



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1270/5/7/16

B E T W E E N:

- (1) WESTPOINT GROUP TRADING LIMITED
- (2) FARMVETS SOUTHWEST LIMITED
- (3) GARTH PIG PRACTICE LIMITED
- (4) RETFORD POULTRY PARTNERSHIP LIMITED

Claimants

- and -

- (1) XL FARMCARE UK LIMITED
- (2) XL FARMCARE WESSEX LIMITED
- (3) XL FARMCARE DEVON AND CORNWALL LIMITED
- (4) XL FARMCARE SOUTH EAST LTD
- (5) XL FARMCARE MIDLANDS LIMITED
- (6) XL FARMCARE NORTH LIMITED

Defendants

ORDER

UPON the application of the Claimants dated 30 September 2016 under Section 68 of the Competition Appeal Tribunal Rules 2015 ("**Application**")

AND UPON the Claimants/Applicants and the Defendants/Respondents having agreed to the terms of this order

AND without admission of any liability on the part of the Defendants whose rights remain fully reserved

BY CONSENT, IT IS ORDERED THAT:

1. The Application be stayed, save for the purposes of enforcing the terms of this Order.
2. The hearing for an interim injunction listed before Mrs Justice Rose on Monday 17 October 2016 be vacated.
3. Within one Business Day of the date of this Order being approved by the Competition Appeal Tribunal the Fourth Defendant shall seek and use reasonable endeavours to obtain APHA approval to the extension of the existing Year 2 Sub-Contract. The Fourth Defendant's obligation to issue an extended Year 2 Sub-contract as set out below shall be contingent upon prior APHA approval being received. Subject to the above the Fourth Defendant shall extend the term of the South East SLA for a period of three months from the date of this Order, or until the financial statements for the First Claimant for the period 30 June 2016 have been finalised, audited and filed at Companies House, whichever is the later, and the Fourth Defendant shall continue to waive compliance with clause 8.3.9 of the South East SLA during such period.
4. Following the First Claimant notifying the Fourth Defendant that the financial statements for the First Claimant for the period ending 30 June 2016 have been finalised, audited and filed at Companies House, the Fourth Defendant shall extend the term of the South East SLA to 31 March 2017, and the Fourth Defendant shall continue to waive compliance with clause 8.3.9 of the South East SLA for the full term of the contract.
5. Within one Business Day of the date of this Order being approved by the Competition Appeal Tribunal the Sixth Defendant shall seek and use reasonable endeavours to obtain APHA approval to the issuing of a Year 2 Sub-Contract subject to completion of the Registrations set out below. The Sixth Defendant's obligation to issue a Year 2 Sub-contract as set out below shall be contingent upon prior APHA approval being received. Subject to the above the Sixth Defendant shall deliver to the Third Claimant:
 - a. within one Business Day of confirmation that the Registrations for the Third Claimant in respect of the Clitheroe Premises have been completed, a signed Year 2 Sub-Contract in respect of the Clitheroe Premises;
 - b. within one Business Day of confirmation that the Registrations for the Third Claimant in respect of the York Premises have been completed, a signed Year 2 Sub-Contract in respect of the York Premises.
6. Within one Business Day of receiving each of the Year 2 Sub-Contracts referred to at paragraph 5 above signed by the Third Claimant, the Sixth Defendant shall enter each of the relevant premises of the Third Claimant onto the Register for the North Region, and provide a copy of an extract from the Register confirming the same by email to Alexandra.kamerling@dlapiper.com, Ilan.sherr@dlapiper.com and Kathryn.ford@dlapiper.com on the same day.
7. Within one Business Day of the date of this Order being approved by the Competition Appeal Tribunal the Fifth Defendant shall seek and use reasonable endeavours to obtain APHA approval to the issuing of a Year 2 Sub-Contract subject to completion of the Registrations set out below. The

Fifth Defendant's obligation to issue a Year 2 Sub-contract as set out below shall be contingent upon prior APHA approval being received. Subject to the above the Fifth Defendant shall deliver to the Fourth Claimant:

