

# Statutory Instrument 2003 No. 1372

## **The Competition Appeal Tribunal Rules 2003**

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STATUTORY INSTRUMENTS

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**2003 No. 1372**

**COMPETITION**

**The Competition Appeal Tribunal Rules 2003**

<i>Made</i>	<i>23rd May 2003</i>
<i>Laid before Parliament</i>	<i>27th May 2003</i>
<i>Coming into force</i>	<i>20th June 2003</i>

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The Secretary of State, after consultation with the President of the Competition Appeal Tribunal and such other persons as she considers appropriate in accordance with section 15(1) of the Enterprise Act 2002[1], and after consultation with the Council on Tribunals in accordance with section 8(1) of the Tribunals and Inquiries Act 1992[2], in exercise of the powers conferred by section 15 of and Part 2 of Schedule 4 to the Enterprise Act 2002, hereby makes the following rules:

# PART I

## INTRODUCTION

### **Citation and commencement**

1. These rules may be cited as the Competition Appeal Tribunal Rules 2003 and shall come into force on 20th June 2003.

### **Interpretation**

2. In these rules -

"a chairman" means any member of the panel of chairmen;

"the chairman" means the chairman of the Tribunal as constituted for particular proceedings;

"the Competition Service" means the body corporate established by section 13 of the Enterprise Act 2002;

"damages" means any sum which may be claimed under section 47A of the 1998 Act[3];

"the Registrar" means the person appointed to be Registrar of the Tribunal;

"the 1998 Act" means the Competition Act 1998[4];

"the 2002 Act" means the Enterprise Act 2002.

### **Application of rules**

3. Unless the context otherwise requires -

(a) Parts I and V of these rules apply to all proceedings before the Tribunal;

(b) Part II of these rules applies to all proceedings before the Tribunal save as otherwise provided in Part III (proceedings under the 2002 Act) or Part IV (claims for damages);

(c) Part III of these rules applies to proceedings for a review or an appeal against penalties under the 2002 Act;

(d) Part IV of these rules applies to claims for damages.

### **The Registrar**

4. - (1) Any person appointed to be the Registrar under section 12(3) of the 2002 Act must -

(a) have a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990[5], or

(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 of at least seven years' standing, or

(ii) a solicitor of the Supreme Court of Northern Ireland of at least seven years' standing.

(2) 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;

(b) the acceptance, transmission, service and custody of documents in accordance with these rules;

(c) the enforcement of decisions of the Tribunal pursuant to paragraphs 4 and 5 of Schedule 4 to the 2002 Act;

(d) certifying that any order, direction or decision is an order, direction or decision of the Tribunal, the President or a chairman, as the case may be.

(3) With the authorisation of the President, the Registrar may consider and dispose of interlocutory matters in accordance with rule 62(3).

(4) A party may within 5 days of any exercise by the Registrar of his functions pursuant to paragraph (3) of this rule request in writing that the exercise of such functions be reviewed by the President. The President may determine the matter acting alone or refer the matter to a chairman or to the Tribunal.

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

#### **Tribunal address for service**

5. The address for service of documents on the Tribunal (referred to in these rules as "the Tribunal address for service") is: The Registrar of the Competition Appeal Tribunal, New Court, 48 Carey Street, London WC2A 3BZ or such other address as may be notified in the London, Edinburgh and Belfast Gazettes and on the Tribunal Website.

#### **Tribunal Website**

6. The location of the Tribunal Website is: [www.catribunal.org.uk](http://www.catribunal.org.uk) or such other location as may be notified from time to time in such manner as the President may direct.

## **Representation**

7. In proceedings before the Tribunal, a party may be represented by -

- (a) a qualified lawyer having a right of audience before a court in the United Kingdom; or
- (b) by any other person allowed by the Tribunal to appear on his behalf.

## **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.

### **PART III**

#### **PROCEEDINGS UNDER THE ENTERPRISE ACT 2002**

##### **Application of these rules**

**25.** Parts I, II and V of these rules apply to proceedings under sections 114 or 176(1)(f) (appeals against penalties in merger or market investigations), section 120 (review of merger decisions) and section 179 (review of market investigation decisions), save as otherwise provided in this Part.

