



COMPETITION APPEAL TRIBUNAL

CATUG/2022

17 March 2022

**MINUTES OF THE COMPETITION APPEAL TRIBUNAL USER GROUP MEETING (01/22)
MONDAY 7 MARCH 2022**

A meeting of the Competition Appeal Tribunal (CAT) User Group took place on Monday 7th March 2022 (1715-1845 hrs) in the Mansfield Room / via MS Teams.

Attendees	Name	Organization	Mode
	Marcus Smith	CAT (President)	
	Charles Dhanowa	CAT (Registrar)	
	Ben Tidswell	CAT (Chairman)	
	Peter Freeman	CAT	
	Anna Morfey	Hausfeld	via Teams
	Euan Burrows	Ashurst	
	Belinda Hollway	Scott & Scott	
	Martin Ballantyne	Ofcom	
	Morag Ross	Axiom Advocates	via Teams
	Stephen Wisking	Herbert Smith Freehills	
	Totis Kotsonis	Pinsent Masons LLP	
	George Peretz QC	Monckton	
	Jon Turner QC	Monckton	
	Sarah Cardell	CMA	via Teams
	Jessica Radke	CMA	
	Tom De La Mare QC	Blackstone Chambers	via Teams
Apologies	Mark Sansom	Freshfields	
	Paolo Palmigiano	Taylor Wessing	
	Marie Demetriou QC	Brick Court	

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1. Welcome	The President opened by welcoming new members to the user group: Morag Ross (Axiom Advocates); Totis Kotsonis (Pinsent Masons LLP) and George Peretz (Monckton Chambers). The President also welcomed Jessica Radke (CMA) and Anna Morfey (Hausfeld).	
2. Role of the User Group	<p>The President introduced the role of the user group and proposed wording for the user group for publication on the Tribunal website:</p> <p><i>“The User Group for the Competition Appeal Tribunal (the Tribunal) is a forum to enable the Tribunal to obtain timely feedback on its operations from users of the Tribunal. In particular, it allows the Tribunal to consult and obtain views on proposals for new or changed procedures.</i></p> <p><i>The members of the User Group are drawn from representatives of the public bodies and legal practitioners</i></p>	

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	<p><i>from throughout the United Kingdom who regularly appear before the Tribunal. Their role on the User Group is to reflect the views of users of the Tribunal as a whole, and any user should feel free to raise an issue with any member of the User Group. The membership is reviewed on a regular basis and applications from regular users to join the group are welcome.</i></p> <p><i>The User Group meets three to four times a year. Meetings are conducted on a hybrid basis and members are welcome to attend in person at the Tribunal or by video conference. Minutes are produced by the Tribunal and the most recent minutes of User Group meetings can be found below.”</i></p> <p>The President emphasised the importance of the user group to promote feedback and constructive suggestions about the Tribunal from all users via user group members. The members of the group agreed to take on that responsibility and in particular to act as a conduit for the views of other users.</p> <p>Ben Tidswell noted that the user group could meet more frequently than 3 or 4 times a year to discuss important developments.</p> <p>No issues were raised with the wording proposed.</p> <p>Action 01/22-1: Comments on the wording of the role of the User Group were to be incorporated into a final version and placed on the CAT Website.</p>	<p>Ben Tidswell</p>
<p>3. Practice Direction on Super Confidential / Super-Sensitive Material</p>	<p>The President expressed his thanks to user group members for their helpful contributions, and he explained that the PD had now been published on the Tribunal’s website. He considered it appropriate to send a signal to prospective parties seeking to protect super-confidential material that they should raise the issue with the Tribunal at the earliest possible opportunity.</p>	
<p>4. Subsidy Control</p>	<p>The President noted that the Tribunal anticipated a new review jurisdiction under the legislation which is currently being considered in Parliament. The Tribunal wished to prepare itself as far as possible prior to the new powers being granted.</p> <p>George Peretz updated the user group on the passage of the Subsidy Bill through Parliament and noted that important issues such as time limits and standing had generated a lot of interest in that process.</p> <p>George Peretz and Totis Kotsonis led a discussion on issues that are likely to be relevant to proceedings before the Tribunal; this included:</p> <ul style="list-style-type: none"> • The Government’s projection that the Tribunal would receive 30 applications for review a year. • The operation of the subsidy control register and the 	

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	<p>transparency in relation to subsidy decisions.</p> <ul style="list-style-type: none"> • The time limits for bringing an appeal (the Bill currently provides for a period of 1 month to bring a challenge from the date of registration of the subsidy on the subsidy control register, although this can be extended in the event the public authority is asked to provide information). • Standing, and a comparison of the proposed test with practice under EU State Aid procedure; • The definition of subsidy and the potential for disputes about the application of the legislation to certain decisions. • The application of the principles for permitted subsidies and the type of evidence that might be submitted to support or challenge a subsidy, including economic evidence and potentially heavy disclosure. • The grounds of judicial review which might be invoked in challenges. • The role which any CMA report into a subsidy might play in an application for review. • Particular sectors in which subsidies might arise. <p>The President emphasised the importance of identifying what the Tribunal and the CMA could do practically to prepare for the process: (1) the Tribunal is aware of the likely increase in work which would require additional resources and facilities in order to move the cases forward; (2) the extent to which there is a need for clarification of the legislation going through Parliament; and (3) Subsidy cases may need to be dealt with on an expedited basis.</p>	
<p>5. Digital Document Management</p>	<p>The Registrar stated that this matter was very early in the Tribunal's thinking. The Tribunal wanted to move away from paper filing and move towards a "one-stop" filing system. This would reduce time and effort spent in bundling and re-presenting documents. The Tribunal did not want to embark on a major bespoke IT project to achieve this – it intended to use document management systems within the Tribunal's current IT systems and/or in common use.</p> <p>The Registrar explained that the Tribunal needs to make sure that the documents which are filed in the Tribunal are in a form which needs no further involvement or reformulating. The Tribunal was considering the use of a unique numbering system which would be used by the Tribunal and all parties as the primary reference point for a document.</p> <p>The President noted that the Tribunal would need to identify minimum standards for documents which are filed. He explained that the Tribunal did not want to 're-invent the wheel': what was required is a system that is meshed into the way in which the Tribunal, particularly the Registry, currently works. The Tribunal was seeking to avoid multiple filings of the same document and include the ability to access a document for a variety of different</p>	

