



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1425/7/7/21

BETWEEN:

JUSTIN GUTMANN

Class Representative

- v -

(1) GOVIA THAMESLINK RAILWAY LIMITED

(2) GOVIA LIMITED

(3) THE GO-AHEAD GROUP LIMITED

(4) KEOLIS (UK) LIMITED

Defendants

- and -

SECRETARY OF STATE FOR TRANSPORT

Intervener

Case No: 1304/7/7/19

JUSTIN GUTMANN

Class Representative

- v -

(1) FIRST MTR SOUTH WESTERN TRAINS LIMITED

(2) STAGECOACH SOUTH WESTERN TRAINS LIMITED

Defendants

- and -

SECRETARY OF STATE FOR TRANSPORT

Intervener

Case No: 1305/7/7/19

JUSTIN GUTMANN

Class Representative

- v -

(1) LONDON & SOUTH EASTERN RAILWAY LIMITED

(2) GOVIA LIMITED

(3) THE GO-AHEAD GROUP LIMITED

(4) KEOLIS (UK) LIMITED

Defendants

- and -

SECRETARY OF STATE FOR TRANSPORT

Intervener

ORDER (DIRECTIONS)

UPON the Order of the Tribunal of 18 January 2022 granting a Collective Proceedings Order (“CPO”) in Cases 1304 and 1305/7/7/19 (the “**SW/SE Proceedings**”)

AND UPON the Order of the Tribunal of 3 July 2023 granting a CPO in Case 1425/7/7/21 (the “**GTR Proceedings**”)

AND UPON the Order of the Chair of 5 April 2023 directing that the SW/SE Proceedings and the GTR Proceedings shall be jointly case managed and tried together

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

AND UPON the Defendants proposing to proceed to an initial trial on the issues of abuse, causation and quantum on the assumption that they are dominant on any relevant markets but fully reserving their respective rights as to the issues of dominance and market definition

AND UPON hearing Leading Counsel for the parties at a CMC held on 7 July 2023

IT IS ORDERED THAT:

1. SPLIT TRIAL

1. The trial of the issues arising in these proceedings shall be split, with issues relating to the alleged abuse of dominance being determined first (the “**First Trial**”), followed by a determination of the issues relating to causation and the quantification of damages (the “**Second Trial**”), with the issues of market definition and dominance to be adjourned to a third trial.
2. The First Trial and the Second Trial shall proceed on the assumption that the Defendants are dominant on any relevant markets.
3. The First Trial shall be listed to commence on 17 June 2024 with a time estimate of 3 weeks with 1 additional week in reserve.
4. The Second Trial shall be listed to commence on 23 June 2025 with a time estimate of 2 to 3 weeks.

2. DIRECTIONS

(1) List of Issues

5. By 6pm on 19 July 2023, the Class Representative shall serve on the Defendants a draft list of the issues to be determined in the SW/SE Proceedings and GTR Proceedings, indicating which issues he considers fall to be determined at the First Trial and the Second Trial.
6. The parties shall seek to agree the list of the issues and the issues for determination at the First Trial by 4pm on 1 August 2023.

(2) Disclosure

7. By 6pm on 19 July 2023, the Class Representative shall serve on the Defendants a draft List of Issues for Disclosure in the format of section 1A of the of the Disclosure Review Document (“**DRD**”) at Appendix 2 to CPR Practice Direction 57AD (“**PD 57AD**”).
8. The draft List of Issues for Disclosure shall identify all issues for disclosure relating to the alleged abuse of dominance and therefore relevant to the issues for determination at the First Trial. If possible, the draft List of Issues for Disclosure shall identify issues for disclosure relating to causation and quantification of damages.
9. The parties shall seek to agree the List of Issues for Disclosure by 1 August 2023.
10. By 4pm on 1 September 2023, the Class Representative shall serve on the Defendants a draft section 1B of the DRD, containing details of his proposed requests for documents or narrow classes of documents in relation to those issues in the List of Issues for Disclosure for which he considers Model C to be the appropriate model for Extended Disclosure (as defined in PD 57AD).
11. By 4pm on 11 September 2023, the parties shall file agreed and completed sections 1A and 1B of the DRD, which shall identify any remaining areas of disagreement between the parties for determination by the Tribunal.
12. By 4pm on 22 September 2023, the Defendants shall file and serve a draft section 2 of the DRD.
13. Any outstanding issues between the parties and further directions for disclosure shall be determined at the further CMC to be listed in accordance with paragraph 15 below (“**the Further CMC**”).

(3) Survey evidence

14. By 4pm on 31 July 2023, the Class Representative shall provide to the Defendants the proposed specification of the passenger survey the Class Representative intends to

conduct, including the proposed survey questions, the proposed process by which the survey will be carried out and when he will carry out the survey.

(4) Further CMC

15. A further CMC shall be listed for 27 September 2023 with a time estimate of 1 day.
16. The parties shall liaise ahead of the Further CMC to agree in so far as possible further directions to the First Trial, to include the timing of disclosure and factual evidence.

(5) Miscellaneous

17. The costs of the CMC be in the cases.
18. There be liberty to apply.

The Honourable Mr Justice Roth
Chair of the Competition Appeal Tribunal

Made: 7 July 2023
Drawn: 1 August 2023