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Information Pack:

00422: Fee Paid Chairman of the Competition
Appeal Tribunal

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INTRODUCTION

The Judicial Appointments Commission (JAC) is now inviting applications for the post of fee paid Chairman of the Competition Appeal Tribunal (the Tribunal). The closing date for applications is 2 July. The JAC has been asked to select one candidate to fill this vacancy which will be based in London.

The Tribunal generally sits in London for cases involving England and Wales, although on occasion it may be necessary to sit outside London if there is a particular regional interest in a case. Scottish cases are usually heard in Edinburgh and those cases concerning Northern Ireland are generally heard in Belfast.

The Tribunal came into existence on 1 April 2003 pursuant to the Enterprise Act 2002, as the successor to the Competition Commission Appeal Tribunals (CCAT). The CCAT was set up under the Competition Act 1998 as part of the Competition Commission. The Competition Commission was, in turn, the successor body to the former Monopolies and Mergers Commission.

The effect of Part 2 of the Enterprise Act was to separate the CCAT from the Competition Commission by creating the Tribunal as a new body to take over the functions of the CCAT. Under the Enterprise Act, appointments to the posts of the President and Chairmen of the Tribunal are now the responsibility of the Lord Chancellor, whereas the lay or “ordinary” members of the Tribunal continue to be appointed by the Secretary of State for Trade and Industry for an eight-year term.

The Tribunal sits as a panel comprising the President or Chairman, and two ordinary members. The expertise of the current ordinary members of the Tribunal covers economics, business, accountancy, academia, law and public affairs. Appeals under the legislative enactments lie, with the leave of the Tribunal or of the relevant appellate court, only on a point of law or the amount of any penalty, directly to the Court of Appeal, the Court of Session, or the Court of Appeal in Northern Ireland, as the case may be.

The work of the Tribunal can be intense and fast moving. Once allocated to a case, members of the panel of chairmen are expected to prioritise the work of the Tribunal ahead of their other activities and to be generally available for consultation by the other members of their panel and staff. The Tribunal does not work on the basis of “sitting days” since much of the work

consists of work on the papers away from the courtroom and liaising with other members and staff both in meetings and by email and telephone.

This pack contains the information that you need about the appointment. It includes the eligibility criteria and job description. It also describes the selection process that the JAC will follow, with relevant dates and advice on how to prepare for the various stages of this process. Before you can be considered for appointment, there are basic eligibility requirements that you must meet and you will need to determine if you have the appropriate experience and knowledge (either of competition law and practice or any other relevant law and practice) to carry out the role.

The JAC is also required to assess your character. Before applying you should read these requirements and the guidelines that the JAC uses to assess character. These can be found on our website (www.judicialappointments.gov.uk) along with outline terms and conditions of service. Please note that you have a continuing responsibility throughout the process to notify the JAC of any matter that may arise up to the point of appointment. You will also need to demonstrate the qualities and abilities required for this office.

The independent JAC selects candidates for judicial office. It does so on merit, through fair and open competition, from the widest range of eligible candidates.

ARE YOU ELIGIBLE?

To be eligible for appointment as a fee paid Chairman of the Competition Appeal Tribunal you must meet the following requirements.

Statutory requirement

Under section 12 and paragraph 2 of the Enterprise Act 2002, as amended by paragraph 36 of Schedule 10 of the Tribunals, Courts and Enforcement Act 2007 (“TCE Act”), a fee paid Chairman of the Competition Appeal Tribunal is appointed by the Lord Chancellor. A person is eligible for appointment under the above legislation only if that person:

- (a) satisfies the judicial-appointment eligibility condition on a 5-year basis;
- (b) is an advocate or solicitor in Scotland of at least 5 years' standing; or
- (c) is a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least 5 years' standing; and

appears to the Lord Chancellor to have appropriate experience and knowledge (either of competition law and practice or any other relevant law and practice).

The TCE Act has introduced the ‘**judicial-appointment eligibility condition**’. Where this applies, eligibility for judicial office is no longer based on possession of rights of audience for a specified period. You will have to show that:

- you have possessed a relevant legal qualification;
- for the requisite period; and
- that whilst holding that qualification you have been gaining legal experience.

Relevant Qualification in England and Wales

You have a relevant qualification if you are a **solicitor or barrister**.

