



COMPETITION APPEAL TRIBUNAL

SUMMARY OF APPLICATION UNDER SECTION 120 OF THE ENTERPRISE ACT 2002

CASE No: 1030/4/1/04

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (“the Rules”), the Registrar of the Competition Appeal Tribunal (“the Tribunal”) gives notice of the receipt of a notice of application, on 2 April 2004, under section 120 of the Enterprise Act 2002 (“the Act”) by the Federation of Wholesale Distributors (“the Federation”) of Floor 1, 9 Gildridge Road, Eastbourne, East Sussex, BN21 4RB, challenging a decision (“the Decision”) by the Office of Fair Trading (“the OFT”) made on 5 March 2004 and published on 19 March 2004 under section 22 of the Act not to make a reference to the Competition Commission of the completed acquisition by Tesco PLC (“Tesco”) of 45 grocery outlets from Adminstore Limited (“Adminstore”).¹

The Federation seeks a review by the Competition Appeal Tribunal both in detail and in the round of the completed acquisition by Tesco of 45 grocery outlets from Adminstore.

In summary the principal grounds of review on which the Federation relies are that:

1. the Decision is based on an error of fact in that the grocery market is one overall market and not two separate markets (one stop and convenience). There is no distinction between Tesco’s different types of store as to prices charged. Furthermore, recent research suggests that a greater proportion of shoppers use a supermarket for ‘topping up’ than local stores. The structure of the market is not defined by the consumer but by huge buyer power that enables Tesco and other superstore groups to extract terms which are not available to wholesalers and to extend their influence from out-of-town into local neighbourhoods.
2. Adminstore’s turnover exceeded £70 million according to its company accounts to 28 September 2002. A relevant merger situation has thus been created under section 23(1)(b) of the Act. The Tribunal is invited to analyse the quality of the reasons for constructing the bid so as to fall under the £70 million level.
3. the OFT is acting on the issues on a store-by-store basis, while ignoring how the market is changing in a wider context against the consumer interest.
4. as to barriers to entry, the OFT is merely looking at rental values rather than the buying power of the potential tenant. The OFT is led into this error because it is looking at two markets instead of one. The post-acquisition presence of Tesco in central London will become a barrier to entry for small independent grocery retailers, a situation which will act against the medium and long-term interests of the consumer and diversity of the market.

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.

¹ The decision may be found at <http://www.oft.gov.uk/Business/Mergers+EA02/Decisions/Clearances+and+referrals/Tesco.htm>

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 fax (020 7979 7978). Please quote the case number mentioned above in all communications.

Charles Dhanowa

Registrar
Published 2 April 2004