



Neutral citation [2013] CAT 17

IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1204/4/8/13

B E T W E E N

AKZO NOBEL N.V.

Applicant

-v-

COMPETITION COMMISSION

Respondent

- supported by -

(1) METLAC HOLDING S.r.L.

(2) METLAC S.p.A.

Interveners

ORDER

UPON the Tribunal handing down its judgment (“the Judgment”) dismissing Akzo Nobel N.V.’s (“AkzoNobel”) application for review on 21 June 2013 ([2013] CAT 13)

AND UPON AkzoNobel applying for permission to appeal the Judgment on 12 July 2013 (“the PtA Application”)

AND UPON considering the observations of the Commission and the Interveners on the PtA Application, and AkzoNobel’s submissions in reply

AND UPON AkzoNobel requesting, by way of a letter dated 19 July 2013, that it be granted a three week extension to the 14-day period prescribed by CPR Practice Direction 52D, paragraph 8.1(2) for renewing the PtA Application in the Court of Appeal, in the event that the PtA Application is refused

AND HAVING REGARD TO the Glossary of Defined Terms annexed to the Judgment, which we adopt in this Order

IT IS ORDERED THAT:

1. The PtA Application be refused
2. Pursuant to CPR 52.4(2)(a) the period in which AkzoNobel may renew the PtA Application be extended by seven days.

REASONS

It is the unanimous view of the Tribunal that the PtA Application should be refused. We do not consider that any of the grounds advanced by AkzoNobel has a real prospect of success. We do not consider that there is otherwise a compelling reason to grant permission to appeal our fact-specific decision.

Our decision in the Judgment does not proceed on the footing that the decisions of the functional units are to be “simply attributed” to AkzoNobel because AkzoNobel exercised control “without more”.

We believe that a true reading of the Judgment (for which this summary is no substitute) sought to identify the extent of the activities that were properly attributable to AkzoNobel, given that the organisational and decision-making structure of the AN Group was based on its functional units, rather than its operating subsidiaries, a matter we considered to be one of fact and degree in this case as in any other. As to those activities, the Commission had found: (i) contracting, strategic and operational decisions were made within the functional units, not the subsidiaries; (ii) the decision-making of the functional units was centralised in ExCo; (iii) the participation of ExCo was extensive; and (iv) the participation of ExCo involved directing and monitoring the operations of the functional units. As we noted in the Judgment at [62], the Commission’s overall conclusion in this regard was set out at paragraph 11.98 of the Report: “*the organizational structure and arrangements ... described ..., including the relevant business units, is the means through which AkzoNobel NV carries on business, including in the UK.*”

As to attribution, we considered that the relevant decisions had ultimately to be the decisions of legal persons (which the functional units were not). The issue then was whether such activities as were properly attributable to AkzoNobel could, in law, amount to carrying on business in the United Kingdom. We do not consider that there is any real prospect of establishing that the approach which we summarise here embodies any error of law.

Contrary to AkzoNobel’s submission, we do not consider that there is any real prospect of establishing that section 86(1)(c) of the Act requires a legal person to have a fixed place of business in the territory in order to be found to be “*carrying on business in the United Kingdom*”.

In the absence of any real prospect of success there is no compelling reason to grant permission to appeal. We were quite clear that, even if arrangements of the type used by the AN Group were not unusual, our judgment was limited to the facts found by the Commission (which were not challenged by AkzoNobel in its application for review), and their application to legal rules under which the outcome would be a matter of fact and degree in every case.

We will extend the time for filing any Appellant's Notice with the Court of Appeal by seven days (giving 21 days overall). We understand that difficulty may arise from the absence of personnel during the summer vacation. But we consider that the Grounds of Appeal will have been formulated when permission was sought from us and will not require significant adjustment in the light of this present decision.

The Honourable Mr Justice Norris
Chairman of the Competition Appeal Tribunal

Made: 6 August 2013
Drawn: 6 August 2013