



COMPETITION APPEAL TRIBUNAL

NOTICE OF AN APPLICATION TO COMMENCE COLLECTIVE PROCEEDINGS UNDER SECTION 47B OF THE COMPETITION ACT 1998

CASE NO. 1643/7/7/24

Pursuant to rule 76(8) of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (“the Rules”), the Registrar gives notice of the receipt on 20 June 2024 of an application to commence collective proceedings, under section 47B of the Competition Act 1998 (“the Act”), by Waterside Class Limited (the “Proposed Class Representative/PCR”) against (1) Mowi ASA, (2) Mowi Holding SA, (3) Grieg Seafood ASA, (4) Salmar ASA, (5) Lerøy Seafood Group ASA, and (6) Scottish Sea Farms Limited (together, the “Respondents/Proposed Defendants”). The Proposed Class Representative (whose sole director is Ms Anne Heal) is represented by Simmons & Simmons LLP, CityPoint, 1 Ropemaker Street, London EC2Y 9SS (Reference: Patrick Boylan).

The claims that it is proposed that the collective proceedings should combine are brought under Article 101 of the Treaty on the Functioning of the European Union (“TFEU”), Article 53 of the EEA Agreement and/or pursuant to the Chapter I prohibition in section 2 of the Act (the “Chapter I Prohibition”).

The proposed class members are consumers who bought certain salmon products (“Salmon Products”) in retail settings in the UK between 1 October 2015 and 31 May 2019 (the “Relevant Period”). The Proposed Defendants are members of undertakings that are major producers of primary processed farmed Atlantic salmon (“Atlantic Salmon”).

According to the Collective Proceedings Claim Form (“CPCF”), between at least April 2013 and February 2019 (the “Infringement Period”), the Proposed Defendants unlawfully colluded to increase Atlantic Salmon prices, in particular by means of the manipulation of the reference prices for Norwegian Atlantic Salmon on the NASDAQ Salmon Index (the “NASDAQ Spot Price”) and through the unlawful exchange of commercially sensitive information regarding the prices and volumes of sales of Atlantic Salmon. This led to increases in the price paid for Salmon Products by the members of the proposed class.

In the proposed claim, the PCR seeks to recover damages to compensate the proposed class for the loss suffered as a result of such price increases, together with interest.

The broad outline of the claim which the PCR seeks to advance in collective proceedings is as follows:

- (1) The Proposed Defendants (together with Sjør AS1 and Cermaq Group AS2 and/or the undertaking of which Cermaq Group AS forms part) unlawfully colluded to increase Atlantic Salmon prices, in particular by means of the manipulation of the NASDAQ Spot Price and through the unlawful exchange of commercially sensitive information regarding the prices and volumes of sales of Atlantic Salmon. Collectively, the Proposed Defendants together with Sjør and Cermaq are referred to in the CPCF as the “Colluding Producers”.
- (2) The NASDAQ Spot Price was generated based on transaction data contributed to the NASDAQ Salmon Index on a weekly basis by ten major producers of Atlantic Salmon. Three of those contributors are fellow members of the same undertakings as the Proposed Defendants Mowi, SalMar and Grieg (the “Proposed Contributor Defendants”). All the Colluding Producers (with the exception of Lerøy and SSF) were fellow members of the same undertaking as entities who contributed to the NASDAQ Salmon Index (collectively, the “Colluding Contributor Producers”).
- (3) The NASDAQ Spot Price acts as a key reference point for both Spot Sales and Contract Sales; the prices at which Spot Sales and Contract Sales took place are, and were, very closely linked to the NASDAQ Spot Price. As such, the NASDAQ Spot Price is a strong driver of the market price of

Atlantic Salmon. All the undertakings of which the Proposed Defendants were members had a commercial interest in increasing the price at which Atlantic Salmon was sold. The market for the production of Atlantic Salmon had a number of characteristics that facilitated collusion between producers. The market was highly concentrated, with high barriers to entry. Because Atlantic Salmon is a commodity product, competition is largely focussed on price, and supply of Atlantic Salmon is inelastic in the short term due to lengthy production cycles. Close links between the Proposed Defendants were strengthened by factors including ownership links between undertakings, movements of senior personnel between the Proposed Defendant businesses, and frequent meetings in numerous trade associations.

