



COMPETITION APPEAL TRIBUNAL

**SUMMARY OF APPLICATION UNDER SECTION 179 OF THE ENTERPRISE ACT 2002**

**CASE No. 1191/6/1/12**

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 on 1 May 2012 of an application under section 179 of the Enterprise Act 2002 (“the Act”), by the Association of Convenience Stores (“ACS”) and the National Federation of Retail Newsagents (“NFRN”), for review of a decision dated 1 March 2012 (“the Decision”) made by the Office of Fair Trading (“OFT”), titled “Newspaper and Magazine Distribution in the UK” (OFT1406). ACS is represented by Edwin Coe LLP of 2 Stone Buildings, Lincoln’s Inn, London WC2A 3TH (ref: David Greene) and NFRN is represented by Nabarro LLP of Lacon House, 84 Theobald’s Road, London WC1X 8RW (ref: Ilan Sherr).

ACS and NFRN (together, “the Applicants”) state that in the Decision the OFT indicated that, under its Prioritisation Principles, it would not be justified in conducting an update review of the distribution arrangements in the UK for newspapers and magazines, with a view to a potential reference to the Competition Commission under section 131 of the Act. The Applicants state that this is despite an earlier decision by the OFT in 2009 finding substantial anti-competitive features of the market(s) and refraining from making a market investigation reference to the Competition Commission under Part 4 of the Act only on the basis (a) that the system of absolute territorial protection for magazine distribution was not likely to persist and (b) that the industry was for various reasons in a “period of flux” which would render it difficult for the Competition Commission at that stage to evaluate the evolution of supply chains in the short term and hence the impact and effectiveness of remedies.

The Applicants contend that the Decision is vitiated by unreasonableness. The Applicants submit that the conclusions reached in the Decision are either not supported by evidence or are not adequately supported by evidence, and material considerations that should have been taken into account were not considered. In particular, the Applicants submit that:

1. the OFT reached conclusions as to consumer impact on a basis that failed to deal adequately or at all with the case made by the Applicants that the operation of the duopolistic distribution system had substantial and increasingly detrimental effects on consumer choice of titles; and
2. the OFT founded its conclusion as to strategic significance in large part on a wholly flawed conclusion that the Applicants’ members’ concerns could be dealt with by self-regulatory mechanisms.

By way of relief, the Applicants seek an order that the Decision be quashed and the matter referred back to the OFT to reconsider whether to conduct an updated review of the market, taking account of the Tribunal’s judgment, and an order for costs.

By way of directions, the Applicants request that the Tribunal determine, as a preliminary matter and urgently, whether it has jurisdiction to consider this application under section 179 of the Act.

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, QC*  
Registrar

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