

## SCHEDULES

### SCHEDULE 2

Section 30

#### APPEALS UNDER SECTIONS 24 AND 25

##### PART 1

###### PERMISSION TO APPEAL

###### *Application for permission to appeal*

- 1 (1) An application for permission to appeal under section 24 or 25 against a decision in respect of a licence may not be made after the end of the period of 6 weeks beginning with the day on which the CAA published the relevant notice.
- (2) In this paragraph “the relevant notice” means—
  - (a) in the case of an application for permission to appeal under section 24, the notice published in accordance with section 15 of the decision to grant the licence, and
  - (b) in the case of an application for permission to appeal under section 25, the notice published in accordance with section 22 of the decision that is the subject of the application.
- (3) The applicant must send a copy of the application to the CAA.
- (4) The CAA must—
  - (a) publish the application, and
  - (b) send a copy of the application to the persons listed in sub-paragraph (5) (other than the applicant).
- (5) Those persons are—
  - (a) the holder of the licence that is the subject of the application,
  - (b) any other person with a qualifying interest in the decision that is the subject of the application, and
  - (c) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.

###### *Determination of application for permission to appeal*

- 2 (1) The Competition Commission’s decision on an application for permission to appeal is to be taken by an authorised member of the Commission.
- (2) The authorised member must take the decision before the end of the period of 10 weeks beginning with the day on which the CAA published the relevant notice (as defined in paragraph 1).
- (3) The authorised member may grant permission to appeal subject to conditions.

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- (4) The conditions may, in particular, include—
- (a) conditions which limit the matters that are to be considered on the appeal,
  - (b) conditions for the purpose of expediting the determination of the appeal, and
  - (c) conditions requiring the appeal to be considered together with other appeals, including appeals relating to different matters or decisions and appeals brought by different persons.
- (5) An authorised member of the Competition Commission who grants permission to appeal against a decision that relates entirely or partly to a matter remitted to the CAA following an earlier appeal under section 24 or 25 must grant it subject to conditions excluding consideration of—
- (a) matters that were considered as part of the earlier appeal, and
  - (b) matters that could have been raised by the applicant or a relevant connected person as part of the earlier appeal,
- unless the member considers that there are compelling reasons not to do so.
- (6) In sub-paragraph (5), in relation to an applicant, “relevant connected person” means a person who was connected to the applicant at any time during the consideration of the earlier appeal by the Competition Commission.
- (7) The Competition Commission must—
- (a) publish the decision on an application for permission to appeal and the reasons for the decision, and
  - (b) send a copy of the decision and reasons to the persons listed in sub-paragraph (8).
- (8) Those persons are—
- (a) the holder of the licence which is the subject of the application,
  - (b) if the application was made by someone other than the holder of that licence, the applicant,
  - (c) any other person with a qualifying interest in the decision that is the subject of the application,
  - (d) such bodies representing airport operators or providers of air transport services as the Commission considers appropriate, and
  - (e) the CAA.
- (9) Section 29(5) applies to the publication of a decision and reasons under this paragraph as it applies to the publication of an order containing a determination of an appeal.

*Time limit for CAA to make representations*

- 3
- (1) This paragraph applies where the CAA wishes to make representations to the Competition Commission in relation to an application under paragraph 1 for permission to appeal against a decision.
  - (2) The CAA must make the representations in writing before the end of the period of 8 weeks beginning with the day on which the CAA publishes the relevant notice (as defined in paragraph 1).
  - (3) The CAA must send a copy of its representations to—
    - (a) the holder of the licence which is the subject of the application,

- (b) if the application was made by someone other than the holder of that licence, the applicant,
- (c) any other person with a qualifying interest in the decision that is the subject of the application, and
- (d) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.

## PART 2

### INTERVENTION IN APPEAL

#### *Application for permission to intervene in appeal*

- 4
- (1) Where an application is made under paragraph 1 for permission to appeal against a decision, an application for permission to intervene in the appeal may be made to the Competition Commission by another person who would be entitled to appeal against the decision.
  - (2) An application for permission to intervene may be made before the end of the period of 1 week beginning with the day on which the Competition Commission publishes its decision to grant permission to appeal against the decision.
  - (3) An application for permission to intervene may be made after the end of that period only with the leave of an authorised member of the Competition Commission.
  - (4) The applicant must send a copy of the application to the CAA.
  - (5) The CAA must—
    - (a) publish the application, and
    - (b) send a copy of the application to the persons listed in sub-paragraph (6) (other than the applicant).
  - (6) Those persons are—
    - (a) the holder of the licence that is the subject of the application for permission to appeal,
    - (b) any other person with a qualifying interest in the decision that is the subject of that application, and
    - (c) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.

