



## COMPETITION APPEAL TRIBUNAL

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

**CASE No: 1147/5/7/09**

The Registrar of the Competition Appeal Tribunal (the “Tribunal”) gives notice of the receipt of a claim for damages (“the Claim”) on 22 December 2009, under section 47A of the Competition Act 1998 (“the Act”), by (1) Moy Park Limited of 39 Seagoe Industrial Estate, Portadown, Craigavon, Co. Armagh, BT63 5QE; (2) Faccenda Group Limited of Willow Road, Brackley, NN13 7EX; and (3) GW Padley Poultry Limited of Cumberland Court, 80 Mount Street, Nottingham, NG1 6HH (“the Claimants”) against (1) Evonik Degussa GmbH of Rellinghauser Str. 1-11, 45128 Essen, Nordrhein-Westfalen, Germany (“the First Defendant”); and (2) Degussa Limited of Tego House, Chippenham Drive, Kingston, Milton Keynes, MK10 0AF (“the Second Defendant”) (together, “the Defendants”). The Second Defendant is a wholly-owned subsidiary of the First Defendant. The Claimants are represented by Hausfeld & Co LLP of 12 Gough Square, London, EC4A 3DW (Reference: VS/RD/L0019.0001).

The Claim arises from a decision of the European Commission (“the Commission”) (Case C.37.519 – Methionine, OJ [2003] L 255/1), adopted on 2 July 2002 relating to proceedings under Article 81 of the Treaty establishing the European Community (“the EC Treaty”)<sup>1</sup> and Article 53 of the Agreement on the European Economic Area (“the EEA Agreement”) (“the Decision”). In the Decision, the Commission found that the First Defendant, together with three other undertakings, had participated in a continuous agreement and/or concerted action contrary to Article 81(1) of the EC Treaty and Article 53 of the EEA Agreement covering the whole of the EEA, by which they agreed on price targets for methionine, agreed on and implemented a mechanism for implementing price increases, exchanged information on sales volumes and market shares and monitored and enforced their agreements (“the Infringement”). The Commission found that the addressees of the Decision had participated in the Infringement from February 1986 to February 1999 (“the Cartel Period”).

Methionine is an amino acid which is incorporated in most animal feeds and all poultry feed. Synthetic methionine is present in two principal forms: a dry or powder form called DL-methionine and a liquid form called methionine hydroxyl analogue (“MHA”).

The First Defendant appealed against the articles of the Decision imposing both liability and penalty to the Court of First Instance of the European Communities (“CFI”)<sup>2</sup>. By its judgment of 5 April 2006 in Case T-279/02 *Degussa AG v Commission* [2006] ECR II-897, the CFI reduced the fine imposed by the Commission in respect of the Infringement but otherwise dismissed the appeal. The First Defendant subsequently appealed to the Court of Justice of the European Communities (“ECJ”)<sup>3</sup> on both liability and penalty. By its judgment of 22 May 2008 in Case C-266/06 *Evonik Degussa GmbH v Commission* [2008] ECR I-0081, the ECJ dismissed the appeal.

According to the Claim, the Claimants made a series of indirect purchases of DL methionine and MHA from the addressees of the Decision or their subsidiaries during the Cartel Period. The Claimants claim that the

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<sup>1</sup> Now Article 101 of the Treaty on the Functioning of the European Union.

<sup>2</sup> Now the General Court of the Court of Justice of the European Union.

<sup>3</sup> Now the Court of Justice of the European Union.

overcharge (as particularised in more detail in the Claim) resulting from the Infringement was passed on to the Claimants by their suppliers, and that the Claimants absorbed that overcharge. As a result of the Infringement and the resulting overcharge, the Claimants have suffered loss and damage arising from their purchases of methionine. The Defendants are each jointly and severally liable for all of the said loss and damage caused by the Infringement.

The Claimants seek the following relief:

- (a) damages, as particularised in more detail in the Claim;
- (b) compound, alternatively, simple interest on the damages assessed by the Tribunal, whether under section 35A of the Senior Courts Act 1981, or otherwise at law or in equity.

Further details concerning the procedures of the Tribunal can be found on its website at [www.catribunal.org.uk](http://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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