



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 46 OF THE COMPETITION ACT 1998

CASE No. 1188/1/11

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003) (“the Rules”), the Registrar gives notice of the receipt on 10 October 2011 of an appeal under section 46 of the Competition Act 1998 (the “Act”), by (1) Tesco Stores Limited, (2) Tesco Holdings Limited and (3) Tesco plc all of Tesco House, Delamare Road, Cheshunt, Herts EN8 9SL (together, “Tesco”) against a decision in Case CE/3094-03 dated 26 July 2011 (the “Decision”) taken by the Office of Fair Trading (“OFT”) and sent to Tesco on 10 August 2011. Tesco is represented by Freshfields Bruckhaus Deringer LLP of 65 Fleet Street, London EC4Y 1HS (ref: Deirdre Trapp, Paul Lomas, Dan Burton and Mary Wilks).

In the Decision the OFT concluded that Tesco participated in two concerted practices that infringed the Chapter I prohibition contained in section 2(1) of the Act. First, the OFT concluded that in 2002 Tesco indirectly exchanged intentions for the retail pricing of cheese with three other retailers via three suppliers of cheese acting as intermediaries (the “Cheese 2002 Infringement”). Second, the OFT concluded that in 2003 Tesco indirectly exchanged intentions for the retail pricing of cheese with two other retailers via one cheese supplier acting as an intermediary (the “Cheese 2003 Infringement”). According to the Decision, each of those two concerted practices had as its object the prevention, restriction or distortion of competition in the supply by national multiple retailers of cheddar and British territorial cheeses.

In summary, the principal grounds of appeal on which Tesco relies are that:

1. The OFT was wrong to conclude from the evidence that Tesco participated in an unlawful concerted practice in the Cheese 2002 Infringement.
2. The OFT was wrong to conclude from the evidence that Tesco participated in an unlawful concerted practice in the Cheese 2003 Infringement.
3. In the alternative, the penalty imposed on Tesco was excessive and disproportionate.

As regards the relief sought, Tesco asks that the Tribunal:

- (a) to quash the Decision as it applies to Tesco;
- (b) alternatively to reduce Tesco’s penalty;
- (c) to award Tesco its costs of this appeal.

Any person who considers that he has sufficient interest in the outcome of the proceedings may make a request for permission to intervene in the proceedings, in accordance with rule 16 of the Rules.

A request for permission to intervene should be sent to the Registrar, The Competition Appeal Tribunal, Victoria House, Bloomsbury Place, London, WC1A 2EB, so that it is received within **three weeks** of the publication of this notice.

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 the above address or by telephone (020 7979 7979) or fax (020 7979 7978). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE
Registrar

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