- a. within one business day of confirmation that the Registrations for the Fourth Claimant in respect of the Louth Premises have been completed, a signed Year 2 Sub-Contract in respect of the Louth Premises;
 - b. within one Business Day of confirmation that the Registrations for the Fourth Claimant in respect of the Ashbourne Premises have been completed, a signed Year 2 Sub-Contract in respect of the Ashbourne Premises;
 - c. within one Business Day of confirmation that the Registrations for the Fourth Claimant in respect of the Daventry Premises have been completed, a signed Year 2 Sub-Contract in respect of the Daventry Premises.
8. Within one Business Day of receiving each of the Year 2 Sub-Contracts referred to at paragraph 7 above signed by the Fourth Claimant, the Fifth Defendant shall enter each of the relevant premises of the Fourth Claimant onto the Register for the Midlands Region, and provide a copy of an extract from the Register confirming the same by email to Alexandra.kamerling@dlapiper.com, Ilan.sherr@dlapiper.com and Kathryn.ford@dlapiper.com on the same day.
9. Within one Business Day of the date of this Order being approved by the Competition Appeal Tribunal the Third Defendant shall seek and use reasonable endeavours to obtain APHA approval to the issuing of a Year 2 Sub-Contract subject to completion of the Registrations set out below. The Third Defendant's obligation to issue a Year 2 Sub-contract as set out below shall be contingent upon prior APHA approval being received. Subject to the above the Third Defendant shall deliver to the Second Claimant:
- a. within one business day of confirmation that the Registrations for the Second Claimant in respect of the Launceston Premises have been completed, a signed Year 2 Sub-Contract in respect of the Launceston Premises;
 - b. within one Business Day of confirmation that the Registrations for the Second Claimant in respect of the St Columb Premises have been completed, a signed Year 2 Sub-Contract in respect of the St Columb Premises.
10. Within one Business Day of receiving each of the Year 2 Sub-Contracts referred to at paragraph 9 above signed by the Second Claimant, the Third Defendant shall enter each of the relevant premises of the Second Claimant onto the Register for the Devon and Cornwall Region, and provide a copy of an extract from the Register confirming the same by email to Alexandra.kamerling@dlapiper.com, Ilan.sherr@dlapiper.com and Kathryn.ford@dlapiper.com on the same day.
11. Within three Business Days of the written confirmation by the Claimants that all of the necessary registrations being sought by them have been obtained and the subsequent concluding of the Year 2 Sub-Contracts provided for above, the First Defendant shall publish the statement set out at Schedule 2 of this Order within the body of a bulletin to be sent to all suppliers.

12. The costs of and occasioned by the Application be reserved to be determined by the Competition Appeal Tribunal upon final determination of the claim.

13. There be liberty to apply.

The Hon Mrs Justice Rose
Chairman of the Competition Appeal Tribunal

Made: 13 October 2016
Drawn: 13 October 2016

SCHEDULE 1

Definitions

"Ashbourne Premises" means Unit D, Ednaston business Centre, Hollington Road, Ednaston, Ashbourne, Derbyshire DE6 3AE

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London, United Kingdom

"Charge Rate" means the rate set out on the relevant table of the Year 2 Sub-contract in Annex 1 as follows:

Claimant	Defendant	Premises	Relevant page of Annex 1
Second Claimant	Third Defendant	Launceston Premises	18
Second Claimant	Third Defendant	St Columb Premises	29
Third Claimant	Sixth Defendant	Clitheroe Premises	32
Third Claimant	Sixth Defendant	York Premises	35
Fourth Claimant	Fifth Defendant	Ashbourne Premises	38
Fourth Claimant	Fifth Defendant	Daventry Premises	41
Fourth Claimant	Fifth Defendant	Louth Premises	44

"Clitheroe Premises" means Princess Avenue, Clitheroe, Lancashire BB7 2AL

"Daventry Premises" means Unit 2 Egerton Close, Drayton Fields, Daventry NN11 8PE

