



## COMPETITION APPEAL TRIBUNAL

### NOTICE OF AN APPLICATION TO COMMENCE COLLECTIVE PROCEEDINGS UNDER SECTION 47B OF THE COMPETITION ACT 1998

**CASE NO. 1529/7/7/22**

Pursuant to rule 76(8) of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (“the Rules”), the Registrar gives notice of the receipt on 26 August 2022 of an application to commence collective proceedings, under section 47B of the Competition Act 1998 (“the Act”), by Elisabetta Sciallis (“the Applicant/Proposed Class Representative”) against (1) Korg (UK) Limited and (2) Korg Inc. (“the Respondents/Proposed Defendants”). The Applicant/Proposed Class Representative is represented by PGMBM Law Ltd, 70 Mark Lane, London, EC3R 7NQ (Reference: Jeremy Evans / Matthew Newbould).

The Applicant/Proposed Class Representative makes an application for a collective proceedings order permitting it to act as the class representative bringing opt-out collective proceedings on behalf of UK domiciled persons who fall within the proposed class definition and opt-in collective proceedings for non-UK domiciled persons who fall within the proposed class definition (“the Application”). The proposed class definition is more fully described below.

The proposed collective proceedings would combine a mixture of follow-on and standalone claims for damages under section 47A of the Act and are claims for breaches of statutory duty relating to the infringement of section 2(1) of the Act (the “Chapter I Prohibition”) and/or Article 101 of the Treaty on the Functioning of the European Union (“TFEU”) (together, “the Claims”), as determined by the Competition and Markets Authority (“CMA”) in a settlement decision addressed to the Respondents/Proposed Defendants dated 29 June 2020 in Case 50565-4: *Online resale price maintenance in the synthesizer and hi-tech sector* (the “Decision”) and by relying on findings of fact and evidence cited in the Decision in respect of the sale of synthesisers and certain other hi-tech musical products (“Relevant Products”).

The Application states that the Second Respondent/Proposed Defendant directly owns the First Respondent/Proposed Defendant, and supplies, among other products, electronic musical instruments under the Korg brand. The First Respondent/Proposed Defendants is active in the UK and Republic of Ireland in the supply of electronic musical instrument products manufactured by or on behalf of the Second Respondent/Proposed Defendant and is the exclusive distributor in the UK and Republic of Ireland of certain brands of other musical instruments such as electric keyboards, digital pianos, professional arrangers, sequencers, samplers, piano keyboards for computers, music production software, amplifiers, electric guitars, harmonicas, drum kits and drum sticks, cymbals and gongs and accessories for these products. In particular, the First Respondent/Proposed Defendant sold the Relevant Products manufactured by or on behalf of Korg (“Korg Relevant Products”) and other brands of electric keyboards, digital pianos, professional arrangers, sequencers, samplers, piano keyboards for computers, music production software, amplifiers, electric guitars, harmonicas, drum kits and drum sticks, cymbals and gongs and accessories for these products (together with the Korg Relevant Products, the “Korg Relevant Musical Products”) through musical instrument resellers, mass resellers and directly to final customers.

According to the Application, the Decision establishes that the First Respondent/Proposed Defendant engaged in a single and continuous infringement of the Chapter I Prohibition and/or Article 101 TFEU by entering into an unlawful resale price maintenance agreement and/or concerted practice (the “Agreement”) with one of its musical instrument resellers (“Reseller 1”) not to advertise or sell online Korg Relevant Products, or bundles of any Korg Relevant Product with other products, below a price specified by the First Respondent/Proposed Defendant from time to time (the “Korg Pricing Policy”). The Application states that the CMA found that the Agreement had as its object the prevention, restriction, or distortion of competition within the UK and/or between EU Member States, may have affected trade within the UK and/or between EU Member States, and lasted at least from 9 June 2015 to 17 April 2018 (the “Relevant Period”). As the CMA attributed liability for the infringement to the First and Second Respondents/Proposed Defendants, the

Proposed Class Representative contends that the Respondents/Proposed Defendants are jointly and severally liable for the infringement.

