

## RULES OF PROCEDURE FOR THE CONDUCT AND DISPOSAL OF ENERGY LICENCE MODIFICATION APPEALS

### Consultation Document

#### Introduction

This consultation document seeks views on the draft Energy Licence Modification Appeals Rules (the Draft Rules) the Competition Commission (the CC) proposes to make for appeals against a decision of the Gas and Electricity Markets Authority<sup>1</sup> (GEMA, which is the governing entity of Ofgem) to modify a condition of a gas or electricity licence. This appeal framework has not yet come into force. It is provided for by the draft *Electricity & Gas (Internal Markets) Regulations 2011* (Draft Regulations), which were laid before Parliament on 18 July 2011 and are expected to be debated by both Houses during October.<sup>2</sup>

The Draft Regulations make amendments to the electricity and gas legislation (in particular the Gas Act 1986, the Electricity Act 1989 and the Utilities Act 2000) and licences granted under it in order to implement and address matters arising out of the European Union (EU) Third Energy Package,<sup>3</sup> concerning common rules for the internal market in electricity and gas.

The Draft Regulations would, among other things, alter the existing procedure for modifying conditions of electricity and gas licences and create a new appeal mechanism in respect of such licence modifications (which will replace the current licence modification reference mechanism). Under the amendments made by the Draft Regulations, an appeal against a decision of Ofgem to amend the conditions of a licence may be made to the CC by the licence holders, certain materially affected persons and the National Consumer Council (NCC) and provision is made for the CC to make procedural rules for such appeals.

This consultation is being carried out to give those affected by or interested in the mechanisms being set up by the Draft Regulations the opportunity to see and comment on a draft of such procedural rules.

The Draft Rules seek to ensure that the CC has flexibility to manage appeals justly and expeditiously, having regard to the interests of the parties to the appeal, interested third parties and the statutory time frames (see Draft Rule 4—Overriding objective).

The CC welcomes comments on the Draft Rules either of a general nature or on any specific points.

This consultation document can be found on the CC's website, [www.competition-commission.org.uk](http://www.competition-commission.org.uk).

#### Responses

You can respond to this consultation:

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<sup>1</sup> As the Authority is more commonly known and referred to as Ofgem, the CC will refer to the Authority as Ofgem (rather than GEMA) for the purposes of this consultation document.

<sup>2</sup> The Draft Regulations is subject to an affirmative resolution procedure (which means that it does not become law unless approved by both Houses).

<sup>3</sup> Third Package Electricity Directive 2009/72/EC; Third Package Gas Directive 2009/73/EC.

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Southampton Row  
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When responding, please say whether you are responding as an individual or representing the views of an organization. If responding on behalf of an organization, please make it clear whom the organization represents.

## **Enquiries**

If you have any questions relating to this consultation, either email as above or telephone Clare Fawcett on 020 7271 0342.

## **Closing date**

Responses should be received by 5pm on Friday 4 November 2011.

A summary of the consultation and outcome will be provided on the CC's website.

## **Guidance on the appeals process**

The CC expects to publish guidance to assist parties to appeals which has regard both to the new statutory framework and its rules.

## **Confidentiality**

The CC may wish to publish your response to this consultation. If you do not want all or part of your response, or your name, made public, please state this clearly in your response.

## **Background to the Draft Regulations**

1. The EU Third Energy Package requires, among other things, that Member States ensure that national regulatory authorities are able to take autonomous decisions in relation to specified regulatory tasks. Member States must also ensure that suitable mechanisms exist at a national level under which a party affected by a decision of a regulatory authority has a suitable right of appeal to a body independent of the parties involved and of any Government.
2. The Draft Regulations implement the EU Third Energy Package in Great Britain (they do not extend to Northern Ireland). Ofgem is designated as the regulatory authority for Great Britain for the purposes of the relevant directives. The Draft Regulations enable Ofgem to modify licence conditions and sets out the process that Ofgem must adopt in making modifications. The new licence modification procedures provide for appeal of Ofgem's licence modification decisions to the CC.
3. The purpose of the appeal system created by the Draft Regulations is to provide a fair and expeditious review by the CC of Ofgem's decision to modify a condition in a gas or electricity licence.

