



# Competition Commission Airport Licence Condition Appeal Rules

February 2014



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## 1. Introduction, citation and commencement

- 1.1 These Rules are made in exercise of the powers conferred by paragraph 31 of Schedule 2 to the Civil Aviation Act 2012<sup>1</sup> for the purpose of regulating the conduct and disposal of appeals brought under sections 24 and 25 of the same Act.
- 1.2 Before making these Rules the Competition Commission (CC) consulted such persons as it considered appropriate, in accordance with paragraph 31(5) of Schedule 2 to the Civil Aviation Act 2012.
- 1.3 These Rules are to be known as the ‘Competition Commission Airport Licence Condition Appeal Rules’.
- 1.4 These Rules will have effect from 12 February 2014.

## 2. Interpretation and application

- 2.1 In these Rules:
  - (a) ‘**the Act**’ means the Civil Aviation Act 2012;
  - (b) ‘**the CAA**’ means the Civil Aviation Authority;
  - (c) ‘**the CC**’ means the Competition Commission or, where the functions have been transferred to the Competition and Markets Authority, the Competition and Markets Authority;
  - (d) ‘**licence**’ means a licence granted by the CAA under section 14(2) of the Act;
  - (e) ‘**the Schedule**’ means Schedule 2 to the Act; and
  - (f) ‘**sensitive information**’ means information which is either:
    - (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 These Rules are supplementary to the provisions of the Act and are to be interpreted in accordance with the provisions of the Act, including paragraph 35 of the Schedule, which provides for the interpretation of the Schedule. In the event of any conflict between the Rules and the Act, the latter will prevail.

## 3. Overriding objective

- 3.1 The overriding objective of these Rules is to enable the CC to exercise its functions fairly, efficiently and in accordance with the time limits prescribed by the Act.<sup>2</sup> In applying these Rules the CC will seek to give effect to the overriding objective.

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<sup>1</sup> 2012 c.19. The majority of the process regulating appeals under sections 24 and 25 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.

<sup>2</sup> 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 sections 24 or 25 of the Act are set out in section 28 of the Act. In determining the appeal, the CC must have regard to the matters in respect of which duties are imposed on the CAA by section 1 of the Act (section 30(2) of the Act).

- 3.2 All parties to an application or an appeal must assist the CC to further the overriding objective.<sup>3</sup>

#### 4. Permission to appeal<sup>4</sup>

- 4.1 Any person who is entitled to, and wishes to, appeal must make an application for permission to appeal to the CC within the period of six weeks beginning with the day on which the CAA published the relevant notice.<sup>5</sup>
- 4.2 To make an application for permission to appeal a person must send to the CC a notice, marked Application for Permission to Appeal in Airport Licence Condition Appeal, which contains, or annexes, the following material:
- (a) particulars of the decision of the CAA the applicant wishes to appeal;
  - (b) the date on which the CAA published the relevant notice mentioned in paragraph 1(1) of the Schedule;
  - (c) the applicant's name and address and, where applicable, the name and address of the applicant's legal representatives;
  - (d) an address in the UK, together with an address for electronic mail, for the purpose of receiving documents relating to the application and any subsequent appeal;
  - (e) where the applicant is the holder of a licence, particulars of the relevant licence;
  - (f) the grounds on which the applicant considers the decision appealed against was wrong;<sup>6</sup>
  - (g) where the applicant is a provider of air transport services,<sup>7</sup> particulars of why it considers its interests are materially affected by the decision;<sup>8</sup>
  - (h) particulars of the action the applicant considers the CC must take under section 27(2) to (4) of the Act if the CC allows the appeal;

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<sup>3</sup> See paragraphs 35(2) and (3) of the Schedule.

<sup>4</sup> See paragraphs 1 to 3 of the Schedule. The CC 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 (sections 24(5) & 25(5) of the Act). In the case of appeals against a decision by the CAA to modify a licence condition under section 25 of the Act, the CC 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 24 or section 25 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 (sections 25(5) & (6) of the Act).

<sup>5</sup> An appeal may be brought under section 24 or section 25 of the Act only by the holder of the licence, or a provider of air transport services whose interests are materially affected by the decision (sections 24(2) and 25(2) of the Act). Paragraph 1(1) of the Schedule provides that an application for permission to appeal under section 24 or section 25 against a decision in respect of a licence may not be made after the end of the period of six weeks beginning with the day on which the CAA published the relevant notice. 'The relevant notice' is defined in paragraph 1(2) of the Schedule as (a) in the case of an application for permission to appeal under section 24, the notice published in accordance with section 15 of the decision to grant the licence, and (b) in the case of an application for permission to appeal under section 25, the notice published in accordance with section 22 of the decision that is the subject of the application.

