



COMPETITION APPEAL TRIBUNAL

SUMMARY OF APPLICATION UNDER SECTION 120 OF THE ENTERPRISE ACT 2002

CASE No: 1023/4/1/03

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (“the Rules”), the Registrar of the Competition Appeal Tribunal gives notice of the receipt of a notice of application, on 21 November 2003, under section 120 of the Enterprise Act 2002 (“the Act”) by IBA Health Limited (“IBA”) of Darling Park, Tower One, Level 8, 201 Sussex Street, Sydney, NSW 2000, Australia, with an address for service at the offices of Macfarlanes, 10 Norwich Street, London EC4A 1BD challenging a decision (“the Decision”) by the Office of Fair Trading (“the OFT”) made on 6 November 2003 under section 33 of the Act not to make a reference to the Competition Commission of the anticipated merger between iSOFT Group plc (“iSOFT”) of Torex plc (“Torex”).

IBA seeks the following relief:

1. that the Decision be quashed in whole or in part;
2. if the anticipated merger has not been completed, to refer the matter back to the OFT with a direction to reconsider and make a new decision under section 33 of the Act in accordance with the ruling of the Tribunal, and to include within that ruling a statement that the merger should have been referred to the Competition Commission;
3. if the anticipated merger has been completed, to refer the matter back to the OFT with a direction (i) to reconsider and make a new decision under section 22 of the Act in accordance with the ruling of the Tribunal, and to include within that ruling a statement that the merger should have been referred to the Competition Commission and (ii) to make an order under section 72 of the Act requiring iSOFT to keep separate the businesses carried out by iSOFT and Torex prior to the merger;
4. an order that the OFT and/or any intervener in support of the OFT’s decision pay IBA’s costs of and incidental to this application.
5. such further or other relief as the Tribunal may consider appropriate.

If the Tribunal is unable to hear and determine the case with sufficient expedition IBA seeks the following interim relief pending the determination of its application pursuant to rule 61 of the Tribunal’s rules:

1. a direction under rule 61(2) to iSOFT not to seek approval for the merger offer from its shareholders either at its extraordinary general meeting convened for 9 December 2003 or otherwise; or

2. should a merger take place, a direction under rule 61(2) to iSOFT to keep separate businesses carried out by iSOFT and Torex prior to the merger; and in any event
3. an order under rule 6(1) suspending in whole or in part the effect of the Decision.

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

1. the OFT has erred in law and in fact by finding that the anticipated merger situation would not be expected to result in a substantial lessening of competition because if permitted, the merger will lead to a substantial increase in concentration in the relevant market. The merged firm would have created for itself a dominant position in the relevant market, with a market share of almost 50 per cent. The OFT appears to have accepted in the Decision that, absent the effect of the National Programme for Information Technology (“the NPfIT”), the merger would be expected to lessen competition substantially. The OFT was wrong to conclude that the effect of the NPfIT would be to remedy what would otherwise be a substantial lessening of competition caused by the anticipated merger situation.
2. The OFT carried out inadequate and inappropriate procedures in carrying out its investigation into the anticipated merger and adopting the Decision. As a result the OFT made material procedural errors, which led to material errors of fact in the Decision.

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, New Court, 48 Carey Street, London WC2A 3BZ, so that it is received **no later than 5pm on Wednesday 26 November**.

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 7271 0395) or fax (020 7271 0281). Please quote the case number mentioned above in all communications.

Charles Dhanowa
Registrar

Published 24 November 2003