



COMPETITION APPEAL TRIBUNAL

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

**CASE NO. 1256/5/7/16**

Pursuant to rule 33(8) of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648), the Registrar gives notice of the receipt of a claim for damages (the “Claim”) on 28 April 2016, under section 47A of the Competition Act 1998, by (1) BMW AG; (2) Rolls-Royce Motor Cars GmbH; (3) Rolls-Royce Motor Cars Ltd; and (4) BMW (UK) Manufacturing Ltd (together, the “Claimants”) against (1) Pilkington Group Limited; and (2) Pilkington Automotive Limited (together, the “Defendants”). The Claimants are represented by Hausfeld & Co. LLP, 12 Gough Square, London EC4A 3DW (Reference: Anthony Maton).

The Claim arises from a decision of the European Commission (the “Commission”) (Case COMP/39.125 – Carglass) of 12 November 2008 relating to a proceeding under Article 81 of the EC Treaty (now Article 101 of the Treaty on the Functioning of the European Union) and Article 53 of the Agreement on the European Economic Area (“the Decision”).

In the Decision, the Commission found that the Defendants and other undertakings (the “Other Cartelists”) had participated in a cartel, inter alia, to fix the prices and allocate the supplies of car glass (the “Cartel”). The Commission further found that the anti-competitive practices of the Cartel were implemented and had effects in the European Union and the European Economic Area, therefore including the United Kingdom. The Cartel operated between 10 March 1998 and 11 March 2003 (the “Cartel Period”).

The Claimants all form part of the BMW AG group of companies which is, and was during the Cartel Period, an operational manufacturer of motor cars. The Claimants are and were at all material times original equipment manufacturers (“OEMs”). The Defendants supplied glass to OEMs for use in cars and light commercial vehicles (that is, vehicles under 3.5 tonnes).

According to the Claim, the Claimants made purchases of car glass from the Defendants and the Other Cartelists that were, by virtue of the Cartel, subject to overcharges and thereby suffered loss. The Claimants made further purchases of car glass from other companies who did not participate in the Cartel (the “Non-Cartelist Suppliers”). As a result of the existence and direct anti-competitive effect of the Cartel on the remainder of the market, the Non-Cartelist Suppliers were also not subject to real price competition. Instead, supplies by them to the Claimants were similarly subject to an overcharge (referred to as “the Umbrella Overcharge” in the claim form), thereby causing the Claimants loss.

Further, the Cartel had a continuing effect upon the price of car glass even after termination of the Cartel in the form of an overcharge (referred to as “the Run Off Overcharge” in the claim form) during the period of time it took for normal market forces to take effect. The Claimants made purchases of car glass from the Defendants, Other Cartelists and Non-Cartelist Suppliers that were subject to a Run Off Overcharge, and thereby suffered loss.

According to the Claim, insofar as the Defendants seek to argue that the amount the Claimants are entitled to recover in respect of the overcharges should be reduced to the extent the Claimants passed on such overcharges by directly or indirectly raising the prices for automobiles incorporating car glass, as a consequence of the overcharges paid by the Claimants to the Defendants and/or Non-Cartelist Suppliers, the Claimants will deny that such plea constitutes a defence in law and will in any event deny any such pass on.

To the extent the Defendants are successful in establishing both that they are entitled to rely on the pass on argument, and that some or all of the Claimants did in fact pass on the overcharges to their customers in whole or in part by means of higher prices, the Claimants will claim that as a consequence of any such pass on of the overcharges to its customers each relevant Claimant sold a reduced volume of its automobiles

during and after the Cartel Period. Each such relevant Claimant, if any, claims damages for profits on the difference between the volume of sales it in fact achieved during and after the Cartel Period but for the Cartel (referred to as “Volume Damages” in the claim form).

The Claimants claim:

- (1) Damages.
- (2) Interest.
- (3) Such further or other relief as may be appropriate.

Further details concerning the procedures of the Competition Appeal 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 Victoria House, Bloomsbury Place, London WC1A 2EB, or by telephone (020 7979 7979), fax (020 7979 7978) or email ([registry@catribunal.org.uk](mailto:registry@catribunal.org.uk)). Please quote the case number mentioned above in all communications.

*Charles Dhanowa OBE, QC (Hon)*  
Registrar

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