



## COMPETITION APPEAL TRIBUNAL

### NOTICE OF APPEAL UNDER SECTION 47 OF THE COMPETITION ACT 1998

#### CASE NO 1044/2/1/04

Pursuant to Rule 15 of the Competition Appeal Tribunal Rules 2003 (“the Rules”), the Registrar of the Competition Appeal Tribunal gives notice of the receipt of a notice of appeal, dated 15 July 2004, under section 47 of the Competition Act 1998 (“the Act”) by ME Burgess, JJ Burgess and SJ Burgess (trading as JJ Burgess & Sons) (“JJ Burgess” or “the appellant”) of Alfred House, The Common, Hatfield, Hertfordshire AL10 AND in respect of decision No CA/98/06/2004, made by the Office of Fair Trading (“the OFT”) and notified to the appellant on 30 June 2004 (“the Contested Decision”).<sup>1</sup>

In the Contested Decision the OFT finds that W Austin and Sons (Stevenage) Limited (“Austins”) has not abused a dominant position contrary to the Chapter II prohibition imposed by section 18 of the Act, by refusing to allow JJ Burgess access to Harwood Park Crematorium (“the Crematorium”), its wholly owned subsidiary.

By way of relief the appellant requests the Tribunal:

1. to find that the Crematorium is dominant in the market for crematoria services in the Stevenage area or the Stevenage and Knebworth area or the area in which the Crematorium is the nearest crematorium;
2. to find that the Crematorium has abused its dominant position by excluding JJ Burgess’ clients and/or by allowing JJ Burgess’ clients into the crematorium only on discriminatory terms, without any objective justification;
3. to find, further, or in the alternative, that Austins have abused their dominant position in an associated market, crematoria services, by refusing access and/or permitting access to JJ Burgess’ clients on discriminatory terms;
4. to find, further, or in the alternative, that the Crematorium has entered into an unlawful agreement or concerted practice by preventing one or more funeral directors from choosing freely the persons with whom they do business.

In summary the principal grounds on which the appellant relies are that the OFT:

1. erred in defining the relevant product market;
2. erred in law and fact in defining the relevant geographical market;
3. erred in concluding that the Crematorium was not in a dominant position on the relevant market;
4. erred in concluding that an otherwise unlawful abuse of a dominant position (refusal to supply) is lawful if sufficient competition remains in the market;
5. erred in concluding that, in circumstances in which it found that refusal to supply was not an abuse, it was nevertheless unnecessary to consider whether the terms on which

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<sup>1</sup> The decision will be published in due course at [www.of.gov.uk](http://www.of.gov.uk)

JJ Burgess' clients might be supplied with the assistance of a third party might amount to discrimination in the terms of supply to JJ Burgess and/or the clients of JJ Burgess;

6. erred in concluding that the breakdown in the working relationship between the Crematorium and Burgess was the reason for the refusal or that, if it was, why that amounted to an "objective justification";
7. erred in rejecting JJ Burgess' complaint under the Chapter I prohibition of the Act without giving any reasons;
8. having concluded in the Contested Decision that Austins was dominant in the funeral market in Stevenage and Knebworth, erred in rejecting the possibility that there might be an abuse in an associated market, namely cremation services.

Any person who considers that he has a 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 within **three weeks** of the publication of this notice.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at [www.catribunal.org.uk](http://www.catribunal.org.uk). Alternatively the Tribunal Registry can be contacted by post at the above address or by telephone (020 79797979) or fax (020 79797978). Please quote the case number mentioned above in all communications.

Registrar

19 July 2004