



SUMMARY OF APPLICATION UNDER SECTION 179 OF THE ENTERPRISE ACT 2002

CASE No: 1109/6/8/09

Pursuant to rules 15 and 25 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003) (“the Rules”), the Registrar of the Competition Appeal Tribunal gives notice of the receipt of a notice of application, on 30 March 2009, under section 179 of the Enterprise Act 2002 (“the Act”), by Barclays Bank PLC (“Barclays”) of One Churchill Place, Canary Wharf, London, E14 5HP, challenging the legality of certain findings made by the Competition Commission (“the Commission”) contained in a report, published on 29 January 2009, entitled “Market investigation into payment protection insurance” (“the Report”)¹.

Payment protection insurance (“PPI”) covers repayments on an insured credit product if the borrower suffers an insured event, such as an accident, sickness, unemployment or death. Nearly 95% of PPI sold in the UK covers personal finance, credit cards and mortgages. The Commission found that those businesses that offer PPI alongside credit face little or no competition when selling PPI to their credit customers. The Commission concluded that the relevant product market was an individual distributor’s or intermediary’s sales of a particular type of PPI policy and that there were barriers to effective searching by consumers of different policies and barriers to switching between policies. It also found that there were barriers to expansion for other providers of PPI and that there was an advantage in selling PPI at the point of sale of the associated credit product. The Commission further concluded, pursuant to section 134(1) of the Act, that there are features of the markets for PPI which resulted in an adverse effect on competition (“AEC”).

In terms of the detrimental effects on consumers of these features, the Commission concluded that these included higher prices for, and less choice in, PPI policies than would be expected in a well-functioning market. To address the AEC, the Commission decided that a number of remedies are required, *inter alia*: a prohibition on selling PPI at the credit point of sale; a requirement on all PPI providers prominently to disclose certain information regarding PPI; a requirement on all PPI providers to provide information to the Financial Services Authority (“FSA”); and a prohibition on the selling of single-premium PPI policies.

Barclays seeks to challenge the following aspects of the Report: the decision to introduce a prohibition on distributors selling PPI at the credit point of sale (“the POSP”); the findings in relation to the relevant market; and the findings in relation to the factors affecting the nature and extent of competition in the supply of (non-retail) PPI.

Barclays applies for review of the Report pursuant to section 179(1) of the Act on four principal grounds. First, Barclays argues that the Commission failed to take account of considerations which are relevant to the proportionality of the POSP. In particular, the Commission failed to consider and take account of the extent of benefits that would arise from its proposed remedies taken as a package and the extent of the incremental benefits that would arise from the inclusion of the POSP in the package of remedies.

Barclays also contends that the Commission concluded that the POSP was justified without any proper evidential basis for this conclusion and incorrectly concluded that the POSP was a more reasonable, effective or proportionate remedy to impose than a proposal made by Barclays involving informational remedies and an increased cooling-off period. In addition, the Commission failed to take account of relevant considerations and/or took account of irrelevant considerations in its analysis of the extent of consumer detriment arising from the AEC and whether the benefits of its intervention would outweigh the loss of the relevant consumer benefits.

¹ The Report may be found at: http://www.competition-commission.org.uk/rep_pub/reports/2009/542ppi.htm

Finally, Barclays submits that the Commission failed to take account of relevant considerations in its analysis of the relevant market(s) and the extent of the competition problems. In particular, the Commission, in adopting a narrow market definition, erred by not updating earlier findings in the light of new information and it took no account of changes in the market since carrying out the majority of its financial analysis on the basis of data up until the end of 2006.

Accordingly, Barclays requests that the Tribunal:

1. quash the Report insofar as it relates to the POSP and the Commission's findings on market definition and the nature and extent of competition in the supply of PPI;
2. refer the matter back to the Commission with a direction to reconsider and make a new decision in accordance with the Tribunal's ruling; and
3. order that the Commission pay Barclays its costs.

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 OBE
Registrar

Published 2 April 2009