#### *Determination of application for permission to intervene*

- 5
- (1) The Competition Commission's decision on an application for permission to intervene is to be taken by an authorised member of the Commission.
  - (2) An authorised member of the Competition Commission may grant permission to intervene in an appeal only if satisfied that allowing the applicant to intervene is necessary or desirable for the proper resolution of the appeal.
  - (3) The authorised member—
    - (a) may grant permission to intervene for the purposes of supporting or opposing an appeal;

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- (b) must make any permission to intervene for the purposes of supporting an appeal subject to conditions preventing the intervener from putting forward new grounds of appeal;
  - (c) may make permission to intervene subject to other conditions, including conditions which limit the matters that may be raised by the intervener.
- (4) The Competition Commission must—
- (a) publish the decision on an application for permission to intervene and the reasons for the decision, and
  - (b) send a copy of the decision and reasons to the persons listed in sub-paragraph (5).
- (5) Those persons are—
- (a) the holder of the licence which is the subject of the application,
  - (b) if the application was made by someone other than the holder of that licence, the applicant,
  - (c) any other person with a qualifying interest in the decision that is the subject of the application,
  - (d) such bodies representing airport operators or providers of air transport services as the Commission considers appropriate, and
  - (e) the CAA.
- (6) Section 29(5) applies to the publication of a decision and reasons under this paragraph as it applies to the publication of an order containing a determination of an appeal.

### PART 3

#### AUTOMATIC SUSPENSION OF CONDITION OF NEW LICENCE OR MODIFICATION

##### *Automatic suspension of condition of new licence including exception for certain financial arrangements*

- 6 (1) Sub-paragraph (2) applies where—
- (a) the CAA decides to grant a licence under section 15,
  - (b) an application is made for permission to appeal under section 24 against the CAA's decision to include a relevant financial arrangements condition in the licence, and
  - (c) the relevant financial arrangements condition would have effect, but for this paragraph, before the end of the period of 10 weeks beginning with the day on which notice of the decision was published in accordance with section 15 (“the 10 week period”).
- (2) The relevant financial arrangements condition does not have effect during the 10 week period.
- (3) Sub-paragraph (4) applies where—
- (a) the CAA decides to grant a licence under section 15, and
  - (b) the Competition Commission grants an application for permission to appeal under section 24 against the CAA's decision to include a relevant financial arrangements condition in the licence.

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- (4) The relevant financial arrangements condition does not have effect until the appeal against the decision is determined or withdrawn (or, if there is more than one appeal against the decision, until all of the appeals are determined or withdrawn).
- (5) In this paragraph, “relevant financial arrangements condition” means a condition that is subject to an exception (however expressed) relating to, or operating by reference to, financial arrangements entered into by the holder of the licence, or a person connected to the holder of the licence, before section 3 came into force.
- (6) For the purposes of this paragraph, financial arrangements entered into after section 3 came into force but pursuant to other financial arrangements entered into by the holder of the licence, or a person connected to the holder of the licence, before that time are to be treated as entered into before that time.

*Automatic suspension of modification of existing licence involving exception for certain financial arrangements*

- 7 (1) Sub-paragraph (2) applies where—
  - (a) the CAA decides under section 22 to modify a licence by adding a relevant financial arrangements condition,
  - (b) an application is made for permission to appeal under section 25 against the decision, and
  - (c) the condition would have effect, but for this paragraph, before the end of the period of 10 weeks beginning with the day on which notice of the decision was published in accordance with section 22 (“the 10 week period”).
- (2) The relevant financial arrangements condition does not have effect during the 10 week period.
- (3) Sub-paragraph (4) applies where—
  - (a) the CAA decides under section 22 to modify a licence by adding a relevant financial arrangements condition, and
  - (b) the Competition Commission grants permission to appeal against the decision.
- (4) The relevant financial arrangements condition does not have effect until the appeal against the decision is determined or withdrawn (or, if there is more than one appeal against the decision, until all of the appeals are determined or withdrawn).
- (5) In this paragraph, “relevant financial arrangements condition” has the same meaning as in paragraph 6.
- 8 (1) Sub-paragraph (2) applies where—
  - (a) the CAA decides under section 22 to modify a licence condition,
  - (b) the decision is subject to the restrictions in section 23,
  - (c) an application is made for permission to appeal under section 25 against the decision, and
  - (d) the licence modification that is the subject of the decision would have effect, but for this paragraph, before the end of the period of 10 weeks beginning with the day on which notice of the decision was published in accordance with section 22 (“the 10 week period”).
- (2) The licence modification does not have effect during the 10 week period.

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- (3) Sub-paragraph (4) applies where—
- (a) the CAA decides under section 22 to modify a licence condition,
  - (b) the decision is subject to the restrictions in section 23, and
  - (c) the Competition Commission grants permission to appeal against the decision.
- (4) The licence modification does not have effect until the appeal against the decision is determined or withdrawn (or, if there is more than one appeal against the decision, until all of the appeals are determined or withdrawn).