You will first be considered as a solicitor when your name is entered on the Roll kept under section 6 of the Solicitors Act 1974. In order to meet the statutory qualification for appointment, a solicitor (or a salaried judicial office holder who was formerly a solicitor) must appear on the Roll.

You will first be considered a barrister:

- a) when you have completed pupillage in connection with becoming a barrister or
- b) if you are not required to undertake pupillage in connection with becoming a barrister, when you are called to the Bar of England and Wales.

When applying for a judicial appointment under (b) you will need to provide details in the Application Form of why you are not required to undertake pupillage.

Legal Experience

In order to be eligible for judicial appointment, you must not only be in possession of the relevant qualification, but must also have been engaged in 'law related activity' whilst holding that qualification.

Meaning of Law Related Activity

An activity is considered to be a law related activity whether or not it is undertaken for remuneration, and whether or not it is undertaken on a full or part-time basis.

Each of the following is a relevant law related activity:

- a) The carrying out of judicial functions of any court or tribunal
- b) Acting as an arbitrator
- c) Practice or employment as a lawyer
- d) Advising (whether or not in the course of practice or employment as a lawyer) on the application of the law
- e) Assisting (whether or not in the course of such practice) persons involved in proceedings for the resolution of issues arising under the law
- f) Acting (whether or not in the course of such practice) as mediator in connection with attempts to resolve issues that are, or if not resolved could be, the subject of proceedings
- g) Drafting (whether or not in the course of such practice) documents intended to affect persons' rights or obligations
- h) Teaching or researching law
- i) Any activity that in the relevant decision makers opinion is of a broadly similar nature to an activity within paragraphs (a) to (h).

The Ministry of Justice has provided the following guidance

Category b) is intended to cover arbitration where legal disputes are resolved on a reasonably formal, structured basis. For example, it would cover arbitration governed by the Arbitration Act 1996, and carried out by a person who is accredited by a body such as CEDR (Centre for Effective Dispute Resolution).

Categories d) – g) are also intended to cover activities which are carried out on a reasonably formal, structured basis, for example volunteers who give legal advice in a law centre, or citizens advice bureau. However, it is not intended to cover (say) a person who gives informal advice to friends and neighbours.

Category (e) is intended to cover legal assistance, rather than other kinds of support.

Category (g) is intended to cover drafting which involves legal judgment and skill, such as drafting contracts and leases. It is not intended to cover drafting which may affect rights or obligations, but is essentially an administrative task, e.g. filling in enforcement orders, or penalty notices.

The purpose of (i) is to cover the possibility of some kinds of law-related activity that might not quite fit within (a) – (h).

Your engagement in law-related activities during a period will be disregarded if the engagement is 'negligible in terms of the amount of time engaged'.

Age

There is no upper or lower age limit for candidates apart from the statutory retirement age of 70 for all judges. The age at which someone is appointed to the position of fee paid Chairman of the Competition Appeal Tribunal must allow for a reasonable length of service before retirement, usually about three years, having regard to the need for training before commencing sitting.

Nationality

You must complete a declaration of your nationality in the Application Form. In order to qualify for this post, you must be a citizen of:

- the United Kingdom; or
- another Commonwealth country; or
- the Republic of Ireland.

Character

The JAC is required by statute to appoint only persons of good character. In order to make these assessments we have developed Good Character Guidance which you can find on our website at www.judicialappointments.gov.uk. You can also write to us to request a copy (see the 'Contacts and Further Information' section of this Information Pack for our contact details).

The Good Character Guidance gives you some indication as to whether anything in your past conduct or present circumstances might affect your application for judicial appointment. You should read it carefully before completing the Application Form.

Good character questions and declarations

You are required to answer a number of questions related to good character in the Application Form and must make appropriate declarations as requested.

Applicants for judicial appointments are not protected by sections 4(2) and 4(3) of the Rehabilitation of Offenders Act 1974. Any convictions which would normally be regarded as having expired under that Act should therefore be declared in writing (Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975). You must provide details of all offences for which you have been convicted or cautioned. Details should include the nature of each offence, date of conviction or caution and the penalty imposed.

