



COMPETITION APPEAL TRIBUNAL

SUMMARY OF APPLICATION UNDER SECTION 120 OF THE ENTERPRISE ACT 2002

CASE No: 1086/4/1/07

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 2 July 2007, under section 120 of the Enterprise Act 2002 (“the Act”), by Aggregate Industries Limited (“AI”) of Bardon Hall, Copt Oak Road, Markfield, LE67 9PJ, challenging a decision (“the Decision”) by the Office of Fair Trading (“the OFT”), first communicated to AI by letter on 4 June 2007 and subsequently confirmed by telephone on 11 June 2007, refusing AI’s request for approval of Hanson Aggregates Limited (“Hanson”) as a proposed purchaser for certain businesses which AI had agreed to divest pursuant to undertakings (“the Undertakings”) accepted by the OFT on 22 December 2006 in lieu of a reference to the Competition Commission of the completed acquisition by AI of Foster Yeoman Limited¹.

The businesses to be divested pursuant to the undertakings consisted of asphalt plants located at Croydon in Surrey, Theale in Berkshire and Harlow in Essex. AI challenges the Decision only insofar as it relates to the refusal of approval of Hanson as the purchaser for the Standard Havens asphalt plant located at Theale in Berkshire (“the Theale plant”).

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

1. The OFT misdirected itself in law by applying a test of whether divestment to Hanson would restore competition to its pre-merger levels rather than the correct test pursuant to section 73 of the Act (as replicated in the Undertakings and explained in the OFT’s guidance), namely whether divestment to Hanson would be appropriate for the purpose of remedying the substantial lessening of competition which the OFT had found may be expected to arise as regards the local area centred on Theale, or any resulting adverse effect.
2. The OFT erred in respect of its analysis of the effect of divestment of the Theale plant on competition faced by Hanson and made findings which were so unreasonable as to be outwith its margin of discretion. In particular:
 - (a) The finding that Hanson would face only one principal competitor following the divestment is incorrect. On any view of the evidence, Hanson would face at least two substantial competitors; and
 - (b) The conclusion that Hanson would have a “diminished incentive” to compete as a result of the transfer to Hanson of the Theale plant is irrational as being inconsistent with the OFT’s own analysis of competition in the West Drayton area in the merger decision issued by the OFT on 20 November 2006.
3. The OFT failed properly or at all to take into account two relevant considerations:
 - (a) The evidence showing a material difference between competition in the market post-merger and competition in the market post-divestment, contrary to the OFT’s assertion that the two situations were “closely analogous”;

¹ Completed acquisition by Aggregate Industries Limited of Foster Yeoman Limited
http://www.offt.gov.uk/advice_and_resources/resource_base/Mergers_home/decisions/2006/Aggregate3

- (b) The evidence demonstrating a clear increase in competition, as compared to the counterfactual, for customers both in the Theale area and customers in Central Southern England (particularly Berkshire, Hampshire and Surrey).
4. If and insofar as the Decision is taken to be comprised exclusively in the OFT's letter of 4 June 2007, such that the subsequent representations made by AI in a meeting of 7 June and a letter of 8 June 2007 were not taken into account by the OFT in making the Decision, the OFT failed to give AI an adequate opportunity to make representations.

AI seeks an Order from the Tribunal:

1. Quashing that part of the Decision which relates to the refusal of Hanson as a purchaser for the Theale plant;
2. Referring the matter back to the OFT for reconsideration and a new decision in accordance with the ruling of the Tribunal;
3. Awarding costs to AI.

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 **no later than 5pm on Thursday 12 July 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

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