

**2000 No. 261**

**COMPETITION**

**The Competition Commission Appeal Tribunal Rules 2000**

<i>Made</i> - - - -	<i>7th February 2000</i>
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The Secretary of State, after consultation with the President of the Competition Commission Appeal Tribunals in accordance with section 48(2) of the Competition Act 1998(a) and after consultation with the Council on Tribunals in accordance with section 8(1) of the Tribunals and Inquiries Act 1992(b), in exercise of the powers conferred by sections 48(2), (3) and (4), 49(3) and 71 of the Act and Part II of Schedule 8 to the Act hereby makes the following rules:

## PART I

### INTRODUCTION

#### Citation and commencement

1. These rules may be cited as the Competition Commission Appeal Tribunal Rules 2000 and shall come into force on 1st March 2000.

#### The Registrar of Appeal Tribunals

2.—(1) A Registrar of Appeal Tribunals shall be appointed by the Competition Commission with the approval of the Secretary of State.

(2) Any person appointed to be the Registrar shall—

- (a) have a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990(c);
- (b) be an advocate or solicitor in Scotland of at least seven years standing; or
- (c) be—
  - (i) a member of the Bar of Northern Ireland; or
  - (ii) a solicitor of the Supreme Court of Northern Ireland

of at least seven years standing.

(3) The Registrar shall act in accordance with the instructions of the President and shall, in particular, be responsible for:—

- (a) the establishment and maintenance of a register in which all pleadings and supporting documents and all orders and decisions of the tribunal shall be registered; and
- (b) the acceptance, transmission, service and custody of documents in accordance with these rules.

(4) The President may delegate to the Registrar the power to abridge or extend the time prescribed by these rules for the doing of any act.

(5) Any function of the Registrar may be performed on his behalf by any other member of his staff whom the President may authorise for the purpose.

#### Tribunal address for service

3. For the purposes of proceedings under sections 46 and 47 of the Competition Act 1998 (“the Act”) the address for service of documents on the Competition Commission (referred to in these rules as “the Tribunal address for service”) is: The Registrar, The Competition Commission Appeal Tribunals, New Court, 48 Carey Street, London WC2A 2JT or such other address as may be notified in the London, Edinburgh and Belfast Gazettes.

#### Constitution of Tribunals

4.—(1) The President shall publish the arrangements for constituting tribunals to determine appeals.

(2) If a member of a tribunal constituted by the President in accordance with paragraph 27 of Schedule 7 to the Act ceases to be an appeal panel member or is otherwise unable to act before that tribunal has commenced hearing the appeal in accordance with rules 23 and 24 below, the President may attribute the hearing of that appeal to a differently constituted tribunal.

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(a) 1998 c. 41.

(b) 1992 c. 53; Schedule 1 was amended by the Competition Act 1998, Sch. 12, para. 15.

(c) 1990 c. 41.

## **Representation**

5. In proceedings before the tribunal, a party may be represented by—
- (a) a qualified lawyer having rights of audience before a court in the United Kingdom; or
  - (b) any other person allowed by the tribunal to appear on his behalf.

## **PART II**

### **COMMENCING PROCEEDINGS**

#### **Time and manner of commencing proceedings**

6.—(1) In these rules the notice of appeal referred to in Schedule 8 to the Act is referred to as “the application” and “the applicant” means the person making the appeal.

(2) An appeal to the Competition Commission under sections 46 and 47 of the Act must be made by sending an application to the Registrar so that it is received not later than two months after the date upon which the applicant was notified of the disputed decision.

(3) The tribunal may not extend the time limit provided under paragraph (2) unless satisfied that the circumstances are exceptional.

(4) The application shall state:—

- (a) the name and address of the applicant;
- (b) the name and address of the applicant’s legal representative, if appropriate;
- (c) an address for service in the United Kingdom;
- (d) in which part of the United Kingdom the applicant requests that the proceedings take place; and
- (e) the name and address of the respondent to the proceedings

and shall be signed and dated by the applicant or his legal representative.

