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External Lawyer Communication

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Note On Collective Proceedings To Be Brought By Road Haulage Association As Representative

This Note describes legal team working on the proposed collective proceedings to be brought by the Road Haulage Association Limited (“RHA”) acting as class representative on behalf of its members and other truck purchasers before the Competition Appeal Tribunal (“CAT”) against European truck manufacturers found to have been involved in a 14-year price-fixing cartel across Europe.

The RHA would be supported by an experienced legal team in bringing collective proceedings before the CAT. The external legal team will be led by industry-specialist law firm Backhouse Jones. Backhouse Jones’ lawyers include seasoned litigators with experience of competition law matters. Backhouse Jones’ industry specialism will assist not only in understanding the factual basis for the claim but also in “book building” from the outset and during the matter. Their considerable claims handling experience for large clients and ability to ramp up capacity as needed will be beneficial in gathering evidence from the large numbers of hauliers expected to opt in to the action, as well as in dealing with disclosure. Backhouse Jones will be supported by senior commercial litigation and competition law specialists from Exchange Chambers who will adopt a hands-on approach, as well as by James Flynn QC from Brick Court chambers. The commercial and competition lawyers at Exchange chambers have considerable experience of working within the law-firm environment at partner level.

A. Backhouse Jones

Backhouse Jones is the UK’s leading firm of solicitors dealing with the transport industry. Chambers & Partners UK has created a national transport category for Backhouse Jones, with Backhouse Jones sitting exclusively within that category. Chambers & Partners UK describes Backhouse Jones as “*the premier firm dealing with road transport*” and having “*far and away the biggest market share of any firm in this field*”.

The firm has a strong heritage within the transport industry and provides industry-specific advice to its portfolio of transport clients ranging from multi-nationals to entrepreneurial start-ups. Backhouse Jones equally provides legal advice to many of the major transportation trade associations. Given the firm’s experience, the Olympic Delivery Authority consulted the firm on the question of logistics prior to the London Olympics 2012.

Backhouse Jones provides advice across the full range of legal issues, emphasising the importance of consistent strategic focus for its clients. The firm provides day-to-day legal advice, as well as advising on bet-the-company matters.

Backhouse Jones has represented hauliers at every judicial level from the County Court through the Court of Appeal and House of Lords and up to and including the European Courts of Justice. The European Court of Justice case resulted in codification of tachograph legislation for the haulage industry. Examples of representing clients in complex litigation include (a) representing operators in multi-million pound claims for compensation from the UK Government arising out of the foot-and-mouth crisis; and (b) instigating 164 simultaneous judicial review cases with regard to a concessionary bus fare dispute.

Backhouse Jones works for all five of the largest multinational bus companies operating in the United Kingdom to handle self-insured litigation and complex regulatory issues. Backhouse Jones has also in the past had two multi-national logistics companies outsource their entire self-insured claims function to them, handling approximately 4,000 claims per annum on behalf of the two companies and demonstrating their capacity and experience in handling volume litigation. Claims handling for these operators is combined with approximately 1,600 litigated files per year on behalf of retainer clients and trade association members.

Moreover, the firm has advised transport clients on competition-related matters, covering merger control, abuse of dominance, and restrictive agreements.

Steven Meyerhoff

Steven Meyerhoff is a Director of Backhouse Jones and heads up the Commercial Litigation Department. Steven completed his training contract with Backhouse Jones, qualifying as a solicitor in 2005. His legal career has been entirely transport focused, covering all sectors of the industry.

Steven's practice encompasses a broad range of commercial disputes within the transport industry, including:

- Contract of carriage/goods in transit issues
- Sale of goods
- Vehicle acquisition disputes
- HM Revenue & Customs
- Shareholder/partnership disputes
- Negligence
- Misrepresentation
- Warranty claims
- High value recoveries/loss of use
- Company disputes
- Property disputes

Steven has represented transport operators in assorted High Court litigation. Representative matters including bringing judicial review proceedings on behalf of multiple bus and coach operators against concessionary fares schemes imposed by various local government entities, bringing over 150 claims against local authorities in relation to underpayments of monies owing to local concession reimbursement schemes, and acting for an operator to recover a significant unpaid debt from a major supermarket chain.

Steven has worked on a number of competition law matters during his career, including representing a bus operator in merger control proceedings before what is now the Competition and Markets Authority, advising a large London operator on competition issues in relation to union negotiations, providing counsel to a trade association in connection with an information exchange programme, and advising a coach operator in relation to an abuse of dominance complaint.

Steven has a broad client base ranging from small businesses to large multinational PLCs within both the haulage and passenger carrying sectors. Steven also acts for and represents trade associations in varying sectors within the transport industry and regularly delivers training and support to trade associations and their members.

