

Air Traffic Services Licence Modification Appeals: Competition and Markets Authority Rules

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CMA168con

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1. Introduction, citation and commencement

- 1.1 These Rules are made in exercise of the powers conferred by paragraph 23 of Schedule A1 to the Transport Act 2000¹ for the purpose of regulating the conduct and disposal of appeals brought under section 19A of the same Act.
- 1.2 Before making these Rules the CMA consulted such persons as it considered appropriate, in accordance with paragraph 23(5) of Schedule A1 to the Transport Act 2000.
- 1.3 These Rules are to be known as the *Air Traffic Services Licence Modification Appeals: Competition and Markets Authority Rules*.
- 1.4 These Rules will have effect from [X]

2. Interpretation

- 2.1 In these Rules:
- (a) **'the Act'** means the Transport Act 2000;
 - (b) **'the CAA'** means the Civil Aviation Authority;
 - (c) **'the CMA'** means the Competition and Markets Authority;
 - (d) **'CMA Group'** means a group constituted by the Chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for the purposes of carrying out functions of the CMA with respect to an appeal under section 19A of the Act.
 - (e) **'licence'** means a licence granted under section 5 and 6 of the Act;
 - (f) **'party'** to an appeal means the appellant, any intervener and the CAA.
 - (g) **'the Schedule'** means Schedule A1 to the Act; and
 - (h) **'sensitive information'** means information which is:

¹ 2000 c.38 as amended in particular by the Air Traffic Management and Unmanned Aircraft Act 2021. The majority of the process regulating appeals under section 19A of the Act is contained in the Act (in particular in the Schedule) most of which has not been repeated in these rules, which supplement the Act in a limited number of areas. However, where possible, footnotes have been included to enable the rules to be easily read with the Act.

- (i) commercial information, the disclosure of which would, or might, significantly harm the legitimate business interests of an undertaking to which it relates; or
- (ii) information relating to the private affairs of an individual, the disclosure of which would, or might, significantly harm the individual's interests.

2.2 In these Rules, unless the contrary intention appears, words in the singular include the plural and words in the plural include the singular.

2.3 Words defined by paragraph 27 of the Schedule have the same meaning in these Rules as they have in the Schedule.

3. Application of rules

3.1 These Rules are supplementary to the provisions of the Act and are to be interpreted in accordance with the provisions of the Act. In the event of any conflict between the Rules and the Act, the latter will prevail.

3.2 The CMA has also published Guidance to assist those involved in appeals governed by these Rules – see *Air Traffic Services Licence Modification Appeals: Competition and Markets Authority Guide (CMA[x])*.

4. Overriding objective

4.1 The overriding objective of these Rules is to enable the CMA to dispose of appeals fairly, efficiently and at proportionate cost within the time limits prescribed by the Act.² The CMA will apply these Rules so as to give effect to the overriding objective.

4.2 All parties to an application or an appeal must assist the CMA to further the overriding objective.

² The time limit for the determination of an application for permission to appeal is set out in paragraph 2(2) of the Schedule. Time limits for the determination of an appeal under section 19A of the Act are set out in section 19D of the Act. In determining the appeal, the CMA must have regard to the matters in respect of which duties are imposed on the CAA by section 2 of the Act (section 19F(2) of the Act).

5. Obtaining permission to appeal³

5.1 Any person who wishes to make an application for permission to appeal must send a notice, marked Notice of Appeal, Air Traffic Services Licence Modification Appeal ('the notice of appeal') to the CMA within the period of six weeks beginning with the day on which the CAA published the decision notice.⁴

5.2 The notice of appeal must:

(a) include the applicant's main submission covering:

(i) details of the decision of the CAA the applicant wishes to appeal and the date on which the CAA published the decision notice,⁵ referencing the specific parts of the decision that the applicant wishes to appeal;

(ii) the applicant's standing⁶ to bring an appeal, namely:

- the capacity in which the applicant is making the application;
- if the applicant is not the holder of the licence subject to the CAA's decision, a description of why it is an owner or operator of an aircraft or an owner or manager of a prescribed aerodrome,⁷ in either case whose interests are materially affected by the decision.⁸

³ See paragraphs 1 to 3 of the Schedule. The CMA may refuse permission to appeal on one of the following grounds: (a) that the appeal is brought for reasons that are trivial or vexatious, or (b) that the appeal does not have a reasonable prospect of success (section 19A(6) of the Act). The CMA may also refuse permission to appeal if the appeal is brought against a decision that relates entirely to a matter remitted to the CAA following an earlier appeal under section 19A and on grounds that were considered, or could have been raised by the current applicant or a relevant connected person, as part of the earlier appeal (section 19A(7) of the Act).

