



## COMPETITION APPEAL TRIBUNAL

### SUMMARY OF APPLICATION UNDER SECTION 120 OF THE ENTERPRISE ACT 2002

**CASE No: 1059/4/1/06**

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 21 March 2006, under section 120 of the Enterprise Act 2002 (“the Act”), by Celesio AG (“Celesio”) of Neckartalstrasse 155, 70376 Stuttgart, Germany, challenging a decision (“the Decision”), by the Office of Fair Trading (“the OFT”), made on 6 February 2006 and published on 22 February 2006, under section 33 of the Act, not to make a reference to the Competition Commission of the anticipated acquisition by Boots Plc (“Boots”) of Alliance UniChem Plc (“UniChem”), provided that satisfactory undertakings to address competition concerns were given.<sup>1</sup>

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

1. the OFT incorrectly based its assessment of competitive concerns on the local retail market solely on a “fascia test”. The OFT thereby erred in its reasoning, and failed to consider material factors relevant to the identification of the competitive concerns arising from the merger.
2. even if the fascia test was sufficient to identify the competitive concerns arising from the merger on the local retail market, the OFT’s conclusion in this case that a reduction from 4-3 fascia would not give rise to a substantial lessening of competition was incorrect in fact and law, and inadequately reasoned.
3. the defects in the OFT’s assessment of the local retail market vitiate the OFT’s conclusions that no competitive concerns arise at a national level. The OFT’s conclusions on this issue are also not substantiated by the evidence.
4. if any of the grounds 1 to 3 above are correct, the undertakings proposed by the parties are insufficient and inappropriate to remedy the competitive concerns arising from the merger.

Celesio seeks an Order from the Tribunal:

1. to quash the Decision, in whole or in part;
2. that the matter be referred back to the OFT with a direction to reconsider and take a new decision under section 33 of the Act in accordance with the ruling of the Tribunal;
3. for costs;
4. for such further or other relief as the Tribunal may consider appropriate.

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<sup>1</sup> The decision may be found at <http://www.oft.gov.uk/NR/rdonlyres/23C1F9AE-2380-4DFF-ACDE-131FEC5C77D1/0/Boots.pdf>

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.

Pursuant to the Order of the Tribunal made on 23 March 2006 any 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 27 March 2006**.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at [www.catribunal.org.uk](http://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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