



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Rules for Adjudication Oral Hearings

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The Commission for Communications Regulation (the “Commission”) in exercise of the powers conferred on it by section 86(17) of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 (the “Act”) hereby makes the following rules.

1 Preliminary

- 1.1 These Rules may be cited as the Rules for Adjudication Oral Hearings.
- 1.2 These Rules shall be published on ComReg’s website and shall come into operation on that date.

2 Interpretation

- 2.1 These Rules are made under and in accordance with the Act. Where there is a conflict between these Rules and the provisions of the Act, the provisions of the Act shall take precedence.
- 2.2 Words and phrases not otherwise defined in these Rules shall, unless the context otherwise requires, have the meanings assigned to them in the Act.

3 General

3.1 Fair hearing

- 3.1 Adjudicators shall conduct an oral hearing fairly in accordance with the principles of procedural fairness and constitutional and natural justice. Adjudicators shall also conduct oral hearings with due professionalism and courtesy towards the parties and witnesses involved.

3.2 Standard of proof

- 3.2 The standard of proof in respect of matters subject to an oral hearing under these rules shall be the civil standard of proof on the balance of probabilities.

3.3 Adjudicators sitting together

3.3 Where multiple Adjudicators are assigned by the Chief Adjudicator for the purpose of a particular adjudication, those Adjudicators shall sit together for the purposes of an oral hearing, including for the hearing of submissions by the parties and evidence from witnesses, but save for a case management hearing which can be conducted by one Adjudicator of the division. Where one or more Adjudicators in such a division of Adjudicators is unable to attend the oral hearing for reasons of illness or otherwise, the Chief Adjudicator may assign another Adjudicator and the adjudication may proceed so long as there is at all times an odd number of Adjudicators present and provided that, in such circumstances, only the Adjudicators who attend the oral hearing shall make the decision in respect of the adjudication. The decision of a division of Adjudicators shall be by majority and no reference shall be made to any minority view in any decision.

3.4 Location of oral hearings

3.4 Oral hearings shall, unless otherwise directed by the Adjudicator, be conducted in person in Dublin.

3.5 Remote hearings

3.5 The Adjudicator may, at his or her discretion, direct that any oral hearing (including the giving of evidence) or part thereof be conducted remotely, including in an online format, or that certain participants may participate remotely in a hybrid hearing. Where a remote oral hearing is directed, the Commission will make available a video link through which the adjudication can be accessed.

3.6 Hearings otherwise than in public

3.6 Oral hearings shall be held in public unless the Adjudicator is satisfied that special circumstances exist (including where commercially sensitive information is given or likely to be given in evidence) such as to justify the oral hearing or part thereof being conducted otherwise than in public. Where the hearing or part thereof is held in private, the Adjudicator will determine who is entitled to attend the hearing or part thereof.

3.7 Reporting restrictions

3.7 An Adjudicator may, if special circumstances exist (including where commercially sensitive information is given or likely to be given in evidence), impose restrictions on the reporting or distribution of particular information given at the oral hearing.

3.8 Prior directions

3.8 Where directions have been made in relation to an oral hearing at a case management hearing or at any point during the adjudication, the parties will comply with

those directions and the oral hearing will proceed in accordance with those directions unless they are varied by the Adjudicator.

3.9 Adjournments

3.9 An Adjudicator may, at his or her own discretion or on the application of any party, adjourn an oral hearing to a specific date and/or place.

4 Evidence

4.1 Application of rules of evidence

4.1 The rules of evidence applicable in civil proceedings before the High Court shall apply to any adjudication before an Adjudicator, save as otherwise prescribed in these Rules.

4.2 The type of proof that is admissible as evidence in an adjudication under these Rules shall include relevant documents, oral statements, electronic messages, recordings and all other objects containing information, irrespective of the form it takes and the medium on which information is stored, provided that the evidence referred to would have been admissible before a court were it before a court.

4.2 Documentary evidence

4.3 The provisions of Chapter 3 of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 (the “2020 Act”), and sections 46B and 46D of The Communications Regulation Act, 2002 shall apply to an adjudication. For the purpose of these Rules, “business” shall have the meaning set out in section 12 of the 2020 Act.

4.4 Information contained in a document shall be admissible in an adjudication as evidence of any fact in the document of which direct oral evidence would be admissible if the information—

- (a) was compiled in the ordinary course of a business;
- (b) was supplied by a person (whether or not he or she so compiled it and is identifiable) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with; and
- (c) in the case of information in non-legible form that has been reproduced in permanent legible form, was reproduced in the course of the normal operation of the reproduction system concerned.

Such information shall be admissible regardless of whether the information was supplied directly or indirectly but, if it was supplied indirectly, only if each person (whether or not he or she is identifiable) through whom it was supplied received it in the ordinary course of a business.

4.5 If a document contains a statement by a person asserting that an act has been done, or is, or was, proposed to be done, by another person, being an act that relates to a regulatory breach (the “relevant act”) then, at the Adjudicator’s discretion, that statement shall be admissible at the oral hearing as evidence that the relevant act was done by that other person or was proposed (at the time the statement was made, or, as the case may be, at a previous time) to be done by him or her.

