



COMPETITION APPEAL TRIBUNAL

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

CASE NO 1142/1/1/09

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 30 November 2009, under section 46 of the Competition Act 1998 (“the Act”), by Hays plc, Hays Specialist Recruitment Limited and Hays Specialist Recruitment (Holdings) Limited all of 250 Euston Road, London, NW1 2AF (together, “Hays”) in respect of a decision taken by the Office of Fair Trading (“OFT”) entitled “Construction Recruitment Forum, Case CE/7510-06” dated 29 September 2009 (“the Decision”). Hays is represented by Freshfields Bruckhaus Deringer LLP, 65 Fleet Street, London EC4Y 1HS (Reference: JAL/JKAC/BB/NF).

In the Decision the OFT found that Hays, together with other recruitment consultants, had infringed section 2 of the Act (“the Chapter I prohibition”) by agreeing to refuse to deal with another recruitment consulting company which was entering the market, and agreeing to fix target fee rates for the supply of certain candidates to various parties. The OFT imposed a penalty of £30,359,129 on Hays in respect of the infringement.

Hays appeals against the Decision on the basis that, overall, the fine imposed on it is manifestly excessive, disproportionate and, hence, unlawful. Hays submits that the infringement in this case was not of the utmost severity and had none of the elements of a serious, hard core cartel. There was no widespread consumer detriment or evidence that Hays profited by reason of the infringement. Notwithstanding these facts, the OFT has levied fines on a par with those imposed in other cartel cases involving dishonest and criminal conduct implemented at the highest level of the companies, and involving long term concealed anti-competitive conduct, with a proven detriment to consumers on a global scale. Moreover, the position is disproportionate when viewed against the background of Hays’ reaction to the investigation, the extensive measures it has taken to remove the risk of future infringements and the harm/punishment it has suffered in consequence of the acts of a single non-senior employee.

In particular, Hays puts forward the following specific grounds of appeal:

- (a) Hays appeals against the finding of infringement in so far as it applies to the construction company Atkins Limited (“Atkins”). Hays admitted the infringement in so far as it relates to the intermediary, Parc UK Ltd, but it does not accept that its infringement extended to Atkins.
- (b) The calculation of relevant turnover for the purposes of Step 1 of the fining calculation based on Hays’ Gross Turnover rather than Net Fees is wrong, disproportionate and unlawful.
- (c) The application of a starting point percentage of 9% at Step 1 is unjustified and the percentage should be reduced. The OFT has acted disproportionately by having regard only to object, without taking into account that this infringement had no, or no appreciable, effect.
- (d) Step 3 has been applied in a disproportionate and unlawful manner. Hays submits that the OFT’s application of the Minimum Deterrence Threshold based on nothing more than a simple proportion of total turnover, in place of a figure that is intended to reflect individual culpability in the relevant market, is disproportionate and wrong in principle and should be rejected by the Tribunal.
- (e) The application of a 10% uplift for the involvement of a “senior manager” in Step 4 of the fining calculation is unjustified and should be overturned.

- (f) The extent of Hays' compliance and acknowledgement of responsibility merited a greater reduction in fine than 5%.

Hays asks the Tribunal to:

- (a) set aside the finding in the Decision that Hays fixed with Eden Brown the prices to be charged to Atkins;
- (b) set aside the fine imposed on Hays by the Decision and to assess in place of the fine a significantly reduced fine taking into account the grounds of appeal; and
- (c) award Hays its 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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