



The Competition Commission Appeal Tribunals

NOTICE OF APPLICATION UNDER SECTIONS 46 AND 47 OF THE COMPETITION ACT 1998 CASE NO. 1006/2/1/01

Pursuant to Rule 13 of the Competition Commission Appeal Tribunal Rules 2000 ("the Rules"), the Registrar of the Appeal Tribunals gives notice of the receipt of an application, dated 20 November 2001, under section 47 or, alternatively, section 46 of the Competition Act 1998 ("the Act") by BetterCare Group Limited of BetterCare House, 1 Boucher Crescent, Belfast, BT12 6HU ("the applicant") in respect of a decision taken by the Director General of Fair Trading ("the Director") and notified to the applicant on 25 September 2001, ("the Contested Decision"), relating to a finding by the Director that the North & West Belfast Health and Social Services Trust ("North & West") is not an "undertaking" within the meaning of the Act and therefore not subject to the provisions of the Act. The Contested Decision *inter alia* rejected the applicant's request to the Director to withdraw or vary his decision ("the Relevant Decision") taken in the course of correspondence between the Applicant and the Director, over the period 23 November 2000 to 2 November 2001. The Relevant Decision found that the North & West was not an "undertaking" and that the Director was entitled to close his file on the applicant's complaint that North & West has abused its position as a dominant purchaser in the market for nursing home care services in the area for which it is responsible for providing such services. The applicant is a company engaged in the provision of nursing home care services in facilities throughout the United Kingdom.

The applicant considers that if the Contested Decision is not susceptible to challenge under section 47 of the Act, it is entitled to appeal the Relevant Decision under section 46 of the Act.

The applicant seeks the following relief:

1. that the Contested Decision be set aside;
2. a declaration that North & West is an undertaking for the purposes of a complaint under section 18 of the Act;
3. a declaration that North & West's activities ought to be investigated under section 18 of the Act;
4. that in the event that the Appeal Tribunal may consider that insufficient evidence was submitted by the Applicant in relation to the conduct and activities of North & West under its complaint under section 18 of the Act, the Appeal Tribunal would remit the applicant's complaint to the Director;
5. such further or other relief as the Tribunal may consider appropriate.

The principal grounds on which the applicant relies are that:

1. the Director has erred in fact and in law in concluding that the rejection of the applicant's complaint was based on a failure to provide reasonable grounds under section 25 of the Act;
2. the Director has erred in fact and law in concluding that the Contested Decision is not a decision capable of appeal within the meaning of sections 46 and 47 of the Act;
3. pursuant to the obligations on the Director under section 60 of the Act the Director has erred in fact and law in concluding that North & West is not an undertaking for the purposes of an investigation of its activities under a complaint under section 18 of the Act;
4. the Director has erred in fact and law in concluding that the file on the Applicant's complaint should be closed.

Any person who considers that he has sufficient interest in the Contested Decision may make a request for permission to intervene in the proceedings, in accordance with Rule 14 of the Rules.

A request for permission to intervene should be sent to the Registrar, The Competition Commission Appeal Tribunals, New Court, 48 Carey Street, London WC2A 2JT, so that it is received within one month of the publication of this notice.

Further details concerning the procedures of the Competition Commission Appeal Tribunals can be found on its website at www.competition-commission.org.uk. Alternatively the Tribunal Registry can be

contacted by post at the above address or by telephone (020 7271 0395) or fax (020 7271 0281).
Please quote the case number mentioned above in all communications.

Charles Dhanowa
Registrar

30 November 2001