



## COMPETITION APPEAL TRIBUNAL

### **NOTICE OF APPEAL UNDER SECTION 46 OF THE COMPETITION ACT 1998 CASE NO 1033/1/1/04**

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (“the Rules”), the Registrar gives notice of the receipt of an appeal, filed on 11 May 2004 (and resubmitted pursuant to the directions of the Tribunal on 24 May 2004), under section 46 of the Competition Act 1998 (“the Act”) by Richard W. Price (Roofing Contractors) Ltd (“the appellant”) in respect of a decision (CP/0001-02) taken by the Office of Fair Trading (“the OFT”) and notified to the appellant on 16 March 2004 (“the Decision”).

In the Decision the OFT found that a number of undertakings active in the market for the supply of repair, maintenance and improvement services (“RMI services”) for flat roofs in the West Midlands area had been party to individual agreements or concerted practices by cooperating with each other in relation to the setting of tender prices for RMI services. Those agreements or concerted practices had as their object the prevention, restriction or distortion of competition.

The appellant was found to have been involved in one infringement contrary to section 2 (‘the Chapter I prohibition’) of the Act: an agreement or concerted practice with Rio Asphalt & Paving Co. Limited (“Rio”) having the object of providing non-competitive prices in connection with invitations to tender for works on the Pallasades Shopping Centre, Birmingham.

For its infringement of the Chapter I prohibition the OFT imposed a penalty of £18,000 on the appellant.

The appellant appeals against the penalty imposed in the Decision:

- The appellant rejects the OFT’s assumption set out at paragraph 388 of the Decision that “there was perceived pressure in the industry for suppliers to put in tender bids even when suppliers did not wish to win the contract because otherwise there was the risk of not being invited to tender in the future”;
- The appellant was unaware that Rio were in contact with any other contractors and consequently it rejects the OFT’s finding at paragraph 367 that it was party to a concerted practice or agreements to provide a non-competitive price;
- In the entirety of the OFT’s investigation the appellant was not mentioned by any witness, involved in any other tender or enquiry, or mentioned in any statement forwarded to it;
- The inference of a complex concerted practice or agreements is incorrect. The appellant is an insignificant supplier of RMI services in the West Midlands.
- The increase in the amount of the penalty imposed at Step 3 of the appellant’s penalty calculation (see paragraph 457 of the Decision) is excessive and unjustified, when it is understood that the appellant’s intention was solely to submit a competitive, realistic tender to remain on the surveying practice’s tender list.

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*

Registrar  
3 June 2004