
STATUTORY INSTRUMENTS

2003 No. 1372

The Competition Appeal Tribunal Rules 2003

PART II

APPEALS

COMMENCING APPEAL PROCEEDINGS

Time and manner of commencing appeals

8.—(1) An appeal to the Tribunal must be made by sending a notice of appeal to the Registrar so that it is received within two months of the date upon which the appellant was notified of the disputed decision or the date of publication of the decision, whichever is the earlier.

(2) The Tribunal may not extend the time limit provided under paragraph (1) unless it is satisfied that the circumstances are exceptional.

(3) The notice of appeal shall state—

- (a) the name and address of the appellant;
- (b) the name and address of the appellant's legal representative, if appropriate;
- (c) an address for service in the United Kingdom; and
- (d) the name and address of the respondent to the proceedings,

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

(4) The notice of appeal shall contain—

- (a) a concise statement of the facts;
- (b) a summary of the grounds for contesting the decision, identifying in particular:
 - (i) under which statutory provision the appeal is brought;
 - (ii) to what extent (if any) the appellant contends that the disputed decision was based on an error of fact or was wrong in law;
 - (iii) to what extent (if any) the appellant is appealing against the respondent's exercise of his discretion in making the disputed decision;
- (c) a succinct presentation of the arguments supporting each of the grounds of appeal;
- (d) the relief sought by the appellant, and any directions sought pursuant to rule 19; and
- (e) a schedule listing all the documents annexed to the notice of appeal.

(5) The notice of appeal may contain observations on the question in which part of the United Kingdom the proceedings of the Tribunal are to be treated as taking place for all or for any purposes of those proceedings.

(6) There shall be annexed to the notice of appeal—

- (a) a copy of the disputed decision; and

(b) as far as practicable a copy of every document on which the appellant relies including the written statements of all witnesses of fact, or expert witnesses, if any.

(7) Unless the Tribunal otherwise directs the signed original of the notice of appeal (and its annexes) must be accompanied by ten copies certified by the appellant or his legal representative as conforming to the original.

Defective notices of appeal

9.—(1) If the Tribunal considers that a notice of appeal does not comply with rule 8, 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 those defects are remedied.

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

Power to reject

10.—(1) The Tribunal may, after giving the parties an opportunity to be heard, reject an appeal in whole or in part at any stage in the proceedings if—

- (a) it considers that the notice of appeal discloses no valid ground of appeal;
- (b) it considers that the appellant does not have (or represent those who have) a sufficient interest in the decision in respect of which the appeal is made;
- (c) it is satisfied that the appellant has habitually and persistently and without any reasonable ground—
 - (i) instituted vexatious proceedings, whether against the same person or different persons; or
 - (ii) made vexatious applications in any proceedings; or
- (d) the appellant fails to comply with any rule, direction, practice direction or order of the Tribunal.

(2) When the Tribunal rejects an appeal it may make any consequential order it considers appropriate.

Amendment

11.—(1) The appellant may amend the notice of appeal 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 appeal was made; or
- (b) it was not practicable to include such ground in the notice of appeal; or
- (c) the circumstances are exceptional.

Withdrawal of the appeal

12.—(1) The appellant may withdraw his appeal only with the permission of the Tribunal, or if the case 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 on the Tribunal website or in such other manner as the Tribunal may direct.
- (3) Where an appeal is withdrawn—
 - (a) any interim order of the Tribunal, other than an order made in respect of costs, shall immediately cease to have effect; and
 - (b) no fresh appeal may be brought by the appellant in relation to the decision which was the subject of the appeal withdrawn.

RESPONSE TO APPEAL PROCEEDINGS

Acknowledgement and notification

13. On receiving a notice of appeal the Registrar shall—
 - (a) send an acknowledgement of its receipt to the appellant; and
 - (b) subject to rules 9(2) and 10 send a copy of the notice of appeal to the respondent who made the disputed decision.

Defence

14.—(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 notice of appeal in accordance with rule 13(b).

- (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,

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;
 - (b) the relief sought by the respondent and any directions sought pursuant to rule 19; and
 - (c) a schedule listing all the documents annexed to the defence.

(4) The defence may contain observations on the question in which part of the United Kingdom the proceedings of the Tribunal are to be treated as taking place for all or for any purposes of those proceedings.

(5) 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.

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

- (7) Rules 9, 10 (except rule 10(1)(b) and (c)) and 11 shall apply to the defence.
- (8) On receiving the defence, the Registrar shall send a copy to the appellant.

INTERVENTION, CONSOLIDATION AND FORUM

Publication of summary of appeal

15.—(1) Subject to rules 9 and 10 of these rules the Registrar shall as soon as practicable upon receipt of an appeal publish a notice on the Tribunal website and in any other manner the President may direct.