Jonathon Backhouse

Jonathon Backhouse is a Director at Backhouse Jones, where he focuses on transport regulatory law and related litigation. He is recognised in the *Independent Chambers Guide to the Legal Profession* as a leader in the field of road transport law and is described as having “cover to cover knowledge in the road transport sector”.

Jonathon has undertaken a large number of significant cases on behalf of transport operators. This has included representing a haulier in an alleged illegal exporting of arms to a foreign country through to codifying tachograph legislation in the House of Lords in *Wing v Nuttall*. Many of the cases he undertakes are in upper tribunals, including the Transport Tribunal, Court of Appeal, Administrative Court, and other appellate courts.

Jonathon’s breadth of experience means he is often consulted in the most complex and high profile cases. He was, for example, chosen to represent the bus company that was targeted during the 7 July bombings in London.

Jonathon led the team that handled in excess of 150 simultaneous claims relating to the judicial review against the Secretary of State for Transport on behalf of a number of national bus operators which claimed they were not properly reimbursed for the carriage of concessionary passengers. His ability to manage a team through the implementation of systems ensured a successful outcome of the judicial reviews. Jonathon’s leadership and focus on meeting strategic objectives by measurable results ensures that he is regularly appointed to lead and manage teams to deliver large and complex legal projects through the setting of high standards and a clear sense of purpose.

Jonathon’s objective is always the pursuit of excellence on behalf of his clients and the need to eliminate as many risks as possible by ensuring his team undertakes relentless groundwork to ensure their trust is well placed.

Ian Jones

Ian Jones is Director at, and one of the founders of, Backhouse Jones. Ian qualified as a solicitor at a commercial practice in Manchester and following qualification decided to specialise in insurance litigation representing both insurers and self-insured undertakings.

In 1993, a multinational bus operator became self-insured and retained Ian to defend insurance-related litigation issued against the group. This is a professional relationship that has continued to date. Ian was subsequently consulted by other multinational bus operators to replicate the formula of taking back control of volume litigation. Ian has also overseen a three-year contract to reinvigorate the business model for dealing with insurance litigation and claims handling on behalf of large logistics businesses.

Ian and long-standing colleague James Backhouse established Backhouse Jones in 1999 with a view to developing a unique brand recognised throughout the transport industry.

Ian sits on the Council of the Confederation of Passenger Transport (“CPT”) and is Chairman of the CPT Suppliers committee; is a director of the Institute of Road Transport Engineer (“IRTE”); and in 2014 was appointed a trustee of the Society of Engineers. He is a regular speaker at seminars hosted by the CPT, the Road Haulage Association, the Freight Transport Association, IRTE, and the Society of Operations Engineers. He is also a regular contributor to articles in the industry trade media such as Commercial Motor, Motor Transport, Coach and Bus Week, Route One, and Transport Engineer.

B. James Flynn QC at Brick Court Chambers

James Flynn QC is a leading competition law litigator at the London Bar. His wide experience at the Bar builds on his years of practice at a magic circle law firm in London and Brussels, together with his work as a Legal Secretary at the European Court of Justice. Current high profile cases in London include acting for Sky in the long-running Pay TV litigation and for GSK in its appeal against the UK’s first pharmaceutical patent reverse settlement proceedings. He has considerable expertise concerning the interface between Competition and Intellectual Property law, particularly on the licensing of standard essential patents and FRAND terms (acting for Qualcomm, IP Com and Samsung). Significant Competition Appeal Tribunal appeals in recent years include acting for BMI in relation to the Private Healthcare Market Investigation; for Aer Lingus in its long-running dispute over Ryanair’s hostile shareholding; and for Asda in the successful appeals against the OFT’s Tobacco decision.

His considerable experience of competition damages cases embraces follow-on (public examples include synthetic rubber and LCD screens) and standalone actions in the High Court, including acting for Intrepreneur in *Courage v Crehan*, the first standalone damages case to go to full trial in the United Kingdom, and for Cardiff Bus in the first follow-on damages action to come to trial and to lead to a damages award. He also appeared in the leading cases on the interaction between criminal law and competition law.

Recent appearances in competition cases in Luxembourg include cartel appeals and the interchange fees litigation. Notable previous EU cases include the leading authority on legal privilege in competition proceedings (Akzo Nobel) and the landmark Microsoft appeal.

Further details on James’ experience can be found at <http://www.brickcourt.co.uk/people/profile/james-flynn-qc>.

C. Exchange Chambers

Exchange Chambers is an award-winning set of chambers, consistently ranked as a leading national set with a proven track record in all major areas of law. With over 155 members, including 16 silks, many of its barristers are recognised leaders in their own specialist fields. Members of Exchange Chambers working on this matter would include Mark Cawson QC and Stephen Connolly on the commercial litigation side and David Went on the competition law side. Mark, David, and Stephen would work with other barristers within chambers on the competition law and commercial litigation side as needed.

