

DRAFT ENERGY CODE MODIFICATION APPEALS: COMPETITION AND MARKETS AUTHORITY RULES

CMA196

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Contents

1.	Introduction, citation and commencement	4
2.	Interpretation	5
3.	Application of rules	6
4.	Overriding objective.....	7
5.	Applications for permission to appeal	8
6.	CMA's permission decision following submission of a notice of appeal.....	12
7.	Application for suspension of decision	13
8.	Response	16
9.	Intervention.....	18
10.	Withdrawal of application or summary determination.....	22
11.	Non-disclosure applications	23
12.	Procedure.....	24
13.	Non-compliance	26
14.	Appeal management conferences	27
15.	Oral hearings	28
16.	The production of documents, calling witnesses and the production of written statements	29
17.	Determination	30
18.	The CMA's powers and duties on determination of an appeal.....	31
19.	Costs	32
20.	Slip rule	34
21.	Filing of documents	35

1. Introduction, citation and commencement

- 1.1 These Rules are made in exercise of the powers conferred by paragraph 12(1) of Schedule 22 to the Energy Act 2004¹ for the purpose of regulating the conduct and disposal of appeals brought under section 173 of the Energy Act 2004.
- 1.2 Before making these Rules the Competition and Markets Authority (**CMA**) consulted such persons as it considered appropriate.²
- 1.3 These Rules are to be known as the *Energy Code Modification Appeals: Competition and Markets Authority Rules*.
- 1.4 These Rules will have effect from [xx Month] 2024 and supersede the previous rules, known as the Energy Code Modification Rules: CC10.³

¹ 2004 c20, as amended.

² Paragraph 12(4) of Schedule 22 to the Energy Act 2004.

³ Competition Commission: The Energy Code Modification Rules, July 2005 (CC10), adopted by the CMA in 2014.

2. Interpretation

2.1 In these Rules:

'the Act' means the Energy Act 2004;

'CMA' means the Competition and Markets Authority;

'CMA Group' means a group constituted by the Chair of the CMA under Part 3 of Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for the purposes of carrying out the functions of the CMA with respect to an appeal under section 173 of the Act;

'GEMA' means the Gas and Electricity Markets Authority;

'party' to an appeal means the appellant, an intervener or GEMA;

'the Schedule' means Schedule 22 to the Act;

'sensitive information' means information which is:

(a) commercial information, the disclosure of which would, or might, significantly harm the legitimate business interests of an undertaking to which it relates; or

(b) information relating to the private affairs of an individual, the disclosure of which would, or might, significantly harm the individual's interests.

'the 30-day period' means the period of 30 working days within which the CMA must determine the appeal. The 30-day period starts on the first working day after the last day allowed to GEMA to submit its response.

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 15 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. In the event of any conflict between these 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 *Energy Code Modification Appeals: Competition and Markets Authority Guide* (CMA197)

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 periods prescribed by the Act. The CMA will apply these Rules so as to give effect to the overriding objective.
- 4.2 All parties to an appeal must assist the CMA to further the overriding objective.

5. Applications for permission to appeal

5.1 Any person who wishes to make an application for permission to appeal⁴ must send a notice, marked Notice of Appeal, Energy Code Modification (the **notice of appeal**) to the CMA within fifteen working days following the earliest day on which GEMA's decision is published.⁵

5.2 The notice of appeal must:

- (a) include the applicant's main submission covering:
 - (i) the applicant's, and where applicable, the applicant's legal representatives':
 - (1) name; and
 - (2) contact information, which unless otherwise specified in writing by the CMA, should include an email and a physical address;
 - (ii) an email address, together with a physical address in the United Kingdom (**UK**), for the purpose of receiving service of documents, unless otherwise specified in writing by the CMA;
 - (iii) details of the decision of GEMA the applicant wishes to appeal and the date it was published, referencing the specific parts of the decision that the applicant wishes to appeal, including by reference to paragraph numbers where relevant;
 - (iv) the applicant's standing to bring an appeal,⁶ namely:
 - (1) a statement of those interests of the applicant that it believes are materially affected by the decision, or
 - (2) a statement explaining why the applicant believes it is to be regarded as a body or association whose functions are or include representing persons in respect of interests of theirs that are materially affected by the decision;

⁴ Section 173(4) of the Act provides that the permission of the CMA is required to bring an appeal under section 173.

