



# **Competition Commission Rules of Procedure**

Consultation Document

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# **COMPETITION COMMISSION RULES OF PROCEDURE**

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## **COMPETITION COMMISSION**

### **COMMISSION RULES OF PROCEDURE**

#### **PART I: GENERAL**

##### **Introductory**

1.1 These rules of procedure of the Competition Commission (“the Commission”) are those referred to in, and required by, paragraph 19A of Schedule 7 to the Competition Act 1998.<sup>1</sup>

1.2 Before making these rules the Chairman of the Commission consulted the members of the Commission and such other persons as he considered appropriate<sup>2</sup>.

##### **Application of the Rules**

2.1 The rules apply to all references made to the Commission under the enactments described in Part VIII of these rules.

2.2 Where a special reference group is appointed, its procedure is provided for in Part VII of these rules.

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<sup>1</sup> As inserted by section 178(3) of the Enterprise Act 2002.

<sup>2</sup> As required by section 182(4) of the Enterprise Act 2002.

## Effect of the Rules

3.1 The rules are supplementary to those statutory provisions which apply to the Commission under any enactment, or instrument made thereunder, and, in the event of any conflict between the rules and any statutory provision, the latter shall prevail.

3.2 The rules, which concern the functions of the Commission, are binding on: -

- (a) the Chairman,
- (b) any Deputy Chairman,
- (c) any chairman of a group,
- (d) any group appointed by the Chairman,
- (e) any member of the Commission, and
- (f) any person authorised by the Chairman or the group to carry out any function of the Commission.

3.3 If, at any time, a group encounters a situation which is not provided for in these rules, then it shall determine its own procedure, but before doing so it shall consult the Chairman and shall have regard to any guidance given to it by the Chairman.

## PART II APPOINTMENT OF A GROUP

### Appointment

4.1 When a reference has been made to the Commission under rule 2.1, the Chairman shall, in a prompt manner, appoint members to form a group and a member of the group to be the chairman of the group.

4.2 A group must consist of at least three persons one of whom may be the Chairman of the Commission.

4.3 The chairman of a group shall have a casting vote on any question to be decided by the group.

4.4 A group may be a “market reference group” to conduct an investigation in connection with a reference under section 126 or 127 of the Enterprise Act 2002, (“the Act”), a “merger reference group” in connection with a reference under section 59 of the Fair Trading Act 1973 or section 21, 32, 44 or 61 of the Act, or a “special reference group” to conduct a reference or an investigation under any of the enactments mentioned in paragraph 19A(9) of Schedule 7 to the Competition Act 1998.

4.5 In making his appointments to a group, the Chairman shall have regard to the Commission’s Code of Practice for Reporting Panel members and Specialist Panel Members and the Commission’s Guidance on conflicts of interest (which are on the Commission’s website) and take into account any other factors which, in his opinion, might prejudice the independence and impartiality of the Commission.

4.6 The Chairman may, either at the invitation of the chairman of a group or if he considers it appropriate to do so, attend meetings or otherwise take part in the proceedings of a group for the purpose of offering the group advice about the exercise of their functions.

4.7 Where the Chairman is absent or otherwise unable to attend then a Deputy Chairman designated by the Deputy Chairmen may attend instead.

4.8 It shall be the duty of a group to have regard to any advice given to it by the Chairman or the Deputy Chairman under rules 4.6 and 4.7 but the Chairman or Deputy Chairmen may not vote or have any statement of their dissent from a conclusion of the group included in the group’s report.

4.9 A group or a member of a group may consult any member of the Commission with respect to any matter or question with which the group is concerned but, before doing so, the group or member of the group shall consult the chairman of the group, to avoid any conflict of interest arising.

4.10 All members of the Commission shall have regard to any guidance issued by the Chairman under paragraph 19(3) of Schedule 7 to the Competition Act 1998 and any advice and information under sections 103(3) and 166(3) of the Act and any statement of policy on penalties under section 113(1) of the Act published by the Commission.

4.11 If, during the proceedings of a group-

- (a) a member of the group ceases to be a member of the Commission,
- (b) the Chairman is satisfied that a member of the group will be unable for a substantial period to perform his duties as a member of the group, or
- (c) it appears to the Chairman that because of a particular interest of a member of the group it is inappropriate for him to remain in the group,

the Chairman may appoint a replacement.

### PART III: PROCEDURES FOR MARKET AND MERGER REFERENCE GROUPS

#### The Timetable

5.1 It shall be the duty of the group to comply with the relevant statutory timetable provided by the Act for the reference in question.

5.2 After the group has been appointed, it shall, as soon as practicable, make arrangements for an administrative timetable to be drawn up which shall make provision for the major stages of the reference.

