



Neutral Citation [2023] CAT 12

IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1574/10/12/22

BETWEEN:

BAYERISCHE MOTOREN WERKE AG
(a company incorporated under the laws of Germany)

Appellant

- and -

THE COMPETITION AND MARKETS AUTHORITY

Respondent

REASONED ORDER (CONSEQUENTIALS) (PERMISSION TO APPEAL)

UPON the Respondent (“the CMA”) having imposed on the Appellant (“BMW AG”) a penalty under section 40A of the Competition Act 1998 by notice dated 6 December 2022 (“the Penalty Notice”) comprising a fixed amount of £30,000 and an amount calculated by reference to a daily rate of £15,000

AND UPON BMW AG having appealed against the Penalty Notice by appeal notice dated 16 December 2022 on three separate grounds (“Grounds 1-3”)

AND UPON the Tribunal having determined BMW AG’s appeal on Ground 1, without having heard argument from the parties on Grounds 2 and 3

AND UPON the Tribunal having ordered on 31 January 2023 that the continuing daily fine of £15,000 imposed by the Penalty Notice shall not continue to accrue in the period from 26

January 2023 to the date of the Tribunal's Judgment in these proceedings (inclusive of both dates)

AND UPON the Tribunal having handed down its Judgment on 8 February 2023

AND UPON the Tribunal having ordered on 8 February 2023 that the continuing daily fine of £15,000 imposed by the Penalty Notice shall not continue to accrue in the period from the date of the Tribunal's Judgment in these proceedings until further Order of the President (inclusive of both dates)

AND UPON the parties agreeing to an Order in the terms of paragraph 7 below

IT IS ORDERED THAT:

1. BMW AG's appeal is allowed. The penalty imposed upon BMW AG (notice of which was given in the Penalty Notice) is quashed.
2. The CMA shall pay BMW AG's costs of the appeal, to be assessed on the standard basis by a costs officer of the Senior Courts of England and Wales if not agreed. Any such assessment is stayed pending the final disposition of any appeal by the CMA against paragraph 1 of this order (and any further appeal).
3. The costs reserved by the Tribunal's orders of 31 January 2023 and 8 February 2023 shall be costs in the case.
4. The CMA shall have permission to appeal against paragraph 1 of this Order
5. Pursuant to CPR, r.52.12(2)(a), the CMA shall file any Appellant's Notice by no later than 21 days after the date on which this Order is made.
6. Pursuant to CPR, r.52.13(4)(a), BMW AG shall file any Respondent's Notice by no later than 6 weeks after the date on which this Order is made.
7. In the event that paragraph 1 of this Order is set aside as a result of any appeal, the amount of the penalty (notice of which was given by the Penalty Notice) that is calculated by reference to a daily rate shall be deemed not to have accrued in the period from the date this Order is made until the date of the final disposition of any appeal by either party, inclusive of that date.

REASONS

1. The CMA sought permission to appeal on two grounds; (i) that the Tribunal erred in law in holding that a requirement under section 26(1) of the Competition Act 1998 can only be imposed on persons with a territorial connection to the United Kingdom and (ii) that, further or alternatively, the Tribunal erred in law in holding that when a requirement under section 26(1) of the Competition Act 1998 is imposed on an undertaking present in the United Kingdom, the requirement to produce documents and or to provide information is not imposed on the undertaking as whole but instead only on those natural or legal persons within the undertaking which has a territorial connection to the United Kingdom.
2. As per paragraph 81 of the Judgment, the issues of construction raised in these proceedings is by no means straightforward and has significant implications for the CMA's investigatory powers. On this basis, under CPR rule 52.6(1)(b), there is a compelling reason for an appeal to be heard and, accordingly, the Tribunal grants permission to appeal.

Sir Marcus Smith
President

Michael Cutting

Tim Frazer

Charles Dhanowa O.B.E., K.C. (*Hon*)
Registrar

Date: 8 March 2023