



COMPETITION APPEAL TRIBUNAL

SUMMARY OF APPLICATION UNDER SECTION 120 OF THE ENTERPRISE ACT 2002

CASE No. 1300/4/12/18

Pursuant to rules 14 and 26 of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (the “Rules”), the Registrar gives notice of the receipt on 12 December 2018 of an application for review under section 120 of the Enterprise Act 2002 (the “Act”), by J Sainsbury plc and Asda Group Limited (together, “the Applicants”) against certain decisions made by the Competition and Markets Authority (the “CMA”) in correspondence with the Applicants between 30 November 2018 and 7 December 2018. J Sainsbury plc is represented by Linklaters LLP of One Silk Street, London EC2Y 8HQ (reference: Simon Pritchard/Nicole Kar). Asda Group Limited is represented by Gibson, Dunn & Crutcher UK LLP of 2-4 Temple Avenue, London EC4Y 0HB (reference: Ali Nikpay/Deirdre Taylor).

The Applicants are the main parties in the ongoing Sainsbury’s / Asda merger inquiry which is being conducted by the CMA.¹

The notice of application states that the CMA has reached the stage of its investigation where it sets out its emerging thinking in Working Papers on: the methods and approaches that should be taken to analysing particular issues in the investigation; the evidence that is considered relevant; and the inferences to be drawn in light of the evidence. In recognition of the key importance of it doing so in this inquiry, and in line with its guidance, in the last weeks the CMA has sent to the Applicants 21 Working Papers and survey presentations, which for the most part are highly complex and detailed.

The Applicants contend that the CMA has imposed deadlines for the Applicants to carry out work and to provide information that cannot possibly be met, and which have crossed the line from being challenging to being purely unrealistic. According to the notice of application, the CMA has not engaged with the Applicants’ observations that its demands cannot be met, nor is it prepared to agree to take into account material provided as soon as is practically possible, only just over two weeks after the CMA’s final deadline (9am on Monday 17 December 2018) and on the basis of working continuously and under enormous pressure every day during the holiday period.

The Applicants challenge the following CMA decisions (“the Decisions”):

- (1) The refusal to grant the Applicants an extension of time to prepare meaningful written responses to the CMA’s complex Working Papers (including to voluminous and intricate material sent overnight on 27-28 November 2018). The CMA demands that the Applicants must provide all written responses by 9am on Monday 17 December 2018, which is not practically possible, even with continuous work;
- (2) The refusal to schedule the “Main Party Hearings” on a date which would allow the Applicants the opportunity effectively to explain their position on key points in the Working Papers to the Phase 2 decision-makers (which is what the CMA Guidance expressly envisages); and
- (3) The decision to instead schedule the Main Party Hearings on or before 14 December 2018, thereby taking away more time and resources from the already intolerably compressed timetable for preparing

¹ Further details are available on the CMA’s website: <https://www.gov.uk/cma-cases/j-sainsbury-plc-asda-group-ltd-merger-inquiry>.

responses to the CMA's Working Papers (9am on 17 December 2018), and exacerbating the difficulties confronted by the Applicants.

The Applicants seek an order setting aside the Decisions and amending the timeline of the inquiry so as to restore the minimum requirements of procedural fairness to the Applicants.

Specifically, they seek an order that:

- (a) The Applicants have permission to respond to the Working Papers in accordance with the dates which were proposed to the CMA by letter dated 6 December 2018 and are the genuine limit of what the Applicants can achieve;
- (b) The oral hearings be rescheduled to a date as soon as practicable in the New Year;
- (c) The Tribunal grant any further or other relief which it considers 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. Pursuant to the Order of the President of the Tribunal abridging time for applying for permission to intervene (made on 12 December 2018), any 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 **no later than 12 noon on 13 December 2018**.

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 email (registry@catribunal.org.uk). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, QC (Hon)
Registrar

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