(5) The application shall contain:—

- (a) a brief statement of the facts;
- (b) a summary of the principal grounds for contesting the decision, which shall include the information required by paragraph 2(2) of Schedule 8 to the Act;
- (c) a succinct presentation of the arguments supporting each of those grounds;
- (d) the relief sought by the applicant, and any directions sought pursuant to rule 17 below; and
- (e) a schedule listing all the documents annexed to the application.

(6) There shall be annexed to the application:—

- (a) a copy of the disputed decision; and
- (b) as far as practicable, a copy of every document on which the applicant relies including the written statements of all witnesses of fact, or expert witnesses, if any.

(7) The signed original of the application (and its annexes) must be accompanied by seven copies certified by the applicant or his legal representative as conforming to the original.

(8) If the applicant wishes to request confidential treatment for any part of his application, or the annexes, he must indicate in the application, or within 14 days after sending it to the Registrar, the relevant passages or documents, together with the reasons, and, if so directed by the Registrar, supply a non-confidential version of the application.

#### **Defective applications**

7.—(1) If the tribunal considers that the application does not comply with rule 6 above, or is materially incomplete, or is unduly prolix or lacking in clarity, the tribunal may give such directions as may be necessary to ensure that the application is put in order and dealt with justly.

(2) The tribunal may, if satisfied that the efficient conduct of the proceedings so require, instruct the Registrar to defer service of the application on the respondent until after the directions referred to in paragraph (1) above have been complied with.

### **Power to strike out applications**

**8.—**(1) The tribunal may, after hearing the parties, strike out an application at any stage in the proceedings if—

- (a) it considers that the application discloses no valid ground of appeal;
- (b) it is satisfied that the applicant has habitually and persistently and without any reasonable ground—
  - (i) instituted vexatious proceedings, whether against the same person or different persons; or
  - (ii) made vexatious applications in any proceedings; or
- (c) the application does not comply with rule 6 in a substantial respect, and the applicant has not remedied the defect pursuant to a direction under rule 7(1); or
- (d) the applicant fails to comply with a direction of the tribunal.

(2) When the tribunal strikes out an application it may make any consequential order it considers appropriate.

### **Amendment of application**

**9.—**(1) The applicant may amend the application only with the permission of the tribunal.

(2) Where the tribunal grants permission under paragraph (1) it may do so on such terms as it thinks fit, and shall give such further or consequential directions as may be necessary.

(3) The tribunal shall not grant permission to amend in order to add a new ground for contesting the decision unless:—

- (a) such ground is based on matters of law or fact which have come to light since the application was made; or
- (b) it was not practicable to include that ground in the application; or
- (c) the circumstances are exceptional.

### **Withdrawal of application**

**10.—**(1) The applicant may withdraw his application only with the permission of the tribunal, or if the application has not yet proceeded to a hearing, the President.

(2) Where the tribunal gives permission under paragraph (1) it may:—

- (a) do so on such terms as it thinks fit; and
- (b) instruct the Registrar to publish notice of the withdrawal in one issue of the London, Edinburgh and Belfast Gazettes and in such other manner as the tribunal may direct.

(3) Where an application is withdrawn:—

- (a) any interim order made under rule 32, other than an order made in respect of costs, shall immediately cease to have effect; and
- (b) a fresh application may not be brought by the applicant in relation to the decision which was the subject of the application withdrawn.

## **PART III**

### **RESPONSE TO THE APPLICATION**

#### **Acknowledgement and notification**

**11.** On receiving an application the Registrar shall—

- (a) send an acknowledgement of its receipt to the applicant; and
- (b) subject to rules 7(2) and 8 above, send a copy of the application to the respondent who made the disputed decision.

#### **Defence**

**12.—**(1) The respondent shall send to the Registrar a defence in the form required by this rule so that the defence is received within six weeks, (or such further time as the tribunal may allow),

of the date on which the respondent received a copy of the application sent in accordance with rule 11(b) above.

