



[2003] CAT 13

IN THE COMPETITION
APPEAL TRIBUNAL

Case No. 1009/1/1/02

New Court,
48 Carey Street,
London WC2A 2JT.

23 June 2003

Before:
SIR CHRISTOPHER BELLAMY
(The President)
PROFESSOR ANDREW BAIN OBE FRSE
PATRICIA QUIGLEY WS

BETWEEN:

ABERDEEN JOURNALS LIMITED

Applicant

and

THE DIRECTOR GENERAL OF FAIR TRADING

Respondent

supported by

ABERDEEN INDEPENDENT LIMITED

Intervener

Miss Veronica Roberts of Messrs Herbert Smith appeared for the Appellant.

Mr Simon Brindley of Legal Services, Office of Fair Trading appeared for the Respondent.

Mr John Hill of Messrs Shoosmiths appeared for the Intervener.

*Transcribed from the Shorthand notes of
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JUDGMENT
RE: INTEREST

1 THE PRESIDENT: As regards the question of interest on the penalty imposed on Aberdeen
2 Journals, the question arises as to what date, and at what rate such interest should be payable.
3 Rule 27 of the Competition Appeal Tribunal Rules, 2000 (which are the relevant Rules for this
4 purpose) provides that the Tribunal may order that interest is payable on the amount of a
5 penalty:

6 *"...from such date not being a date earlier than the date upon which the application is*
7 *made."*

8 The application in this case was made on 18 November 2002, so strictly speaking the
9 Tribunal has jurisdiction to order that interest should run from 18 November, 2002. We
10 disregard in that connection the date on which the first appeal was introduced in this matter,
11 which was 14 September 2001, since the result of that first appeal was to set aside the first
12 decision of the Director, which was dated 16 July, 2001.

13 However, Miss Roberts, on behalf of Aberdeen Journals, points out that in the notice
14 which accompanied the Director's second decision - a letter of 16 September, 2002 - the
15 Director asked that payment should be made by 17 December 2002.

16 Section 36(6) of the Act provides that:

17 *"The Director must give notice of a penalty under this section which must be:*

18 *(a) in writing; and*

19 *(b) specify the date before which the penalty is required to be paid."*

20 Section 36(7) provides:

21 *"The date specified must not be earlier than the end of the period within which an*
22 *appeal against the notice may be brought under section 46."*

23 The result of those provisions is that the penalty cannot be required to be paid earlier
24 than two months after the notice of penalty, two months being the period in which the appeal is
25 required to be lodged under Rule 6(2) of the Tribunal's Rules of 2000, (S.I. 2000 No. 261).

26 However, the statutory provisions do not apparently preclude the possibility of the
27 Director (as he then was) specifying a date later than the end of the period within which an
28 appeal may be lodged. It may be in this case that there has been a clerical error, because in
29 general the Tribunal would take the view that the penalty should be paid within the two month
30 period in which an appeal should be lodged, and not at any later time. In particular that is
31 because, under section 37, the penalty is suspended only during the hearing of the appeal.

32 However, in this case the date specified in the penalty notice was 17 December 2002
33 and not 18 November 2002. In those circumstances it seems to the Tribunal right that the date
34 from which interest should run should be the date specified in the penalty notice, namely 17
35 December 2002 and not 18 November 2002.

36 As regards the rate of interest on the penalty, in its judgment in *Napp v The Director*
37 *General of Fair Trading (interest and costs)* [2002] CAT 3 the Tribunal held that the rate of
38 interest should normally be one per cent. above bank base rate. There is no serious contest that
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that is an appropriate rate in this case. We think that, technically speaking, the rate in this case should be 1 per cent. above the base rate of the Bank of Scotland, for the period from 17 December 2002. Such interest is to run until payment of the penalty or judgment obtained by the Office of Fair Trading under section 37 of the Act.