⁵ See paragraph 1(1) and (3) of [the Schedule](#) which specify that an application for permission is not to be made after the end of fifteen working days following the earliest day on which the decision was published.

⁶ See section 173(3) of the Act.

- (v) a statement explaining why the decision to be appealed is not to be regarded as excluded by an order made by the Secretary of State under section 173 of the Act;⁷
 - (vi) the applicant's statement of case, stating the grounds of appeal on which the applicant wishes to rely (indicating the specific part(s) of the decision to which each ground relates, including by reference to paragraph numbers where relevant);
 - (vii) 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;
 - (viii) a statement identifying which, if any, of the facts relied upon were in the belief of the applicant not known to GEMA at the time of the decision and why they were not brought to the attention of GEMA before it made the decision;
 - (ix) the identification of which, if any, of the matters relied on in any ground of appeal were, in the belief of the applicant, matters to which GEMA was unable to have regard in reaching its decision and whether they are matters to which GEMA would have been entitled to have regard in reaching its decision had it had the opportunity of doing so; and
 - (x) a statement of the relief sought and any directions necessary to give effect to that relief.
- (b) append a bundle of supporting documentation comprising:
- (i) a copy of the decision to be appealed and (as applicable) a link to the webpage on which it has been published;
 - (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

⁷ See the Electricity and Gas Appeals (Designation and Exclusion) Order 2014, <https://www.legislation.gov.uk/uksi/2014/1293/contents/made>, which describes the decisions that are for the time being excluded from the right of appeal under section 173 of the Act.

applicable) must verify the information contained in any witness statement or expert report submitted under Rule 5.2(b) by a statement of truth.⁸

- 5.4 Where the applicant considers that the notice of appeal, together with the supporting documentation, required under Rule 5.2 contains sensitive information, the applicant must provide the CMA with a non-sensitive version at the same time as the sensitive version is submitted to the CMA. Unless otherwise specified in writing by the CMA, it must also send the CMA by no later than the end of the working day following the day of submission of the sensitive version of the notice of appeal a table setting out the applicant's reasons for treating each item or category of information as sensitive information.
- 5.5 The applicant must send GEMA a copy of the notice of appeal at the same time as it is sent to the CMA.⁹
- 5.6 The applicant must send:
- (a) by the end of the first working day following the date of submission of the notice of appeal:
 - (i) to such persons (apart from GEMA) as appear to the applicant to be affected by the decision a non-sensitive version of the notice of appeal required under Rule 5.2;¹⁰ and
 - (ii) to the CMA and GEMA, a list of the names and contact information, including email and physical addresses, of those persons to whom the non-sensitive version of the notice of appeal has been sent under Rule 5.6(a)(i); and
 - (b) to the extent that GEMA has specified in writing to the applicant following receipt of the list provided under Rule 5.6(a)(ii) any additional persons who should be kept informed about the appeal, to such additional persons (and for information to the CMA), a non-sensitive version of the notice of appeal by the end of the first working day following receipt by the applicant of such a request from GEMA.¹¹
- 5.7 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.

⁸ Paragraph 15(1) of the Schedule provides that a 'statement of truth' in relation to the production of a document by a person, means a statement that the person producing the document believes the facts stated in the document to be true.

⁹ Paragraph 1(6) of the Schedule.

¹⁰ Paragraph 1(7)(a) of the Schedule.

¹¹ Paragraph 1(7)(b) of the Schedule.

5.8 The CMA will publish the non-sensitive version of an applicant's main submission required under Rule 5.2(a) as soon as reasonably practicable following receipt.

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

- 6.1 The CMA has ten working days (following the day on which it received the notice of appeal)¹² in which to decide whether to grant permission to appeal.¹³ The grounds on which such permission may be refused are that:
- (a) the appeal is brought for reasons that are trivial or vexatious; or
 - (b) the appeal has no reasonable prospect of success.¹⁴
- 6.2 The CMA will normally consider applications for permission to appeal without a hearing.
- 6.3 The CMA may hold a hearing to determine an application for permission, either of its own motion or on application. Where the CMA decides of its own motion to hold a permission hearing, the CMA may give notice to GEMA and such other persons as it considers appropriate. The CMA may also request additional information from the applicant or GEMA to inform its decision.
- 6.4 Where permission to appeal is granted, the applicant, GEMA and each person to whom the applicant provided a copy of the notice of appeal will be notified of the CMA's decision, the reasons for it and of any conditions¹⁵ subject to which the decision to grant permission is made.¹⁶
- 6.5 If permission is refused, the applicant, GEMA and each person to whom the applicant provided a copy of the notice of appeal will be notified of the CMA's decision and of the reasons for it.¹⁷
- 6.6 The CMA will publish a non-sensitive version of its decision on its website as soon as reasonably practicable after it is made.

