



COMPETITION APPEAL TRIBUNAL

CATUG/2023

13 March 2023

**MINUTES OF THE COMPETITION APPEAL TRIBUNAL USER GROUP MEETING (01/23)
WEDNESDAY 8 FEBRUARY 2023**

A meeting of the Competition Appeal Tribunal (CAT) User Group took place on Wednesday 8th February 2023 (1715-1845 hrs) in the Mansfield Room / via MS Teams.

Attendees			
	Marcus Smith J	CAT (President)	Chair
	Charles Dhanowa KC	CAT (Registrar)	
	Ben Tidswell	CAT (Chair)	
	Belinda Hollway	Scott & Scott	
	Martin Ballantyne	Ofcom	
	Stephen Wisking	Herbert Smith Freehills	
	Jon Turner KC	Monckton	
	George Peretz KC	Monckton	
	Mark Sansom	Freshfields	
	Jessica Radke	CMA	
	Morag Ross KC	Axiom Advocates	
	Euan Burrows	Ashurst	
	Tom De La Mare KC	Blackstone Chambers	
	Totis Kotsonis	Pinsent Masons LLP	
	Peter Freeman	CAT	
	Chris Prevett	CMA	

Item	Record	Action
1. Introduction	The President welcomed all attendees.	
2. Minutes of Previous Meeting (2 Nov 22)	The Minutes of the meeting on 2 Nov 2022 were reviewed. No issues were raised, and the Minutes were agreed.	
3. Confidential Treatment of Documents: Draft Practice Direction	Ben Tidswell sought feedback on the draft Practice Direction (PD) on Confidential Treatment of Documents. The PD aims to put the onus on parties to justify claims for confidentiality, and envisages a confidentiality protocol being put in place early on in proceedings (around the time of the Case Management Conference), which would be reviewed at the time witness statements were served. Concern was raised about the extent of emphasis at paragraph [3] of the PD on Rule 102 of the Competition Appeal Tribunal Rules 2015; the limits of this level of protection were illustrated	

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	<p>by cases in which a document had been quoted extensively in the media after being appended to a claim and read out in court.</p> <p>It was suggested that if the protection offered under paragraph [3] of the PD was equivalent to the outer confidentiality ring, there would still be a need for an inner ring in follow-on or standalone damages claims. This could result in more material being placed in the inner confidentiality ring, and may lead to reluctance by parties to exchange documents prior to the CMC. Further, parties were unlikely to know at the beginning of a matter how many documents would be subject to confidentiality claims (e.g. tens, hundreds, thousands or more). There was a need to avoid documents being released into a confidentiality ring by default because the parties had not yet reviewed for confidentiality, but this would occur unless the Rule 102 regime was sufficiently protective.</p> <p>Attendees also questioned whether Rule 102 protection would be sufficient to satisfy the CMA when granting claimants access to its file in follow on proceedings.</p> <p>The President clarified that Rule 102 was the minimum protection afforded to parties, and wondered whether a form of Rule 102 protection may be sufficient up to the first CMC, following which the parties might seek a more tailored solution.</p> <p>The President suggested that a confidentiality order in the nature of the order made in Sportradar could be appended to the PD as an example of the outermost limit of the confidentiality regime the CAT would be minded to impose, noting it would be on the parties to justify such an order in the circumstances of their case. The Tribunal wishes to avoid the parties in every case saying theirs is an exceptional case which merits an inner confidentiality ring, while ensuring that parties are reassured that confidentiality arrangements will reflect their particular needs.</p> <p>Attendees agreed that the PD should include guidance on circumstances that would not usually give rise to claims for confidentiality (e.g. the documents are more than 5 years old) – this would help focus the parties’ minds earlier to confidentiality claims.</p> <p>The CAT was to provide an amended version of the PD prior to the next meeting. Issues for consideration in the revised draft included:</p> <ul style="list-style-type: none"> - Revisions to paragraphs 3 and 4, particularly what the judicial “teeth” for the Rule 102 regime would be; - How the PD would deal with references to documents in pleadings and open court. 	<p>Ben Tidswell</p>

