



# Competition Commission Rules of Procedure 2006

These Rules of Procedure are required to be made and published by the Chairman of the Competition Commission under the Enterprise Act 2002.

# Competition Commission Rules of Procedure 2006

## Contents

Part I: General.....	4
Introductory .....	4
Application of the rules.....	4
Effect of the rules .....	4
Part II: Appointment and conduct of groups.....	5
Appointment and conduct.....	5
Appointment of a standing group .....	6
Part III: Procedures for market and merger reference groups .....	7
Timetable .....	7
Hearings.....	8
Appearances at hearings .....	8
Investigation powers.....	9
Part IV: Findings on the terms of reference .....	10
Provisional findings .....	10
Remedies .....	10
Final findings .....	11
Part V: Reports .....	12
Preparation.....	12
Exclusion of matter.....	12
Publication.....	12
Part VI: Undertaking and orders .....	13
Consideration of actions.....	13
Part VII: Rules for special reference groups .....	14
Special reference groups .....	14
Part VIII: Interpretation, commencement and title.....	15
Interpretation .....	15
Title .....	15
Explanatory note .....	16

## Part I: General

### Introductory

- 1.1 These rules of procedure of the Competition Commission (CC) are those referred to in, and required by, paragraph 19A of Schedule 7 to the Competition Act 1998.<sup>1</sup> This version of the rules supersedes the Competition Commission Rules of Procedure of June 2003.
- 1.2 Before making these rules the Chairman of the CC consulted the members of the CC and such other persons as he considered appropriate.<sup>2</sup>

### Application of the rules

- 2.1 The rules shall apply in relation to merger reference groups, market reference groups and special reference groups.<sup>3</sup>
- 2.2 Where a special reference group is appointed, its procedure is provided for in Part VII of these rules.

### Effect of the rules

- 3.1 The rules are supplementary to those statutory provisions which apply to the CC 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 CC, 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 CC; and
  - (f) any person authorized by the Chairman or the group to carry out any function of the CC.
- 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.

---

<sup>1</sup>As inserted by section 187(3) of the Enterprise Act 2002 and amended by the Communications Act 2003, Schedules 17 and 19, paragraph 153, and by the Water Services etc (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (SI 2005/3172), Schedule, paragraph 3. It is further amended by the Water Act 2003, Schedule 8, paragraph 54, with effect from 1 December 2005.

<sup>2</sup>This is required by paragraph 19A(4) of Schedule 7 to the Competition Act 1998. Consultations took place prior to the making of the Competition Commission Rules of Procedure of June 2003. No further consultations have taken place in respect of the minor and consequential changes introduced in these rules.

<sup>3</sup>The rules are subject to the transitional and transitory provisions and savings set out in Schedule 24 to the Enterprise Act 2002 so that they shall not apply to any references to which the 'old law' as defined in paragraphs 13(10) and 14(3) of the Schedule continues to apply. They do not apply to appeals against energy code modification decisions brought under section 173 of the Energy Act 2004. Schedule 22 of that Act (procedure on appeals) applies instead. See also CC10 *The Energy Code Modification Rules* and CC11 *Guide to Appeals in Energy Code Modification Cases*.

## Part II: Appointment and conduct of groups

### Appointment and conduct

- 4.1 When a reference has been made to the CC, the Chairman shall promptly 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 CC.
- 4.3 The chairman of a group shall have a casting vote on any question to be decided by the group.
- 4.4 In making his appointments to a group, the Chairman shall have regard to the CC's Code of Practice for Reporting Panel Members and Specialist Panel Members and the CC's Guidance on Conflicts of Interest (which are on the CC's website) and take into account any other factors which, in his opinion, might prejudice the independence and impartiality of the CC.
- 4.5 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 its functions.
- 4.6 It shall be the duty of a group to have regard to any advice given to it by the Chairman under rule 4.5 but the Chairman may not vote or have any statement of his dissent from a conclusion of the group included in the group's report.
- 4.7 A group, or a member of a group, may consult any member of the CC 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.
- 4.8 All members of the CC shall have regard to any guidance issued by the Chairman under paragraph 19A(7) of Schedule 7 to the Competition Act 1998, the advice and information requirements in sections 105, 106, 170 and 171 of the Act and to the CC's Statement of Policy on Penalties made under section 116(1) of the Act.
- 4.9 If, during the proceedings of a group:
  - (a) a member of the group ceases to be a member of the CC; or
  - (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.

