



COMPETITION APPEAL TRIBUNAL

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

CASE NO 1140/1/1/09

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 30 November 2009, under section 46 of the Competition Act 1998 (“the Act”), by Eden Brown Limited (“the appellant”) of 222 Bishopsgate, London, EC2M 4QD in respect of a decision in Case CE/7510-06 dated 29 September 2009 (“the Decision”) taken by the Office of Fair Trading (“OFT”). The appellant is represented by Addleshaw Goddard LLP, Milton Gate, 60 Chiswell Street, London EC1Y 4AG (reference: ADSA/GATEA/ARNOL/331058-1).

In the Decision the OFT found that the appellant, together with other recruitment consultants, had infringed section 2 of the Act (“the Chapter I prohibition”) by agreeing to refuse to deal with another recruitment consulting company which was entering the market, and agreeing to fix target fee rates for the supply of certain candidates to various parties. The OFT imposed a penalty of £1,072,069 on the appellant in respect of the infringement.

In summary, the principal grounds of appeal on which the appellant relies are that:

1. The amount of penalty imposed on the appellant was excessive and in breach of section 36 of the Act and the principle of proportionality. In particular the appellant submits that the OFT has failed to have proper regard to the OFT’s Guidance as to the appropriate amount of a penalty (OFT 423, December 2004).
2. The OFT erred in using the appellant’s gross turnover to calculate the “starting point” for the calculation of the fine (“Step 1”) principally because gross turnover includes temporary candidates’ wages for which the appellant is merely a conduit.
3. The application of a “starting point” percentage of 9% at Step 1 was unjustifiably high, having regard to the facts of this case and to the OFT’s treatment of other cartel infringements.
4. The OFT erred in using the appellant’s 2008/09 turnover at Step 1. The OFT ought properly to have calculated relevant turnover on the basis of the appellant’s turnover in the last business year preceding the date when the infringement ended.
5. The fine imposed on the appellant exceeds the level necessary for deterrence. Having concluded that an amount equal to a certain percentage (namely 15%) of total worldwide turnover was the relevant turnover necessary to deter an undertaking (i.e. the OFT’s Minimum Deterrence Threshold), the OFT erred by failing sufficiently to reduce the appellant’s fine at step 3; and an MDT of 15%, in respect of the appellant, was excessive and/or disproportionate.
6. The OFT erred in failing sufficiently to reduce the appellant’s fine at step 4, in light of all the steps the appellant has taken in mitigation.

The appellant seeks the following relief from the Tribunal:

- (a) an order revoking the penalty imposed upon the appellant or reducing the amount of that penalty;
- (b) an order 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. 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 8 December 2009