<sup>6</sup> Section 26 of the Act provides that the CC may allow an appeal under section 24 or section 25 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.

<sup>7</sup> 'Air transport service' is defined in section 69 of the Act as a service for the carriage by air of passengers or cargo to or from an airport in the United Kingdom.

<sup>8</sup> See sections 24(2)(b) and 25(2)(b) of the Act.

- (i) a statement of the facts and reasons supporting the application and each ground of appeal on which the applicant wishes to rely, verified by a statement of truth;<sup>9</sup>
  - (j) any representations the applicant wishes to make concerning whether permission to appeal should be granted subject to any conditions;<sup>10</sup>
  - (k) any written evidence in the possession or control of the applicant which the applicant wishes to adduce in support of the application or appeal;
  - (l) particulars of any other matter, information or evidence to which the applicant contends the CC should have regard in determining the application or appeal;
  - (m) where the applicant believes that any matter, information or evidence contained in the material provided to the CC in accordance with this Rule was not considered by the CAA in making the decision that is the subject of the application<sup>11</sup> particulars of the reasons why:
    - (i) the applicant or a relevant connected person<sup>12</sup> 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 decision<sup>13</sup> that is the subject of the application; 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;
  - (n) where the applicant considers any of the material provided under this Rule contains sensitive information, particulars of why the information is sensitive information; and
  - (o) a copy of the material referred to in Rule 4.2(c) to (n) with sensitive information excised in a form that the CAA can publish or provide to another person in accordance with paragraph 1(4) of the Schedule.
- 4.3 The applicant must send a copy of the material provided to the CC under Rule 4.2 to the CAA. The applicant must give written notice of having done so to the CC.<sup>14</sup>
- 4.4 Where the CAA makes representations under paragraph 3 of the Schedule:
- (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 relevant 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:

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<sup>9</sup> Paragraph 35 of the Schedule provides that a statement of truth in relation to the production of a statement or in relation to information provided by a person, means a statement that the person producing that statement or providing that information believes the facts contained in the statement or the information to be true.

<sup>10</sup> Paragraph 2(3) of the Schedule permits the grant of permission to appeal to be made subject to conditions.

<sup>11</sup> Paragraph 23(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.

<sup>12</sup> See paragraph 23(5) of the Schedule.

<sup>13</sup> See paragraph 23(6) of the Schedule.

<sup>14</sup> Following receipt of the application, under paragraph 1(3) 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).

- (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.
- 4.5 The CC 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 the relevant notice referred to in paragraph 1(2) of the Schedule<sup>15</sup> 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;<sup>16</sup> or
  - (b) the CAA giving written notice to the CC 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.
- 4.6 The CC's decision on an application for permission to appeal will normally be taken without holding an oral hearing, although an authorised member<sup>17</sup> considering an application for permission to appeal may hold an oral hearing at the request of a party to the application or otherwise.
- 4.7 Where the CC decides to hold a hearing under Rule 4.6 it will give notice of the hearing to the parties to the application and may also give notice of the hearing by the publication of a notice on the CC's website.

## 5. Intervention in appeal<sup>18</sup>

- 5.1 Any person who is entitled to, and wishes to intervene in an appeal may make an application for permission to intervene in the appeal to the CC before the end of the period of one week beginning with the day on which the CC publishes its decision to grant permission to appeal against the decision.<sup>19</sup>
- 5.2 An application for permission to appeal may be made after the end of the period referred to in paragraph 5.1 only with the leave of an authorised member of the CC.<sup>20</sup>
- 5.3 To make an application for permission to intervene in the appeal a person must send to the CC a notice, marked Application for Permission to Intervene in Airport Licence Condition Appeal, which contains, or annexes, the following material:
- (a) details of the appeal the applicant wishes to intervene in;

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<sup>15</sup> See paragraph 2(2) of the Schedule. See footnote 5 above which sets out what 'the relevant notice' means. Under paragraph (4) of the Schedule the CC 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.

<sup>16</sup> 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.

<sup>17</sup> See paragraph 35(1) of the Schedule.

<sup>18</sup> 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 CC by another person who would be entitled to appeal against the decision (paragraph 4(1) of the Schedule).

<sup>19</sup> Paragraph 4(2) of the Schedule.

<sup>20</sup> See paragraph 4(3) of the Schedule.

