COMPETITION APPEAL TRIBUNAL

NOTICE OF AN APPLICATION TO COMMENCE COLLECTIVE PROCEEDINGS UNDER SECTION 47B OF THE COMPETITION ACT 1998

CASE NO. 1339/7/7/20

Pursuant to rule 76(8) of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) ("the Rules"), the Registrar gives notice of the receipt on 20 February 2020 of an application to commence collective proceedings, under section 47B of the Competition Act 1998 ("the Act"), by Mark McLaren Class Representative Limited (the "Applicant/Proposed Class Representative") against (1) MOL (Europe Africa) Ltd, (2) Mitsui O.S.K. Lines Limited, (3) Nissan Motor Car Carrier Co. Ltd, (4) Kawasaki Kisen Kaisha Ltd, (5) Nippon Yusen Kabushiki Kaisha, (6) Wallenius Wilhelmsen Ocean AS, (7) EUKOR Car Carriers Inc, (8) Wallenius Logistics AB, (9) Wilhelmsen Ships Holding Malta Limited, (10) Wallenius Lines AB, (11) Wallenius Wilhelmsen ASA and (12) Compañía Sudamericana de Vapores S.A. (together, "the Respondents/Proposed Defendants"). The Applicant/Proposed Class Representative is represented by Scott+Scott UK LLP, St. Bartholomew House, 90-94 Fleet Street, London, EC4Y 1DH (Reference: Belinda Hollway).

The Applicant/Proposed Class Representative makes an application for a collective proceedings order permitting it to act as the class representative bringing opt-out collective proceedings for UK-domiciled persons who fall within the proposed class definition and opt-in collective proceedings for non-UK domiciled persons who meet the proposed class definition ("the Application").

The proposed collective proceedings would combine follow-on claims for damages under section 47A of the Act caused by the Respondents'/Proposed Defendants' breach of statutory duty in infringing Article 101(1) of the Treaty on the Functioning of the European Union ("TFEU") and Article 53 of the Agreement on the European Economic Area ("EEA Agreement"), as determined by the European Commission ("the Commission") in an infringement decision adopted on 21 February 2018 (Case AT.40009 – Maritime Car Carriers) ("the Settlement Decision").

The Application states that the central finding of the Commission in the Settlement Decision is that there was a cartel in the market for deep sea carriage services on route to and/or from the European Economic Area ("EEA"). The cartel involved all of the Respondents/Proposed Defendants and operated between 18 October 2006 and 6 September 2012 ("the Cartel Period"). The Settlement Decision finds that the Respondents/Proposed Defendants were involved in horizontal anti-competitive and collusive arrangements concerning deep sea car carrier services (which included market sharing, price fixing, customer allocation and capacity reduction) aimed to preserve the Respondents'/Proposed Defendants' position in the market and to maintain or increase prices, including by resisting requests for price reduction from certain customers.

The proposed class includes all persons (other than certain excluded persons) who between 18 October 2006 and 6 September 2015 ("the Relevant Period") purchased or financed in the UK new cars or light-medium weight commercial vehicles (other than those produced by certain excluded brands) and were required to pay an unlawfully inflated delivery charge in respect of those vehicles as a result of the Respondents'/Proposed Defendants' unlawful and anti-competitive conduct.

According to the Application, the claims raise common issues which comprise: (i) whether the Tribunal has jurisdiction over the claims; (ii) what relevant substantive law(s) is/are applicable to the claims; (iii) what the relevant limitation period(s) is/are; (iv) whether and to what extent the infringements of Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement identified in the Settlement Decision had an impact on the price at which deep sea carriage services for new vehicles were provided in the Cartel Period (the extent of the "Price Impact"); (v) whether, to what extent and for how long the Price Impact persisted after the end of the Cartel Period; (vi) the aggregate volume of commerce affected by the Price Impact; (vii) whether and to what extent the Price Impact was passed on to proposed class members; (viii) whether interest should be

awarded on a simple or compound basis; and (ix) the rate of interest to be awarded to proposed class members.

