



COMPETITION APPEAL TRIBUNAL

NOTICE OF A CLAIM UNDER SECTION 47A OF THE COMPETITION ACT 1998

Case No: 1569/5/7/22

Pursuant to Rule 33(8) of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (the “Tribunal Rules”), the Registrar gives notice of the receipt of a claim for damages (the “Claim”) on 22 November 2022, under section 47A of the Competition Act 1998 (the “Act”), by Instaplanta (Yorkshire) Limited (the “Claimant”) against Leeds City Council (the “Defendant” or “LCC”). The Claimant is represented by TupperS Law Limited, 22 Disraeli Road, Ealing, London W5 5HP (Reference: Stephen Tupper).

The Claimant is a micro business based in Leeds, West Yorkshire, which principally provides horticultural timber products to the care, education, and local authority sectors and more specifically provides environmentally friendly roadside advertising space through the supply, installation, and maintenance of timber floral planters within the limits of the highways of North England.

The Defendant is the administrative authority for the City of Leeds in West Yorkshire, England. It is a metropolitan district council, one of five in West Yorkshire and one of 36 in the metropolitan counties of England. It provides the majority of local government services in Leeds. The Leeds Metropolitan District covers 552 square kilometres and is the second largest metropolitan district in England.

According to the claim form, LCC, like many local authorities, is an active commercial participant in the market for supply of environmentally friendly roadside advertising space (referred to as “Green Roadside Advertising”) in the Leeds metropolitan market.

In addition to being the largest single provider of Green Roadside Advertising space in the Leeds metropolitan area, LCC is also the statutory highways body charged with regulating roadside enhancements in line with national legislation. The Claimant was advised by LCC in July/August 2015 that it was required to apply to LCC for permission to install objects or structures in or over a highway as a precursor to installation. As the sole relevant permitting authority, LCC is effectively the “gatekeeper” to the Green Roadside Advertising market in Leeds as well as the largest single supplier within it.

In August 2015, the Claimant applied to the Defendant for permission to site 29 timber floral planters in the Leeds City Highways (the “2015 Application”) under Part VIIA of the Highways Act 1980 (“HA80”), specifically, pursuant to Section 115E HA80.

In January 2016, the Defendant substantially refused the 2015 Application, stating that 27 of the 29 locations requested by the Claimant were for locations to which Part VIIA HA80 did not apply (i.e., according to LCC, 27 of the locations are designated “carriageway” and as such, fall outside of the scope of Part VIIA HA80, and therefore LCC did not have the power to grant the Claimant’s application).

The remaining 2 of the 29 locations in the 2015 Application were refused by the Defendant on the basis that, after an internal LCC consultation process, they could pose issues relating to sightline and maintenance access.

Dissatisfied with the rejection of the 2015 Application, and with no formal appeal process available, the Claimant made a complaint to LCC’s Whistleblowing Department (so-called “Audit”) on 16 March 2018. LCC’s Audit department downgraded the Claimant’s whistleblowing to a general complaint which subsequently followed the Defendant’s 2-stage Complaints policy. The Defendant did not uphold the Claimant’s complaint.

According to the Claimant, there was no proper justification for the LCC's decisions which were motivated primarily by a desire to preserve the economic advantages enjoyed by LCC as the near-monopoly provider of Green Roadside Advertising space in Leeds. Using its regulatory powers to exclude unfairly a competitor from the Green Roadside Advertising market in Leeds is a breach of the LCC's duties under s.18 of the Act.

The Claimant submits that a refusal to supply a competitor, in this case with the relevant permission, or the imposition of unattractive terms, is much more likely to raise competition concerns where the dominant undertaking treats its own commercial arm (be it a subsidiary or related company) more favourably than its competitors, whether or not the service/facility at issue is strictly speaking an "essential facility".

The Claimant submits further that LCC has, contrary to section 18 of the Act, abused its dominant position by treating the Claimant's application for permission to place objects on the highway in a different way than other undertakings and itself thereby placing the Claimant at a competitive disadvantage.

As a result, the Claimant alleges that it has suffered loss and damage.

The Claimant seeks:

- (1) Damages, together with interest.
- (2) Costs.
- (3) Such further or other relief as the Tribunal may think fit.

The Claimant has applied for fast-track designation of the proceedings pursuant to Rule 58 of the Tribunal Rules.

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 Salisbury Square House, 8 Salisbury Square, London EC4Y 8AP, 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, KC (Hon)
Registrar

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