- (b) the applicant's name and address and, where applicable, the name and address of the applicant's legal representatives;
  - (c) an address in the UK, together with an address for electronic mail, for the purpose of receiving documents relating to the application or appeal;
  - (d) where the applicant is the holder of a licence, particulars of the relevant licence;
  - (e) where the applicant is a provider of air transport services,<sup>21</sup> particulars of why it considers that its interests are materially affected by the decision;<sup>22</sup>
  - (f) a statement of whether the applicant supports or opposes the appeal; and
    - (i) 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 CC must take under section 27(2) to (4) of the Act if the CC allows the appeal, together with the facts and reasons relied on; or
    - (ii) if the application opposes the appeal, the applicant must identify the facts and reasons why it believes the appeal should not succeed, or why it believes the CC should not take the action under section 27(2) to (4) of the Act requested by the appellant;
- verified by a statement of truth;
- (g) 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;
  - (h) any representations the applicant wishes to make concerning whether permission to intervene in the appeal should be granted subject to any conditions;<sup>23</sup>
  - (i) any written evidence in the possession or control of the applicant which the applicant wishes to adduce in support of the application;
  - (j) particulars of any other matter, information or evidence to which the applicant contends the CC should have regard in determining the application or appeal;
  - (k) where the applicant considers that any of the material provided under this Rule contains sensitive information, particulars of why the information is sensitive information; and
  - (l) a copy of the material referred to in Rule 5.3(a) to (k) with sensitive information excised in a form that the CAA can publish or provide to another person in accordance with paragraph 4(5) of the Schedule.

5.4 The applicant must send a copy of the material provided to the CC under Rule 5.3 to the CAA. The applicant must give written notice of having done so to the CC.<sup>24</sup>

5.5 The CC's decision on an application for permission to intervene will normally be taken without a hearing, although an authorised member considering an application

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<sup>21</sup> See footnote 7 and section 69 of the Act.

<sup>22</sup> See sections 24(2)(b) and 25(2)(b).

<sup>23</sup> Paragraph 5(3) of the Schedule permits the grant of permission to intervene to be made subject to conditions.

<sup>24</sup> Following receipt of the application, the CAA must publish the application and send a copy of the application to the persons listed in paragraph 4(6) of the Schedule (other than the applicant).



for permission to intervene may hold an oral hearing at the request of a party to the application or otherwise.

- 5.6 Where the CC decides to hold a hearing under Rule 5.5 it will give notice of the hearing to the parties to the application and may also give notice of the hearing by the publication of a notice on the CC's website.
- 5.7 The CC must publish its decision on the application for permission to intervene and the reasons for the decision as soon as practicable.<sup>25</sup>

## 6. Application for suspension of condition of new licence or modification<sup>26</sup>

6.1 Where an application is made for permission to appeal, any person who is entitled to, and wishes to, make an application for a direction suspending the effect of the decision of the CAA being appealed must make the application to the CC in accordance with the Schedule.<sup>27</sup>

6.2 To make an application for a direction suspending the effect of the CAA's decision a person must send to the CC a notice, marked Application for a Suspension Direction in Airport Licence Condition Appeal, which contains, or annexes, the following material:

- (a) particulars of the CAA's decision that the applicant wishes the CC to suspend;
- (b) if the applicant is not also applying or has not applied for permission to appeal or permission to intervene in the appeal:
  - (i) the applicant's name and address and, where applicable, the name and address of the applicant's legal representatives;
  - (ii) an address in the UK, together with an address for electronic mail, for the purpose of receiving documents relating to the application or appeal;
  - (iii) where the applicant is the holder of a licence, particulars of the relevant licence;
  - (iv) where the applicant is a provider of air transport services,<sup>28</sup> particulars of why it considers that its interests are materially affected by the decision;<sup>29</sup>
- (c) particulars of the action the applicant considers the CC must take under paragraph 11(3) or paragraph 14(3) of the Schedule if the CC gives a direction suspending the effect of the decision.
- (d) a statement of the costs that the applicant will incur if the application is not granted, verified by a statement of truth;

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<sup>25</sup> Paragraph 34 of the Schedule. The CC must also send a copy of the decision and reasons to the persons listed in paragraph 5(5) of the Schedule.

<sup>26</sup> See paragraphs 9 and 12 of the Schedule. An application for a direction may be made at any time before the determination of the appeal (paragraphs 9(2) and 12(2) of the Schedule). In the case of an early application for direction, the CC's decision on the application must be taken within the time period specified in paragraphs 10(3) and 13(3) of the Schedule. Where the CC grants an application for permission to appeal, the Act also provides for the automatic suspension of certain conditions involving financial arrangements until the appeal against the decision is determined or withdrawn (or, if there is more than one appeal against the decision, until all of the appeals are determined or withdrawn). See paragraphs 6 to 8 of the Schedule.

