



COMPETITION APPEAL TRIBUNAL

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

CASE No: 1173/5/7/10

The Registrar of the Competition Appeal Tribunal (the “Tribunal”) gives notice of the receipt of a claim for damages (“the Claim”) on 15 December 2010, under section 47A of the Competition Act 1998 (“the Act”), by the claimants listed in Annex 1 to this Notice (“the Claimants”) against the defendants listed in Annex 2 to this Notice (“the Defendants”). The Claimants are represented by Hausfeld & Co LLP of 12 Gough Square, London, EC4A 3DW (Reference: AM/LC/L0035.0001).

The Claim arises from a decision of the European Commission (“the Commission”) (Case C.38.359 – Electrical and Mechanical Carbon and Graphite Products, OJ [2004] L 125/45), adopted on 3 December 2003 relating to proceedings under Article 81 of the Treaty establishing the European Community (“the EC Treaty”)¹ and Article 53 of the Agreement on the European Economic Area (“the EEA Agreement”) (“the Decision”). In the Decision, the Commission found that the Defendants participated in a single and continuous infringement of Article 81(1) of the EC Treaty and, from 1 January 1994, Article 53(1) of the EEA Agreement, covering the whole of the EEA territory (“the Infringement”), by which they:

- (1) agreed and occasionally updated a uniform, highly detailed method of calculating prices to customers, covering the main types of electrical and mechanical carbon and graphite products, different types of customers and all EEA countries where demand existed, with a view to arriving at identically or similarly calculated prices for a wide variety of products;
- (2) agreed regular percentage price increases for the main types of electrical and mechanical products and all EEA countries where demand existed, for different types of customers;
- (3) agreed on certain surcharges to customers, on discounts for different types of delivery and on payment conditions;
- (4) agreed account leadership for certain major customers, agreed to freeze market shares in respect of those customers, and regularly exchanged pricing information and agreed specific prices to be offered to those customers;
- (5) agreed a ban on advertising and on participation in sales exhibition;
- (6) agreed quantity restrictions, price increases or boycotts in respect of re-sellers that offered potential competition;
- (7) agreed price undercutting in respect of competitors; and
- (8) operated a highly refined machinery to monitor and enforce their agreements.

The Commission found in the Decision that the period of the Infringement was at least eleven years and two months (between October 1988 and December 1999) (“the Cartel Period”), although the participation of the individual companies varied in duration.

¹ Now Article 101 of the Treaty on the Functioning of the European Union.

The Second, Third, Fourth and Fifth Defendants appealed against the articles of the Decision imposing both liability and penalty to the Court of First Instance of the European Communities (“CFI”)² (Cases T-68/04, T-69/04 and T-73/04). Their appeals were dismissed in a judgment delivered on 8 October 2008. The Fourth and Fifth Defendants subsequently appealed, in respect of penalty only, to the Court of Justice of the European Communities (“ECJ”)³ (Cases C-554/08 and C-564/08). Both appeals were dismissed in a judgment delivered on 12 November 2009.

According to the Claim, the acts of the Defendants set out in the Decision as constituting the Infringement also constituted actionable breaches of statutory duties, being duties which are directly enforceable in proceedings in the United Kingdom pursuant to section 2 of the European Communities Act 1972. The Claimants are all companies which either purchased the products which were the subject of the cartel, or goods or services incorporating those products, during the Cartel Period, thereby sustaining loss or damage as a result of the Defendants’ breaches of duties, or have been assigned or inherited the rights to claim for such breaches. Each of the Defendants is jointly and severally liable, for the period of its participation in the Infringement, for all the loss and damage caused to the Claimants and each of them resulting from the breaches of statutory duties.

The Claimants seek the following relief:

- (a) damages, as particularised in more detail in the Claim;
- (b) compound, alternatively, simple interest on the damages;
- (c) costs;
- (d) further and/or other relief.

Further details concerning the procedures of the Tribunal can be found on its website at www.catribunal.org.uk. Alternatively the Tribunal Registry can be contacted by post at the above address or by telephone (020 7979 7979) or fax (020 7979 7978). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE
Registrar

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² Now the General Court of the Court of Justice of the European Union.

³ Now the Court of Justice of the European Union.