## PART 4

### APPLICATION FOR SUSPENSION OF CONDITION OF NEW LICENCE OR MODIFICATION

#### *Application for direction suspending condition of new licence*

- 9 (1) Where an application is made for permission to appeal against a decision under section 15 to include a condition in a licence, an application for a direction suspending the effect of the decision may be made to the Competition Commission—
- (a) by the person who applied for permission to appeal, or
  - (b) by another person who would be entitled to appeal against the decision.
- (2) An application for a direction may be made at any time before the determination of the appeal.
- (3) The applicant must send a copy of the application to the CAA.
- (4) The CAA must—
- (a) publish the application, and
  - (b) send a copy of the application to the persons listed in sub-paragraph (5) (other than the applicant).
- (5) Those persons are—
- (a) the holder of the licence that is the subject of the application,
  - (b) any other person with a qualifying interest in the decision that is the subject of the application, and
  - (c) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.

#### *Effect of early application for direction under paragraph 9*

- 10 (1) This paragraph applies if—
- (a) an application is made under paragraph 9 for a direction suspending the effect of a decision under section 15 to include a condition in a licence,
  - (b) the application is made before the end of the period of 6 weeks beginning with the day on which the CAA published the notice of the decision to grant the licence in accordance with section 15, and
  - (c) the licence condition would have effect, but for this paragraph, before the end of the period of 10 weeks beginning with that day (“the 10 week period”).
- (2) The licence condition does not have effect during the 10 week period.

- (3) The Competition Commission's decision on the application under paragraph 9 must be taken before the end of the 10 week period.

*Direction following application under paragraph 9*

- 11 (1) The Competition Commission's functions in relation to an application under paragraph 9 for a direction are to be carried out by an authorised member of the Commission.
- (2) An authorised member of the Competition Commission may give a direction suspending the effect of a decision under section 15 to include a condition in a licence only if—
- (a) the applicant for the direction would incur significant costs if the licence condition were to have effect from the date specified in the decision, and
  - (b) the balance of convenience does not otherwise require the licence condition to have effect from that date.
- (3) If an authorised member gives a direction suspending the effect of the decision, the licence condition does not have effect or ceases to have effect—
- (a) to the extent specified in the direction, and
  - (b) for the period specified or described in the direction.
- (4) The Competition Commission may by notice vary or withdraw a direction under this paragraph if it considers it appropriate to do so having regard to the costs and the balance of convenience referred to in sub-paragraph (2).

*Application for direction suspending licence modification*

- 12 (1) Where an application for permission to appeal against a decision under section 22 to modify a licence condition is made, an application for a direction suspending the effect of the decision may be made to the Competition Commission—
- (a) by the person who applied for permission to appeal, or
  - (b) by another person who would be entitled to appeal against the decision.
- (2) An application for a direction may be made at any time before the determination of the appeal.
- (3) The applicant must send a copy of the application to the CAA.
- (4) The CAA must—
- (a) publish the application, and
  - (b) send a copy of the application to the persons listed in sub-paragraph (5) (other than the applicant).
- (5) Those persons are—
- (a) the holder of the licence that is the subject of the application,
  - (b) any other person with a qualifying interest in the decision that is the subject of the application, and
  - (c) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.

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*Effect of early application for direction under paragraph 12*

- 13 (1) This paragraph applies if—
- (a) an application is made under paragraph 12 for a direction suspending the effect of a decision under section 22 to modify a licence condition,
  - (b) the application is made before the end of the period of 6 weeks beginning with the day on which the CAA published notice of that decision in accordance with that section, and
  - (c) the modification would have effect, but for this paragraph, before the end of the period of 10 weeks beginning with that day (“the 10 week period”).
- (2) The modification does not have effect during the 10 week period.
- (3) The Competition Commission’s decision on the application under paragraph 12 must be taken before the end of the 10 week period.

*Direction following application under paragraph 12*

- 14 (1) The Competition Commission’s functions in relation to an application under paragraph 12 for a direction are to be carried out by an authorised member of the Commission.
- (2) An authorised member of the Competition Commission may give a direction suspending the effect of a decision under section 22 to include a condition in a licence only if—
- (a) the applicant for the direction would incur significant costs if the licence condition were to have effect from the date specified in the decision, and
  - (b) the balance of convenience does not otherwise require the licence condition to have effect from that date.
- (3) If an authorised member gives a direction suspending the effect of the decision, the licence condition does not have effect or ceases to have effect—
- (a) to the extent specified in the direction, and
  - (b) for the period specified or described in the direction.
- (4) The Competition Commission may by notice vary or withdraw a direction under this paragraph if it considers it appropriate to do so having regard to the costs and the balance of convenience referred to in sub-paragraph (2).

