

## PRACTICE DIRECTION

# COMPETITION LAW – CLAIMS RELATING TO THE APPLICATION OF ARTICLES 81 AND 82 OF THE EC TREATY AND CHAPTERS I AND II OF PART I OF THE COMPETITION ACT 1998

## Scope and Interpretation

- 1.1** This practice direction applies to any claim relating to the application of –
- (a) Article 81 or Article 82 of the Treaty establishing the European Community; or
  - (b) Chapter I or Chapter II of Part I of the Competition Act 1998.
- 1.2** In this practice direction –
- (a) ‘the Act’ means the Competition Act 1998;
  - (b) ‘the Commission’ means the European Commission;
  - (c) ‘the Competition Regulation’ means Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty;
  - (d) ‘national competition authority’ means –
    - (i) the Office of Fair Trading; and
    - (ii) any other person or body designated pursuant to Article 35 of the Competition Regulation as a national competition authority of the United Kingdom;
  - (e) ‘the Treaty’ means the Treaty establishing the European Community.

## Venue

- 2.1** A claim to which this Practice Direction applies –
- (a) must be commenced in the High Court at the Royal Courts of Justice; and
  - (b) will be assigned to the Chancery Division, unless it comes within the scope of rule 58.1(2), in which case it will be assigned to the Commercial Court of the Queen’s Bench Division.
- 2.2** Any party whose statement of case raises an issue relating to the application of Article 81 or 82 of the Treaty, or Chapter I or II of Part I of the Act, must –
- (a) state that fact in his statement of case; and
  - (b) apply for the proceedings to be transferred to the Chancery Division at the Royal Courts of Justice, if they have not been commenced there, or in the Commercial or Admiralty Courts; or
  - (c) apply for the transfer of the proceedings to the Commercial Court, in accordance with rules 58.4(2) and 30.5(3). If such application is refused, the proceedings must be transferred to the Chancery Division of the High Court at the Royal Courts of Justice.
- 2.3** Rule 30.8 provides that where proceedings are taking place in the Queen’s Bench Division (other than proceedings in the Commercial or Admiralty Courts), a district registry of the High Court or a county court, the court must transfer the proceedings to the Chancery Division at the Royal Courts of Justice if the statement of case raises an issue relating to the application of Article 81 or 82, or Chapter I or II. However, if any such proceedings which have been commenced in the Queen’s Bench Division or a Mercantile Court fall within the scope of

rule 58.1(2), any party to those proceedings may apply for the transfer of the proceedings to the Commercial Court, in accordance with rules 58.4(2) and 30.5(3). If the application is refused, the proceedings must be transferred to the Chancery Division of the High Court at the Royal Courts of Justice.

- 2.4** Where proceedings are commenced in or transferred to the Chancery Division at the Royal Courts of Justice in accordance with this paragraph, that court may transfer the proceedings or any part of the proceedings to another court if –
- (a) the issue relating to the application of Article 81 or 82, or Chapter I or II, has been resolved; or
  - (b) the judge considers that the proceedings or part of the proceedings to be transferred does not involve any issue relating to the application of Article 81 or 82, or Chapter I or II.

(Rule 30.3 sets out the matters to which the court must have regard when considering whether to make a transfer order.)

### **Notice of proceedings**

- 3.** Any party whose statement of case raises or deals with an issue relating to the application of Article 81 or 82, or Chapter I or II, must serve a copy of the statement of case on the Office of Fair Trading at the same time as it is served on the other parties to the claim (addressed to the Director of Competition Policy Co-ordination, Office of Fair Trading, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX).

### **Case management**

- 4.1** Attention is drawn to the provisions of article 15.3 of the Competition Regulation (co-operation with national courts), which entitles competition authorities and the Commission to submit written observations to national courts on issues relating to the application of Article 81 or 82 and, with the permission of the court in question, to submit oral observations to the court.
- 4.1A** A national competition authority may also make written observations to the court, or apply for permission to make oral observations, on issues relating to the application of Chapter I or II.
- 4.2** If a national competition authority or the Commission intends to make written observations to the court, it must give notice of its intention to do so by letter to Chancery Chambers at the Royal Courts of Justice (including the claim number and addressed to the Court Manager, Room TM 6.06, Royal Courts of Justice, Strand, London WC2A 2LL) at the earliest reasonable opportunity.
- 4.3** An application by a national competition authority or the Commission for permission to make oral representations at the hearing of a claim must be made by letter to Chancery Chambers (including the claim number and addressed to the Court Manager, Room TM 6.06, Royal Courts of Justice, Strand, London WC2A 2LL) at the earliest reasonable opportunity, identifying the claim and indicating why the applicant wishes to make oral representations.
- 4.4** If a national competition authority or the Commission files a notice under paragraph 4.2 or an application under paragraph 4.3, it must at the same time serve a copy of the notice or application on every party to the claim.

- 4.5** Any request by a national competition authority or the Commission for the court to send it any documents relating to a claim should be made at the same time as filing a notice under paragraph 4.2 or an application under paragraph 4.3.
- 4.6** Where the court receives a notice under paragraph 4.2 it may give case management directions to the national competition authority or the Commission, including directions about the date by which any written observations are to be filed.
- 4.7** The court will serve on every party to the claim a copy of any directions given or order made –
- (a) on an application under paragraph 4.3; or
  - (b) under paragraph 4.6.
- 4.8** In any claim to which this practice direction applies, the court shall direct a pre-trial review to take place shortly before the trial, if possible before the judge who will be conducting the trial.

### **Avoidance of conflict with Commission decisions**

- 5.1** In relation to claims which raise an issue relating to the application of Article 81 or 82 of the Treaty, attention is drawn to the provisions of article 16 of the Competition Regulation (uniform application of Community competition law).
- 5.2** Every party to such a claim, and any national competition authority which has been served with a copy of a party's statement of case, is under a duty to notify the court at any stage of the proceedings if they are aware that –
- (a) the Commission has adopted, or is contemplating adopting, a decision in relation to proceedings which it has initiated; and
  - (b) the decision referred to in (a) above has or would have legal effects in relation to the particular agreement, decision or practice in issue before the court.
- 5.3** Where the court is aware that the Commission is contemplating adopting a decision as mentioned in paragraph 5.2(a), it shall consider whether to stay the claim pending the Commission's decision.

### **Judgments**

- 6.** Where any judgment is given which decides on the application of Article 81 or Article 82 of the Treaty, the judge shall direct that a copy of the transcript of the judgment shall be sent to the Commission.
- Judgments may be sent to the Commission electronically to [comp-amicus@cec.eu.int](mailto:comp-amicus@cec.eu.int) or by post to the European Commission – DG Competition, B-1049, Brussels.

