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IN THE COMPETITION
APPEAL TRIBUNAL

Case No 1032/1/1/04
1033/1/1/04

Victoria House,
Bloomsbury Place,
London WC1A 2EB

24th February, 2005

Before:
MARION SIMMONS QC
(Chairman)

Sitting as a Tribunal in England and Wales

BETWEEN:

APEX ASPHALT & PAVING COMPANY LIMITED

Appellant

and

OFFICE OF FAIR TRADING

Respondent

AND

RICHARD W PRICE (ROOFING CONTRACTORS) LTD

Appellant

and

OFFICE OF FAIR TRADING

Respondent

Mr. John Price appeared In Person

Mr. Noel Tarleton of the Office of Fair Trading, appeared for the Respondent.

Transcribed from the Shorthand notes of
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PROCEEDINGS AFTER JUDGMENTS HANDED DOWN

1 THE CHAIRMAN: The Tribunal today hands down Judgment in respect of two appeals brought by
2 Apex Asphalt & Paving Company Limited, and Richard W Price (Roofing Contractors) Ltd.
3 against Decision No. CA98/1/2004 taken by the Office of Fair Trading on 16 March 2004
4 under section 2(1) of the Competition Act 1998.

5 In the Decision the OFT concluded that various roofing contractors, including Price, had
6 infringed the prohibition contained in section 2(1) of the Act in colluding in relation to the
7 making of tender bids for flat roofing contracts in the West Midlands. Nine contractors were
8 found to have been involved in various discrete individual agreements or concerted practices,
9 each of which had as its object or effect the fixing of prices in the market for the supply of
10 repair, maintenance and improvement services for flat roofs. Penalties were assessed by the
11 OFT against all of those contractors.

12 Apex was fined £35,922.80 for its participation in two discrete concerted practices in
13 relation to the making of tender bids for two sets of contracts known as the FHH Contracts and
14 the Dudley Contracts.

15 Price was fined £18,000 for its participation in one concerted practice in relation to the
16 making of tender bids for a contract known as the Pallasades Contract.

17 Apex appealed against the OFT's finding of infringement and imposition of a penalty on
18 four bases set out in paragraphs 44 and 45 of our Apex Judgment. For the reasons given in
19 our Apex Judgment we dismiss the appeal. Our principal reasons are as follows:

- 20 (a) Apex was not caused any prejudice by the OFT omitting from the Rule 14 Notice that it
21 proposed to take action in respect of the alleged infringement by Apex in relation to the
22 Dudley Contracts. Accordingly, notwithstanding the omission in the Rule 14 Notice the
23 OFT was entitled to impose a penalty on Apex in relation to the Dudley Contracts;
- 24 (b) We are satisfied that the elements of a concerted practice contrary to the
25 Chapter I prohibition are made out in respect of Apex in relation to both the FHH
26 Contracts and the Dudley Contracts;
- 27 (c) We are satisfied that the reasons set out in the Decision sufficiently informed Apex of the
28 factual and legal basis for the Decision and were sufficient to enable Apex to understand
29 the basis for the Decision;
- 30 (d) We are satisfied that the level of the penalty imposed by the OFT is appropriate having
31 regard to the impact upon consumers, and the duration, of the infringements found.
32

1 Price too appealed against the OFT's findings of infringement. For the reasons given in
2 our Price Judgment we dismiss the Appeal on infringement, but we allow the appeal on penalty
3 to the extent that we reduce the level of the penalty imposed on Price to £9,000. Our principal
4 reasons are as follows:

- 5 (a) We are satisfied that the elements of a concerted practice contrary to the
6 Chapter I prohibition are made out in respect of Price in relation to the Pallasades
7 Contract.
- 8 (b) We are satisfied that the principle of equal treatment was not applied by the OFT when
9 setting the penalty imposed upon Price and that a penalty of £9,000 in all the
10 circumstances of this case is appropriate and provides an effective deterrent.

11 The Tribunal is currently considering submissions by Apex as to confidentiality. In the
12 meantime the versions being handed today exclude certain figures relating to the OFT's
13 penalty calculations. In its considerations the Tribunal has regard to the matters set out in
14 Schedule 4 paragraph (1)(2) and paragraph (1)(3) of the Enterprise Act 2002 in deciding
15 whether to exclude any material from these Judgments.

16 In the meanwhile, non-confidential versions excluding those figures will be published on
17 the website today. The Tribunal Registry will contact the parties to these appeals through the
18 usual channels with regard to consequential matters arising out of these Judgments.

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