Where proceedings of any kind are pending, you should give details of the offence with which you have been charged or the disciplinary process you are subject to and, if known, the date when the case or action may be heard. **It is important that you inform us of the outcome of any case or action concluded while your application is under consideration. Similarly, if you are charged with any offence or any action is brought against you after submitting your application you should inform us immediately** (see the 'Contacts and Further Information' section of this Information Pack).

In all cases, please provide as much detail as you can and indicate if there are any mitigating factors that you think the JAC should take into account in assessing your good character.

Good character checks

The JAC will also carry out checks on all candidates whom it is considering for recommendation for appointment. Further information about these checks will be provided separately to relevant candidates.

Failure to have declared any matters that come to light from these checks may prejudice the outcome of your application.

Disqualification

You should note that the House of Commons Disqualification Act 1975 applies to this office.

REASONABLE ADJUSTMENTS

The JAC is committed to considering any reasonable adjustments needed to ensure that you can participate in the selection process fairly. The Application Form asks you to identify any arrangements and adjustments you may require. Requests will be considered on a case-by-case basis and the information given will not be used in selection decisions.

If you are recommended for appointment, reasonable adjustments will be considered if you have a disability under the meaning of the Disability Discrimination Act, as they are for serving judges. Any reasonable adjustments to enable you to take up appointment will be discussed separately with you by the Competition Appeal Tribunal after the JAC has made its recommendation.

CONFLICT OF INTEREST

You will need to determine that the performance of your duties as Chairman of the Tribunal (if appointed) will not give rise to a conflict of interest (whether actual or apparent) arising out of any other employment or professional activity in which you are or have been engaged or any office that you may hold or have held. Please refer to paragraphs 13 to 16 of the Terms and Conditions of appointment, available on the JAC website.

JOB DESCRIPTION

The Ministry of Justice has provided the following information.

FEE PAID CHAIRMAN OF THE COMPETITION APPEAL TRIBUNAL

PURPOSE OF OFFICE

The purpose of judicial office is to administer justice in accordance with the laws of England and Wales, Scotland and Northern Ireland.

MAIN ACTIVITIES

I. Procedure of the Tribunal

The procedure of the Tribunal is adapted to deal with cases concerning relatively complex economic matters. The current rules of the Tribunal (S.I. 2003 No. 1372) are to be found on the Tribunal's website (www.catribunal.org.uk). Those rules were very slightly amended by The Competition Appeal Tribunal (Amendment and Communications Act Appeals) Rules (S.I. 2004 No. 2068) which are also available on that website, as is a copy of the Tribunal's "Guide to Proceedings" (the Guide) which illustrates the essential nature of the procedure.

The five principles upon which the rules proceed (see p. 2 of the Guide) are as follows:

Early disclosure in writing

As in the Court of First Instance of the EC (CFI), there is extensive exchange of written submissions. Applicants in appeals under the Competition Act 1998 have two months in which to lodge the application, and are expected to set out their arguments in some detail. The application is normally accompanied by numerous annexes of relevant documents. Subject to any specific directions of the Tribunal, the respondent regulator then sets out his arguments in detail in the defence, which in Competition Act proceedings is normally served within four to six weeks of the application. The hearing is usually preceded by the exchange of skeleton arguments in the normal way.

The procedures with regard to reviews of merger decisions under the Enterprise Act are substantially quicker and timetables can be very demanding. As an illustration of this, the recent challenge to the merger of Lloyds Bank and HBOS was heard and decided in just under two weeks. The same considerations apply to applications for interim measures.

Active case management

Case management in the Tribunal is "hands on". In Competition Act cases a first case management conference is normally held about three weeks after receipt of the application, and before the defence has been filed. Since the respondent is defending a decision already taken, the general lines of the respondent's case are already known. At this first case conference, the handling of any preliminary issues can be discussed, such as the admissibility of the appeal, third party interventions, confidentiality etc. Most importantly, a preliminary assessment of the issues in the case can be made, e.g. will there be interlocutory issues, witnesses, experts etc. This assessment will normally permit the "timetable for the case" to be set, including the date of the main hearing. It may become clear in the course of the conference that some issues are more important than others, thus enabling both the respondent and the Tribunal to concentrate on the main points. Further case conferences may be held at later stages of the case. In merger cases under the Enterprise Act, case

management will be accelerated.

