



Guidance Note

1/2009

Office of Fair Trading: Competition Act 1998 Decision of 22 September 2009 – “Case CE/4327-04: cover pricing in the construction industry in England” (“the Construction Industry Decision”)

1. This note is intended for the guidance of any person who intends to appeal the Construction Industry Decision.
2. Rule 8 of the Competition Appeal Tribunal Rules 2003 (“the Tribunal Rules of Procedure”) sets out the requirements of the Tribunal with regard to the time and manner of commencing appeals.
3. In particular Rule 8(6)(a) stipulates that there shall be annexed to the notice of appeal “a copy of the disputed decision”.
4. It is the Tribunal’s understanding that the Construction Industry Decision is a document running to nearly 2000 pages.
5. Given that fact, and in the interest of minimising costs, the Tribunal is prepared to adopt a practical approach to the application of Rule 8(6)(a) in the particular circumstances of any appeals commenced in respect of the Construction Industry Decision.
6. In relation to any such appeals the Tribunal will accept the requirement of Rule 8(6)(a) as being satisfied if the parts of the Construction Industry Decision containing the *specific* findings and decision in respect of the *particular* appellant are annexed to the notice of appeal.
7. There is no need to annex those parts of the Construction Industry Decision which are common to all addressees of the decision.
8. Appellants and their legal representatives are urged to err on the side of providing less rather than more material pursuant to Rule 8(6)(a) since they can rely on the fact that, at the appropriate time in the proceedings, the Tribunal will obtain copies of the Construction Industry Decision from the Office of Fair Trading (although the Office’s costs in this regard may form part of the Tribunal’s eventual consideration of the costs of the proceedings).
9. The same approach should be adopted with regard to any other documents of a similar size, such as the statement of objections, which relate to the administrative procedure before the Office of Fair Trading and which an appellant wishes to annex to the notice of appeal (in accordance with Rule 8(6)(b)).