



COMPETITION APPEAL TRIBUNAL

SUMMARY OF APPLICATION UNDER SECTION 179 OF THE ENTERPRISE ACT 2002

CASE No. 1203/6/1/12

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 21 December 2012 of an application under section 179 of the Enterprise Act 2002 (“the Act”), by John Lewis plc (“John Lewis”), for review of a decision communicated to John Lewis on 15 November 2012 (“the Decision”) by the Office of Fair Trading (“OFT”), by which the OFT refused to list certain John Lewis extended warranties on a price comparison website (“the Website”). The Website is to be established pursuant to undertakings in lieu of a market investigation reference given by Comet Group plc, Argos Limited and DSG Retail Limited on 27 June 2012 (“the UIL”), following an OFT market study in relation to extended warranties on domestic electrical goods. John Lewis is represented by Shepherd and Wedderburn LLP of Condor House, 10 St Paul’s Churchyard, London EC4M 8AL (ref: John Schmidt / Hayley Pizzey).

According to the notice of application, John Lewis actively participated in the OFT’s consultation on the UIL and the OFT’s development of the Website, and raised certain concerns regarding the presentation of “bundled” extended warranties (i.e. extended warranties where the price of the extended warranty is included within the overall price of the relevant domestic electrical good) offered by providers such as John Lewis on the Website. John Lewis states that the OFT, by its Decision communicated at a meeting on 15 November 2012 and confirmed in writing on 14 December 2012, informed John Lewis that the Website would not include bundled extended warranties offered by John Lewis or other providers.

In summary, John Lewis seeks a review of the Decision on the following grounds:

1. The OFT’s refusal to list John Lewis’ bundled extended warranties, or refer to the provision of bundled extended warranties by John Lewis, on the Website solely on the basis that it does not charge a separate price for the extended warranties is in breach of the UIL. The UIL cover any extended warranties which are provided for monetary consideration, and do not require that any such price is unbundled from that of the underlying product. John Lewis submits that the OFT’s active participation in facilitating such a breach, alternatively its failure to prevent that breach under section 167(6) of the Act, is in breach of its statutory duties set out in section 162 of the Act.
2. The OFT has unreasonably and unlawfully exercised its discretion under section 154(2) and 154(3) of the Act by rejecting a proposal that provides more relevant information to the consumer and deliberately excludes extended warranty providers that structure their product in a particular way.
3. The Website will mislead customers and thus will distort free trade in goods and services and will lead to the distortion of competition between different types of competitors within the EU. John Lewis submits that the OFT’s participation via the “steering group” established under the UIL involves a breach of its EU law duties under Article 4(3) TEU read with Articles 3(b), 45, 56 and 101 TFEU.

John Lewis seeks the following relief under section 179(5) of the Act:

1. An order to quash the Decision.
2. A direction requiring the OFT and/or the steering group established under the UIL to make a new decision:

- a. To allow all of John Lewis' extended warranties to be listed on the Website comparing extended warranty prices and features from different providers in a neutral manner irrespective of whether or not John Lewis price the extended warranty separate from the underlying product; alternatively
 - b. To refer on the pages showing comparison tables on the Website to the provision of such extended warranties by John Lewis and other named providers of bundled extended warranties;
 - c. To include a statement on the Website that the consumer needs to assess both the price of the extended warranty and the price of the underlying product to ensure that he or she is receiving value for money.
3. Such other order or relief as the Tribunal may consider appropriate.
 4. An order that the OFT and/or any intervener in support of the OFT pay John Lewis' costs of and incidental to the application.

By way of directions, John Lewis requests that the Tribunal determine the application on an expedited basis given that the Website is due to launch on or around 14 January 2012.

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.

Pursuant to the Tribunal's Order of 28 December 2012, 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 by 5pm on 7 January 2013.

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, QC
Registrar

Published 28 December 2012