



## COMPETITION APPEAL TRIBUNAL

### **PRACTICE DIRECTION 2/2021: TRIAL/APPEAL WITNESS STATEMENTS IN THE COMPETITION APPEAL TRIBUNAL**

#### **1. General**

**1.1** This Practice Direction is made under rule 115 of the Competition Appeal Tribunal Rules 2015 (“the Tribunal Rules”). It concerns witness statements for use at trials and appeals and applies to new and existing proceedings, but only to trial/appeal witness statements signed **on or after 8 November 2021**. For the avoidance of doubt, nothing in this Practice Direction affects—

- (1) affidavit evidence,
- (2) evidence in a witness statement other than a trial/appeal witness statement, or
- (3) the general powers of the Tribunal under rules 21 and 55 of the Tribunal Rules, to control, exclude or limit factual witness evidence.

**1.2** In this Practice Direction—

“Tribunal Guide” means the Competition Appeal Tribunal Guide to Proceedings 2015,

“relevant legal representative” means, in relation to a trial/appeal witness statement, a legal representative authorised to conduct litigation who has had responsibility for ensuring that the purpose and proper content of trial/appeal witness statements and proper practice in relation to their preparation have been explained to and understood by the witness

“trial/appeal” means a final trial/appeal hearing, whether of all issues or of only one or some particular issues, in proceedings in the Tribunal under Parts 2, 4 or 5 of the Tribunal Rules.

“trial/appeal witness statement” means a statement by a witness of fact that is served pursuant to rule 21(3) or 55(2) of the Tribunal Rules, and

“relevant party” means the party by or on behalf of whom the witness statement is served (and for the avoidance of doubt includes a party who is also a witness, as regards their own trial/appeal witness statement).

**1.3** This Practice Direction does not apply to the following proceedings, unless the Tribunal at any stage directs that it is to apply:

- (1) an application for a collective proceedings order brought pursuant to section 47B of the Competition Act 1998 and Part 5 of the Tribunal Rules; and
- (2) an application for judicial review made pursuant to sections 114, 120 and 179 of the Enterprise Act 2002 and Part 3 of the Tribunal Rules.

**1.4** If a rule or other Practice Direction requires some matter to be stated in a witness statement that will be a trial/appeal witness statement, that requirement still applies.

**1.5** In the event of inconsistency between this Practice Direction and any other Practice Direction the provisions of this Practice Direction shall prevail.

**1.6** The Tribunal may direct under rule 21(3) or 55(1) that this Practice Direction does not apply in whole or in part to a witness statement or statements.

## **2. The purpose of a trial/appeal witness statement**

**2.1** The purpose of a trial/appeal witness statement is to set out in writing the evidence in chief that a witness of fact would give if they were allowed to give oral evidence at the trial or the hearing of the appeal without having provided the statement.

**2.2** Trial/appeal witness statements are important in informing the parties and the Tribunal in advance of the evidence a party intends to rely on at trial or the hearing of the appeal. Their use furthers the governing principles (defined in rule 4 of the Tribunal Rules) by helping the Tribunal to deal with cases justly, efficiently and at proportionate cost, including by helping to put parties on an equal footing, saving time at trial and promoting settlement in advance of trial.

## **3. The content of witness statements**

**3.1** A trial/appeal witness statement must contain only –

(1) evidence as to matters of fact that need to be proved at trial or the hearing of the appeal by the evidence of witnesses in relation to one or more of the issues of fact to be decided at trial or on the appeal, and

(2) the evidence as to such matters that the witness would be asked by the relevant party to give, and the witness would be allowed to give, in evidence in chief if they were called to give oral evidence.

**3.2** A trial/appeal witness statement must set out only matters of fact of which the witness has personal knowledge that are relevant to the case, and must identify by list what documents, if any, the witness has referred to or been referred to for the purpose of providing the evidence set out in their trial/appeal witness statement. The requirement to identify documents the witness has referred to or been referred to does not affect any privilege that may exist in relation to any of those documents.

**3.3** A trial/appeal witness statement should, so far as possible, be expressed in the witnesses' own words and drafted in their own language, and for that purpose a witness's own language includes any language in which the witness is sufficiently fluent to give oral evidence (including under cross-examination) and is not limited to a witness's first or native language. A party who relies on a witness statement in a foreign language must also file a translation.

**3.4** Trial/appeal witness statements should be prepared in accordance with the Tribunal Guide.

## **4. Confirmation of compliance**

**4.1** A trial/appeal witness statement must be verified by a statement of truth as defined by rule 2(1) of the Tribunal Rules and, unless the Tribunal otherwise orders, must also include the following confirmation, signed by the witness:

*“ I understand that the purpose of this witness statement is to set out matters of fact of which I have personal knowledge.*

*I understand that it is not my function to argue the case, either generally or on particular points, or to take the Tribunal through the documents in the case.*

*This witness statement sets out only my personal knowledge and recollection, in my own words.*

*On points that I understand to be important in the case, I have stated honestly (a) how well I recall matters and (b) whether my memory has been refreshed by considering documents, if so how and when.*

*I have not been asked or encouraged by anyone to include in this statement anything that is not my own account, to the best of my ability and recollection, of events I witnessed or matters of which I have personal knowledge. ”*

**4.2** Any application for permission to vary or depart from the requirement to include the statement set out in paragraph 4.1 above may be made, and generally should be made, without notice, for determination without a hearing.

**4.3** A trial/appeal witness statement must be endorsed with a certificate of compliance in the following form, signed by the relevant legal representative, unless the statement is signed when the relevant party is a litigant in person or the Tribunal orders otherwise:

*“I hereby certify that:*

*1. I am the relevant legal representative within the meaning of Practice Direction 2/2021.*

*2. I am satisfied that the purpose and proper content of trial/appeal witness statements, and proper practice in relation to their preparation, including the witness confirmation required by paragraph 4.1 of Practice Direction 2/2021, have been discussed with and explained to [name of witness].*

*3. I believe this trial/appeal witness statement complies with Practice Direction 2/2021 and paragraphs 7.58-7.62 of the Tribunal Guide.*

*Name: .....*

*Position: .....*

*Date:..... ”*

**4.4** Any application to dispense with the certificate of compliance referred to in paragraph 4.3 above, or for permission to vary or depart from the form for it there set out, may be made, and generally should be made, without notice, for determination without a hearing.

## **5. Sanctions**

**5.1** The Tribunal retains its full powers of case management and the full range of sanctions available to it and nothing in paragraph 5.2 or paragraph 5.3 below confines either.

**5.2** If a party fails to comply with any part of this Practice Direction, the Tribunal may, upon application by any other party or of its own motion, do one or more of the following –

(1) refuse to give or withdraw permission to rely on, or strike out, part or all of a trial/appeal witness statement,

(2) order that a trial/appeal witness statement be re-drafted in accordance with this Practice Direction or as may be directed by the Tribunal,

(3) make an adverse costs order against the non-complying party,

(4) order a witness to give some or all of their evidence in chief orally.

**5.3** The Tribunal may, upon application by any other party or of its own motion, strike out a trial/appeal witness statement not endorsed with a certificate of compliance pursuant to paragraph 4.3 above if there is reason to consider that the relevant party was acting in person when it was signed, in order to avoid the application of paragraph 4.3 above to the statement.

The Hon. Mr Justice Roth

President

**4 November 2021**