Strict timetables

The subject matter of the Tribunal's work is one where relatively speedy and efficient decision making is an important part of the credibility of the system as a whole. Accordingly, the Tribunal imposes strict deadlines on the parties, and seeks to work to its own internal deadline for the completion of the case. As stated in the Guide, the Tribunal aims to complete straightforward cases under the Competition Act in or around six months. In practice, and given the demanding and complex nature of the cases, this is an ambitious target and often cases break into distinct phases or "cases within cases". Nevertheless the Tribunal has generally succeeded in hearing and deciding the major issues before it within 6 to 12 months. In certain areas such as already noted, mergers – and some aspects of telecommunications matters - speed of decision-making is always of the essence.

Effective fact finding procedures

In accordance with normal common law procedures, the Tribunal's rules make provision for disclosure of documents, hearing of witnesses, expert evidence and so on. The hearing of oral evidence from witnesses has occurred, but is not frequent. The handling of expert evidence is also a key issue. While traditional cross-examination may be necessary and desirable, informal meetings between experts, including meetings in the presence of the Tribunal, may go a long way to resolve differences and narrow down the issues. The Tribunal has a reserve power to appoint its own experts.

Short and structured oral hearings

With the assistance of preliminary identification of the issues and skeleton arguments, it is normally possible to confine the hearings of even major cases to 1-2 days. So far, a Tribunal hearing, where there are no witnesses involved, has not lasted longer than 4 days. Each party is normally allotted a time for main submissions (e.g. limited to 1 hour) with time reserved for the Tribunal's questions. The Tribunal may give advance indications of the points that it would particularly like to see covered.

II. Case conferences

The President or Chairman will normally convene the other two members hearing the case in advance of the first case conference, and lead a first discussion. The ordinary members play a full part throughout the decision making process. Case management decisions are reached at the first case management conference (which may involve *ex tempore* judgments on interlocutory issues) and the case proceeds throughout its stages to the main hearing, which is again preceded by preparatory meetings between the Chairmen and the other members hearing the case. The Chairman is supported throughout by a referendaire, who will prepare notes of the issues, do legal research, and generally assist. The Chairman will preside and direct the main hearing. The Tribunal will discuss the case after the hearing and the Chairman will then prepare a draft judgement, with the assistance of the referendaire. This is then discussed in detail with the members. There is a very great emphasis on close and flexible team working both with the members of the Tribunal and the Registrar and his staff. The final decision may be by a majority, although nearly all of the Tribunal's decisions so far have been unanimous. The Tribunal's decisions are published on its website, in the Competition Appeal Reports, and elsewhere.

III. Training

The President has a statutory duty to organise such training for members as he considers appropriate. Each present member of the Tribunal has completed a basic training course in competition law and the related economic principles organised by the Tribunal. In addition, half-day training sessions for the members take place approximately 6 times a year. These sessions are mainly devoted to keeping up with recent developments. It is expected that candidates appointed to the panel of Chairmen will undertake an introductory training course and attend, as appropriate, the regular training sessions organised by the Tribunal.

Further Information

Please note carefully the further information on the jurisdiction and relevant terms and conditions of this post which can be found on the JAC website (current selection exercises) www.judicialappointments.gov.uk.

THE SELECTION PROCESS

Application form

Details of the qualities and abilities against which you will be assessed are set out in the Application Form. You can draw on your full range of work and personal experience to demonstrate these qualities and abilities including, for example, voluntary work or any publication to which you have contributed. Please be specific in giving information.

Please note that you will need to demonstrate clearly that you have appropriate experience and knowledge of either competition law and practice or any other relevant law and practice in the application form.

Timetable

Closing date for applications	2 July 2009
Provisional dates for selection days	7 - 8 September 2009

Shortlisting

Shortlisting will be carried out by a panel conducting a paper sift based on your application form and references. If you are shortlisted, you will be invited to an interview which will take place in London. Further details will be sent with your invitation to attend. The results of shortlisting will be sent to you whether you are called for interview or not, but we are not able to offer feedback to candidates who are not successful at the shortlisting stage.

References

We may seek information from people who are well placed to comment on how you meet the qualities and abilities. Referees are usually approached before the shortlisting takes place and will be encouraged to draw on appraisal material if it is available. The material provided by referees will usually inform the shortlisting and interview decisions. It will also inform the final selection decisions by Commissioners.