4.6 In estimating the weight, if any, to be attached to evidence admitted by virtue of these Rules the Adjudicator shall consider all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise.

4.7 Where the proof admitted in evidence by virtue of these Rules comprises a statement by a person—

- (a) any evidence which, if the person who made the statement had been called as a witness, would have been admissible as relevant to his or her credibility as a witness shall be admissible for that purpose;
- (b) evidence may, with the leave of the Adjudicator, be given of any matter which, if that person had been called as a witness, could have been put to him or her in cross-examination as relevant to his or her credibility but of which evidence could not be adduced by the cross-examining party; and
- (c) evidence tending to prove that that person, whether before or after making the statement, made (whether orally or not) a statement which is inconsistent with it shall, if not already admissible by virtue of any rule of law or other enactment, be admissible for the purpose of showing that he or she has contradicted himself or herself.

4.8 Nothing in these Rules shall prejudice the admissibility in any adjudication before an Adjudicator of any document, as evidence of any matters stated in it—

- (a) that is so admissible by virtue of any rule of law or other enactment; or
- (b) that would be admissible before a Court hearing civil proceedings by virtue of any rule of law or other enactment.

4.3 Summoning of witnesses

4.9 An Adjudicator may summon a witness to appear before the Adjudicator to give evidence or to produce books, documents or records in such person’s power before the Adjudicator, or both, by serving a notice in writing on such person no less than 14 days

prior to the date on which the person is required to attend before the Adjudicator. Such service shall be effected in any manner for the time being permitted for service of a witness summons to attend the High Court. An Adjudicator may require that witness to attend an oral hearing from day to day unless excused or released from further attendance by the Adjudicator. The payment or reimbursement of, or any part of, the reasonable travelling and subsistence expenses of a witness required to attend an oral hearing is at the direction of the Adjudicator and such expenses shall be discharged by the Commission.

4.10 Nothing in these Rules compels the disclosure by any person of any information that the person would be entitled to refuse to produce on the grounds of legal professional privilege or authorises the inspection or copying of any document containing such information that is in the person's possession, power or control.

4.11 The Adjudicator has the same powers, rights and privileges as a judge of the High Court when hearing civil proceedings on the occasion of that action including with respect to—

- (a) the attendance and examination of witnesses on oath or affirmation or otherwise (including witnesses who are outside the State); and
- (b) compelling the production (including discovery) of records or an identified category or categories of records.

4.4 Administration of oaths

4.12 An Adjudicator may require evidence to be given on oath or affirmation and may require a witness to take an oath or make an affirmation that the evidence the witness will give shall be true. The Adjudicator may administer such an oath to the witness orally or permit the witness to affirm. The required oath or affirmation shall be in the form required by courts of law.

4.5 Presentation of Evidence and Submissions by or on behalf of the Commission

4.13 At the oral hearing, an authorised officer or other representative of the Commission or any other person (including but not limited to a legal representative), with leave of the Adjudicator, shall present the evidence in support of the referral. Such person may also make submissions including but not limited to submissions on any issues of law arising. The testimony of witnesses attending the oral hearing shall be given in accordance with these Rules.

4.6 Presentation of Evidence and Submissions by or on behalf of a notified person

4.14 At the oral hearing, a notified person or any other person (including but not limited to a legal representative), with leave of the Adjudicator, shall be entitled to present the evidence in support of their defence. The testimony of witnesses attending the oral hearing shall be given in accordance with these Rules. Such person may also make submissions including but not limited to submissions on any issues of law arising.

4.7 Witness statements for witnesses of fact

4.15 Save for those witnesses appearing under compulsion of summons, where it is intended by a party to call a witness of fact, that witness' witness statement shall be submitted to the Adjudicator and the other parties in advance of the hearing and in accordance with any directions made by the Adjudicator in that regard.

4.8 Examination of witnesses generally

4.16 An Adjudicator may direct that the witness statement of a witness shall be treated as the evidence in chief of that witness and that the evidence of an expert shall be treated as the evidence in chief of that expert provided that it is verified on oath or affirmation.

4.17 Parties will be entitled to examine and cross-examine witnesses in accordance with the practice applicable in the High Court subject to the supervisory jurisdiction of the Adjudicator who may limit the matters on which evidence is adduced or refuse to permit a party to examine or cross-examine a witness or expert at his or her discretion.

4.18 The Adjudicator may dispense with the need to call a witness to give oral evidence where they have provided written evidence on oath or affirmation and where the opposing party does not intend to cross examine them in respect of that evidence.

4.9 Applications to Adjudicators relating to evidence

4.19 On an application by the Commission or the notified person or of the Adjudicator's own motion, where the Adjudicator is satisfied that such direction is necessary for the determination of the issues before the Adjudicator the Adjudicator may—

- (a) direct authorised officers of the Commission, or the notified person (each of which, in this rule, is referred to as a "party") to answer (whether on oath or affirmation or otherwise) an identified question or questions in whatever manner or form the Adjudicator may specify;
- (b) direct a party to adduce evidence or produce books, documents and records in its power or control; and

(c) direct a party to clarify any issue of fact that an Adjudicator may deem necessary.

