



COMPETITION APPEAL TRIBUNAL

SUMMARY OF APPEAL UNDER SECTION 46 OF THE COMPETITION ACT 1998 CASE NO 1032/1/1/04

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (“the Rules”), the Registrar gives notice of the receipt of an appeal, dated 14 May 2004, under section 46 of the Competition Act 1998 (“the Act”) by Apex Asphalt and Paving Co. Limited (“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 party to two agreements or concerted practices, one with Briggs Cladding and Roofing Limited (“Briggs”) and the other with Howard Evans (Roofing) Limited (“Howard Evans”), in respect of bids for contracts to provide RMI services at certain schools. Those concerted practices constituted separate infringements of section 2 (“the Chapter I prohibition”) of the Act

For its infringements of the Chapter I prohibition the OFT imposed a penalty of £35,923 on the appellant.

The appellant appeals against the Decision:

- insofar as it decides that the appellant has infringed the Chapter I prohibition. The appellant denies that there were unlawful agreements or concerted practices between the appellant and Briggs and between the appellant and Howard Evans as found by the OFT to be infringements of the Chapter I prohibition;
- insofar as it imposes a penalty on the appellant in respect of the alleged agreement or concerted practice involving Howard Evans. The appellant contends that the OFT was not entitled to impose a fine on the appellant in circumstances where the OFT had not indicated in its Rule 14 Notice that it proposed to take any action in respect of the alleged infringement constituted by the alleged concerted practice; and
- in relation to the amount of the penalty imposed on the appellant on the basis that it is excessive. In the appellant’s view, the OFT failed to take sufficient account of the absence of any impact on consumers of the infringements found.

The appellant also contends that there is a general lack of reasoning in respect of both findings of infringement.

The appellant seeks the following relief from the Tribunal:

- an order quashing the Decision insofar as it decides that the appellant has infringed the Chapter I prohibition; and/or

- an order reducing the amount of the penalty imposed on it.

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

Registrar
27 May 2004