



COMPETITION APPEAL TRIBUNAL

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

**CASE NO 1132/1/1/09**

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 Thomas Vale Holdings Limited and Thomas Vale Construction plc (together, “Thomas Vale”) 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 Thomas Vale had infringed the Chapter I prohibition contained in the Act in relation to 24 instances of cover pricing and imposed a penalty of £1,021,473 calculated by reference to three infringements (identified as infringement numbers 30, 107 and 197 in the Decision).

Thomas Vale submits that the OFT has erred in its appraisal of the facts and in the exercise of its discretion and that it has imposed an unfair, disproportionate and discriminatory penalty on Thomas Vale, contrary to (1) Thomas Vale’s rights under the Human Rights Act 1998 and (2) to fundamental principles of law including the principle of sound administration.

In summary, the principal grounds of appeal on which Thomas Vale rely are that:

- (a) The penalty imposed on Thomas Vale is unfair and disproportionate considering the exceptional nature of the case.
- (b) The OFT has wrongly exercised its discretion in calculating step one of the penalty by adopting the year of relevant turnover as the year preceding the Decision, leading to an excessive and unfair penalty being imposed on Thomas Vale.
- (c) The OFT has erred in its appraisal of fact in including framework and negotiated agreements within the relevant product market for step one of the calculation of the penalty. In the alternative, and in the circumstances, this inclusion is unfair and disproportionate and results in an excessive penalty being imposed.
- (d) The OFT’s imposition of a Minimum Deterrence Threshold of 0.75% in relation to one of the infringements (number 107) is discriminatory and excessive.
- (e) The OFT has erred in its appraisal that the parties, including Thomas Vale, must or should have been aware that cover pricing was an infringement of the Chapter I prohibition and should have taken the lack of awareness into account as a mitigating factor at step four of the calculation of the penalty.

Thomas Vale seek the following relief from the Tribunal:

- (a) The reduction in the amount of the fine imposed on Thomas Vale by the Decision; and
- (b) An order that the OFT pay the costs of these proceedings.

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

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