

Competition Act 1998

Decision of the Director General of Fair Trading

No 21/2002

Elite Greenhouses Limited

16 September 2002
(Case CP/1709-02)

SUMMARY

The Director General of Fair Trading (the Director) has made a decision that Elite Greenhouses Limited (Elite) has not entered agreements with its distributors, which seek to fix selling prices. Therefore, Elite has not infringed the Chapter I prohibition of the Competition Act 1998 in this regard.

In the light of the judgment of the Competition Commission Appeals Tribunal of 26 March 2002 on admissibility in the BetterCare case,¹ the Director has concluded that the views put forward in a letter of 16 September 2002 to Click4Web Limited, the complainant, amounted to a decision that the Chapter I prohibition had not been infringed.

¹ BetterCare Group Limited v the Director General of Fair Trading – Case: 1006/2/1/01

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Our Ref: CE/1709-02

16 September 2002

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Dear Mr Paice

I am writing further to our correspondence relating to the refusal by Elite Greenhouses Limited to continue supplying your company with greenhouses.

In your first approach to us last year, you provided copies of letters to you from Elite (dated 28 November and 13 December 2001). The later letter pointed out that that other agents had margins 'at the minimum of 20% as far as Elite's products are concerned' and that 'your [company's] policy of price and lead time causes concern for other agents with specials and standard buildings'. The earlier letter pointed out that in many cases your gross profit margins were less than 10%. This letter also recognised that Elite 'cannot dictate to you regarding your retail prices'.

David Gabathuler's letter of 17 January 2002 to Elite (which was copied to you by e-mail of the same date) indicated our view that, by requiring its customers to maintain a minimum margin on its products, Elite was affecting the price at which it sells those products and that this practice amounted to the setting of minimum resale prices which was likely to be a breach of the prohibition in Chapter I of the Competition Act 1998 (the 'Act'). However, Mr Gabathuler went on to say that the Office did not propose to consider more carefully the case for a formal investigation into the matter on the grounds that Elite is a relatively small family business and that the economic impact of any breach of the Act may be relatively small.

As you know, since that time, we have considered this matter in more depth and we have given further thought to the question whether there is a case for us to consider here and, if so, whether there would be merit in us pursuing the case further.

As you are aware the prohibition in Chapter I of the Act applies to agreements between undertakings that have the object or effect of preventing, restricting or distorting competition in the UK. This prohibition will not apply unless the agreement has an appreciable effect on competition in the UK.



In this case, the refusal by Elite to continue supplying your company, in part, it appears on the grounds that your margins on its products were too low might imply the existence of agreements with other customers to keep margins above a minimum level. However, at this time, we have found no evidence to suggest that Elite's refusal to supply is the result of such agreements. We have conducted a number of surveys of the retail pricing of Elite greenhouses and have found no evidence of similarities in pricing or other patterns of pricing which might indicate that Elite has entered into agreements with its customers imposing minimum margin requirements on them. Furthermore, we consider that from the correspondence that Elite has had with your company it appears that there could have been other reasons which might, on their own, have given Elite sufficient cause to discontinue supplies.

In conclusion, we take the view that we do not have reasonable grounds to suspect that the Chapter I prohibition in the Act has been infringed. Of course if evidence came to light which gave us reasonable cause to suspect the existence of active and current agreements to require customers to maintain margins above a certain level then we would consider re-opening the case. However, I should point out that even if the case were re-opened and Elite were found to have infringed the Chapter I prohibition by entering into agreements with its customers requiring them to maintain margins above a certain level, we would only be able to direct Elite to bring that infringement to an end. We would not necessarily be able to direct Elite to start supplying your company again.

Yours sincerely,

R J MacDowall
Principal Case Officer
Competition Enforcement Division
(Consumer Goods Industries)

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