



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1337/1/12/19

BETWEEN:

FP McCANN LIMITED

Appellant

- v -

COMPETITION AND MARKETS AUTHORITY

Respondent

ORDER

UPON the appeal (“the Appeal”) by FP McCann Limited (“FPM”) against the decision of the Competition and Markets Authority (“CMA”) dated 23 October 2019 in Case 50299: Supply of Products to the Construction Industry (Pre-Cast Concrete Drainage Products) (“the Decision”)

AND UPON FPM’s application against the CMA for disclosure of documents in relation to ground 1(a) of the Appeal (“the First Disclosure Application”)

AND UPON FPM’s application against the CMA for disclosure of documents in relation to ground 5(b) of the Appeal (“the Second Disclosure Application”)

AND UPON FPM’s application against the CMA for an order that the evidence of Dr Michael Grenfell, served with the CMA’s Defence, be declared inadmissible (“the Admissibility Application”)

AND UPON the CMA agreeing that, by no later than seven days after the date of this Order, it will inform the Tribunal and FPM’s solicitors in writing of the date on which the Office for Fair Trading opened its investigation under s.192 of the Enterprise Act 2002 in Case CE/9705/12

AND UPON the Tribunal listing a remote case management conference (“the CMC”) in the Appeal on 20 May 2020

AND UPON hearing leading counsel for FPM and leading counsel for the CMA at the CMC

AND UPON the Tribunal issuing a ruling on the Admissibility and First and Second Disclosure Applications on 3 June 2020 ([2020] CAT 13)

IT IS ORDERED AND DIRECTED THAT:

Forum

1. The appeal be treated as proceedings in England and Wales for the purposes of Rule 18 of the Competition Appeal Tribunal Rules 2015 (S.I. No. 1648 of 2015) (“the Tribunal Rules”).

Disclosure

2. The CMA shall, by 4.30 pm on 3 July 2020, inform FPM in writing of (i) the date on which the CMA took active steps to resume its investigation under s.25 of the Competition Act 1998 in Case 50299 (“the civil investigation”); and (ii) the step taken by the CMA which it considers amounted to a resumption of the civil investigation.
3. The CMA shall, by 4.30 pm on 3 July 2020, explain to FPM what the CMA considers are the typical difficulties which it encounters in conducting investigations under s.192 of Enterprise Act 2002 and investigations under s.25 of the Competition Act 1998 into the same or similar conduct in parallel, either by letter or by filing and serving a witness statement. If the CMA wishes to contend at trial that the typical difficulties set out in the letter or witness statement applied in this case, it may at the same time identify and disclose to FPM by list any specific documents which the CMA says supports its case.

Future conduct of the appeal

4. FPM be permitted (if so advised) to file and serve a reply to the CMA’s Defence by no later than 4pm 28 days after the CMA provides the explanation pursuant to paragraph 3 of this Order.
5. The CMA shall within 14 days of the date of this Order inform the Tribunal and FPM in writing as to whether the CMA wishes to cross-examine at trial FPM’s witnesses, Mr Don Mulholland and Dr Avantika Chowdhury. If the CMA indicates that it wishes to cross-examine either witness, it shall explain the reasons why it intends to do so. In the event FPM considers that those reasons do not amount to a proper basis for cross-examining either witness, FPM shall inform the Tribunal and the CMA of its objection and the reasons for it within seven days of the CMA’s notice under this paragraph. In the event FPM objects, the Tribunal shall determine whether the CMA is permitted to cross-examine either witness on the papers or, if it considers the issue cannot fairly be determined on the papers, at a pre-trial review.

6. The parties shall inform the Tribunal by 4pm on 3 August 2020 of any request for a pre-trial review hearing. Such a pre-trial review hearing shall be listed at the earliest convenient date after 1 September 2020.
7. FPM shall prepare an agreed hearing bundle and lodge six copies with the Tribunal no later than 4pm on 20 August 2020.
8. FPM shall file and serve its skeleton argument no later than 4pm on 17 September 2020.
9. The CMA shall file and serve its skeleton argument no later than 4pm on 24 September 2020.
10. FPM shall file six copies of an agreed bundle of authorities no later 4pm on 29 September 2020.
11. The trial be listed for 5 October 2020 at 10:30am with a time estimate of five days.

Other issues

12. The case management of the first condition of the CMA's application under the Company Directors Disqualification (Northern Ireland) Order 2002 in respect of Eoin McCann and Francis McCann, which has been transferred to the Tribunal for determination, with FPM's Appeal be established by separate order.

Miscellaneous

13. Costs be reserved.
14. There be liberty to apply.

The Hon Mr Justice Morgan
Chairman of the Competition Appeal Tribunal

Made: 15 June 2020
Drawn: 15 June 2020