## Appointment of a standing group

- 5.1 The Chairman may appoint a single standing group from the members of the CC for the purposes of discharging any functions of the CC that are discharged by merger reference groups, market reference groups or special reference groups.
- 5.2 The standing group shall consist of at least five members of the CC and the chairman of the group shall be the Chairman or any Deputy Chairman of the CC.
- 5.3 Members of the standing group shall cease to be members of it when they resign from it or when they cease to be members of the CC.
- 5.4 Any decision of the standing group shall be taken by a simple majority and the quorum for the group shall be two.
- 5.5 The standing group may determine its own procedure and the Chairman is to have a casting vote on any question to be decided by the standing group.
- 5.6 The general functions of the CC which the standing group may discharge shall include, but not be limited to:
  - (a) the acceptance of undertakings;
  - (b) the variation or release of an undertaking;
  - (c) the making of an order or a final order; and
  - (d) the variation or revocation of an order or a final order.

## Part III: Procedures for market and merger reference groups

### Timetable

- 6.1 It shall be the duty of the group to comply with the relevant statutory timetable provided by the Act for the reference in question.
- 6.2 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.
- 6.3 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 provisional findings;
  - (h) notifying and 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.
- 6.4 The group shall, when drawing up the administrative timetable, have regard to any views which the main parties to the reference have submitted to it.
- 6.5 Once the administrative timetable has been produced, the group shall make such arrangements as it thinks appropriate in order for it to be notified to all parties to the reference and to the public. The CC may publish the timetable on its website.
- 6.6 The group may proceed on the basis that the main parties to the reference will comply with the administrative timetable.
- 6.7 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 6.5 shall apply.

## Hearings

- 7.1 It shall be the duty of the group to decide which, if any, of its hearings are to be held in public.
- 7.2 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.
- 7.3 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 rule 7.2(b), (c), (d) and (e), 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.
- 7.4 The group may, if it considers that it would assist a proper consideration of the reference, hold joint hearings with one or more of the parties.
- 7.5 If the group decides to hold joint hearings then it shall be the duty of the group to consider which, if any, of those joint hearings are to be held in public, and in taking that decision the group shall have regard to the factors described in rule 7.2.

## Appearances at hearings

- 8.1 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.
- 8.2 For the purpose of any investigation in connection with a reference, a group, or any person nominated by it, may take evidence on oath and for that purpose may administer oaths.

- 8.3 Any person who objects to being sworn shall be permitted to make a solemn affirmation instead of taking an oath.

### Investigation powers

- 9.1 A group may during the course of its proceedings exercise any of the investigation powers contained in sections 109 to 117 and section 176 of the Act.
- 9.2 Where a group is minded to impose a penalty under section 110(1) or (3) of the Act, it shall have regard to the CC's Statement of Policy on Penalties made under section 116(1) of the Act.
- 9.3 Where, at any stage of a reference, any individual or body has been asked to provide information within a reasonable period of time and has failed 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

- 10.1 A group shall make provisional findings on any reference it has been appointed to determine.
- 10.2 Provisional findings shall include the group's provisional decisions on the statutory questions it has to decide in relation to mergers and market investigation references.
- 10.3 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.
- 10.4 The notice shall describe the group's provisional findings and give an explanation of its reasons for coming to them.
- 10.5 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 its 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 244 of the Act (specified information: considerations relevant to disclosure).
- 10.6 The group shall not be obliged to hold an oral hearing to consider any written response made by any main party.
- 10.7 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.
- 10.8 A copy of any notice given under this rule shall be published on the CC's website.