4. Most of the procedures for regulating appeals, including the time periods for appealing and completing them and provision for the payment of costs by the parties to the appeal, will be set out in the Electricity Act 1989 and Gas Act 1986 (as amended by the Draft Regulations). However, these Acts will also give the CC the power to supplement these provisions by making rules of procedure regulating the conduct and disposal of appeals.
5. The CC has therefore prepared Draft Rules that it would propose to make under these powers to manage its review of Ofgem's decisions under the new appeals processes. The Draft Rules are annexed to this consultation document and are to be read together with Part 9 and Schedules 5 and 6 of the Draft Regulations.

## Summary of the Licence Modification Appeal Framework

The key features of the appeal framework are these.

6. *It is an appeal to the CC against Ofgem's decision to modify a condition in a gas or electricity licence and may be brought by:*
  - a relevant licence holder;<sup>4</sup>
  - any other person who holds a specified type of licence whose interests are materially affected by the decision;
  - a qualifying body or association<sup>5</sup> representing materially affected licence holders;
  - the NCC representing consumers whose interests are materially affected by the decision.
7. *In determining an appeal, the CC must act within the same statutory framework Ofgem operates within:* the CC may allow the appeal only to the extent that it is satisfied that Ofgem failed to have proper regard to, or give appropriate weight to, its duties; that the decision was based, wholly or partly, on an error of fact or was wrong in law or a modification of the licence failed to achieve the effect intended. To the extent that the CC does not allow the appeal, it must confirm the decision appealed against.<sup>6</sup>
8. *The CC's powers in allowing an appeal are as follows:*
  - In relation to a price control decision,<sup>7</sup> the CC can quash the decision or relevant portion of the decision and either remit it back to Ofgem for reconsideration and determination, in accordance with any directions given by the CC, or substitute its own decision and give any directions to Ofgem or any other party to the appeal.<sup>8</sup>

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<sup>4</sup> 'Relevant licence holder' is defined in the Draft Regulations as, in relation to the modification of standard conditions, the holder of a licence of that type which (i) is to be modified by the inclusion of any new standard condition, or (ii) includes any standard conditions to which the modifications relate and which are in effect at the time specified by Ofgem for the making of representations in relation to the proposed modification; or, in relation to the modification of a condition of a particular licence (other than a standard condition), the holder of that particular licence.

<sup>5</sup> The Draft Regulations define a qualifying body or association as a body or association whose functions are or include representing persons in respect of their interests which are materially affected by the decision in question.

<sup>6</sup> Draft Regulation Part 9, sections 41(7) and 43(8).

<sup>7</sup> The Draft Regulations provide that a decision is a price control decision, in relation to the modification of a condition of a licence, if the purposes of the condition is, in the CC's opinion, to limit or control the charges on, or the revenue of, the holder of the licence.

<sup>8</sup> Where that price control decision concerns special conditions, any imposition of a decision by the CC will concern the conditions of that particular licensee only.

- In relation to any other decision, the CC can quash the decision or relevant portion of the decision and remit it back to Ofgem for reconsideration and determination, in accordance with any directions given by the CC.
9. *Appellants must obtain the CC's permission to bring an appeal.* The CC may only refuse permission if:
- with the exception of appeals brought by relevant licence holders, the interests of the holders of the type of licence (whether they are appealing directly or being represented by a qualifying body or association) or where an appeal is brought by the NCC, the interests of consumers, are not materially affected by the decision; or
  - in relation to any appeal, the appeal is brought for reasons that are trivial or vexatious or has no reasonable prospect of success.
10. *The CC has strict time frames for reaching its decision:*
- the CC has six months to determine an appeal relating to a price control decision and four months to determine an appeal relating to any other decision;
  - where the CC receives representations on timing from a party to the appeal and it is satisfied that there are special reasons why the determination cannot be made within the time allowed, it may extend the deadline for determination by no more than one month;<sup>9</sup> and
  - where the CC takes a decision to extend the deadline allowed for the determination, it will inform the parties to the appeal and publish this decision and the updated administrative timetable on the CC's website.<sup>10</sup>

