



COMPETITION APPEAL TRIBUNAL

**NOTICE OF A CLAIM FOR DAMAGES UNDER SECTION 47A OF
THE COMPETITION ACT 1998**

CASE No: 1106/5/7/08

The Registrar of the Competition Appeal Tribunal (“the Tribunal”) gives notice of the receipt of a claim (“the claim”) for damages on 7 November 2008, under section 47A of the Competition Act 1998 (“the Act”), by Enron Coal Services Limited (in liquidation) (“the claimant”) against English Welsh & Scottish Railway Limited whose registered office is at Lakeside Business Park, Carolina Way, Doncaster, DN4 5PN (“the defendant”).

The claimant’s legal advisers are Orrick, Herrington & Sutcliffe, Tower 42, Level 35, 25 Old Broad Street, London EC2N 1HQ (Mr Douglas Lahnborg). The claimant went into liquidation on 9 April 2002 and the appointed liquidator is Mr Ian Oakley-Smith of PricewaterhouseCoopers LLP, Hill House, Richmond Hill, Bournemouth BH2 6HR.

The claim arises from a decision of the Office of Rail Regulation (“ORR”), which was notified to the defendant on 17 November 2006 and published on 19 December 2006 (“the decision”). By virtue of section 67 of the Railways Act 1993 (as amended), the ORR is entitled to exercise, concurrently with the Office of Fair Trading (“OFT”), the functions of the OFT under the provisions of Part I of the Act in respect of agreements or conduct relating to the supply of services relating to railways. The ORR is required to apply Articles 81 and 82 of the Treaty establishing the European Community (“the EC Treaty”) where there is an actual or potential effect on trade between Member States.

The decision found that the defendant had abused a dominant position in the relevant market for coal haulage by rail in Great Britain thereby infringing section 18 of the Act (“the Chapter II prohibition”) and Article 82 of the EC Treaty. In particular and relevant to the claim, the decision found that the defendant had abused its dominant position by:

- (a) entering into, applying and maintaining certain agreements with industrial users of coal, for the haulage of coal by rail, whose terms had an exclusionary effect, during the period 1996 to 2005; and
- (b) engaging in unlawful price discrimination against the claimant for rail haulage to three UK power generators, Fiddler’s Ferry, Ferrybridge and Eggborough.

The claimant contends that the infringing conduct not only resulted in an unlawful overcharge, but that it also put the claimant at a competitive disadvantage in its attempt to renew coal supply agreements with its existing customers.

The claimant further contends that the defendant intended to and did cause the claimant loss and damage in that it:

- (a) overcharged the claimant for coal haulage;
- (b) imposed additional costs upon the claimant in relation to coal haulage; and

- (c) prevented the claimant from obtaining new or extended business with new or existing customers and/or materially reduced the chance of the claimant obtaining such business.

The claimant seeks the following relief:

- (a) damages and lost profit pursuant to section 47A of the Act;
- (b) restitution and/or restitutionary damages;
- (c) an account of profits;
- (d) interest;
- (e) costs; and
- (f) further and other relief.

Further details concerning the procedures of the 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

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