



COMPETITION APPEAL TRIBUNAL

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

**CASE NO 1139/1/1/09**

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, by Galliford Try plc (“GT”) 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 the following infringements: Infringement 42, a cover price provided by Try Accord Limited (“Try Accord”), a subsidiary of GT, to Mansell; Infringement 142, a cover price provided by Sol to Galliford Try Construction Limited (“Galliford Construction”), a subsidiary of GT; Infringement 186, a cover price provided by JH Hallam to Galliford Construction.

The OFT held GT liable for Try Accord and Galliford Construction’s conduct as, at all relevant times, GT was the parent company of Try Accord and Galliford Construction. The total fine imposed on GT and its subsidiary companies in respect of the Infringements was £8,333,329.

GT’s primary case is that the penalty should be revoked for defects of reasoning, and error of law, in respect of, in particular, the refusal to accept the relevance of a limitation period and the rigid and inflexible application of the Minimum Deterrence Threshold (“MDT”). Further, and alternatively, the OFT could and should have calculated the MDT for GT using turnover figures which would have more accurately reflected its circumstances. Such calculations would have resulted in the final gross penalty for GT being reduced substantially. In summary, the principal grounds of appeal on which the Appellants rely are that:

- (a) The OFT imposed penalties on GT for infringements which took place in 2001, 2003 and 2004. However, the Decision imposing those penalties was not made until 2009. When imposing penalties for infringements which took place up to eight and a half years before the Decision imposing those penalties, the OFT should have been particularly careful to ensure that the penalties imposed were fair and reasonable, taking into account that substantial lapse of time.
- (b) By failing to take into account an objective difference between GT’s situation and the situation of other parties, particularly when calculating the MDT to be imposed on GT, the OFT breached the principles of fairness and equal treatment.
- (c) The OFT imposed an excessive penalty on GT which cannot be objectively justified. The penalties which the OFT has imposed pursue the objective of deterrence at the expense of the objective of ensuring the penalty reflects the seriousness of the infringement. For GT, the OFT’s approach means that there is no correlation at all between the fine imposed and the impact of the infringements.

GT seeks an Order from the Tribunal:

- (a) Revoking the OFT’s decision to impose the penalty of £8,333,329 on GT and its subsidiary companies, Galliford Construction and Try Accord, alternatively reducing the level of that penalty;
- (b) for such further or other relief as is appropriate; and
- (c) for the OFT to pay its costs of this appeal.

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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