## **Key points on the Draft Rules**

11. The CC considers it important that the appeals process is managed in a way that is fair and efficient within the time periods prescribed by the Draft Regulations having regard to the circumstances of the individual appeal. It therefore proposes to include in the Draft Rules an Overriding Objective in Draft Rule 4.
12. The Draft Rules contemplate the CC taking an appeal management approach to appeals (see in particular Draft Rule 13). This should enable the CC to deal appropriately and flexibly with the interests both of the parties to an appeal and third parties where they are raised having regard to the particular circumstances of any particular appeal.
13. With respect to third parties more generally, the Draft Rules would require notification to the relevant licence holders who are not appellants that a Notice of Appeal has been lodged. In addition, all parties who file representations or observations with the CC would be required to provide a full non-confidential version of these for publication on the CC's website.<sup>11</sup> This should allow all interested third parties to see the substance of the appeal that has been brought and to decide whether to participate.

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<sup>9</sup> The CC will take account of the representations made by parties to the appeal in taking any decision in relation to an extension of time. However, the final decision rests with the CC.

<sup>10</sup> Draft Regulation Part 9, sections 41(7) and 43(8).

<sup>11</sup> Draft Rules 5.5, 9.2, 10.2.3 and 11.2.3.

14. The CC considers that the scope of the permission stage is intended to be relatively limited and would expect, therefore, to normally deal with this stage without a hearing or involvement of third parties. However, it will be able to hear from them if the circumstances require. The Draft Rules also make provision to enable the CC to hear from relevant licence holders in relation to any application for suspension of Ofgem's decision.
15. Where permission to bring an appeal is given, interested third parties who would have had standing to appeal Ofgem's decision (such as, for example, a relevant licence holder) will be given the opportunity to make representations or observations to the CC. This will enable the CC to take account of the evidence and arguments of interested third parties in reaching its decision.

## **DRAFT COMPETITION COMMISSION ENERGY LICENCE MODIFICATION APPEALS RULES**

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# Competition Commission Energy Licence Modification Appeals Rules

## 1. Introduction, citation and commencement

- 1.1 These Rules are made in exercise of the powers conferred by paragraph 11 of Schedule 4A to the Gas Act 1986 and Schedule 5A to the Electricity Act 1989 for the purpose of regulating the conduct and disposal of appeals under section 23B of the Gas Act 1986 and section 11C of the Electricity Act 1989.<sup>1</sup>
- 1.2 Before making these Rules the Commission<sup>2</sup> consulted such persons as it considered appropriate.
- 1.3 These Rules are to be known as the 'Competition Commission Energy Licence Modification Appeals Rules 2011'.
- 1.4 These Rules shall have effect from the day the Electricity and Gas (Internal Markets) Regulations 2011 [SI No ] come into force.

## 2. Interpretation

- 2.1 In these Rules:

**'the Acts'** means the Electricity Act 1989 and the Gas Act 1986;

**'the Authority'** means the Gas and Electricity Markets Authority;

**'electronic form'** means transmitted electronically such that the document so transmitted is capable of being reproduced in legible form;

**'interested third party'** means any person, qualifying body or association referred to in section 11C(2) of the Electricity Act 1989 or section 23B(2) of the Gas Act 1986 (as the case may be) who is not an appellant;

**'relevant licence holder'** has the same meaning as in section 11A(10) of the Electricity Act 1989 and section 23(10) of the Gas Act 1986;

**'the Schedules'** means Schedule 5A to the Electricity Act 1989 and Schedule 4A to the Gas Act 1986; and

**'sensitive information'** means information which is either:

- (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 interests of that individual.

- 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.

