



COMPETITION APPEAL TRIBUNAL

SUMMARY OF APPLICATION UNDER SECTION 120 OF THE ENTERPRISE ACT 2002

CASE No: 1075/4/8/07

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 8 January 2007, under section 120 of the Enterprise Act 2002 (“the Act”), by Stericycle International LLC (“Stericycle”), of 28161 North Keith Drive, Lake Forest, Illinois 60045, USA, and Stericycle International Limited, of Knostrop Treatment Works, Leeds LS9 0PJ (together, “the applicants”), challenging a decision (“the Decision”) by the Competition Commission (“the CC”), published on 12 December 2006, under section 35 of the Act, to the effect that the completed acquisition by Stericycle of Sterile Technologies Group Limited (“STG”) may be expected to result in a substantial lessening of competition (“SLC”) in the market for treatment services for healthcare risk waste requiring high temperature treatment in the geographical areas of northern England, the north Midlands, north Wales, the West Midlands and south-east Wales.¹

Notwithstanding its view that the CC had erred in finding an SLC, Stericycle submitted two divestiture proposals to remedy the SLC identified by the CC. The first proposal concerned the sale of the STG indirect subsidiaries (through BFH Incineration Limited (“BFH”)) which operate incinerators at Salford and Redditch and plant at Wrexham owned by STG’s subsidiary, Sterile Technologies (UK) Limited (“the First Proposal”). The second proposal comprised an offer to divest the entire business of BFH (“the Second Proposal”).

The CC decided that Stericycle should be allowed to market test the First Proposal and enter into binding commitments with a purchaser approved by the CC. Failing this, the CC will have the right to require the appointment of a divestiture trustee and to order the sale of STG’s business in Great Britain in whole or in part.

In summary, the principal grounds of review on which the applicants rely are that:

1. The CC erred in law and in fact by finding that the acquisition of STG by Stericycle may be expected to result in an SLC. The CC’s finding of an SLC is “flawed” because:
 - (a) its conclusions on the relevant geographic market are not substantiated by the evidence;
 - (b) it failed to take sufficient account of the representations made by Stericycle in response to the CC’s Provisional Findings. The CC thereby erred in excluding the (correctly measured) spare capacity of competitors in the area affected by the merger.
2. The CC’s rejection of the Second Proposal was “flawed”. The applicants submit that:
 - (a) the CC’s interpretation and application of the test set out in section 41(2) of the Act was legally incorrect;
 - (b) the CC’s reasoning was vitiated by its flawed assessment of capacity in the affected area;
 - (c) the CC failed to take sufficient account of the representations made by Stericycle in response to the CC’s Provisional Findings.

¹ The Decision may be found in the relevant CC report at http://www.competition-commission.org.uk/rep_pub/reports/2006/519stericycle.htm.

The applicants seek, initially, an order that the application be stayed until further order so that they can seek to implement the First Proposal. If the First Proposal is successfully implemented then the applicants will apply to withdraw the application.

If the First Proposal is not implemented and the CC seeks to require divestment of assets other than those contained in the First Proposal then the applicants will wish to pursue this application and apply for any stay to be lifted. In that event, the applicants will seek:

- (a) an order setting aside the finding of SLC and the decision by the CC that a divestment is required; or
- (b) in the alternative, an order setting aside the CC's decision to reject the Second Proposal; and in any event
- (c) an order that the CC pay the costs of this 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 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

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