



COMPETITION APPEAL TRIBUNAL

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

CASE NO 1127/1/1/09

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 23 November 2009, under section 46 of the Competition Act 1998 (“the Act”), by Bowmer and Kirkland Limited (“B&K”) and B&K Property Services Limited (“BKPS”) (together, “the Appellants”) 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 concluded that B&K was liable for two infringements of the Chapter I prohibition and that the Appellants, as part of the same economic entity, were jointly and severally liable for a third infringement of the Chapter I prohibition (“the Infringements”). The OFT imposed a penalty of £7,574,736 in respect of the Infringements. The Appellants had accepted the OFT’s “fast track offer” in relation to one of the three infringements, and received an allowance of 25% in respect of that infringement.

The Appellants advance the following grounds of appeal in respect of the penalty imposed by the OFT:

- (a) The OFT’s analysis of cover pricing in the context of the facts applicable to the infringements in which B&K was involved, failed to recognise the limited significance of the anti-competitive agreement involved in such infringements and consequently the OFT adopted an excessive starting point percentage, which in turn fed into its calculation of the Minimum Deterrence Threshold (“MDT”) percentage.
- (b) The OFT inappropriately applied the MDT to the worldwide turnover of B&K thereby increasing the penalty without providing any proper justification.
- (c) The OFT’s process did not allow the Appellants an opportunity, equal to that of other undertakings, to claim leniency.
- (d) The OFT failed properly to take account of the circumstances surrounding one infringement, which consisted of the making of a compensation payment to another firm. Since the Appellants were the victim of fraud, it follows that no penalty for deterrence for the compensation payment can be justified.

The Appellants seek the following relief from the Tribunal:

- (a) to quash the Decision insofar as it relates to the penalty imposed on the Appellants;
- (b) to refer the matter back to the OFT with a direction to reconsider and make a new decision in accordance with the Tribunal’s ruling; and
- (c) to order the OFT to pay the Appellants’ 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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