<sup>27</sup> See paragraphs 9 to 13 of the Schedule.

<sup>28</sup> See footnote 7 above which sets out what 'air transport service' means.

<sup>29</sup> See sections 24(2)(b) and 25(2)(b) of the Act.

- (e) particulars of the reasons why:
  - (i) the applicant would incur significant costs if the new or modified licence condition were to have effect from the date specified in the decision; and
  - (ii) the balance of convenience does not otherwise require the licence condition to have effect from that date;
- (f) a statement of any further considerations that the applicant believes the CC should take into account in deciding the application;
- (g) any written evidence in the possession or control of the applicant which the applicant wishes to adduce in support of the application;
- (h) particulars of any other matter, information or evidence to which the applicant contends the CC should have regard in determining the application;
- (i) where the applicant considers that any of the material provided under this Rule contains sensitive information, particulars of why the information is sensitive information; and
- (j) a copy of the material referred to in Rule 6.2(a) to (i) with sensitive information excised in a form that the CAA can publish or provide to another person in accordance with paragraph 9(4) or 12(4) of the Schedule.

6.3 Any person who wishes to make an early application for a direction under paragraph 9 or paragraph 12 of the Schedule must make an application to the CC before the end of the period of six weeks beginning with the day on which the CAA published the relevant decision.<sup>30</sup>

6.4 The applicant must send a copy of the material provided to the CC under Rule 6.2 to the CAA. The applicant must give written notice of having done so to the CC.<sup>31</sup>

6.5 Where an early application for a direction has been made under paragraph 9 or paragraph 12 of the Schedule, the CC must publish a decision on that application and the reasons for the decision before the end of the ten-week period<sup>32</sup> 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 16 of the Schedule; or
- (b) the CAA giving written notice to the CC that it will not be making representations in relation to the application under paragraph 16 of the Schedule; and
- (c) the expiry of the period of ten weeks referred to in paragraph 10(3) and paragraph 13(3) of the Schedule.

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<sup>30</sup> In the case of an application under paragraph 9, it is the notice of the decision to grant the licence in accordance with section 15 (paragraph 10(1) of the Schedule), and in the case of an application under paragraph 12, it is the notice of the decision under section 22 to modify a licence condition (paragraph 13(1) of the Schedule).

<sup>31</sup> Following receipt of the application, the CAA must publish the application and send a copy of the application to the persons listed in paragraph 9(5) and 12(5) of the Schedule.

<sup>32</sup> Described in paragraph 10(1) or paragraph 13(1) of the Schedule as applicable. The CC must publish a decision on an application under paragraph 9 or paragraph 12 for a direction and the reasons for the decision and send a copy of the decision and reasons to the persons listed in paragraph 15(4) of the Schedule.

- 6.6 The CC's decision on an application for suspension of the CAA's decision under paragraph 9 or paragraph 12 of the Schedule<sup>33</sup> may be taken without an oral hearing, although an authorised member considering an application for suspension of the CAA's decision under paragraph 9 or 12 of the Schedule may hold an oral hearing at the request of a party to the application or otherwise.
- 6.7 Where the CC decides to hold a hearing under Rule 6.6 it will give notice of the hearing to the parties to the application and may also give notice of the hearing by the publication of a notice on the CC's website.
- 6.8 For applications that are not early applications for a direction under paragraph 9 or paragraph 12 of the Schedule the CC must 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.<sup>34</sup>

## 7. Administrative timetable

- 7.1 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 CC will set an administrative timetable which makes provision for the major stages of the appeal and complies with the statutory timetable provided by the Act.
- 7.2 The CC will, when drawing up the administrative timetable, have regard to any views which the parties to the appeal submit to it.
- 7.3 The CC will proceed on the basis that the parties to the appeal will comply with the administrative timetable.
- 7.4 Once the administrative timetable has been drawn up, the CC will notify it to the appellant, the CAA and any interveners in the appeal, and will publish it on the CC's website.
- 7.5 If, at any point during the appeal, the CC has reason to believe that the administrative timetable will not be met for any reason, the CC may prepare a revised timetable to which the notification and publication requirements contained in Rule 7.4 will apply.

## 8. Representations on the appeal by the CAA<sup>35</sup>

- 8.1 Where the CAA wishes to make representations to the CC under paragraph 19 of the Schedule, the CAA, subject to any direction given under Rule 9.1:
- (a) must make the representations before the end of the period of two weeks beginning with the day on which the CC publishes its decision to grant permission to appeal against the decision;
  - (b) must indicate where any matter, information or evidence raised or provided by it in the representations was not considered by the CAA in making the decision that is the subject of the appeal and give particulars of the reasons why:

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<sup>33</sup> Paragraphs 11(1) and 14(1) of the Schedule.