##### **Time for commencing proceedings for a review under section 120 of the 2002 Act**

**26.** An application under section 120(1) of the 2002 Act for the review of a decision in connection with a reference or possible reference in relation to a relevant merger situation or a special merger situation, must be made within four weeks of the date on which the applicant was notified of the disputed decision, or the date of publication of the decision, whichever is the earlier.

##### **Time for commencing proceedings for a review under section 179 of the 2002 Act**

**27.** An application under section 179(1) of the 2002 Act for review of a decision in connection with a reference or possible reference under Part 4 of that Act (market investigations) must be made within two months of the date on which the applicant was notified of the disputed decision, or the date of publication of the decision, whichever is the earlier.

##### **Supplementary provisions concerning reviews**

**28.** - (1) In proceedings for a review under sections 120 or 179 of the 2002 Act, rules 8 to 16 shall be construed and applied as if references to "appeal" were references to "application", references to "the notice of appeal" were references to

"the notice of application", references to the "appellant" were references to the "applicant", and references to the "grounds of appeal" were references to the "grounds of review".

(2) Rule 8(2) shall apply to the time for commencing proceedings under rules 26 and 27 as it does to the time for commencing an appeal under rule 8(1).

(3) In proceedings for a review under section 120 of the 2002 Act, rule 14(1) shall apply with the substitution of "four weeks" for "six weeks".

(4) The Tribunal's power to reject an appeal under rule 10 includes a power to reject an application for review if it considers that the applicant is not a person aggrieved by the decision in respect of which the review is sought.

#### **Appeals in relation to penalties under sections 114 or 176(1)(f) of the 2002 Act**

**29.** - (1) An appeal against a penalty brought under section 114 or 176(1)(f) of the 2002 Act must be made by sending a notice of appeal to the Registrar so that it is received within the period of 28 days starting with-

(a) in the case of an appeal against a penalty imposed by a notice under section 112(1) of that Act, the day on which a copy of the notice was served on the person concerned;

(b) in the case of an appeal against a decision on an application under section 112(3), the day on which the person concerned was notified of the decision.

(2) In an appeal against a penalty brought under section 114 or 176(1)(f) of the 2002 Act, rule 14(1) shall apply with the substitution of "three weeks" for "six weeks".

(3) Rules 15 and 16 shall not apply to appeals against penalties under sections 114 or 176(1)(f) of the 2002 Act.

## **PART IV**

### **CLAIMS FOR DAMAGES**

#### **Application of rules to claims for damages**

**30.** The rules applicable to proceedings under sections 47A and 47B of the 1998 Act (claims for damages) are those set out in this Part, and in Part I, Part II (except for rules 8 to 16) and Part V of these rules. In respect of proceedings in Scotland, references in this Part to "claimant" and "defendant" shall be read respectively as "pursuer" and "defender".

### **COMMENCEMENT OF PROCEEDINGS**

#### **Time limit for making a claim for damages**

**31.** - (1) A claim for damages must be made within a period of two years

beginning with the relevant date.

(2) The relevant date for the purposes of paragraph (1) is the later of the following –

- (a) the end of the period specified in section 47A(7) or (8) of the 1998 Act in relation to the decision on the basis of which the claim is made;
- (b) the date on which the cause of action accrued.

(3) The Tribunal may give its permission for a claim to be made before the end of the period referred to in paragraph (2)(a) after taking into account any observations of a proposed defendant.

(4) No claim for damages may be made if, were the claim to be made in proceedings brought before a court, the claimant would be prevented from bringing the proceedings by reason of a limitation period having expired before the commencement of section 47A.

#### **Manner of commencing proceedings under section 47A of the 1998 Act**

**32.** - (1) A claim for damages under section 47A of the 1998 Act must be made by sending a claim form to the Registrar within the period specified in rule 31(1).