⁴ Paragraph 1(1) of the Schedule provides that an application for permission to appeal under section 19A against a decision to modify a licence condition may not be made after the end of the period of six weeks beginning with the day on which the CAA published the decision notice. 'The decision notice' is defined in paragraph 1(2) of the Schedule as the notice published under section 11A of the decision that is the subject of the application for permission to appeal under section 19A.

⁵ See footnote 4 above.

⁶ See Section 19A(2) of the Act.

⁷ Under section 19A(3) of the Act, "prescribed aerodrome" means an aerodrome of a description prescribed by regulations made by the Secretary of State.

⁸ See section 19A(2)(b) and (c) of the Act.

- (iii) the grounds of appeal⁹ on which the applicant wishes to rely (indicating the specific part(s) of the decision to which each ground relates);
- (iv) a statement of facts and reasons supporting each ground of appeal on which the applicant is relying, including an explanation of the relevance of any evidence or documents appended to the main submission to each ground of appeal;
- (v) where the applicant believes that any matter, information or evidence contained in the material provided to the CMA in accordance with this Rule was not considered by the CAA in making the decision that is the subject of the application,¹⁰ particulars of the reasons why:
 - the applicant or a relevant connected person¹¹ could not reasonably have raised the matter with, or provided the information or evidence to, the CAA during the period in which the CAA was making the decision¹² that is the subject of the application; and
 - the matter, information or evidence is likely to have an important effect on the outcome of the application or appeal, either by itself or taken together with other matters, information or evidence.
- (vi) a statement of the relief sought and any directions necessary to give effect to that relief;¹³
- (vii) the applicant's name and address and, where applicable, the name and address of the applicant's legal representatives;
- (viii) an email address, together with a physical address in the UK, for the purpose of receiving documents;

⁹ Section 19B of the Act provides that the CMA may allow an appeal under section 19A only to the extent that it is satisfied that the decision appealed against was wrong on one or more of the following grounds: (a) that the decision was based on an error of fact; (b) that the decision was wrong in law; (c) that an error was made in the exercise of a discretion.

¹⁰ Paragraph 16(3) of the Schedule limits the circumstances in which account can be taken of new matters, information or evidence raised or provided by persons other than the CAA.

¹¹ See paragraph 16(5) of the Schedule.

¹² See paragraph 16(6) of the Schedule.

¹³ See section 19C(2) to (4) of the Act.

- (b) append a bundle of supporting documentation including:
- (i) a copy of the CAA's decision subject to appeal;
 - (ii) any evidence on which the applicant wishes to rely in the form of witness statements or expert reports; and
 - (iii) any documents (or extracts of documents) to which the applicant believes the CMA should have regard in determining the appeal.

- 5.3 The applicant must verify the information contained in the main submission required under Rule 5.2(a) by a statement of truth. The witness or expert (as applicable) must verify the information contained in any witness statement or expert report submitted under Rule 5.2(b) by a statement of truth. Paragraph 27 of the Schedule provides that a 'statement of truth' in relation to the production of a statement or provision of information by a person, means a statement that the person believes the facts stated in the statement or information to be true.
- 5.4 The applicant must send the CAA a copy of the notice of appeal at the same time as it is sent to the CMA. The applicant must give written notice of having done so to the CMA.¹⁴
- 5.5 The applicant must also send both the CMA and the CAA a non-sensitive version of the main submission required under Rule 5.2(a) at the same time as sending the sensitive version to the CMA and the CAA respectively. The applicant must send both the CMA and the CAA a non-sensitive version of the bundle required under Rule 5.2(b) by the end of the second working day following the day of submission of the sensitive version to the CMA and the CAA respectively (subject to the CMA agreeing to an extended deadline where necessary based on the circumstances of the case).
- 5.6 If the CMA considers that the notice of appeal is incomplete, or is insufficiently clear, it may take this into account in considering whether to grant permission, or whether to grant permission subject to conditions.

¹⁴ Following receipt of the application under paragraph 1(3) of the Schedule, under paragraph 1(4) of the Schedule the CAA must publish the application and send a copy of the application to the persons listed in paragraph 1(5) of the Schedule (other than the applicant).