¹² Day one of the ten days is the day after the date on which the notice of appeal was submitted.

¹³ Paragraph 1(8) of the Schedule.

¹⁴ Section 173(5) of the Act.

¹⁵ Paragraph 1(10) of the Schedule provides that a decision to grant permission may be made subject to conditions. Paragraph 1(11) of the Schedule sets out a non-exhaustive list of conditions.

¹⁶ Paragraph 1(12) of the Schedule.

¹⁷ Paragraph 1(12) of the Schedule.

7. Application for suspension of decision

- 7.1 Where the CMA has granted permission to appeal against a decision by GEMA to give a consent, the CMA may following an application suspend all or part of that decision pending the determination of the appeal.¹⁸
- 7.2 An application to the CMA for the suspension of a decision by GEMA to give a consent (an **application for suspension**) must contain the following information:
- (a) the applicant's, and where applicable, the applicant's legal representatives'
 - (i) name; and
 - (ii) contact information, which unless otherwise specified in writing by the CMA should include the applicant's email and physical address;
 - (b) an email address, together with a physical address in the UK, for the purpose of receiving service of documents;
 - (c) particulars of the decision of GEMA the applicant wishes the CMA to suspend and the date it was published, including whether the applicant is requesting suspension of the whole or part of GEMA's decision (and if part, by reference to paragraph numbers where relevant);
 - (d) if the applicant is not the applicant for permission to appeal or otherwise a party to the appeal, an explanation of the basis on which the applicant has interests or functions that entitle them, or would have entitled them, to appeal against the decision;
 - (e) an explanation as to whether the applicant would incur significant costs if the consent were to have effect, or to continue to have effect, before the determination of the appeal;
 - (f) an explanation as to whether the balance of convenience does not otherwise require effect to be given to the consent pending the determination of the appeal;
 - (g) an explanation of the relevance of any supporting evidence or documents submitted as part of the application pursuant to Rule 7.2(j) below;
 - (h) any further considerations that the applicant believes the CMA should take into account in deciding the application;

¹⁸ Paragraph 3 of the Schedule. For these purposes, 'consent' includes an approval or direction (paragraph 3(6) of the Schedule).

- (i) a statement of the relief sought, specifying the action the applicant considers the CMA must take under paragraph 3(1) of the Schedule if the CMA gives a direction suspending the effect of that consent; and
- (j) a bundle of supporting documentation including:
 - (i) a statement of the costs that the applicant will incur if the application is not granted;
 - (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 appellant believes the CMA should have regard in determining the application.

7.3 The applicant must verify the information contained in the submission required under Rule 7.2(a)-(j) 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 7.2(j) by a statement of truth.¹⁹

7.4 Where the applicant considers that the application for suspension required under Rule 7.2 contains sensitive information, the applicant must provide the CMA with a non-sensitive version at the same time as the sensitive version is submitted to the CMA. Unless otherwise specified in writing by the CMA, it must also send the CMA by no later than the end of the working day following the day of submission of the sensitive version of the application for suspension a table setting out the applicant's reasons for treating each item or category of information as sensitive information.

7.5 The applicant must send GEMA and any other parties to the appeal a copy of the application for suspension at the same time as it is sent to the CMA.

7.6 The applicant must send:

- (a) to any other persons as appear to the applicant to be affected by the application for suspension a non-sensitive version of that application, including any evidence and documents provided pursuant to Rule 7.2(j)(ii) and (iii) unless the applicant has already served that evidence and documents on them; and
- (b) to the CMA and GEMA, a list of the names and contact information, including email and physical addresses, of those persons to whom the documents referred to in Rule 7.6(a) have been sent;

¹⁹ Paragraph 15(1) of the Schedule provides that a 'statement of truth' in relation to the production of a document by a person, means a statement that the person producing the document believes the facts stated in the document to be true.

by the end of the first working day following the date of submission of the application for suspension.

