



COMPETITION APPEAL TRIBUNAL

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

CASE No: 1201/5/7/12

The Registrar of the Competition Appeal Tribunal (“the Tribunal”) gives notice of the receipt of a claim for damages (“the Claim”) on 27 September 2012, under section 47A of the Competition Act 1998 (“the Act”), by (1) VION Food Group Limited; (2) VION Food UK Limited; (3) VION Food Scotland Limited; (4) VION Food Wales and West England Limited; (5) Grampian Country Chickens (Bucksburn) Limited; (6) Sovereign Food Group Limited; (7) Marshall Food Group Limited; (8) Grampian Country Chickens (Fresh) Limited; (9) Mayhew Country Chickens Limited; (10) Thorne Poultry Limited; (11) VION Agriculture Limited (previously Grampian Country Chickens (Rearing) Limited); (12) Favor Parker Limited; (13) Grampian Country Feeds Limited; (14) Cymru Country Feeds Limited; (15) Grampian Country Chickens Limited, all with a joint service address of 7 Bain Square, Kirkton Campus, Livingston EH54 7DQ (together, “the Claimants”) against (1) Tessenderlo Chemie N.V., of 130 Rue du Trone, 1050 Brussels, Belgium; and (2) Britphos Limited, of Unit A6 Severn Road, Treforest Industrial Estate, Pontypridd, Rhondda Cynon Taff, South Wales CF37 5SQ (together, “the Defendants”). The Claimants are represented by Maclay Murray & Spens LLP, Quartermile One, 15 Lauriston Place, Edinburgh EH3 9EP (Reference: Catriona Munro).

The Claim arises from a decision of the European Commission (“the Commission”) (Case COMP/38.866 – Animal Feed Phosphates, OJ 2011 C 111, p. 21), dated 20 July 2010 relating to a proceeding pursuant to Article 101(1) of the Treaty on the Functioning of the European Union (“the TFEU”) 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 various other undertakings, had participated in a single and continuous infringement of Article 101(1) TFEU and Article 53 of the EEA Agreement, by which they participated in agreements and concerted practices consisting of price fixing and market sharing in the European feed phosphates market (“the Infringement”). The Commission found that the Infringement lasted from at least 19 March 1969 until at least 10 February 2004 (“the Cartel Period”). The UK was one of the countries covered by the Infringement. The Second Defendant was not an addressee of the Decision but, according to the Claim, was, during the Cartel Period, a wholly-owned and/or controlled subsidiary of the First Defendant.

The Infringement concerned the sale of feed phosphates used in animal feed. Feed phosphates are chemical compounds of phosphorous used mainly to balance the phosphorus and calcium contents of feed for animals such as cattle, pigs, poultry, fish and pets. The most commonly marketed products were dicalcium phosphate, monocalcium phosphate and monocalcium phosphate. Feed phosphates are used by feed manufacturers and large meat or fish producers.

According to the Claim, the Claimants made purchases of feed phosphates from the addressees of the Decision or their servants, agents, distributors, subsidiaries and/or associated companies at inflated prices during the Cartel Period. These prices included an “overcharge”, 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. The Claimants allege that they have suffered loss and damage in consequence of the Infringement. The Claimants allege that, due to the nature of the market, the Claimant companies that sold to the retail and wholesale markets absorbed the full amount of the overcharge. In the alternative, if the overcharge was not absorbed (which the Claimants deny), the Claimants allege that they suffered loss due to the decline in the overall volume sales of chicken meat to their retail and wholesale customers.

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 101 TFEU and/or section 2(1) of the European Communities Act 1972;
- (b) compound, or alternatively simple, interest on the damages assessed by the Tribunal;
- (c) an account of profits;
- (d) further or other relief, including equitable 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 OBE, QC (Hon)
Registrar
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