



Neutral citation [2007] CAT 25

IN THE COMPETITION
APPEAL TRIBUNAL

Victoria House
Bloomsbury Place
London
WC1A 2EB

Case No: 1081/4/1/07

27 July 2007

Before:
Marion Simmons QC
(Chairman)

Sitting as a Tribunal in England and Wales

BETWEEN:

CO-OPERATIVE GROUP (CWS) LIMITED

Applicant

-v-

OFFICE OF FAIR TRADING

Respondent

Mr Matthew Cook (instructed by Clifford Chance) appeared for the Applicant

Mr Julian Gregory (instructed by the Solicitor to the Office of Fair Trading) appeared for the Respondent

Heard at Victoria House on 27 July 2007

RULING ON COSTS

THE CHAIRMAN:

- 1 The OFT has made an application for an order, under Rule 55 of the Competition Appeal Tribunal Rules 2003 (S.I. 2003 No. 1372) (“the Tribunal’s Rules”) that that CGL pay the OFT’s costs of defending CGL’s application. This application is resisted by CGL. CGL submits that either no order should be made against them, or that the OFT should not recover its whole costs.
- 2 CGL relies heavily on the judgment on costs in *Celesio v Office of Fair Trading* [2006] CAT 20 (“*Celesio: Costs*”). However, that case concerned an entirely different set of circumstances. As can be seen from paragraph 33 of *Celesio: Costs*, it was only after the elucidation in Mr Pritchard’s witness statement that Celesio had the full picture on one of the issues on fascia analysis and then acted responsibly in not pursuing that ground. Similarly, it can be seen from paragraphs 37, 38, 40 and 51 of *Celesio: Costs* that the success of the OFT in that case was based largely on the elucidation of the reasoning in Mr. Pritchard’s witness statement.
- 3 In the present case the decision was clear on its face, as were the undertakings. Mr. Pritchard’s elucidation explained background matters and the context in which the decision had been taken. I do not, therefore, find any assistance from *Celesio: Costs* in deciding whether to award costs in this case.
- 4 In section 120 cases costs would normally be awarded to the successful party (see, for instance, paragraph 17 of the judgment on costs in *UniChem v Office of Fair Trading* [2005] CAT 31). This is normally so whether or not a novel or important point is raised by CGL’s notice of application and is also so notwithstanding that the submissions made by the losing party were reasonable.
- 5 It is suggested by CGL that at the time of giving the Undertakings it did not anticipate a member of the co-operative movement proposing to purchase the “Funeral Divestment Businesses” (that term is defined in paragraph 1 of the main judgment, [2007] CAT 24). This does not appear to me to be a reason for resisting the OFT application for its costs in this case. The application for

review was of the Decision and it is not appropriate to go behind the Undertakings to investigate the reasons why CGL decided to give them.

- 6 Accordingly, I consider it is just and appropriate for the OFT to be awarded its reasonable costs. Hopefully, those costs will be agreed between the parties but otherwise they can be assessed in accordance with Rule 55(3) of the Tribunal's Rules.

(For discussion after Ruling see main transcript)