### Remedies

- 11.1 A group shall have regard to the need to give as much notice as is practicable of the actions which it considers might be taken by the CC for the purpose of remedying the effects of completed or anticipated mergers or for the purpose of remedying the adverse effects of a market investigation.
- 11.2 Any notice of those actions may be contained in the provisional findings but, if it is not, the group shall notify the main parties as soon as practicable after it has notified them of its provisional findings.
- 11.3 A copy of any notice given under this rule shall be published on the CC's website.
- 11.4 Any notice published on the CC's website 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 244 of the Act (specified information: considerations relevant to disclosure).

- 11.5 The group shall consult the parties upon whom it has given notice under this rule and have regard to any representations received from them.

### Final findings

- 12.1 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 statutory questions and actions, and proceed to make and publish the report as required by the Act.

## Part V: Reports

### Preparation

- 13.1 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.
- 13.2 A group may, for the purposes of rule 13.1, ask any person or body to identify any matter which that person or body might wish to have excluded from its report.
- 13.3 Where the final decision of a group is taken by a majority then the report may contain a statement or statements from the member or members in the minority of his or their dissent from that decision.

### Exclusion of matter

- 14.1 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 244 of the Act (specified information: considerations relevant to disclosure).

### Publication

- 15.1 As soon as practicable after deciding which matter is to be excluded from the report, the group shall make arrangements for its publication in accordance with the provisions of sections 39 and 137 of the Act.
- 15.2 A copy of the report shall be published on the CC's website.

## Part VI: Undertaking and orders

### Consideration of actions

- 16.1 In any case where the report of a group contains a decision that, in the case of a merger reference, there is or may be a substantial lessening of competition, or, in the case of a market investigation, that there is one or more than one adverse effect on competition, and that remedial action should be taken, the group shall, in accordance with sections 41 and 138 of the Act, consider what further reasonable and practicable actions it should take.
- 16.2 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.
- 16.3 After the consultation has taken place, the group shall proceed to consider whether to accept an undertaking under sections 82 and 159 of the Act or to make an order under sections 84 and 161 of the Act, as the case may be.

## Part VII: Rules for special reference groups

### Special reference groups

- 17.1 The rules in Parts I to III and in Parts V and VI shall apply to the procedure of special reference groups.
- 17.2 Instead of complying with Part IV special reference groups shall determine their own procedures for findings on the reference but when doing so they shall have regard to any guidance issued by the Chairman under paragraph 19A(7) of Schedule 7 to the Competition Act 1998.
- 17.3 In their application to Ofcom price control references, these rules shall have effect subject to the rules made under section 15 of the Act (rules with respect to proceedings before the Competition Appeal Tribunal) and any directions given to the CC by the Competition Appeal Tribunal in exercise of powers conferred by those rules.<sup>4</sup>

---

<sup>4</sup>See section 193 of the Communications Act 2003.

## Part VIII: Interpretation and title

### 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 CC;
- ‘CC’ means the Competition Commission;
- ‘main parties’ means, in the case of a merger reference, those parties which, in the opinion of the group, are the main parties to the reference;
- ‘main parties’ means, in the case of a market investigation reference, those parties which, in the opinion of the group, are the main parties to the inquiry;
- ‘third parties’ means those parties which are not main parties but which, 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;<sup>5</sup> and
- ‘Ofcom price control reference’ means a reference made under section 193 of the Communications Act 2003.

18.2 In relation to an investigation under section 162 or 306 of the Financial Services and Markets Act 2000, the word ‘reference’ in these rules shall (except in rule 4.1) be construed as a reference to the investigation and, in rule 4.1, the words ‘When a reference has been made to the CC’ shall be construed as a reference to the time when the CC became under a duty to carry out the investigation.

