



## COMPETITION APPEAL TRIBUNAL

### **NOTICE OF APPEAL UNDER SECTION 46 OF THE COMPETITION ACT 1998 CASE NO 1065/1/1/06**

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (“the Rules”), the Registrar gives notice of the receipt of an appeal on 24 April 2006, under section 46 of the Competition Act 1998 (“the Act”) by Prater Limited (“the appellant”) in respect of a decision (CA/98/01/2006) dated 22 February 2006 taken by the Office of Fair Trading (“the OFT”) and notified to the appellant on the same date (“the Decision”).

In the Decision the OFT found that a number of contractors, including the appellant, had been party to individual agreements or concerted practices by cooperating with each other in relation to the setting of tender prices for tenders for flat roof and car park contracts. Those agreements or concerted practices had as their object the prevention, restriction or distortion of competition, in breach of section 2 (“the Chapter I prohibition”) of the Act.

The appellant was found to have committed two infringements of the Chapter I prohibition in respect of collusive tendering for a contract in relation to tenders for contracts at the New Bull Ring, Birmingham and Hillingdon Circus, London.

In respect of the infringement of the Chapter I prohibition the OFT imposed a penalty of £270,432 on the appellant.

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

- Insofar as the increase in the amount of penalty imposed at step three of the analysis was not supported by any adequate reasoning and is not related to any rational assessment of the deterrent effect of the fine, the penalty imposed by the OFT is arbitrary and disproportionate.
- Insofar as paragraph 865 of the Decision states that the appellant’s activities in the relevant market diminished as a result of the appellant’s withdrawal from the Mastic Asphalt Council in 2004, the OFT has made a manifest error of assessment of fact.
- Insofar as the OFT relied on the assessment of fact in paragraph 865 of the Decision when deciding the appropriate uplift in the fine imposed on the appellant in order to deter the appellant and other undertakings from engaging in future collusive activity, the OFT calculated the penalty on an irrelevant consideration which was disproportionate and arbitrary in any event.
- Insofar as the appellant was not given any indication, at the administrative stage of the procedure, that the OFT would reach the conclusion at paragraph 865 of the Decision, there was a material breach of the appellant’s rights of defence.
- Insofar as the Decision did not deal with a particular contract, the appellant’s legitimate expectations have been breached.

- Insofar as the OFT had proposed, in relation to the contract not dealt with in the Decision, to calculate the penalty based on the gain made by the appellant but in the event did not apply the same logic to the two infringements found in the Decision, there was a material inconsistency in the OFT's approach to penalties against the appellant.

The appellant seeks the following relief from the Tribunal:

- an order to annul paragraph 865 of the Decision;
- an order to reduce the amount of the penalty imposed on the appellant;
- an order that the OFT pay the appellant's costs of bringing the 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*

Registrar  
17 May 2006