



**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No: 1531/7/7/22

BETWEEN:

**ELISABETTA SCIALIS**

Applicant/  
Proposed Class Representative

- v -

**(1) YAMAHA MUSIC EUROPE GMBH**  
**(2) YAMAHA CORPORATION**

Respondents/  
Proposed Defendants

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**ORDER**

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**UPON** reading the Proposed Class Representative’s collective proceedings claim form filed on 26 August 2022 and the Proposed Class Representative’s application dated 15 September 2022 pursuant to Rule 31(2) of the Competition Appeal Tribunal Rules 2015 (the “Tribunal Rules”) for permission to serve the collective proceedings claim form on the Second Proposed Defendant out of the jurisdiction (the “Rule 31(2) Application”)

**AND UPON** reading the first witness statement of Jeremy Evans dated 15 September 2022 in respect of the Rule 31(2) Application

**IT IS ORDERED THAT:**

1. The Proposed Class Representative be permitted to serve the Second Proposed Defendant outside the jurisdiction.
2. This Order is without prejudice to the rights of the Second Proposed Defendant to apply pursuant to Rule 34 of the Tribunal Rules to dispute the jurisdiction. Any such

application should take account of the observations set out in *Epic Games, Inc. v Apple Inc.* [2021] CAT 4, at [3].

## REASONS

### (A) Background to the claim

1. The Proposed Class Representative (“PCR”) has applied for a Collective Proceedings Order (“CPO”) pursuant to section 47B of the Competition Act 1998 (“Competition Act”) so as to enable the continuation of collective proceedings on an opt out basis claiming aggregated damages for loss suffered by purchasers of musical instruments (“Proposed Class Members”) as a result of unlawful resale price maintenance engaged in by the First Proposed Defendant, Yamaha Music Europe GmbH (“Yamaha Europe”). Yamaha Europe is located at 22-34 Siemensstrasse, Rellingen, Germany, and has a number of branches in Europe including its in the UK, Yamaha Music Europe GmbH (UK) (“Yamaha UK”) which is registered at Companies House. Its registered business address is Sherbourne Drive, Tilbrook, MK7 BBL. Yamaha Europe also operates a retail shop in London.
2. The claims which the PCR proposes to pursue are a mix of follow on and standalone claims under section 47A of the Competition Act, and are claims for breach of statutory duty by infringing the Chapter I prohibition contained in section 2 of the Competition Act and/ or Article 101 of the Treaty on the Functioning of the European Union (“TFEU”) (“the Claim”).
3. On 17 July 2020, the Competition and Markets Authority (“CMA”) issued a settlement decision in Case 50565-6 regarding RPM in the digital piano, digital keyboard, and guitar sectors addressed to Yamaha Europe, and to three companies within a group of companies referred to for convenience in the Claim Form as “GAK” which was one of its major resellers (“the Decision”). The Decision related to what was referred to as “the Yamaha Pricing Policy”. In summary, the CMA found that the Yamaha Pricing Policy was an agreement and/ or concerted practice entered into by Yamaha Europe through Yamaha UK with GAK that applied to online advertising and sales of digital pianos, digital keyboards, synthesisers/ stage pianos, workstations and acoustic and electric guitars (“the Relevant Infringement Products”).

4. The Decision in this case is one of a number of RPM infringement settlement decisions issued by the CMA in the period 1 August 2019 and 17 July 2020, regarding musical instrument products and suppliers' pricing policies. The PCR in this case has applied for a CPO in a number of other cases based on those CMA decisions. Those other cases also raise the issue of whether or not permission should be granted to serve proposed defendants out of the jurisdiction. The essential nature of the claim, and structure of the claim form is similar in each case, and similar issues arise when it comes to jurisdiction. The terms of the Reasoned Order on permission to serve out of the jurisdiction are also similar in each case.
5. The Decision relates specifically to the Yamaha Pricing Policy as it applied between Yamaha UK and GAK during the period 1 March 2013 to 31 March 2017 = ("the Relevant Period") whereby GAK would not advertise or sell online the Yamaha Relevant Infringement Products below a price specified by Yamaha Europe ("the Agreement"). The Agreement was found to infringe the Chapter I prohibition and Article 101 ("the Infringement"). The Decision is final as none of the addressees sought to appeal it.
6. The PCR alleges that Yamaha Europe and the Second Proposed Defendant, Yamaha Corporation ("Yamaha Corp"), its parent company are jointly and severally liable for the Infringement. Yamaha Corp is headquartered in Japan, and its shares are traded on the Tokyo Stock Exchange.
7. Although the CMA considered that it had reasonable grounds for suspecting that the Yamaha Pricing Policy applied to Yamaha Europe's entire UK selective distribution network of resellers and that they had generally complied with it, for reasons of administrative efficiency, the CMA chose to focus on the Yamaha Pricing Policy as it applied to GAK. The CMA also concluded that the Infringement involving GAK was likely to have had a wider effect in the market, by reducing downward pressure on the retail price of the Yamaha Relevant Infringement Products through other resellers (including what are referred to as "mass resellers").
8. Although the CMA focused its decision on Yamaha Relevant Infringement Products, the PCR maintains that the evidence suggests that the Yamaha Pricing Policy was not

limited to those products but extended to other musical instrument products (Relevant Infringement Musical Instrument Products) manufactured and supplied by Yamaha Europe (“Yamaha Relevant Infringement Musical Instrument Products”), and that it was applied by at least some resellers to both online and in store sales.