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<p>4. Draft Practice Direction: August Working Practices</p>	<p>Given the reaction to the draft Practice Direction regarding August Working Practices at the last meeting, the President concluded the proposal seemed uncontroversial.</p> <p>The CAT was to circulate the draft PD for comments.</p> <p><i>Post Meeting Note: Comments were later provided by e-mail that the PD should clarify whether the time for filing appeals is affected, and whether the fact that a deadline for appeals falls within August is grounds for an extension of time.</i></p>	<p>President</p>
<p>5. Subsidy Control</p>	<p>The President asked for an indication from attendees about the volume of cases that may start flowing through to the CAT on subsidy control; the CAT had already received its first case, potentially suggesting a high volume. He also asked for feedback about the way the CAT was dealing with such cases (once these cases had come through).</p> <p>Two of the attendees were working on a case that raises a number of issues regarding the standard of review, and the extent to which some of the more prescriptive aspects of the state aid regime can be read across to the subsidy control regime.</p> <p>Attendees suggested that once judicial review was sought of a subsidy decision, all judicial review grounds would be available. Cases may be dominated by public law issues rather than subsidy issues. Claimants may also seek to bring cases in the CAT because of its economic expertise and efficient case management. Attendees noted the CAT was the only forum in which review could be sought in relation to the state aid regime – it is not possible to approach the CMA.</p> <p>The Transparency Database may provide an indication of payments recognised as subsidies; parafiscal taxes may also be subject of smaller state aid cases.</p>	
<p>6. CAT Rules Advisory Committee Update</p>	<p>The second meeting of the CAT Rules Advisory Committee was scheduled for 21 Feb 23.</p> <p>The President invited observations about potential subjects for discussion by the Committee, noting that disclosure was already being discussed.</p> <p>Attendees noted a perception that there was very little pre-action correspondence in CAT matters, and accordingly no applications for pre-action disclosure. This may be due to fears that such correspondence would spark disputes over appropriate jurisdiction or tip off others to potential claims (causing carriage dispute issues). However, the result was that there was currently no incentive for defendants to engage with claimants to share documents that will narrow the issues in dispute. Attendees wondered whether there may be scope for the CAT to encourage pre-action correspondence with a view to</p>	

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	<p>establishing channels of communication regarding early disclosure.</p> <p>Third party disclosure was also raised, noting uninvolved third parties may take on more significance in the context of umbrella proceedings and matters involving multiple levels of the market.</p> <p>With regard to timeframe, ideally a draft of any revisions to the CAT Rules would be with the Department for Business and Trade by the end of the year with a view to having new CAT Rules by 2024. The CAT would identify areas to the Department where discussions with stakeholders had taken place, and the Department would be able to implement the Rules in the confidence that more significant proposals had been the subject of consultation.</p>	
<p>7. CAT “Electrification” Project</p>	<p>The Registrar advised that the CAT is progressing plans to move to a fully digital filing system, from which Tribunal members would be able to access and work on all documents. Interoperability between any new system implemented by the CAT and the systems used by Tribunal users was an important consideration.</p> <p>The President noted the need to consider a practice direction on filing nomenclature as part of this project.</p> <p>The Registrar noted the CAT is not yet ready to convene a technical committee for this project, but will do so at some future stage. The meeting attendees agreed that such a committee may be best comprised by technical officers from law firms and employees from legal technology firms such as Opus, rather than just including lawyers. The President also noted he was keen to receive early input from potential users with particular accessibility needs.</p> <p>CAT User Group members were requested to submit a point of contact in their organisations, who could assist with the technical side of the project, or to consult on accessibility issues.</p>	<p>All</p>
<p>8. Any Other Business</p>	<p>The Bellamy Lecture and the CAT’s 20th Anniversary Conference will be held on 4 May 2023 at Downing College Cambridge.</p>	
<p>9. Date of Next Meeting</p>	<p>Wed 7 Jun 23 (1715-1830 hrs) [calendar invitation issued]</p>	

Isabella van Leer
for CAT President