- (2) The defence shall state:—
- (a) the name and address of the respondent;
  - (b) the name and address of the respondent’s legal representative, if appropriate;
  - (c) an address for service in the United Kingdom;
  - (d) in which part of the United Kingdom the respondent requests that the proceedings take place

and shall be signed and dated by the respondent, or on his behalf by his duly authorised officer or his legal representative.

- (3) The defence shall contain:—
- (a) a succinct presentation of the arguments of fact and law upon which the respondent will rely in opposing the application;
  - (b) the relief sought by the respondent and any directions sought pursuant to rule 17 below; and
  - (c) a schedule listing all the documents annexed to the defence.

(4) There shall be annexed to the defence a copy of every document upon which the respondent relies including the written statements of all witnesses of fact, and where practicable expert witnesses, if any.

(5) The signed original of the defence (and its annexes) must be accompanied by seven copies certified by the respondent or on his behalf by his duly authorised officer or his legal representative as conforming to the original.

(6) Rules 6(8), 7, 8 (except rule 8(1)(b)) and 9 shall apply to the defence as if references to “rule 6” were references to “rule 12”, references to “the applicant” were references to “the respondent”, references to “the application” were references to “the defence”, the reference in rule 8(1)(a) above to “ground of appeal” were a reference to “ground for opposing the application” and the reference in rule 9(3) above to “the decision” were a reference to “the application”.

(7) On receiving the defence, the Registrar shall send a copy to the applicant.

## PART IV

### INTERVENTION, CONSOLIDATION AND LOCATION OF PROCEEDINGS

#### Publication of notice of application

**13.**—(1) Upon receipt of an application the Registrar shall, subject to any directions or order of the tribunal pursuant to rule 7 or 8, as soon as practicable publish a notice in the London, Edinburgh and Belfast Gazettes and in any other manner as the President may think fit.

- (2) The notice referred to in paragraph (1) above shall state—
- (a) that an application has been received;
  - (b) the name of the applicant;
  - (c) the disputed decision to which the application relates and the person by whom it was made;
  - (d) the particulars of the relief sought by the applicant;
  - (e) a summary of the principal grounds relied on; and
  - (f) that any person who considers that he has sufficient interest may apply to intervene in the proceedings, in accordance with rule 14 below, within one month of publication of the notice.

#### Addition of parties to the proceedings

**14.**—(1) Any person who considers he has sufficient interest in the outcome of any proceedings may make a request to the tribunal, in the form required by this rule, for permission to intervene.

(2) The request must be sent to the Registrar within one month of the date upon which the notice in respect of the relevant proceedings is published in accordance with rule 13(1).

(3) The Registrar shall give notice of the request for permission to intervene to all the other parties to the proceedings and invite their observations on that request within a time limit specified in the notice.

(4) A request for permission to intervene shall state—

- (a) the title of the proceedings to which that request relates;
- (b) the name and address of the person wishing to intervene;
- (c) the name and address of his legal representative, if appropriate;
- (d) an address for service in the United Kingdom.

(5) The request shall contain—

- (a) a concise statement of the matters in issue in the proceedings which affect the person making the request;
- (b) the name of any party whose position the person making the request intends to support; and
- (c) a succinct presentation of the reasons for making the request.

(6) If the tribunal is satisfied, having taken into account the observations of the parties, that the person wishing to intervene has a sufficient interest, it may permit the intervention on such terms and conditions as it thinks fit.

(7) On granting permission in accordance with paragraph (6) of this rule, the tribunal shall give all such consequential directions as it considers necessary with regard, in particular, to the service on the intervener of documents lodged with the Registrar, the submission by the intervener of a statement of intervention and, if appropriate, the submission by the principal parties of a response to the statement of intervention.

(8) In making any order under this rule, section 56 of the Act shall apply to the tribunal as it applies to the Director.

