



COMPETITION APPEAL TRIBUNAL

SUMMARY OF APPLICATION UNDER SECTION 120 OF THE ENTERPRISE ACT 2002

CASE No: 1051/4/8/05

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 29 September 2005, under section 120 of the Enterprise Act 2002 (“the Act”), by Somerfield plc (“Somerfield”) of Somerfield House, Whitchurch Lane, Bristol, BS14 0TJ, challenging a decision (“the Decision”), by the Competition Commission (“the CC”), notified to Somerfield on 1 September 2005 and published on 2 September 2005, under section 35 of the Act, to the effect that the acquisition by Somerfield of 115 stores owned by Wm Morrison Supermarkets plc (“Morrison’s”) may be expected to result in a substantial lessening of competition (“SLC”) in each of the local grocery markets in Great Britain served by twelve of the acquired stores.¹

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

1. the CC erred in law and in fact by finding that Somerfield’s acquisition of stores from Morrison’s may be expected to result in an SLC in twelve local grocery markets in Great Britain. The CC’s approach to SLC was illogical, self-contradictory and perverse. The CC correctly acknowledged that neither diversion ratios nor high margins in isolation need indicate even that a merger has potential anti-competitive effects. In seeking to identify SLC by combining these two measures in an abstract “illustrative price rise” model, however, it erred in that
 - (a) its choice of a 14.3 per cent revenue diversion threshold was based on the legally incorrect and factually absurd notion that a combined market share of 25 per cent equates to or creates a presumption of SLC;
 - (b) the illustrative price rise model was constructed on a flawed basis, which produced patently absurd results, and in any event failed to demonstrate what the CC claimed it did (thus being inadequate even on the basis of the CC’s approach);
 - (c) the CC made no attempt to cross-check its abstract model, notwithstanding its deficiencies, against evidence of the operation of the market in practice (including the CC’s own evidence on the relationship between margins and local concentration).
2. the CC acted unreasonably and without adequate foundation by
 - (a) ordering Somerfield to divest itself of specified stores (*viz.* in each case the store which it had acquired from Morrison’s) in seven of the twelve local grocery markets in Great Britain where the CC concluded that it had an expectation of SLC – in each of those local grocery markets Somerfield should be at liberty to decide which of its stores to divest;
 - (b) wrongly placing restrictions on the identity of persons to whom Somerfield is being required to divest stores (at least during the initial divestment period).

Somerfield seeks the following relief from the Tribunal:

1. an order quashing sections 7-11 of the Decision, in whole or in part, and the CC’s consequential summary and findings contained in the Decision;

¹ The decision may be found at http://www.competition-commission.org.uk/rep_pub/reports/2005/501somerfield.htm.

2. an order referring the matter back to the CC with a direction to reconsider and make a new decision under section 35 of the Act in accordance with the ruling of the Tribunal;
3. such other order or relief as the Tribunal may consider appropriate;
4. an order that the CC and/or any intervener in support of the CC should pay Somerfield's costs of and incidental to its application.

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.

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 **no later than 5pm on Friday 14 October 2005**.

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

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