9. The PCR intends to rely on the Decision in order to establish the Infringement in respect of GAK during the Relevant Period, including the understanding that the Yamaha Pricing Policy applied to Yamaha Europe’s resellers in the UK more generally, and that the Agreement had a broader impact as identified by the CMA.
10. The PCR also intends to rely on findings in the Decision for the purposes of establishing that, in addition to the Infringement involving GAK, in the period 1 March 2013 to 30 September 2015 the Yamaha Pricing Policy was implemented more widely and applied either to all Yamaha UK resellers (excluding mass resellers), or alternatively to the additional resellers identified in the Decision (the “Pre-1 October 2015 Infringements”).
11. The PCR also intends to rely on findings in the Decision, evidence cited in the Decision, and other evidence to be obtained by way of disclosure (should a CPO be granted) to establish that from 1 October 2015 until at least 31 March 2017, the terms of the Yamaha Pricing Policy applied to (1) all Yamaha Europe’s UK resellers (rather than just GAK); and (2) to the wider range of Yamaha Relevant Infringement Musical Instrument Products<sup>1</sup>, and that this was also an infringement of the Chapter I prohibition and Article 101 TFEU (the “post 30 September 2015 Infringements”).

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<sup>1</sup> The definitions adopted by the PCR are rather tortuous and not entirely intuitive. (1) The PCR defines “Relevant Products” as meaning Relevant Infringement Products and in addition, (a) various other products referred to by the PCR as B-Stock Products, and Applicable Education Products – the detail of which does not much matter for present purposes; and (b) acoustic pianos and ukuleles (on the basis that there is some doubt as to whether or not they are included within the Infringement). The PCR contends that the Infringement had a price effect on these additional products. (2) The PCR then lists a number of additional “musical instrument products” namely wind, stringed, brass and percussion instruments, high tech music production tools, and accessories for these products. (3) The PCR then defines Relevant Musical Instrument Products as being the Relevant Products plus the additional musical instrument products in (2). (4) The PCR’s definition of Relevant Infringement Musical Instrument Products is the Relevant Infringement Products, plus the additional musical instrument products listed in (2) (so presumably excluding the B-Stock Products and Applicable Education Products). Finally, (5) the Yamaha Relevant Infringement Musical Instrument Product are those manufactured and/ or supplied by Yamaha in the UK.

12. Further, the PCR alleges that as a consequence, the prices paid by the Proposed Class Members for (1) Relevant Products<sup>2</sup> (whether manufactured or supplied by Yamaha Europe or a third party) in the period 7 January 2011 to 30 September 2015 (the “First Infringement Period”); and (2) Relevant Musical Instrument Products<sup>3</sup> (again, whether or not they were manufactured or supplied by Yamaha UK) in the period 1 October 2015 to 31 March 2017 (the “Second Infringement Period”) were materially higher than they would otherwise have been. The PCR maintains that the anti-competitive effects were such that other manufactures or suppliers, and other reseller channels were not subject to real price competition and their prices would also have been artificially inflated by virtue of “umbrella pricing”.
13. Further, the PCR contends that the prices did not return to competitive levels immediately following the Relevant Period, and that there is a “Run-Off period” of 12 months during which time the prices were inflated. The PCR also claims damages on behalf of Proposed Class Members who paid for Relevant Electronic Musical Products on finance in relation to the additional financing costs of the inflated prices.
14. The “Proposed Class” comprises<sup>4</sup> any person (including any deceased person through the personal or authorised representative of his or her estate) who:
  - (a) Purchased in the UK, in the First Infringement Period (between 1 March 2013 and 30 September 2015), a new Yamaha Relevant Product and/ or a new Relevant Product manufactured or supplied by another manufacturer; and
  - (b) Purchased in the UK, in the Second Infringement Period (between 1 October 2015 and 31 March 2018), a new Yamaha Relevant Musical Instrument Product and/ or a new Relevant Musical Instrument Product of another manufacturer or supplier.
15. The reason for the different date ranges and product groups is to reflect the requirement that claims arising prior to 1 October 2015 must be based on a relevant decision (such

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<sup>2</sup> See footnote 3

<sup>3</sup> See footnote 3

<sup>4</sup> Subject to certain specified exclusions.

as the Decision in this case). For claims arising on or after 1 October 2015, that is not required, and it is possible to bring “standalone” claims.