(9) The statement of intervention shall contain—

- (a) a succinct presentation of the facts and arguments supporting the intervention;
- (b) the relief sought by the intervener; and
- (c) a schedule listing all documents annexed to the intervention and, as far as possible shall have annexed, a copy of every document on which the intervener relies including the written statement of witnesses of fact or expert witnesses, if any.

(10) Rules 6(8), 7, 8 (except 8(1)(b)) and 9 shall apply to the statement of intervention as if references to “rule 6” were references to “rule 14(9)”, references to “the applicant” were references to “the intervener”, references to “the application” were references to “the statement of intervention”, the reference in rule 8(1)(a) above to “ground of appeal” were a reference to “ground for intervention” and the reference in rule 9(3) above to “contesting the decision” were a reference to “supporting the intervention”.

### **Consolidation of applications**

**15.—**(1) Where two or more applications have been made in respect of the same decision or which involve the same or similar issues, the tribunal may, on the request of a party or of its own motion, order that the applications or any particular issue or matter raised in the applications be consolidated or heard together.

(2) Before making an order under this rule, the tribunal shall invite the parties to the relevant proceedings to submit their observations on the consolidation of the proceedings.

### **Location of the proceedings**

**16.—**(1) The tribunal shall, as soon as practicable, taking account of the observations of the parties in the application and defence, determine whether the proceedings are proceedings before a tribunal in England and Wales, in Scotland or in Northern Ireland and shall instruct the Registrar to notify the parties of its determination.

(2) In making this determination, the tribunal shall have regard to all matters which appear to it to be relevant and in particular, the part of the United Kingdom where:—

- (a) the applicant is habitually resident or has his principal place of business;
- (b) the majority of the parties are habitually resident or have their principal places of business;
- (c) any agreement, decision or concerted practice to which the disputed decision relates was made or implemented or intended to be implemented;
- (d) any conduct to which the disputed decision relates took place.

(3) The tribunal may hold any meeting, case conference, pre-hearing review or hearing or give any directions in such place as it thinks fit having regard to the just, expeditious and economical conduct of the proceedings.

## PART V

### PREPARATION FOR DECIDING THE APPLICATION

#### Directions

**17.**—(1) The tribunal may at any time, on the request of a party or of its own motion, at the pre-hearing review or otherwise, give such directions as are provided for in paragraph (2) below or such other directions as it thinks fit to secure the just, expeditious and economical conduct of the proceedings.

(2) The tribunal may give directions—

- (a) as to the manner in which the proceedings are to be conducted, including any time limits to be observed in the conduct of the oral hearing;
- (b) that the parties file a reply to the defence or other additional pleadings;
- (c) for holding a pre-hearing review;
- (d) requiring persons to attend and give evidence or to produce documents;
- (e) as to the evidence which may be required or admitted in proceedings before the tribunal and the extent to which it shall be oral or written, including, where a witness statement has been submitted, whether the witness is to be called to give oral evidence;
- (f) as to the submission in advance of a hearing of any witness statements or expert reports;
- (g) as to the examination or cross-examination of witnesses;
- (h) as to the fixing of time limits with respect to any aspect of the proceedings;
- (i) as to the abridgement or extension of any time limits, whether or not expired;
- (j) to enable a disputed decision to be referred back (or in Scotland, remitted) to the person by whom it was taken;
- (k) for the disclosure between, or the production by, the parties of documents or classes of documents; or in the case of proceedings taking place in Scotland, for such recovery or inspection of documents as might be ordered by a sheriff;
- (l) for the appointment and instruction of experts, whether by the tribunal or by the parties and the manner in which expert evidence is to be given; and
- (m) for the award of costs or expenses, including any allowances payable to persons in connection with their attendance before the tribunal.

(3) The tribunal may, in particular, of its own motion:—

- (a) put questions to the parties;
- (b) invite the parties to make written or oral submissions on certain aspects of the proceedings;
- (c) ask the parties or third parties for information or particulars;
- (d) ask for documents or any papers relating to the case to be produced;
- (e) summon the parties' representatives or the parties in person to meetings or case conferences.