- 7.7 If the CMA considers that the application for suspension is incomplete, or is insufficiently clear, it may take this into account in considering whether to make a direction.
- 7.8 The CMA will publish the non-sensitive version of an application for suspension required under Rule 7.2 as soon as reasonably practicable following receipt.
- 7.9 The CMA may consider an application for suspension, with or without a hearing, and may hold any such hearing either of its own motion or on application. 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 any such other persons as it considers appropriate.
- 7.10 Before determining whether to grant an application for suspension, the CMA must give GEMA an opportunity to make representations about the matter.²⁰ The CMA will give directions for further steps in the disposal of the application, including directions as to the submission of further evidence and hearings.
- 7.11 The CMA will notify the parties to the appeal and any such other persons as it considers appropriate of its decision and reasons.
- 7.12 The CMA will publish a non-sensitive version of its decision on its website soon as reasonably practicable after it is made.

²⁰ Paragraph 3(5) of the Schedule.

8. Response

- 8.1 Where GEMA wishes to make representations or observations to the CMA about the decision in respect of which permission to appeal has been granted, GEMA's reasons for that decision, or the grounds on which the appeal is brought against that decision, it must provide its response (**response**) to the CMA within 15 working days following the day on which the last application for permission to appeal is made.²¹
- 8.2 Any GEMA response must contain:
- (a) a statement comprising
 - (i) the following details, unless otherwise specified in writing by the CMA:
 - (1) name and contact information (including an email and physical address) for GEMA;
 - (2) where applicable, the name and contact information (including an email and physical address) for GEMA's legal representatives; and
 - (3) the email address for the purpose of GEMA receiving service of documents;
 - (ii) a statement in response,
 - (1) identifying the facts and reasons as to whether and if so why the appeal should not succeed and, or alternatively, whether and if so why the relief sought should not be allowed:
 - (A) indicating the specific part(s) of the notice of appeal to which each part of the response relates; and
 - (B) explaining the relevance of any evidence or documents appended to the response to each part of the response, including in both (A) and (B) by reference to paragraph numbers where relevant; and
 - (2) identifying any matters, which in the belief of GEMA are matters to which GEMA was unable to have regard in reaching its decision and whether they are matters to which GEMA would have been entitled to have regard in reaching its decision had it had the opportunity of doing so; and

²¹ Paragraphs 4(1) and 4(2) of the Schedule.

- (b) a bundle of supporting documentation comprising:
 - (i) any evidence on which GEMA wishes to rely in the form of witness statements or expert reports; and
 - (ii) any documents (or extracts of documents) to which GEMA believes the CMA should have regard in determining the appeal.

8.3 GEMA must verify the information contained in the response required under Rule 8.2(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 8.2(b) by a statement of truth.²²

8.4 Where GEMA considers that the response under Rule 8.2 contains sensitive information, GEMA must provide the CMA with a non-sensitive version at the same time as the sensitive version is submitted to the CMA. Unless otherwise specified in writing by the CMA, it must also send the CMA by no later than the end of the working day following the day of submission of the sensitive version of the response a table setting out the GEMA's reasons for treating each item or category of information as sensitive information.

8.5 GEMA must send to the appellant and any intervener a copy of the response²³ at the time of sending the response to the CMA.

8.6 GEMA must:

- (a) send a copy of the response to every appellant, intervener, and person who received a copy of the notice of appeal; and
- (b) provide the CMA with a list of the names and email and physical addresses of those persons to whom GEMA has sent the response;

by the end of the first working day following the date of submission of the response.

8.7 The CMA will publish the non-sensitive version of GEMA's response required under Rule 8.2(a) as soon as reasonably practicable following receipt.

²² Paragraph 15(1) of the Schedule provides that a 'statement of truth' in relation to the production of a document by a person, means a statement that the person producing the document believes the facts stated in the document to be true.

²³ Where appropriate, in accordance with Rule 11.