ANNEX 1

Names and addresses of the claimants:

- (1) **Deutsche Bahn AG**
Potsdamer Platz, 2
10785 Berlin
Germany
- (2) **DB Netz AG**
Theodor-Heuss-Allee 7
60486 Frankfurt am Main
Germany
- (3) **DB Energie GmbH**
Pfarrer-Perabo-Platz 2-5
60326 Frankfurt am Main
Germany
- (4) **DB Regio AG**
Stephensonstr 1
60326 Frankfurt am Main
Germany
- (5) **S-Bahn Berlin GmbH**
Invalidenstraße 19
10115 Berlin
Germany
- (6) **S-Bahn Hamburg GmbH**
Paul-Neumann-Platz 12
22765 Hamburg
Germany
- (7) **DB Regio NRW GmbH**
Willi-Becker-Allee 11
40227 Düsseldorf
Germany
- (8) **DB Kommunikationstechnik GmbH**
Caroline-Michaelis-Straße 5 – 11
10115 Berlin
Germany
- (9) **DB Schenker Rail Deutschland AG**
Rheinstraße 2
55116 Mainz
Germany

- (10) **DB Bahnbau Gruppe GmbH**
Gross-Berliner-Damm 81
12487 Berlin
Germany
- (11) **DB Fahrzeuginstandhaltung GmbH**
Weilburger Straße 22
60326 Frankfurt am Main
Germany
- (12) **DB Fernverkehr AG**
Stephensonstr 1
60326 Frankfurt am Main
Germany
- (13) **DB Schenker Rail (UK) Ltd**
Lakeside Business Park
Carolina Way
Doncaster DN4 5PN
United Kingdom
- (14) **Loadhaul Limited**
Lakeside Business Park
Carolina Way
Doncaster
South Yorkshire
DN4 5PN
- (15) **Mainline Freight Limited**
Lakeside Business Park
Carolina Way
Doncaster
South Yorkshire
DN4 5PN
- (16) **Rail Express Systems Limited**
Lakeside Business Park
Carolina Way
Doncaster
South Yorkshire
DN4 5PN
- (17) **English Welsh & Scottish Railway International Limited**
Lakeside Business Park
Carolina Way
Doncaster
South Yorkshire
DN4 5PN

- (18) **EMEF - Empresa de Manutenção de Equipamento Ferroviário S.A.**
Rua das Indústrias, 21
2700-460, Amadora
Portugal
- (19) **CP - Comboios de Portugal E.P.E.**
Calçada do Duque, no.20
1249-109
Lisbon
Portugal
- (20) **Metro de Madrid, S.A.**
Calle Cavanilles, 58
28007, Madrid
Spain
- (21) **Angel Trains Limited**
Portland House
Bressenden Place
London SW1 5BH
United Kingdom
- (22) **NV Nederlandse Spoorwegen**
Laan van Puntenburg 100
3511 ER Utrecht
The Netherlands
- (23) **NedTrain B.V.**
Stationshal 15
3511 CE Utrecht
The Netherlands
- (24) **NedTrain Ematech B.V.**
CAB-Rondom 21
3534 BE Utrecht
The Netherlands
- (25) **NS Reizigers B.V.**
Laan van Puntenburg 100
3511 ER Utrecht
The Netherlands
- (26) **DB Schenker Rail Nederland N.V.**
Moreelsepark 1
3511 EP Utrecht
The Netherlands

- (27) **Trenitalia S.p.A.**
Piazza della Croce Rossa, 1
00161 Rome
Italy
- (28) **Rete Ferroviaria Italiana, S.p.A**
Piazza della Croce Rossa, 1
00161 Rome
Italy
- (29) **Norges Statsbaner AS**
Prinsensgt 7-9
0048 Oslo
Norway
- (30) **EuroMaint Rail AB**
Svetsarvägen 10
171 29 Solna
Sweden
- (31) **Göteborgs Spårvägar AB**
Rantorget 4
414 64 Gothenburg
Sweden

ANNEX 2

Names and addresses of the defendants:

- (1) **Morgan Crucible PLC**
55/57 High Street
Windsor
England
SL4 1LP
- (2) **Schunk GmbH**
Rodheimer Straße 59
D-35452 Heuchelheim
Germany
- (3) **Schunk Kohlenstofftechnik GmbH**
Rodheimer Straße 59
D-35452, Heuchelheim
Germany
- (4) **SGL Carbon AG**
Rheingaustrasse 182-184
D-65203 Wiesbaden
Germany
- (5) **Mersen SA (formerly Le Carbone-Lorraine SA)**
Immeuble La Fayette
2-3 Place des Vosges
La Defense 5
92400 Courbevoie
France
- (6) **Hoffman & Co. Elektrokohle AG**
Au 62
A-4822 Bad Goisern am Hallstättersee
Austria