



COMPETITION APPEAL TRIBUNAL

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

**CASE NO 1138/1/1/09**

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, by Apollo Property Services Group Limited (“Apollo”) 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 Apollo provided a cover price to a competitor, Mansell Construction Services Limited, on three separate occasions in relation to three separate tenders (“the Infringements”). The OFT imposed a penalty of £2,150,536 on Apollo in respect of the Infringements.

Apollo advances the following grounds of appeal in respect of the penalty imposed by the OFT:

- (a) It was wrong in law, inconsistent, unfair and/or an unlawful fetter on discretion to calculate the penalty with reference to Apollo’s turnover in the year before the Decision, as opposed to its turnover in the years in which the Infringements were found to have occurred.
- (b) It was disproportionate and/or irrational to apply the minimum deterrence threshold (“MDT”) to one of a number of infringements and then, in addition, to levy additional penalties in respect of those infringements not covered by the MDT, thus taking the total amount of the penalty well beyond that which the OFT considered necessary to provide a sufficient deterrence.
- (c) Viewed globally, the penalty imposed on Apollo was disproportionate and failed to take into account the particular circumstances of Apollo’s case.

Apollo seeks an order from the Tribunal:

- (a) reducing the penalty imposed on Apollo to £929,364 or such other sum as the Tribunal considers appropriate; and
- (b) for 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](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 1 December 2009