*Publication of decisions about directions*

- 15 (1) The Competition Commission must—
- (a) publish a decision on an application under paragraph 9 or 12 for a direction and the reasons for the decision, and
  - (b) send a copy of the decision and reasons to the persons listed in sub-paragraph (4).
- (2) Where paragraph 10 or 13 applies, the Competition Commission must comply with sub-paragraph (1) before the end of the 10 week period referred to in that paragraph.
- (3) The Competition Commission must—
- (a) publish any notice varying or withdrawing a direction under paragraph 11 or 14 and the reasons for the variation or withdrawal, and



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- (b) send a copy of the notice and reasons to the persons listed in sub-paragraph (4).
- (4) Those persons are—
  - (a) the holder of the licence which is the subject of the application or direction,
  - (b) if the application for the direction was made by someone other than the holder of that licence, the applicant,
  - (c) any other person with a qualifying interest in the decision that is the subject of the application,
  - (d) such bodies representing airport operators or providers of air transport services as the Commission considers appropriate, and
  - (e) the CAA.
- (5) Section 29(5) applies to the publication of a decision, notice or reasons mentioned in sub-paragraph (1) or (3) as it applies to the publication of an order containing a determination of an appeal.

*Time limit for CAA to make representations*

- 16 (1) This paragraph applies where the CAA wishes to make representations to the Competition Commission in relation to an application under paragraph 9 or 12 for a direction.
- (2) In a case to which paragraph 10 or 13 applies, the CAA must make the representations in writing before the end of the period of 8 weeks beginning with the day on which the CAA published the relevant notice.
- (3) In sub-paragraph (2) “the relevant notice” means—
  - (a) in the case of an application under paragraph 9, the notice published in accordance with section 15 of the decision to grant the licence, and
  - (b) in the case of an application under paragraph 12, the notice published in accordance with section 22 of the decision that is the subject of the application.
- (4) In any other case—
  - (a) the Competition Commission must specify a reasonable period for making representations, and
  - (b) the CAA must make the representations in writing before the end of that period.
- (5) In all cases, the CAA must send a copy of its representations to—
  - (a) the holder of the licence which is the subject of the application,
  - (b) if the application was made by someone other than the holder of that licence, the applicant,
  - (c) any other person with a qualifying interest in the decision that is the subject of the application, and
  - (d) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.

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## PART 5

### APPEALS

#### *Determination of appeal by group*

- 17 (1) The following functions of the Competition Commission are to be carried out, in accordance with appeal rules, by a group selected for the purpose by the Chairman—
- (a) considering and determining an appeal, and
  - (b) giving directions and taking other steps to give effect to the Commission's determination on an appeal.
- (2) The group must consist of 3 members of the Competition Commission.
- (3) The Chairman must appoint one of the members of the group to be its chair.
- (4) The Chairman may—
- (a) select himself or herself to be a member of the group, and
  - (b) appoint himself or herself to be its chair.
- (5) A decision of the group is effective only if—
- (a) all of the members of the group are present when it is made, and
  - (b) at least 2 members of the group are in favour of the decision.

#### *Replacing members of group*

- 18 (1) The Chairman may select a member of the Competition Commission to replace another as a member of a group with the function of determining an appeal if—
- (a) the person being replaced has ceased to be a member of the Commission,
  - (b) the Chairman is satisfied that the person being replaced will be unable, for a substantial period, to perform the duties of a member of the group, or
  - (c) the Chairman is satisfied that, because of a particular interest of the person being replaced, it is inappropriate for that person to remain a member of the group.
- (2) The Chairman may select himself or herself to replace a member of the group.
- (3) The replacement of a member of the group does not—
- (a) prevent the group from continuing with anything begun before the member is replaced, or
  - (b) affect any decision made, or direction given, by the group before the member is replaced.

#### *Representations made by the CAA*

- 19 (1) This paragraph applies where an application for permission to appeal has been granted and the CAA makes representations to the Competition Commission for the purposes of the appeal.
- (2) The CAA must send a copy of its representations to—
- (a) the holder of the licence which is the subject of the appeal,
  - (b) if the appeal was brought by someone other than the holder of that licence, the appellant,

- (c) any other person with a qualifying interest in the decision that is the subject of the appeal, and
- (d) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.