(4) A request by a party for directions shall be made, as far as practicable, in the application or defence, or on notice at the pre-hearing review. A request made at any other time shall be made in writing and shall be served by the Registrar on any other party who might be affected by such directions and determined by the tribunal taking into account the observations of the parties.

### **Pre-hearing review**

**18.**—(1) Where it appears to the tribunal that any proceedings would be facilitated by holding a pre-hearing review, taking into account the criteria set out in paragraph (3) below, the tribunal may on the request of a party or of its own motion, give directions for such a review to be held. The Registrar shall give the parties not less than fourteen days notice, or such shorter notice as the parties agree, of the time and place of the pre-hearing review.

(2) The pre-hearing review shall be in private unless the tribunal otherwise directs.

(3) The purpose of the pre-hearing review shall be—

- (a) to ensure the efficient conduct of the proceedings;
- (b) to determine the points on which the parties must present further argument or which call for further evidence to be produced;
- (c) to clarify the forms of order sought by the parties, their arguments on fact and law and the points at issue between them;
- (d) to ensure that all agreements that can be reached between the parties about the matters in issue and the conduct of the proceedings are made and recorded;
- (e) to facilitate the settlement of the proceedings.

(4) The tribunal may authorise a person qualified for appointment to the panel of chairmen to carry out on its behalf the pre-hearing review or any other preparatory measure relating to the organisation or disposal of the proceedings.

### **Timetable for the oral hearing**

**19.** As soon as practicable, the tribunal shall—

- (a) set a timetable outlining the steps to be taken by the parties pursuant to the directions of the tribunal in preparation for the oral hearing;
- (b) fix the date for the oral hearing;
- (c) notify the parties in writing of the date and place for the oral hearing and send them a copy of the timetable for that hearing; and
- (d) if it considers it necessary for the expeditious disposal of the proceedings, send the parties a report for the hearing summarising the factual context of the case and the parties' principal submissions.

### **Evidence**

**20.**—(1) The tribunal may control the evidence by giving directions as to—

- (a) the issues on which it requires evidence;
- (b) the nature of the evidence which it requires to decide those issues; and
- (c) the way in which the evidence is to be placed before the tribunal.

(2) The tribunal may admit or exclude evidence, whether or not the evidence was available to the respondent when the disputed decision was taken and notwithstanding any enactment or rule of law relating to the admissibility of evidence in proceedings before a court.

(3) The tribunal may require any witness to give evidence on oath or affirmation or if in writing by way of affidavit.

(4) The tribunal may allow a witness to give evidence through a videolink or by other means.

### **Summoning or citing of witnesses**

**21.**—(1) Subject to paragraphs (2) and (3) below, the tribunal may at any time, either of its own motion or on the request of any party, issue a summons, (or in relation to proceedings taking

place in Scotland, a citation), requiring any person wherever he may be in the United Kingdom to do one or both of the following—

- (a) to attend as a witness before the tribunal at the time and place set out in the summons or citation; and
  - (b) to answer any questions or produce any documents or other material in his possession or under his control which relate to any matter in question in the proceedings.
- (2) A request by a party for the issue of a summons or citation or for directions under this rule shall state with reasons—
- (a) upon which facts the witness is to be questioned and the reasons for the examination;
  - (b) the documents required to be produced.
- (3) No person may be required to attend in compliance with a summons or citation under this rule unless—
- (a) he has been given at least 7 days notice of the hearing; and
  - (b) he is paid—
    - (i) if the proceedings are taking place before a tribunal in England and Wales, such sum as would be recoverable by that witness in respect of his attendance in proceedings before the Supreme Court of England and Wales;
    - (ii) if the proceedings are taking place before a tribunal in Scotland, such sum as would be recoverable by that witness in respect of his attendance in proceedings before the Court of Session; and
    - (iii) if the proceedings are taking place before a tribunal in Northern Ireland, such sum as would be recoverable by that witness in respect of his attendance in proceedings before the Supreme Court of Northern Ireland.
- (4) The tribunal may make the summoning or citation of a witness in accordance with paragraph (1) above conditional upon the deposit with the Registrar of a sum determined by the tribunal as sufficient to cover—
- (a) the costs of the summons or citation;
  - (b) the sum referred to in sub-paragraph (3)(b) of this rule.
- (5) The Registrar shall advance the funds necessary in connection with the examination of any witnesses summoned by the tribunal on its own motion.

