



## COMPETITION APPEAL TRIBUNAL

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

#### CASE NO. 1270/5/7/16

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 a claim for damages and an injunction (the “Claim”) on 30 September 2016, under section 47A of the Competition Act 1998 (the “Act”), by (1) Westpoint Group Trading Limited (the “First Claimant”); (2) FarmVets Southwest Limited (the “Second Claimant”); (3) Garth Pig Practice Limited (the “Third Claimant”); and (4) Retford Poultry Partnership Limited (the “Fourth Claimant”) (together, “the Claimants”) against (1) XL Farmcare UK Limited (the “First Defendant”); (2) XL Farmcare Wessex Limited (the “Second Defendant”); (3) XL Farmcare Devon & Cornwall Limited (the “Third Defendant”); (4) XL Farmcare South East Limited (the “Fourth Defendant”); (5) XL Farmcare Midlands Limited (the “Fifth Defendant”); and (6) XL Farmcare North Limited (the “Sixth Defendant”) (together, “the Defendants”). The Claimant is represented by DLA Piper UK LLP, 3 Noble Street, London EC2V 7EE (Reference: Alexandra Kamerling/Ilan Scherr).

The Claim arises from an alleged infringement of the Chapter I and Chapter II prohibitions contained in sections 2 and 18 of the Act. The Claimants have applied for fast-track designation of the proceedings pursuant to Rule 58 of the Tribunal Rules.

The Claimants are and were at all material times in the business of providing veterinary services for cattle, sheep, pigs and poultry throughout the UK, principally to farms.

The Second to Sixth Defendants are a number of veterinary practice groups which deliver and at all material times delivered Government veterinary work, including managing the supply of Tuberculosis Testing and other specified veterinary services for Government (“TB Testing”)<sup>1</sup> on behalf of the Animal & Plant Health Agency in England. Each of the regional XL entities namely the Second to Sixth Defendants was appointed by the Department for Environment Food and Rural Affairs (“DEFRA”) as a principal contractor to provide a fully managed delivery service for TB Testing and the supply of veterinary services to Government for a specific region in England (the “DEFRA Framework Agreement”). In each region, the Second to Sixth Defendant were respectively appointed as the sole primary contractor.

Previously the management and administrative coordination of TB Testing services was undertaken directly by the Government. In order to alleviate the public burden and costs, on 9 September 2014, DEFRA issued an Invitation to Tender for “The provision of fully managed service for the delivery tuberculin testing and the supply of veterinary services to government in England and Wales” (the “ITT”). The ITT divided the geographic area of England and Wales into 7 Lots – with 5 Geographic Lots in England and 2 in Wales – with the stated intention of awarding these Geographic Lots to a number of different suppliers in order to administer TB Testing across the whole of England and Wales under the DEFRA Framework Agreement.

Following the tendering process, the contract for the 5 English regions were each awarded to one of the Defendants as the sole primary contractor supplier as follows: (a) Lot 3 - South West 1 (Devon and Cornwall) - to the Third Defendant; (b) Lot 4 - South West 2 (Wessex) - to the Second Defendant; (c) Lot 5 - South East - to the Fourth Defendant; (d) Lot 6 - Midlands - to the Fifth Defendant; and (e) Lot 7 - North - to the Sixth Defendant.

According to the Claim, the First Defendant managed the tendering process for each of the Second to Sixth Defendants bidding to be appointed as a primary contractor for the DEFRA contract. Essentially the Defendants

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<sup>1</sup> Mycobacterium bovis, or bovine tuberculosis (“TB”) is a bacterial disease of major national and international significance to cattle populations and poses a significant risk to public health.

are an alliance of individual veterinary practices under a common brand which allows individual practices to share collective purchasing power, provide training, send representations to industry events and create tendering and bidding consortiums.

In summary, the Claimants allege that the Second to Sixth Defendants each hold a dominant position with regard to the award of sub-contracts to eligible veterinary practices to provide TB Testing to livestock in the 5 English regions. The 5 English regions correspond to the Geographic Lots where the Second to Sixth Defendants have been awarded a monopoly to provide a fully managed delivery service for TB Testing to Government for different Lots under the DEFRA Framework Agreement in 2014.

Furthermore, and in the alternative, the Claimants argue that the Defendants are collectively dominant with regard to the award of sub-contracts to eligible veterinary practices to provide TB Testing to livestock in England, as the First Defendant coordinates with the other Second to Sixth Defendants regarding the registration and allocation of provision of the TB Testing services by the Second to Sixth Defendants in each of the 5 English regions.

The Claimants contend that the Defendants have breached the Chapter II prohibition by imposing unfair trading conditions which prohibit the First Claimant from providing TB Testing services to its customers, thereby aiming to foreclose it from the market. Furthermore, the Defendants have breached the Chapter II prohibition by refusing to supply (or constructively refusing to supply) the Second Claimant with registration of two additional branches and the Third to Fourth Claimants with a subcontract to enable them to provide TB Testing services, thereby aiming to foreclose the market.

The Claimants further allege that the Defendants have breached the Chapter I prohibition by entering into an agreement, decision or concerted practice which has the object or effect of distorting competition by imposing unfair trading conditions on the First Claimant and by refusing to supply the Second to Fourth Claimants with a sub-contract or register additional veterinary practices to enable them to provide TB Testing services.

The Claimants claim:

- (1) Injunctive relief.
- (2) A declaration that each of the Defendants has: (a) entered into an anti-competitive agreement; and/or (b) abused a dominant position.
- (3) Damages.
- (4) Exemplary damages.
- (5) Costs and fees.
- (6) Interest.
- (7) Such further or other relief as deemed necessary and adequate by the Tribunal.

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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