(2) The claim form referred to in paragraph (1) shall state -

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

(3) The claim form shall contain -

- (a) a concise statement of the relevant facts, identifying any relevant findings in the decision on the basis of which the claim for damages is being made;
- (b) a concise statement of any contentions of law which are relied on;
- (c) a statement of the amount claimed in damages, supported with evidence of losses incurred and of any calculations which have been undertaken to arrive at the claimed amount;
- (d) such other matters as may be specified by practice direction,

and its contents shall be verified by a statement of truth signed and dated by the claimant or on his behalf by his duly authorised officer or his legal representative.

(4) There shall be annexed to the claim form -

(a) a copy of the decision on the basis of which the claim for damages is being made;

(b) as far as practicable a copy of all essential documents on which the claimant relies.

(5) Unless the Tribunal otherwise directs, the signed original of the claim form (and its annexes) must be accompanied by ten copies certified by the claimant or his legal representative as conforming to the original.

### **Manner of commencing proceedings under section 47B of the 1998 Act**

**33.** - (1) Where a claim for damages is made under section 47B of the 1998 Act by a specified body on behalf of consumers the claim form shall in addition to the information required by rule 32 -

(a) contain the name and address of the specified body and a concise statement of the object or activities of that body;

(b) contain the names and addresses of the persons it seeks to represent;

(c) be accompanied by a document or documents, giving consent to the specified body by each of the individuals listed in the claim form to act on his behalf;

(d) indicate whether each individual listed in connection with the claim is a "consumer" for the purposes of section 47B of the 1998 Act.

(2) A claim for damages commenced under section 47A of the 1998 Act may be continued by a specified body under section 47B of that Act subject to such directions as may be given by the Tribunal.

### **Amendment**

**34.** A claim form may only be amended -

(a) with the written consent of all the parties; or

(b) with the permission of the Tribunal.

### **Addition of parties**

**35.** The Tribunal may, after hearing the parties, grant permission for one or more parties to be joined in the proceedings in addition or in substitution to the existing parties.

## **RESPONSE TO A CLAIM FOR DAMAGES**

### **Acknowledgment and notification**

**36.** - (1) On receiving a claim the Registrar shall send an acknowledgment of receipt to the claimant and send a copy of the claim form to the defendant.

(2) Within 7 days of receipt of the copy of the claim form from the Registrar the defendant shall send to the Registrar an acknowledgment of service of the claim form in such form as the President may direct.

### **Defence to a claim for damages**

**37.** - (1) Within 28 days of receipt of the copy of the claim form from the Registrar the defendant shall send to the Registrar a defence setting out in sufficient detail which of the facts and contentions of law in the claim form it admits or denies, on what grounds and on what other facts or contentions of law it relies.

(2) The contents of the defence shall be verified by a statement of truth signed and dated by the defendant or on his behalf by his duly authorised officer or his legal representative.

(3) Unless the Tribunal otherwise directs, the signed original of the defence (and its annexes) must be accompanied by ten copies certified by the defendant or his legal representative as conforming to the original.

### **Additional claims**

**38.** - (1) A defendant may make a counterclaim against a claimant or a claim against any other person -

(a) without the Tribunal's permission if he includes it with his defence;

(b) at any other time with the Tribunal's permission.

(2) Rules 31, 32(2), (3), (4) and (5) shall apply to claims or counterclaims under this rule and rules 36 and 37 shall apply to the response to such claims, subject to any direction by the Tribunal to the contrary.

### **Further pleadings**

**39.** No further pleadings may be filed without the permission of the Tribunal.

## **SUMMARY DISPOSAL**

### **Power to reject**

**40.** - (1) The Tribunal may, of its own initiative or on the application of a party, after giving the parties an opportunity to be heard, reject in whole or in part a claim for damages at any stage of the proceedings if -

(a) it considers that there are no reasonable grounds for making the claim;

(b) in the case of proceedings under section 47B of the 1998 Act it considers that the body bringing the proceedings is not entitled to do so, or that an individual on whose behalf the proceedings are brought is not a consumer for the purposes of that section;

(c) it is satisfied that the claimant 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 claimant fails to comply with any rule, direction, practice direction or order of the Tribunal.