The Applicant/Proposed Class Representative states that the CMA considered that the Respondents'/Proposed Defendants' infringement involving Reseller 1 was likely to have had a wider effect in the market for the supply in the UK of synthesisers and hi-tech equipment by: (a) reducing downward pressure on online prices of Korg Relevant Products, (b) reducing online price competition between Reseller 1 and other musical instrument resellers of Korg Relevant Products and (c) stabilising prices within the UK, thereby protecting or improving the margins of musical instrument resellers (including Reseller 1), who adhered to the Korg Pricing Policy. Further, the CMA had reasonable grounds for suspecting that more than 20 Korg UK musical instrument resellers were subject to the Korg Pricing Policy, that resellers generally complied with the First Respondent's/Proposed Defendant's request to comply with the minimum price and that the Korg Pricing Policy was not limited to Korg Relevant Products. However, the CMA decided for reasons of administrative efficiency to focus its infringement findings on Reseller 1 and to limit the scope of the investigation to the Korg Relevant Products, thereby excluding other Korg Relevant Musical Products.

The Applicant/Proposed Class Representative contends that, as a consequence of the Respondents'/Proposed Defendants' infringements during the Relevant Period, the prices charged to proposed class members were at all material times higher than they would otherwise have been. Further, the effects on price extended to all reseller channels in the UK, including those not directly affected by the infringements. The Applicant/Proposed Class Representative also contends that the impact of the infringements extended for a run-off period of up to one year beyond the Relevant Period.

The proposed class comprises any natural and legal persons (including personal or authorised representatives of any deceased person's estate) who: (a) between 9 June 2015 and 30 September 2015 purchased (online or offline) in the UK a new Korg Relevant Product and/or a new Relevant Product manufactured or supplied by a musical instrument manufacturer other than Korg; (b) between 1 October 2015 and 17 April 2019 purchased (online or offline) in the UK a new Korg Relevant Musical Product and/or a new Relevant Musical Product manufactured or supplied by a musical instruments manufacturer other than Korg. The Applicant/Proposed Class Representative considers that persons purchasing Relevant Products or Relevant Musical Products will be amateur and professional musicians, as well as educational institutions, and proposes that any person active as a business selling any Relevant Musical Product is excluded from the proposed class. The Applicant/Proposed Class Representative considers that there may be overlap among proposed class members between the two different categories of the proposed class, to the extent that the same persons purchased Relevant Musical Products in each of the two applicable time periods.

The Application proposes that all UK-domiciled persons who purchased the Relevant Musical Products (or the UK-domiciled personal or authorised representatives of the estate of persons who have died since they made the purchase) fall within the class, and all non-UK domiciled persons (or the non-UK domiciled personal or authorised representative of persons falling within the proposed class who have died since the relevant purchase) fall within the class if they choose to opt in.

According to the Application, the Claims raise common issues from the perspective of law, facts and economic evidence as follows: (i) the relevant limitation period applicable to the Claims; (ii) whether, in addition to the infringement involving Reseller 1, the First Respondent/Proposed Defendant was engaged in resale price maintenance infringements with other resellers during the Relevant Period; (iii) whether and to what extent the infringements had an impact on prices paid by purchasers of Relevant Musical Products; (iv) whether and to what extent the infringements had an impact on the financing costs of proposed class members who purchased Relevant Musical Products on finance; and (v) what simple interest rate should be applied to proposed class members who did and those who did not purchase the Relevant Musical Products on finance.

The Applicant/Proposed Class Representative submits that it is just and reasonable for her to act as class representative because:

1. The Applicant/Proposed Class Representative would act fairly and adequately in the interests of the class members.

- (a) The Applicant/Proposed Class Representative has experience as a consumer rights campaigner and has organisational and representational skills required for these proposed collective proceedings. She is also a qualified solicitor, an accredited mediator and arbitrator, and has been involved in the management of various consumer protection projects.
  - (b) The Applicant/Proposed Class Representative has already launched collective proceedings in the Competition Appeal Tribunal against Fender (Case No. 1437/7/7/22) and is also launching collective proceedings against Casio, Roland and Yamaha. She will be requesting that these various proceedings be case managed together so as to ensure that they are pursued as efficiently and proportionately as possible.
  - (c) The Applicant/Proposed Class Representative has engaged leading competition and group litigation experts in both counsel and solicitors to pursue the proposed collective proceedings on behalf of the proposed class members.
  - (d) The Applicant/Proposed Class Representative intends to enter into a litigation funding agreement with a leading third-party alternative investment fund with a sufficient budget to cover the costs associated with bringing these proposed collective proceedings and those in respect of Fender, Casio, Roland and Yamaha, including the litigation costs of the Applicant/Proposed Class Representative's legal and expert team and the costs associated with administering the claims.
2. The Applicant/Proposed Class Representative is not a member of the proposed class and does not have a material interest that is in conflict with the interests of the proposed class members in relation to the common issues.
  3. The Applicant/Proposed Class Representative is not aware of any other person seeking approval to act as the class representative in connection with the same claims.
  4. The Applicant/Proposed Class Representative will have the benefit of an after-the-event insurance policy that means she will be able to pay the Respondents'/Proposed Defendants' costs if ordered to do so.
  5. The Applicant/Proposed Class Representative has a litigation plan for the proceedings, which includes:
    - (a) A method for bringing the proceedings on behalf of the proposed class members and for notifying proposed class members of the progress of the proceedings;
    - (b) A procedure for governance and consultation which takes into account the size and nature of the proposed class; and
    - (c) Estimates of and details of arrangements as to costs, fees or disbursements.

The Application states that the Claims are suitable to be brought in collective proceedings because:

1. The proposed collective proceedings are more suitable than individual proceedings. All the issues to be determined in the proposed collective proceedings are common issues that can fairly, efficiently and proportionately be dealt with in collective proceedings and there are no individual issues to be determined.
2. Individual proceedings are not a relevant alternative to the proposed collective proceedings as the Claims are individually low in value and it would be unviable for individuals to bring what would be complex competition law damages actions against the Respondents/Proposed Defendants. Bringing such claims would involve substantial and costly exercises that proposed class members could not reasonably be expected or afford to take individually. It would also be a waste of court resources to have the relevant claims dealt with on an individual basis.

3. The impact of the infringements can be assessed on a class-wide basis pursuant to a common methodology applied across the proposed class. It would be impracticable and disproportionate, having regard to the substantial number of proposed class members and affected transactions, to assess the overcharge incurred by each member of the proposed class on an individual basis.
4. The Claims are suitable for an aggregate award of damages.
5. The benefits of continuing the proposed collective proceedings outweigh any costs for the members of the proposed class, the Respondents/Proposed Defendants and the Tribunal. The costs, which will be spread across the proposed collective proceedings against Korg, Fender, Casio, Roland and Yamaha are fair and proportionate in light of the loss suffered as a result of the various infringements, the size of the proposed classes, and the aggregate value of the Claims.
6. The Applicant/Proposed Class Representative is not aware of any separate proceedings making claims of the same or a similar nature having been commenced.
7. The size and nature of the proposed class means that the Claims are suitable to be brought by way of collective proceedings.
8. The proposed class definition is clear and simple and it is possible to determine in respect of any person whether that person is or is not a member of the proposed class.

According to the Application, the proposed collective proceedings should proceed on an opt-out basis (although it will be possible for non-UK domiciled persons who fall within the class and the non-UK domiciled personal or authorised representative of persons falling within the proposed class who have died since the relevant purchase to opt-in) because:

1. The Claims are strong given the Decision and the admissions made by the Respondents/Proposed Defendants.
2. Opt-out proceedings are the only practicable means for bringing the Claims given the number of individual claimants and the relatively small value of each individual claim.

The relief sought in these proceedings is:

- (1) Damages on behalf of the proposed class, to be assessed on an aggregate basis and to include damages for the additional interest costs paid by proposed class members who purchased the Relevant Musical Products on finance;
- (2) Simple interest pursuant to section 35 of the Senior Courts Act 1981 and Rule 105 of the Competition Appeal Tribunal Rules 2015 on such sums and at such rate as the Tribunal thinks fit;
- (3) Costs; and
- (4) Such further and other relief as the Tribunal may think fit.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at [www.catribunal.org.uk](http://www.catribunal.org.uk). Alternatively, the Tribunal Registry can be contacted by telephone (020 7979 7979) or email ([registry@catribunal.org.uk](mailto:registry@catribunal.org.uk)). Please quote the case number mentioned above in all communications.

*Charles Dhanowa OBE, KC (Hon)*  
Registrar  
Published 31 January 2023