*Matters that may be disregarded*

- 20 (1) A group with the function of determining an appeal may disregard matters raised by the CAA if it thinks it necessary to do so for the purpose of securing that the appeal is determined within the period allowed under section 28, unless they are matters contained in representations made to the Competition Commission—
- (a) in accordance with paragraph 16, or
  - (b) before the end of the period of 12 weeks beginning with the day on which the relevant notice was published.
- (2) In sub-paragraph (1) “the relevant notice” means—
- (a) in the case of an appeal under section 24, the notice published in accordance with section 15 of the decision to grant the licence, and
  - (b) in the case of an appeal under section 25, the notice published in accordance with section 22 of the decision that is the subject of the appeal.
- (3) A group with the function of determining an appeal may disregard matters raised by the appellant if it thinks it necessary to do so for the purpose of securing that the appeal is determined within the period allowed under section 28, unless the matters were raised by the appellant—
- (a) at the time of the application under paragraph 1 for permission to appeal, or
  - (b) in an application under paragraph 9 or 12 for a direction.
- (4) A group with the function of determining an appeal may disregard matters raised by an intervener if it thinks it necessary to do so for the purpose of securing that the appeal is determined within the period allowed under section 28, unless the matters were raised by the intervener—
- (a) at the time of the application under paragraph 4 for permission to intervene, or
  - (b) in an application under paragraph 9 or 12 for a direction.

*Remitting decision to CAA*

- 21 (1) This paragraph applies where the Competition Commission decides to remit a matter that is the subject of an appeal to the CAA for reconsideration and decision.
- (2) Where, on reconsidering the matter, the CAA decides to modify a licence, the notice under section 22(6) in respect of the modification may, with the agreement of the holder of the licence, specify a date falling—
- (a) before the end of the period of 6 weeks beginning with the date on which the notice is published, but
  - (b) on or after the date on which the decision that was the subject of the appeal took effect or would have taken effect but for its suspension under this Schedule.
- (3) Where, on reconsidering the matter, the CAA considers it appropriate to modify a licence by adding or altering a price cap condition in respect of goods and services—

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- (a) sub-paragraph (4) applies if the highest charges that would be permitted by the new or altered price cap condition (disregarding sub-paragraphs (4) and (6)) (“the proposed maximum charges”) are lower than charges imposed by the holder of the licence in respect of such goods and services during all or part of the appeal period, and
  - (b) sub-paragraph (6) applies if the proposed maximum charges are higher than charges imposed by the holder of the licence in respect of such goods and services during all or part of that period.
- (4) Where this sub-paragraph applies, the CAA may modify the licence so that it includes such price cap conditions as the CAA considers appropriate with a view to putting the holder of the licence in the position that it would have been in if, during the appeal period, it had imposed such lower charges as the CAA considers appropriate.
- (5) The reference in sub-paragraph (4) to lower charges does not include charges of less than the proposed maximum charges.
- (6) Where this sub-paragraph applies, the CAA may modify the licence so that it includes such price cap conditions as the CAA considers appropriate with a view to putting the holder of the licence in the position that it would have been in if, during the appeal period, it had imposed such higher charges as the CAA considers appropriate.
- (7) The reference in sub-paragraph (6) to higher charges does not include charges of more than the proposed maximum charges.
- (8) For the purposes of this paragraph a licence condition is a price cap condition to the extent that it regulates prices by providing that the amount, or the maximum amount, that may be charged is an amount specified in, or determined in accordance with, the condition.
- (9) In this paragraph “appeal period” has the same meaning as in section 28.

*Substituting CAA’s decision*

- 22 (1) This paragraph applies where the Competition Commission decides to substitute its own decision for a decision of the CAA that is the subject of an appeal.
- (2) Section 23 applies to the Competition Commission as it applies to the CAA.
- (3) The Competition Commission’s decision has effect as if made by the CAA, except that—
- (a) section 22(6) does not apply, and
  - (b) an appeal may not be brought against it under this Chapter.
- (4) Any modification of a licence effected by the Competition Commission’s decision takes effect from the date specified by the Commission.
- (5) The Competition Commission may, with the agreement of the holder of the licence, specify a date falling—
- (a) before the date on which the order containing its decision is published, but
  - (b) on or after the date on which the decision that was the subject of the appeal took effect or would have taken effect but for its suspension under this Schedule.

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- (6) Where the Competition Commission considers it appropriate to modify the licence by adding or altering a price cap condition in respect of goods and services—
- (a) sub-paragraph (7) applies if the highest charges that would be permitted by the new or altered price cap condition (disregarding sub-paragraphs (7) and (9)) (“the proposed maximum charges”) are lower than charges imposed by the holder of the licence in respect of such goods and services during all or part of the appeal period, and
  - (b) sub-paragraph (9) applies if the proposed charges are higher than charges imposed by the holder of the licence in respect of such goods and services during all or part of that period.
- (7) Where this sub-paragraph applies, the Competition Commission’s decision may modify the licence so that it includes such price cap conditions as the Commission considers appropriate with a view to putting the holder of the licence in the position that it would have been in if, during the appeal period, it had imposed such lower charges as the Commission considers appropriate.
- (8) The reference in sub-paragraph (7) to lower charges does not include charges of less than the proposed maximum charges.
- (9) Where this sub-paragraph applies, the Competition Commission’s decision may modify the licence so that it includes such price cap conditions as the Commission considers appropriate with a view to putting the holder of the licence in the position that it would have been in if, during the appeal period, it had imposed such higher charges as the Commission considers appropriate.
- (10) The reference in sub-paragraph (9) to higher charges does not include charges of more than the proposed maximum charges.
- (11) In this paragraph—
- “appeal period” has the same meaning as in section 28;
  - “price cap condition” has the same meaning as in paragraph 21.