(2) When the Tribunal rejects a claim it may enter judgment on the claim in whole or in part or make any other consequential order it considers appropriate.

### **Summary judgment**

**41.** - (1) The Tribunal may of its own initiative or on the application of a party, after giving the parties an opportunity to be heard, give summary judgment in a claim for damages or reject in whole or in part a claim or defence in a claim for damages if -

(a) it considers that -

(i) the claimant has no real prospect of succeeding on the claim or issue; or

(ii) the defendant has no reasonable grounds for defending the claim or issue; and

(b) there is no other compelling reason why the case or issue should be disposed of at a substantive hearing.

(2) The Tribunal shall not exercise its power under this rule before the filing of the defence.

(3) The Tribunal shall give such directions as it considers appropriate for dealing with a request under this rule.

(4) Upon giving summary judgment the Tribunal may make any consequential order it considers appropriate.

### **Withdrawal**

**42.** - (1) The claimant may withdraw his claim only -

(a) with the consent of the defendant; or

(b) with the permission of the President or, if the case has proceeded to a hearing, the Tribunal.

(2) Where a claim is withdrawn -

(a) the Tribunal may make any consequential order it thinks fit;

(b) no further claim may be brought by the claimant in respect of the same subject matter.

## **OFFERS AND PAYMENTS TO SETTLE**

### **Offers and payments to settle**

**43.** - (1) A payment to settle is an offer made by way of payment into the Tribunal in such manner as may be prescribed by practice direction.

(2) A payment to settle the whole or part of a claim may be made by a defendant once a claim for damages has been commenced.

(3) Notification of a payment to settle into the Tribunal must be sent to the Registrar and to the party to whom the payment to settle is made. Such notification must state precisely the basis on which the payment has been calculated.

(4) A payment to settle may be withdrawn or reduced only with the permission of the Registrar.

(5) A payment to settle may be accepted any time up to 14 days before the substantive hearing of the claim.

(6) Where a claimant accepts a defendant's payment to settle the whole or part of the proceedings, he shall be entitled to his costs of the proceedings or such costs relating to the part of the proceedings to which the offer related, up to the date of serving notice of acceptance, unless the Tribunal otherwise directs.

(7) Notwithstanding rule 55(3), where following a substantive hearing a claimant fails to better a payment to settle, the Tribunal will order the claimant to pay any costs incurred by the defendant after the latest date on which the payment or offer could have been accepted unless it considers it unjust to do so. The Tribunal may order such costs to carry interest from that date and to be paid on an indemnity basis.

(8) The fact that a payment to settle has been made shall not be communicated to the members of the Tribunal deciding the case until all questions of liability and the amount of money to be awarded have been agreed between the parties or determined by the Tribunal.

(9) A payment to settle under this rule will be treated as "without prejudice " except as to costs.

(10) This rule does not preclude either party from making an offer to settle at any time or by any other means. In the event that, following a substantive hearing, a claimant recovers less than the amount offered by a defendant other than by way of a payment to settle, the Tribunal may take that fact into account on the issue of costs, notwithstanding the provisions of rule 55(3).

## **CASE MANAGEMENT**

### **Case management generally**

**44.** - (1) In determining claims for damages the Tribunal shall actively exercise the Tribunal's powers set out in rules 17 (Consolidation), 18 (Forum), 19 (Directions),

20 (Case management conference etc.), 21 (Timetable for the oral hearing), 22 (Evidence), 23 (Summoning or citing of witnesses) and 24 (Failure to comply with directions) with a view to ensuring that the case is dealt with justly.

(2) Dealing with a case justly includes, so far as is practicable -

(a) ensuring that the parties are on an equal footing;

(b) saving expense;

(c) dealing with the case in ways which are proportionate -

(i) to the amount of money involved;

(ii) to the importance of the case;

(iii) to the complexity of the issues; and

(iv) to the financial position of each party;

(d) ensuring that it is dealt with expeditiously and fairly; and

(e) allotting to it an appropriate share of the Tribunal's resources, while taking into account the need to allot resources to other cases.

