



COMPETITION APPEAL TRIBUNAL

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

CASE NO 1119/1/1/09

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 20 November 2009, under section 46 of the Competition Act 1998 (“the Act”), by Ballast Nedam N.V. (“Ballast Nedam”) of Ringwade 71, 3439 LM Nieuwegein, The Netherlands, in respect of a decision in Case CE/4327-04 dated 21 September 2009 (“the Decision”) taken by the Office of Fair Trading (“OFT”).

According to the Decision, the OFT fined Ballast Nedam £8,333,116. The fine was in respect of three infringements relating to cover pricing with regard to tenders for construction work in the defence sector in the East Midlands (“Infringement 41”), the public housing sector in Yorkshire and Humberside (“Infringement 47”) and the education sector in the South East (“Infringement 48”).

Ballast Nedam appeals against the OFT’s determination of its penalty on the following grounds:

- (a) The application of a “proxy” for turnover in the relevant product and geographic market to Ballast Nedam’s worldwide turnover for Infringements 41 and 47 is manifestly unfair and the penalty thereby imposed is disproportionate and in breach of the principle of equal treatment.
- (b) Further or alternatively, the calculation of the Minimum Deterrence Threshold by reference to Ballast Nedam’s overall group turnover for Infringement 48 is manifestly unfair, perverse, irrational and/or in breach of legitimate expectations and has given rise to a penalty which is disproportionate and in breach of the principle of equal treatment.
- (c) Further or alternatively, the overall level of Ballast Nedam is manifestly unfair, disproportionate and in breach of the principle of equal treatment.

Ballast Nedam seeks the following relief from the Tribunal:

- (a) an order that the penalty on Ballast Nedam be quashed or substantially reduced by the Tribunal pursuant to paragraph 3(2)(b) of Schedule 8 to the Act;
- (b) 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

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