

## **The Competition Appeal Tribunal Rules 2015**

### **Department for Business, Innovation and Skills**

**RPC rating: validated**

The IA is now fit for purpose as a result of the Department's response to the Regulatory Policy Committee's initial review. As first submitted, the IA was not fit for purpose.

#### **Description of proposal**

The Competition Appeal Tribunal (CAT) is a specialist judicial body that hears appeals of competition decisions, and regulatory decisions in the communications sector. It also hears a number of appeals in other regulated sectors.

CAT rules have not been substantively reviewed since its creation in 2003. An independent review, led by Sir John Mummery, concluded that the current rules could be improved to make the appeal process quicker and less costly. The provisions implement the rule changes recommended by the review. They introduce a package of measures intended to reduce the length and cost of the appeal process.

#### **Impacts of proposal**

The impact assessment states that the measures will improve the efficiency of the CAT and will result in lower costs to business. The Department estimates this benefit to business to be £165,000 each year. This figure is estimated as five per cent of the benefit of a previous policy that introduced a more wide-ranging reform of the regulatory and competition appeals process.

The impact assessment explains that specialist solicitors and counsel, who represent parties at the CAT, will incur some one-off familiarisation costs. The measures will also implement a rule whereby a claimant, who rejects a settlement offer and subsequently fails to obtain a more advantageous outcome, may be liable to pay the defendant's costs from the date of the offer. The Department has not monetised either of these costs.

#### **Quality of submission**

##### **Issues addressed following RPC's initial review**

The Department has revised the impact assessment in response to issues raised by the Regulatory Policy Committee's (RPC) initial review, which identified four points:

## Benefits

The RPC asked the Department to provide further evidence to support the assumption that the benefits should be based on five per cent of the value of the benefits of the previous policy. The Department followed this up with stakeholders, who confirmed that the assumption was “broadly accurate and not unreasonable”. While this assumption remains somewhat speculative, the RPC accepts that it would be disproportionate, given the small size of the benefit, to undertake further analysis in this area.

## Statement of new evidence

The RPC asked the Department either to quantify the additional costs of producing statements of new evidence or provide further evidence to support the Department’s conclusion that these costs will not be significant. The Department has also followed this up with stakeholders who confirmed that these costs would not be significant. The Department’s explanation appears reasonable.

## Familiarisation costs

The RPC asked the Department either to quantify the familiarisation costs or provide more evidence to support its conclusion that they will be insignificant. The impact assessment now explains that lawyers always familiarise themselves with the rules before beginning a case, so the impact of the change would be insignificant. The RPC accepts that it would be disproportionate to attempt to quantify these costs.

## Settlement costs

The RPC asked for clarification of whether the proposal concerning settlement costs will be a benefit to non-compliant businesses and a cost to compliant businesses. While the Department could have explored this issue in more detail, the explanation that “The cost implications for compliant businesses will be extremely small...” appears reasonable.

## **Equivalent annual cost to business (EANCB)**

Following the adjustments made to the impact assessment by the Department, the RPC is able to validate the EANCB figure of -£0.16 million. Under the Better Regulation Framework Manual (March 2015), this would be considered to be an OUT under the last parliament’s One-in, Two-out policy. Based on current working assumptions, the RPC expects this to be a qualifying regulatory provision that will score as an OUT under the business impact target.

### **Small and micro business assessment (SaMBA)**

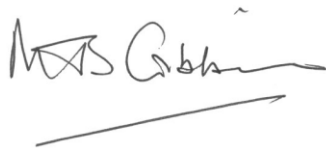
No exemption or mitigation is proposed. The Department states that small and micro businesses represent only a small proportion of claimants at the CAT. Additionally, if they were to appeal, the Department explains that they would benefit from the cost savings. As such, the SaMBA is sufficient.

### **Departmental assessment**

Classification	In scope
EANCB	−£0.16 million
Business net present value	£1.4 million
Societal net present value	£1.4 million

### **RPC assessment**

Classification	Qualifying regulatory provision
EANCB – RPC validated	−£0.16 million
Small and micro business assessment	Sufficient
RPC rating (of IA as initially submitted)	Not fit for purpose



**Michael Gibbons CBE**, Chairman