



COMPETITION APPEAL TRIBUNAL

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

CASE NO. 1273/5/7/16

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 (the “Claim”) on 25 November 2016, under section 47A of the Competition Act 1998 (the “Act”), by Labinvesta Limited (“the Claimant”) against: (1) Dako Denmark A/S (“the First Defendant”); (2) Dako (UK) Limited (“the Second Defendant”); and (3) Agilent Technologies LDA UK Limited (“the Third Defendant”) (together, “the Defendants”). The Claimant is represented by Kings Chambers, 5 Park Square, Leeds, LS1 2NE (Reference: Adam Aldred).

The Claim arises from an alleged infringement of the prohibition on abuse of a dominant position contained in section 18 of the Act (“the Chapter II prohibition”). The Claimant has applied for fast-track designation of the proceedings pursuant to Rule 58 of the Tribunal Rules.

The Claimant is a limited company registered in England; since 2010 it has supplied equipment and consumables used to perform tests on samples from the human body to detect and diagnose medical conditions and monitor their treatment. The products are supplied to the Republic of Belarus (“Belarus”) and principally sourced from manufacturers in the USA, the UK, Germany, Denmark, China and Japan. The Claimant operates from Kent and Greater Manchester and through local market support from Minsk, Belarus.

According to the Claim, the First Defendant (a limited company registered in Denmark) is the market leader in the supply of tissue-based cancer diagnostics solutions, providing reagents, instruments, software and know-how for tissue-based cancer diagnostics and laboratory processes (the “Dako System”). The First Defendant manufactures and distributes the Dako System.

The Second Defendant distributes the Dako System in the UK. The Third Defendant wholly owns the Second Defendant and provides the First Defendant with compliance and legal advice, directing it as to the manner and means whereby the First Defendant distributes the Dako System in Europe.

In 2005, Tosilena ODO (“Tosilena”), a company incorporated in Belarus, became the authorised distributor of the Dako System in Belarus. In 2012, the First Defendant, the Claimant and Tosilena entered into an agreement for the supply of the Dako System in Belarus (“the Agreement”). The Agreement was implemented from 2012 to 2015.

According to the Claim, from 1 January 2016 the First Defendant wrongfully and unlawfully imposed on the Claimant and Tosilena variations of the terms of the Agreement. These included the termination of supplies to the Claimant. The Claimant also contends that since 17 October 2016 the Defendants have refused to supply legacy tenders and contracts successfully awarded to the Claimant prior to 31 December 2015.

The Claimant alleges that the Defendants hold a dominant position in the market for the supply of reagents for immunohistochemistry (IHC) tests for conducting cancer diagnostics in Belarus, which includes (i) pharma tests which are co-developed with a pharmaceutical company and used to test a specific treatment; and non-pharma tests which are used for general diagnosis of cancer cells and that the Defendants’ conduct, including the refusal to supply, constitutes an abuse of a dominant position and an infringement of the Chapter II prohibition.

The Claimant claims:

- (1) A declaration that the conduct of the Defendants infringed and continues to infringe the Chapter 2 prohibition.
- (2) An interlocutory injunction to restrain the Defendants until trial from the abusive conduct.

- (3) A final injunction to the restrain the Defendants from the abusive conduct for 24 months or such other period as the Tribunal shall determine.
- (4) An account of losses.
- (5) Damages for breach of the Chapter II prohibition.
- (6) Interest due to the Claimant at such rate and for such period as the Tribunal shall in its discretion determine.
- (7) Such further or other relief as the Tribunal considers appropriate.
- (8) Costs.

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

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