



IN THE COMPETITION APPEAL TRIBUNAL

Case No.: 1425/7/7/21

BETWEEN:

JUSTIN GUTMANN

Applicant/Proposed Class Representative

– and –

(1) GOVIA THAMESLINK RAILWAY LIMITED

(2) GOVIA LIMITED

(3) THE GO-AHEAD GROUP PLC

(4) KEOLIS (UK) LIMITED

Respondents/Proposed Defendants

SECRETARY OF STATE FOR TRANSPORT

Proposed Intervener

DIRECTIONS ORDER

UPON the Applicant’s application dated 24 November 2021 for a collective proceedings order (the “**CPO Application**”) pursuant to section 47B of the Competition Act 1998 and Rule 75 of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (the “**Tribunal Rules**”)

AND UPON the Secretary of State for Transport’s (the “**Proposed Intervener’s**”) application dated 7 November 2022 (the “**Application for Permission to Intervene**”) for permission to intervene in these proceedings and Cases No. 1304/7/7/19 *Gutmann v First MTR South Western Trains Ltd and Another* and 1305/7/7/19 *Gutmann v London & South Eastern Railway Ltd* (together, the “**SW/SE Proceedings**”)

AND UPON reading the written submissions of the parties and the Proposed Intervener’s Note in support of the Application for Permission to Intervene dated 14 November 2022 (the “**Proposed Intervener’s Note**”) filed in advance of a case management conference (“**CMC**”)

AND UPON hearing Counsel for the parties and the Proposed Intervener at a CMC held on 15 November 2022

AND UPON the parties having agreed by consent the draft terms of a confidentiality ring for the disclosure of certain confidential documents following the CMC

AND UPON the Proposed Intervener’s request for confidential treatment of the Proposed Intervener’s Note and of his Statement of Intervention in Case No. 1404/7/7/21 *David Courtney Boyle v Govia Thameslink Railway Ltd & Others* (the “**Boyle SoI**”)

IT IS ORDERED THAT

Forum

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

Application for Permission to Intervene

2. Determination of the Application for Permission to Intervene shall be deferred and heard at the joint hearing in accordance with paragraph 13 of this Order.

Confidentiality

3. The Boyle SoI and the Proposed Intervener’s Note shall, pending a decision in the application referenced in the paragraph below, be deemed to have been provided into the Confidentiality Ring established by the Confidentiality Ring Order made on 28 November 2022 and deemed not to have been read or referred to in open court for the purposes of Rule 102 of the Tribunal’s Rules. For the avoidance of doubt, any use of the Boyle SoI and the Proposed Intervener’s Note other than in accordance with the Confidentiality Ring prior to the date of this Order shall not be considered a breach of the Confidentiality Ring.

4. If the Proposed Intervener wishes to maintain confidential treatment for the Boyle SoI and/or the Proposed Intervener's Note, by 22 November 2022, the Proposed Intervener shall file and serve confidential versions of the Boyle SoI and/or the Proposed Intervener's Note (as relevant) with passages highlighted over which confidentiality is asserted, together with non-confidential versions of the same documents and a reasoned application under Rule 101 of the Tribunal's rule for their confidential treatment (the "**Rule 101 Application**").
5. The parties shall file any submissions in response to the Rule 101 Application by 29 November 2022, upon which the Tribunal will consider the application on the papers.

Amendment of Collective Proceedings Claim Form

6. The Applicant shall file and serve an amended Collective Proceedings Claim Form reflecting the proposed amendments to the wording of the class definition at paragraph 28 of the Tribunal's ruling in *Gutmann v First MTR South Western Trains Ltd and Another; Gutmann v London & South Eastern Railway Ltd* [2022] CAT 49 and amending the date of 1 October 2015 in the class definition at paragraph 104 of the Collective Proceedings Claim Form to 24 November 2015.

Publicity

7. The Applicant shall publicise the CPO Application by 22 November 2022 according to the proposal set out in paragraphs 5.1-5.9 of the Epiq/Hilsoft Plan exhibited to the First Witness Statement of Mr Justin Gutmann, amended to reflect the directions of the Tribunal in *Gutmann v First MTR South Western Trains Ltd and Stagecoach South and Another; Gutmann v London & South Eastern Railway Ltd* [2022] CAT 49, so far as relevant to these proceedings.
8. The Applicant shall publicise such notice by 22 November 2022, in accordance with paragraphs 7, 11 and 12 of this Order, the right under Rule 76(10)(c) of persons with an interest to object to the CPO Application or the authorisation of the Proposed Class Representative.
9. The Applicant shall publicise by 22 November 2022, in accordance with paragraphs 7 and 11 of this Order, the right under Rule 79(5) of members of the proposed class to

make an application to the Tribunal for permission to make oral submissions at the hearing of the CPO Application.

Responses and Replies

10. The parties are not required to file any Response or Reply prior to the CPO hearing.

Objections to the CPO Application and applications for permission to make observations

11. Any person with an interest (including any member of the proposed class) may object to the CPO Application or the authorisation of the Proposed Class Representative by writing to the Tribunal stating their reasons for objecting by 4pm on 22 December 2022. Any member of the proposed class may also seek permission to make oral observations at the CPO Application hearing, by making an application for such permission, with reasons, as part of his/her written objections.
12. Any third party with a legitimate interest (who is not a member of the proposed class) 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 22 December 2022.

CPO Application hearing and further CMC

13. The parties, the Proposed Intervener and the Defendants in the SW/SE Proceedings shall liaise with the Tribunal Registry to fix a date for a joint directions hearing with a time estimate of 1 day on the first available date after 20 February 2023 (the “**Hearing**”). The CPO Application, the Application for Permission to Intervene and any other application made by the parties shall be heard at that Hearing which shall also serve as a CMC in the SW/SE Proceedings.
14. Within 3 days of this Order being made, the Registrar shall write to the parties in the SW/SE Proceedings enclosing this Order and informing them that the possibility of joint case management of the SW/SE Proceedings with the present proceedings will be considered at the hearing referred to at paragraph 13 of this Order, alongside the Application for Permission to Intervene in the SW/SE Proceedings, and that that hearing will also serve as a CMC in the SW/SE Proceedings.

15. The parties, the Proposed Intervener and the Defendants to the SW/SE Proceedings shall file and serve skeleton arguments by 4pm 10 calendar days before the date of the hearing.
16. The parties, the Proposed Intervener and the Defendants to the SW/SE Proceedings shall seek to agree the hearing and authorities bundles in accordance with the Tribunal's Guide and Practice Direction of 25 February 2021. The Applicant shall file an electronic version and five hard copies of the agreed hearing and authorities bundles by 4pm 7 calendar days before the date of the hearing.

General

17. Costs be reserved.
18. There be liberty to apply.

The Honourable Mr Justice Roth
Chair of the Competition Appeal Tribunal

Made: 28 November 2022
Drawn: 28 November 2022