"Devon and Cornwall Region" means the Geographical Lot consisting of the counties of Cornwall, Devonshire and Isles of Scilly

"Geographical Lot" means the region of England and Wales to which the Government Contract to which the relevant Defendant is a counterparty relates

"Government Contract" means the contracts entered into between each of the Defendants and the Secretary of State for Environment, Food and Rural Affairs in or around February 2015

"Keeper" means a person responsible for animals or livestock which are tested as part of the services to be provided by the Defendants under the Government Contracts

"Launceston Premises" means Kennards House, Trethorne Business Park, Launceston, Cornwall PL15 8QE

"Louth Premises" means Louth Livestock Market, Newmarket, Louth, Lincoln, Lincolnshire LN11 9HF

"Midland Region" means the Geographical Lot consisting of the counties of Derbyshire, Herefordshire, Worcestershire, Leicestershire, Lincolnshire, Northamptonshire, Nottinghamshire, Shropshire, Staffordshire, Warwickshire and West Midlands

"North Region" means the Geographical Lot consisting of the counties of Cleveland, Cheshire, Cumbria, Durham, Lancashire, Merseyside, Tyne & Wear, Northumberland, Greater Manchester, South Yorkshire, North Yorkshire, West Yorkshire and Humberside

"Register" means the list of available sub-contractors kept by each of the Defendants, and from which a Keeper is to identify a preferred veterinary business for provision of the Services under clause 7.6 of Schedule 1 to the Government Contracts

"Registrations" means that the relevant Claimant has been registered with the Royal College of Veterinary Surgeons to provide veterinary services from the relevant premises and that the relevant Claimant is registered with the Royal College of Veterinary Surgeons and the Veterinary Medicines Directorate to supply veterinary medicines from the relevant premises

"Services" means testing for bovine tuberculosis and the supply of other veterinary services as set out in Schedule 2 to the Year 2 Sub-Contract

"South East Region" means the Geographical Lot consisting of the counties of Bedfordshire, Berkshire, Buckinghamshire, Cambridgeshire, Essex, Hampshire, Isle of Wight, Hertfordshire, Kent, Greater London, Norfolk, Oxfordshire, Suffolk, Surrey, East Sussex and West Sussex

"South East SLA" means the Service Level Agreement relating to tuberculosis testing and the supply of other services in the South East Region entered into between the First Claimant and the Fourth Defendant dated 23 March 2016

"St Columb Premises" means Unit B, Trevornick Business Park, Winnard's Perch, St Columb, Cornwall TR9 6DH

"Year 2 Sub-Contract" means a Service Level Agreement relating to bovine tuberculosis testing and the supply of other veterinary services, substantially in the form of the contract received by the First Claimant from the Third Defendant on 21 January 2016 and annexed hereto as Annex 1.

"York Premises" means York Livestock Centre, Murton, York, Yorkshire YO19 5GF

"Wessex Region" means the counties of Dorset, Gloucestershire, Avon, Somerset and Wiltshire

SCHEDULE 2 - THE STATEMENT

Following the appropriate registrations having been made with the Royal College of Veterinary Surgeons, the Veterinary Medicines Directorate and APHA, the following veterinary practices have been approved to deliver tuberculosis testing in the following regions:

- The Garth Pig Practice Limited, trading from premises in Clitheroe and York – North Region;
- Retford Poultry Partnership Limited, trading from premises in Louth, Ashbourne and Daventry – Midlands Region;
- Farmvets South West Limited, trading from premises in Launceston and St Columb – Devon and Cornwall Region.

Any keepers wishing to use these veterinary practices to undertake their tuberculosis testing should contact us immediately on 0800 612 5289 and we will make the appropriate arrangements.

In addition, Westpoint Group Trading Limited will continue to deliver tuberculosis testing from its premises in the South East Region.

ANNEX 1
Terms of the Year 2 Sub-
Contract