COMPETITION APPEAL TRIBUNAL

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

Case No: 1633/5/7/24

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 5 January 2024, under section 47A of the Competition Act 1998 (the "Act"), by: (1) Tesco Stores Limited; and (2) Tesco Distribution Limited (together, the "Claimants") against: (1) Scania (Great Britain) Limited; (2) Scania Finance Great Britain Limited; (3) Scania AB; (4) Scania CV AB; and (5) Scania Deutschland GmbH (together, the "Defendants"). The Claimants are represented by Bryan Cave Leighton Paisner LLP, Governor's House, 5 Laurence Poutney Hill, London EC4R 0BR (Reference: Edward Coulson).

This Claim is for damages pursuant to section 47A of the Act as substituted by section 81 and paragraphs 1 and 4 of Schedule 8 to the Consumer Rights Act 2015 ("Unmodified Section 47A"). The Claim Form states that the Unmodified Section 47A continues to have effect pursuant to regulation 64 and paragraphs 14(2)(b) and 15(1) to Schedule 4 of the Competition (Amendment, etc.) (EU Exit) Regulations 2019 in circumstances where a claim is made in relation to an 'EU competition infringement', which includes an infringement of Article 101(1) of the Treaty on the Functioning of the European Union ("TFEU") ("Article 101 TFEU") that occurred before 'IP completion day', that being 31 December 2020. The Claimants accordingly claim damages and other monetary sums for losses suffered in the UK as a result of infringements of competition law relating to unlawful and anti-competitive behaviour regarding Trucks.

According to the Claimants, those infringements of competition law included agreements and/or concerted practices on pricing and gross price increases in order to align gross prices in the European Economic Area ("EEA"), coordination of the timing for the introduction of emission technologies and coordination of the passing on to customers of the costs of the emissions technologies, between 1997 and 2011 (the "Unlawful Collusion"). The Defendants thereby infringed Article 85(1) of the Treaty Establishing the European Economic Community ("Article 85 EEC") and/or Article 81(1) TFEU ("Article 81 EC") and/or Article 101 TFEU (as each applied at the material time).

The Claimants rely in particular on: (i) the infringement decision of the European Commission ("the Commission") dated 27 September 2017 in *Case AT.39824 – Trucks* (the "Infringement Decision"); and (ii) the settlement decision of the Commission dated 19 July 2016 in Case AT.39824 – *Trucks* (the "Settlement Decision") (together, the "Decisions"). The Decisions resulted from proceedings initiated by the Commission against the participants in the Unlawful Collusion pursuant to Commission Regulation (EC) No 773/2004.

The Decisions establish that six undertakings, including the Scania Undertaking, and five other undertakings each colluded with one another for 14 years between 17 January 1997 and 18 January 2011 (the "Relevant Period") on the pricing of Trucks and on passing on the costs of compliance with stricter emission rules, thereby infringing Article 101 TFEU. The Decisions each state that the geographic scope of the Unlawful Collusion covered the entire EEA throughout the Relevant Period.

The Settlement Decision, published on 19 July 2016 was addressed to MAN SE, Daimler AG, CNH Industrial and Fiat Chrysler Automobiles NV, AB Volvo and PACCAR Inc (together with the subsidiaries of each) (the "Settlement Decision Cartelists"). The Settlement Decision Cartelists each submitted a request to settle the infringement proceedings initiated by the Commission pursuant to Article 10a(2) of Regulation (EC) No 773/2004 and accepted the facts outlined in the Settlement Decision in the settlement procedure.

The Third to Fifth Defendants did not submit a request to settle the infringement proceedings. The Infringement Decision, a provisional and non-confidential version of which was published on 30 June 2020, and which includes extensive redactions for confidentiality claims, was accordingly separately addressed to the Third to Fifth Defendants (the "Addressee Defendants") pursuant to the Commission's standard (non-settlement) procedure.

The Addressee Defendants sought annulment of the Infringement Decision. By its judgment of 2 February 2022, the action was dismissed in its entirety by the General Court of the European Union (Case T-799/17) (the "GC Judgment"). The GC Judgment was subject to a further appeal by the Third to Fifth Defendants to the Court of Justice of the European Union ("CJEU") (C-251/22 P) (the "Addressee Defendants' Appeal"). By its judgment of 1 February 2024, the Addressee Defendants' Appeal action was also dismissed in its entirety by the CJEU.

The Claim is made in reliance on decisions of the European Commission, namely the Decisions. The Claimants submit that the Unlawful Collusion caused them loss and damage arising out of the purchase and/or lease of such Trucks for the purpose of carrying out their business as a grocery retailer. As a consequence of the Unlawful Collusion, the prices paid by the Claimants for the Trucks they purchased and/or leased that were manufactured by companies within the Scania Undertaking and the Settlement Decision Cartelists in at least the Relevant Period, were at all times materially higher than they would otherwise have been. The Claimants accordingly claim damages for the losses they have suffered as a result of the Unlawful Collusion, including losses arising as a result of inflated purchase and/or lease prices.

The Claim Form states that, during the Relevant Period, the Claimants purchased and/or leased (including by way of sale-and-leaseback arrangements) Trucks in the UK: (1) directly from entities within the Scania Undertaking, including the First and Second Defendant; (2) indirectly from dealerships and/or distributors authorised and/or owned by and/or part of the Scania Undertaking; (3) directly from entities within the economic units of which the Settlement Decision Cartelists form part; and (4) indirectly from dealerships and/or distributors authorised and/or owned by and/or part of the economic units of which the Settlement Decision Cartelists form part.

The Infringement Decision establishes that the Third to Fifth Defendants infringed Article 101(1) TFEU (and its predecessor provisions) during the Relevant Period by colluding with the Settlement Decision Cartelists to coordinate the prices and gross list prices of Trucks and the extent and timing of the passing on of the costs of complying with European environmental standards to customers.

The Claimants also claim, simple interest on the Overcharge or on such sums as the Tribunal determines is appropriate at such rate as the Tribunal determines is appropriate and for such period as the Tribunal determines is appropriate.

The Claimants claim:

(1) Damages.
(2) Simple interest.
(3) Such further and other relief as the Tribunal considers appropriate.
(4) 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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