



## COMPETITION APPEAL TRIBUNAL

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

**CASE No: 1202/5/7/12**

The Registrar of the Competition Appeal Tribunal (“the Tribunal”) gives notice of the receipt of a claim for damages (“the Claim”) on 28 September 2012, under section 47A of the Competition Act 1998 (“the Act”), by (1) Moy Park Limited; (2) Faccenda Group Limited; (3) Faccenda South Limited; (4) GW Padley Poultry Limited; (5) GW Padley Holdings Limited; and (6) O’Kane Poultry Limited<sup>1</sup> (together, “the Claimants”) against Tessenderlo Chemie NV of 130 Rue du Trône, 1050 Brussels, Belgium (“the Defendant”). The Claimants are represented by Hausfeld & Co LLP, 12 Gough Square, London, EC4A 3DW (Reference: Tom Bolster / Nicola Boyle).

The Claim arises from a decision of the European Commission (“the Commission”) (Case COMP/38.866 – Animal Feed Phosphates, OJ 2011 C 111, p. 21), dated 20 July 2010 relating to a proceeding pursuant to Article 101(1) of the Treaty on the Functioning of the European Union (“TFEU”) and Article 53 of the Agreement on the European Economic Area (“EEA Agreement”) (“the Decision”).

In the Decision, the Commission found that the Defendant, together with various other undertakings, had participated in a single and continuous infringement of Article 101(1) TFEU and Article 53 of the EEA Agreement, by which they participated in agreements and concerted practices consisting of price fixing and market sharing in the European feed phosphates market (“the Infringement”). The Commission found that the Infringement lasted from at least 19 March 1969 until at least 10 February 2004 (“the Cartel Period”).

The Infringement concerned the sale of feed phosphates used in animal feed. Feed phosphates are chemical compounds of phosphorous used mainly to balance the phosphorous and calcium contents of feed for animals such as cattle, pigs, poultry, fish and pets. The most commonly marketed products were dicalcium phosphate, monocalcium phosphate and monocalcium phosphate. Feed phosphates are used by feed manufacturers and large meat or fish producers.

According to the Claim, the effect of the Infringement was to maintain prices of feed phosphates at a level higher than they would have been without the Infringement. Further, the effect of the Infringement was to unlawfully inflate the price at which the Claimants purchased feed phosphates directly from the addressees of the Decision and/or indirectly via agents/distributors for those companies or via purchases from their compounders and/or pre-mix suppliers (“the Overcharge”). The Claimants allege that an additional effect of the Infringement was to unlawfully inflate the price at which feed phosphates were sold on the market by suppliers other than the addressees of the Decision, with the consequence that the Claimants’ purchases from such suppliers was similarly inflated (“the Umbrella Overcharge”). The Claimants also allege that the Infringement did or was likely to have a continuing effect upon prices for feed phosphates for the Claimants even after the end of the cartel (“the Run-Off Overcharge”). According to the Claim, as a result of the Infringement and the resulting Overcharge, Umbrella Overcharge and Run-Off Overcharge, the Claimants have suffered loss and damage arising from their purchases of feed phosphates.

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<sup>1</sup> The address of the 1<sup>st</sup> and 6<sup>th</sup> claimants is 39 Seagoe Industrial Estate, Portadown, Craigavon, Co. Armagh, BT63 5QE. The address of the 2<sup>nd</sup> and 3<sup>rd</sup> claimants is Willow Road, Brackley, NN13 7EX. The address of the 4<sup>th</sup> and 5<sup>th</sup> claimants is Cumberland Court, 80 Mount Street, Nottingham, NG1 6HH.

The Claimants seek the following relief:

- (a) damages (as particularised in more detail in the Claim) for breach of statutory duty, namely a breach of Article 101 TFEU and/or section 2(1) of the European Communities Act 1972; and
- (b) compound, or alternatively simple, interest on the damages assessed by the Tribunal.

Further details concerning the procedures of the Tribunal can be found on its website at [www.catribunal.org.uk](http://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, QC (Hon)*  
Registrar  
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