6. CMA's permission decision following submission of a notice of appeal

- 6.1 The CMA will normally not require a hearing when considering whether to grant permission to appeal.
- 6.2 Where the CAA makes representations under paragraph 3 of the Schedule in relation to an application for permission to appeal:
- (a) the CAA must make the representations before the end of the period of eight weeks beginning with the day on which the CAA publishes the decision notice referred to in paragraph 1(2) of the Schedule; and
 - (b) the CAA must indicate any matter, information or evidence raised or provided in the representations which was not considered by the CAA in making the decision that is the subject of the application and give particulars of the reasons why:
 - (i) the CAA could not reasonably have been expected to consider the matter, information or evidence when making that decision; and
 - (ii) the matter, information or evidence is likely to have an important effect on the outcome of the application or appeal, either by itself or taken together with other matters, information or evidence.¹⁵
- 6.3 The CMA may hold a hearing to determine whether permission to appeal should be granted, either of its own motion or on application. Where the CMA decides to hold a permission hearing the CMA will give notice to the applicant and the CAA, and the CMA may give notice to such other persons as it considers appropriate. The CMA may also request additional information from the applicant or the CAA to inform its decision.
- 6.4 If the CMA grants permission to appeal, it will notify the applicant and the CAA (and any other such persons it considers appropriate) of its decision, giving reasons, and of any conditions subject to which the decision to grant permission is made.
- 6.5 The CMA must decide whether to grant permission to appeal before the end of the period of ten weeks beginning with the day on which the CAA published

¹⁵ See paragraph 16(2) of the Schedule.

the decision notice referred to in paragraph 1(2) of the Schedule¹⁶ and must not make this decision before the earlier of:

- (a) the making of any representations by the CAA in relation to the application under paragraph 3 of the Schedule;¹⁷ or
- (b) the CAA giving written notice to the CMA that it will not be making representations in relation to the application under paragraph 3 of the Schedule; and
- (c) the expiry of the period of eight weeks mentioned in paragraph 3(2) of the Schedule.

6.6 If the CMA refuses permission to appeal, it will notify the applicant and the CAA of its decision and its reasons.

6.7 The CMA will publish its decision on the application for permission to appeal and the reasons for the decision as soon as practicable on its website.¹⁸

7. Withdrawal of application¹⁹

7.1 An appellant or intervener must notify the CMA in writing if it wishes to withdraw an appeal or intervention in its entirety or in part. An applicant for permission to appeal, intervention or suspension must also notify the CMA in writing if it wishes to withdraw an appeal in its entirety or in part.

7.2 The CAA may apply to the CMA for a summary determination allowing the appeal.

7.3 Where a notification is made to the CMA under Rule 7.1 or 7.2, it must at the same time be sent to the CAA. The CAA must then publish the notice and send a copy of the notice to those listed in paragraph 22(11) of the Schedule.²⁰

¹⁶ See paragraph 2(2) of the Schedule. See footnote 4 above which sets out what 'the decision notice' means. Under paragraph 2(7) of the Schedule the CMA must publish the decision on an application for permission to appeal and the reasons for the decision and send a copy of the decision and reasons to the persons listed in paragraph 2(8) of the Schedule.

¹⁷ The CAA must make any representations in relation to an application for permission to appeal within the time period specified in paragraph 3(2) of the Schedule.

¹⁸ Under paragraph 2(7) of the Schedule, the CMA is also required to send the decision to those listed in paragraph 2(8) of the Schedule.

¹⁹ See paragraph 22 of the Schedule. This requires the consent of the CMA to withdraw appeals, interventions and applications for permission to appeal and applications for permission to intervene. Applications for suspension under paragraph 6 of the Schedule may be withdrawn at any time.

²⁰ See paragraph 22(10) of the Schedule.

8. Interveners²¹

8.1 Any person who is entitled to intervene in an appeal may make an application for permission to intervene in the appeal to the CMA before the end of the period of one week beginning with the day on which the CMA publishes its decision to grant permission to appeal against the decision.²²

8.2 An application for permission to intervene may be made after the end of the period referred to in paragraph 4(2) of the Schedule only with the leave of an authorised member of the CMA.²³

8.3 The application for permission to intervene must be contained in a notice of intervention sent to the CMA, marked Application for Permission to Intervene in Air Traffic Services Licence Modification Appeal. The notice of intervention must:

(a) include the applicant's main submission covering:

- (i) details of the appeal in which the applicant seeks to intervene;
- (ii) the applicant's standing to intervene, namely why it would have been entitled to appeal against the decision itself;²⁴
- (iii) a statement of whether the applicant supports or opposes the appeal; and
 - if the application is in support of the appeal, the applicant must identify the grounds of appeal in relation to which the application is made and particulars of the action the applicant considers the CMA must take under section 19C(2) to (4) of the Act if the CMA allows the appeal, together with the facts and reasons relied on; or
 - if the application opposes the appeal, the applicant must identify the facts and reasons why it believes the appeal should not

²¹ See paragraphs 4 and 5 of the Schedule. Where an application is made under paragraph 1 of the Schedule for permission to appeal against a decision, an application for permission to intervene in the appeal may be made to the CMA by another person who would be entitled to appeal against the decision (paragraph 4(1) of the Schedule).

