



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1632/5/7/24

BETWEEN:

- (1) ASDA STORES LIMITED
- (2) ICELAND FOODS LIMITED
- (3) MARKS AND SPENCER P.L.C.
- (4) MARKS AND SPENCER GROUP P.L.C.
- (5) OCADO RETAIL LIMITED
- (6) WM MORRISON SUPERMARKETS LIMITED
- (7) INTERNATIONAL SEAFOODS LIMITED
- (8) ALDI STORES LIMITED
- (9) CO-OPERATIVE GROUP LIMITED
- (10) CO-OPERATIVE GROUP FOOD LIMITED

Claimants

- v -

- (1) BREMNES SEASHORE AS
- (2) CERMAQ GROUP AS
- (3) GRIEG SEAFOOD ASA
- (4) GRIEG SEAFOOD UK LTD
- (5) LERØY SEAFOOD GROUP ASA
- (6) LERØY SEAFOOD UK LIMITED
- (7) SALMAR ASA
- (8) MOWI ASA
- (9) MOWI CONSUMER PRODUCTS UK LIMITED
- (10) MOWI SCOTLAND LIMITED
- (11) SCOTTISH SEA FARMS LIMITED
- (12) SSF HJALTLAND UK LIMITED
- (13) SSF SHETLAND LIMITED

Defendants

REASONED ORDER (SERVICE OUT)

UPON reading the Claimants' Claim Form dated 7 February 2024 and the Claimants' application dated 2 February 2024 for permission to serve the Claim Form and associated documents ("Claim Documents") on the First, Second, Third, Fifth, Seventh and Eighth

Defendants out of the jurisdiction pursuant to Rule 31(2) of the Competition Appeal Tribunal Rules 2015 (the “**Tribunal Rules**”)

AND UPON the Tribunal having read the witness statement of Genevieve Quierin dated 2 February 2024, made in support of the Rule 31(2) application, and the accompanying exhibit

AND UPON hearing Counsel for the Claimants at an ex parte hearing on 7 February 2024

IT IS ORDERED THAT:

1. The Claimants have permission to serve the Claim Documents out of the jurisdiction on:
 - (a) The First Defendant at Klansmen 90, N-5430, Bremnes, Norway;
 - (b) The Second Defendant at Dronning Eufemias gate 16, Oslo, Norway;
 - (c) The Third Defendant at Grieg-Gaarden, C. Sundtsgate 17/19, 5004, Bergen, Norway;
 - (d) The Fifth Defendant at Thormøhlens gate 51B, 5006, Bergen, Norway;
 - (e) The Seventh Defendant at Industriveien 51, Kverva, FROYA, 7266, Norway; and
 - (f) The Eighth Defendant at Sandviksboder 77AB, 5035 Bergen, Norway.

Together, the “**Norwegian Defendants**”.

2. This Order is made without prejudice to the rights of the Norwegian Defendants to dispute the Tribunal's jurisdiction pursuant to Rule 34 of the Tribunal Rules and/or validity of the service pursuant to paragraph 3. Any such application should take account of the observations set out in *Epic Games, Inc v Apple Inc.* [2021] CAT 4 at [3].
3. The Claimants have indicated that they intend to serve the Claim Documents out of the jurisdiction:
 - (a) on all the Norwegian Defendants, by postal service under the 1931 Convention Between His Majesty in Respect of the United Kingdom and His Majesty the King of Norway regarding Legal Proceedings and Civil Commercial Matters; and/or
 - (b) on any of the Norwegian Defendants that agree to be served by another means of service permissible under English and Norwegian law, by that other means of service.

