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CAT limitation rules: the saga continues

Anthony Maton (Hausfeld, United Kingdom) · Friday, February 1st, 2013

On 21st December 2012, the Supreme Court granted permission to Morgan Crucible to appeal against the judgment of the Court of Appeal, delivered in July, concerning the time limits for bringing follow-on claims in the Competition Appeal Tribunal (CAT).

Court of Appeal's Judgment

By its judgment the Court of Appeal shed light on the limitation rules applicable to follow-on claims and reversed an order by the CAT striking out the claims by Deutsche Bahn and the other claimants for damages against Morgan Crucible in relation to the latter's illegal participation in the Carbon Graphite cartel. Following the Court of Appeal's judgment, the time for bringing of claims under section 47A of the Competition Act starts to run from the point at which there can be no further appeal against the infringement decision by any addressee of the Commission's Decision.

Order of the Supreme Court

Permission to appeal to the Supreme Court was initially denied to Morgan Crucible by the Court of Appeal. However Morgan Crucible was successful in its application to the Supreme Court. Both parties have already confirmed their wish to proceed and the case is expected to be listed for a hearing within the next 12 – 15 months.

In their submissions Morgan Crucible asks the Supreme Court to make a reference for a preliminary ruling to the Court of Justice of the European Union (ECJ), pursuant to Article 267 of the Treaty on the Functioning of the European Union (TFEU), as they believe there is a European law aspect in the Court of Appeal's conclusion concerning the effect of an appeal by another addressee of a Commission's decision.

Possible outcomes of the Supreme Court's Decision

1. The Supreme Court finds that the matter is not one of European Law and continues with the examination of the case. There are two possible outcomes to consider in this instance:

- The Supreme Court upholds the Court of Appeal's judgment clarifying once and for all the limitation issue in bringing follow-on damages claims in the CAT. This will mean that the two year limitation period under Rule 31 of the CAT Rules does not begin to run against any addressee until the time for appealing against the Commission's Decision has expired against all of them;

- The Supreme Court overturns the Court of Appeal's judgment and therefore time starts to run individually in the CAT for each addressee of the EC Decision based on its individual appeal position;

2. The Supreme Court rules that there is a question of European law to be addressed and it subsequently refers to the Court of Justice to resolve this question. It should be noted that the lodging of a request for a preliminary ruling calls for the national proceedings to be stayed until the Court of Justice has given its ruling. There is an approximate time indication of 2 years before the Court of Justice delivers its decision. The ECJ's ruling will then acquire the force of *res judicata* and will be binding not only on the Supreme Court of the United Kingdom on whose initiative the reference for a preliminary ruling was made but also on all of the national courts across the Member States.

Conclusion

The Supreme Court's judgment is going to be highly anticipated by both claimants and defendants as the issue of how the CAT's limitation provisions operate when some but not all addressees appeal a Commission decision remains uncertain. It will also have an impact on the choice of the CAT over the High Court as a forum for bringing follow-on actions.

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