9. Intervention

9.1 Where the CMA has granted permission to appeal, it may on application give permission to intervene to any person who would have been entitled to seek permission to appeal.²⁴

9.2 Any person wishing to become a party to the appeal must apply for permission to intervene by giving a notice (**intervention notice**) to the CMA, within 20 working days following the day on which permission to appeal is applied for.²⁵

9.3 In considering whether to grant permission to intervene, or to do so subject to conditions, the CMA shall take account of all the circumstances including whether the intervention is compatible with meeting the overriding objective.²⁶

9.4 The application for permission to intervene must be contained in an intervention notice sent to the CMA. An intervention notice must contain:

(a) the applicant's main submission covering:

(i) the applicant's, and where applicable, the applicant's legal representatives'

(1) name; and

(2) contact information, which unless otherwise specified in writing by the CMA, should include an email and a physical address;

(ii) an email address, together with a physical address in the UK, for the purpose of receiving service of documents;

(iii) a statement of those interests of the intervener that it believes are materially affected by the decision under appeal, or a statement explaining why the intervener believes it is to be regarded as a body or association whose functions are or include representing persons in respect of interests of theirs that are materially affected by the decision;

²⁴ Paragraph 2 of the Schedule enables a person to ask the CMA for a direction allowing it to intervene in an appeal, either to support or oppose it. There are requirements as to standing, namely that the person is not the applicant for permission to appeal, but is a person who would have been entitled, at the time of the application for permission to appeal, to make his own application to the CMA for permission to bring an appeal against the decision in question (paragraph 2(2) of the Schedule).

²⁵ Paragraph 2(1) of the Schedule also provides that an intervention notice can be given within such longer period as an authorised member of the CMA may allow.

²⁶ Permission shall not be granted if it is considered that it would prevent the determination of the appeal within the applicable statutory timetable (paragraph 2(6) of the Schedule). The statutory timetable is that set out at paragraph 6 of the Schedule and covers the 30-day period and any extension to that period of not more than 10 more working days (where the CMA is satisfied that there are good reasons for an extension). A direction allowing a person to intervene does not allow the intervener to rely on grounds of appeal that are not contained in the appellant's application for permission to bring an appeal (paragraph 2(8)(a) of the Schedule).

- (iv) why the CMA should grant permission to intervene with reference to why doing so would further the achievement of the overriding objective;
 - (v) any representations the applicant wishes to make concerning whether permission to intervene should be granted subject to any conditions;
 - (vi) the applicant's statement of intervention, stating whether it supports or opposes the appeal, identifying the grounds of appeal in relation to which the intervention is made together with the facts and reasons on which the applicant relies, an explanation of the relevance of any evidence or documents appended in accordance with (b) below;
 - (vii) particulars of any matter, information or evidence to which the CMA should have regard in determining the application or appeal; and
 - (viii) a statement identifying which, if any, of the facts relied upon in the application for permission to intervene were in the applicant's belief not known to GEMA at the time of GEMA's decision and why they were not brought to the attention of GEMA before it made its decision;
- (b) a bundle of supporting documentation comprising:
- (i) any evidence on which the applicant wishes to rely in the form of witness statements or expert reports; and
 - (ii) any documents (or extracts of documents) to which the applicant believes the CMA should have regard in determining the appeal.

9.5 The applicant must verify the information contained in the main submission required under Rule 9.4(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 9.4(b) by a statement of truth.²⁷

9.6 Where the applicant considers that the application under Rule 9.4 contains sensitive information, the applicant must provide the CMA with a non-sensitive version at the same time as the sensitive version is submitted to the CMA. Unless otherwise specified in writing by the CMA, it must also send to the CMA by no later than the end of the working day following the day of submission of the sensitive version of the application for permission to intervene a table setting out the applicant's reasons for treating each item or category of information as sensitive information.

²⁷ Paragraph 15(1) of the Schedule provides that a 'statement of truth' in relation to the production of a document by a person, means a statement that the person producing the document believes the facts stated in the document to be true.

- 9.7 The applicant must send to the appellant and GEMA a copy of the application under Rule 9.4 at the time of sending the intervention notice to the CMA.
- 9.8 The applicant must send:
- (a) by the end of the first working day following the date of submission of the intervention notice:²⁸
 - (i) to any other persons as appear to the applicant to be affected by the decision appealed against a non-sensitive version of the intervention notice required under Rule 9.4; and
 - (ii) to the CMA, GEMA and the appellant, a list of the names and contact information, including email and physical addresses, of those persons to whom the non-sensitive version of the intervention notice has been sent under Rule 9.8(a)(i); and
 - (b) to the extent that GEMA has specified in writing to the applicant following receipt of the list provided under Rule 9.8(a)(ii) any additional persons who should be kept informed about the appeal, to such additional persons (and for information to the CMA), a non-sensitive version of the notice of appeal by the end of first working day following receipt by the applicant of such a request from GEMA.²⁹
- 9.9 The CMA will normally consider an application to intervene without a hearing.
- 9.10 The CMA may hold a hearing to decide whether to allow an intervention either of its own motion or on application. Notice of a hearing will be given to the person wishing to intervene, but will not normally be given to the parties to the appeal.
- 9.11 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.
- 9.12 If the CMA considers that the intervention notice is incomplete or is insufficiently clear, it may take this into account in considering whether to allow the intervention, or whether to allow the intervention subject to conditions.
- 9.13 The applicant and the parties will be notified of the CMA's decision.
- 9.14 The CMA will publish the non-sensitive version of the intervention notice and a non-sensitive version of the CMA's decision on whether to grant permission to

