



COMPETITION APPEAL TRIBUNAL

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

CASE NO. 1531/7/7/22

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 16 September 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) Yamaha Music Europe GmbH and (2) Yamaha Corporation (“the Respondents/Proposed Defendants” or “Yamaha”). 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 breach 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 First Respondent/Proposed Defendant dated 17 July 2020 in Case 50565-6: *Resale price maintenance in the digital piano and digital keyboard, and guitar sectors* (the “Decision”) and by relying on findings of fact and evidence cited in the Decision in respect of the sale of digital pianos, digital keyboards, synthesisers/stage pianos, workstations, and acoustic and electric guitars (“Relevant Infringement Products”).

The Application defines any Relevant Infringement Products manufactured and/or supplied by or on behalf of the First Respondent/Proposed Defendant as “Yamaha Relevant Infringement Products”, and any Relevant Infringement Product, B-Stock Product (discounted products or products in a sub-optimal condition, Applicable Education Product (products sold to education customers), acoustic pianos and ukuleles (but excluding accessories) as “Relevant Products”.

The Application states that the Second Respondent/Proposed Defendant is headquartered in Japan and is active in manufacturing and selling a large range of musical instruments covering acoustic and digital products, professional audio equipment, and components focused on network equipment and semiconductors. The First Respondent/Proposed Defendant is located in Germany and was at all material times wholly owned by the Second Respondent/Proposed Defendant. The First Respondent/Proposed Defendant is active in manufacturing and/or supplying the following products in the UK: (a) wind instruments; (b) stringed instruments; (c) brass instruments; (d) percussion instruments; (e) other hi-tech music production tools in addition to synthesisers, stage keyboards and workstations; and (f) accessories for these various musical instruments (these, together with the Relevant Infringement Products are referred to as “Relevant Musical Instrument Products” in the Application). The First Respondent/Proposed Defendant sells its musical instrument products in the UK through selective resellers, mass resellers (companies not specialising solely in musical instruments), upstream distributors and directly to 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 a number of companies in the GAK group (together, “GAK”) not to advertise or sell online Yamaha

Relevant Infringement Products to GAK below prices specified by the First Respondent/Proposed Defendant from time to time (the “Yamaha 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 from 1 March 2013 to 31 March 2017 (the “Relevant Period”). The Application submits that the Second Respondent/Proposed Defendant exercised decisive influence over the First Respondent/Proposed Defendant and formed a single economic unit with the First Respondent/Proposed Defendant for the purposes of the Chapter I Prohibition and Article 101 TFEU. As a result, the Second Respondent/Proposed Defendant is jointly and severally liable for the infringements with the First Respondent/Proposed Defendant.

The Applicant/Proposed Class Representative states that the Agreement had a wider effect on the market beyond GAK because the totality of the CMA’s evidence showed that the Agreement was aimed at (a) reducing downward pressure on online prices of Yamaha Relevant Infringement Products, and (b) reducing price competition between GAK and other selective resellers of the Yamaha Relevant Infringement Products, thereby protecting or improving the margins of musical instrument resellers of the Yamaha Relevant Infringement Products (including GAK) who adhered to the Yamaha Pricing Policy. The Application states that although the CMA had reasonable grounds for suspecting that all of the First Respondent’s/Proposed Defendant’s UK-based selective resellers were subject to the Yamaha Pricing Policy and generally complied with the First Respondent’s/Proposed Defendant’s requests to comply, the CMA decided for reasons of administrative efficiency to focus its infringement findings on GAK. The CMA also decided to focus on the period from 1 March 2013 onwards, and to limit the scope of the investigation to the Yamaha Relevant Infringement Products, thereby excluding other musical instruments and accessories falling within the definition of Relevant Products. The Applicant/Proposed Class Representative contends that the infringement had a price effect on such products.

The Applicant/Proposed Class Representative contends that, as a consequence of the infringement, the prices paid by proposed class members were at all times materially higher than they would have been. Further, the effects on price extended to all reseller channels in the UK, including mass resellers. The Applicant/Proposed Class Representative also contends that the impact of the infringement 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 1 March 2013 and 30 September 2015 purchased in the UK a new Relevant Product manufactured or supplied by the Respondents/Proposed Defendants and/or a new Relevant Product manufactured or supplied by a musical instruments manufacturer other than the Respondents/Proposed Defendants; (b) between 1 October 2015 and 31 March 2018 purchased in the UK a new Relevant Musical Instrument Product manufactured or supplied by the Respondents/Proposed Defendants or a new Relevant Musical Instrument Product manufactured or supplied by a musical instruments manufacturer other than the Respondents/Proposed Defendants. The Applicant/Proposed Class Representative considers that persons purchasing Relevant Products or Relevant Musical Instrument Products will mostly be amateur musicians, while purchases will also have been made by professional musicians and educational institutions. The Applicant/Proposed Class Representative also proposes that any person active as a business selling any Relevant Musical Instruments Product is excluded from the proposed class. The Applicant/Proposed Class Representative considers that there may be overlap among proposed class members as between categories of the proposed class to the extent that the same persons purchased Relevant Musical Instrument Products in each of the two applicable time periods.

The Application proposes that all UK-domiciled persons who purchased the relevant musical instruments (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 GAK, 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 Instrument

Products; (iv) whether and to what extent the infringements had an impact on the financing costs of proposed class members who purchased Relevant Musical Instrument 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 Instrument 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), Korg (Case No. 1529/7/7/22) and Roland (Case No. 1530/7/7/22) and will also be launching collective proceedings against Casio. 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 Casio, Fender, Korg and Roland, 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, which the Applicant/Proposed Class Representative estimates will comprise several million Claims, 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 are fair and proportionate in light of the loss suffered as a result of the 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 First Respondent/Proposed Defendant.
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 Instrument 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. Alternatively, the Tribunal Registry can be contacted by telephone (020 7979 7979) or email (registry@catribunal.org.uk). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, KC (Hon)
Registrar
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