



COMPETITION APPEAL TRIBUNAL

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

Case No: 1331/5/7/19

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 11 September 2019, under section 47A of the Competition Act 1998 (the “Act”), by Ensign Bus Company Limited (the “Claimant”) against London Southend Airport Company Limited (the “Defendant”). The Claimant is represented by Stone King LLP, 13 Queen Square, Bath, BA1 2HJ (Reference: Antony Pidgeon).

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 is a company incorporated in England and Wales, which trades under the name “Ensignbus”. Its principal business activities comprise the buying and selling of buses and the operation of a range of bus services, including local bus services, private hire services and rail replacement services.

The Defendant is a company incorporated in England and Wales and is a subsidiary of Stobart Aviation Limited, the aviation division of Stobart Group Limited. The Defendant operates and manages London Southend Airport (the “Airport”), which is an international airport situated in the Rochford District in Essex that serves destinations in the United Kingdom and Europe. The Defendant has control over access by third parties to the Airport’s ‘landside’ infrastructure and facilities, including its roads and forecourts, pursuant to The London Southend Airport Byelaws 1997 (the “Byelaws”). One of the Byelaws prohibits persons from carrying on a business, selling or distributing anything, offering anything for sale or hire or making any offer of services whether or not for reward without the Defendant’s permission. Contravention of the Byelaws is a criminal offence.

According to the Claim, there is a train service operated by a train operating company between London Liverpool Street station and a dedicated train station at the Airport, and there are local bus services that operate between Southend and Stansted Airport, between Landwick/Great Wakering and Rayleigh station and between Shoeburyness and Rayleigh station. Consequently, the only option for a passenger wishing to travel by public transport between central London and the Airport is the train service.

The Claimant wishes to provide a passenger bus service between London Victoria station and the Airport in the early morning before the first timetabled train, in the late night after the last timetabled train, and an additional service for flights that are delayed beyond the time of the last train (the “Proposed Service”).

According to the Claim, the Defendant is refusing to permit the Claimant to access facilities at the Airport that are necessary for the operation of the Proposed Service. The Claimant alleges that the Defendant holds a dominant position in the “upstream” market for the supply of access to the physical infrastructure and facilities at the Airport, including its roads and forecourts and the bus stop located on the Airport’s land. The Claimant contends that the Defendant’s conduct prevents the emergence of a new service in the “downstream” market for travel services between the Airport and central London which would provide additional choice for consumers wishing to use public transport to and from the Airport, applies dissimilar conditions to equivalent transactions with other trading parties (thereby placing the Claimant at a competitive disadvantage), and/or constitutes a refusal to supply access to an essential facility necessary in order for the Claimant to provide a commercial passenger service between the Airport and central London. The Claimant alleges that this conduct constitutes an abuse of a dominant position and an infringement of the Chapter II prohibition.

The Claimant has applied for fast-track designation of the part of the proceedings relating to the issue of abuse, pursuant to Rule 58 of the Tribunal Rules.

The Claimant seeks:

- (1) An injunction preventing the Defendant from excluding the Claimant from the Airport's facilities for the purposes of operating the Proposed Service.
- (2) Damages to be assessed.
- (3) Interest on damages.
- (4) Such further or other relief as the Tribunal may think fit.
- (5) 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) 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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