



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 46 OF THE COMPETITION ACT 1998

CASE No. 1160/1/1/10

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003) (“the Rules”), the Registrar gives notice of the receipt of an appeal dated 15 June 2010 under section 46 of the Competition Act 1998 (“the Act”), by Imperial Tobacco Group plc and Imperial Tobacco Limited, both of PO Box 244, Upton Road, Southville, Bristol BS99 7UJ (together, “ITL”) in respect of a decision in Case CE/2596/03 dated 15 April 2010 (“the Decision”) taken by the Office of Fair Trading (“OFT”). ITL is represented by Ashurst LLP of Broadwalk House, 5 Appold Street, London EC2A 2HA (reference: ANP\I210.00205\16966871).

According to the Decision, the OFT fined ITL £112,332,495. In the Decision the OFT concluded that two manufacturers and ten retailers had infringed the Chapter I prohibition, contained in section 2 of the Act, by participating in trading agreements which had as their object the prevention, restriction or distortion of competition in the supply of tobacco products in the UK. In the trading agreements, ITL gave incentives to the retailers to increase sales of its brands and to encourage them to price those brands at or below the price of competitor brands.

In summary the principal grounds of appeal on which ITL relies are that:

- (a) The OFT has erred in concluding that ITL’s trading agreements had as their “object” the prevention, restriction or distortion of competition and, in particular, has failed adequately to identify any applicable theory of harm or adduce evidence to the requisite standard to support such a conclusion.
- (b) The OFT has erred in concluding that the trading agreements either required or operated in practice so as to impose a system of fixed parity and/or differential requirements on retailers’ shelf prices.
- (c) The OFT has erred in law in concluding that the trading agreements were not excluded from the application of the Act further to the provisions of the Competition Act 1998 (Land and Vertical Agreements Exclusion) Order that was in force at the relevant time.
- (d) The OFT has erred in concluding that the trading agreements did not benefit from individual exemption further to section 9 of the Act.
- (e) Further, and in any event, the fine imposed by the OFT should be quashed in its entirety and/or is manifestly disproportionate given that, in particular:
 - a. the OFT’s object infringement is entirely novel;
 - b. the OFT has failed to find any evidence that the trading agreements had any effect upon competition; and
 - c. the fine has been calculated in a manner that is inconsistent with the applicable principles of law and established guidance.

As regards the relief sought, ITL asks that the Tribunal:

- (a) annul the Decision as it applies to ITL;
- (b) alternatively, reduce or annul the penalty applicable to ITL;

(c) award ITL its costs of this appeal; and

(d) grant any other relief as may be required.

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

Published 24 June 2010