(3) The Tribunal may in particular -

(a) encourage and facilitate the use of an alternative dispute resolution procedure if the Tribunal considers that appropriate;

(b) dispense with the need for the parties to attend any hearing;

(c) use technology actively to manage cases.

### **Security for costs**

**45.** - (1) A defendant to a claim for damages may by request under this rule seek security for his costs of the proceedings.

(2) A request for security for costs must be supported by written evidence.

(3) Where the Tribunal makes an order for security for costs, it shall -

(a) determine the amount of security; and

(b) direct -

(i) the manner in which, and

(ii) the time within which

the security must be given.

- (4) The Tribunal may make an order for security for costs under this rule if -
- (a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and
  - (b) one or more of the conditions in paragraph 5 applies.
- (5) The conditions are -
- (a) the claimant is an individual -
    - (i) who is ordinarily resident out of the jurisdiction; and
    - (ii) is not a person against whom a claim can be enforced under the Brussels Conventions or the Lugano Convention or the Regulation, as defined by section 1(1) of the Civil Jurisdiction and Judgments Act 1982[6];
  - (b) the claimant is a company or other incorporated body -
    - (i) which is ordinarily resident out of the jurisdiction; and
    - (ii) is not a body against whom a claim can be enforced under the Brussels Conventions or the Lugano Convention or the Regulation;
  - (c) the claimant is an undertaking (whether or not it is an incorporated body, and whether or not it is incorporated inside or outside the United Kingdom) and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so;
  - (d) the claimant has changed his address since the claim was commenced with a view to evading the consequences of the litigation;
  - (e) the claimant failed to give his address in the claim form, or gave an incorrect address in that form;
  - (f) the claimant is acting as a nominal claimant, other than under section 47B of the 1998 Act, and there is reason to believe that he will be unable to pay the defendant's costs if ordered to do so;
  - (g) the claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him.

## **PAYMENTS OF DAMAGES**

### **Interim payments on claims for damages**

**46.** - (1) An interim payment is an order for payment by the defendant on account of any damages (except costs) which the Tribunal may hold the defendant liable to pay.

(2) The claimant may not request an order for an interim payment before the end of the period for filing a defence by the defendant against whom the claim is made.

(3) The claimant may make more than one request for an order for an interim payment.

(4) The Tribunal may make an interim payment order if -

(a) the defendant against whom the order is sought has admitted liability to pay damages to the claimant;

(b) it is satisfied that, if the claim were to be heard the claimant would obtain judgment for a substantial amount of money (other than costs) against the defendant from whom he is seeking damages.

(5) The Tribunal must not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment.

(6) A request for an interim payment shall include -

(a) the grounds on which an interim payment is sought;

(b) any directions necessary in the opinion of the claimant for the determination of the request.

(7) On receiving a request for an interim payment the Registrar shall send a copy to all the other parties to the proceedings and shall inform them of the date by which they may submit written or oral observations to the Tribunal.

### **Order for payment of damages**

**47.** - (1) If satisfied that the claimant is entitled to an amount of damages, the Tribunal shall order that amount to be paid to the claimant by the defendant.

(2) Where an award is made in respect of a claim included in proceedings brought by a specified body under section 47B of the 1998 Act, the Tribunal may (with the consent of the individual concerned and the specified body) order that the amount awarded is to be paid to the specified body on behalf of the individual.

(3) The Tribunal shall make such consequential orders as may be necessary for the payment of damages awarded in proceedings under section 47B of the 1998 Act.

(4) In making any order for the payment of damages to a claimant the Tribunal may take into account any sums owing from the claimant to the defendant.

## **TRANSFERS**

### **Transfer of claims from the Tribunal**

**48.** The Tribunal may, at any stage of the proceedings on the request of a party or of its own initiative, and after considering any observations of the parties direct that a

claim for damages (other than a claim included in proceedings under section 47B of the 1998 Act) be transferred to -

(a) the High Court or a county court in England and Wales or Northern Ireland; or

(b) the Court of Session or a sheriff court in Scotland.

