



COMPETITION APPEAL TRIBUNAL

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

CASE NO. 1592/7/7/23

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 2 June 2023 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) Casio Electronics Co. Limited and (2) Casio Computer Co., Limited (“the Respondents/Proposed Defendants” or “Casio”). The Applicant/Proposed Class Representative is represented by Pogust Goodhead (trading as 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 (“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 1 August 2019 in Case 50565-2: *Online resale price maintenance in the digital piano and digital keyboard sector* (the “Decision”) and by relying on findings of fact and evidence cited in the Decision in respect of the sale of digital pianos and digital keyboards, excluding associated accessories such as stands, adapters and pedals.

The CMA Decision defines digital pianos and digital keyboards, including workstations, as “Relevant Infringement Products” and any Relevant Infringement Products supplied by or on behalf of the First Respondent/Proposed Defendant as “Casio Relevant Infringement Products” and, further, bundles of any Casio Relevant Infringement Products with accessory products as “Relevant Product Bundles”. The Application defines “Relevant Infringement Musical Products” as Relevant Infringement Products as well as synthesisers, DJ controllers and accessories (“Relevant Infringement Musical Products”) supplied by or on behalf of the Respondent/First Proposed Defendant (“Casio Relevant Infringement Products”). While the Relevant Infringement Musical Products do not include acoustic pianos, these also come within the scope of the Application given the substitutability of acoustic pianos with digital pianos (together with the Relevant Infringement Musical Products, “Relevant Musical Products”).

The Application states that the Second Respondent/Proposed Defendant is headquartered in Japan and that the First Respondent/Proposed Defendant is located in the UK and was at all material times wholly owned by the Second Respondent/Proposed Defendant. The First Respondent/Proposed Defendant is active in the supply of electronic and other products in the UK, including: calculators; digital projectors; electronic musical instruments; handheld point of sale equipment; cash registers; and watches. The First Respondent/Proposed Defendant sells its musical instrument products in the UK through independent musical instruments resellers, national retail chains, catalogue companies and online retailers, collectively referred to as mass resellers.

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 Reseller 1 (one of its most important musical instrument resellers) which stipulated that it would not to

advertise or sell online Casio Relevant Infringement Products or Relevant Product Bundles below prices specified by the First Respondent/Proposed Defendant from time to time (the “Casio 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 4 February 2013 to 5 April 2018 (the “Relevant Period”). The Decision also attributed liability for the infringement to the Second Respondent/Proposed Defendant as the ultimate parent company of the First Respondent/Proposed Defendant. 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 by reducing downward pressure on the retail price of Casio Relevant Infringement Products more widely, including through the independent reseller and Mass Reseller channels. 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 during the Relevant Period. 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 (“Run-Off Period”).

The proposed class comprises any natural or legal person (including any deceased person through the personal or authorised representative of his or her estate) who between 1 October 2015 and 5 April 2019 purchased in the UK a new Casio Relevant Musical Product and or a new Relevant Musical Product supplied by a musical instruments manufacturer other than Casio UK during the Relevant Period and any Run-Off Period. The Applicant/Proposed Class Representative considers that persons purchasing Relevant Musical Products will be amateur and professional musicians, as well as educational institutions. The Applicant/Proposed Class Representative also proposes that any person active as a business selling any Relevant Musical Product is excluded from the proposed class.

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 proposed 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, whether Casio UK was engaged in resale price maintenance with other resellers during the Relevant Period and across all Relevant Musical Products; (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), Korg (Case No. 1529/7/7/22), Roland (Case No. 1530/7/7/22) and Yamaha (Case No. 1531/7/7/22). She will be requesting that these various proceedings be case managed together 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 sufficient budget to cover the costs associated with bringing these proposed collective proceedings and those in respect of Fender, Korg and 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, which the Applicant/Proposed Class Representative estimates will over one hundred thousand claimants, 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.
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 opt-out 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 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 that 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. 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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