4.20 An answer to a question put to a person in response to a direction under rule 4.19(a) is not admissible as evidence against the person in criminal proceedings, other than proceedings for perjury in circumstances where the contested response or information was provided on oath or affirmation.

4.21 A person the subject of a direction under rule 4.19 shall be entitled to the same immunities and privileges in respect of compliance with such direction as a witness appearing in proceedings before the High Court.

4.10 Expert evidence

4.22 Expert evidence may not be delivered or adduced without the prior leave of the Adjudicator. Leave to deliver and/or adduce expert evidence may be granted by the Adjudicator where he or she is satisfied that it is reasonably required for the Adjudicator to determine the adjudication.

4.23 Save for those witnesses appearing under compulsion of summons, an expert witness shall not be called without the prior leave of the Adjudicator and unless the expert's evidence has been submitted to the Adjudicator and the other parties in advance of the hearing and in accordance with any directions made by the Adjudicator in that regard.

4.24 Save where the Adjudicator grants leave, each party may offer evidence from one expert only in a particular field of expertise on a particular issue. Such leave shall not be granted unless the Adjudicator is satisfied that the evidence of an additional expert is necessary in order to do justice between the parties.

4.25 It is the duty of an expert to assist the Adjudicator(s) as to matters within his or her field of expertise and to comply with the duties applicable to experts in High Court actions. This duty overrides any obligation to any party paying the fee of the expert.

4.26 Every report of an expert delivered pursuant to these Rules or to any direction of the Adjudicator(s) shall:

- (a) contain a statement acknowledging the duty mentioned in rule 4.25;
- (b) disclose any financial or economic interest of the expert, or of any person connected with the expert, in any business or economic activity of the party retaining that expert, including any sponsorship of or contribution to any research of the expert or of any University, institution or other body with which the expert was, is or will be connected, other than any fee agreed for the preparation by the expert of the report provided or to be provided in the adjudication concerned and any fee and expenses due in connection with the participation of the expert in the adjudication concerned.

Orders an Adjudicator may make in relation to expert evidence

4.27 An Adjudicator may of his or her own motion, or at the request of the parties, give any of the following directions as to expert evidence:

- (a) requiring each party intending or proposing to offer expert evidence to identify—
 - (i) the field in which expert evidence is required; and
 - (ii) where practicable, the name of the proposed expert;
- (b) determining the fields of expertise in which, or the proposed experts by whom, evidence may be given at the hearing; and/or
- (c) fixing the date by which a report setting out the evidence of each expert intended to be called by a party shall be delivered.

4.11 Meeting between experts

4.28 Where two or more parties intend to call experts, an Adjudicator may direct any of those experts to meet. Where such a direction is made, the experts shall be required to meet privately, without the presence of any party or any legal representative of any party, and to discuss with each other their proposed evidence.

4.29 Following the meeting referred to in rule 4.28, the experts shall be required to draw up a written memorandum (the “Expert Memorandum”) setting out the matters which are agreed and disputed as between them and that statement shall be furnished to the each of the parties and to the Adjudicator.

4.30 Upon a consideration of the Expert Memorandum, the Adjudicator may, before or in the course of the oral hearing:

- (a) require any experts to be examined and cross-examined (either on the whole or on a specified part of their evidence) one after another, in such order as the Adjudicator shall direct; or
- (b) apply the “debate among experts” procedure in accordance with rule 4.31.

4.31 Where the “debate among experts” procedure is applied, each of two or more contradicting experts shall be sworn in order to testify at the same time. When sworn, each expert, in such order as the Adjudicator shall determine, and without being examined by, or by counsel for, any party, shall give an outline of the evidence that is agreed between or among them. The experts shall then, in such order as the Adjudicator shall determine, present the evidence on which they are not agreed the one with the other or others. Following such presentation, the experts may, subject to the directions of the Adjudicator in that regard, be required to debate the points which are not agreed between or among them, the one with the other or others.

4.32 When the “debate among experts” in accordance with rule 4.31 is complete, examination in chief by counsel, if deemed necessary by the Adjudicator, and cross examination by counsel on such matters as the Adjudicator, or if the Adjudicator so directs, general cross examination shall be allowed, as may re-examination.

4.12 Single Joint Expert

4.33 Where both the notified person and the Commission (in this rule and in rule 4.34, the “parties”) wish to offer expert evidence on a particular issue, the Adjudicator may at his or her discretion, direct that the evidence on that issue is to be given by a single joint expert (in this rule and in rule 4.34, the “single joint expert”). The Adjudicator may direct the terms on and manner in which the single joint expert is to be instructed.

4.34 Where the parties cannot agree who should be the single joint expert, the Adjudicator may:—

- (a) select the single joint expert from a list prepared or identified by the parties; or
- (b) direct that the single joint expert be selected in such other manner as the Adjudicator directs.