



## COMPETITION APPEAL TRIBUNAL

### **NOTICE OF A CLAIM UNDER SECTION 47A OF THE COMPETITION ACT 1998 CASE NO: 1379/5/7/20**

Pursuant to Rule 33(8) of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (the “Tribunal Rules”), the Registrar gives notice of the receipt of a claim (the “Claim”) on 30 December 2020, under section 47A of the Competition Act 1998 (the “Act”), by Kerilee Investments Limited (the “Claimant”) against the International Tin Association Ltd (the “Defendant”). The Claimant is represented by Berkeley Rowe Limited, of Park House, 116 Park Street, London, W1K 6SS (Reference: Ian Sellers).

The Claim arises from an alleged infringement of the prohibition contained in section 18 of the Act (the “Chapter II prohibition”), the prohibition contained in section 2(1) of the Act (the “Chapter I prohibition”), and Article 101(1) or Article 102 of the Treaty of the Functioning of the European Union (“TFEU”) in two interrelated markets: (i) the product market for responsibly produced and supplied minerals, specifically tantalum/niobium, tin and tungsten in the form of concentrates, where the relevant geographic market is said to include the states of Burundi, The Democratic Republic of Congo, Rwanda and Uganda; and (ii) the market for accreditation and standardisation of producing and supplying such minerals.

According to the Claim, the Claimant is a metal trading (including tin, tantalum/niobium and tungsten) SME, incorporated in the United Kingdom (the “UK”). Its global business includes central Africa. The Claimant pays UK corporation tax and its profit and cost centre is in the UK. The Claimant’s ‘mine-to-metal’ business model is designed to maximise income by having minerals smelted and then converted to metal products for trade.

The Claimant's business in the relevant product market is the financing and trade in the relevant product and the supply of relevant product downstream to smelters and makers of intermediate metal products in Asia, China, Europe and the United States of America.

The Defendant, referred to within the Claim as “ITA” and “ITA/ITSCI”, is a UK-based and incorporated trade association and special purpose entity incorporated by guarantee in the UK. It comprises corporate members in the tin producing and processing industry. The ITA is responsible for the governance, policy, financial, executive and secretariat functions of the International Tin Supply Chain Initiative (“ITSCI”) conflict mineral due-diligence programme. The ITA/ITSCI programme was set up in 2009 and formalised in 2011. It includes within its scope tin, tantalum/niobium and tungsten.

According to the Claim, the Defendant excluded the Claimant from membership of ITA/ITSCI without due process or justifiable reason. The refusal by ITA to review the Claimant’s membership application amounted to an abuse of the Defendant’s dominant position arising from its position as the leading provider of upstream due-diligence services in the relevant market. Competition in the downstream market was thereby restricted and ongoing loss caused to the Claimant. The refusal to include the Claimant as a member of ITA/ITSCI distorted the competitive playing field by having a direct or indirect bearing on commodity price for the ultimate consumer.

The Defendant constrained the pricing of commodities in the relevant market by offering selected members of ITA a levy discounting mechanism. The discount amounts to a price subsidy which is not available to non ITSCI members such as the Claimant. It has an anti-competitive effect, distorts

competition and amounts to price rigging. The subsidy by ITA/ITSCI of upstream due-diligence costs denies the Claimant and its upstream suppliers level playing field conditions and distorts upstream and downstream mineral supply chains within the relevant market.

The Defendant applied punitive sanctions which unfairly discriminated against the Claimant, through selective incident investigations and the use of members only/secret alert communiques by email to other ITA/ITSCI members so as to marginalise and exclude the Claimant and others from trade in the relevant market. ITA/ITSCI members are discouraged from dealing with entities who are the subject of ITSCI incidents and alerts.

The Defendant exchanges detailed commercial information within its ITA/ITSCI network under a mandatory ITA/ITSCI secrecy agreement thereby shading its restricted communications, directives and activities from non-members.

The Defendant discourages its members from trading with non-members and permits or turns a blind eye to contractual wording which has the objective of excluding or restricting trade with non-members.

The Defendant creates and enforces exclusive and closed industry standardisation codes and practises relating to so called "due diligence" protocols that are not accessible or of limited accessibility to non-members of ITSCI and which are not transparent and accountable

Accordingly, the Claimant has suffered loss and damage.

The Claimant seeks:

- 1) An injunction restraining the Defendant from issuing communiques, alerts or directives with regards to the Claimant's commercial activity;
- 2) Declarations that:
  - i) The Defendant has abused its dominant position and has engaged in anti-competitive practices in breach of the Competition Act.
  - ii) The exclusion of the Claimant from the ITSCI Programme is illegal or was effected arbitrarily without due process.
- 3) Damages.
- 4) Interest.
- 5) Costs.
- 6) Such further relief as the Tribunal considers appropriate.

The Claimant applies for fast-track designation pursuant to Rule 58 of the Tribunal Rules on the basis that it is proportionate to the scale of the parties involved and the issues to be heard.

Further details concerning the procedures of the Competition Appeal 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 telephone (020 7979 7979) or email ([registry@catribunal.org.uk](mailto:registry@catribunal.org.uk)). Please quote the case number mentioned above in all communications.

*Charles Dhanowa OBE, QC (Hon)*

Registrar

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