



COMPETITION APPEAL TRIBUNAL

**NOTICE OF APPEAL UNDER SECTION 46 OF THE COMPETITION ACT 1998
CASE NO 1062/1/1/06**

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (“the Rules”), the Registrar gives notice of the receipt of an appeal, registered on 27 April 2006, under section 46 of the Competition Act 1998 (“the Act”) by The London Metal Exchange (“LME”; “the appellant”) of 56 Leadenhall Street, London, EC3A 2DX, against a decision¹ taken by the Office of Fair Trading (“the OFT”) on 27 February 2006 (“the Decision”) and effective as of that date.

The Decision takes the form of an interim measures direction under section 35 of the Act (“the Direction”). In the Decision the OFT directed LME (a) not to increase the hours of trading available on its electronic trading platform, LME Select, outside of 07:00 to 19:00 (London time), as is currently its practice; and (b) to confirm in writing to the OFT that it had complied with the above direction within 5 working days of receipt of the Decision.

LME appeals against the Decision on the grounds that the OFT erred in fact and/or in law in concluding that it was necessary and/or appropriate to impose the Direction. As to the conditions for the grant of interim relief, which in LME’s submission are set out in *Genzyme Limited v Office of Fair Trading* [2003] CAT 8, LME’s position, in summary, is as follows:

- (a) *Prima facie case*: LME strongly rejects that it has committed any breach of Article 82 EC as alleged by the OFT or otherwise.
- (b) *Urgency*: LME contends that the OFT erred in fact and/or in law in concluding that it was necessary to impose the Direction as a matter of urgency.
- (c) *Serious and irreparable harm if interim relief is not granted*: LME disputes the conclusions in the Direction that if interim measures were not adopted (a) the likely consequence would be the elimination of a competitor from the market and (b) it would be extremely difficult at least for a competitor to re-establish a viable electronic trading platform in this area at some point in the future.
- (d) *Likely effect on competition or relevant third party interests*: the OFT’s consideration of the public interest is fundamentally flawed. First, it failed to conduct a proper investigation into the relevant public and third party interests. Secondly, it failed to understand that the only relevant consumers are LME members.
- (e) *Balance of interests*: LME submits that the best judges of the balance of convenience are the LME’s members. They are overwhelmingly in favour of an immediate extension of LME Select’s operating hours.

The appellant requests that the Tribunal:

- (a) allows the appeal and sets aside the Direction;
- (b) orders the OFT to pay the LME’s costs of the appeal;

¹ The text of the decision can be found at: <http://www.offt.gov.uk/NR/rdonlyres/1BBB54B4-4D75-4A71-8B18-F50701BCDA6E/0/londonmetalexchange.pdf>.

(c) any other order that is necessary or appropriate.

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 by no later than 12 May 2006.

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

5 May 2006