#### **Failure to comply with directions**

**22.** If any party fails to comply with any direction given in accordance with these rules, the tribunal may if it considers that the justice of the case so requires, order that such party be debarred from taking any further part in the proceedings without the permission of the tribunal.

### **PART VI**

## **THE HEARING**

#### **Hearing to be in public**

**23.** The hearing 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, confidential information.

#### **Procedure at the hearing**

**24.—(1)** The proceedings shall be opened and directed by the President or 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 handling of the proceedings.

(3) If, after the commencement of any hearing, a member other than the President or Chairman, is absent, the application may, with the consent of the parties, be heard by the other

two members and, in that event, the tribunal shall be deemed to be properly constituted. A decision of a tribunal so constituted must be unanimous.

(4) 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.

(5) The tribunal may limit cross-examination of witnesses to any extent or in any manner it deems appropriate, having regard to the just, expeditious and economical conduct of the proceedings.

## PART VII

### DECISION OF THE TRIBUNAL

#### Delivery of the decision

**25.**—(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) of this rule.

#### Costs

**26.**—(1) For the purposes of these rules “costs” means—

- (a) if the proceedings are taking place before a tribunal in England and Wales, costs and expenses recoverable in proceedings before the Supreme Court of England and Wales;
- (b) if the proceedings are taking place before a tribunal in Scotland, costs and expenses recoverable in proceedings before the Court of Session; and
- (c) if the proceedings are taking place before a tribunal in Northern Ireland, costs and expenses recoverable in proceedings before the Supreme Court of Northern Ireland.

(2) The tribunal may at its discretion, 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 such proportion of the costs as may be just. The tribunal may assess the sum to be paid pursuant to any order made under paragraph (2) above or may direct that it be assessed by the President or Chairman or dealt with by the detailed assessment of the costs by 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, any order or direction made pursuant to paragraphs (2) and (3) above 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 this rule 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.

(6) If a party against whom an order for costs has been made fails to pay those costs within 28 days of the later of

- (a) the date of that order, or,
- (b) where costs are assessed in accordance with paragraph (3) above, the date of that assessment

the person to whom the outstanding amount is due may recover that amount from the debtor as a civil debt due to him.

## Interest on penalties

27. If it imposes confirms or varies any penalty, 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 6 above, 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<sup>(a)</sup>. Such interest is to form part of the penalty and be recoverable as a civil debt in addition to the amount payable on any outstanding penalty notice issued in accordance with section 36 of the Act.

## Consent orders

28.—(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 request to publish a notice in one issue of the London, Edinburgh and Belfast Gazettes and in such other manner as the tribunal may direct.

(5) The notice referred to in paragraph (4) above 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 shall exclude any information of a confidential nature.

(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) above.

(7) Comments supplied in accordance with paragraph (6) above 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) above 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;
- (b) invite the parties to vary the terms; or
- (c) refuse to make any order.

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<sup>(a)</sup> 1970 c. 31.

## PART VIII

### APPEALS

#### Request for permission to appeal

**29.**—(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 seeks a hearing of his request and any special circumstances relied on.

#### Decision of the tribunal on request for permission to appeal

**30.**—(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.

## PART IX

### REFERENCES TO THE EUROPEAN COURT

#### Reference to the European Court

**31.**—(1) An order may be made by the tribunal of its own motion 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 orders, 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 thereof 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.