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<sup>1</sup> 23C and 11D of the Acts exclude energy licence modification appeals from the general functions of the Commission and apply the provisions of the Schedules. The Schedules make certain provision for the procedure for energy licence appeals and also empower, in paragraph 11, the Commission to make these rules.

<sup>2</sup> Is defined as Competition Commission (paragraph 13(1) of the Schedules).

2.3 Words defined by paragraph 13 of the Schedules have the same meaning in these Rules as they have in the Schedules.

### **3. Application of rules**

3.1 These Rules are supplementary to the provisions of the Acts, which confer functions on the Commission. In the event of any conflict between the Rules and the Acts, the latter shall prevail.

### **4. Overriding objective**

4.1 The overriding objective of these Rules is to enable the Commission to dispose of appeals fairly and efficiently within the time periods prescribed by the Acts. The Commission will apply these Rules so as to give effect to the overriding objective.

4.2 Parties to the appeal and interested third parties must assist the Commission to further the overriding objective.

### **5. Notice of appeal**

5.1 Any person who wishes to make an application for permission to bring an appeal must send a notice, marked Application to Appeal, Energy Licence Modification, to the Commission within the period specified in paragraph 1(3) of the Schedules.

5.2 The appellant must state in the notice of appeal:

5.2.1 the decision of the Authority the appellant wishes to appeal and the date it was published;

5.2.2 the grounds of appeal on which the appellant is relying;

5.2.3 a statement of the relief which the appellant is seeking and any directions necessary to give effect to that relief;

5.2.4 the capacity in which the appellant is making the application;

5.2.5 if the appellant is not the relevant licence holder, a description of the interests that the appellant believes are materially affected by the decision; and

5.2.6 where applicable a statement as to why the appellant believes it is to be regarded as a body or association whose functions include the representation of persons whose interests are materially affected in respect of such interests.

5.3 The notice of appeal must include the following information:

5.3.1 a statement of the facts and reasons supporting each ground of appeal on which the appellant is relying;

5.3.2 any written evidence which the appellant wishes to adduce in support of the appeal;

5.3.3 a statement identifying which, if any, of the facts relied upon were in the belief of the appellant not known to the Authority at the time of the decision and why they were not brought to the attention of the Authority before it made the decision;

- 5.3.4 a copy of the decision to be appealed;
  - 5.3.5 the applicant's name and address and, where applicable, the name and address of the applicant's solicitors and, or alternatively, the name and address of the applicant's other legal representatives; and
  - 5.3.6 an address for service in the United Kingdom.
- 5.4 The appellant must verify the notice of appeal by a statement of truth.<sup>3</sup>
- 5.5 Where the appellant considers that any of the statements or evidence required by Rule 5.3 contain sensitive information, the appellant must provide, with the notice of appeal, a non-confidential version of the statements or evidence, with any sensitive information redacted, in a form suitable for publication on the Commission website.
- 5.6 At the time of making an application for permission to appeal the appellant must send to the Authority:
- 5.5.1 a copy of the notice of appeal; and
  - 5.5.2 a copy of any written evidence adduced in support of the appeal.
- 5.7 At the time of making an application for permission to appeal the appellant must send to any relevant licence holders who are not parties to the appeal a non-confidential notice setting out the matters required in Rule 5.2.
- 5.8 If the Commission considers that the application for permission 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.

## **6. Withdrawal of appeal**

- 6.1 An appellant may apply to the Commission for permission to withdraw the application for permission to appeal, the application for the suspension of the decision under appeal, or the appeal.
- 6.2 The Authority may apply to the Commission for a summary determination allowing the appeal.
- 6.3 When the Commission grants permission for an appeal to be withdrawn, or issues a summary determination, it may make an order as to costs.

## **7. Permission to appeal**

- 7.1 The Commission will normally consider applications for permission to appeal without a hearing.
- 7.2 The Authority must make any representations or observations it wishes to make about an application for permission to bring an appeal with the Commission in writing within the period specified in paragraph 3(2) of the Schedules.

