



Neutral citation [2024] CAT 28

Case No: 1638/4/12/24 (IR)

**IN THE COMPETITION APPEAL TRIBUNAL**

Salisbury Square House  
8 Salisbury Square  
London EC4Y 8AP

22 April 2024

Before:

SIR MARCUS SMITH  
(President of the Competition Appeal Tribunal)

Sitting as a Tribunal in England and Wales

BETWEEN:

**(1) TEREOS SCA**  
**(2) TEREOS UK & IRELAND LIMITED**

Applicants

- v -

**THE COMPETITION AND MARKETS AUTHORITY**

Respondent

Heard remotely on 22 April 2024

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**RULING (INJUNCTION)**

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## APPEARANCES

Aidan Robertson KC (instructed by Squire Patton Boggs LLP) appeared on behalf of the Applicants.

## A. RULING

1. I have before me an urgent application by two applicants, Tereos SCA and Tereos UK and Ireland Limited (the “Applicants”), made against the Competition and Markets Authority (“CMA”)
2. The CMA is imminently due to publish a Phase 1 merger report relating to the Applicants. The date for publication is tomorrow, Tuesday, 23 April. I do not know the time at which the report is proposed to be published, but given the hour at which I am now hearing the application - 4.50 pm on Monday- that is probably immaterial.
3. The Applicants submit that certain parts of the Phase 1 merger report should not be published as that would prejudice them for reasons that are articulated in the witness statement of Mr Ryan, the Applicants' solicitor, a partner at Squire Patton Boggs.
4. I can say nothing about the question of whether publication would damage the Applicants, but I do take into consideration the evidence in Mr Ryan's report and note that it is not contradicted by the CMA to date.
5. The history of this matter is as follows: during the course of and immediately prior to Thursday, the applicants moved the CMA to publish the report with certain additional redactions over and above those that the CMA were prepared to make when the Phase 1 merger report was published. Those representations were refused in the course of Thursday evening. As a result, the report was only going to be published with the redactions made if the judicial review contemplated by the Applicants was successful. The application before me is effectively to hold the ring pending the determination of that judicial review.
6. The application for judicial review, the application for interim relief and Mr Ryan’s witness statement were filed with the CMA during the course of Monday, but were prepared on Friday and over the weekend. The precise timing probably does not matter, but it is obviously on very short notice to the CMA.

7. The CMA have at various points during the course of today been requested by both the Applicants and the Tribunal to assist, in order for the Tribunal to properly understand the parameters of the factors which go to the question of interim relief. Unfortunately, the CMA has found itself unable to assist in this regard.
8. I do have before me a letter, sent immediately before this hearing (indeed, I received it during the hearing) from the CMA saying that the CMA is unable to assist.
9. The letter was a response to the Tribunal's request for some degree of input from the CMA as to what prejudice it might occur if the injunction were to be granted by the Tribunal. As it is, no indication of any prejudice has been provided, not even by way of outline.
10. Mr Robertson KC, who appears for the Applicants, has been able to identify no specific prejudice or reason why the Phase 1 merger report must be published on 23 April, tomorrow.
11. This is a case where the Tribunal's job would have been made a good deal easier had the parties had been able to negotiate a timetable for the regulation of the judicial review in addition to its determination. These matters can be dealt with quickly.
12. Mr Robertson has obviously, on his clients' behalf, filed the application. The CMA need to respond. I do not know how long that might take them. There would then be provision for reply, but there is no reason why this matter cannot be resolved within the next fortnight.
13. There being no identified prejudice to the public interest, in these circumstances, Mr Robertson KC invites me to hold the ring.
14. I have looked at the grounds for review and it seems to me that they are, to say no more than this, seriously arguable. The question then is whether there should be an injunction to enable these grounds to be aired and determined by the Tribunal at a later date.

15. It is quite clear that the substance of the judicial review would be prejudiced, indeed rendered nugatory, if publication does in fact take place tomorrow. The core of the application for judicial review is that the decision to publish is one that is challengeable on public law grounds.
16. In those circumstances, it is quite clear that publication at this stage would prejudice not merely the due process of the judicial review, but also, for the reasons articulated, the position of the Applicants generally. It therefore seems to me that the reasons for granting the injunction are strong.
17. Against this I must set aside the risk that there will be prejudice to the public interest if the report is not published on the date that the CMA has elected. The CMA, after all, has been asked to consider delaying publication. It was asked on Thursday, and on Thursday evening it said no, resulting in this application between Thursday evening and Monday morning.
18. I do not know anything more about the potential to prejudice, and it seems to me that I cannot for present purposes assume that prejudice to the public interest would outweigh the clear prejudice to the Applicants. It would have been helpful to have the benefit of some form of outline indication of the CMA's position but, as I have indicated, that has not been forthcoming.
19. In these circumstances, it seems to me that I am obliged to make an order in broadly the terms sought by the Applicants.

Sir Marcus Smith  
President of the Competition Appeal Tribunal

Charles Dhanowa O.B.E., K.C. (*Hon*)  
Registrar

Date: 22 April 2024