²² Paragraph 4(2)(a) of the Schedule.

²³ See paragraph 4(2)(b) of the Schedule. 'Authorised member' of the CMA is defined in paragraph 27(1) of the Schedule.

²⁴ See paragraph 4(1) of the Schedule. This should mirror the standing content for applicants submitting a notice of appeal under section 19A(b) and (c) of the Act.

succeed, or why it believes the CMA should not take the action under section 19C(2) to (4) of the Act requested by the appellant;

- (iv) particulars of the reasons why the applicant considers that allowing the applicant to intervene is necessary or desirable for the proper resolution of the appeal;²⁵
- (v) particulars of any other matter, information or evidence to which the applicant contends the CMA should have regard in determining the application or appeal;
- (vi) the applicant's name and address and, where applicable, the name and address of the applicant's legal representatives;
- (vii) an email address, together with a physical address in the UK, for the purpose of receiving documents;

(b) append a bundle of supporting documentation including:

- (i) any evidence on which the applicant wishes to rely in the form of witness statements of expert reports;
- (ii) any documents (or extracts of documents) to which the applicant believes the CMA should have regard in determining the appeal.

8.4 The applicant must verify the information contained in the main submission required under Rule 8.3(a) by a statement of truth. The witness or expert (as applicable) must verify the information contained in any witness statement or expert report submitted under Rule 8.3(b) by a statement of truth.

8.5 The applicant must send a copy of the notice of intervention to the CMA under Rule 8.3 to the CAA. The applicant must give written notice of having done so to the CMA.²⁶

8.6 The applicant must also send both the CMA and the CAA a non-sensitive version of the main submission required under Rule 8.3(a) at the same time as sending the sensitive version to the CMA and the CAA respectively. The applicant must send both the CMA and the CAA a non-sensitive version of the

²⁵ Under paragraph 5(2) of the Schedule, an authorised member of the CMA may grant permission to intervene in an appeal only if satisfied that allowing the applicant to intervene is necessary or desirable for the proper resolution of the appeal.

²⁶ Following receipt of the application under paragraph 4(3) of the Schedule, the CAA must publish the application and send a copy of the application to the persons listed in paragraph 4(5) of the Schedule (other than the applicant).

bundle required under Rule 8.3(b) by the end of the second working day following the day of submission of the sensitive version to the CMA and the CAA respectively (subject to the CMA agreeing to an extended deadline where necessary based on the circumstances of the case).

- 8.7 The CMA may consider an application for permission to intervene, and any representations or observations made under Rule 8.8, with or without a hearing, and may hold any such hearing either of its own motion or on application. Where the CMA decides to hold a permission hearing, the CMA will give notice to the parties to the appeal, the applicant and such other persons as it considers appropriate.
- 8.8 The CMA of its own motion or on application may direct any party to provide it with representations or observations on the application for permission to intervene.
- 8.9 The CMA must make any permission to intervene for the purposes of supporting an appeal subject to conditions preventing the intervener from putting forward new grounds of appeal. The CMA may make permission to intervene subject to other conditions, including conditions which limit the matters that may be raised by the intervener.²⁷
- 8.10 The CMA will take its decision on whether to grant permission to intervene as soon as practicable following receipt of the notice of intervention.
- 8.11 The CMA will publish a non-sensitive version of its decision on the application for permission to intervene and the reasons for the decision as soon as practicable on its website.²⁸

9. Application for suspension of decision²⁹

- 9.1 Where an application is made for permission to appeal, the person who applied for permission to appeal or any person who would be entitled to appeal, may make an application for a direction suspending the effect of the decision of the CAA being appealed. The application may be made at any

²⁷ See paragraph 5(3) of the Schedule.

²⁸ Paragraph 5(4) and 26 of the Schedule. The CMA must also send a copy of the decision and reasons to the persons listed in paragraph 5(5) of the Schedule.