## **PART 6**

### **GENERAL**

#### *Consideration of new matters*

- 23 (1) This paragraph applies to—
- (a) an authorised member of the Competition Commission with the function of determining an application for permission to appeal under section 24 or 25, and
  - (b) a group with the function of determining an appeal.
- (2) The member or group must not have regard to any matter, information or evidence raised or provided by the CAA if it was not considered by the CAA in making the decision that is the subject of the application or appeal, unless the member or group considers that—
- (a) the CAA could not reasonably have been expected to consider the matter, information or evidence when making that decision, and

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- (b) the matter, information or evidence is likely to have an important effect on the outcome of the application or appeal, either by itself or taken together with other matters, information or evidence.
- (3) The member or group must not have regard to any matter, information or evidence raised or provided by a person other than the CAA if it was not considered by the CAA in making the decision that is the subject of the application or appeal, unless the member or group considers that—
- (a) the person or a relevant connected person could not reasonably have raised the matter with the CAA, or provided the information or evidence to the CAA, during the period in which the CAA was making that decision, and
  - (b) the matter, information or evidence is likely to have an important effect on the outcome of the application or appeal, either by itself or taken together with other matters, information or evidence.
- (4) Where the member or group has regard to a matter, information or evidence in reliance on sub-paragraph (2) or (3), those sub-paragraphs do not prevent the member or group having regard to further matters, information or evidence raised or provided in response to it if the member or group considers that the further matter, information or evidence is likely to have an important effect on the outcome of the application or appeal, either by itself or taken together with other matters, information or evidence.
- (5) In sub-paragraph (3), in relation to a person who raises or provides a matter, information or evidence, “relevant connected person” means a person who was connected to that person at any time during the period in which the CAA was making the decision that is the subject of the application or appeal.
- (6) References in this paragraph to the period in which the CAA was making a decision are to the period—
- (a) beginning with the publication of a notice under section 15(1) or 22(2) proposing to make the decision, and
  - (b) ending with the publication of a notice under section 15(5) or 22(6) in relation to the decision.

#### *Production of documents*

- 24 (1) The Competition Commission may by notice require a person to produce to the Commission documents specified or described in the notice that are in the person’s custody or under the person’s control.
- (2) The notice may require the production of documents—
- (a) at the time and place specified in the notice, and
  - (b) in the form and manner specified in the notice.
- (3) The notice may not require a person to produce documents that the person could not be compelled to provide in evidence in civil proceedings before the appropriate court.
- (4) A notice under this paragraph may be given on the Competition Commission’s behalf by—
- (a) a member of the Commission, or
  - (b) its secretary.

### *Oral hearings*

- 25 (1) For the purposes of this Schedule the following persons may hold an oral hearing and take evidence on oath—
- (a) an authorised member of the Competition Commission considering an application under paragraph 1 for permission to appeal,
  - (b) an authorised member of the Competition Commission considering an application under paragraph 4 for permission to intervene,
  - (c) an authorised member of the Competition Commission considering an application under paragraph 9 or 12 for a direction, and
  - (d) a group with the function of determining an appeal.
- (2) In the course of holding such a hearing and taking such evidence, a person or group described in sub-paragraph (1) may administer oaths.
- (3) The Competition Commission may by notice require a person—
- (a) to attend at a time and place specified in the notice, and
  - (b) at that time and place, to give evidence to a member or group described in sub-paragraph (1).
- (4) At an oral hearing, the member or group conducting the hearing may require the following persons to give evidence or to make representations—
- (a) the applicant, the appellant or any intervener (if present), or
  - (b) a person attending the hearing as a representative of the applicant, the appellant, an intervener or the CAA.
- (5) A person who gives oral evidence at the hearing may be cross-examined by or on behalf of a party to the appeal, subject to sub-paragraph (6).
- (6) Such a person may be cross-examined by or on behalf of an intervener only with the leave of the person or group conducting the hearing.
- (7) If the applicant, the appellant, an intervener or a representative of such a person or the CAA is not present at a hearing—
- (a) the Competition Commission is not required to give notice to that person under sub-paragraph (3), and
  - (b) the member or group conducting the hearing may determine the application or appeal without hearing that person's evidence or representations.
- (8) A person may not be required under this paragraph to give evidence that the person could not be compelled to give in civil proceedings before the appropriate court.
- (9) Where a person is required under this paragraph to attend at a place more than 16 kilometres from the person's place of residence, the Competition Commission must pay the person the necessary expenses of attendance.
- (10) A notice under this paragraph may be given on the Competition Commission's behalf by—
- (a) a member of the Commission, or
  - (b) its secretary.

