



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 46 OF THE COMPETITION ACT 1998

Case No: 1279/1/12/17

Pursuant to rule 14 of the Competition Appeal Tribunal Rules 2015 (S.I. No. 1648 of 2015) (“the Rules”) the Registrar gives notice of the receipt of an appeal on 24 October 2017 under section 46 of the Competition Act 1998 (“the Act”), by Ping Europe Limited. (“Ping”) against a decision of the Competition and Markets Authority (“the CMA”) dated 24 August 2017, entitled *Online sales ban in the golf equipment sector* (“the Decision”). Ping is represented by K&L Gates LLP of One New Change, London EC4M 9AF (reference: Scott S. Megregian).

Ping is a manufacturer of golf clubs, golf accessories and clothing and as indicated in the notice of appeal believes that “Dynamic Face-To-Face Custom Fitting” is the best way to optimise its products and enhance product choice and quality for consumers. Ping concluded that Dynamic Face-To-Face Custom Fitting could not be carried out over the internet. Accordingly, Ping retained two major complementary planks to its Custom Fitting Policy:

- (i) a requirement that Ping clubs should be sold after a Dynamic Face-To-Face Custom Fitting; and
- (ii) a concomitant ban on online sales by retailers for Ping golf clubs (the “Internet Policy”)

The Decision finds that Ping infringed section 2(1) of the Act and Article 101 of the Treaty on the Functioning of the European Union (“TFEU”) by entering into agreements with two UK retailers containing clauses prohibiting the retailers from selling Ping’s golf clubs on their websites pursuant to Ping’s Internet Policy. The Decision finds that these agreements restrict competition by object and do not benefit from any exclusion or exemption.

The Decision directs Ping to bring the alleged infringement to an end (the “Direction”) and imposes a fine of £1.45 million. On 25 October 2017 the President approved a consent order suspending the Direction pending the final resolution of the appeal by the Tribunal.

Ping appeals the Decision. In summary, its principal grounds of appeal are as follows:

1. The effect of the Decision is to force Ping to sell a product (non-fitted clubs) that it does not wish to sell in breach of its rights under Articles 16 and 17 of the EU Charter on Fundamental Rights.
2. The Decision is wrong to characterise Ping’s Internet Policy as a restriction by object since it pursues a legitimate aim (custom fitting) which benefits consumers and has no material adverse effect on competition.
3. The Decision is wrong to find that Ping’s Internet Policy is disproportionate. The CMA’s proposed alternative measures would be impractical and less effective than the Internet Policy at maximising custom fitting rates.
4. Ping’s Internet Policy falls within the ‘ancillary restraint’ doctrine or is exempt under Article 101(3) TFEU / section 9 of the Act.
5. The CMA was wrong to impose a fine on Ping because any infringement by Ping was not intentional or negligent.
6. Alternatively, the penalty should be reduced because it is excessive.

As regards the relief sought, Ping seeks:

- (a) the annulment of the Decision (in whole or in part);
- (b) the annulment of the fine or alternatively a reduction thereof; and
- (c) that the CMA pay Ping's costs of bringing the 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 email (registry@catribunal.org.uk). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, QC (Hon)
Registrar
Published 27 October 2017