²⁹ See paragraph 6 of the Schedule. In the case of an early application for direction, the CMA's decision on the application must be taken within the 10 week time period during which the licence condition or modification does not take effect as set out in paragraph 7(3) of the Schedule.

time before the determination of the appeal³⁰ and must be made to the CMA in accordance with the Schedule.³¹

9.2 To make an application for a direction suspending the effect of the CAA's decision to modify a licence condition, a person must send to the CMA a notice, marked Application for a Suspension Direction in Air Traffic Licence Modification Appeal, which must:

(a) include in a statement:

- (i) particulars of the CAA's decision that the applicant wishes the CMA to suspend, including whether the appellant is requesting suspension of the whole or part of the CAA's decision;
- (ii) particulars of the action the applicant considers the CMA must take under paragraph 8(3) of the Schedule if the CMA gives a direction suspending the effect of the decision.
- (iii) if the applicant is not also applying or has not applied for permission to appeal or permission to intervene in the appeal:
 - the applicant's name and address and, where applicable, the name and address of the applicant's legal representatives, and
 - an email address, together with a physical address in the UK, for the purpose of receiving documents.
- (iv) where the applicant is the holder of a licence, particulars of the relevant licence
- (v) where the applicant is the owner or operator of an aircraft or the owner or manager of a prescribed aerodrome, particulars of why it considers that its interests are materially affected by the decision.³²
- (vi) an explanation of whether the applicant would incur significant costs if the new or modified licence condition were to have effect from the date specified in the decision;

³⁰ See paragraph 6(2) of the Schedule.

³¹ See paragraphs 6 to 10 of the Schedule.

³² See sections 19A(2)(b) and (c) of the Act.

(vii) an explanation of whether the balance of convenience does not otherwise require the licence condition to have effect from that date;³³ and

(viii) any further considerations that the applicant believes the CMA should take into account in deciding the application;

(b) Append as a bundle:

(i) a statement of the costs that the applicant will incur if the application is not granted, verified by a statement of truth;

(ii) any evidence on which the applicant wishes to rely in the form of witness statements or expert reports; and

(iii) any documents (or extracts of documents) to which the applicant believes the CMA should have regard in determining the application

9.3 The applicant must verify the information contained in the statement submitted under Rule 9.2(a) by a statement of truth. The witness or expert (as applicable) must verify the information contained in any witness statement or expert report submitted under Rule 9.2(b) by a statement of truth.

9.4 Any person who wishes to make an early application for a direction under paragraph 6 of the Schedule must make an application to the CMA before the end of the period of six weeks beginning with the day on which the CAA published the decision notice.³⁴

9.5 The applicant must send a copy of notice of application for suspension to the CAA. The applicant must give written notice of having done so to the CMA.³⁵

9.6 The applicant must also send both the CMA and the CAA a non-sensitive version of the main submission required under Rule 9.2(a) at the same time as sending the sensitive version to the CMA and the CAA respectively. The applicant must send both the CMA and the CAA a non-sensitive version of the bundle required under Rule 9.2(b) by the end of the second working day following the day of submission of the sensitive version to the CMA and the

³³ See paragraph 8(2) of the Schedule.

³⁴ Paragraph 7 of the Schedule.

³⁵ Following receipt of the application, the CAA must publish the application and send a copy of the application to the persons listed in paragraph 6(5) of the Schedule.

CAA respectively (subject to the CMA agreeing to an extended deadline where necessary based on the circumstances of the case).

- 9.7 Where an early application for a direction has been made under paragraph 6 of the Schedule, the CMA must publish a decision on that application and the reasons for the decision before the end of the ten-week period³⁶ and must not take its decision on the application suspending the effect of the CAA's decision before the earlier of:
- (a) the making of any representations by the CAA in relation to the application for suspension under paragraph 10 of the Schedule; or
 - (b) the CAA giving written notice to the CMA that it will not be making representations in relation to the application under paragraph 10 of the Schedule; and
 - (c) the expiry of the period of ten weeks referred to in paragraph 7(3) of the Schedule.
- 9.8 The CMA may consider an application for suspension of the CAA's decision, with or without a hearing, and may hold any such hearing either of its own motion or on application.
- 9.9 If the CMA decides to hold a hearing to consider an application for suspension, it will give notice to the parties to the appeal and such other persons as it considers appropriate.
- 9.10 For applications that are not early applications for a direction under paragraph 6 of the Schedule the CMA will publish its decision on the application for a direction suspending the effect of the CAA's decision and the reasons for the decision as soon as practicable on its website.³⁷

10. Administrative timetable

- 10.1 As soon as practicable after permission to appeal has been granted and any applications for permission to intervene in an appeal under paragraph 4(2) of the Schedule have been determined, the CMA will set an administrative

³⁶ Described in paragraph 7(1) of the Schedule. The CMA must publish a decision on an application under paragraph 6 for a direction and the reasons for the decision and send a copy of the decision and reasons to the persons listed in paragraph 9(4) of the Schedule.