### **Transfer of claims to the Tribunal**

**49.** - (1) A claim which may be made under section 47A of the 1998 Act may be transferred to the Tribunal from any court in accordance with rules of court or any practice direction.

(2) The person bringing the claim shall within 7 days of the order of the court transferring the claim or such other period directed by that court, send to the Registrar -

(a) a certified copy of the order of the court transferring the claim to the Tribunal;

(b) any pleadings and documents in support of the claim filed with the court in which the claim was begun;

(c) any directions sought for the further progress of the claim.

(3) As soon as practicable after receipt of the documents referred to in paragraph (2) a case management conference shall be held in accordance with rule 20.

## **PART V**

### **GENERAL AND SUPPLEMENTARY**

#### **THE HEARING**

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

**50.** The hearing of any appeal, review or claim for damages 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, information of the kind referred to in paragraph 1(2) of Schedule 4 to the 2002 Act.

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

**51.** - (1) The proceedings shall be opened and directed by the President or the 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, expeditious and economical handling of the proceedings.

(3) 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.

(4) The Tribunal may limit cross-examination of witnesses to any extent or in any manner it deems appropriate.

### **Quorum**

**52.** - (1) If, after the commencement of any hearing, the chairman is unable to continue the President may appoint either of the remaining two members to chair the Tribunal; and in that case the Tribunal shall consist of the remaining two members for the rest of the proceedings.

(2) If the person appointed under paragraph (1) is not a member of the panel of chairmen, the President may appoint himself or some other suitably qualified person to attend the proceedings and advise the remaining members on any questions of law arising.

(3) For the purposes of paragraph (2), a person is "suitably qualified" if he is, or is qualified for appointment as, a member of the panel of chairmen.

(4) If, after the commencement of any hearing, a member of the Tribunal (other than its chairman) is unable to continue, the President may decide that the Tribunal shall consist of the remaining two members for the rest of the proceedings.

(5) Where in pursuance of this rule the Tribunal consists of two members, a decision of the Tribunal must be unanimous.

## **CONFIDENTIALITY**

### **Requests for confidential treatment**

**53.** - (1) A request for the confidential treatment of any document or part of a document filed in connection with proceedings before the Tribunal shall be made in writing by the person who submitted the document at the latest within 14 days after filing the document indicating the relevant words, figures or passages for which confidentiality is claimed and supported in each case by specific reasons and, if so directed by the Registrar, the person making the request must supply a non-confidential version of the relevant document.

(2) No request for confidential treatment made in disregard of this rule or outside the period provided under paragraph (1) shall be permitted unless the Tribunal considers that the circumstances are exceptional.

(3) In the event of a dispute as to whether confidential treatment should be accorded, the Tribunal shall decide the matter after hearing the parties, taking into account the matters referred to in paragraph 1(2) of Schedule 4 to the 2002 Act.

## **DECISION OF THE TRIBUNAL**

### **Delivery of the decision**

**54.** - (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).

(4) The President shall arrange for the decision of the Tribunal to be published in such manner as he considers appropriate.

### **Costs**

**55.** - (1) For the purposes of these rules "costs" means costs and expenses recoverable before the Supreme Court of England and Wales, the Court of Session or the Supreme Court of Northern Ireland.

(2) The Tribunal may at its discretion, subject to paragraph (3), 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 all or such proportion of the costs as may be just. The Tribunal may assess the sum to be paid pursuant to any order under paragraph (1), (2) or (3) or may direct that it be assessed by the President, a chairman or the Registrar, or dealt with by the detailed assessment of 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, an order made pursuant to paragraphs (1) and (2) 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 paragraphs (1) to (3) 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. Any sum due as a result of such a direction may be recovered by the Tribunal as a civil debt due to the Tribunal.

### **Interest**

**56.** - (1) If it imposes, confirms or varies any penalty under Part 1 of the 1998 Act, 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 8, 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[7]. Such interest is to form part of the penalty and be recoverable as a civil debt in addition to the amount recoverable under section 36 of the 1998 Act.