### Title

19.1 These rules may be referred to as the Competition Commission Rules of Procedure 2006.



Peter Freeman  
*Chairman*  
Competition Commission  
17 March 2006

---

<sup>5</sup>See explanatory note.

## Explanatory note

[This note is not part of the rules]

*These rules of procedure are required to be made by the Chairman of the Competition Commission under paragraph 19A(1) of Schedule 7 to the Competition Act 1998. Before making them the Chairman consulted the members of the CC and other people and bodies who had an interest in the work of the CC. The rules will be kept under review and may be changed from time to time in the light of experience. The latest version is always that appearing on the CC website.*

*The rules are supplementary to any statutory provisions which apply to the CC under any enactment, or instrument made thereunder, and if there is a conflict between the rules and any statutory provision then the statutory provisions will prevail. Also the rules do not repeat procedures which are provided for in the Act. So, for example, where the main procedural requirements for penalties are set out in section 112 of the Act, they are not repeated in the rules.*

*The rules are designed to assist the transparency of the CC's procedures and its decision-making processes. They are also there to help the CC to take its decisions on competition questions as soon as reasonably practicable as well as to help it discharge its duty under the Enterprise Act to consult relevant parties. So, for example, the rules provide for an administrative timetable, the notification of provisional findings and remedies to the main parties and consultation with the main parties on both.*

*As well as complying with these rules, any group considering a reference has to have regard to any guidance issued by the Chairman under paragraph 19 of Schedule 7 to the 1998 Act and, in effect, the rules and the guidance should be read in conjunction with each other.*

*These rules replace the Competition Commission Rules of Procedure of June 2003. Apart from some minor drafting changes and corrections, the changes are consequential to the Communications Act 2003, the Water Act 2003 and the Water Services etc (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005.*

*The rules apply to merger reference groups, market reference groups and special reference groups as defined paragraph 19A of Schedule 7 to the Competition Act 1998. The definitions, as the date of these rules, are set out below:*

*'market reference group' means any group constituted in connection with a reference under section 131 or 132 of the Enterprise Act 2002 (including that section as it has effect by virtue of another enactment);*

*'merger reference group' means any group constituted in connection with a reference under section 32 of the Water Industry Act 1991 (c 56) or section 22, 33, 45 or 62 of the Enterprise Act 2002;<sup>6</sup> and*

*'special reference group' means any group constituted in connection with a reference or (in the case of the Financial Services and Markets Act 2000 (c 8)) an investigation under—*

*(a) section 11 of the Competition Act 1980 (c 21);*

---

<sup>6</sup>The reference in this definition to section 62 of the Enterprise Act 2002 has effect as if it included a reference to article 5 of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (SI 2003/1592). See paragraph 15(2) of Schedule 4 to that Order.

- (b) section 43 of the Airports Act 1986 (c 31);*
- (c) section 24 or 41E of the Gas Act 1986 (c 44);*
- (d) section 12 or 56C of the Electricity Act 1989 (c 29);*
- (e) section 12, 14 or 17K of the Water Industry Act 1991 (c 56);*
- (f) article 15 of the Electricity (Northern Ireland) Order 1992 (SI 1992/231 (NI 1));*
- (g) section 13 of, or Schedule 4A to, the Railways Act 1993 (c 43);*
- (h) article 34 of the Airports (Northern Ireland) Order 1994 (SI 1994/426 (NI 1));*
- (i) article 15 of the Gas (Northern Ireland) Order 1996 (SI 1996/275 (NI 2));*
- (j) section 15 of the Postal Services Act 2000 (c 26);*
- (k) section 162 or 306 of the Financial Services and Markets Act 2000 (c 8); ...*
- (l) section 12 of the Transport Act 2000 (c 38);*
- (m) section 193 of the Communications Act 2003; or*
- (n) article 3 of the Water Services etc (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005.<sup>7</sup>*

---

<sup>7</sup>SI 2005/3172.

