

Subsidiary Legislation made under s.8 of the Fair Trading Act 2015 and s.23(g)(i) of the Interpretation and General Clauses Act.

**FAIR TRADING (DAMAGES FOR INFRINGEMENT OF
COMPETITION) RULES 2016**

Repealed by Act.2020-15 as from 1.1.2021

(LN. 2016/254)

Commencement **27.12.2016**

Amending enactments	Relevant current provisions	Commencement date
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Transposing:

Directive 2014/104/EU

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In exercise of the powers conferred upon him by section 8 of the Fair Trading Act 2015 and section 23(g)(i) of the Interpretation and General Clauses Act, and all other enabling powers, and for the purposes of transposing into the law of Gibraltar 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 the competition law provisions of the Member States and of the European Union, the Minister has made the following Rules—

PART 1

SCOPE AND INTERPRETATION

Title.

1. These Rules may be cited as the Fair Trading (Damages for Infringement of Competition) Rules 2016.

Commencement.

2. These Rules come into operation on 27 December 2016.

Scope.

3.(1) These Rules make provisions for claims in respect of loss or damage arising from infringements of competition law.

(2) A person who has suffered harm caused by an infringement of competition law by a business or by an association of businesses may under these Rules make a claim for full compensation for that harm from the business or association of businesses.

Interpretation.

4. In these Rules-

“business” has the same meaning as in the Fair Trading Act 2015;

“cartel” means an agreement or concerted practice between two or more competitors aimed at coordinating their competitive behaviour on the market or influencing the relevant parameters of competition through practices such as, but not limited to, the fixing or coordination of purchase or selling prices or other trading conditions, including in relation to intellectual property rights, the allocation of production or sales quotas, the sharing of markets and

customers, including bid-rigging, restrictions of imports or exports or anti-competitive actions against other competitors;

“competition authority” means-

- (a) the body appointed under rule 5;
- (b) the European Commission; and
- (c) a Member State competition authority;

“competition claim” means a claim for compensation for harm caused by an infringement of competition law, whatever the legal basis of the claim, which is made by or on behalf of-

- (a) the person who suffered the loss or damage; or
- (b) a person who has acquired that person’s right to make the claim, whether by operation of law or otherwise;

“competition damages claim” means a competition claim to the extent that it is a claim for damages;

“consensual dispute resolution” means any mechanism enabling parties to reach the out-of-court resolution of a dispute concerning a competition claim;

“consumer” has the same meaning as in the Fair Trading Act 2015;

“Court” unless otherwise specified, means the Supreme Court;

“decision” means a decision of a competition authority or review court that finds an infringement of competition law;

“direct purchaser” means a person who acquired, directly from an infringer, products or services that were the object of an infringement of competition law;

“evidence” means all types of means of proof admissible before the Court, in particular documents and all other objects containing information, irrespective of the medium on which the information is stored;

“indirect purchaser” means a person who acquired, not directly from an infringer, but from a direct purchaser or a subsequent purchaser, products or services that were the object of an infringement of

competition law, or products or services containing them or derived therefrom;

“infringement of competition law” means an infringement of Gibraltar competition law, or of Article 101 or 102 of the TFEU;

“investigation materials” means-

- (a) information prepared by a person, other than a competition authority, for the purpose of an investigation by a competition authority into an infringement of competition law;
- (b) information sent by a competition authority, during the course of such an investigation, to a business which is the subject of the investigation;
- (c) a settlement submission which has been withdrawn;

“leniency programme” means a programme concerning the application of Article 101 TFEU or a corresponding provision under Gibraltar law on the basis of which a participant in a cartel, independently of the other businesses involved in the cartel, cooperates with an investigation of the competition authority, by voluntarily providing presentations regarding that participant's knowledge of, and role in, the cartel in return for which that participant receives, by decision or by a discontinuation of proceedings, immunity from, or a reduction in, fines for its involvement in the cartel;

“leniency statement” means-

- (a) an oral or written presentation voluntarily provided by, or on behalf of, a business or a person to a competition authority or a record thereof;
- (b) which describes the knowledge of that business or person of a cartel and describes its role therein; and
- (c) which presentation was drawn up specifically for submission to a competition authority with a view to obtaining immunity or a reduction of fines under a leniency programme, not including pre-existing information;

