



Competition Commission Postal Services Price Control Appeals Rules

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1. Introduction, citation and commencement

- 1.1 These Rules are made in exercise of the powers conferred by [section 60\(1\)](#) of the Postal Services Act 2011 (the Act) about the making, conduct and disposal of appeals under [section 59](#) of the Act.
- 1.2 Before making these Rules the Competition Commission (CC) consulted such persons as it considered appropriate.
- 1.3 These Rules are to be known as the ‘CC Postal Services Price Control Appeals Rules’.
- 1.4 These Rules will have effect from 25 September 2012.

2. Interpretation

- 2.1 In these Rules:
 - (a) **‘the Act’** means the Postal Services Act 2011;
 - (b) **‘the CC’** means the Competition Commission;
 - (c) **‘the Chairman’** means the Chairman of the CC;
 - (d) **‘Group Chairman’** means the chairman of the group appointed in accordance with Rule 7.1;
 - (e) **‘member’** means a member of the CC;
 - (f) **‘Ofcom’** means the Office of Communications;
 - (g) **‘parties to the appeal’** means the appellant and Ofcom;
 - (h) **‘sensitive information’** means information to which [section 56](#) of the Act (General restriction on disclosure of information) applies; and
 - (i) **‘statement of truth’** in relation to producing 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.
- 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 the Act have the same meaning in these Rules as they have in the Act.

3. Application of rules

- 3.1 These Rules are supplementary to the provisions of the Act. In the event of any conflict between the Rules and the Act, the latter will prevail.

4. Overriding objective

- 4.1 The overriding objective of these Rules is to enable the CC to dispose of appeals fairly and efficiently within the time periods prescribed under the Act and any

extensions made under powers conferred by [section 60\(6\)](#) of the Act.¹ The CC will apply these Rules so as to give effect to the overriding objective.

4.2 Parties to the appeal must assist the CC to further the overriding objective.

5. Notice of appeal

5.1 A notice of appeal must include the following:

- (a) the decision of Ofcom the appellant wishes to appeal and the date it was published;
- (b) the appellant's name and address and, where applicable, the name and address of the appellant's solicitors and, or alternatively, the name and address of the appellant's other legal representatives;
- (c) an address in the UK for the purpose of receiving documents;
- (d) the grounds of appeal on which the appellant is relying;
- (e) a statement of the facts and reasons supporting each ground of appeal on which the appellant is relying;
- (f) an explanation of why the appellant is an affected person² entitled to bring an appeal; and
- (g) a statement of the relief which the appellant is seeking and any directions necessary to give effect to that relief.

5.2 The appellant must verify the information contained in a notice of appeal by a statement of truth.

5.3 The notice of appeal must be accompanied by:

- (a) any written evidence in the possession or control of the appellant to which the appellant wishes to adduce in support of the appeal;
- (b) a copy of the decision to be appealed; and
- (c) particulars of any other documents to which the appellant contends the CC should have regard in determining the appeal.

5.4 Where the appellant considers that any information in the notice of appeal contains sensitive information, the appellant must provide, with the notice of appeal, a non-confidential version of the notice of appeal, with any sensitive information redacted, that is in a form suitable for publication on the CC's website.

¹ See [section 109](#) of the Enterprise Act 2002, as applied to the Act by The Postal Services (Appeals to the Competition Commission) (Investigations and Extension of Time Limits) Order 2011 (SI 2011/2749).

² See [section 59\(1\)](#) of the Act.

6. Reference by Ofcom

- 6.1 Where Ofcom considers that an appeal has been made by a person affected by a price control decision, Ofcom must refer the appeal to the CC by sending the CC the following:
- (a) the notice of appeal;
 - (b) any documents that accompanied the notice of appeal;
 - (c) contact details for the representatives of Ofcom who will be defending the appeal;
 - (d) Ofcom's arguments and representations in relation to the matters raised in the notice of appeal and the accompanying documents provided by the appellant; and
 - (e) any documents or information to which Ofcom contends the CC should have regard in determining the appeal.
- 6.2 When Ofcom has referred an appeal to the CC in accordance with Rule 6.1, the Chairman may determine that the appeal has not been made by a person affected by a price control decision.

7. Appointment of the Group

- 7.1 When an appeal is referred to the CC by Ofcom in accordance with [section 59\(3\)](#) of the Act, and the Chairman has not made a determination under Rule 6.2, the Chairman will promptly appoint members to form a Group and a member of the Group to be the Group Chairman.
- 7.2 In making his appointments to a Group, the Chairman will have regard to any matters which, in his opinion, might prejudice the independence and impartiality of the CC.
- 7.3 A Group must consist of at least three persons, one of whom may be the Chairman.
- 7.4 Any decision of the Group will be taken by a simple majority.
- 7.5 The Chairman may, either at the invitation of the Group Chairman 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.
- 7.6 It will be the duty of a Group to have regard to any advice given to it by the Chairman under Rule 7.5 but the Chairman may not vote, advise on the merits of an appeal or have any opinion held as to an appeal included in the Group's determination.
- 7.7 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, will consult the Group Chairman, to avoid any conflict of interest arising.
- 7.8 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.

