



## COMPETITION APPEAL TRIBUNAL

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

**CASE No: 1194/5/7/12**

The Registrar of the Competition Appeal Tribunal (“the Tribunal”) gives notice of the receipt of a claim for damages (“the Claim”) on 17 May 2012, under section 47A of the Competition Act 1998 (“the Act”), by (1) W.H. Newson Holding Limited; (2) W.H. Newson & Sons Limited; (3) BMSS Limited; (4) Broombys Limited; (5) Connections (AML) Limited; (6) Jayhard Limited, all of Lodge Way House, Lodge Way, Harlestone Road, Northampton NN5 7UG; (7) Keyline Builders Merchants Limited, Suite S3, 8 Strathkelvin Place, Kirkintilloch, Glasgow G66 1XH; (8) Travis Perkins (Properties) Limited; (9) Travis Perkins Trading Company Limited; (10) Wickes Limited; (11) Wickes Building Supplies Limited; (12) City Plumbing Supplies Limited; (13) City Plumbing Supplies Holdings Limited; (14) B&G (Heating & Plumbing) Limited; (15) The BSS Group Limited; (16) PTS Group Limited; (17) P.T.S. Plumbing Trade Supplies Limited; (18) Fry & Pollard Limited; (19) Tricom Group Limited; (20) Tricom Supplies Limited; and (21) Zenith Plumbpoint Limited, all of Lodge Way House, Lodge Way, Harlestone Road, Northampton NN5 7UG) (together, “the Claimants”) against (1) IMI Plc (“the First Defendant”); (2) IMI Kynoch Limited (“the Second Defendant”), both of Lakeside, Solihull Parkway, Birmingham Business Park, Birmingham B37 7XZ; and (3) Boliden AB of Klarabergsviadukten 90, PO Box 44, SE-101 20 Stockholm, Sweden (“the Third Defendant”) (together, “the Defendants”). The Claimants are represented by Hausfeld & Co LLP of 12 Gough Square, London, EC4A 3DW (Reference: AJM/NB/L0029.0001).

The Claim arises from a decision of the European Commission (“the Commission”) (Case COMP/E-1/38.069 – Copper Plumbing Tubes, OJ 2006 L 192, p. 21), dated 3 September 2004 relating to a proceeding pursuant to 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 Defendants, together with various other undertakings, had participated in a single, continuous, complex and, as far as certain cartelists are concerned, multiform infringement of Article 81 of the EC Treaty and Article 53 of the EEA Agreement, by which they participated in complex agreements and concerted practices consisting of price fixing and market sharing in the copper plumbing tubes sector (“the Infringement”). The Commission found that the addressees of the Decision had participated in the Infringement from 3 June 1988 to 22 March 2001 (“the Cartel Period”).

The Infringement concerned copper plumbing tubes, also called ‘sanitary tubes’, ‘water tubes’ or ‘installation tubes’, which are used for water, oil, gas and heating installations in the construction industry. The product, copper plumbing tubes, includes both plain copper plumbing tubes and plastic-insulated copper plumbing tubes.

The Defendants 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 judgments of 19 May 2010 in Cases T-18/05 *IMI and Others v Commission* [2010] ECR II-01769 and T-19/05 *Boliden AG and Others v Commission* [2010] ECR II-01843, the CFI rejected the Defendants’ appeals except for a partial success relating to the duration of the First and Second Defendants’ involvement.

According to the Claim, the Claimants made purchases of copper plumbing tubes from the addressees of the Decision or their subsidiaries during and after the Cartel Period. The Claimants allege that they have suffered loss and damage in consequence of the Infringement. The Claimants’ loss falls into the following heads:

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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.

- (a) the overcharge paid by them in relation to the supply to them by any cartel of copper plumbing tubes during the Cartel Period (i.e. the difference between the artificial prices that were obtained because of the Infringement and the competitive prices which would otherwise have been obtainable had there been no unlawful conduct);
- (b) the run-off overcharge paid by the Claimants in relation to the supply to them by any cartel of copper plumbing tubes after the Cartel Period (the Claimants allege that the Infringement was likely to have a continuing effect upon prices for copper plumbing tubes even after the end of the cartel);
- (c) the like overcharge and run-off charge paid by the Claimants in relation to the supply to them by any non-cartel of copper plumbing tubes during and after the Cartel Period respectively;
- (d) the loss of profits arising from the reduction in sales consequential upon the volume effects (the Claimants allege that the inflated prices caused by the Infringement led to a decline in overall volume of sales of copper plumbing tubes to their customers);
- (e) the costs of investigating the effects of the Infringement upon them; and
- (f) in addition, in the usual course of business, the Claimants would have reinvested a substantial proportion of the sums claimed in their business, thereby generating further profits and/or reducing the amount paid for borrowing. The Claimants allege that, pursuant to the principles set out in *Sempre Holdings Ltd v IRC* [2008] 1 AC 561, they are entitled to recover compound interest by way of damages.

The Claimants seek the following relief:

- (a) damages (as particularised in more detail in the Claim) for breach of statutory duty, namely a breach of Article 81 of the EC Treaty and/or section 2(1) of the European Communities Act 1972;
- (b) damages for the conspiracy to use unlawful means;
- (c) compound, or alternatively simple, interest on the damages assessed by the Tribunal; and
- (d) costs.

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, QC (Hon)*  
Registrar  
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