“Member State” includes a State party to the European Economic Area Agreement;

“Member State competition authority” means an authority designated by a Member State pursuant to Article 35 of Regulation (EC) No 1/2003, as being responsible for the application of Articles 101 and 102 TFEU;

“Minister” means the Minister with responsibility for consumer affairs;

“OFT” means the Office of Fair Trading;

“OFT Commission” has the meaning given in the Fair Trading Act 2015;

“overcharge” means the difference between the price actually paid and the price that would otherwise have prevailed in the absence of an infringement of competition law;

“pre-existing information” means evidence that exists irrespective of the proceedings of a competition authority, whether or not such information is in the file of a competition authority;

“procedural rules” means rules of court;

“review court” means a court of a Member State which-

- (a) hears appeals in connection with a decision of a competition authority of the Member State that there has been an infringement of Article 101(1) or Article 102 TFEU; or
- (b) reviews judgments made by another court of the Member State in connection with such decisions;

“settlement submission” means a voluntary presentation by, or on behalf of, a business to a competition authority describing the businesses’ acknowledgement of, or its renunciation to dispute, its participation in an infringement of competition law and its responsibility for that infringement of competition law, which was drawn up specifically to enable the competition authority to apply a simplified or expedited procedure;

“small or medium-sized enterprise” means a small or medium-sized enterprise as defined in the Annex to Commission Recommendation (EC) No. 2003/361 of 6 May 2003, as may be amended from time to time;

“TFEU” means the Treaty on the Functioning of the European Union, as may be amended from time to time.

PART 2

COMPETITION AUTHORITY, REFERENCES AND PENALTIES

Appointment of competition authority.

5. The OFT Commission is a competition authority for the purposes of these Rules.

Reference to the competition authority.

6.(1) Subject to subrule (2), the OFT or the Minister may use the powers under Part 5 of the Fair Trading Act 2015 to make a reference to the competition authority if there are reasonable grounds for suspecting that any feature, or combination of features, is or has amounted to an infringement of competition law, which is or appears to be significantly harming consumer interests.

(2) A reference under subrule (1) must only be made in the following circumstances-

- (a) if there are reasonable grounds for suspecting that there is, or was at some time in the past, an agreement which-
 - (i) may have had or is affecting trade within Gibraltar; and
 - (ii) had or has as its object or effect the prevention, restriction or distortion of competition within Gibraltar;
- (b) if there are reasonable grounds for suspecting that there is, or there was at some time in the past, an agreement which-
 - (i) may have had or is affecting trade between Gibraltar and a Member State; and
 - (ii) had or has as its object or effect the prevention, restriction or distortion of competition within the European Union; or
- (c) if there are reasonable grounds for suspecting an infringement of competition law.

(3) The power under section 24 of the Fair Trading Act 2015 to request that a person produce a document includes the power-

- (a) if the document is provided-

- (i) to take copies or extracts from it;
 - (ii) to require the person providing the document, or any person who is a present or past officer of his, or is or was at any time employed by him, to provide an explanation of the document;
- (b) if the document is not provided, to require the person to state, to the best of his knowledge and belief, where it is.

(4) If as a result of a reference under subrule (1) the competition authority proposes to make a decision it must do so in accordance with Part 5 of the Fair Trading Act 2015.

(5) The competition authority may make use of the powers provided for in Part 7 of the Fair Trading Act 2015.

(6) In this rule, “reference” has the same meaning as in the Fair Trading Act 2015.

Penalty for infringement.

7.(1) On making a decision that an agreement or conduct has infringed competition law, the competition authority may require a business which is a party to the agreement or is responsible for the conduct to pay the competition authority a penalty in respect of the infringement.

(2) The competition authority may impose a penalty on a business only if the competition authority is satisfied that the infringement of competition law has been committed intentionally or negligently by the business.

(3) Notice of a penalty under this Part must-

- (a) be in writing; and
- (b) specify the date before which the penalty is required to be paid.

(4) The date specified under subrule (3)(b) must not be earlier than the end of the period within which an appeal against the notice may be brought under Part 3.