- (4) During the Relevant Period, the NASDAQ Spot Price, and the price of Norwegian Atlantic Salmon generally, rose substantially without any explanation.
- (5) The rise in the NASDAQ Spot Price and in the price of Norwegian Atlantic Salmon generally was the result of unlawful collusion between the Colluding Producers. This was achieved by the following means in particular:
 - (a) Via transactions pursuant to which the Proposed Contributor Defendants sold Atlantic Salmon to other members of the same undertaking or to other Colluding Producers (the “Manipulated Transactions”). It is inferred that there was no legitimate explanation for the Manipulated Transactions: the Colluding Producers are all members of major Atlantic Salmon producing undertakings and could therefore generally be expected to have met their needs for Atlantic Salmon through internal transfers within their own corporate groups. It is to be inferred that the prices at which Atlantic Salmon was bought and sold in the Manipulated Transactions were inflated above what would otherwise have been the market rate as a result of a collusive scheme between the relevant Colluding Producers to raise the NASDAQ Spot Price. This caused, alternatively contributed to, an increase in the NASDAQ Spot Price.
 - (b) Via “Unlawful Exchanges”, by which the Colluding Producers unlawfully exchanged commercially sensitive information regarding the prices and volumes of sales of Atlantic Salmon and sought to fix the prices at which Atlantic Salmon was sold. The Unlawful Exchanges had the object and effect of increasing the prices at which Atlantic Salmon was sold by the Colluding Producers. It is to be inferred that this also led to an increase in the price at which the transactions reported by the Colluding Contributor Producers were concluded, and in turn caused, alternatively contributed to, an increase in the NASDAQ Spot Price.
- (6) Further:
 - (a) There were frequent contacts between the Colluding Producers in which the attendees agreed to take unspecified steps involving “cooperation” or “coordination” (the “Co-ordination Contacts”).
 - (b) There were meetings between representatives of the Colluding Producers, the subject matter of which is currently unknown (the “Unexplained Meetings”).
- (7) The Manipulated Transactions, the Unlawful Exchanges, the Co-ordination Contacts and the Unexplained Meetings are collectively the “Collusive Contacts” or the “Infringement”. The PCR infers that, along with the Unlawful Exchanges, the Co-ordination Contacts and Unexplained Meetings, alternatively some of them, had the object and effect of increasing the prices at which the Colluding Producers sold Atlantic Salmon. It is further to be inferred that this led to an increase in the price at which the transactions reported by the Colluding Contributor Producers to the NASDAQ Salmon Index were concluded, and in turn caused, alternatively contributed to, an increase in the NASDAQ Spot Price.
- (8) The unlawful collusion between the Colluding Producers affected the wholesale prices of Atlantic Salmon. Those price rises were passed through, in significant part, to consumers who purchased Salmon Products in retail settings (i.e. the members of the Proposed Class). The allegations in the proposed collective proceedings are the subject of a regulatory investigation in the EU. The European Commission (the “Commission”) conducted unannounced inspections of premises

occupied by a number of the Proposed Defendants in the context of its investigation in February 2019.

The Proposed Defendants (with the exception of Mowi Holding AS), together with certain other companies, are subject to a proposed claim under section 47A of the Act by ten UK-based supermarket retailers (the “Retailer Claim”).¹

The Proposed Class comprises:

“All Persons (other than Excluded Persons²) who between 1 October 2015 and 31 May 2019 (inclusive) purchased Salmon Products for the purpose of Personal Consumption from Grocery Retailers in the United Kingdom, together with the Personal or Authorised Representative of the estate of any individual who meets that description and would be in the class but for their death.”

It is estimated that (1) there are between approximately 35,665,000 – 44,241,000 persons in the Proposed Class and (2) each member of the Proposed Class will recover on average approximately £1.97 - £10.71.

The PCR submits that it would be just and reasonable for it to act as class representative because:

1. The PCR would act fairly and adequately act in the interests of the class members (Rule 78(2)(a)), as will Ms Heal herself in her role as sole director of the PCR.
2. The PCR is not a class member; Ms Heal would fall within the class definition, but is an Excluded Person.
3. Ms Heal has a distinguished career history of undertaking roles that include advocating for the protection and advancement of consumer rights.
4. Ms Heal will be supported by an Advisory Panel who offer expertise in a range of fields complementary to that of Ms Heal herself.
5. The PCR itself is a corporate special purpose vehicle (“SPV”), which was created to pursue the present proposed collective proceedings.
6. The PCR has appointed a specialist claims administrator which has extensive knowledge of handling class actions and has prepared the Notice and Administration Plan, appended to the Litigation Plan. The Litigation Plan addresses the matters required under Rule 78(3)(c).
7. The PCR has also appointed a specialist public relations firm.
8. The PCR’s solicitors are highly experienced competition litigators who have been involved in other high-profile cases, the collective proceedings brought by Justin Le Patourel against BT: see e.g. [2022] EWCA Civ 593. The PCR’s counsel team also has extensive experience of competition litigation, including collective proceedings. The PCR has also instructed economic experts with experience of working in the field of competition economics and the quantification of damages arising from competition claims.
9. The PCR does not have a material interest that is in conflict with the interest of the members of the Proposed Class.

