



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 46 OF THE COMPETITION ACT 1998

Case No: 1277/1/12/17

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 20 February 2017 under section 46 of the Competition Act 1998 (the “Act”), by Balmoral Tanks Limited and Balmoral Group Holdings Limited (together, “Balmoral”) against a decision of the Competition and Markets Authority (the “CMA”) dated 19 December 2016 in Case CE/9691/12: *Galvanised steel tanks for water storage information exchange infringement* (the “Decision”). Balmoral is represented by K&L Gates LLP, One New Exchange, London EC4M 9AF (reference: Neil Baylis).

In the Decision, the CMA found that Balmoral had infringed the Chapter I prohibition contained in section 2 of the Act and Article 101 of the Treaty on the Functioning of the European Union by sharing information with its competitors in the market for the supply of cylindrical galvanised steel tanks for water storage (“CGSTs”) at a meeting on 11 July 2012 (the “Meeting”). The CMA imposed a penalty of £130,000 on Balmoral.

The CMA reached a second decision finding that, between 29 April 2005 and 27 November 2012, four companies (the “Cartelists”) had operated a cartel (the “Cartel”) which fixed prices, rigged bids and allocated customers within the market for CGSTs in the UK. The CMA accepted that Balmoral formed no part of that Cartel.

In summary, Balmoral’s principal grounds of appeal are as follows:

1. The purpose, or object, of the Meeting and the information disclosed by Balmoral was not to restrict competition. Balmoral attended the Meeting with the intention of putting to an end unwelcome contact from the Cartelists. Viewed in its proper context the purpose of the information disclosed by Balmoral during the Meeting was not to restrict competition within the meaning of an object infringement.
2. The CMA failed to establish that the information disclosed by Balmoral at the Meeting was capable of producing a “sufficient degree of harm” to competition for purposes of an object infringement. Neither Balmoral nor any of the Cartelists disclosed the essential elements of its pricing policy during the Meeting.
3. Balmoral’s activities were essentially pro-competitive and it should not have been fined. The other participants at the Meeting did not receive a penalty pursuant to the Decision, notwithstanding that they instigated the Meeting. To fine Balmoral infringes the principle of equal treatment.
4. The penalty should be reduced to a nominal level in any event. The CMA erred in its assessment of the relevant turnover, the appropriate starting point, the adjustment for duration and in its assessment of mitigating factors such as Balmoral’s exceptional cooperation in the criminal investigation.

As regards the relief sought, Balmoral requests that:

- (a) the Decision set aside in whole or in part;
- (b) the penalty imposed on Balmoral be annulled or alternatively reduced; and

(c) costs be awarded to Balmoral in respect 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 email (registry@catribunal.org.uk). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, QC (Hon)
Registrar
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