



## COMPETITION APPEAL TRIBUNAL

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

**CASE No: 1105/5/7/08**

The Registrar of the Competition Appeal Tribunal (“the Tribunal”) gives notice of the receipt of a claim (“the claim”) for damages on 4 August 2008, under section 47A of the Competition Act 1998 (“the Act”), by Freightliner Limited and Freightliner Heavy Haul Limited whose registered office is at 3<sup>rd</sup> Floor The Podium, 1 Eversholt Street, London NW1 2FL (collectively, “the claimants”) against English Welsh & Scottish Railway Limited whose registered office is at Lakeside Business Park, Carolina Way, Doncaster, DN4 5PN (“the defendant”).

The claimants’ legal advisers are SJ Berwin LLP, 10 Queen Street Place, London EC4R 1BE (Mr Stephen Kon).

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, the decision found that the defendant had acted abusively 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;
- (b) discriminating against Enron Coal Services Limited; and
- (c) engaging in predatory pricing directed towards the claimants, during the period July 2002 to December 2003.

The ORR found that all three types of infringing conduct formed part of a continuing strategy to seek to exclude or restrict the defendant’s potential competitors’ participation in the market for coal haulage by rail. In particular the claimants state that the ORR found that the infringing conduct was intended by the defendant to foreclose and/or disadvantage the claimants.

The claimants contend that the infringements by the defendant of the Chapter II prohibition and Article 82 of the EC Treaty identified in the decision were intended by the defendant to cause the claimants loss and damage and did in fact cause the claimants loss and damage. As intended by the defendant, its abusive conduct placed the claimants at a competitive disadvantage and unlawfully reduced their market share.

The claimants seek the following relief:

- (a) damages pursuant to section 47A of the Act; and
- (b) interest pursuant to rule 56(2) of the Competition Appeal Tribunal Rules 2003 (SI 2003, No 1372) at such rate and for such a period as the Tribunal determines is appropriate.

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*  
Registrar

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