

OFT Procedural Adjudicator Trial Commences

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The OFT has published further information on the Procedural Adjudicator's processes in Competition Act 1998 ('**CA98**') cases as the trial of the new role commences on 21 March 2011.

On 2 March 2011 the OFT announced plans for a one year pilot to enable parties under investigation to ask the Procedural Adjudicator to review decisions on procedural issues. The Adjudicator will be able to review decisions including deadlines imposed on parties, requests for confidentiality redactions at the access to file and Statement of Objections stages or in a final decision, and requests for disclosure or non-disclosure of certain documents at access to file stage.

The trial follows consultations with businesses and advisers which highlighted the absence of an efficient process to deal with disputes arising on procedural issues which could not be resolved with the Senior Responsible Officer ('**SRO**'). The previous perception was that the only option available was for parties to apply for judicial review. The consultation also assessed a need to speed up proceedings to reduce delays.

Many called for the introduction of an EU style Hearing Officer role in CA98 investigations and the OFT therefore considered a mechanism which could be introduced without legislation to assist in the swift resolution of procedural disputes.

The Procedural Adjudicator role will only apply to cases in the situation where the OFT has decided to open a formal investigation under the CA98 and where there is a request from a party to the investigation, and only after the party has been unable to resolve the dispute with the SRO. The role of the Procedural Adjudicator will not prejudice a party's rights to apply for a judicial review or in any appeal to the CAT.

A party wishing to apply to the Procedural Adjudicator for a review of a decision will need to make an application as soon as possible and, in any event, within five working days of being notified of the SRO's decision on the issue.

The new information states that applications should be submitted by email to procedural.adjudicator@oft.gsi.gov.uk and in hard copy. The applications should be no longer than five sides of A4 paper and should include the contact details of the parties, the date of the SRO's decision and a short summary of the issue in question. The applicant must also enclose or attach copies of relevant correspondence between the applicant and the case team or SRO relating to the issue in question. The Procedural Adjudicator will acknowledge receipt of an application within two working days and indicate the process that will be followed to resolve the issue in question.

Where the Procedural Adjudicator is unable to take a decision regarding an application, for example if there is a conflict of interest or if the Procedural Adjudicator is expected to be away from the office for a period of time that would prevent a decision being taken in a timely fashion, the Procedural Adjudicator will designate another OFT official to act as the Procedural Adjudicator.

The OFT has stated that the Procedural Adjudicator will endeavour to deal with complaints as quickly as possible and there is an indicative administrative target of taking decisions in 90 per cent of cases within a ten working day period from the receipt of the application.

This emphasis on speed and efficiency is the latest in a series of measures and the importance of a swift mechanism is so high that the role is likely to be discontinued if cases take longer than before the trial. However, the OFT has not provided details of the consequences of not meeting the deadlines.

The Procedural Adjudicator's decision, or a summary of that decision, will be published either at the time of the decision or at the end of the case, subject to confidentiality redactions as appropriate.

The trial role will be undertaken for 12 months by Jackie Holland, the Director of Competition Policy at the OFT, who has experience in procedural issues arising in CA98 cases. The Adjudicator will be independent from the case team and will report directly to the CEO.

The OFT has made it clear that they are not directly transposing the EU Hearing Officer model to the UK as there is a difference in scope. This is due to some aspects of the EU role already being undertaken by other OFT officials, such as senior OFT officials independent of the case team chairing oral representations.

Although the model will not be an exact mirror of its European counterpart, the OFT will no doubt be hoping for the same level of success, as a recent survey of the Hearing Officer's role detailed largely

positive feedback, specifically that the Hearing Officer responded promptly to the requests and that intervention was 'very helpful'.

The announcement of the Procedural Adjudicator was made by the OFT at the same time as publishing the OFT's finalised Competition Act Procedures Guidance ('**Guidance**') and revealing the plan to publish a summary of the OFT's experience to date on settlements. The Guidance set out how the OFT handles the various stages of a CA98 investigation. It includes offering informal pre-complaint discussions, a commitment to reach a decision on whether to formally open a case within four months of receiving a substantiated complaint, and sending a case initiation letter on opening a formal investigation.

The OFT emphasised that the Procedural Adjudicator role is part of a trial and separately acknowledged that the Adjudicator and Guidance package reflected the regime for the immediate future, considering the Government proposal for reform of the competition and consumer regime

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