(5) Subject to subrules (6) and (7), in fixing a penalty under this rule the competition authority must have regard to-

- (a) the seriousness of the infringement concerned; and

(b) the desirability of deterring both the business on whom the penalty is imposed and others from infringing competition law.

(6) No penalty fixed by the competition authority under these Rules may exceed 10 percent of the turnover of the business.

(7) The competition authority may, prior to its decision imposing a penalty, consider compensation paid as a result of a consensual settlement to be a mitigating factor.

(8) Any sums received by the competition authority under this rule are to be paid into the Consolidated Fund.

Recovery of penalties.

8.(1) If the specified date in a penalty notice has passed and-

(a) the period during which an appeal against the imposition, or amount, of the penalty may be made has expired without an appeal having been made; or

(b) such an appeal has been made and determined,

the competition authority may recover from the business, as a civil debt due to the competition authority, any amount payable under the penalty notice which remains outstanding.

(2) If a penalty or a fine has been imposed by the European Commission, or by a court or other body in a Member State, in respect of an agreement or conduct, the competition authority or the Court must take that penalty or fine into account when setting the amount of a penalty under this Part in relation to that agreement or conduct.

PART 3

**BUSINESS COMPENSATION CLAIMS AND APPEALS TO THE
COURT**

Business claims for compensation.

9.(1) A business that has suffered loss on account of an infringement of competition law may apply to the Magistrates' Court for compensation.

(2) In considering an application under subrule (1) the Magistrates' Court may use any of the powers available to the competition authority.

(3) An action under this rule must be brought in accordance with procedural rules and the limitation period in Part 4.

Appealing a decision.

10.(1) Any party to an agreement or person who has been found by a decision of a competition authority or the Magistrates' Court to have committed an infringement of competition law, may appeal to the Court under section 50 of the Fair Trading Act 2015, against or with respect to, the decision.

(2) Notwithstanding subsection 50(2) of the Fair Trading Act 2015, an appeal for infringement of competition law may be brought on a point of law or error of facts.

(3) The notice of appeal must set out the grounds of appeal in sufficient detail to indicate-

- (a) under which provision of these Rules or the Fair Trading Act 2015 the appeal is brought; and
- (b) to what extent, if any, the appellant contends that the decision against, or with respect to which, the appeal is brought was based on an error of fact or was wrong in law.

(4) The Court may give an appellant leave to amend the grounds of appeal identified in the notice of appeal.

(5) The Court may confirm or set aside the decision which is the subject of the appeal, or any part of it, and may-

- (a) impose or revoke, or vary the amount of the penalty set by the competition authority;
- (b) give such direction, or take such other steps, as the competition authority could have given or taken; or
- (c) make any other decision which the competition authority could have made.

Disclosure orders.

11.(1) For the purposes of this Part, and without prejudice to Part 8 of the Fair Trading Act 2015, the Magistrates' Court or the Court makes a

disclosure order in respect of something if it orders its disclosure or production in accordance with procedural rules.

(2) The Magistrates' Court or the Court does not make a disclosure order in respect of something if it orders its disclosure, production, recovery or inspection for the purposes of enabling it to determine whether the document is a cartel leniency statement or a settlement submission.

(3) The Magistrates' Court or the Court must not make a disclosure order in respect of-

- (a) a settlement submission which has not been withdrawn;
- (b) a cartel leniency statement, whether or not it has been withdrawn;
- (c) a competition authority's investigation materials before the day on which the competition authority closes the investigation to which those materials relate; or
- (d) addressed to a competition authority in respect of documents or information included in the competition authority's file.

(4) Subrule (3)(d) does not apply where the Magistrates' Court or the Court is satisfied that no-one else is reasonably able to provide the documents or information.

(5) A competition authority may, acting on its own initiative, submit observations to the Magistrates' Court or the Court to state its views on the proportionality of a disclosure request.

Use of evidence.

12.(1) A settlement submission which has not been withdrawn is not admissible in evidence in competition proceedings.

(2) A cartel leniency statement is not admissible in evidence in competition proceedings, whether or not it has been withdrawn.