5.3 The major stages of the reference may include, in particular, the following: -

- (a) gathering information,
- (b) issuing questionnaires,
- (c) hearing of witnesses,
- (d) verifying information,
- (e) providing a statement of issues,
- (f) considering responses to a statement of issues,
- (g) notifying and publishing provisional findings,
- (h) considering possible remedies,
- (i) considering exclusions from disclosure, and
- (j) publishing reports,

provided that these stages need not necessarily take place within the administrative timetable in the order in which they are mentioned in this rule.

5.4 The group shall, when drawing up the administrative timetable, have regard to any views which the main parties to the reference have submitted to them.

5.5 Once the administrative timetable has been produced, the group shall make arrangements for it to be made known to all parties to the reference and to the public, and shall publish it on the Commission's website.

5.6 The group may proceed on the basis that the main parties to the reference will comply with the administrative timetable.

5.7 If, at any point during the reference, the group has reason to believe that the administrative timetable will not be met for any reason, including any unforeseen circumstance, any difficulty concerning any stage of it, or any change to the statutory timetable, then the group shall prepare a revised timetable to which the notification and publication requirements contained in rule 5.5 shall apply.

### Hearings

6.1 It shall be the duty of the group to decide which, if any, of its hearings are to be held in public.

6.2 In taking that decision, the group shall have regard to: -

- (a) the views of the main and third parties,
- (b) the likelihood that a matter relating to the private affairs of an individual or body might be made known to the public and, being made known, might significantly harm the interests of that individual or body,
- (c) the extent to which an individual or body might be inhibited from providing information to the group if the hearing were to be held in public,
- (d) the extent to which an individual or body might be encouraged to provide information to the group if the hearing were to be held in public,
- (e) the efficient and proper conduct of the reference,
- (f) the administrative timetable,
- (g) the resource implications for the hearing, and
- (h) the transport implications of the location of the hearing.

6.3 If, during the course of any hearing in public, the group considers that it would be appropriate, having regard to the factors set out in rules 6.2 (b), (c), (d) and (g), that the hearing should no longer continue to be held in public, it shall hold the hearing in private, after having given its reasons in public for doing so.

#### Appearances at Hearings

7.1 The group shall decide the extent, if any, to which persons interested or claiming to be interested in the subject-matter of the reference are allowed:

- (a) to be present or to be heard, either by themselves or by their representatives;
- (b) to cross-examine witnesses; and
- (c) otherwise to take part.

#### Investigation Powers

8.1 A group may during the course of its proceedings exercise any of the investigation powers contained in sections 106 to 114 and 171 of the Act.

8.2 Where a group is minded to impose a penalty under section 107(1) or (3) of the Act, it shall have regard to the Commission's Statement of Policy on Penalties made under section 113(1) of the Act.

8.3 Where at any stage of a reference, any individual or body has been asked to provide information within a reasonable period of time and fails to do so, without a reasonable explanation, the group shall not be obliged to have regard to any information received from that person or body after the date specified.

## PART IV: FINDINGS ON THE TERMS OF REFERENCE

### Provisional Findings

9.1 A group shall make provisional findings on any reference it has been appointed to determine.

9.2 Provisional findings shall include the group's provisional decisions on the questions to be decided in relation to mergers and market investigation references ("the competition questions").

9.3 When a group makes provisional findings on any reference it shall notify the main parties to the reference as soon as practicable after it has made them.

9.4 The notice shall describe the group's provisional findings and give an explanation of its reasons for coming to them.

9.5 Every notice: -

(a) shall invite the main party affected, within such period being not less than 21 days as may be specified in the notice, to provide the group with reasons in writing as to why such provisional findings should not become final (or, as the case may be, should be varied);

(b) shall, provided the group has formed a view, inform the main party affected of the procedure the group is minded to follow on receipt of such reasons; and

(c) shall not contain any information which the group considers should be excluded from the notice having regard to the three considerations set out in section 239 of the Act (competition information: considerations relevant to disclosure).

9.6 The group shall not be obliged to hold an oral hearing to consider any written response made by any main party.

9.7 If any main party fails to provide reasons in writing by the date specified in the notice then the group shall not be obliged to take them into account.

9.8 A copy of any notice given under this rule shall be published on the Commission's website.

9.9 A group shall have regard to the desirability of excluding from any notice made under this rule any information which, in their opinion, might significantly harm the interests of an individual or body or the disclosure of which might be contrary to the public interest.

### Remedies

10.1 Before it reaches its final decisions on the competition questions, the group may, either of its own accord or at the request of the main or third parties, give consideration to what actions might be taken for the purposes of remedying, mitigating or preventing the consequences of its provisional decisions on the competition questions. The group shall consult the parties it considers appropriate about these actions.

