



Neutral citation: [2005] CAT 10

IN THE COMPETITION
APPEAL TRIBUNAL

Case No. 1048/1/1/05

Victoria House
Bloomsbury Place
London WC1A.2EB

7th April 2005

Before:
MARION SIMMONS QC
(Chairman)
PETER GRANT-HUTCHISON
GRAHAM MATHER

Sitting as a Tribunal in England and Wales

BETWEEN:

DOUBLE QUICK SUPPLYLINE LIMITED
and

Appellant

OFFICE OF FAIR TRADING

Respondent

Mr. Matthew Cook (instructed by M&A Solicitors, Cardiff) appeared for the Appellant.

Mr. Jon Turner (instructed by the Solicitor to the Office of Fair Trading) appeared for the Respondent.

Transcribed from the Shorthand notes of
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RULING: Remittal

THE CHAIRMAN:

- 1 The Tribunal has been considering in this CMC whether or not the Decision should be remitted at this preliminary stage to the OFT. This arises having regard to the Order we made on 8th March 2005 and the defence which has been served by the OFT.
- 2 The Appellant submits today that the Decision should be remitted because it did not take into account the fact that DQS (as a limited company) came into existence in June 2001. The Appellant submits that the OFT's approach to the whole of the material before it would have been different had this feature been in the OFT's mind at the time they took the Decision.
- 3 The OFT seek to persuade us that the Appellant's submissions are misconceived as to this. The OFT submit that the approach adopted in the defence to the evidence in the Decision remains the same notwithstanding the concessions made concerning the intervention of the new entity in June 2001.
- 4 The OFT has today taken us to its Decision and has explained that its approach (as at the time of taking the Decision and now) was that there was a continuous single infringement by one economic undertaking. The OFT submit that since the OFT conclude that there was a continuous single infringement the intervention of the new entity is relevant only to the identity of the person against whom the penalty is ordered, and in consequence the amount of that penalty.
- 5 DQS have submitted that the OFT require evidence additional to that contained in the Decision to support a finding incriminating DQS from June 2001. The OFT have submitted to us today that this is not necessary and that it does not intend to do so; that it relies only on the material in the Decision. On this point the OFT submitted to us today that the evidence pre-June 2001 contained in the Decision is circumstantial evidence relied upon by them to find infringements by the new entity after June 2001.
- 6 In para. 25 of the defence, the OFT stated that it would rely upon the failure by DQS to distance itself from the conduct of the DQS undertaking prior to its being carried on by the

new entity, and the presumption that it took account of the information it obtained thereby as to its competitors' conduct. These matters are not within the Rule 14 Notice, or the Decision. However, this is not how the OFT presented its position today. The OFT also clarified today that para. 16 of the defence is badly worded and is to be understood having regard to paras. 29 and 30 of its Decision.

- 7 On the basis of the submissions made by the OFT today that it relies only on the material in the Decision and on no other evidence, and that at a hearing it will not itself adduce any additional evidence (although if DQS adduce any oral evidence it will cross-examine such witnesses) we have not been persuaded that it is appropriate to remit this case at this stage or that there would be any procedural advantage in doing so.