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<sup>3</sup> In relation to the production of a statement or provision of information by a person, a statement of truth is defined as a statement that the person believes the facts stated in the statement or information to be true (paragraph 13(1) of the Schedules).

- 7.3 In making its decision on an application for permission to appeal, the Commission must have regard to any representations or observations made by the Authority.
- 7.4 The Commission may hold a hearing to determine an application for permission, either of its own motion or on application. Where the Commission decides to hold a permission hearing the Commission will give notice to the parties and such other persons as it considers appropriate.
- 7.5 If the Commission grants permission to appeal, it must notify the parties and any relevant licence holders of its decision and of any conditions subject to which the decision to grant permission is made.
- 7.6 If the Commission refuses permission to appeal, it must notify the parties and any relevant licence holders of its decision and its reasons.
- 7.7 The Commission will publish on its website, as soon as reasonably practicable after making its decision, and subject to the exclusion of sensitive material, its decision, its reasons and any relevant conditions.

## **8. Consolidation**

- 8.1 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 Commission are closely related, the Commission may order that the appeals, in whole or part, should be consolidated and considered or heard together.

## **9. Application for suspension of decision**

- 9.1 The Commission may consider an application for suspension of the decision under appeal with or without a hearing, and may hold any such hearing either of its own motion or on application.
- 9.2 Where an appellant makes an application for suspension of the decision under appeal the appellant must provide with this application a non-confidential notice stating that the application has been made and the basis of the application, with any sensitive information redacted and in a form suitable for publication on the Commission's website.
- 9.3 At the time of making an application for suspension of the decision under appeal the appellant must send to any relevant licence holders who are not parties to the appeal a non-confidential notice informing them of the fact that the application has been made and the basis of the application.
- 9.4 The Authority must make any representations or observations it wishes to make about an application for suspension of the decision under appeal with the Commission in writing within the period specified in paragraph 3(2) of the Schedules.
- 9.5 Any relevant licence holder must lodge any representations or observations to the Commission about an application for suspension of the decision under appeal with the Commission in writing within five working days<sup>4</sup> of receipt of the notification of the application for suspension.

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<sup>4</sup> Is defined as any day other than (a) Saturday or Sunday; (b) Christmas Day or Good Friday; (c) a day which is a bank holiday in England and Wales or Scotland under the Banking and Financial Dealings Act 1971 (paragraph 13(1) of the Schedules).

- 9.6 In making its decision on an application for the suspension of the decision under appeal, the Commission must have regard to any representations or observations made by the Authority and any relevant licence holder.
- 9.7 If the Commission decides to hold a hearing to consider an application for suspension, it will give notice to the parties to the appeal, any relevant licence holders and such other persons as it considers appropriate.
- 9.8 The Commission will notify the parties to the appeal, any relevant licence holders and such other persons as it considers appropriate of its decision and reasons and, as soon as reasonably practicable after making its decision, publish it on the Commission website.

## **10. The Authority's response**

- 10.1 Where the Commission has granted permission the Authority may make representations or observations to the Commission about its reasons for the decision being appealed, and/or the grounds on which the appeal is being brought. It must lodge its representations or observations in writing with the Commission within the period specified in paragraph 3(4) of the Schedules.
- 10.2 The Authority's response should provide the following:
- 10.2.1 a statement , identifying the facts and reasons why it believes the appeal should not succeed and, or alternatively, why it believes the relief sought should not be allowed;
- 10.2.2 any written evidence it wishes to adduce in support of that response; and
- 10.2.3 a non-confidential version of the statement in response and any evidence adduced in support of that response.
- 10.3 At the time that it lodges its response, or as soon as possible thereafter, the Authority must send to the appellant:
- 10.3.1 a copy of the statement in response; and
- 10.3.2 a copy of any written evidence it has adduced.
- 10.4 The non-confidential version of the statement in response and any evidence adduced in support of that response should be in a form suitable for publication on the Commission's website.