²⁸ Paragraph 2(4) of the Schedule provides that the applicant must send a copy of the notice and of information as may be required by appeal rules to (a) such persons (apart from GEMA) as appear to him to be affected by the decision appealed against; and

(b) such other persons as GEMA may require him to keep informed about his appeal.

²⁹ Paragraph 2(4)(b) of the Schedule.

intervene on the CMA's website as soon as reasonably practicable after the decision is made.

10. Withdrawal of application or summary determination

- 10.1 An appellant must notify the CMA in writing if it wishes to withdraw an appeal in its entirety or in part (either before or after permission to appeal is granted), or an application for suspension of GEMA's decision in its entirety or in part.
- 10.2 GEMA may apply to the CMA for a summary determination allowing the appeal.
- 10.3 Where a notification is made to the CMA under Rule 10.1 or 10.2, it must at the same time be sent to the other parties to the appeal.

11. Non-disclosure applications

11.1 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 the information contained within the document is sensitive information which should not be disclosed to that person, they may:

- (a) make a non-disclosure application to the CMA at the same time that they send the document to the CMA (unless otherwise specified in writing by the CMA). The non-disclosure application must include a table setting out the applicant's reasons for treating each item or category of information as sensitive information; and
- (b) pending the CMA's direction, excise the sensitive information from the relevant document sent in accordance with these Rules.

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 directions or make requests 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;³⁰
 - (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;³¹
 - (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;³²
 - (e) the appointment and instruction of experts, whether by the CMA 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 a person who gives oral evidence at a hearing;³³
 - (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);

³⁰ Paragraph 1(11) 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).

³¹ See paragraph 9 of the Schedule.

³² See paragraphs 8 and 10 of the Schedule.

³³ See paragraph 9(4) of the Schedule.

- (j) the disclosure or the production of documents, or classes of documents, or the supply of estimates, forecasts, returns or other information, between the parties to the appeal or to other persons (for example, persons whose interests are materially affected by GEMA's decision);³⁴
- (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 and requests.

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;
- (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 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 must explain why such submissions or the provision of such evidence are justified in the circumstances and why it was not possible to make such submissions or provide such evidence earlier in the appeal process. All such applications must be sent to all parties. 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 Rule 12.5.

³⁴ See paragraph 8 of the Schedule.

13. Non-compliance

- 13.1 If any party fails to comply with any direction given by the CMA under these Rules, the CMA may make such order as appears necessary to further the overriding objective.³⁵

³⁵ Rule 4 sets out the overriding objective. See also, paragraph 11 of the Schedule, Defaults in relation to evidence.

14. Appeal management conferences

- 14.1 The CMA may hold appeal management conferences with the parties to the appeal and any person invited under Rule 14.2 where it considers that to do so would further the overriding objective.
- 14.2 The CMA may invite any applicants or potential applicants for permission to intervene to the appeal management conferences.

15. Oral hearings

- 15.1 The procedure at a hearing will be determined by the CMA.³⁶
- 15.2 Hearings will be opened and directed by the chair of the CMA Group or by such other member of the CMA as is appropriate.
- 15.3 The CMA will decide the extent, if any, to which the parties are allowed at a hearing:
- (a) to be present or to be heard, in person or by their representatives;
 - (b) to cross-examine a person who gives oral evidence at a hearing; and
 - (c) otherwise to take part.
- 15.4 If no previous direction or other notification 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 and arguments at a hearing.
- 15.5 Subject to Rule 15.3, at a hearing a party may appear on its own behalf and/or may be represented by:
- (a) a qualified lawyer having a right of audience before a court in the UK; or
 - (b) such other person as the CMA allows.

³⁶ See paragraph 9 of the Schedule.