10.2 The provisional findings of a group may include a description of those actions.

### Final Findings

11.1 Once the group has had regard to any reasons in writing or oral evidence submitted to or given to it following the notice of provisional findings, then it shall take its final decisions on the relevant competition questions and proceed to make and publish the report as required by the Act.

## PART V: REPORTS

### Preparation

12.1 A group may, for the purpose of preparing its report, send any material which it has produced back to any person or body so that its accuracy can be verified.

12.2 A group shall decide what information needs to be excluded from disclosure in the report it proposes to publish and in taking that decision it shall have regard to the three considerations set out in section 239 of the Act (competition information: considerations relevant to disclosure).

12.3 Where the final decision of a group is taken by a majority then the report may contain a statement from the members in the minority of their dissent from that decision.

### Exclusion of matters

13.1 A group may exclude any matter from its report if it considers that publication of the matter would be inappropriate and in deciding what is inappropriate for this purpose the group shall have regard to the considerations mentioned in section 239 of the Act (specified information: considerations relevant to disclosure).

13.2 A group shall consult the individual or undertaking to which the matter relates before it decides whether or not to exclude the matter from the report.

### Publication

14.1 As soon as practicable after deciding which matter is to be excluded from the report, the group shall make arrangements for the report's

publication in accordance with the provisions of sections 37 and 131 of the Act.

14.2 A copy of the report shall be published on the Commission's website.

## PART VI: UNDERTAKINGS AND ORDERS

### Consideration of Actions

15.1 In any case where the report of a group contains a decision that, in the case of a merger reference there is an anti-competitive outcome, or in the case of a market investigation, that there is one or more than one adverse effect on competition, the group shall, in accordance with sections 40 and 133 of the Act, consider what further reasonable and practicable actions it should take.

15.2 As part of its considerations the group shall consult any individual or undertaking likely to be affected by those actions and shall have regard to any representations submitted to it by them.

15.3 After the consultation has taken place, the group shall proceed to consider whether to accept an undertaking under sections 79 and 154 of the Act or to make an order under sections 80 and 156 of the Act, as the case may be.

## PART VII: RULES FOR SPECIAL REFERENCE GROUPS

### Special reference groups

16.1 Special reference groups are those appointed to references made under the enactments mentioned in rules 17(1) (c) to (p).

16.2 These rules shall apply to the procedure of special reference groups with the exception of rules 9 (provisional findings) and 11 (final findings).

16.3 Instead of complying with rules 9 and 11, special reference groups shall determine their own procedure but when doing so they shall have regard to any guidance issued by the Chairman under paragraph 19(3) of Schedule 7 to the Competition Act 1998.

16.4 For the purposes of this rule, a group constituted to consider a reference under section 32 of the Water Industry Act 1991 shall be treated as if it were a merger reference group.

## PART VIII ENACTMENTS DEALING WITH REFERENCES TO THE COMMISSION

### Statutory References

17.1 These rules apply to any reference made to the Commission under the following enactments: -

- (a) The Fair Trading Act 1973,
- (b) The Competition Act 1980,
- (c) The Telecommunications Act 1984,
- (d) The Airports Act 1986,
- (e) The Gas Act 1986,
- (f) The Electricity Act 1989,
- (g) The Broadcasting Act 1990,
- (h) The Water Industry Act 1991,
- (i) The Electricity (Northern Ireland) Order 1992,

- (j) The Railways Act 1993,
- (k) The Airports (Northern Ireland) Order 1994,
- (l) The Gas (Northern Ireland) Order 1996,
- (m) The Postal Services Act 2000,
- (n) The Transport Act 2000,
- (o) The Financial Services and Markets Act 2000, and
- (p) The Enterprise Act 2002.

## PART IX: INTERPRETATION AND COMMENCEMENT

### Interpretation

18.1 In these rules the following words have the meanings ascribed to them:

- “the Act” means the Enterprise Act 2002
- “Chairman” means the Chairman of the Commission
- “Commission” means the Competition Commission
- “main parties” means, in the case of a merger reference, those parties who, in the opinion of the group, are the main parties to the reference
- “main parties” means, in the case of a market inquiry, those parties who, in the opinion of the group, are the main parties to the inquiry
- “third parties” means those parties which are not main parties but who, in the opinion of the group, have a sufficient interest in the subject matter of the reference or the inquiry to be treated as such
- “market reference group”, “merger reference group”, and “special reference group” have the meanings given to them in paragraph 19A(9) of Schedule 7 to the Competition Act 1998.

### Commencement

19.1 These rules shall come into force on .....

Derek Morris  
Chairman  
Competition Commission  
[Date]