³⁷ Paragraph 9(1) and 26 of the Schedule. See Rule 9 for the requirements in relation to early applications for a direction under paragraph 6 of the Schedule. The CMA must also send a copy of the decision and reasons to the persons listed in paragraph 9(4) of the Schedule.

timetable which makes provision for the major stages of the appeal and complies with the statutory timetable provided by the Act.

10.2 The administrative timetable may, in particular, include arrangements for the following:

- (a) considering and notifying possible directions;
- (b) considering submissions and representations;
- (c) clarifying and verifying information;
- (d) holding appeal management conferences;
- (e) holding hearings;
- (f) notifying provisional determinations; and
- (g) publishing the CMA's determination,

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

10.3 The CMA will, when drawing up the administrative timetable, have regard to any representations made by the parties to the appeal.

10.4 The CMA will proceed on the basis that the parties to the appeal will comply with the administrative timetable.

10.5 Once the administrative timetable has been drawn up, the CMA will notify it to the parties to the appeal, and will publish it on the CMA's website.

10.6 If, at any point during the appeal, the CMA has reason to believe that the administrative timetable will not be met for any reason, the CMA may prepare a revised timetable to which the notification and publication requirements contained in Rule 10.5 will apply.

11. The CAA's response³⁸

11.1 Where the CMA has granted permission to appeal, the CAA may make representations to the CMA under paragraph 12 of the Schedule, the CAA, subject to any direction given under Rule 14, must make the representations

³⁸ See paragraph 19 of the Schedule.

to the CMA (the 'response') before the end of the period of two weeks beginning with the day on which the CMA notifies its decision to grant permission to appeal against the decision.

11.2 The response should contain:

(a) a statement:

- (i) identifying the facts and reasons why the appeal should not succeed and, alternatively, why the relief sought should not be allowed;
- (ii) indicating any matter, information or evidence raised or provided by it in the response that was not considered by the CAA in making the decision that is the subject of the appeal and give particulars of the reasons why:
 - the CAA could not reasonably have been expected to consider the matter, information or evidence when making that decision, and
 - the matter, information or evidence is likely to have an important effect on the outcome of the appeal, either by itself or taken together with other matters, information or evidence.³⁹

(b) a bundle of supporting documentation including:

- (i) any evidence on which the CAA wishes to rely in the form of witness statements or expert reports; and
- (ii) any documents (or extracts of documents) to which the appellant believes the CMA should have regard in determining the appeal.

11.3 The CAA must verify the information contained in the statement submitted under Rule 11.2(a) by a statement of truth. The witness or expert (as applicable) must verify the information contained in any witness statement or expert report submitted under Rule 11.2(b) by a statement of truth.

11.4 The CAA must confirm in writing to the CMA that it has sent a copy of the response to the persons specified in paragraph 12(2) of the Schedule at the same time as sending the response to the CMA.

³⁹ Paragraph 16(2) of the Schedule limits the circumstances in which account can be taken of new matters, information or evidence raised or provided by the CAA.

- 11.5 Where the CAA considers that the statement under Rule 11.2(a) contains sensitive information, the CAA must provide the CMA with a non-sensitive version at the same time as filing the response. A non-sensitive version of the supporting documentation under Rule 11.2(b) must be provided to the CMA by the end of the second working day following the date of submission of the sensitive version (subject to the CMA agreeing to an extended deadline where necessary based on the circumstances of the case).
- 11.6 The non-sensitive version of the statement in response filed under Rule 11.2(a) will be published on the CMA's website as soon as practicable following receipt.

12. Procedure

- 12.1 Subject to the provisions of the Act and these Rules, the CMA may determine its own procedure.
- 12.2 The CMA may at any time on application or of its own motion give such directions or, where appropriate, such notice as it considers necessary for the conduct of any appeal including but not limited to any of the following matters:
- (a) the holding of appeal management conferences;
 - (b) where there are two or more appeals pending in respect of the same decision, or in respect of decisions which in the view of the CMA are closely related, that the appeals in whole or part should be considered together, where it is appropriate to do so;⁴⁰
 - (c) the conduct of hearings, including the calling of witnesses, as well as provision for joint hearings and/or joint oral submissions on particular grounds of appeal to be made at hearings where the CMA is considering appeals or parts of appeals together;⁴¹
 - (d) the filing and service of further written statements, including provision for joint submissions where the CMA is considering appeals or parts of appeals together ;⁴²

⁴⁰ Paragraph 2(3) of the Schedule provides that the CMA may grant permission to bring an appeal subject to conditions, which may include conditions requiring that the appeal be considered together with other appeals (including appeals relating to different matters or decisions and appeals brought by different persons).

⁴¹ See paragraph 18 of the Schedule.

