

87th UPDATE – PRACTICE DIRECTION AMENDMENTS

The insertion of a new Practice Direction supplementing the Civil Procedure Rules 1998 is made by the Master of the Rolls under the powers delegated to him by the Lord Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and is approved by Sir Oliver Heald, Minister of State, by the authority of the Lord Chancellor.

The new Practice Direction 31C comes into force in accordance with paragraph A and is subject to the transitional provision in paragraph B.

The Right Honourable The Lord Etherton
Master of the Rolls and Head of Civil Justice

Signed by authority of the Lord Chancellor:

Sir Oliver Heald
Minister of State
Ministry of Justice

COMMENCEMENT – PRACTICE DIRECTION 31C

A) Practice Direction 31C comes into force on the same day and immediately after the coming into force of the Claims in respect of Loss or Damage arising from Competition Infringements (Competition Act 1998 and Other Enactments (Amendment)) Regulations 2017.

TRANSITIONAL PROVISION – PRACTICE DIRECTION 31C

B) Practice Direction 31C applies to applications for disclosure or inspection of evidence made in relation to a claim where the first proceedings in relation to that claim were brought before the court on or after the in force date of the Practice Direction.

**PRACTICE DIRECTION 31C – DISCLOSURE AND INSPECTION IN
RELATION TO COMPETITION CLAIMS**

- 1) After Practice Direction 31B, insert new Practice Direction 31C – Disclosure and Inspection in relation to Competition Claims, as set out in the Schedule to this Update.

Schedule

**“PRACTICE DIRECTION 31C – DISCLOSURE AND INSPECTION IN
RELATION TO COMPETITION CLAIMS**

Title	Number
Disclosure and inspection of evidence in relation to a competition claim	Para 1
Disclosure and inspection of evidence in relation to a competition claim – evidence in the file of the competition authority	Para 2

1 Disclosure and inspection of evidence in relation to a competition claim

1.1 In this Practice Direction-

(a) “the 1998 Act” means the Competition Act 1998;

(b) “competition claim” has the same meaning as in paragraph 2(2) of Schedule 8A to the 1998 Act;

(c) “Damages Directive” means Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of competition law provisions of the Member States and of the European Union;

(d) “reasoned justification” means a statement containing reasonably available facts and evidence sufficient to support the plausibility of the claim for damages to which the relevant evidence relates;

(e) “relevant evidence” means evidence that a person is seeking to have disclosed or is seeking to inspect that relates to a competition claim.

1.2 Where a person seeks disclosure or inspection of relevant evidence, that person must apply in accordance with Part 23.

1.3 The person who has control of the relevant evidence must be named as a respondent to the application and must be served with a copy of the application notice.

1.4 The application must include a description of the evidence that is sought that is as precise and narrow as possible on the basis of the reasoned justification.

1.5 The court may only permit disclosure or inspection that is proportionate.

1.6 In order to determine proportionality, the court must in particular consider the factors set out in article 5(3) of the Damages Directive.

1.7 Where this paragraph applies, Part 31 applies to the extent that it is consistent with this paragraph.

2 Disclosure and inspection of evidence in relation to a competition claim - evidence in the file of the competition authority

2.1 In this paragraph-

(a) “cartel leniency statement” has the same meaning as in paragraph 4(4) of Schedule 8A to the 1998 Act;

(b) “competition authority” has the same meaning as in paragraph 3(1) of Schedule 8A to the 1998 Act;

(c) “competition authority evidence” means evidence in the file of a competition authority;

(d) “investigation materials” has the same meaning as in paragraph 3(3) of Schedule 8A to the 1998 Act;

(e) “settlement submission” has the same meaning as in paragraph 5(1) of Schedule 8A to the 1998 Act.

2.2. This paragraph applies where the application for disclosure or inspection made under paragraph 1 relates to relevant evidence that includes competition authority evidence.

2.3. This paragraph applies to the competition authority evidence in addition to paragraph 1.

2.4. Where the competition authority would not otherwise be named as a respondent under paragraph 1, the competition authority must be named as a respondent and served with a copy of the application notice.

2.5 If, after the application has been made, the applicant or respondent becomes aware that the application for disclosure or inspection made under paragraph 1 relates to evidence that includes competition authority evidence, the applicant or respondent (as appropriate) must-

(a) notify the court and the other parties of that fact as soon as practicable; and

(b) if the competition authority has not otherwise been named as a respondent-

(i) apply for the competition authority to be joined as a respondent; and

(ii) serve the competition authority with a copy of the application for disclosure, within 7 days after the date of the application to the court.

2.6 Where the court receives notification under paragraph 2.5, the court may give such other directions as it considers appropriate.

2.7 In order to determine the proportionality of disclosure or inspection, in addition to the requirements of paragraph 1.6, the court must also consider the factors set out in article 6(4) of the Damages Directive.

2.8. Where the competition authority evidence includes a competition authority's investigation materials, the application for disclosure or inspection must be supported by evidence that the competition authority has closed the investigation to which those materials relate.

2.9. Where the application is for an order requiring the competition authority to disclose or allow inspection of competition authority evidence, the application for disclosure must be supported by evidence that no other person is reasonably able to provide that evidence.

2.10. Any application under paragraph 4(7) or 5(3) of Schedule 8A to the 1998 Act for the inspection by the court of an alleged cartel leniency statement or settlement submission must be made in accordance with Part 23.

(Paragraph 28 of Schedule 8A to the 1998 Act provides that the court must not make a disclosure order in respect of a settlement submission which has not been withdrawn or a cartel leniency statement, whether or not it has been withdrawn.)

2.11. Where an application is made under paragraph 2.10 and the competition authority or the author of the alleged cartel leniency statement or

settlement submission would not otherwise be a party, they must be named as respondents to the application and must be served with a copy of the application notice.

2.12 Copies of the alleged cartel leniency statement or settlement submission and the content of the alleged statements or submissions must not be served on any parties other than the competition authority and the author of the alleged cartel leniency settlement or settlement submission.

(Paragraphs 4(8) and 5(4) of Schedule 8A place restrictions on the courts' ability to seek assistance to help determine whether information is a cartel leniency statement or whether a document is a settlement submission.)

2.13. Any hearings held in relation to the application under paragraph 2.10 must be in private and may only be attended by-

(a) the competition authority;

(b) the author of the statement or submission in question.

2.14. Rules 5.4B and 5.4C do not apply in relation to cartel leniency settlements and settlement submissions.”.