



COMPETITION APPEAL TRIBUNAL

PRACTICE DIRECTION 3/2022

CONDUCT OF COLLECTIVE PROCEEDINGS AFTER CERTIFICATION

1. Paragraph 6.7 of the Tribunal's Guide to Proceedings 2015 ("the Guide") deals with the management of collective proceedings after the making of a collective proceedings order ("CPO"). The Guide (which was drafted before the Tribunal had any practical experience of collective proceedings) envisaged the appointment of a "Trial Tribunal" at an appropriate point which would take over the conduct of the proceedings from the Tribunal ("the Case Management Tribunal") that had heard and decided the CPO application.
2. Paragraph 6.7 of the Guide has been the subject of recent consideration in *Le Patourel v. BT Group* [2022] CAT 21 ("*Le Patourel*").
3. It must be stressed that the appropriate directions to be made following the certification of collective proceedings are judicial questions for the tribunal in the case. That tribunal will, of course, take due consideration of the Guide, but the Guide cannot and does not do anything more than offer guidance in the form of a Practice Direction, which will be taken into account appropriately according to the circumstances of the case and the accumulated experience of the Tribunal in dealing with collective proceedings.
4. Generally, the most efficient way of managing the proceedings will be for the Case Management Tribunal to maintain the conduct of the proceedings for as long as possible after a CPO is made. That will ensure continuity in terms of knowledge of the facts of the case and is likely to be the most efficient course with regard to the costs of the parties and the deployment of the Tribunal's own resources. If there is no reason to depart from this approach then the Case Management Tribunal will be the Trial Tribunal by default.
5. As identified by the Tribunal in *Le Patourel*, the most likely situation in which another tribunal may need to be constituted is if a collective settlement is proposed. In that event, the parties should notify the Registrar of the proposed collective settlement and request the constitution of a separate Tribunal ("the Settlement Tribunal") to consider the proposed settlement and give or make any appropriate directions or orders. In that way, the Trial Tribunal can be kept apart from the consideration of any settlement and ready to continue to trial if necessary.

Sir Marcus Smith
President

1 August 2022