Barristers at Exchange Chambers would adopt a hands-on approach to the litigation and, in the case of David Went and Stephen Connolly, would bring with them a wealth of experience gained in the law-firm environment.

David Went

David was recognised as one of the UK's leading competition lawyers worldwide under 45 years old (and among only a select number of barristers) in Who's Who Legal: Competition – Future Leaders 2017. He was previously named in Global Competition Review's list of the leading 40 competition law specialists under 40 years' old worldwide in 2012 and has consistently been ranked in the leading legal directories since 2010, including a top tier ranking in Chambers & Partners.

David has worked solely on EU/UK competition law matters for the entirety of his 17-year legal career both at the bar and in the law firm environment. Prior to returning to his roots as a barrister during 2015 (having originally been called to the bar in 1999), David's considerable competition law experience has been acquired at two leading US law firms in Brussels and London, most recently as partner at Sidley Austin LLP.

David has worked on numerous competition law damages actions and EU/UK cartel cases before both the European Commission and the UK's Competition and Markets Authority (formerly the Office of Fair Trading). Cartel cases before the European Commission have included investigations into copper fittings, bathroom products, cathode ray tubes, LCDs, submarine/underground power cables, while cartel cases before the UK authorities have included ebooks, bathroom products, and health & beauty products. Recent competition law litigation cases have included High Court damages actions following on from the European Commission's decision in industrial bags and claims against Google for abuse of dominance.

David is based at Exchange Chambers (Leeds, Manchester, and Liverpool) and at a leading commercial/chancery set of chambers in London (Three Stone). Further details on David's experience can be found at <http://www.exchangechambers.co.uk/barristers/david-went>.

Mark Cawson QC

Mark Cawson QC has consistently been recognised as a leading QC in the Legal 500, and as a Band 1 QC in in the fields of Commercial Dispute Resolution, Chancery, Insolvency/Restructuring and Professional Negligence in Chambers and Partners UK Bar Guide which describes him as: "*a leading commercial silk with highly regarded*

expertise in a broad spectrum of commercial disputes, who acts for significant public sector clients and private companies.”

Mark has over 33 years’ experience of increasingly complex commercial disputes, frequently raising complex and difficult issues in respect of the recovery and quantification of damages, and involving long trials.

Mark has experience of group litigation having been involved as counsel acting for the solicitors in the Home Income Scheme litigation involving multiple claims against firms of solicitors brought by clients, lenders and the Investors' Compensation Scheme.

Recent cases have included successfully defending a deceit and procurement claim for in excess of £40 million brought against Leeds City Council in respect of the development of the Leeds Arena.

Mark sits as a Deputy High Court Judge in London and Manchester, and is an accredited Mediator. He is the current Chairman of the Northern Chancery Bar Association.

Mark is based at Exchange Chambers (Manchester, Liverpool, and Leeds) and at a leading commercial/chancery set of Chambers in London (Three Stone, Lincoln’s Inn).

Further details as to Mark’s practice can be found at <http://www.exchangechambers.co.uk/barristers/mark-cawson>.

Stephen Connolly

Stephen Connolly is recognised by both Chambers and Partners and the Legal 500 as a leading junior in the field of commercial dispute resolution.

The 2016 Edition of Chambers UK includes the following plaudits about Stephen: *“He’s brilliant on his feet. He’s a really good advocate. He fights his client’s corner – a force to be reckoned with”* and *“Barrister with renowned advocacy skills who practices in commercial and property disputes”*.

Stephen began his legal career in 1992 as a commercial dispute resolution solicitor, becoming a partner in a leading national law firm before converting to the bar in 2003. Since 2003, and with the benefit of his previous experience as a solicitor, Stephen has *“specialised in high value and complex commercial disputes”* (Legal 500 2014). In recent times, Stephen has spent a good deal of time advising and arguing unusual and novel tortious damages claims. Examples include *West Midlands Travel v Aviva Insurance UK [2013] EWCA Civ 887* (resulting in an estimated saving to insurers on loss of use claims made by bus companies of circa £50 million per annum) and *Raymond v Young [2015] EWCA Civ 456* (blight damages to real property from nuisance neighbours, more modest in value but no less complicated in law).

The quality that Stephen brings to high value and complex litigation can be best summarised by the commentary of Nick Harvey Head of Dispute Resolution at Bermans Solicitors who said the following: *“Advocacy and legal skills apart (which are a given), if I was to list three of the best qualities Stephen has as a barrister they would be: (1) his strategic and tactical brain, (2) his appreciation of the importance of the solicitor/client relationship and (3) his ability to knit together the litigation team and to manage multi-party litigation”*.

Stephen is based at Exchange Chambers (Manchester, Leeds, and Liverpool). Further details on Stephen's experience can be found at <http://www.exchangechambers.co.uk/barristers/stephen-conolly/cv/commercial>.