



The Competition Commission Appeal Tribunals

NOTICE OF APPLICATION UNDER SECTION 46 OF THE COMPETITION ACT 1998
CASE NO. 1005/1/1/01

Pursuant to Rule 13 of the Competition Commission Appeal Tribunal Rules 2000, the Registrar of Appeal Tribunals gives notice of the receipt of an application under section 46 of the Competition Act 1998 by Aberdeen Journals Ltd, of PO Box 43, Lang Stracht, Mastrick, Aberdeen, AB15 6DF, in respect of a decision of the Director General of Fair Trading ("the Director") No CA 1005/1/1/01, dated 16 July 2001 ("the Contested Decision"), relating to infringements of section 18 of the said Act. The Contested Decision was taken following the Director's investigation commenced in January 2000 into a complaint submitted by Aberdeen Independent Ltd, publisher of the Aberdeen & District Independent ("the Independent"), that the Herald & Post, owned by Aberdeen Journals Ltd, was pricing its advertising space at significantly below "market value". The Contested Decision finds that Aberdeen Journals Ltd has abused a dominant position in the market for the supply of advertising space in local newspapers (paid-for and free) in the Aberdeen area by its pricing of advertising space in its Herald & Post. By the Contested Decision the Director required Aberdeen Journals Ltd to pay a penalty of £1,328, 040.

Aberdeen Journals Ltd now seeks the following relief:

1. that the Contested Decision be set aside in whole or in part;
2. that the penalty be set aside or reduced;
3. a declaration that Aberdeen Journals Ltd's conduct in the period 1-29 March 2000 did not infringe section 18 of the Act;
4. that the Director pay Aberdeen Journals Ltd's costs of the application;
5. such further and other relief as the Appeal Tribunal may consider appropriate

The principal grounds on which the application relies are that:

1. the Director has erred in fact and law in concluding that Aberdeen Journals Ltd held a dominant position in the market for the supply of advertising space in both paid-for and free local newspapers in Aberdeen or the circulation area of the Herald & Post;
2. even if Aberdeen Journals held a dominant position in a relevant market the Director has erred in fact and law in concluding that Aberdeen Journals Ltd has abused that position by engaging in predatory conduct;
3. should Aberdeen Journals Ltd be found by the Tribunal to have infringed section 18 of the Act, it did not commit the infringement intentionally or negligently and therefore the Director did not have the power to require it to pay a penalty;
4. even if the Director had the power to impose the penalty on Aberdeen Journals the penalty imposed is excessive in all the circumstances of the case and particularly by reference to the terms of the Director's Guidance as to the Appropriate Amount of Penalty and to relevant mitigating factors.

Any person who considers that he has a sufficient interest in the Contested Decision may make a request for permission to intervene in the proceedings, in accordance with Rule 14 of the Competition Commission Appeal Tribunal Rules 2000.

A request for permission to intervene should be sent to the Registrar, The Competition Commission Appeal Tribunals, New Court, 48 Carey Street, London WC2A 2JT, so that it is received within one month of the publication of this notice.

Further details concerning the procedures of the Competition Commission Appeal Tribunals can be found on its website at competition-commission.org.uk. Alternatively the Tribunal Registry can be contacted by post at the above address or by telephone (020 7271 0395) or fax (020 7271 0281). Please quote the case number mentioned above in all communications.

Charles Dhanowa, Registrar.

21 September 2001