



**IN THE COMPETITION
APPEAL TRIBUNAL**

Case No: 1577/12/13/23

BETWEEN:

**THE DURHAM COMPANY LIMITED
(TRADING AS MAX RECYCLE)**

Appellant

- v -

DURHAM COUNTY COUNCIL

Respondent

DIRECTIONS ORDER

UPON reading the Notice of Appeal under section 70 of the Subsidy Control Act 2022 filed by the Appellant on 3 February 2023

AND UPON hearing Counsel for the Appellant (Ms Ligia Osepciu) and Counsel for the Respondent (Mr Aidan Robertson, KC) at a CMC held remotely on 17 February 2023

IT IS ORDERED THAT:

1. FORUM

1. Pursuant to Rule 18 of the Competition Appeal Tribunal Rules 2015 SI 2015/1648 (“**the Rules**”), the proceedings shall be treated for all purposes as proceedings in England and Wales.

2. INTERVENTION

2. Any request to the Tribunal for permission to intervene shall be made in accordance with Rule 16 of the Rules and lodged by no later than 5pm on 3 March 2023.

3. PLEADINGS

3. By 5pm on 24 February 2023, the Appellant shall identify the “decision” under section 70 of the Subsidy Control Act 2022 that is being appealed (“**the Decision under Appeal**”). In particular, the Appellant shall state with the specificity to be relied upon at trial:

- (a) Whether the Decision under Appeal was made orally, in writing or by conduct, in each case identifying all facts and matters relied upon, and producing (to the extent not appended to the Notice of Appeal) all documents on which the Appellant proposes to rely.
- (b) Exactly what terms of the Decision under Appeal are.

The particulars provided under this paragraph are referred to herein as the “**Particulars of the Decision**” and must be set out in no more than 2 pages of A4 paper.

4. By 5pm on 22 March 2023, the Respondent shall file its Defence. That Defence shall:

- (a) Be limited to the following questions:
 - (i) Whether the Decision under Appeal as defined by the Appellant in the Particulars of the Decision is capable in law of amounting to a “decision” within the meaning of section 70 of the Subsidy Control Act 2022.
 - (ii) Whether the Decision under Appeal constitutes a “subsidy” as defined in section 2(1) of the of the Subsidy Control Act 2022.
 - (iii) Whether the subsidy control principles as defined in section 12 of the Subsidy Control Act 2022 are satisfied.
- (b) Be accompanied by disclosure as is necessary to discharge the Respondent’s duty of candour as regards the questions set out in paragraph 4(a) above.

5. The parties shall, by no later than 19 April 2023, file with the Tribunal, for the Tribunal to consider on the papers:
 - (a) An agreed statement of facts. Such statement may set out, in an identified form, areas of disagreement. The agreed statement of facts may not exceed 20 pages of A4 paper in length.
 - (b) Short written submissions, from each party, not exceeding 10 pages in length, identifying the need, if any, for:
 - (i) Any other questions, apart from those set out in paragraph 4(a), to be determined.
 - (ii) Further disclosure.
 - (iii) Witness statements.
 - (iv) Expert reports.

For the avoidance of any doubt, the Tribunal's starting point will be that the questions identified in paragraph 4(a) set out the issues between the parties; and any further disclosure, witness statements and/or expert reports will need to be justified.

The Tribunal will make such directions as it sees fit on the papers, but reserves the right to order a further CMC, if so advised.

4. FINAL HEARING OF THE REVIEW

6. The final hearing of the issues set out in paragraph 4(a) above shall be heard on 3 and 4 July 2023, with 30 June 2023 being a reading day. The parties shall, by no later than 5pm on 23 June 2023 file with the Tribunal:
 - (a) An agreed electronic copy of the hearing bundle.

(b) An agreed electronic authorities bundle.

(c) Written submissions.

The Tribunal will expect these documents to cross-refer, and so the parties must ensure that the hearing and authorities bundles are agreed in sufficient time to enable final written submissions to be filed.

5. COSTS

7. The Respondent shall file and serve written submissions on whether there should be cost capping in these proceedings by 5pm on 3 March 2023. The Appellant shall file its written submissions in response by 5pm on 17 March 2023. Unless the Tribunal orders otherwise, the matter will be determined by the Tribunal on the papers.
8. Costs of this CMC in the case.

Sir Marcus Smith
President of the Competition Appeal Tribunal

Made: 17 February 2023
Drawn: 17 February 2023