



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 46 OF THE COMPETITION ACT 1998

CASE NO 1072/1/1/06

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 29 August 2006, under section 46 of the Competition Act 1998 (“the Act”) by Double Quick Supplyline Limited (“DQS”) and Plastic Building Materials Limited (“PBM”) (together “the appellants”) both of Unit 4 Plasmarl Industrial Park, Beaufort Road, Plasmarl, Swansea, SA6 8JG in respect of decision No CA/98/04/2006 dated 28 June 2006 taken by the Office of Fair Trading (“the OFT”) and published on the OFT website on 29 June 2006 (“the Decision”)¹.

In the Decision the OFT found that in November/December 2002 DQS, EWS (Manufacturing) Limited (“EWS”), Ulmke Metals Limited and Thermosteel Group Limited had infringed section 2 of the Act (“the Chapter I prohibition”) by being parties to an agreement and/or concerted practice designed to fix and/or maintain resale prices and share the market for the sale of aluminium spacer bars sourced from EWS with the intention of targeting the customers of a competitor, UKae Limited and the objective of excluding it from the market.

In respect of the infringement of the Chapter I prohibition the OFT imposed a penalty of £180,000 on DQS.

The appellant does not appeal liability in respect of its involvement in the alleged infringement however, the appellants submit that the OFT erred in the calculation of the financial penalty and that the penalty imposed is excessive and/or unjustified on the basis that:

1. the “Starting Point” percentage was excessive;
2. the penalty is disproportionate to DQS’s involvement in the alleged infringement and its purported impact on competition;
3. the “deterrent multiplier” applied by the OFT is excessive and a substantially lower multiplier would serve as an equally effective deterrent against future infringements
4. the OFT has failed to demonstrate that the financial penalty has been calculated in a fair and reasonable way
5. the OFT erred in naming a particular individual as being the senior management of DQS and has overstated his involvement in the day to day running of its business; and
6. the OFT failed to sufficiently consider the appellants’ representations as to the effect that a substantial penalty would have on the business, and, accordingly, imposed an unduly severe financial penalty.

¹ The text of the decision can be found at <http://www.offt.gov.uk/NR/rdonlyres/ADC63974-AF00-4CCD-9A67-3360F8BB9786/0/Spacerbars.pdf>.

The appellants contend that the OFT erred in holding that DQS and Precision Concepts Limited (“PC”) are jointly and severally liable under the Decision on the basis that “they form part of the same undertaking”. In particular, the appellants submit that:

1. PC is an economic entity that is distinct from DQS and, accordingly, DQS and PC do not form part of a single undertaking;
2. the autonomous management structure of DQS and the financial arrangements between DQS, PMB and Saint Gerald Holdings PLC clearly demonstrate that DQS and PC did not operate as a single economic entity; and
3. the OFT failed to adequately consider the written and oral submissions of DQS countering the assertion that PC and DQS are a single undertaking.

The appellants seek the following relief from the Tribunal:

1. an order reducing the amount of the penalty imposed; and/or
2. an order that the OFT pay the appellants’ 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

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