## **11. Third party representations**

- 11.1 Where the Commission has granted permission to appeal, an interested third party may make representations or observations to the Commission about the grounds on which the appeal is being brought. It must lodge its representations or observations with the Commission in writing within the period allowed to the Authority and specified in paragraph 3(4) of the Schedules.
- 11.2 The interested third party's representations should contain the following:
- 11.2.1 the facts and reasons it believes the appeal should or should not succeed and, or alternatively, why it believes the relief sought should or should not be allowed;

- 11.2.2 any written evidence it wishes to adduce in support of its representations;  
and
- 11.2.3 a non-confidential version of the representations and any evidence.
- 11.3 At the time that it lodges its representations, or as soon as possible thereafter, the interested third party must send to the appellant and the Authority:
  - 11.3.1 a copy of the non-confidential version of its representations; and
  - 11.3.2 a copy of the non-confidential version of any written evidence it has adduced.
- 11.4 The non-confidential version of the representations should be in a form suitable for publication on the Commission's website.

## **12. Non-disclosure applications**

- 12.1 Where a party or an interested third party is required by these Rules to serve on a party a confidential version of any document or submissions and the party or interested third party considers that any information contained within the document or submission is sensitive information which should not be disclosed to that party, it may:
  - 12.1.1 make a non-disclosure application to the Commission at the same time that it files the document or submission with the Commission; and
  - 12.1.2 pending the Commission's direction, excise the sensitive information from the relevant document or submission served in accordance with these Rules.

## **13. Appeal management**

- 13.1 The Commission may at any time on the application of a party or of its own motion give such directions as it considers necessary for the conduct of the appeal.
- 13.2 The Commission may give directions:
  - 13.2.1 as to the manner in which the appeal is to be conducted, including time limits to be observed and the conduct of hearings;
  - 13.2.2 as to the filing of further submissions;
  - 13.2.3 as to further evidence that may be required;
  - 13.2.4 as to the appointment and instruction of experts, whether by the Commission or by the parties to the appeal, and as to the manner in which expert evidence is to be given;
  - 13.2.5 as to the submission of further witness statements or expert reports;
  - 13.2.6 as to the examination or cross-examination of witnesses;
  - 13.2.7 as to the fixing of time limits in respect of any aspect of the appeal;
  - 13.2.8 as to the disclosure or the production of documents, or classes of documents, between the parties or otherwise, including directions as to the treatment of sensitive information;

- 13.2.9 for 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;
  - 13.2.10 for the production of interim statements of costs;
  - 13.2.11 as to the variation of the provisions of these Rules in relation to the service of documents;
  - 13.2.12 exceptionally, permitting the Notice of Appeal, the Authority's response or third party representations or observations to be amended; and
  - 13.2.13 for such other matters as appear to the Commission to be necessary to meet the overriding objective.
- 13.3 Where necessary written notice shall be given of the Commission's directions.
- 13.4 The Commission may at any time put questions to the parties to the appeal or interested third parties, invite the parties to the appeal or interested third parties to make written or oral submissions on aspects of the appeal, ask the parties to the appeal or interested third parties for information or particulars, ask for documents or papers relating to the case to be produced and require the parties' representatives or the parties to the appeal or interested third parties to attend meetings or hearings.

#### **14. Appeal management conferences**

- 14.1 The Commission will hold appeal management conferences where it considers that to do so would further the overriding objective.
- 14.2 As soon as practicable after permission to appeal has been granted, the Commission will make arrangements for an appeal management conference to fix an administrative timetable for the conduct of the appeal and address any further directions in relation to the conduct of the appeal.
- 14.3 The Commission will normally expect to invite any relevant licence holders who are not parties to the appeal and any interested third parties who have declared their interest in the appeal to the initial appeal management conference.

