



COMPETITION APPEAL TRIBUNAL

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

CASE NO 1126/1/1/09

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 23 November 2009, under section 46 of the Competition Act 1998 (“the Act”), by ISG Pearce Limited (“ISG”) 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 concluded that ISG, together with its wholly owned subsidiary Peace Construction (Midlands) Limited (“Pearce Midlands”) (together, “the Pearce Companies”), had engaged in an unlawful anticompetitive agreement and/or concerted practice concerning a competition for a contract for the refurbishment of a school at Handsworth in 2001 (“the Infringement”). At the time of the Infringement, ISG (then called Pearce Group plc) was a wholly owned subsidiary of Crest Nicholson plc (“Crest”). ISG ceased to be a subsidiary of Crest in 2003. The OFT imposed a penalty on the Pearce Companies of £5,188,846 in respect of the Infringement, of which Crest is jointly and severally liable to pay £4,369,555.

ISG submits that the inclusion of ISG in the undertaking found to have committed the Infringement is wrong in fact and law. In particular, ISG submits that:

- (a) The OFT erred in concluding that Pearce Midlands was an agent for ISG.
- (b) The OFT breached the principle of equal treatment by including ISG in the undertaking responsible for the Infringement.

Further, ISG submits that the calculation of the penalty is unlawful and/or should be reduced by the Tribunal. In particular, ISG advances the following grounds of appeal in respect of the penalty imposed by the OFT:

- (a) The overall level of the penalty imposed on the Pearce Companies is disproportionate and unfair.
- (b) The OFT’s adjustment of the penalty in recognition of Crest’s late admission of facts was wrong in principle and unfair since it did not reduce the overall penalty but instead it simply transferred liability for 15% of the penalty exclusively to the Pearce Companies.
- (c) The OFT erred in the manner in which it applied the minimum deterrence threshold (“MDT”) to ISG.
- (d) The OFT was wrong to impose a single penalty on the Pearce Companies and Crest calculated by reference to their combined turnover for which they are jointly and severally liable.

ISG seeks the following relief from the Tribunal:

- (a) to strike down the Decision as it applies to ISG;
- (b) alternatively, to reduce or annul the penalty applicable to the Pearce Companies;
- (c) to award ISG its costs of this appeal; and
- (d) to grant any other relief as may be required.

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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