



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 46 OF THE COMPETITION ACT 1998

CASE NO 1048/1/1/05

Pursuant to Rule 15 of the Competition Appeal Tribunal Rules 2003 (“the Rules”), the Registrar of the Competition Appeal Tribunal gives notice of the receipt of a notice of appeal, lodged on 10 January 2004, under section 46 of the Competition Act 1998 (“the Act”) by Double Quick Supplyline Limited (“DQS” or “the appellant”) of Unit 4 Plasmarl Industrial Park, Beaufort Road, Plasmarl, Swansea, SA6 8JG in respect of decision No CA/98/08/2004, made by the Office of Fair Trading (“the OFT”) and published on the OFT website on 9 November 2004 (“the Decision”)¹.

In the Decision the OFT found that the appellant had infringed section 2 of the Act (“the Chapter I prohibition”) by being party to an overall agreement and/or concerted practice to fix and/or maintain minimum resale prices for dessiccant manufactured by UOP Limited. The OFT imposed a penalty of £109,000 on the appellant in respect of that infringement.

The appellant contends that the OFT erred in amalgamating various sub-agreements and/or concerted practices and treating them as one continuous infringement and in imposing a penalty on the appellant on this basis. In particular, the appellant submits that the OFT:

1. was wrong to impose a penalty on the appellant on the basis of a continuous infringement lasting from 1 March 2000 until at least 12 March 2002 when the appellant was not incorporated until 8 May 2001 and did not begin to trade until 12 June 2001 on which date it acquired a business previously owned by Heywood Williams Components Limited;
2. was wrong to find that DQS participated in a number of sub-agreements and/or concerted practices which occurred in whole or in part before its date of incorporation;
3. was wrong to treat mere attendance at meetings as evidence of participation in an infringement and wrong to find that the appellant had participated in a policy of matching but not undercutting prices at all; and
4. was wrong to impose a penalty in respect of an agreement to co-ordinate the timing of a price increase in 2002 as that agreement had little or no effect on competition or on consumers.

Further, in relation to the amount of penalty imposed, the appellant submits that the OFT erred:

1. in choosing a “starting point” for the calculation of the fine that was excessive as a percentage of relevant turnover;
2. in its treatment of “aggravating factors” in particular the extent to which senior management participated in the infringement;

¹ The text of the decision can be found at <http://www.offt.gov.uk/Business/Competition+Act/Decisions/UOP+Limited.htm>.

3. in calculating the duration of the infringement; and
4. in failing to fully consider the financial position of the applicant, and that a lower penalty would have provided a sufficient and effective deterrent.

In addition the appellant contends that the Decision suffers from a number of procedural defects, that the OFT failed to conduct a proper investigation, used evidence improperly and failed adequately to take into account the appellant's response to the Rule 14 Notice.

The appellant seeks the following relief from the Tribunal:

1. that the Decision be set aside; or
2. an Order reducing the amount of the penalty imposed on the appellant; and/or
3. an Order that the OFT pay the appellant's costs of the appeal.

Any person who considers that he has a 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. 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
Registrar

Published 19 January 2005