



COMPETITION APPEAL TRIBUNAL

SUMMARY OF APPLICATION UNDER SECTION 120 OF THE ENTERPRISE ACT 2002

CASE No: 1081/4/1/07

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 1 May 2007, under section 120 of the Enterprise Act 2002 (“the Act”), by Co-operative Group (CWS) Limited (“CGL”) of PO Box 53, New Century House, Manchester, M60 4ES, challenging a decision (“the Decision”), by the Office of Fair Trading (“the OFT”), notified to CGL on 3 April 2007, refusing CGL’s request for approval of Southern Co-operatives Limited (“Southern”) as a proposed purchaser for businesses which CGL had agreed to divest pursuant to undertakings (“the Undertakings”) which the OFT had on 29 November 2006 accepted in lieu of a reference to the Competition Commission of the completed acquisition by CGL of Fairways Group UK Limited (“Fairways”)¹. The businesses to be divested pursuant to the undertakings consisted of a number of Fairways branches in the Southampton, New Forest, Eastleigh, Wychavon and Woking areas.

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

1. The OFT has acted outside its powers by refusing approval of Southern as a purchaser. It has done so on the basis of a construction of the requirement in paragraph 3.1(a) of the Undertakings that the proposed purchaser be “independent of and unconnected to CGL” that is substantially wider than is necessary to remedy, mitigate or prevent the substantial lessening of competition identified in the decision of 29 November 2006.
2. To the extent that the OFT did purport to exercise its powers in relation to approval of Southern as a purchaser on the basis that a sale of Southern would not remedy, mitigate or prevent the substantial lessening of competition identified in the decision of 29 November 2006, there is no evidential basis or analysis produced by the OFT which would reasonably have allowed it come to this conclusion
3. In the alternative, even if the OFT’s objections to the presence of the Chief Executive of Southern on CGL’s Board were valid, the OFT was wrong, in the exercise of its discretion, to reject the more proportionate remedy by CGL of “firewalling” information from the Chief Executive of Southern.

CGL seeks an Order from the Tribunal:

1. to quash the Decision;
2. that the matter be referred back to the OFT with a direction to reconsider and make a new decision in accordance with the ruling of the Tribunal;
3. for costs.

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.

¹ Completed acquisition by the Co-operative Group (CWS) Limited of Fairways Group UK Limited, published on 5 December 2006, http://www.offt.gov.uk/advice_and_resources/resource_base/Mergers_home/decisions/2006/Coop.

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 Wednesday 9 May 2007**.

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

Published 4 May 2007