



COMPETITION APPEAL TRIBUNAL

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

CASE NO 1129/1/1/09

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (SI 2003, No 1372) (“the Rules”), the Registrar gives notice of the receipt on 23 November 2009 of an appeal dated 23 November 2009, under section 46 of the Competition Act 1998 (“the Act”), by Corringway Conclusions plc (In liquidation) (“Corringway”) 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 Haymills (Contractors) Limited (“HCL”) had breached the Chapter I prohibition by engaging in cover bidding on three occasions (“the Infringements”). HCL had been a wholly owned subsidiary of Corringway (then called Haymills plc) until 26 May 2004, when Corringway sold HCL to Haymills Group Limited (“Haymills Group”) by way of a management buy out. After various reductions for financial hardship, compliance and under the terms of a fast track offer the OFT imposed a penalty of £781,440 in respect of the Infringements and found Corringway jointly and severally liable with HCL for the penalties imposed in respect of two of the three occasions of cover bidding, amounting to £769,593 (“the Penalty”).

Corringway appeals against the amount of the Penalty on the grounds that:

- (a) The minimum deterrence threshold (“MDT”) set by the OFT is unlawful and/or disproportionate and/or discriminatory as between the parties to the Decision.
- (b) The use of Corringway’s turnover from the business year ending 31 March 2003 as a base for applying the MDT is unlawful and/or disproportionate.
- (c) The OFT’s withdrawal of leniency and use of the fast track offer is discriminatory, arbitrary and unlawful.
- (d) The imposition of penalties without regard to evidence of the frequency and scale of an undertaking’s infringements is unlawful.
- (e) The OFT ought further to have reduced the Penalty on grounds of financial hardship.

Corringway seeks the following relief from the Tribunal:

- (a) to set aside the Decision on the Penalty; and
- (b) to assess in its place significantly reduced penalties taking into account the above grounds of 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. 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

Published 27 November 2009