



The Competition Commission Appeal Tribunals

**NOTICE OF APPLICATION UNDER SECTION 47 OF THE COMPETITION ACT
1998
CASE NO 1011/2/1/03**

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 3 February 2003, under section 47 of the Competition Act 1998 (“the Act”) by (1) Claymore Dairies Limited (“Claymore”) of Site 1(A)&(B), Balmakeith Industrial Estate, Forres Road, Nairn IV12 5JX; and (2) Express Dairies PLC (“Express”) of Express House, Meridian East, Meridian Business Park, Leicester, LE19 1TR (“the Applicants”) in respect of a decision taken by the Director General of Fair Trading (“the Director”) and notified to the applicants on 4 December 2002, (“the Contested Decision”).

Claymore is owned as to 75 per cent by Express and 25 per cent by North Milk Cooperative (a cooperative of local farmers). Its sole activities involve the processing of raw milk into liquid milk at its dairy at Nairn, Scotland, and the sale of processed liquid milk to customers in Scotland. Express is engaged principally in the processing of raw milk into liquid milk and cream at a number of sites in England and the sale of those products through retailers, doorstep delivery rounds and other outlets.

The Contested Decision *inter alia* rejected the Applicants’ request to the Director to withdraw or vary his decision notified to the applicants on 9 October 2002 (“the Relevant Decision”), whereby the Director closed his file on the Applicants’ complaint that certain suppliers (“the Suppliers”) of fresh processed milk to middle ground customers in Scotland were party to price fixing and market sharing agreements. According to the Applicants, the Relevant Decision found that the Suppliers had not infringed the Chapter I prohibition of the Act.

The applicants seek the following relief:

1. that the Contested Decision be set aside;
2. that either:
 - (a) the matter be remitted to the Director for proper consideration and investigation;
or
 - (b) the Tribunal issue appropriate directions pursuant to paragraph 3 of Schedule 8 to the Act to enable it to determine that the activities of the Suppliers infringed the Chapter I prohibition;
3. that the Director be ordered to pay the Applicants’ costs;
4. that the Tribunal grant such further or other relief as it sees fit.

In summary the principal grounds on which the Applicants rely are that the Director:

1. has taken an appealable decision within the meaning of section 46 of the Act (in finding the Suppliers had not infringed the Chapter I prohibition of the Act) and has refused to withdraw or vary that decision under section 47 of the Act;
2. has failed to issue a decision which is properly or adequately reasoned.

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 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

7 February 2003