(2) If it makes an award of damages the Tribunal may include in any sum awarded interest on all or any part of the damages in respect of which the award is made, for all or any part of the period between the date when the cause of action arose and -

(a) in the case of any sum paid before the decision making the award, the date of the payment; and

(b) in the case of the sum awarded, the date of that decision.

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.

### **Consent orders**

**57.** - (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 application to publish a notice on the Tribunal website or in such other manner as the Tribunal may direct.

(5) The notice referred to in paragraph (4) 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 so far as practicable exclude any information of the kind referred to in paragraph 1(2) of Schedule 4 to the 2002 Act.

(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).

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

(10) This rule does not apply to claims for damages.

## **APPEALS FROM THE TRIBUNAL**

### **Permission to appeal**

**58.** - (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 requests a hearing of his request and any special circumstances relied on.

### **Decision of the Tribunal on request for permission to appeal**

**59.** - (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.

### **REFERENCES TO THE EUROPEAN COURT**

#### **References to the European Court**

**60.** - (1) An order may be made by the Tribunal of its own initiative 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 directs, 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 of it 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.

### **INTERIM ORDERS AND MEASURES**

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

**61.** - (1) The Tribunal may make an order on an interim basis -

(a) suspending in whole or part the effect of any decision which is the subject matter of proceedings before it;

(b) in the case of an appeal under section 46 or 47 of the 1998 Act, varying the conditions or obligations attached to an exemption;

(c) granting 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 give such directions as it considers appropriate for that purpose.

(3) 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 relief sought is not granted; and

(c) the effect on competition if the relief is granted.

(4) Any order or direction under this rule is subject to the Tribunal's further order, direction or final decision.

(5) A party shall apply for an order or a direction under paragraphs (1) and (2) by sending a request for interim relief in the form required by paragraph (6) to the Registrar.

(6) The request for interim relief shall state -

(a) the subject matter of the proceedings;

(b) in the case of a request for a direction pursuant to paragraph (2), the circumstances giving rise to the urgency;

(c) the factual and legal grounds establishing a prima facie case for the granting of interim relief by the Tribunal;

(d) the relief sought;

(e) if no appeal or application has been made in accordance with rule 8, in respect of a decision which is the subject of the request for interim relief, an outline of the information required by rule 8(4).

(7) On receiving a request for interim relief the Registrar shall send a copy to all the other parties to the proceedings (and where no appeal or application has been made in accordance with rule 8, to the 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.

(8) 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 the request for interim relief.

(9) The Tribunal may, for the purposes of this rule, join any party to the proceedings.

(10) Subject to paragraph 11, an order or direction for interim relief may be made against a person who is not a party to the proceedings, provided that no such order may be made unless that person has been given an opportunity to be heard.

(11) 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.

(12) Unless the context otherwise requires, these rules apply to requests for interim relief.

(13) This rule does not apply to claims for damages.

## **SUPPLEMENTARY**

### **Power of President, Chairman and Registrar to exercise powers of Tribunal**

**62.** - (1) Any procedural act required or authorised by these rules, not being one required or authorised by the following rules -

(a) rules 10 (Power to reject) and 28(2);

(b) rule 12 (Withdrawal of the appeal), in the case of a withdrawal during or after the hearing;

(c) rule 40 (Power to reject);

(d) rule 41 (Summary judgment);

(e) rule 42 (Withdrawal), in the case of a withdrawal during or after the hearing;

(f) rules 58 (Permission to appeal) and 59 (Decision of the Tribunal on request for permission to appeal);

(g) rule 60 (References to the European Court),

may be done by the President acting alone.

(2) The powers of the President may be exercised by a chairman provided that the powers conferred by rule 61 may only be exercised by a chairman if the urgency of an application made in accordance with rule 61(7) so requires.

(3) If so authorised by the President, the Registrar may, subject to rule 4(4) and without prejudice to rule 55(3) -

- (a) make any order by consent (except where rule 57(4) applies);
- (b) deal with extensions or abridgments of time limits under rule 19(2)(i), except a request for an extension of time for filing an appeal or application under Part II or Part III of these rules;
- (c) deal with requests for confidential treatment under rule 53;
- (d) exercise the Tribunal's powers in respect of the service of documents under rule 63.