8. Administrative timetable

8.1 After the Group has been appointed, it will, as soon as practicable, set an administrative timetable which makes provision for the major stages of the appeal.

8.2 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 findings; and
- (g) publishing the CC'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.

8.3 The Group will, when drawing up the administrative timetable, have regard to any views which the parties to the appeal submit to it.

8.4 The Group will proceed on the basis that the parties to the appeal will comply with the administrative timetable.

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

8.6 If, at any point during the appeal, the Group has reason to believe that the administrative timetable will not be met for any reason, then the Group will prepare a revised timetable to which the notification and publication requirements contained in Rule 8.5 will apply.

9. Procedure and directions

9.1 Subject to the provisions of the Act and these Rules, the CC may determine its own procedure.

9.2 The Group may at any time on the application of a party to the appeal or of its own motion give such directions as it considers necessary for the conduct of the appeal.

9.3 The matters on which the Group may give directions include:

- (a) the holding of appeal management conferences;
- (b) the conduct of hearings;
- (c) the making of further submissions;
- (d) further evidence that may be required;
- (e) the appointment and instruction of experts, whether by the Group 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;
- (i) the disclosure or the production of documents, or classes of documents, between the parties to the appeal or other persons, including directions as to the treatment of sensitive information;
- (j) the variation of the provisions of these rules in relation to the requirements for sending documents;
- (k) 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
- (l) such other matters as appear to the Group to be necessary to meet the overriding objective.

9.4 The Group will give written notice of its directions.

9.5 The Group may at any time:

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

10. Withdrawal of appeal

10.1 An appellant may apply to the Group for permission to withdraw the appeal.

10.2 Ofcom may apply to the Group for a summary determination allowing the appeal.

11. Investigation powers

11.1 A Group may, during the course of the appeal, exercise any of the investigation powers contained in sections 109 to 117 of the Enterprise Act 2002, which have been

applied to the Act by the Secretary of State in accordance with [section 60\(6\)](#) of the Act.³

- 11.2 Where a Group is minded to impose a penalty under section 110(1) or (3) of the Enterprise Act 2002, it will have regard to the CC's [Statement of Policy on Penalties](#) made under [section 116\(1\)](#) of that Act.
- 11.3 Where, at any stage of an appeal, 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 will not be obliged to have regard to any information received from that individual or body after the date specified.

12. Disclosure of information

- 12.1 A person providing information to the Group for the purposes of the appeal must clearly identify to what extent a claim is being made that information is sensitive information.
- 12.2 Before disclosing any sensitive information, the Group must have regard to three considerations, namely:
 - (a) the extent to which disclosure of the information is necessary for the purpose of facilitating the carrying out by the Group of any of its functions under the Act;
 - (b) the need to exclude from disclosure (so far as practicable) any information whose disclosure the Group thinks is contrary to the public interest; and
 - (c) the need to exclude from disclosure (so far as practicable):
 - (i) commercial information whose disclosure the Group thinks might significantly harm the legitimate business interests of the person to which it relates; or
 - (ii) information relating to the private affairs of an individual whose disclosure the Group thinks might significantly harm the individual's interests.

13. Oral hearings

- 13.1 The procedure at a hearing will be determined by the Group.
- 13.2 Hearings will be opened and directed by the Group Chairman or by such other member of the Group as is appropriate.
- 13.3 The Group may decide if a hearing is to be held in public and if so, whether it is held either wholly or partly in public.
- 13.4 The Group may hold hearings with both the parties to the appeal present, or with the parties to the appeal separately, whichever it considers would better assist a proper consideration of the appeal.
- 13.5 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 Group wishes to concentrate at the hearing and the order in which the Group wishes to hear the submissions.

³ See The Postal Services (Appeals to the Competition Commission) (Investigations and Extension of Time Limits) Order 2011 (SI 2011/2749).

- 13.6 The Group will decide the extent, if any, to which at a hearing persons other than parties to the appeal 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.

14. Preparation of Appeal Determination

- 14.1 A Group may, for the purpose of preparing its determination, send any material which it has produced back to any party to the appeal or other person so that its accuracy can be verified.
- 14.2 A Group may, for the purposes of Rule 14.1, ask any party to the appeal or other person to identify any matter which that party or person might wish to have excluded from its determination.
- 14.3 Where the determination of a Group is taken by a majority then the determination may contain a statement or statements from the member or members in the minority of his or their dissent from that determination.
- 14.4 A Group may exclude any matter from the published form of its determination if it considers that publication of the matter would be inappropriate, and in deciding what is inappropriate for this purpose the Group will have regard to the considerations mentioned in [section 56](#) of the Act (General restriction on disclosure of information).
- 14.5 As soon as practicable after deciding which matter is to be excluded from the determination, the Group will make arrangements for publication of the redacted determination.
- 14.6 A copy of the redacted determination will be published on the CC's website.
- 14.7 Where any direction or determination of the CC contains a clerical error, or a slip or omission, that error, slip or omission may be corrected and a further direction or determination issued by any person who could have made the original direction or determination.



Roger Witcomb
Chairman
Competition Commission