4. There shall be no order as to costs.

REASONS

1. The Claimants are bringing a claim for damages pursuant to section 47A of the Competition Act 1998. As articulated in the Claim Form, the claim concerns companies within six international corporate groups that are engaged in the farming and/or processing and sale and/or distribution of Atlantic salmon that has been farmed in Norway and Scotland. It is alleged that the Defendants entered into and/or implemented unlawful cartel arrangements relating to the exchange of commercially sensitive information regarding prices and other price-setting factors which artificially inflated the sale prices for farmed Atlantic salmon. The Claimants are some of the largest supermarkets in the UK with significant combined purchases of farmed Atlantic salmon products.
2. Permission to serve out of the jurisdiction is sought in respect of the First, Second, Third, Fifth, Seventh and Eighth Defendants, all of which are based in Norway.
3. The Claimants contend that the proceedings are to be treated as taking place in England and Wales. Based on the evidence adduced ex parte by the Claimants, this seems likely to be the correct outcome - the Claimants are based in England and Wales, the claim relates to products purchased and paid for in England and for sale in UK supermarkets and to the implementation and effects of the alleged cartel in the UK, and the Claimants' factual witnesses will be overwhelmingly based in England. The Tribunal approaches service out of jurisdiction on the same basis as the High Court under the Civil Procedure Rules: *DSG Retail Ltd v Mastercard* [2015] CAT 7. A final determination of this issue can be made by the Tribunal which hears the first case management conference in the proceedings.
4. The relevant legal principles for applications to serve defendants out of the jurisdiction in Tribunal cases are summarised in *Epic Games Inc and others v. Apple Inc and Others* [2021] CAT 4 [78]. In short, they involve determinations of whether:
 - (a) There is a serious issue to be tried on the merits of the claim. This is a test of whether there is a real as opposed to fanciful prospect of success on the claim.
 - (b) There is a good arguable case that the claim falls within one of the "gateways" set out in CPR Practice Direction 6B at paragraph 3.1.
 - (c) In all the circumstances, England and Wales is clearly or distinctly the appropriate forum for the trial of the claim.
5. I consider that the claim has a real prospect of success and that there is a serious issue to be tried, having reviewed the Claim Form, and note that the alleged facts on which the claim is grounded are currently under investigation by the European Commission. I proceed on the basis – without prejudice to any future contentions that the Defendants might choose to make – that the averments are true.
6. The Claimants rely on paragraphs 3.1(9)(a) (damage sustained within the jurisdiction), 3.1(9)(c) (tortious claim governed by UK law) and 3.1(3) (anchor defendants) of

Practice Direction 6B of the CPR. I consider there to be a good arguable case that the claim articulated in the Claim Form falls within these “gateways” as described in paragraphs 15 *ff.* of the application.

7. The Claimants submit that the Tribunal is clearly and distinctly the appropriate forum in which the claim against the Defendants can suitably be tried for the interests of all the parties and for the ends of justice. They rely on the facts and matters specified in paragraphs 33 *ff.* of the application.
8. I am satisfied that the UK (and this Tribunal) is the proper place in which to bring the claim. I am conscious that although the Tribunal has, by statute, a UK jurisdiction, by Rule 18 of the Competition Tribunal Rules 2015, the Tribunal may, after taking account of the observations of the parties at any time determine whether any proceedings or part of any proceedings are to be treated as proceedings in England and Wales, in Scotland or in Northern Ireland. In this case:
 - (a) I am satisfied that the UK is clearly and distinctly the appropriate forum for the trial of this claim.
 - (b) Within the UK, I am prepared to permit service out on the basis that in light of the Claimants’ submissions, England and Wales is a proper place in which to bring this claim, the other proper place being Scotland.
 - (c) For purposes of service out only, I determine that these are proceedings in England and Wales. I note that the Claimants raise in their application that the Defendants may seek to contend that the applicable law to the claim is Scottish law, as some of the Defendants are based in Scotland. This order is expressly without prejudice to any such contention that may be made in the future.
9. Accordingly, I grant the application for service out of the jurisdiction.

Sir Marcus Smith
President of the Competition Appeal Tribunal

Made: 7 February 2024
Drawn: 7 February 2024