



COMPETITION APPEAL TRIBUNAL

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

CASE NO. 1289/7/7/18

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 17 July 2018 of an application to commence collective proceedings, under section 47B of the Competition Act 1998, by Road Haulage Association Limited (the “Applicant/Proposed Class Representative” or “RHA”) against MAN SE, MAN Truck & Bus AG, MAN Truck & Bus Deutschland GMBH, Fiat Chrysler Automobiles N.V., CNH Industrial N.V., Iveco S.P.A., Iveco Magirus AG, PACCAR Inc., DAF Trucks N.V. and DAF Deutschland GmbH (together, “the Respondents/Proposed Defendants”). The Applicant/Proposed Class Representative is represented by Backhouse Jones Solicitors, The Printworks, Hey Road, Clitheroe, Lancashire, BB7 9WD (Reference: Steven Meyerhoff/James Lomax) and Addleshaw Goddard LLP, Milton Gate, Chiswell Street, London, EC1Y 4AG (Reference: Bruce Kilpatrick/Mark Molyneux).

The Applicant/Proposed Class Representative makes an application for a collective proceedings order (“CPO”) permitting it to act as the class representative bringing opt-in collective proceedings (“the Application”).

The proposed collective proceedings would combine follow-on actions for damages arising from a decision of the European Commission (the “Commission”) of 19 July 2016 (Case AT.39824 - Trucks) relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union (“TFEU”) and Article 53(1) of the Agreement on the European Economic Area (“EEA”) (“the Decision”).

In the Decision, the Commission found that the Respondents/Proposed Defendants and other European truck manufacturers engaged in a single and continuous infringement of Article 101(1) TFEU and Article 53(1) of the EEA Agreement comprising collusive arrangements on pricing and gross price increases in the EEA, as well as collusive arrangements on the timing and passing on of costs for the introduction of emission technologies for relevant trucks required by Euro 3 to 6 standards. The infringement covered the entire EEA from 17 January 1997 until 18 January 2011.

The proposed class is any person who between 17 January 1997 and the date of the Rule 81 Notice (the “Relevant Period”) purchased or leased for road haulage operations new or pre-owned medium or heavy trucks either (a) registered in the United Kingdom or (b) registered in an EEA Member State other than the United Kingdom provided the person belongs to a group of companies which also purchased or leased such trucks registered in the United Kingdom during the Relevant Period, subject to excluded categories.

According to the Application, the following common issues arise in respect of the proposed class: (i) confirmation that the Tribunal has jurisdiction over the claims; (ii) the relevant substantive law(s) applicable to the claims; (iii) the relevant limitation period(s) applicable to the claims; (iv) the extent to which the cartel had an impact on EEA gross list prices; (v) whether and to what extent the cartel had an impact on UK (and other country) list prices through the cartel’s impact on EEA gross list prices or otherwise; (vi) whether and to what extent the cartel had an impact on prices paid by road haulage operators for new medium and heavy trucks manufactured by the cartel members either through the cartel’s impact on EEA and/or country list prices and/or because of other areas on which the cartel members coordinated; (vii) whether and to what extent the cartel had an impact on prices paid by road haulage operators for new medium and heavy trucks manufactured by non-cartel members; (viii) whether and to what extent the cartel had an impact on prices paid by road haulage operators for pre-owned medium and heavy trucks; (ix) whether and to what extent the cartel otherwise had an impact on costs borne by road haulage operators; (x) whether and to what extent the cartel had an impact on prices paid by road haulage operators for medium and heavy trucks or costs borne by road haulage operators during any run-off period; (xi) the appropriate interest rate at which to adjust

damages suffered by road haulage operators in the past to compensate for the passing of time, additional finance costs, and/or a loss of return on investment; and (xii) whether interest should be awarded on a simple or compound basis.

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

- (a) The RHA will fairly and adequately act in the interests of the class members for reasons including: the RHA, a company limited by guarantee and without share capital, is a substantial not-for-profit trade association dedicated to the interests of the road haulage industry and the only trade association in the United Kingdom dedicated to the interests of the road haulage industry; it has the organisational and representational skills required; is a large well-resourced association; and has a legal team with considerable experience in the areas of transport, logistics, competition law, large multi-party disputes, and group litigation. It has entered into a Litigation Funding Agreement with a leading third-party litigation funder; and it has approved a Litigation Plan that satisfies the criteria laid down in Rule 78(3)(c) of the Rules.
- (b) The RHA is not a class member and does not have a material interest that is in conflict with the interests of the proposed class members.
- (c) While the RHA is aware that a competing CPO application was submitted by UK Trucks Claim Limited, the RHA submits that it is the most suitable to be appointed as class representative.
- (d) The RHA has sufficient funding arrangements in place in order to ensure that it will be able to pay the Respondents/Proposed Defendants' recoverable costs if ordered to do so.
- (e) No interim injunction is sought and so the ability to satisfy an undertaking as to damages is not relevant.

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

1. There is a large number of common issues across the proposed class that can fairly and efficiently be dealt with in collective proceedings.
2. As at 15 June 2018, almost 3,500 proposed class members had signed up to the RHA's proposed collective proceedings, while a further almost 700 had registered their interest. Assuming that the Tribunal is minded to grant the CPO, it is expected that the number of claimants opting in to the proposed collective proceedings will increase materially.
3. As the majority of the proposed class members are micro, small, and medium sized businesses, it would not be practicable from the perspective of costs or resources for such businesses to bring what would be complex competition law damages actions on an individual basis.
4. Although the level of damages remains to be assessed, even a relatively modest percentage increase in relevant truck prices as a result of the infringement will lead to a sizeable overall claim relative to the costs of bringing collective proceedings.
5. The individual claims issued in the High Court do not detract from the utility of bringing collective proceedings on behalf of the proposed class.
6. The proposed class definition is clear and simple. Accordingly, it will be possible for any person to determine whether or not they are a member of the proposed class and for the Tribunal and the parties to verify that any person opting in is a proper class member.
7. The impact of the infringement can be assessed pursuant to well-established common methodologies enabling the individual loss suffered by each proposed class member to be estimated so that damages can be awarded which restore the proposed class members to the position they would have been in absent the infringement.

8. It is two years since the Decision and the addressees have not taken any steps to provide voluntary redress.

According to the Application, it is practicable for the proceedings to be brought in “opt-in” collective proceedings. The amount of damages likely to be recoverable in respect of each relevant truck is sufficiently large that proposed class members are likely to opt-in; there will be no difficulty in identifying proposed class members due to the records held by UK vehicle agencies; and the RHA has the means and resources to identify and contact the proposed class members.

The relief sought in these proceedings is:

- (1) Damages;
- (2) Compound interest;
- (3) Alternatively, simple interest; and
- (4) 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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