**(B) Application under Rule 31(2) of the Tribunal Rules**

16. The PCR contends that the majority of the Proposed Class Members are likely to be domiciled in England and Wales. Yamaha Europe has a registered branch office in England. Further, the PCR also contends that the damage in question occurred in the jurisdiction each and every time the Proposed Class Member(s) purchased the products the subject of the proposed claim. I think it is likely, for the purposes of Rule 31(2) of the Tribunal Rules that the proceedings are to be treated as taking place in England and Wales. Accordingly, the Tribunal approaches service out of the jurisdiction on the same basis as the High Court by reference to the relevant principles in the Civil Procedure Rules 1998 (“CPR”) (*DSG Retail Ltd and another v Mastercard Inc and others* [2015] CAT 7, at [17]-[18]).

**(a) *Serious Issue to be Tried***

17. For the purposes of Rule 31(2)(b) of the Tribunal Rules, I am satisfied that there is a serious issue to be tried on the merits of the claim, and that there is a real, as opposed to fanciful prospect of success.
18. As regards the follow-on claims, the PCR intends to rely as against the Proposed Defendants on the Decision, which found the Infringement at least as regards GAK, and at least as regards Yamaha Relevant Infringement Products, and further the CMA identified that the conduct would have had a wider impact on the market. The Decision is binding on the Tribunal and the Proposed Defendants pursuant to s. 58A(2) of the Competition Act. Although the Decision was not addressed to Yamaha Corp, it is arguably jointly and severally liable as Yamaha Europe’s controlling parent company.
19. As regards the stand alone claims, I also note that the CMA recorded that on the basis of the evidence it had seen (1) it had reasonable grounds for suspecting that all of Yamaha’s UK resellers were subject to the Yamaha Pricing Policy; and (2) that it was not confined to Yamaha Relevant Infringement Products. I note that in addition to the

evidence available to the CMA, if a CPO is made, the PCR will seek further disclosure. In the circumstances I am satisfied that there is a real prospect of establishing infringement in relation to the broader range of Yamaha Relevant Musical Instrument Products, and that it extended to other Yamaha UK Resellers. I am also satisfied that there is a real prospect of Yamaha Corp. being found to be jointly and severally liable with Yamaha Europe.

20. I am also satisfied that there is a real prospect of an expert economist being able to estimate the relevant price effects not just in relation to the Yamaha products, but also in relation to substitute Relevant Products and Relevant Musical Instrument Products provided by third party manufacturers and suppliers, by virtue of “umbrella pricing”. In that regard, I have seen the Expert Report of Iestyn Williams dated 13 September 2022 on the Quantification Methodology, a copy of which was exhibited to the witness statement of Elisabetta Sciallis, the PCR (dated 15 September 2022). Mr Williams’ report specifically addresses the potential overlap in the effects of various RPM infringements that affected the musical instrument industry sector, which the CMA has investigated, and in relation to which it has issued a number of Decisions.

***(b) The jurisdictional gateways under CPR Practice Direction 6B (PD6B)***

21. The PCR relies on two of the jurisdictional gateways specified in paragraph 3.1 of PD6B: paragraphs 3.1(3) and 3.1(9). Paragraph 3.1(3) requires there to be a real issue which it is reasonable for the court to try as between the claimant and a defendant on whom the claim form will be served other than in reliance on paragraph 3.1, and that the person in relation to whom permission to serve out of the jurisdiction is sought is a “*necessary or proper party to the claim*”. As to this Yamaha Europe has a registered branch in the UK and I am told that the PCR will serve the Claim Form on the UK branch in any event. For the reasons I have explained, I am satisfied that there is a serious issue to be tried as regards Yamaha Europe, which it is reasonable for the Tribunal to try.
22. Yamaha Europe was at all material times 100% owned by Yamaha Corp. The PCR contends that it exercised decisive influence over Yamaha Europe during the Relevant Period so as to form a single economic unit for the purposes of the Chapter I Prohibition

and Article 101 TFEU. Yamaha Corp is therefore plainly a necessary and proper party to these proceedings.

23. Given my decision in relation to paragraph 3.1(3), I do not strictly speaking need to reach a conclusion on the second gateway: paragraph 3.1(9). The PCR contends that the claim is a tort claim where damage was sustained within the jurisdiction. In my view, there is a good arguable case that this gateway is also met on the basis that the claims arise out of tortious breaches (or alleged breaches) of statutory duty by Yamaha UK committed in the UK by virtue of its arrangements with UK resellers. Further, damage was allegedly caused in the UK when relevant purchases were made. Again, Yamaha Europe and Yamaha Corp. are alleged to be jointly and severally liable for all damage proved.

**(c) *Appropriate Forum***

24. It seems to me that for the purposes of Rule 31(3) of the Tribunal Rules the UK (and this Tribunal) is the proper place in which to bring the claims. The Proposed Class Members are likely to be largely made up of individuals domiciled in the UK; on the information available, the products which are the subject of these proceedings were marketed and sold in the UK; the proposed First Defendant has a registered branch in England; the claims relate at least in part to the Decision of the CMA based on a breach of UK competition rules, and the applicable law will be English law.
25. In my view, this Tribunal is clearly the appropriate forum for the trial of the Claim.

For the reasons give, permission is granted for the service of proceedings outside the jurisdiction.