



COMPETITION APPEAL TRIBUNAL

**NOTICE OF APPEAL UNDER SECTION 46 OF
THE COMPETITION ACT 1998**

CASE NO 1122/1/1/09

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (SI 2003, No 1372) (“the Rules”), the Registrar gives notice of the receipt of an appeal dated 20 November 2009, under section 46 of the Competition Act 1998 (“the Act”), by AH Willis and Sons Limited (“AH Willis”) in respect of a decision in Case CE/4327-04 dated 21 September 2009 (“the Decision”) taken by the Office of Fair Trading (“OFT”).

In the Decision the OFT concluded that AH Willis entered into three separate agreements with Mansell to provide Mansell with a cover price in relation, in each case, to a tender for Reading University. The relevant infringements are Infringements 188, 215 and 224.

AH Willis denies that it was a party to any agreement which was in breach of the Chapter I prohibition in the Competition Act 1998.

In relation to Infringements 188 and 215, the OFT has concluded, on the basis of some limited evidence obtained from Mansell, that there was an anti-competitive agreement in relation to each Infringement between Mansell and AH Willis. However, neither in the Decision nor in the Statement of Objections did the OFT provide any particulars of those agreements, including information such as when these agreements are said to have been reached, how and between which individuals. Since it cannot find any evidence of dealings with Mansell in relation to these tenders, AH Willis denies it was a party to any infringement and challenges liability in relation to these Infringements on the basis that the limited evidence relied upon by the OFT does not provide strong and compelling evidence that AH Willis was party to an infringement.

In relation to Infringement 224, AH Willis’ enquiries established that the price used by Mansell in this tender did not come from AH Willis, but from a third party self-employed costs estimator, who carried out estimating work for AH Willis along with a number of other companies. The costs estimator had no authority to enter into any agreement on behalf of AH Willis. The OFT concluded that AH Willis was a party to an anti-competitive agreement with Mansell on the basis that the costs estimator was acting as AH Willis’ agent in his dealings with Mansell and is, therefore, part of the same undertaking. The OFT also concluded that the costs estimator had ostensible authority to enter into an agreement with Mansell on behalf of AH Willis. AH Willis does not agree with the OFT’s legal analysis and submits that it cannot be legally liable for the actions of the costs estimator on his own behalf and which took place without the knowledge or authority of AH Willis.

In the alternative to its case on liability, AH Willis challenges the penalty methodology that the OFT adopted. In particular, AH Willis contends that:

- (a) The OFT wrongly applied a starting point percentage of 5% to three infringements, giving a total starting point of 15% which is much higher than would have been imposed in relation to a much more serious cartel covering every tender in the market;
- (b) The OFT’s analysis of cover pricing was flawed, resulting in it adopting a starting point percentage which was excessive in any event;
- (c) The OFT imposed an arbitrary fine on AH Willis which the OFT’s own analysis of deterrence showed was excessive;

- (d) The OFT failed to take any proper account of the fact that the evidence suggests that if an infringement did occur, it was instigated by Mansell;
- (e) In relation to Infringement 224, the OFT failed to take any proper account of the fact that the actions in question were those of an independent third party contractor

AH Willis seeks the following relief from the Tribunal:

- (a) the Decision insofar as it concludes that AH Willis was party to any infringement of the Chapter I prohibition should be quashed;
- (b) alternatively, the fine imposed upon AH Willis should be adjusted to an appropriate and reasonable level;
- (c) alternatively, the matter should be referred back to the OFT with a direction to reconsider and make a new decision in accordance with the Tribunal's ruling;
- (d) an order that the OFT pay AH Willis' costs.

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 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. 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
Registrar

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