



IN THE COMPETITION
APPEAL TRIBUNAL

Case: 1044/2/1/04

BETWEEN:

M.E. BURGESS, J.J. BURGESS AND S.J. BURGESS
(trading as J.J. BURGESS & SONS)

Appellants

-v-

OFFICE OF FAIR TRADING

Respondent

and

(1) W AUSTIN & SONS (STEVENAGE) LIMITED

(2) HARWOOD PARK CREMATORIUM LIMITED

(3) THE CONSUMERS' ASSOCIATION

Interveners

ORDER

UPON hearing counsel for the parties at a case management conference held on 19 October 2004

IT IS ORDERED THAT, subject to the receipt by the Tribunal of written undertakings in the terms of Part C of the Schedule to this Order from each of the persons named in Part B of the Schedule to this Order (the "External Advisers"):

1. The Respondent shall forthwith serve on the External Advisers a copy of Annex 2(A) to Decision of the Office of Fair Trading No. CA98/06/2004 dated 29 June 2004 (the "Decision") in the following form:
 - a. providing an indicative range within 10% bands under the heading "percentage for each branch" in the table;
 - b. such indicative range to be provided in respect of Harwood Park Crematorium only; and

- c. the precise figures under the heading “number of cremations” to remain excised.
2. If so advised, the Appellants make any further representations concerning the disclosure by the Respondent of further information in Annex 2(A) of the Decision within 4 business days of receipt of a copy of Annex 2(A) to the Decision in the form required by paragraph 1 above.
3. The First and Second Interveners file and serve, as soon as practicable, a table providing, for each of the years 2001, 2002 and 2003, an indicative range (within 10% bands) for the percentage of cremations at Harwood Park Crematorium for which funeral directing services were performed by:
 - a. The Appellants;
 - b. The First Intervener; and
 - c. The two largest funeral directors other than the Appellant or the First Intervener (without identifying those other funeral directors by name).
4. Costs be reserved.
5. There be liberty to apply.

Sir Christopher Bellamy
President of the Competition Appeal Tribunal

Made: 19 October 2004
Drawn: 22 October 2004

SCHEDULE

Part A

“Protected Information” means the form of Annex 2(A) to the Decision to be served on the External Advisers pursuant to paragraph 1 of this Order save for any material previously disclosed to the parties or published by the Respondent.

Part B

For the purposes of this Order:

The “External Advisers” are the following persons only, save as otherwise expressly authorised by the Tribunal upon further application of the parties:

For the Appellants:

- | | | | |
|----|-------------------|-----------|-------------------|
| 1. | Jennifer Skilbeck | Counsel | Monckton Chambers |
| 2. | Christopher Leek | Solicitor | Howell & Co. |

Part C

In respect of any Protected Information disclosed to them pursuant to this Order, each External Adviser set out in part B of this Order above undertakes to the Tribunal that they will comply with the following requirements:

- i. the Protected Information will not be disclosed to any person other than another External Adviser, the Office of Fair Trading or the Tribunal without the prior permission of the Tribunal;
- ii. the Protected Information will only be used for the purposes of these proceedings;
- iii. the documents containing the Protected Information are to remain in the custody of the External Advisers at all times;
- iv. the production of further copies of the documents containing the Protected Information shall be limited to those required for the use of the External Advisers for the purposes of these proceedings; and
- v. copies of documents containing the Protected Information shall be numbered and identified as being for the specific use of one of the External Advisers; and such copies shall be returned to the Respondent at the conclusion of the present proceedings and any appeal/appeals therefrom;

save that none of the requirements listed at paragraphs i. to v. above shall prevent the External Advisers from disclosing to the party advised by them any information which such party has already seen or which has been published by the Respondent.