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	<p>purposes.</p> <p>The Registrar concluded by emphasising the need for a system which worked well for all Tribunal users.</p> <p>Action 01/22-2: User Group members were invited to submit to the CAT the names of any Subject Matter Experts involved in the document handling processes in their organisations.</p>	<p>All</p>
<p>6. Embargoed Judgements</p>	<p>The President opened by highlighting that the embargoed judgment process had become increasingly problematic in the High Court, with examples of wrongful disclosure of the contents of draft judgments: see <i>Optis Cellular Technology Inc. and others v Apple Retail UK Limited and others</i> [2021] EWHC 2694 (Pat). The President explained that the Tribunal saw value in sending the draft judgment to the parties under embargo for their comments, although an alternative approach was to publish the final version of the judgment but emphasising that it may be subject to minor typographical errors.</p> <p>Jon Turner stated that the Tribunal's embargo judgment process was very important as he had been involved in a small number of cases where more than minor typographical errors had been identified by the parties, and the judgment therefore had to be amended in light of the parties' comments. He stated that the Tribunal typically kept confidentiality rings very tight and that the current process worked well and was therefore fit for purpose.</p> <p>Jessica Radke and Sarah Cardell agreed but explained that it could be difficult for the CMA to take instructions during the embargo process which resulted in applications for additional people to be added to the list of people who were able to view the embargoed draft judgment. She queried whether this could be addressed prior to the embargoed judgment being circulated. In addition, as a regulator, decisions of the CAT often created immediate external attention which could be difficult to manage properly without some advance warning of the outcome.</p> <p>The group discussed whether there could be, in the Tribunal's embargo judgment process, a limited carve out for a policy maker, such as the CMA. There were differing views, including concern about the asymmetry this could create and noting the role the CMA plays in managing the confidential information of third parties.</p> <p>The President concluded by saying the Tribunal was to maintain its current process but that the CAT Registry would seek to send the embargo letter to the parties more in advance of publication, and then invite comments on who should be included in the confidentiality ring. The Tribunal would give further consideration to the CMA's position.</p>	

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<p>7. Confidentiality ring order</p>	<p>Euan Burrows reported that the Confidentiality Ring Working Group had met on three occasions and now had a very advanced draft, which was a single proforma order.</p> <p>Belinda Hollway identified two points where the working group sought input: (1) Was an inner and outer ring so inevitable that it should be included in the draft order as a default? and (2) was the requirement to identify and then notify changes to the confidentiality ring overly burdensome? (e.g. adding junior staff members such as trainees on rotation can involve the parties sending and receiving numerous emails).</p> <p>The following points were discussed:</p> <ul style="list-style-type: none"> • whether it would be appropriate to have a steward for each party who would have the list of individuals who were contained in the ring and responsibility for liaison between firms. • the possibility of a “warranting” process to ensure all members of the ring understood and took personal responsibility. • The use of email accounts for distribution lists and the undesirability of confidential information going to those accounts. • the possibility of using a traffic light system where certain documents are subject to differing controls. <p>The need for a cover note for the proforma, explaining the key issues to consider.</p> <p>Action 01/22-3: A draft proforma order was to be circulated to user group members by 18 Mar 22.</p>	<p>Euan Burrows</p>
<p>8. CLLS Litigation Committee Feedback</p>	<p>Ben Tidswell explained that the Litigation sub-committee of the CLLS had been in touch to say they have compiled significant feedback of a number of the senior courts, including the CAT. This had been offered to the CAT but had not yet been provided. When it was, the Tribunal would circulate it to the user group for any comments.</p>	
<p>9. Annual Review Case List Feedback</p>	<p>The Registrar discussed the CAT Annual Report and stated that the Tribunal was considering removing the breakdown of case activity section, and asked the user group for comment on whether it had any value to users. He noted that the section which summarised judgments would remain, as would the table showing overall activity.</p> <p>Tom de la Mare stated that he would like the Annual Report to be more easily identifiable on the Tribunal website. There was a further discussion in relation to improved searchability of the website.</p> <p>It was agreed that the “Activity by Case” section would not be</p>	

Item	Record	Action
	included in this year's Annual Report.	
10. AOB	There was no other business.	
11. Date of Next Meeting	The date for the next meeting in June 2022 will be circulated in due course.	

Mark Colyer
for CAT President