## PART X

### INTERIM ORDERS AND MEASURES

#### Power to make interim orders and to take interim measures

**32.**—(1) The tribunal may make an order granting on an interim basis 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 make an order giving such directions as it considers appropriate for that purpose.
- (3) The tribunal may make an order:–
    - (a) suspending the effect of the disputed decision in whole or part; or
    - (b) varying any or all of the conditions or obligations attached to an exemption.
  - (4) 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 interim order is not made; and
    - (c) the effect on competition if the interim order is made.
  - (5) Any order or direction under this rule is subject to the tribunal’s further order or final decision.
  - (6) A person shall apply for an order under this rule by sending a request for interim relief in the form required by paragraph (7) below to the Registrar.
  - (7) The request for interim relief shall state:–
    - (a) the subject matter of the proceedings;
    - (b) in the case of a request for an order pursuant to paragraph (2) of this rule, the circumstances giving rise to the urgency;
    - (c) the factual and legal grounds establishing a prima facie case for the interim order being made by the tribunal;
    - (d) the relief sought;
    - (e) if no application has been made in accordance with rule 6, in respect of the decision which is the subject of the request for interim relief, the information required by rule 6(4) above.
  - (8) On receiving a request for interim relief the Registrar shall send a copy to all the other parties to the proceedings (and where no application has been made in accordance with rule 6, to the competent 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.
  - (9) 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 that request.
  - (10) 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.
  - (11) Unless the context otherwise requires, these rules apply to requests for interim relief.

## PART XI

### SUPPLEMENTARY

#### **Power of President and Chairman to exercise powers of tribunal**

**33.—**(1) Any act required or authorised by these rules, not being one required or authorised by the following rules–

- (a) rule 8                                    *(power to strike out applications);*
- (b) rule 9                                    *(amendment of application);*
- (c) rule 10                                   *(as regards withdrawal of an application during or after the hearing);*
- (d) rule 17 (except sub-paragraphs (2)(h) and (2)(i))                                    *(directions);*

- (e) rule 18                    (*pre hearing review*);
- (f) rule 24                    (*procedure at the hearing*);
- (g) rule 25                    (*delivery of the decision*);
- (h) rule 26                    (*costs*);
- (i) rule 28                    (*consent orders*);
- (j) rules 29 and 30        (*appeals*);
- (k) rule 31                    (*references to the European Court*);

may be done by the President acting alone.

(2) In relation to particular proceedings, the powers of the President may be exercised by a Chairman of the tribunal constituted to deal with those proceedings except the powers conferred by rule 32 (*interim orders and measures*).

### **Documents etc.**

**34.**—(1) Any document required to be sent to or served on any person in accordance with 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) A document which is sent to 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 before 4 p.m. on a business day, on that day and in any other case on the business day after 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.

(3) Subject to paragraph (2)(c) above, if a document is served after 5 p.m. on any day, the document shall be treated as having been served on the next business day.

(4) 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.

(5) 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 6(4)(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 12(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 14(4)(d) or such other address as may be subsequently notified to the tribunal.

(6) 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 on the date of service.

(7) 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.

### **Time**

**35.**—(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 that 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 last day of that month.

(3) Where the time prescribed by the President, a Chairman, the Registrar or the tribunal or by these rules for doing any act expires on a day which is not a business day, the act is in time if done on the next following business day.

### **Irregularities**

**36.**—(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 President, Registrar, a Chairman or tribunal, or errors arising in such a document from an accidental slip or omission, may be corrected by the President, Registrar or Chairman by certificate under his hand.

### **General power of the tribunal**

**37.**—(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.

7th February 2000

*Kim Howells,*  
Parliamentary Under Secretary of State for  
Consumers and Corporate Affairs,  
Department of Trade and Industry

## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules prescribe the procedure to be followed before a tribunal constituted by the President of the Competition Commission Appeal Tribunals to hear an appeal made pursuant to either section 46 or 47 of the Competition Act 1998.

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