(3) A competition authority's investigation materials are not admissible in evidence in competition proceedings at any time before the competition authority has closed the investigation to which those materials relate.

(4) The prohibitions in subrules (1) to (3) do not apply if a party to the proceedings obtained the submission, statement or materials-

- (a) lawfully; and
- (b) otherwise than from a competition authority's file.

(5) Documents or information obtained by a person ("P") from a competition authority's file are admissible in evidence in competition proceedings only where-

- (a) the proceedings relate, entirely or partly, to a competition claim made by P or by a person who acquired P's right to make the claim, whether by operation of law or otherwise; and
- (b) none of the prohibitions in this rule apply.

(6) For the purposes of competition proceedings, a final decision of a Member State competition authority or review court that there has been an infringement of Article 101(1) or Article 102 TFEU by a business is prima facie evidence of the infringement.

(7) In these Rules a decision becomes "final"-

- (a) when the time for appealing against it expires without an appeal having been brought; or
- (b) where an appeal has been brought against the decision, when-
 - (i) the appeal and any further appeal in relation to the decision has been decided or has otherwise ended; and
 - (ii) the time for appealing against the result of the appeal or further appeal has expired without another appeal having been brought.

Court determinations.

13.(1) On the application of a claimant in competition proceedings, the Magistrates' Court or the Court may, in accordance with procedural rules, determine-

- (a) whether or not a document is a cartel leniency statement; or
- (b) whether or not a document is a settlement submission.

(2) For the purposes of making a determination under subrule (1) the Magistrates' Court or the Court may ask for assistance from the competition authority.

PART 4

LIMITATION PERIODS

Limitation period.

14.(1) This Part applies for the purposes of determining the limitation period which applies in respect of making a competition complaint, or a claim made before the Magistrates' Court.

(2) The limitation period for a competition claim against an infringer is 6 years and begins with the later of-

- (a) the day on which the infringement of competition law that is the subject of the claim ceases; or
- (b) the claimant's day of knowledge.

(3) In these Rules "the claimant's day of knowledge" means the day on which the claimant first knows or could reasonably be expected to know-

- (a) of the infringer's behaviour;
- (b) that the behaviour constitutes an infringement of competition law;
- (c) that the claimant has suffered loss or damage arising from that infringement of competition law; and
- (d) the identity of the infringer.

(4) Where the claimant has acquired the right to make the competition claim from another person, whether by operation of law or otherwise-

- (a) the reference in subrule (2) to the day on which the claimant first knows or could reasonably be expected to know something is to be read as a reference to the first day on which either the claimant or a person in whom the cause of action was previously vested first knew or could reasonably be expected to have known it; and
- (b) the reference to the claimant in subrule (3)(c) is to be read as a reference to the injured person.

(5) In subrule (4), “injured person”, in relation to a competition claim, means a person who suffered the loss or damage that is the subject of the claim.

(6) Where a person has acquired an infringer’s liability in respect of an infringement of competition law from another person, whether by operation of law or otherwise-

- (a) the reference to an infringer in subrule (2) is to be read as a reference to that person; but
- (b) the references to the infringer in subrule (3) are to be read as references to the original infringer.

(7) The references in subrule (3) and (4) to a person knowing something are to a person having sufficient knowledge of it to bring competition proceedings.

(8) This rule has effect subject to the provisions in rules 15 and 16, which defers the beginning of the limitation period in certain circumstances.

Suspension of limitation period during investigation by the OFT.

15.(1) Where the OFT investigates an infringement of competition law, the period of the investigation is not to be counted when calculating whether the limitation period for a competition claim in respect of loss or damage arising from the infringement has expired.

(2) The period of an investigation by the OFT begins when the first formal steps in the investigation are taken.

(3) The period of an investigation ends-

- (a) if a decision is made in relation to the infringement as a result of the investigation, at the end of the period of one year beginning with the day on which the decision becomes final; and
- (b) otherwise, at the end of the period of one year beginning with the day on which the investigation is closed.

Suspension of limitation period during consensual dispute resolution.

16.(1) This rule applies where-

- (a) a dispute arising from an infringement of competition law is the subject of a consensual dispute resolution process;

- (b) a competition claim is made which arises from the dispute; and
- (c) the claimant and the defendant participated in the consensual dispute resolution process.

