



COMPETITION APPEAL TRIBUNAL

PRACTICE DIRECTION 2/2022

UMBRELLA PROCEEDINGS

1. Function and purpose of Umbrella Proceedings

1.1 In this Practice Direction, “Proceedings” are any proceedings before the Competition Appeal Tribunal (the “Tribunal”).

1.2 Proceedings may raise issues, concern matters, or have features that are not only particular to those proceedings but are also ubiquitous in that otherwise unrelated Proceedings may raise or concern the same or similar issues or matters or share features, albeit that those issues, matters or features (“Ubiquitous Matters”) may occur (or be “hosted”) in the context of differing facts and circumstances.

1.3 Ubiquitous Matters may be hosted in different Proceedings (“Host Cases”) when they arise out of a broadly similar economic and/or regulatory landscape. For example, such Host Cases may concern different levels or aspects of economic markets, yet each Host Case may raise the Ubiquitous Matter of what is commonly referred to as “pass on”. In one case, a business may be defending an allegation that the business has passed on an overcharge to a consumer. In another case, the consumer may be alleging that the business has passed on the overcharge to the consumer. Ubiquitous Matters may be substantive or procedural in nature or both.

1.4 The Tribunal has established processes for hearing similar proceedings (e.g. appeals of a single, common, decision) together and/or consolidating them pursuant to Rule 17 of the Competition Appeal Tribunal Rules 2015 (SI 2015 No 1648) (“the Rules”). Furthermore, Rule 17 (which, pursuant to Rules 51 and 74 is applicable to proceedings under Parts 4 and 5 of the Rules) enables the Tribunal, on the request of a party or of its own initiative, to order the consolidation of any particular issue or matter raised in Proceedings. The purpose of this Practice Direction is to indicate one way in which the Tribunal will seek to achieve the effective and consistent case management of different cases that coincide with each other in hosting a Ubiquitous Matter.

1.5 To assist in the effective and consistent management of such Host Cases (or, more particularly, the Ubiquitous Matters present in each such case), the President may group them together under a common designation or “Umbrella”. From that point onwards, the Tribunal will deal with and dispose of Ubiquitous Matters in the “Umbrella Proceedings” and not in the context of the individual Host Cases.

2. The Umbrella Proceedings Order

2.1 The President may, from time-to-time, by way of an “Umbrella Proceedings Order”, designate certain Ubiquitous Matters in named Host Cases as being the subject of Umbrella Proceedings. The Host Cases from which Ubiquitous Matters have been so designated will retain their existing case numbers, but will share, in addition, an Umbrella Proceedings case name and number.

2.2 The President may make an Umbrella Proceedings Order:

- (a) Of his or her own motion;
- (b) In response to a request from the Chair of another, already constituted, tribunal; or
- (c) On the application of any party to Proceedings.

2.3 For the purpose of hearing any submissions in relation to the designation of Ubiquitous Matters and the making of an Umbrella Proceedings Order, the President may sit with the Chair or all Members of an already constituted tribunal dealing with a Host Case (“the Host Case Tribunal”).

2.4 The Umbrella Proceedings Order will specify:

- (a) The Ubiquitous Matters that have been designated to be subject to Umbrella Proceedings;
- (b) The Host Cases from which the Ubiquitous Matters have been designated; and
- (c) The constitution of the tribunal that will have the conduct of the Umbrella Proceedings (the “Umbrella Proceedings Tribunal”).

2.5 The Umbrella Proceedings Tribunal will have the conduct of the Ubiquitous Matters that are subject to the Umbrella Proceedings. Orders, rulings and judgments will be made, in relation to the Ubiquitous Matters, using the Umbrella Proceedings case name and number without specific reference to the individual case numbers of the Host Cases; and such orders, rulings and judgments will stand as if made pursuant to an order in the individual Host Cases. All other issues in Host Cases that are not subject to the Umbrella Proceedings Order will be dealt with, as appropriate, by the Host Case Tribunal.

3. Membership of the tribunal in an Umbrella Proceedings hearing

3.1 The Tribunal has a well-established process for allocating Proceedings to a specifically constituted tribunal at an early stage. That practice will continue in the case of Umbrella Proceedings, but the President may decide that the Umbrella Proceedings Tribunal will have a different constitution from the Host Case Tribunal. Where there are multiple Host Cases, before different Host Case Tribunals, this may be unavoidable.

4. Addition and Removal of Ubiquitous Matters to and from Umbrella Proceedings

4.1 The President, or the Chair of any tribunal (in consultation with the President), may (after hearing the parties) designate additional Ubiquitous Matters to be subject to an existing Umbrella Proceedings Order.

4.2 The President, or the Chair of the Umbrella Proceedings Tribunal (in consultation with the President) and after hearing the parties, may order the removal of any Ubiquitous Matter from an Umbrella Proceedings Order.

Sir Marcus Smith
President

6 June 2022