



COMPETITION APPEAL TRIBUNAL

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

Case No: 1632/5/7/24

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 for damages (the “Claim”) on 7 February 2024, under section 47A of the Competition Act 1998 (the “Act”), by: (1) Asda Stores Limited, (2) Iceland Foods Limited, (3) Marks and Spencer P.L.C, (4) Marks and Spencer Group plc, (5) Ocado Retail Limited, (6) Wm Morrison Supermarkets Limited, (7) International Seafoods Limited, (8) Aldi Stores Limited, (9) Co-operative Group Food Limited, and (10) Co-operative Group Limited (together, the “Claimants”) against: (1) Bremnes Seashore AS, (2) Cermaq Group AS, (3) Grieg Seafood ASA, (4) Grieg Seafood UK Limited, (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 Hjaltdland UK Limited, and (13) SSF Shetland Limited (together, the “Defendants”).

The Claim is for damages arising from alleged unlawful cartel arrangements entered into and/or implemented by at least the Defendants in relation to the supply of farmed Atlantic salmon (“farmed Atlantic salmon”). These cartel arrangements comprised a single and continuous infringement (“SCI”) contrary to the Chapter I prohibition contained in s.2 of the Act and, until 31 December 2020, Article 101(1) of the Treaty on the Functioning of the European Union (“TFEU”) and Article 53 of the European Economic Area Agreement (“EEA Agreement”), for which the Defendants are jointly and severally liable. The Claim Form states that the effects of the Cartel extended downstream through the supply chain, affecting secondary processed products made from farmed Atlantic Salmon, such as smoked or frozen salmon and ready to eat salmon products (together with farmed Atlantic Salmon – “the Relevant Products”)

According to the Claim Form, since February 2019, the Defendants (with the exception of D2, Cermaq) were the subject of dawn raids by the European Commission (“EC”), followed by the opening of the EC’s antitrust investigation in Case AT.40606 *Farmed Atlantic Salmon*. On 25 January 2024, the EC issued a statement of objections against Bremnes AS (D1), Cermaq Group ASA (D2), Grieg Seafood ASA (D3), Lerøy Seafood Group ASA (D5), SalMar ASA (D7) and Mowi ASA (D8). The Claim Form states that it is anticipated that the EC investigation will culminate in due course by one or more infringement decision(s), which will, once final, be binding on the relevant addressees and the Tribunal.

The Claim Form states that members of the Grieg, Lerøy, Mowi and SalMar Groups have also been investigated by the US Department of Justice since 15 November 2019; that criminal investigation was settled in 2023. Some of the Defendants have also been sued in US class actions by both direct and indirect purchasers in relation to the cartel in Florida and have recently settled antitrust litigation in the US and Canada.

In summary, the Claimants contend:

1. The SCI comprises unlawful agreements and/or concerted practices in relation to the coordination of sales prices for farmed Atlantic salmon in the European Economic Area (“EEA”) and the United Kingdom, including, in particular, the exchange of commercially sensitive information and the manipulation of prices on the Norwegian spot market, which provided the international benchmark reference price for the pricing of farmed Atlantic salmon globally, including the EEA and the United Kingdom (the “Cartel”).

2. Pending the adoption and disclosure of any such EC infringement decision(s), the precise duration of the Cartel is not known but, so far as the Claimants can ascertain, it operated in secret for at least the period from 2011 until 20 February 2019 (the “Cartel Period”).
3. Due to the Claimants’ long-term contractual arrangements with suppliers and the long production cycles in Atlantic salmon farming, the effects of the Cartel are likely to have extended for a considerable time beyond the end of the Cartel Period. The exact duration of the run-off effects will be a matter for evidence at trial, but provisionally, it is assumed to have lasted (at least) from the end of the Cartel Period until December 2020 but may have extended considerably longer; such extension is referred to as the “Run-Off Period”. The Cartel Period and the Run-Off Period are collectively referred to as the “Relevant Period”.
4. Each of the Defendants and/or the economic undertakings of which they formed part during the Cartel Period (the “Defendant Groups”), participated in, and/or implemented, the Cartel. The precise duration and particulars of their respective participation and/or implementation will be pleaded in due course in the light of further information and disclosure.

The Claimants and/or the economic undertakings of which they formed part (the “Claimant Groups”) comprise seven of the largest supermarkets in the UK, together representing over 44% of the UK grocery market with total estimated combined purchases of farmed Atlantic salmon of around £1.7 billion during the Cartel Period.

The Claim Form states that each Claimant Group purchased the Relevant Products, sourced from the Defendants and/or other producers, through different supply arrangements, including: (a) from entities within one or more of the Defendant Groups; (b) from third party intermediary processors or wholesalers/distributors, that were sourced from the Defendant Groups; (c) from any other producers involved in the Cartel but not named as defendants to this claim; and (d) directly and/or indirectly from non-Cartelists. The Defendants are said to be jointly and severally liable for all losses resulting from the effects of the Cartel on such purchases.

The Claimants contend that the SCI is actionable in damages. The Cartel caused the Claimants and/or members of the Claimant Groups loss and damage as they had to pay higher prices than they would otherwise have paid (to entities within the Defendant Groups and/or to other suppliers or processors) for the purchase of Relevant Products during and after the Cartel Period.

The Claimants’ current best estimate of their total losses over the Relevant Period is £675m (excluding financing costs).

The Claimants also claim damages in respect of the additional cost of financing the inflated purchase prices. Further, the Claimants claim compound or alternatively simple interest on the losses they have suffered. The Claimants reserve the right to provide further particulars of their purchases of Relevant Products, including following further investigation and/or disclosure and/or the Defendants’ responses to any requests for information.

The Claimants claim:

- (1) Damages for breach of statutory duty.
- (2) Compound interest as damages.
- (3) In the alternative to compound interest, simple interest.
- (4) Such further and other relief as the Tribunal considers appropriate.
- (5) Costs.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively, the Tribunal Registry can be contacted by post at Salisbury Square House, 8 Salisbury Square, London EC4Y 8AP, or by telephone (020 7979 7979) or email (registry@catribunal.org.uk). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, KC (Hon)
Registrar

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