



COMPETITION APPEAL TRIBUNAL

**NOTICE OF AN ADDITIONAL CLAIM UNDER
SECTION 47A OF THE COMPETITION ACT 1998**

CASE NO. 1250/5/7/16

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 an additional claim made pursuant to rule 39 of the Tribunal Rules (the “Rule 39 Claim”) on 18 May 2016, under section 47A of the Competition Act 1998 (“the Act”), by (1) Vita Cellular Foams (UK) Ltd; and (2) Vita Industrial (UK) Ltd (together, the “Rule 39 Claimants”) against (1) Carpenter Limited; (2) Carpenter Co.; (3) Recticel Limited; and (4) Recticel N.V./S.A. (together, the “Rule 39 Defendants”). The Rule 39 Claimants are represented by Freshfields Bruckhaus Deringer LLP, 65 Fleet Street, London EC4Y 1HS (Reference: Jon Lawrence/Bea Tormey/Deba Das/Ricky Versteeg).

On 7 April 2016, (1) Breasley Pillows Ltd; (2) Comfortex Ltd; (3) Drury-Adams Ltd; (4) Fibreline Ltd; (5) G.N.G. Foam Converters (Lancs) Ltd; and (6) Platt & Hill Ltd (together, “the Claimants”) brought a claim against the Rule 39 Claimants under section 47A of the Act (“the Main Claim”). The Rule 39 Claimants are the defendants to the Main Claim: see the summary of claim dated 28 April 2016 http://www.catribunal.org.uk/files/1250_Breasley_Notice_280416.pdf.

The Main Claim arises from a decision of the European Commission (the “Commission”) (Case AT.39801 – Polyurethane foam) of 29 January 2014 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union (“TFEU”) (“the Decision”). The Decision was adopted pursuant to the settlement procedure following the Vita group, of which the Rule 39 Claimants form part, having brought the issue to the attention of the Commission and being granted immunity. The Rule 39 Claimants and the Rule 39 Defendants are addressees of the Decision. Each of the addressees was held to have infringed Article 101 of the TFEU by participating in an agreement and/or concerted practice in the flexible polyurethane foam sector. The Decision holds that Carpenter Limited and the Recticel Rule 39 Defendants participated in the infringement covered by the Decision from 26 October 2005 to 27 July 2010. It also held that Carpenter Co. was liable for the participation of its subsidiaries for the same period.

According to the Rule 39 Claim, while the Rule 39 Claimants deny that the Claimants have suffered loss or damage at all, any such losses as are proven by the Claimants were caused by and/or are the responsibility of (in whole or part) the Rule 39 Defendants. If and insofar as the Rule 39 Claimants are liable in whole or in part to the Claimants (which it is denied), the Rule 39 Defendants are jointly and/or severally liable to the Claimants in respect of the same loss.

Further and alternatively, if and insofar as the Rule 39 Claimants make or agree to make payment to the Claimants in bona fide settlement or compromise of the Main Claim, the Rule 39 Defendants are jointly and/or severally liable to the Claimants in respect of the same loss. Accordingly, pursuant to the Civil Liability (Contribution) Act 1978 (the “1978 Act”) and/or in equity, the Rule 39 Claimants (and each of them) seek from the Rule 39 Defendants a contribution towards, alternatively an indemnity against, such liability as there may be established or payments as may be incurred in bona fide settlement or compromise of the Main Claim.

Pursuant to the 1978 Act, the Rule 39 Claimants claim contribution and/or indemnity in an amount just and equitable having regard to responsibility for the damage in question. In determining what is just and equitable, the Rule 39 Claimants rely in particular on (a) the finding in the Decision that the Rule 39 Claimants’ participation in the cartel was from 26 October 2005 to 30 April 2010; and (b) the granting of immunity to the Rule 39 Claimants by the Commission.

The Rule 39 Claimants claim:

- (1) A contribution and/or indemnity for damages, interest and/or costs, including costs incurred in defending the Main Claim
- (2) Compound and/or simple interest on all sums advanced by either or both the Rule 39 Claimants in respect of which the Rule 39 Defendants are later found liable for a contribution and/or indemnity.
- (3) Costs.
- (4) Such further or other relief as the Tribunal sees 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 Victoria House, Bloomsbury Place, London WC1A 2EB, or by telephone (020 7979 7979), fax (020 7979 7978) or email (registry@catribunal.org.uk). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, QC (Hon)

Registrar

Published 16 June 2016