



## COMPETITION APPEAL TRIBUNAL

### NOTICE OF APPEAL UNDER SECTION 46 OF THE COMPETITION ACT 1998

#### CASE No. 1164/1/1/10

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 (1) Asda Stores Limited, (2) Asda Group Limited, (3) Wal-Mart Stores (UK) Limited and (4) Broadstreet Great Wilson Europe Limited all of Asda House, Great Wilson Street, Leeds, LS11 5AD (together, “Asda”) in respect of a decision in Case CE/2596/03 dated 15 April 2010 (“the Decision”) taken by the Office of Fair Trading (“OFT”). Asda is represented by Norton Rose LLP of 3 More London Riverside, London, SE1 2AQ (reference: MHJ/LN12739).

According to the Decision, the OFT fined Asda £14,095,933. 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 Asda relies are as follows:

- (a) The OFT was wrong to characterise the challenged practices as an infringement of section 2 of the Act by object.
- (b) The OFT has mischaracterised the evidence in the case: the evidence does not show an unlawful vertical price-fixing agreement.
- (c) The OFT erred in refusing to find that the challenged practices were excluded from the Chapter I prohibition by virtue of the Competition Act 1998 (Land and Vertical Agreements Exclusion) Order 2000 or alternatively that they were capable of exemption under section 9 of the Act.
- (d) The penalty imposed contains errors of law and is discriminatory and disproportionate.

Asda seeks the following relief from the Tribunal:

- (a) The annulment of the Decision in its entirety; or
- (b) A declaration that the practices as described in the Decision are, in so far as they concern Asda, excluded from the Chapter I prohibition by virtue of the Competition Act 1998 (Land and Vertical Agreements Exclusion) Order 2000 or alternatively exempt from the Chapter I prohibition under section 9 of the Act; or
- (c) Alternatively, in so far as it concerns Asda, remission of the matter to the OFT for consideration of exemption from the Chapter I prohibition under section 9 of the Act; and/or
- (d) The annulment of Asda’s penalty or alternatively a substantial reduction of Asda’s penalty.

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](http://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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