#### **15. Administrative timetable**

- 15.1 The administrative timetable may, in particular, include arrangements for the following:
  - 15.1.1 providing the Group<sup>5</sup> with further representations or observations;
  - 15.1.2 verifying information;
  - 15.1.3 an oral hearing;
  - 15.1.4 notifying provisional findings;
  - 15.1.5 notifying and considering possible directions;

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<sup>5</sup> Is defined as a group of members of the Commission selected for the purposes of determining an appeal in accordance with paragraph 4 of the Schedules (paragraph 13(1) of the Schedules)

15.1.6 considering possible exclusion of sensitive material from disclosure; and

15.1.7 publishing the Group's decision.

15.2 The Group shall, when drawing up the administrative timetable, have regard to any views which the parties to the appeal, and any interested third parties, submit to it.

15.3 The Group shall proceed on the basis that the parties to the appeal and interested third parties will comply with the administrative timetable.

15.4 Once the administrative timetable has been drawn up, the Group will notify it to the parties to the appeal, and any relevant licence holders, and will publish it on the Commission's website.

## **16. Oral hearing**

16.1 The Commission will normally permit the parties and any interested third parties and their representatives to be present at a hearing.

16.2 Subject to these Rules, the procedure at a hearing shall be as the Chairman of the Group, or other member of the Commission, shall direct.

16.3 Proceedings will be opened and directed by the Chairman of the Group or by such other member of the Commission as is appropriate.

16.4 Hearings will normally consist of oral submissions, comprising representations and observations, by the attendees and questioning by members of the Group.

16.5 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 Group wishes to concentrate at the hearing, and the order in which the Group wishes to hear the submissions.

## **17. The production of documents, calling witnesses and the production of written statements**

17.1 Where the Commission wishes to require a person to produce a document, to attend and give evidence or to produce a written statement pursuant to paragraphs 6, 7 and 8 of the Schedules, it will provide a copy of the notice to each party.

17.2 The Commission will specify in a notice requiring the production of a written statement issued pursuant to paragraph 8 of the Schedules, the time and place that the statement is to be produced and that it is required to be verified by a statement of truth.

## **18. Information and evidence**

18.1 The Commission may seek clarification or further submission or evidence on matters it considers necessary to understand in its consideration of the application for permission to appeal, the application for the suspension of the decision under appeal, or the determination of the appeal.

18.2 Where at any stage of the appeal any individual or body has been asked to provide information within a reasonable period of time and has failed to do so without a

reasonable explanation, the Commission shall not be obliged to have regard to any information received from that person or body after the date specified.

- 18.3 The Commission may admit in evidence a matter that was not adduced to the Authority at the time that the Authority made its decision only if, in the opinion of the Commission, the matter could not, on the exercise of reasonable diligence, have been adduced to the Authority before it made the decision subject to appeal and if the evidence may be expected to have a real influence on the outcome of the appeal.

## **19. Slip rule**

- 19.1 Where any order or decision of the Commission contains a clerical error, or a slip or omission, that error, slip or omission may be corrected and a further order or decision issued by any person who could have made the original order or decision.

## **20. Procedure**

- 20.1 Subject to the provisions of these Rules, the Commission may determine its own procedure.

## **21. Documents**

- 21.1 All confidential documents filed with or served upon the Commission or any other person should be marked to identify sensitive information that has been excised from the non-confidential version.

- 21.2 Any document required to be filed with or served upon the Commission for the purposes of proceedings under these Rules must be provided in hard copy and in electronic form.

- 21.3 Any document required to be served upon a person for the purposes of proceedings under these Rules may be:

21.3.1 delivered personally;

21.3.2 sent by first class post; or

21.3.3 sent by electronic mail.

- 21.4 Documents will be treated as having been received on a working day when they are delivered before 5pm on that working day.

- 21.5 Documents delivered after 5pm on a working day, or on a day that is not a working day, will be treated as having been received on the next working day.

- 21.6 Unless parties are notified otherwise any document required to be filed with or served upon the Commission for the purposes of proceedings under these Rules should be sent:

(a) in hard copy to:

Information Centre Manager, Competition Commission, Victoria House,  
Southampton Row, London WC1B 4AD; and

(b) by email to: [info@cc.gsi.gov.uk](mailto:info@cc.gsi.gov.uk).