



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 46 OF THE COMPETITION ACT 1998 CASE NO 1056/1/1/05

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (“the Rules”), the Registrar gives notice of the receipt of an appeal, lodged on 7 November 2005, under section 46 of the Competition Act 1998 (“the Act”), by the Royal Bank of Scotland Group (“RBSG”; “the appellant”) of 36 St Andrew Square, Edinburgh, EH2 2TB, against a decision (CA98/5/05)¹ taken by the Office of Fair Trading (“the OFT”) on 6 September 2005 (“the decision”).

The decision relates to the arrangements for setting the multilateral interchange fees (“MIF”) which are payable between acquiring and issuing banks on UK domestic MasterCard credit and charge card transactions in the absence of any bilateral agreements between the banks. The arrangements were set out in the UK Domestic Rules of MasterCard UK Members Forum Limited (“MMF”), in and of which RBSG is a shareholder and member, and are referred to as the “MMF MIF”. The relevant rules together comprised the “MMF MIF Agreement”. The MMF MIF Agreement is no longer in force. The decision concerns the MMF MIF Agreement that was in place from 1 March 2000 until 18 November 2004, when new arrangements for setting the MMF MIF were introduced.

In the decision the OFT concluded that the MMF MIF Agreement restricted competition within the meaning of Article 81(1) of the EC Treaty and section 2 of the Act (referred to collectively as “Article 81(1)”), and did not meet the exemption conditions set out in Article 81(3) of the EC Treaty and section 9 of the Act (referred to collectively as “Article 81(3)”).

RBSG appeals against that decision on the following grounds:

1. the OFT’s approach to market definition, in particular its identification of the relationship between acquirers and issuers taking place in a “wholesale market” and the inconsistency between market definition and identification of restrictions, is fundamentally flawed.
2. the OFT has misapplied Article 81(1) in respect of the collective price restriction. It has failed to show a restrictive effect in either the wholesale market or the acquiring market; it has failed to apply the correct legal test in order to identify a restriction; and it has committed errors of law and assessment in considering whether there is an appreciable effect on competition.
3. the OFT has committed errors of assessment in the application of Article 81(3) in respect of the collective price restriction. First, it has incorrectly applied the third exemption condition. Specifically, it has adopted a misguided theoretical approach, set an impossible standard of proof, mischaracterised certain costs and services as extraneous, failed to conduct the required assessment and failed to have proper regard to evidence that merchants benefit from the extension of credit. Secondly, it has incorrectly applied the second exemption condition in interpreting that condition as requiring the parties to demonstrate benefits for all customers, not just MasterCard holders.

¹ The text of the decision can be found at: <http://www.offt.gov.uk/NR/rdonlyres/E0CDB5F8-3ECC-462A-9D73-FDEC47ACEDA2/0/mastercard.pdf>.

4. the OFT has misapplied Article 81(1) in respect of the extraneous cost restriction. It has failed properly to define extraneous costs; there are inherent flaws in its approach to such costs; and the alleged effects of the extraneous cost restriction arise in markets other than the relevant markets identified by the OFT.
5. the OFT has committed errors of assessment in the application of Article 81(3) in respect of the extraneous cost restriction. Specifically, the OFT's finding that the MMF MIF Agreement does not meet the first condition of Article 81(3) because the willingness of individual merchants to pay for the ability to accept credit cards overstates the aggregate merchant benefits of such acceptance is flawed.

The appellant requests that the Tribunal:

- (a) set aside the decision;
- (b) order any further relief as appropriate;
- (c) award the appellant its costs of the appeal.

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. 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 on 10 November 2005