16. The production of documents, calling witnesses and the production of written statements

- 16.1 Where the CMA requires a person to produce a document, to attend and give evidence or to produce a written statement pursuant to paragraphs 8, 9 or 10 of the Schedule, it may provide a copy of the notice or other requirement to each party.

17. Determination

- 17.1 The CMA's order containing its determination with reasons will be provided to the parties to the appeal.^{37 38}
- 17.2 The CMA will publish a non-sensitive version of the order containing the CMA's determination with reasons on the appeal on its website as soon as reasonably practicable after it is made.³⁹

³⁷ Section 175(9) of the Act.

³⁸ Paragraph 6 of the Schedule.

³⁹ Section 175(9)(e) of the Act.

18. The CMA's powers and duties on determination of an appeal

18.1 Where the CMA allows an appeal, it must do one or more of the following:⁴⁰

- (a) quash the decision appealed against;
- (b) remit the matter to GEMA for reconsideration and determination in accordance with the directions given by the CMA;
- (c) where the CMA quashes the refusal of a consent, give directions to GEMA, and to such other persons as it considers appropriate, for securing that the relevant condition has effect as if the consent had been given.

18.2 Where the CMA is considering appeals or parts of appeals together,⁴¹ it may elect to make a single determination in relation to two or more appeals in part or in their entirety.

18.3 Where the CMA does not allow the appeal, it must confirm the decision appealed against.⁴²

⁴⁰ Section 175(6) of the Act.

⁴¹ Paragraph 1(11)(c) of the Schedule.

⁴² Section 175(5) of the Act.

19. Costs

CMA costs

- 19.1 Where the CMA determines an appeal, it must make an order requiring the payment to the CMA of the costs incurred by the CMA in connection with the appeal, in accordance with paragraph 13 of the Schedule. Such an order must require those costs to be paid:
- (a) where the appeal is allowed, by GEMA; and
 - (b) where the appeal is dismissed, by the appellant(s).⁴³
- 19.2 Before making any order under Rule 19.1, the CMA will provide GEMA and the appellant(s) 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.

Inter partes costs

- 19.3 Where the CMA determines an appeal, it may also make such order as it thinks fit for requiring a party⁴⁴ to make payments to another party in respect of costs incurred by that other party in connection with the appeal.⁴⁵
- 19.4 Any party seeking an award of costs in its favour should file a statement of costs when invited by the CMA, which should be sent to any party who may become liable to pay those costs. Where a party makes representations to the CMA in relation to the award of costs, irrespective of whether it also seeks to claim its costs, a non-sensitive version of these representations should be sent to the other parties to the appeal.
- 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;

⁴³ Paragraph 13(2) and (3) of the Schedule. If there is more than one appellant, the order (a) may provide that only such one or more of the appellants as may be specified in the order is to be liable for the costs, and (b) may determine the proportions in which the appellants so specified are to be so liable (paragraph 13(3) of the Schedule).

⁴⁴ A party includes an intervener who has been granted permission to become a party to the appeal for the purpose of supporting the appeal or opposing it (paragraph 15 of the Schedule).

⁴⁵ Paragraph 13(5) of the Schedule. For these purposes, references to costs incurred in connection with the appeal are treated as costs reasonably incurred in connection with that appeal.

(ii) whether it was reasonable for a party to raise, pursue or contest a particular issue;

(iii) the manner in which a party has pursued its case or a particular aspect of its case;

(b) whether a party has succeeded;

(c) the proportionality and reasonableness of the costs claimed;

(d) whether any chilling effects would result from a costs order on GEMA.

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.

Publication of final determination on costs

19.7 The CMA will normally publish non-sensitive versions of the final determination on costs and costs order 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 the CMA.

21. Filing of documents

- 21.1 All documents sent to the CMA or any other person should be clearly marked to identify information which should be treated as sensitive information. The absence of such marking shall be treated as denoting that the information should not be treated as sensitive information.
- 21.2 It would assist the CMA if, when submitting documents, parties confirm in a cover email which documents contain confidential text (which has been highlighted) and which should be considered non-sensitive and, where possible, indicate this in a header on each document.
- 21.3 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:
- (a) provided in an electronic, searchable and machine-readable format and appropriately indexed; and
 - (b) sent via email to appeals@cma.gov.uk.
- 21.4 If the CMA informs a person that it requires hard copy documents, unless notified otherwise 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.