- (2) The notice referred to in paragraph (1) above shall state—
- (a) that an appeal has been received;
 - (b) the name of the appellant;
 - (c) the disputed decision to which the appeal relates and the person by whom it was made;
 - (d) the particulars of the relief sought by the appellant;
 - (e) a summary of the principal grounds relied on; and
 - (f) a statement indicating that any person who considers that he has sufficient interest may apply to intervene in the proceedings, in accordance with rule 16, within three weeks of publication of the notice or such other period as the President may direct.

Intervention

16.—(1) Any person who considers he has sufficient interest in the outcome may make a request to the Tribunal for permission to intervene in the proceedings.

- (2) The request must be sent to the Registrar within the period referred to in rule 15(2)(f).
- (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 specified period.
- (4) A request for permission to intervene must 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 must 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 intervening party 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), the Tribunal shall give all such consequential directions as it considers necessary with regard, in particular, to the service on the intervener of the 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 decision or direction under this rule the Tribunal shall have regard to the matters referred to in paragraph 1(2) of Schedule 4 to the 2002 Act.
- (9) The statement of intervention and any response thereto shall contain:

- (a) a succinct presentation of the facts and arguments supporting the intervention;
 - (b) the relief sought by the intervener;
 - (c) a schedule listing all the documents annexed to the intervention and, as far as possible, a copy of every document on which the intervener relies including the written statements of witnesses of fact or expert witnesses, if any.
- (10) Rules 9, 10 (except 10(1)(b)) and 11 shall apply to the statement of intervention.

Consolidation

17.—(1) Where two or more proceedings are pending 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 initiative, order that the proceedings or any particular issue or matter raised in the proceedings 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.

Forum

18.—(1) The Tribunal, after taking into account the observations of the parties, may at any time determine whether its proceedings are to be treated, for purposes connected with—

- (a) any appeal from a decision of the Tribunal made in those proceedings; or
- (b) any other matter connected with those proceedings,

as proceedings in England and Wales, in Scotland or in Northern Ireland and shall instruct the Registrar to notify the parties of its determination.

(2) Notwithstanding any determination under paragraph (1), the Tribunal may hold any meeting, case management conference, pre-hearing review or hearing, or give any directions, in such place and in such manner as it thinks fit having regard to the just, expeditious and economical conduct of the proceedings.

(3) In making a determination under paragraph (1), the Tribunal may have regard to all matters which appear to it to be relevant and in particular the part of the United Kingdom where—

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

(4) Without prejudice to paragraph (3), in making a determination under paragraph (1) for the purposes of a claim for damages under section 47A of the 1998 Act, the Tribunal—

- (a) may have regard to the law which is applicable to the claim; and
- (b) in the case of claims included in proceedings under section 47B of the 1998 Act, may decide that one or more of the claims is to be treated as included in separate proceedings.

CASE MANAGEMENT

Directions

19.—(1) The Tribunal may at any time, on the request of a party or of its own initiative, at a case management conference, 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, rejoinder or other additional pleadings or particulars;
- (c) for the preparation and exchange of skeleton arguments;
- (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;
- (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 in whole or in part 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;
- (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;
- (m) for the award of costs or expenses, including any allowances payable to persons in connection with their attendance before the Tribunal; and
- (n) for hearing a person who is not a party where, in any proceedings, it is proposed to make an order or give a direction in relation to that person.

(3) The Tribunal may, in particular, of its own initiative—

- (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.

(4) A request by a party for directions shall be made in writing as soon as practicable 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.

Case management conference etc.

20.—(1) Where it appears to the Tribunal that any proceedings would be facilitated by holding a case management conference or pre-hearing review the Tribunal may, on the request of a party or of its own initiative, give directions for such a conference or review to be held.

(2) Unless the Tribunal otherwise directs, a case management conference shall be held as soon as practicable after the filing of an appeal, whether or not the time for service of the defence has expired.

(3) A case management conference or pre-hearing review shall be held in private unless the Tribunal otherwise directs.

(4) The purpose of a case management conference or 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 of 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.

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

Timetable for the oral hearing

21. 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 of the proceedings;
- (b) fix the date for the oral hearing;
- (c) notify the parties in writing of the date and place for the oral hearing and of any 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

22.—(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.

(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 video link or by other means.

(5) The Tribunal may dispense with the need to call a witness to give oral evidence if a witness statement has been submitted in respect of that witness.

Summoning or citing of witnesses

23.—(1) Subject to paragraphs (2) and (3) below, the Tribunal may, at any time, either of its own initiative or at 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 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 seven days' notice of the hearing; and
 - (b) he is paid such sum as would be recoverable by that witness in respect of his attendance in proceedings before the Supreme Court of England and Wales, the Court of Session or the Supreme Court of Northern Ireland.
- (4) The Tribunal may make the summoning or citation of a witness in accordance with paragraph (1) 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 paragraph (3)(b).
- (5) The Registrar shall advance the funds necessary in connection with the examination of any witness summoned by the Tribunal of its own initiative.

Failure to comply with directions

24. 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.