



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 46 OF THE COMPETITION ACT 1998

CASE No. 1161/1/10

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 16 June 2010 under section 46 of the Competition Act 1998 (“the Act”), by Co-operative Group Limited of New Century House, Manchester, M60 4ES (“CGL”) in respect of a decision in Case CE/2596/03 dated 15 April 2010 (“the Decision”) taken by the Office of Fair Trading (“OFT”). CGL is represented by Burges Salmon LLP of Narrow Quay House, Narrow Quay, Bristol, BS1 4AH (reference: MS11/LC01/15762.222/SHRIM).

According to the Decision, the OFT fined CGL £14,187,353. 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 agreements and/or concerted practices which had as their object the prevention, restriction or distortion of competition in the supply of tobacco products in the UK (“the Infringing Agreements”). As mentioned in the Decision, the Infringing Agreements comprised in each case an agreement and/or concerted practice between each manufacturer and each retailer whereby the manufacturer coordinated with the retailer the setting of the retailer’s retail prices for tobacco products, in order to achieve the parity and differential requirements between competing tobacco brands that were set by the manufacturer, in pursuit of the manufacturer’s retail pricing strategy.

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

- (a) On their proper construction, neither the trading agreement between CGL and Gallaher Limited (“the Gallaher Agreement”) nor the trading agreements between CGL and Imperial Tobacco Limited (“the ITL Agreements”) contained an “agreement”, for the purposes of section 2 of the Act, between CGL and the individual manufacturer to comply with parity and differentials for its tobacco products.
- (b) The Chapter I prohibition did not apply to the Gallaher Agreement or the ITL Agreements by reason of Article 3 of the Competition Act 1998 (Land and Vertical Agreements Exclusion) Order 2000.
- (c) Neither the Gallaher Agreement nor the ITL Agreements had as its object the restriction of competition.
- (d) No penalty should have been imposed on CGL in all the circumstances; alternatively, the penalty is manifestly excessive.

CGL submits that the following remedies should be granted by the Tribunal:

- (a) the Decision in respect of the participation of CGL in infringements of the Chapter I prohibition should be set aside. Further or alternatively, the Decision in respect of the penalty imposed on CGL should be set aside or substantially reduced; and
- (b) the OFT should be ordered to pay the costs of CGL in relation to this appeal.

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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