⁴² See paragraph 19 of the Schedule.

- (e) the appointment and instruction of experts, whether by the CMA⁴³ or by the parties to the appeal, and as to the manner in which expert evidence is to be given;
- (f) the submission of witness statements or expert reports;
- (g) the examination or cross-examination of witnesses;
- (h) the fixing of time limits in respect of any aspect of the appeal (other than where specified in the Act);
- (i) the setting of restrictions in terms of the form and content of any submissions made by any person pursuant to these Rules (such as page limits);
- (j) the disclosure or the production of documents, or classes of documents (including estimates, forecasts, returns or other information), between the parties to the appeal or other persons;
- (k) the giving of directions as to the treatment of sensitive information;
- (l) the variation of the provisions of these Rules in relation to the requirements for sending documents;
- (m) the hearing of a person who is not a party to the appeal where it is proposed to give a notice or direction in relation to that person; and
- (n) such other matters as appear to the CMA to be necessary to meet the overriding objective.

12.3 The CMA will give written notice of its directions.

12.4 The CMA may at any time:

- (a) put questions to the parties to the appeal;
- (b) invite the parties to the appeal to make written or oral submissions on aspects of the appeal;
- (c) direct the parties to the appeal to provide information or particulars and direct them to produce documents or papers relating to the appeal;

⁴³ See paragraph 20 of the Schedule.

- (d) require the parties to the appeal to attend meetings or hearings; and
- (e) invite representations on any matter relating to the appeal from any person who it appears to the CMA may be affected by the outcome of the appeal.

12.5 Parties to the appeal may apply to the CMA for permission under this Rule to make further submissions or provide supplementary evidence. When doing so, parties to the appeal will need to explain why such submissions or the provision of such evidence is justified in the circumstances and why it was not possible to make such submissions or provide such evidence earlier in the appeal process. The CMA reserves the right to reject unsolicited submissions or the provision of supplementary evidence where accepting them would be inconsistent with the overriding objective or where the parties have submitted them on an unsolicited basis without following the procedure set out in this paragraph.

13. Appeal management conferences

- 13.1 The CMA may hold appeal management conferences with the parties to the appeal and any person invited under Rule 13.2 where it considers that to do so would further the overriding objective.
- 13.2 The CMA may invite any applicants or potential applicants for permission to intervene to the appeal management conferences.

14. Oral hearings⁴⁴

- 14.1 The procedure at a hearing will be determined by the CMA.
- 14.2 Hearings will be opened and directed by the Chair of the Group or by such other member of the CMA as is appropriate.
- 14.3 The CMA will decide the extent, if any, to which at a hearing the parties to the appeal are allowed:

⁴⁴ See paragraph 18 of the Schedule in relation to oral hearings. Paragraphs 17, 18 and 19 of the Schedule provide the CMA with powers to issue notices to any person requiring the provision of documents, the attendance at hearings and the making of written statements. Where a person (a) fails to comply with a notice issued or other requirement imposed by these paragraphs; (b) in complying with a notice under paragraph 19, makes a statement that is false in any material particular; or (c) in providing information verified in accordance with a statement of truth required by these Rules, provides information that is false in a material respect, paragraph 21 of the Schedule provides that the High Court or Court of Session may punish the defaulter as if the person had been guilty of contempt of court.

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

14.4 If no previous direction has been made, at the start of the hearing the attendees will be directed as to the length of their oral submissions, the issues on which the CMA wishes to concentrate at the hearing, the order in which the CMA wishes to hear the submissions, and when and how the CMA will pose questions of the attendees. It is for the CMA to determine the form and structure of the hearing and the CMA will not necessarily cover all of the appellant's grounds of appeal at a hearing.

14.5 At a hearing a party may be represented by:

- (a) a qualified lawyer having a right of audience before a court in the United Kingdom; or
- (b) such other person as the CMA allows.

15. The production of documents, calling witnesses and the production of written statements⁴⁵

15.1 Where the CMA requires a person to produce a document, to attend and give evidence or to produce a written statement pursuant to paragraphs 24, 25 or 26 of the Schedule, it may provide a copy of the notice or other requirement to each party to the appeal.

16. Provisional determination

16.1 The CMA may issue a provisional determination depending on the circumstances of the case stating its provisional conclusions on the appeal.

16.2 When the CMA issues a provisional determination, it shall notify the parties to the appeal of that provisional determination on such terms and in such manner as the CMA considers appropriate.

16.3 The provisional determination will not normally be published on the CMA's website, although where appropriate the CMA may publish a summary of the provisional determination.

⁴⁵ See paragraphs 24, 25, and 26 of the Schedule.