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### *Written evidence*

- 26 (1) The Competition Commission may by notice require a person to produce a written statement with respect to a matter specified in the notice to—
- (a) an authorised member of the Competition Commission considering an application under paragraph 1 for permission to appeal,
  - (b) an authorised member of the Competition Commission considering an application under paragraph 4 for permission to intervene,
  - (c) an authorised member of the Competition Commission considering an application under paragraph 9 or 12 for a direction, or
  - (d) a group with the function of determining an appeal.
- (2) The notice may require the written statement—
- (a) to be produced at the time and place specified in the notice, and
  - (b) to be verified by a statement of truth.
- (3) Where a notice requires a written statement to be verified by a statement of truth, the statement may be disregarded unless it is so verified.
- (4) A person may not be required under this paragraph to produce a written statement about a matter about which the person could not be compelled to give evidence in civil proceedings before the appropriate court.
- (5) A notice under this paragraph may be given on the Competition Commission’s behalf by—
- (a) a member of the Commission, or
  - (b) its secretary.

### *Expert advice*

- 27 Where permission to appeal is granted under paragraph 2, the Competition Commission may commission expert advice with respect to any matter raised by a party to the appeal.

### *Enforcement of requirements in relation to evidence etc*

- 28 (1) This paragraph applies where a person (“P”)—
- (a) fails to comply with a notice under paragraph 24, 25 or 26,
  - (b) fails to comply with any other requirement imposed under paragraph 24, 25 or 26,
  - (c) in complying with a notice under paragraph 26, makes a statement that is false or misleading in a material respect, or
  - (d) in providing information verified by a statement of truth required by appeal rules, provides information that is false or misleading in a material respect.
- (2) A member of the Competition Commission may certify to the appropriate court—
- (a) the failure,
  - (b) the fact that P has made a false or misleading statement in circumstances described in sub-paragraph (1)(c), or
  - (c) the fact that P has provided false or misleading information in circumstances described in sub-paragraph (1)(d).



- (3) The appropriate court may inquire into the certified failure or act and, if it does so, must hear—
  - (a) any witness against P,
  - (b) any witness on behalf of P, and
  - (c) any statement in P’s defence.
- (4) The appropriate court may punish P as if P had been guilty of contempt of court if it is satisfied that—
  - (a) the certified failure or act took place, and
  - (b) P did not have a reasonable excuse for the failure or act.
- (5) Where P is a body corporate, the appropriate court may punish any director or other officer of that body, either instead of or as well as punishing the body.
- (6) In this paragraph “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body.

#### *Destruction of documents*

- 29
- (1) A person who intentionally alters, suppresses or destroys a document that the person has been required to produce under paragraph 24 is guilty of an offence.
  - (2) A person guilty of an offence under this paragraph is liable—
    - (a) on summary conviction, to a fine not exceeding the statutory maximum;
    - (b) on conviction on indictment, to imprisonment for not more than 2 years or a fine (or both).

#### *Withdrawal of applications and appeals*

- 30
- (1) An application under paragraph 1 for permission to appeal may be withdrawn only with the consent of the Competition Commission.
  - (2) After an application for permission to appeal is granted, the appeal may be withdrawn only with the consent of the Competition Commission.
  - (3) An application under paragraph 4 for permission to intervene may be withdrawn only with the consent of the Competition Commission.
  - (4) After an application for permission to intervene is granted, the intervener may withdraw from the appeal only with the consent of the Competition Commission.
  - (5) An application under paragraph 9 or 12 for a direction suspending the effect of a decision may be withdrawn at any time.
  - (6) Withdrawal of an application under this Schedule or of an appeal has effect when the applicant or appellant gives notice to the Competition Commission.
  - (7) The applicant or appellant must send a copy of the notice to the CAA.
  - (8) The CAA must—
    - (a) publish the notice, and
    - (b) send a copy of the notice to the persons listed in sub-paragraph (9) (other than the person withdrawing the application or appeal).
  - (9) Those persons are—

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- (a) the holder of the licence that is the subject of the application or appeal,
- (b) any other person with a qualifying interest in the decision that is the subject of the application or appeal, and
- (c) such bodies representing airport operators or providers of air transport services as the CAA considers appropriate.

