



COMPETITION APPEAL TRIBUNAL

SUMMARY OF APPLICATION UNDER SECTION 179 OF THE ENTERPRISE ACT 2002

CASE No: 1148/6/1/09

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003) (“the Rules”), the Registrar of the Competition Appeal Tribunal gives notice of the receipt of a notice of application, on 22 December 2009, under section 179 of the Enterprise Act 2002 (“the Act”), by the Campaign for Real Ale (“CAMRA”) of 230 Hatfield Road, St Albans, AL1 4LW, challenging a decision (“the Decision”) by the Office of Fair Trading (“the OFT”), made on 22 October 2009 contained in a report entitled “Response to CAMRA’s super-complaint” (OFT 1137), not to make a market investigation reference to the Competition Commission (“the Commission”) under section 131 of the Act in respect of competition issues arising in connection with certain features of the market for the supply of beer in the United Kingdom¹. CAMRA is represented by Edwin Coe LLP of 2 Stone Buildings, Lincoln’s Inn, London, WC2A 3TH.

According to the Notice of Application, the Decision relates to arrangements entered into between companies which own pubs (“Pub Companies”) and their lessees and tenants (“Lessees”), under which the Lessees agree to purchase beer and other drinks exclusively from the Pub Companies. Approximately 54% of pubs in the UK are operated under these exclusive purchasing obligations (“Beer Ties”). In particular, 41% of pubs in the UK are operated under these Beer Ties by Pub Companies which tie more than 500 pubs (“Large Pub Companies”). A further 16% of pubs are ‘managed’, many by the same Pub Companies who also impose Beer Ties.

CAMRA filed a super-complaint with the OFT under section 11 of the Act about the impact that the use of these Beer Ties was having on consumers, which CAMRA calculated to be in the region of £2.5 billion per annum. It complained in particular about the use of Beer Ties by Large Pub Companies. The OFT decided, however, that there is effective competition between pubs at the retail level and that the interests of Large Pub Companies ‘would appear to be’ aligned with the interests of Lessees. The OFT therefore refused to conduct a further market study or to refer the matter to the Commission for a market investigation.

CAMRA submits that the Decision was unreasonable since the conclusions reached in the Decision are either not supported by evidence or are not adequately supported by evidence: material considerations that should have been taken into account were not considered; and there was recourse to reasoning to support conclusions that is manifestly illogical. CAMRA also submits that the Decision was procedurally unfair.

In summary, the principal grounds of review on which CAMRA relies are that:

1. The OFT’s conclusion that there is effective competition between pubs at a retail level was based on a manifestly incorrect market definition. The OFT failed to conduct any, or any appropriate, analysis of the markets at a local level, gave no reasons for such failure, and instead relied on irrelevant considerations in defining the local market.
2. The OFT’s conclusion that there is no restriction of competition in the wholesale market is based on wholly deficient logic, and is unreasonable.
3. The OFT’s conclusion that Lessees benefit from the Beer Ties was based on no evidence. As such, the OFT’s consequent conclusion that Lessees did not pay a higher price overall, such as might be passed onto consumers, was likewise based on no evidence.

¹ The Decision may be found at: http://www.of.gov.uk/shared_of/super-complaints/of1137.pdf

4. The OFT's conclusion that there is effective competition between the pubs at a retail level was reached by a flawed procedure. The OFT did not request further information from CAMRA before reaching this conclusion, and in doing so failed to act fairly and to comply with its obligations under section 169 of the Act and with the terms of its own Guidance.
5. The OFT erred in law in failing to apply the correct threshold for the exercise of its powers to respond to the super-complaint.

CAMRA seeks an order that the Decision be quashed and referred back to the OFT with a direction to reconsider whether to conduct a further market study or make a reference to the Commission.

Any person who considers that he has sufficient interest in the outcome of the proceedings may make a request for permission to intervene in the proceedings, in accordance with rule 16 of the Rules.

A request for permission to intervene should be sent to the Registrar, The Competition Appeal Tribunal, Victoria House, Bloomsbury Place, London WC1A 2EB, so that it is received within **three weeks** of the publication of this notice.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively the Tribunal Registry can be contacted by post at the above address or by telephone (020 7979 7979) or fax (020 7979 7978). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE
Registrar

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