(2) The period of the consensual dispute resolution process is not to be counted when calculating whether the limitation period for the claim expired.

(3) The period of a consensual dispute resolution process in relation to a dispute begins with the first day on which either of the following occurs-

- (a) the claimant and the defendant, with or without others, enter into an agreement to engage in the process in respect of the dispute; or
- (b) the claimant and the defendant submit the dispute to the person who is to run the process.

(4) The period of a consensual dispute resolution process ends with the first day on which one of the following occurs-

- (a) the claimant and the defendant reach an agreement to resolve the dispute;
- (b) where the process is the subject of an agreement or rules, the process comes to an end in accordance with the agreement or rules;
- (c) the claimant or defendant notifies the other that it has withdrawn from the process;
- (d) the claimant or the defendant asks another to confirm that it wishes to continue with the process and does not receive a response within the period of 14 days beginning with the day on which the request is made;
- (e) the claimant and the defendant are notified that the person to whom they submitted the dispute refuses to deal with it;
- (f) the claimant and defendant are notified that the person running the process cannot continue to act in relation to the dispute and fail to agree to submit the dispute to another person within the period of 14 days beginning with the day on which they are notified.

(5) Where the competition claim is made in collective proceedings, the references to the claimant in subrules (1)(c), (3) and (4) are to be read as references to the claimant or the representative.

(6) Where the claimant has acquired the right to make the competition claim from another person, whether by operation of law or otherwise, the references to the claimant in subrules (1)(c), (3), (4) and (5) are to be read as references to the claimant or a person in whom the cause of action was previously vested.

(7) Where the defendant has acquired the infringer's liability in respect of the infringement of competition law from another person, whether by operation of law or otherwise, the references to the defendant in subrules (1)(c), (3) and (4) are to be read as references to the defendant or a person who has previously held the liability.

PART 5

JOINT AND SEVERAL LIABILITY

Liability of small and medium-sized enterprises.

17.(1) Subject to subrule (3), businesses which have been found to have infringed competition law through joint behaviour are jointly and severally liable for the harm caused by the infringement of competition law.

(2) Subject to subrule (2), each business is bound to compensate for the harm in full, and the injured party has the right to require full compensation from any of the businesses involved until there is full compensation.

(3) Without prejudice to the right to full compensation and subject to subrule (4), where the infringer is a small or medium sized enterprise the infringer is liable only to its own direct and indirect purchasers where-

(a) its market share in the relevant market was below 5 percent at any time during the infringement of competition law; and

(b) the application of the normal rules of joint and several liability would irretrievably jeopardise its economic viability within Gibraltar and cause its assets to lose all their value.

(4) Subrule (3) does not apply where-

(a) the business led the infringement;

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- (b) the business coerced one or more of the other businesses to participate in the infringement; or
- (c) the business has previously been found to have infringed competition law.

Presumption that cartels cause harm.

18. For the purposes of competition proceedings, it is to be presumed, unless the contrary is proved, that a cartel causes loss or damage.

Immunity recipients.

19.(1) This rule and rule 20 apply where-

- (a) businesses have infringed Article 101(1) of the TFEU or an equivalent Gibraltar law provision by participating in a cartel; and
- (b) in respect of its participation in the infringement (the “cartel infringement”), a business has been granted immunity from financial penalties under a cartel leniency programme.

(2) The business mentioned in subrule (1)(b) is referred to in this Part as “an immunity recipient”.

(3) An immunity recipient is not liable, either alone or jointly, to pay damages in respect of loss or damage suffered by a person as a result of the cartel infringement, whatever the legal basis of the liability, except where-

- (a) the person acquired a product or service that was the object of the cartel infringement directly or indirectly from the immunity recipient;
- (b) the person acquired a product or service containing or derived from a product or service that was the object of the cartel infringement indirectly from the immunity recipient;
- (c) the person provided a product or service that was the object of the cartel infringement directly or indirectly to the immunity recipient;
- (d) a product or service that was the object of the cartel infringement subsequently contained or was derived from a product or service provided by the person; or

- (e) the person is unable to obtain full compensation for the loss or damage from other businesses involved in the cartel infringement.

