



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1404/7/7/21

BETWEEN:

DAVID COURTNEY BOYLE AND EDWARD JOHN VERMEER

Applicants/Proposed Joint Class Representative

- v -

- (1) **GOVIA THAMESLINK LIMITED**
- (2) **THE GO-AHEAD GROUP PLC**
- (3) **KEOLIS (UK) LIMITED**

Respondents/Proposed Defendants

- and -

SECRETARY OF STATE FOR TRANSPORT

Prospective Intervener

ORDER

UPON reading the application by the Proposed Joint Class Representative for a Collective Proceedings Order pursuant to section 47B of the Competition Act 1998 and Rule 75 of the Competition Appeal Tribunal Rules 2015 (the “Tribunal Rules”) filed on 10 June 2021 (the “CPO Application”)

AND UPON reading the application of the Secretary of State dated 16 August 2021 seeking permission to intervene under Rule 16 of the Tribunal Rules and/or seeking to make submissions in writing and/or orally at the CPO Application hearing

AND UPON reading the written submissions of the parties filed in advance of a case management conference (“CMC”)

AND UPON hearing Counsel for the parties at a CMC held on 16 December 2021

IT IS ORDERED THAT:

Forum

1. Pursuant to Rules 18, 52 and 74 of the Tribunal Rules, these collective proceedings be treated as proceedings in England and Wales.

Application to stay the proceedings

2. The Respondents' application to stay the proceedings pending determination of any appeals arising from the Tribunal's certification judgment in Cases 1304/7/7/19 and 1305/7/7/19 (*Justin Gutmann v First MTR South Western Trains Limited and Another*; and *Justin Gutmann v London & South Eastern Railway Limited*) be refused.

Request for permission to intervene

3. Subject to paragraphs 7, 10 and 11 below, the request by the Secretary of State for Transport to intervene pursuant to Tribunal Rule 16 be provisionally granted from the date on which the CPO Application is granted (if at all). The alternative request by the Secretary of State for Transport to make submissions either in writing or orally at the CPO Application hearing be rejected but with liberty to reapply in accordance with paragraph 11 below. For purposes of this Order, the Secretary of State for Transport shall hereafter be referred to as the Prospective Intervener.

Publicity

4. The Proposed Joint Class Representative publicise the CPO Application by 14 January 2022 according to the proposal set out in paragraphs 5.4-5.7, 5.9, and 5.10 of the Notice and Administration Plan annexed to the Litigation Plan that is exhibited to the First Witness Statement of Edward John Vermeer.
5. The Proposed Joint Class Representative publicise by 14 January 2022 in accordance with paragraphs 4 and 10 of this Order, the right under Tribunal

Rule 76(10)(c) of persons with an interest to object to the CPO Application or authorisation of the Proposed Joint Class Representative.

6. The Proposed Joint Class Representative publicise by 14 January 2022, in accordance with paragraphs 4 and 11 of this Order, the right under Tribunal Rule 79(5) of members of the proposed class and other parties with a legitimate interest to make an application to the Tribunal for permission to make written or oral submissions at the hearing of the CPO Application.

Service of documents

7. All documents filed and served on or by the Respondents, including in accordance with this order (such documents to be redacted and/or marked-up, if appropriate, in respect of information over which confidential treatment/privilege is claimed), be filed and served by the serving party on the Prospective Intervener.

Responses, objections, and reply to the CPO Applications

8. The Respondents file and serve their response to the CPO Application and any factual evidence by 4pm on 4 February 2022.
9. If so advised, the Respondents file and serve any application for summary judgment and/or strike out of all or part of the Proposed Collective Proceedings by 4pm on 4 February 2022. Any strike-out/summary judgment application be case managed alongside, listed, and heard at the same hearing as the CPO Application.
10. Any other person with an interest (including any member of the proposed class and the Prospective Intervener) may object to the CPO Application or authorisation of the Proposed Joint Class Representative by writing to the Tribunal stating their reasons for objecting by 4pm on 25 February 2022.
11. Any person with an interest (including any member of the proposed class and the Prospective Intervener) who seeks permission to make written and/or oral observations at the CPO Application hearing is to make such application, supported by reasons, to the Tribunal by 4pm on 25 February 2022.

12. The Proposed Joint Class Representative file and serve any reply to the Respondents' response, any strike-out/summary judgment application, and any objections by 4pm on 25 March 2022.

Hearing

13. A pre-hearing review be listed for a half day on a date three weeks prior to the dates fixed for the CPO Application hearing, to be vacated if not needed.
14. The parties, in conjunction with counsels' clerks, shall liaise with the Tribunal Registry to fix dates for the CPO Application hearing on the first available dates after 26 April 2022 with a time estimate of 3 days.
15. The parties seek to agree the hearing and authorities bundles in accordance with the Tribunal's Guide to Proceedings 2015 and the Tribunal's Practice Direction of 25 February 2021 and file the agreed bundles 14 calendar days before the date of the CPO Application hearing.
16. The parties file and exchange skeleton arguments 10 calendar days before the hearing.

General

17. Costs as between the Applicants and Respondents be in the application.
18. There be liberty to apply.

The Hon Mr Justice Marcus Smith
President of the Competition Appeal Tribunal

Made: 16 December 2021
Drawn: 21 December 2021