The Applicant/Proposed Class Representative submits that it is just and reasonable for it to act as class representative because:

1. The Applicant/Proposed Class Representative will act fairly and reasonably in the interests of the class members:

   (a) The Applicant/Proposed Class Representative has been incorporated as a special purpose vehicle ("SPV") for the sole purpose of acting as the class representative in the proposed collective proceedings. The benefits of using an SPV include limiting Mr McLaren's personal liability, as well as having succession and accounting benefits.

   (b) Mr McLaren is the sole director and member of the Applicant/Proposed Class Representative. Mr McLaren is a suitable person to have sole control of the Applicant/Proposed Class Representative and manage the proposed collective proceedings effectively due to his professional experience working in a number of consumer protection roles. He has also arranged for a small group of advisers to sit on an Advisory Committee in order to assist and act as a sounding board for him in respect of the proposed collective proceedings.

   (c) The Applicant/Proposed Class Representative has instructed a team of legal and expert advisers who comprise highly experienced competition litigators, an experienced econometric expert and leading automotive industry experts.

   (d) The Applicant/Proposed Class Representative has developed a comprehensive litigation plan as required by Rule 78(3)(c) of the Rules.

   (e) The Applicant/Proposed Class Representative has entered into a litigation funding agreement to fund the costs of the proposed collective proceedings and has agreed a comprehensive budget in connection with the funding arrangements.

2. The Applicant/Proposed Class Representative does not have a material interest that is in conflict with the interests of the proposed class members and is not a member of the proposed class.

3. The Applicant/Proposed Class Representative has sufficient funding arrangements in place to pay the Respondents'/Proposed Defendants' recoverable costs if ordered to do so.

4. At the time of filing the Application, the Applicant/Proposed Class Representative is not aware of any other applicant seeking approval to act as the class representative in respect of the same claims.

The Application states that the claims are suitable to be brought in collective proceedings because:

1. The proposed collective proceedings are an appropriate means for the fair and efficient resolution of the common issues. The likely size of the proposed class and expected magnitude of recovery expected per vehicle are such that it would be inefficient to require each claim to be brought individually and for an individual action to be worthwhile.

2. Although the costs associated with the proceedings are substantial, the amounts which the proposed class collectively stands to gain by the proceedings are also large, such that the costs should properly be regarded as proportionate.

3. The Applicant/Proposed Class Representative is aware that three claims have been brought in the High Court in relation to car carrier services by car manufacturers. Notwithstanding these claims by car manufacturers, it remains the case that, as delivery costs are ultimately paid by the purchaser or lessee of a new vehicle, the proposed collective action is required in order to enable the true victims of the anti-competitive conduct to obtain the compensation that they are entitled to.

4. The claims are suitable for an aggregate award of damages because it is possible to estimate the overcharge which was actually passed on to and incurred by proposed class members based on historical data. An aggregate award of damages will enable victims of the Respondents'/Proposed Defendants' anti-competitive conduct to recover damages where they might otherwise not be able to.

5. It does not appear to the Applicant/Proposed Class Representative that there are any other means available for resolving the dispute.

According to the Application, the proposed collective proceedings should proceed on an opt-out basis in so far as UK-domiciled persons are concerned because the claims have a real prospect of success and it is impracticable for the proceedings to be brought on an opt-in basis. The inclusion of the opt-in element for persons who are not domiciled in the UK is possible and cost effective to the extent that the proposed collective proceedings are anyway being brought for the benefit of the opt-out element of the proposed class. The requirement that, in order to opt-in, the person in question must have purchased or financed a new car within the UK means that all opt-in claimants will have a nexus to the UK.

The relief sought in these proceedings is:

(1) An aggregate award of damages on behalf of the proposed class;
(2) Compound interest by way of damages or, alternatively, simple interest pursuant to section 35A of the Senior Courts Act and Rule 105(3) of the Rules, at such rate(s) and for such period(s) as the Tribunal deems fit; and
(3) The Applicant/Proposed Class Representative's costs, pursuant to Rule 104 of the Rules.

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 Salisbury Square House, 8 Salisbury Square, London EC4Y 8AP, 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
Published 1 April 2020