**Documents etc.**

**63.** - (1) Any document required to be sent to or served on any person for the purposes of proceedings under 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) Where -

- (a) a document is to be served by the Tribunal; and
- (b) the Tribunal is unable to serve it,

the Tribunal must send a notice of non-service, stating the method attempted, to the other parties to the proceedings.

(3) Where it appears to the Tribunal that there is a good reason to authorise service by a method not permitted by these rules, the Tribunal may of its own initiative or on the request of a party make an order permitting and specifying an alternative method of service, and specifying when the document will be deemed to be served.

(4) The Tribunal may dispense with service of a document if the interests of justice so require.

(5) A document which is sent 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 on a business day before 4pm on that

day or in any other case on the business day after the day on which 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.

(6) If a document (other than a facsimile) is served after 5pm on a business day, or at any time on a Saturday, Sunday or a Bank Holiday, the document shall be treated as having been served on the next business day.

(7) 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.

(8) 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 8(3)(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 14(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 16(4)(d) or such other address as may be subsequently notified to the Tribunal.

(9) 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 for the time being.

(10) 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.

(11) The Registrar shall, at the request of the Tribunal, or any party, certify the steps taken to serve a document pursuant to this rule, including the date and manner of service.

## **Time**

**64.** - (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 the 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 expiry of the last day of that month.

(2) "Month" shall mean calendar month.

(3) Where the time prescribed by the Tribunal, the President, a chairman or the Registrar, or by these rules, for doing any act expires on a Saturday, Sunday or Bank Holiday, the act is in time if done on the next following day which is not a Saturday, Sunday or Bank Holiday.

### **Conditional Fee Arrangements**

**65.** The rules on funding arrangements made under the Civil Procedure Rules 1998[8] as amended apply to proceedings before the Tribunal.

### **Enforcement of orders**

**66.** Any order, direction or decision of the Tribunal is enforceable in accordance with Schedule 4 to the 2002 Act.

### **Irregularities**

**67.** - (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 Tribunal, the President, a chairman or the Registrar, or errors arising in such a document from an accidental slip or omission, may be corrected by the President, that chairman or the Registrar, as the case may be, by certificate under his hand.

### **General power of the Tribunal**

**68.** - (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.

## **TRANSITIONAL AND REVOCATION**

### **Transitional**

**69.** Proceedings commenced before the Tribunal prior to the coming into force of these rules shall continue to be governed by The Competition Commission Appeal Tribunal Rules 2000[9] as if they had not been revoked.

### **Revocation**

**70.** Save as provided by rule 69, the Competition Commission Appeal Tribunal Rules 2000 are revoked.

*Brian Wilson*

Minister of State for Energy and Construction, Department of Trade and Industry

23rd May 2003

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### **EXPLANATORY NOTE**

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

These rules prescribe the procedure to be followed before the Competition Appeal Tribunal established by section 12 of the Enterprise Act 2002 in relation to proceedings before the Tribunal including proceedings under the Enterprise Act 2002 and the Competition Act 1998 as amended by the Enterprise Act 2002.

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*Notes:*

[1] 2002 c.40.

[2] 1992 c.53; *see* Schedule 1 to the Act, which is amended by paragraph 27 of Schedule 25 to the Enterprise Act 2002.

[3] Section 47A is inserted by section 18 of the Enterprise Act 2002.

[4] 1998 c.41.

[5] 1990 c.41.

[6] 1982 c.27; section 1(1) is amended by paragraph 1 of Schedule 2 to the Civil Jurisdiction and Judgments Order 2001 (S.I. 2001/3929).

[7] 1970 c.31.

[8] S.I. 1998/3132.

[9] S.I. 2000/261 as amended by S.I. 2003/767 which will be treated as having been made under section 15 of the 2002 Act by virtue of paragraph 12(1) of Schedule 24 to that Act.

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