¹ [1632/5/7/24 Asda Stores Limited and Others v Bremnes Seashore AS and Others | Competition Appeal Tribunal \(catribunal.org.uk\)](https://www.catribunal.org.uk/1632/5/7/24/Asda-Stores-Limited-and-Others-v-Bremnes-Seashore-AS-and-Others-Competition-Appeal-Tribunal).

² Excluded Persons means: (a) Officers, directors or employees of the Proposed Defendants, their subsidiaries, holding companies, subsidiaries of those holding companies, and any entity in which any of the addressees has a controlling interest, at any time since April 2013; (b) Officers or directors of the PCR; (c) All members of the PCR’s and Proposed Defendants’ legal teams and all experts or professional advisers instructed by them and all funders or insurers involved in connection with these proceedings; and (d) All members of the Tribunal panel assigned to these proceedings and any judge hearing any appeal in these proceedings.

10. The PCR has obtained an ATE insurance policy (the “ATE Policy”), which provides adverse costs cover. An inner limit covers the period up to a determinative ruling on whether a CPO will be made in the Proposed Class Representative’s favour. An ATE insurance policy for additional cover has been agreed and is in the process of being incepted.

The CPCF states that the claims are brought on behalf of an identifiable class of persons and each of the proposed class members has essentially the same claim against the Proposed Defendants, namely that their unlawful collusion led to an increase in the price paid by the member of the Proposed Class for purchases of Salmon Products from Grocery Retailers.

The PCR submits that the claims raise the following common issues (the “Common Issues”):

- (1) Whether the Tribunal has jurisdiction over the claims.
- (2) What the relevant substantive law(s) is/are applicable to the claims.
- (3) What the relevant limitation period(s) is/are.
- (4) Whether the Proposed Defendants infringed Article 101 TFEU, Article 53 of the EEA Agreement and/or the Chapter I Prohibition.
- (5) Whether any infringement caused members of the Proposed Class to pay higher prices for Salmon Products than they would have done absent the infringement (the “Overcharge”) and, if so, what the magnitude of the Overcharge was.
- (6) Whether the Overcharge persisted after the period of any infringement, and if so for how long.
- (7) The value of commerce of affected Salmon Products purchased by members of the Proposed Class.
- (8) The aggregate value of the loss borne by members of the Proposed Class, taking into account the Overcharge and the value of commerce of affected Salmon Products.
- (9) The rate of interest to be awarded and the amount of interest payable.

The PCR submits that collective proceedings are an appropriate means for the fair and efficient resolution of the Common Issues (Rule 79(2)(a)):

- (1) It could not sensibly be suggested that it would be more appropriate for individual members of the Proposed Class to bring individual claims in order to try and recover their individual loss. The costs of bringing such claims would be disproportionate to their value, and individual claims would place a heavy burden on the Tribunal.
- (2) Many proposed class members are likely to lack the resources to bring individual claims. The proposed class members are individuals who purchased Salmon Products for personal consumption, and as such will be composed of consumers rather than businesses.
- (3) In reality, collective proceedings are not only a fair and efficient means for the resolution of the Common Issues, but the only means by which the Common Issues are likely to be capable of resolution. The proposed claims are a paradigm example of the type of claims for which the collective proceedings regime was designed.

Although the costs of the proposed collective proceedings are substantial, they are proportionate to the amount which the Proposed Class as a whole stands to recover, which the PCR’s experts have estimated to be approximately £87-382 million (8% interest) or £71–312 million (interest at base rate +2%).

The CPCF states that there is a credible and plausible methodology, based on data that is or will be available, to determine loss on a class-wide basis. It is not necessary, as part of that methodology, to consider individual purchases by members of the Proposed Class in order to arrive at an aggregate award.

Further, the collective proceedings should proceed on an opt-out basis as it would not be practicable for the proposed proceedings to be brought on an opt-in basis in light of the average amounts that each member of the Proposed Class is likely to recover, the size of the Proposed Class, and the fact that members of the Proposed Class are consumers.

The relief sought in the proposed collective proceedings is:

1. Damages on behalf of the Proposed Class, to be assessed on an aggregate basis pursuant to section 47C(2) of the Act.
2. Interest.
3. Costs.
4. Such further or other relief as the Tribunal may see fit.

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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