<sup>34</sup> Paragraph 34 of the Schedule. See Rule 6.5 for the requirements in relation to early applications for a direction under paragraph 9 or paragraph 12 of the Schedule. The CC must also send a copy of the decision and reasons to the persons listed in paragraph 15(4) of the Schedule.

<sup>35</sup> See paragraph 19 of the Schedule. This paragraph applies where an application for permission to appeal has been granted.

- (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 appeal, either by itself or taken together with other matters, information or evidence;<sup>36</sup> and
- (c) must confirm in writing to the CC that it has sent a copy of the representations to the persons specified in paragraph 19(2) of the Schedule.

## 9. Procedure and directions

- 9.1 Subject to the provisions of the Act and these Rules an authorised member of the CC<sup>37</sup> responsible for taking a decision of the CC under the Act, or a group with a function under the Act may determine their own procedure, and may give such directions as they consider necessary on behalf of the CC to enable the CC to carry out its functions under the Act.
- 9.2 Subject to the provisions of the Act and these Rules, the matters on which the CC may give directions include:
- (a) the fixing and variation of administrative time limits in respect of any aspect of the proceedings;
  - (b) the holding of appeal management conferences;
  - (c) 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 CC are closely related, the CC directing that the appeals in whole or part should be considered together;<sup>38</sup>
  - (d) the holding and conduct of oral hearings;<sup>39</sup>
  - (e) the production of written evidence;<sup>40</sup>
  - (f) the examination or cross-examination of witnesses;
  - (g) the commissioning of expert advice;<sup>41</sup>
  - (h) the verification of evidence by a statement of truth;
  - (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 process the group will follow to enable it to make orders in relation to costs under paragraph 32 of the Schedule; and

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<sup>36</sup> Paragraph 23(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.

<sup>37</sup> See paragraph 35(1) of the Schedule.

<sup>38</sup> Paragraph 2(3) of the Schedule provides that the CC 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).

<sup>39</sup> See paragraph 25 of the Schedule.

<sup>40</sup> See paragraph 26 of the Schedule.

<sup>41</sup> See paragraph 27 of the Schedule.

- (k) such other matters as appear to the CC to be necessary to meet the overriding objective.

9.3 The CC must give written notice of its directions.

## 10. Oral hearings

- 10.1 The procedure at a hearing will be determined by the authorised member of the CC or group conducting the hearing.
- 10.2 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 CC wishes to concentrate at the hearing, and the order in which the CC wishes to hear the submissions.

## 11. The production of documents, calling witnesses and the production of written statements<sup>42</sup>

- 11.1 Where the CC by notice 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 to each party to the appeal.

## 12. Costs

- 12.1 Where the CC determines an appeal, the CC must make an order for the payment of the costs incurred by the CC in accordance with paragraphs 32(3) and (4) of the Schedule.
- 12.2 Where the CC determines an appeal, the CC may also make such order as it thinks fit requiring one party to the appeal<sup>43</sup> to make payments to another in respect of costs reasonably incurred by the other party in connection with the appeal.
- 12.3 In deciding what order to make under Rule 12.2, the CC must have regard to all the circumstances, including:
- (a) the conduct of the parties, including:
- (i) the extent to which each party has assisted the CC 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;
- (b) whether a party has succeeded wholly or in part; and
- (c) the proportionality of the costs claimed.

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<sup>42</sup> See paragraphs 24, 25, and 26 of the Schedule.

<sup>43</sup> Paragraph 32(8) of the Schedule provides that for the purposes of paragraph 32 (Costs), references to a party to an appeal, include a person who was granted permission to intervene in the appeal and subsequently withdrew from the appeal.

### 13. Slip rule

- 13.1 Where any order, notice or decision of the CC 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.

### 14. Publication on the CC's website<sup>44</sup>

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

### 15. Sending of documents

- 15.1 Where a person sends a document to the CC which the person considers contains sensitive information, the document should be marked to identify sensitive information.
- 15.2 Section 75 of the Act applies to the sending of documents referred to in these Rules, and for the purposes of section 75, the address for service of documents on the CC is: the Competition and Markets Authority, The Cabot, 25 Cabot Square London E14 4QZ.
- 15.3 Unless a person is notified otherwise by the CC, any document that is to be sent to the CC under the Act or these Rules must also be sent to the CC by electronic mail to: [appeals@cma.gov.uk](mailto:appeals@cma.gov.uk).

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<sup>44</sup> Section 74 of the Act applies to the publication of documents under Part 1 of the Act.



