



COMPETITION APPEAL TRIBUNAL

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

CASE NO 1130/1/1/09

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (S.I. 1372 of 2003) (“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 Renew Holdings plc (“Renew”) and Allenbuild Limited (“Allenbuild”) (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”).

The OFT found that Renew, Bullock Construction Limited (“Bullock”), (at the relevant time, a wholly-owned subsidiary of Renew (then called YJL plc)) and Allenbuild, (at the relevant time and presently a wholly-owned subsidiary of Renew), were involved in three infringements (referred to in the Decision as Infringements 39, 137 and 204) of collusive tendering by cover pricing contrary to the Chapter I prohibition contained in the Competition Act 1998 and imposed a penalty of £3,547,931.

The Appellants contend that the penalties imposed upon them are disproportionate and discriminatory, and result from a failure by the OFT to have proper regard to its own Guidance as to the appropriate amount of penalty. The OFT made a number of errors of approach in its calculation of the penalties payable by Renew and Allenbuild. In particular, the OFT erred in:

- (a) Determining the level of the penalty at Step 1 by reference to the relevant turnovers of the undertakings involved in the business year preceding the Decision. The OFT should have based its approach on the turnover in the business year preceding the date of the infringement.
- (b) Deciding to address the Decision to, and impose a penalty upon Renew, in relation to the activities of its former and existing subsidiaries when in at least one other case dealt with in the Decision the OFT chose not to impose a penalty on the parent company. In failing, without explanation, to treat Renew in the same way as that other case the OFT discriminated against Renew in what appears to be an entirely arbitrary manner.
- (c) Insofar as the OFT properly imposed a penalty at all upon Renew in relation to Infringement 39, setting that penalty on the basis of an Minimum Deterrence Threshold set at 0.75% of the consolidated turnover of Renew and Bullock, a level which was excessive, discriminatory and unjustified by reference to the general need for deterrence or any need to deter Renew in particular.

The Appellants seek the following relief from the Tribunal:

- (a) To reduce or annul the penalty imposed by the Decision in respect of infringements 39, 137 and 204;
- (b) Award the Appellants their costs; and
- (c) Grant any other relief as the Tribunal may consider appropriate.

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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