



COMPETITION APPEAL TRIBUNAL

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

**CASE NO 1123/1/1/09**

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 Sol Construction Limited and Barkbury Limited (together, “Sol”) in respect of a decision in Case CE/4327-04 dated 21 September 2009 (“the Decision”) taken by the Office of Fair Trading (“OFT”).

According to the Decision, the OFT fined Sol £3,337,640 in respect of three infringements of the Competition Act 1998: Infringement 142 which concerned a cover price given by Sol to another company, Galliford Try, in respect of which a fine of £185,000 was imposed; Infringement 156 which concerned a cover price given to another company, GG Middleton, in respect of which a fine of £1,576,320 was imposed; and Infringement 187 which concerned a cover price given by GG Middleton to Sol, in respect of which a fine of £1,576,320 was imposed.

Sol submits that the level of fines imposed by the OFT is excessive and unfair both in itself and when compared to fines imposed on other categories of undertakings to whom the Decision is addressed.

In relation to the former point, Sol submits that the absolute level of fines in this case is excessive in general and in the particular case of Sol, in that:

- (a) the three infringements chosen, and in particular Infringements 156 and 187, have artificially inflated Sol’s liability at Steps 1 and 2, given the high proportion of global turnover accounted for by such projects in 2009;
- (b) the date of the Decision has unfortunately coincided with a very high global turnover for Sol when compared to previous years and to the current financial year, leading to a disproportionately high fine.

On the latter point, the fines imposed on Sol are unfair when compared to the individual fining decisions for a series of comparators:

- (a) the most culpable categories of addressees of the Decision, those involved in compensation payments, received fines which, expressed as a proportion of global turnover, are in general set at a much lower level than those imposed on Sol;
- (b) of the limited class of undertakings, including Sol, whose fines were reduced rather than increased at Step 3, Sol received the lowest level of reduction and the highest level of fine as a proportion of global turnover, reversing the position that prevailed at Steps 1 and 2 without justification or explanation;
- (c) undertakings of comparable size to Sol have been subjected to fines at a substantially lower level than Sol; and
- (d) undertakings that are Sol’s direct regional competitors and undertakings active in the education sector received fines much lower than those imposed on Sol.

Sol seeks the following relief from the Tribunal:

- (a) to set aside the Decision imposing the penalty on Sol;
- (b) to vary the amount of the penalty imposed on Sol pursuant to paragraph 3(2)(b) of Schedule 8 to the Competition Act 1998 to a level that is proportionate and non-discriminatory as against the other addressees of the Decision;
- (c) to order the OFT to pay the costs of the appeal pursuant to rule 55 of the Rules.

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](http://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

Published 27 November 2009