

REVISED RULES OF PROCEDURE – MODERNISATION OF EC COMPETITION LAW

Summary

The Authority has approved a number of changes to the Schedule of its Rules of Procedure and the Terms of Reference for Competition Act Enforcement Committees. These changes have been made to take account of the Modernisation of EC Competition Law and related changes to the Competition Act 1998¹. The changes came into effect on 20 May 2004.

Committees

Terms of Reference

Under paragraph 17 of the Rules of Procedure, the Authority has resolved to establish committees to be known as Enforcement Committees, with delegated powers to exercise certain functions. There are two types of Enforcement Committee:

Enforcement Committee - Licence Breach whose terms of reference are to consider the matter referred to it and reach a decision as to whether to take action under Sections 25 and 27A of the Electricity Act 1989 and under Sections 28 and 30A of the Gas Act 1986 and if so what action to take.

Enforcement Committee - Competition Act 1998 whose terms of reference are to consider specific enforcement of the Competition Act 1998 (CA98), as specified in the Annex attached.

Membership

Where a matter arises which could be within the jurisdiction of a committee, the Chairman will normally establish a committee to decide the matter. It will be made up only of Authority members with a majority of non-executive members and a non-executive Chairman.

The company or person in respect of whose actions the committee will be considering what action to take will be notified in writing of the membership of the committee by the Chairman of the Authority.

¹ Please see 'The Competition Act and Other Enactments Regulations 2004' for details of the amendments made to the Competition Act 1998.

Competition Act Enforcement Committees – Terms of Reference²

Rule 14 / Statement of Objections

- to approve, with or without amendment, or reject, any Rule 14 notice (“R14”) / Statement of Objections (“SO”) relating to a proposed infringement decision of the prohibitions under Article 81 or 82 of the EC Treaty and/or the Chapter I or II prohibitions of the CA98 for issue to the applicant/relevant parties (as the case may be.) A R14 is a written notice pursuant to Rule 14 of the Competition Act 1998 (Director’s rules) Order 2000 SI 2000/293³. A SO is a written notice pursuant to Rule 4 of the Competition Act 1998 (Office of Fair Trading’s rules) Order 2004⁴.
- to review/consider any written representations on the R14 / SO and to decide upon next steps to take.
- to hear any oral representations on the R14 / SO and to decide upon next steps to take.

Final Infringement Decision

- to approve any issue of the final infringement decision of the prohibitions under Article 81 or 82 of the EC Treaty and/or the Chapter I or II prohibitions of the CA98 to the applicant/relevant parties (as the case may be) and for publication generally.
- to approve the issue of any appropriate directions to bring the infringement to an end.

Interim Measures

- to do all of the above, but in the context of interim measures applications pursuant to s35 of the CA98.

Court Enforcement

- to approve any application to the court for an enforcement Order to comply with directions given under s32 and/or s33 CA98 in respect of the infringements of the prohibitions under Article 81 or 82 of the EC Treaty and/or the Chapter I or II prohibitions of the CA98 (or in the context of interim measures, where applicable), and to approve the terms of application for the Order, including those relating to costs/expenses.

Financial Penalty

- to impose a financial penalty for any infringement of the prohibitions under Article 81 and 82 of the EC Treaty and/or the Chapter I or II prohibitions of the CA98 and decide when it is required to be paid.

² This version of the Terms of Reference applies from 20 May 2004.

³ Competition Act equivalent of a “minded to” decision under sectoral statutes.

⁴ The Competition Act 1998 (Office of Fair Trading’s rules) Order 2004 is expected to come into effect in August 2004 and repeal the Competition Act 1998 (Director’s rules) Order 2000.