



COMPETITION APPEAL TRIBUNAL

SUMMARY OF APPLICATION UNDER SECTION 120 OF THE ENTERPRISE ACT 2002

CASE No. 1190/4/8/12

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003) (“the Rules”), the Registrar gives notice of the receipt on 16 April 2012 of an appeal under section 120 of the Enterprise Act 2002 (the “Act”), by SRCL Limited (“SRCL”) against a decision dated 21 March 2012 (“the Decision”) made by the Competition Commission (“the Commission”). SRCL is represented by DLA Piper UK LLP of 3 Noble Street, London EC2V 7EE (ref: Andriy Jurkiw).

SRCL, a wholly-owned subsidiary of Stericycle, Inc., is a provider of medical waste collection, treatment and disposal services in the United Kingdom. In January 2011 SRCL acquired Ecowaste Southwest Ltd (“Ecowaste”) (“the Merger”). The Merger was referred to the Commission by the Office of Fair Trading on 25 August 2011 under section 22 of the Act. In the Decision, the Commission concluded that the Merger would lead to a substantial lessening of competition (“SLC”) in the market for services relating to healthcare risk waste (“HRW”) in the relevant geographical area. Prior to the Merger, Ecowaste treated HRW at its Avonmouth plant, while SRCL did so at its plants at Frome and Bridgend. The Commission considered that, following the Merger, competition on the HRW market in the relevant area was less than it would have been were Ecowaste’s Avonmouth plant in the hands of an independent operator. In considering the appropriate remedies under sections 41 and 84 of the Act, the Commission concluded that divestiture by SRCL was likely to be effective in addressing the SLC and the Commission ordered SRCL to take this step within a specified time period.

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

1. Notwithstanding the focus of the Commission’s findings as to SLC on the Avonmouth plant, the Commission required full divestment of Ecowaste which it found to be the only effective remedy for the SLC. In reaching this conclusion, the Commission failed to engage in any consideration or analysis of whether full divestment was the minimum remedy necessary to address the SLC.
2. Further or in the alternative, in rejecting as ineffective SRCL’s proposal for a more limited divestment remedy, the Commission’s analysis ignored various relevant considerations, took account of irrelevant considerations and failed to make necessary factual inquiries.
3. The Commission erred in law in concluding that SRCL’s interests were irrelevant to an assessment of the proportionality of the remedy because SRCL had proceeded with the Merger without first notifying it. On a true construction of its legal duties, the Commission was required to select the least restrictive alternative from among the effective remedies available to it; and to design its remedy so as to minimise the risk of SRCL’s property being sold at a substantial undervalue.
4. By publicly announcing that, if SRCL failed to sell Ecowaste, it may be sold by a divestment trustee in the latter half of 2012 without any minimum price the Commission has given rise to a significant and unnecessary risk that Ecowaste will be sold for a fraction of its true value.

By way of final relief SRCL requests that the Tribunal quash the Decision as to the remedy and refer the matter back to the Commission with a direction to reconsider the matter and make a new decision in accordance with the Tribunal’s ruling.

By way of directions SRCL requests that the Tribunal fix a case management conference at the earliest convenient date following receipt of the notice of application (and prior to the defence) in order to lay down an expedited timetable.

In the notice of application SRCL also signals its intention to apply for interim relief to extend the deadline for divestment in the event that such an extension cannot be agreed with the Commission.

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 11am on 26 April 2012.

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 OBE, QC(Hon)
Registrar

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