Contribution between participants in cartels.

20.(1) Subrule (2) applies in relation to proceedings where the contribution is to be recovered-

- (a) in respect of loss or damage suffered by a person as a result of a cartel infringement; and
- (b) from a person who is an immunity recipient in relation to the cartel infringement.

(2) The amount of contribution that the immunity recipient may be required to pay may not exceed the amount of the loss or damage the immunity recipient caused to-

- (a) persons who acquired products or services that were the object of the cartel infringement directly or indirectly from the immunity recipient;
- (b) persons who acquired products or services containing or derived from products or services that were the object of the cartel infringement indirectly from the immunity recipient;
- (c) persons who provided products or services that were the object of the cartel infringement directly or indirectly to the immunity recipient; and
- (d) persons who provided-
 - (i) products or services that were contained in products or services that were the object of the cartel infringement; or
 - (ii) products or services from which products or services that were the object of the cartel infringement were subsequently derived.

PART 6

PASSING ON

Overcharges and underpayments.

21. For the purposes of these Rules-

- (a) there is an overcharge as a result of an infringement of competition law if, when a product or service is acquired directly from the infringer, the price actually paid exceeds the price that would have been paid in the absence of the infringement; and
- (b) there is an underpayment as a result of an infringement of competition law if, when a product or service is provided directly to the infringer, the price actually paid is less than the amount that would have been paid in the absence of the infringement.

Burden of proof where an overcharge is passed on to an indirect purchaser.

22.(1) Subrule (2) applies where-

- (a) there is an overcharge as a result of an infringement of competition law; and
- (b) a competition claim is made in respect of loss or damage which-
 - (i) arises, directly or indirectly, from the overcharge; and
 - (ii) was suffered by a person who acquired a product or service indirectly from the infringer (“the injured person”).

(2) The claimant is to be treated as having proved that the overcharge was passed on to the claimant if the claimant proves that-

- (a) the defendant infringed competition law;
- (b) as a result of the infringement, there was an overcharge when a person acquired a product or service directly from the defendant; and
- (c) the claimant subsequently acquired-
 - (i) the product or service mentioned in paragraph (b); or
 - (ii) a product or service derived from or containing the product or service mentioned in paragraph (b).

(3) Subrule (2) does not apply if the defendant proves that the overcharge, or part of it, was not passed on to the claimant.

(4) Where the claimant is not the injured person, the following are to be read as references to the injured person-

- (a) the second reference to the claimant in the opening words of subrule (2); and
- (b) the references to the claimant in subrules (2)(c) and (3).

(5) Where the defendant is not the infringer, the references in subrules (2)(a) and (b) to the defendant are to be read as references to the infringer.

Burden of proof where an underpayment is passed on to an indirect provider.

23.(1) Subrule (2) applies where-

- (a) there is an underpayment as a result of an infringement of competition law; and
- (b) a competition claim is made in respect of loss or damage which-
 - (i) arises, directly or indirectly, from the underpayment; and
 - (ii) was suffered by a person who provided a product or service indirectly to the infringer (“the injured person”).

(2) The claimant is to be treated as having proved that the underpayment was passed on to the claimant if the claimant proves that-

- (a) the defendant infringed competition law;
- (b) as a result of the infringement, there was an underpayment when a person provided a product or service directly to the defendant; and
- (c) the product or service mentioned in paragraph (b)-
 - (i) was provided to the person by the claimant; or
 - (ii) contained or was derived from a product or service provided by the claimant.

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(3) Subrule (2) does not apply if the defendant proves that the underpayment, or part of it, was not passed on to the claimant.

(4) Where the claimant is not the injured person, the following are to be read as references to the injured person-

- (a) the second reference to the claimant in the opening words of subrule (2); and
- (b) the references to the claimant in subrules (2)(c) and (3).

(5) Where the defendant is not the infringer, the references in subrules (2)(a) and (b) to the defendant are to be read as references to the infringer.

Burden of proof where an overcharge or underpayment is passed on by the claimant.