### *Appeal rules*

- 31 (1) The Competition Commission may make rules regulating the conduct and disposal of appeals.
- (2) The rules may include provision supplementing the provisions of this Schedule in relation to any application, notice, hearing or requirement for which this Schedule provides.
- (3) The rules may, in particular, include—
- (a) provision requiring an application to be accompanied by information specified in the rules,
  - (b) provision requiring such information to be verified by a statement of truth,
  - (c) provision requiring an applicant to provide the CAA with information specified in the rules,
  - (d) provision imposing time limits or other restrictions on the taking of evidence at an oral hearing, and
  - (e) provision imposing time limits or other restrictions on the making of representations or observations at such a hearing.
- (4) The rules may make different provision for different purposes.
- (5) Before making rules under this paragraph the Competition Commission must consult such persons as it considers appropriate.
- (6) The Competition Commission must publish rules made under this paragraph.

### *Costs*

- 32 (1) Where an application under this Schedule or an appeal is withdrawn, an authorised member of the Competition Commission may make such order as the member thinks fit requiring the parties to the application or appeal to make payments to each other and to the Commission in respect of costs incurred in connection with the application or appeal.
- (2) A group that determines an appeal must make an order requiring the payment to the Competition Commission of the costs incurred by the Commission in connection with the appeal.
- (3) An order under sub-paragraph (2) must require those costs to be paid—
- (a) where the appeal is allowed in full, by the CAA,
  - (b) where the appeal is dismissed in full, by the appellant, and
  - (c) where the appeal is allowed in part, by the appellant and the CAA in such proportions as the Competition Commission considers appropriate,
- subject to sub-paragraph (4).

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- (4) The order may require an intervener in the appeal to pay such proportion of those costs (if any) as the Competition Commission considers appropriate.
- (5) A group that determines an appeal may make such order as it thinks fit requiring one party to the appeal to make payments to another in respect of costs reasonably incurred by the other party in connection with the appeal.
- (6) A person who is required to make a payment by an order under this paragraph must comply with the order before the end of the period of 28 days beginning with the day after the making of the order.
- (7) If that person does not do so, the unpaid balance carries interest at a rate specified in the order or determined in accordance with the order.
- (8) In this paragraph, references to an intervener in an appeal, and to a party to an appeal, include a person who was granted permission to intervene in the appeal and subsequently withdrew from the appeal.

#### *Secretary of State's power to modify time limits*

- 33 The Secretary of State may by regulations modify any period of time specified in this Schedule.

#### *Publication etc*

- 34 Where the CAA or the Competition Commission is required by this Schedule to publish something or send a copy of something and this Schedule does not specify a time for doing so, it must publish or send it as soon as practicable.

#### *Interpretation*

- 35 (1) In this Schedule—
- “appeal” means an appeal under section 24 or 25;
  - “appeal rules” means rules under paragraph 31;
  - “the appropriate court” means—
    - (a) in relation to England and Wales and Northern Ireland, the High Court, and
    - (b) in relation to Scotland, the Court of Session;
  - “authorised member of the Competition Commission”, in relation to a power exercisable in connection with an appeal against a decision, means—
    - (a) the Chairman,
    - (b) a member of the Commission authorised by the Chairman to exercise that power, or
    - (c) a member of any group which has, or (if permission to appeal is granted) will have, the function of determining an appeal against the decision;
  - “Chairman” means the Chairman of the Competition Commission;
  - “a group” means a group selected in accordance with paragraphs 17 and 18;

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“intervener”, in relation to an appeal, means a person who has been granted permission to intervene in the appeal and who has not withdrawn from the appeal (but see paragraph 32(8));

“statement of truth”, in relation to the production of a statement or in relation to information provided by a person, means a statement that the person producing that statement or providing that information believes the facts contained in the statement or the information to be true.

- (2) References in this Schedule to a party to an application are to—
- (a) the applicant, or
  - (b) the CAA.
- (3) References in this Schedule to a party to an appeal are to—
- (a) the appellant,
  - (b) an intervener, or
  - (c) the CAA.
- (4) For the purposes of this Schedule and sections 28 and 29, a person has a qualifying interest in a decision that is the subject of an appeal or an application under this Schedule for permission to appeal if—
- (a) the person has been granted permission to appeal against the decision and has not withdrawn the appeal,
  - (b) the person has applied for permission to appeal against the decision and the application has not been withdrawn or refused,
  - (c) the person has been granted permission to intervene in an appeal against the decision and the appeal has not been withdrawn,
  - (d) the person has applied for permission to intervene in an appeal against the decision and the application has not been withdrawn or refused, or
  - (e) the person has applied for a direction under this Schedule suspending the effect of the decision, the application has not been withdrawn or refused and any direction made in response to the application has not been withdrawn.