- 16.4 The provisional determination will normally contain:
- (a) the CMA's provisional findings on the grounds of appeal raised by the appellant;
 - (b) an explanation for the CMA's provisional conclusions and findings; and
 - (c) the form(s) of relief which the CMA is considering granting.
- 16.5 Where the CMA issues a provisional determination, it will at the same time invite the parties to the appeal to make submissions in response to the provisional determination within such time as the CMA considers appropriate.
- 16.6 Where the CMA is considering appeals or parts of appeals together, it may elect to make a single provisional determination in relation to two or more appeals in part or in their entirety.

17. The CMA's powers where an appeal is allowed⁴⁶

- 17.1 Where the CMA allows an appeal, it must do one or more of the following:
- (a) quash the decision appealed against;
 - (b) remit the matter that is subject of the decision appealed against to the CAA for reconsideration and decision in accordance with any directions given by the CMA;
 - (c) substitute the CMA's decision for that of the CAA and give directions to the CAA or the holder of the licence.
- 17.2 Where the CMA is considering appeals or parts of appeals together, it may elect to make a single final determination in relation to two or more appeals in part or in their entirety.

18. Non-disclosure applications

- 18.1 Where anyone is required by these Rules, or a direction made under these Rules, to send to any person any document, and they consider that information contained within the document is sensitive information which should not be disclosed to that person, it may:

⁴⁶ Section 19C(2) of the Act.

- (a) make a non-disclosure application to the CMA at the same time that it sends the document to the CMA; and
- (b) pending the CMA's direction, excise the sensitive information from the relevant document sent in accordance with these Rules.

19. Costs⁴⁷

- 19.1 The CMA Group that determines an appeal must make an order for the payment to the CMA of the costs incurred by the CMA in connection with the appeal, in accordance with paragraphs 24(3) and (4) of the Schedule.
- 19.2 Before making any order under Rule 19.1, the CMA will provide the parties with a provisional determination on the CMA's costs and a draft of the costs order and give them a reasonable opportunity to make representations on each.
- 19.3 The CMA Group that determines an appeal may also make such order as it thinks fit requiring one party to the appeal to make payments to another in respect of costs reasonably incurred by the other party in connection with the appeal.
- 19.4 Any party to the appeal seeking an award of costs in its favour should file a statement of costs when invited by the CMA, which should be disclosed to any party to the appeal who may become liable to pay those costs.
- 19.5 In deciding what order to make under Rule 19.3, the CMA may have regard to all the circumstances, including but not limited to:
 - (a) the conduct of the parties, including:
 - (i) the extent to which each party has assisted the CMA to meet the overriding objective;
 - (ii) whether it was reasonable for a party to raise, pursue or contest a particular issue; and
 - (iii) the manner in which a party has pursued its case or a particular aspect of its case;

⁴⁷ Paragraph 24 of the Schedule. Paragraph 24(8) of the Schedule provides that for the purposes of paragraph 24 (Costs), references to an intervener in an appeal, and to a party to an appeal, include a person who was granted permission to intervene in the appeal and subsequently withdrew from the appeal.

- (b) whether a party has succeeded wholly or in part;
- (c) the proportionality and reasonableness of the costs claimed;
- (d) chilling effects of a costs order on the CAA.

- 19.6 Before making any order for costs under Rule 19.3, the CMA will provide the parties with a provisional determination on costs and a draft of the costs order and give them a reasonable opportunity to make representations on each.
- 19.7 The CMA will normally publish non-sensitive versions of any final determination on costs under Rule 19.1 or Rule 19.3 on its website.

20. Slip rule

- 20.1 Where any order, notice or decision of the CMA contains a clerical error, or a slip or omission, that error, slip or omission may be corrected and a further order, notice or decision issued by any person who could have made the original order, notice or decision.

21. Publication on the CMA's website

- 21.1 Orders, notices and decisions of the CMA which the Act requires to be published will be published on its website.

22. Filing of documents

- 22.1 All sensitive documents sent to the CMA or any other person should be marked to identify sensitive information.
- 22.2 Unless a person is notified otherwise by the CMA, any document that is to be sent to the CMA under the Act or these Rules must be sent via email to appeals@cma.gov.uk:
- 22.3 If the CMA informs a person that it requires hard copy documents, these must be sent by first class post or personal delivery, marked for the attention of the Regulatory Appeals Team, Competition and Markets Authority, The Cabot, 25 Cabot Square, London E14 4QZ.
- 22.4 Unless a person is notified otherwise by the CMA, any document required to be sent to a person other than the CMA under these Rules should be sent by electronic mail.