



COMPETITION APPEAL TRIBUNAL

**NOTICE OF APPLICATION UNDER SECTION 46 OF THE COMPETITION ACT  
1998**

**CASE NO 1014/1/1/03**

Pursuant to Rule 13 of the Competition Commission Appeal Tribunal Rules 2000 (“the Rules”), the Registrar gives notice of the receipt of an application, dated 17 April 2003, under section 46 of the Competition Act 1998 (“the Act”) by Argos Limited of Avebury, 489-499 Avebury Boulevard, Saxon Gate West, Central Milton Keynes, MK9 2NW (“the applicant”) in respect of a decision (CP0480-01) taken by the Director General of Fair Trading and notified to the applicant on 19 February 2003, (“the Decision”).

In the Decision the Director found that the applicant entered into price-fixing agreements and/or concerted practices with Hasbro UK Limited (‘Hasbro’) and Littlewoods Limited that infringed section 2 (‘the Chapter I prohibition’) of the Act. The Director also found that there was a bilateral agreement between the applicant and Hasbro. The Director further found that the agreements and/or concerted practices in question sought to fix the price of certain Hasbro toys and games in the UK and that the agreements and/or concerted practices infringed the Chapter I prohibition between 1 March 2000 and some time between 15 May 2001 and 14 September 2001. For its infringement of the Chapter I prohibition of the Act the Director imposed a penalty of £17.28 million on the applicant.

In its application the applicant seeks the following relief:

- (1) That the Decision be set aside;
- (2) Alternatively, that the level of the penalty should be reduced.

In its summary of the principal grounds on which it relies, the applicant states that:

- “(a) The burden of proof is on the Director and he is required to prove his case on the basis of “strong and compelling evidence”.
- (b) Whilst the Decision alleges a concerted practice (“knowing cooperation”) at the overall level between Hasbro, Argos and Littlewoods, the finding of a bilateral arrangement between Hasbro and Argos rests solely on the allegation of an agreement (a “concurrence of wills”).
- (c) In order to establish a concurrence of wills or know cooperation between Hasbro and Argos, the Director must provide evidence of the state of mind of relevant employees of Hasbro and Argos. The Decision contains no evidence, let alone strong and compelling evidence, of the state of mind of any relevant Argos employee.
- (d) The interview records of Hasbro employees upon which the Decision relies heavily are woefully inadequate from an evidential perspective. In particular, no proper record was kept, leading questions were used persistently and the level of questioning was hopelessly superficial.

- (e) In spite of the requests made by the Director to Argos under section 26 of the Act and the carrying out of a “dawn raid” at Argos’s headquarters under section 27 of the Act, none of the documents relied upon in the Decision emanates from Argos (e.g. e-mails from Argos employees or internal Argos documents).
- (f) The Director wrongly discounted the overwhelming evidence available that, as a result of its takeover by Great Universal Stores Plc (“GUS”) in April 1998, Argos independently adopted a general change in pricing policy whereby it sought to price goods at the market level, rather than seeking aggressively to undercut competitors.
- (g) The totality of the evidence relied upon by the Director falls far short of establishing a concurrence of wills or even knowing co-operation between relevant Hasbro and Argos employees to charge particular prices for particular products, or to price particular products at particular pricing levels (e.g. RRP or market prices).”

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 14 of the Rules.

A request for permission to intervene should be sent to the Registrar, The Competition Appeal Tribunal, New Court, 48 Carey Street, London WC2A 3BZ, so that it is received within **one month** 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 7271 0395) or fax (020 7271 0281). Please quote the case number mentioned above in all communications.

*Charles Dhanowa*  
Registrar

2 May 2003