24.(1) This rule applies where-

- (a) there is an overcharge or underpayment as a result of an infringement of competition law;
- (b) a person makes a competition claim in respect of loss or damage which arises, directly or indirectly, from the overcharge or underpayment; and
- (c) in its defence, the defendant claims that the claimant passed on all or part of the overcharge or underpayment to another person.

(2) The defendant has the burden of proving-

- (a) that the claimant passed on the overcharge or underpayment; and
- (b) the extent to which the claimant did so.

(3) Where the competition claim is made by someone other than the person who suffered the loss or damage (“the injured person”), the references in subrules (1)(c) and (2) to the claimant are to be read as references to the injured person.

Quantification of harm.

25.(1) The Magistrates’ Court and the Court must not award exemplary damages in competition proceedings.

(2) The Magistrates' Court and the Court must not award compensation for harm caused by an infringement of competition law, which exceeds the amount of harm suffered by the person from the infringement.

(3) When calculating the compensation to be paid the Magistrates' Court and the Court may estimate the share of any overcharge that has been passed on, taking into account all the information available before it.

(4) Where the Magistrates' Court or the Court considers that the competition authority may be able to assist in the determination of the quantum of damages, it may make a request for assistance to the competition authority.

PART 7

CONSENSUAL DISPUTE RESOLUTION AND CONTRIBUTION

Consensual settlement.

26. In this Part "consensual settlement" means an agreement relating to a dispute about loss or damage arising from an infringement of competition law which-

- (a) is reached through a consensual dispute resolution process;
- (b) is made between-
 - (i) an infringer or a person who has acquired an infringer's liability in respect of the infringement, whether by operation of law or otherwise, ("the settling infringer"); and
 - (ii) a person who suffered the loss or damage or a person who has acquired such a person's right to make the claim, whether by operation of law or otherwise ("the settling complainant"); and
- (c) entirely resolves the dispute between the settling infringer and the settling complainant.

Assessment of contribution.

27.(1) This rule applies in relation to proceedings where contribution is to be recovered in respect of loss or damage suffered by a person as a result of an infringement of competition law.

(2) The amount of contribution that one person liable in respect of the loss or damage may recover from another must be determined in the light of their relative responsibility for the whole of the loss or damage caused by the infringement.

(3) The determination of that amount must take into account any damages paid by the other person in respect of the loss or damage in accordance with a consensual settlement.

Effect of consensual settlement on the amount of the claim.

28.(1) Where loss or damage arising from an infringement of competition law is the subject of-

- (a) a consensual settlement; and
- (b) a competition damages claim by the settling complainant,

the amount of the settling complainant's claim is reduced by the settling infringer's share of the loss or damage.

(2) Subrule (1) has effect regardless of the terms of the consensual settlement.

Effect of consensual settlement for the settling infringer.

29.(1) Where loss or damage arising from an infringement of competition law is the subject of a consensual settlement, the settling complainant ceases to have a right of action against the settling infringer in respect of the loss or damage.

(2) Subrule (1) has effect regardless of the terms of the consensual settlement.

(3) Subrules (1) and (2) do not apply where-

- (a) a business other than the settling infringer is liable to pay damages to the settling complainant in respect of loss or damage which arises from the infringement;
- (b) that business or businesses unable to pay damages corresponding to the outstanding amount of the claim; and
- (c) the settling infringer's liability for that amount is not expressly excluded by the terms of the consensual settlement.

Effect of consensual settlement on contributions between defendants.

30.(1) Where-

- (a) loss or damage arising from an infringement of competition law is the subject of a consensual settlement;
- (b) it is also the subject of a competition damages claim by the settling complainant; and
- (c) a business other than the settling infringer is liable to pay damages to the settling complainant in respect of the loss or damage that is the subject of the claim,

that business may not recover contribution from the settling infringer in respect of the loss or damage.

(2) Subrule (1) has effect regardless of the terms of the consensual settlement.

PART 8

APPLICATION

Application.

31.(1) These Rules apply in relation to competition claims and competition proceedings only to the extent that the claims and proceedings relate to loss or damage suffered on or after 27 December 2016 as a result of an infringement of competition law on or after that day.

(2) Where an infringement of competition law takes place over a period of 2 or more days it is to be taken for the purposes of subrule (1) to have taken place on the first of those days.