The Competition Appeal Tribunal President, **The Honourable Mr Justice Barling**, is unable to provide references as he will be on the Sift and Interview Panels. If you would normally have sought him as a referee, you should instead consider nominating **Vivien Rose**, a Chairman of the Competition Appeal Tribunal.

Candidate nominated

You are invited to nominate up to three referees who know you well either personally or professionally. We strongly recommend that you check with your referee that they are not conflicted in any way.

JAC nominated

The JAC may also request references from those identified in the section of this pack titled 'JAC nominated referees'.

Please provide the name, title, position and address of your relevant judicial and professional referees. You may also tell us if you do not wish us to approach the relevant professional referee now, but you must give reasons. If you do not currently hold a judicial office and have excluded your relevant professional referee, you must suggest an alternative referee who is familiar with your work.

Conflict of interest

The Judicial Appointments Commissioners are listed at the back of this pack. You should not nominate a Commissioner as a referee. You should also state in the Application Form if you are in any way related to, or known to, any of the Commissioners and give details.

Outcome of the selection exercise

You will be advised of the outcome of your application in writing.

If you are unsuccessful at the selection day stage of the process, you can request a written explanation. You should make this request within six weeks of the date of the letter informing you that you have not been successful. We will aim to respond to your request within four working weeks.

Complaints procedure

If you are dissatisfied with any aspect of the way your application has been handled, please refer to the JAC's published complaints procedure, which is available from our website, or in writing on request.

CONTACTS AND FURTHER INFORMATION

Obtaining an application form

All the information about applying for this selection exercise is available at www.judicialappointments.gov.uk (current selection exercises).

The Application Form for this selection exercise can be obtained electronically by downloading it from the website.

Please contact the Judicial Appointments Applications Service (JAAS) team at the JAC if you wish to request a hard copy of the Application Form or Information Pack, or if you have any questions about submitting your application.

If you need the form and/or pack in a different format, for example Braille, please contact the JAAS team.

Acknowledgement of your application

You should receive an acknowledgement of your application within five working days of receipt. If you do not, please contact the JAAS team by telephone or e-mail.

Contact details

1. JAAS

Reference: 00422 (Please use this reference on all communications)

Judicial Appointments Commission
3rd Floor, Steel House
11 Tothill Street
London
SW1H 9LH

DX 149822 WESTMINSTER 6

E-mail: jaas@jac.gsi.gov.uk

Telephone: 0203 334 0123

2. Selection Exercise Team:

Assistant Director:

Sue Jones-Owen 0203 334 0303

E-mail: sue.jones-owen@jac.gsi.gov.uk

Deputy Selection Exercise Manager:

Hannah Lyon 0203 334 0316

Email: hannah.lyon@jac.gsi.gov.uk

Fax: 0203 334 0300

3. Director:

Jane Andrews 0203 334 0508

JAC NOMINATED REFEREES

The JAC may also request references from those categories listed below.

As mentioned previously, **The Honourable Mr Justice Barling** is unable to provide references. If you would normally have sought him as a referee, you should instead consider nominating **Vivien Rose**, a Chairman of the Competition Appeal Tribunal.

Judicial referees

If you hold a judicial office not in this list, please contact the JAC so that we can consider who should be nominated as your judicial referee.

If you sit on a Tribunal, the Tribunal President or equivalent.

If you are a Recorder, the Resident Judge, the Designated Civil Judge or the Designated Family Judge in the court(s) where you sit most often.

Professional referee

If you are a solicitor, your managing partner or relevant equity partner.

If you are a barrister, your Head of Chambers or, if in Northern Ireland, your senior member of the Bar Library.

If you are an advocate, the Dean of the Faculty of Advocates (Scotland only).

If you are employed, your line manager or equivalent.

JAC COMMISSIONERS

Chairman of the JAC

Baroness Usha Prashar CBE

Members

Mrs Justice Jill Black DBE

Dame Lorna Boreland-Kelly DBE

Professor Dame Hazel Genn DBE QC

Lady Justice Heather Hallett DBE

Sir Geoffrey Inkin OBE

Her Honour Judge Frances Kirkham

Mr Edward Nally

Ms Sara Nathan OBE

District Judge Charles Newman

His Honour Judge David Pearl

Mr Francis Plowden

Ms Harriet Spicer

Mr Jonathan Sumption OBE QC

Lord Justice Roger Toulson