



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1643/7/7/24

BETWEEN:

WATERSIDE CLASS LIMITED

Claimant

- v -

(1) MOWI ASA
(2) MOWI HOLDING AS
(3) GRIEG SEAFOOD ASA
(4) SALMAR ASA
(5) LERØY SEAFOOD GROUP ASA
(6) SCOTTISH SEA FARMS LIMITED

Defendants

REASONED ORDER (SERVICE OUT)

UPON reading the Claimant's Collective Proceedings Claim Form dated 20 June 2024 and the Claimant's application of the same date for permission to serve the Collective Proceedings Claim Form and associated documents ("**Claim Documents**") on the First, Second, Third, Fourth and Fifth, proposed Defendants out of the jurisdiction pursuant to Rule 31(2) of the Competition Appeal Tribunal Rules 2015 (the "**Tribunal Rules**")

AND UPON the Tribunal having read the witness statement of John Patrick Boylan dated 20 June 2024, made in support of the Rule 31(2) application, and exhibits thereto.

IT IS ORDERED THAT:

1. The Claimant has permission to serve the Claim Documents out of the jurisdiction on:
 - (a) The First Defendant at Sandviksboder 77AB, 5035 Bergen, Norway;
 - (b) The Second Defendant at Sandviksboder 77A, 5035 Bergen, Norway;

- (c) The Third Defendant at C. Sundts gate 17/19, 5004 Bergen, Norway;
- (d) The Fourth Defendant at Industriveien 51, 7266 Kverva, Norway;
- (e) The Fifth Defendant at Thormøhlens gate 51B, 5006 Bergen, Norway.

Together, the “**Service Out Defendants**”.

2. This Order is made without prejudice to the rights of the Service Out Defendants to dispute the Tribunal's jurisdiction pursuant to Rule 34 of the Tribunal Rules and/or validity of the service pursuant to paragraph 3. Any such application should take account of the observations set out in *Epic Games, Inc v Apple Inc.* [2021] CAT 4 at [3].
3. The Claimant has indicated that it intends to serve the Claim Documents out of the jurisdiction:
 - (a) on all the Service Out Defendants, by postal service under the 1931 Convention Between His Majesty in Respect of the United Kingdom and His Majesty the King of Norway regarding Legal Proceedings and Civil Commercial Matters; and/or
 - (b) under the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters; and/or
 - (c) on any of the Service Out Defendants that agree to be served by another means of service permissible under English and Norwegian law, by that other means of service.
4. There shall be no order as to costs.

REASONS

1. The Claimant is a Proposed Class Representative which is seeking a collective proceedings order against the Defendants. It is a special purpose vehicle created to pursue the proposed class action, with Anne Elizabeth Heal as the sole director. The proposed class is:

“All Persons (other than Excluded Persons) who between 1 October 2015 and 31 May 2019 (inclusive) purchased Salmon Products for the purpose of Personal Consumption from Grocery Retailers in the United Kingdom, together with the Personal or Authorised Representative of the estate of any individual who meets that description and would be in the class but for their death”.

2. The Salmon Products are defined by reference to farmed Atlantic Salmon and the definition of Personal Consumption indicates the class is seeking to describe the general public who have purchased salmon from retail outlets between the relevant dates.
3. Permission to serve out of the jurisdiction is sought in respect of the First, Second, Third, Fourth and Fifth Defendants in Norway.
4. The relevant legal principles for applications to serve defendants out of the jurisdiction in Tribunal cases are summarised in *Epic Games Inc and others v. Apple Inc and Others* [2021] CAT 4 [78]. In short, they involve determinations of whether:
 - (a) There is a serious issue to be tried on the merits of the claim. This is a test of whether there is a real as opposed to fanciful prospect of success on the claim.
 - (b) There is a good arguable case that the claim falls within one of the “gateways” set out in CPR Practice Direction 6B at paragraph 3.1.
 - (c) In all the circumstances, England and Wales is clearly or distinctly the appropriate forum for the trial of the claim.
5. In separate proceedings (Case No 1632/5/7/24) the President of this Tribunal, in a reasoned order of 7 February 2024, gave permission for 10 Claimants, being large retailers, to serve a claim form on parties which are the First, Third, Fourth and Fifth Defendants in these proceedings. That claim raises similar allegations, being a claim for damages arising out of what is said to be an unlawful cartel relating to the pricing of Atlantic Salmon.
6. This claim alleges that the NASDAQ Spot Price is a key reference point for both Spot Sales and Contract Sales relating to the Salmon Products. It is contended that between April 2013 and February 2019 the NASDAQ Spot Price rose as a result of unlawful collusion between the Defendants. The unlawful collusion is said to comprise *inter alia* manipulated transactions between the Defendants and the exchange of commercially sensitive information. In support of the allegations, the Claimant relies upon public statements made in the context of a European Commission Investigation expressing a preliminary view that undertakings comprising the Defendants had breached EU antitrust rules. The Claimant also relies upon the existence of two class actions concerning the First to Fifth Defendants which were settled for significant sums in the Southern District of Florida and documents published in the course of those proceedings which are said to evidence unlawful exchanges between the Defendants. Reliance is also placed upon a Canadian Federal Class Action which was settled.

7. The Claimant relies upon an expert report prepared by Messrs Robin Noble and Joseph Bell of Oxera setting out a methodology to determine loss on a class wide basis.
8. In the light of the assertions made in the Collective Proceedings Claim form and the evidence provided *ex parte*, I consider that the claim has a real prospect of success and that there is a serious issue to be tried.
9. As to “gateways”, the Claimant relies upon paragraphs 3.1(9)(a) (damage sustained within the jurisdiction), 3.1(9)(c) (tortious claim governed by UK law) and 3.1(3) (anchor defendants) of Practice Direction 6B of the CPR. I consider there to be a good arguable case that the claim articulated in the Claim Form falls within these “gateways”.
10. The Claimant contends that the proceedings are to be treated as taking place in England and Wales. The claim concerns the sale of Atlantic Salmon to consumers in the United Kingdom, with the greater part of the class being domiciled in England and Wales. The PCR is incorporated under the laws of England and Wales, as is the Sixth Defendant. Based on the evidence adduced *ex parte*, it seems likely that England and Wales is the appropriate forum for this claim. An argument may be raised by the Defendants that Scotland is the appropriate forum within the United Kingdom. Nevertheless, and for the purpose of service out only, I determine that these are proceedings in England and Wales.
11. By Rule 18 of the Competition Tribunal Rules 2015, the Tribunal may, after taking account of the observations of the parties at any time determine whether any proceedings or part of any proceedings are to be treated as proceedings in England and Wales, in Scotland or in Northern Ireland.
12. I am satisfied that this Tribunal is the proper place in which to bring the claim. The Tribunal has, by statute, a UK jurisdiction and I am satisfied that the UK is clearly and distinctly the appropriate forum for the trial of this claim.
13. Accordingly, I grant the application for service out of the jurisdiction.