COMPETITION APPEAL TRIBUNAL

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

CASE NO. 1602/7/7/23

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 26 July 2023 of an application to commence collective proceedings, under section 47B of the Competition Act 1998 ("the Act"), by Christine Reifa Class Representative Limited ("the Applicant/Proposed Class Representative/PCR") against (1) Apple Inc.; (2) Apple Distribution International Limited; (3) Amazon.com, Inc; (4) Amazon Europe Core S.à.r.l; (5) Amazon Services Europe S.à.r.l; (6) Amazon EU S.à.r.l; and (7) Amazon.com Services LLC (together, the "Respondents/Proposed Defendants/PDs") ("the Application"). The PCR is represented by Hausfeld & Co LLP, 12 Gough Square, London EC4A 3D (Reference: Wessen Jazawi/Aqeel Kadri).

The proposed collective proceedings (the "Proposed Collective Proceedings") seek to combine on an opt-out basis, claims for aggregate damages for loss suffered by proposed class members ("PCMs") who purchased Apple (including 'Beats' branded) electronic products (the "Apple Products") at retail level in the United Kingdom as a result of unlawful agreements entered into by the Proposed Defendants in breach of the prohibition in Article 101 of the Treaty on the Functioning of the European Union ("TFEU") (prior to 31 December 2020) and/or the Chapter I prohibition under section 2 of the Act ("the Infringements").

According to the Application, the First Proposed Defendant, Apple Inc. (together with its group of companies, "Apple"), is a US company based in Cupertino (State of California) and is the parent company of the Second Proposed Defendant. Apple designs, manufactures, and markets mobile communication and multimedia devices, personal computers, and audio-visual devices under the Apple and Beats brands, as well as accessories, related software, and services. The Second Proposed Defendant, Apple Distribution International Limited ("Apple DI"), is registered in Ireland. Apple DI is responsible for sales and distribution of Apple Products in Europe and also operates the Apple online store, the Apple mobile app and the Apple contact centre.

Apple is the world's largest technology company, specialising in the development, manufacture, marketing, and sale of consumer electronics. In respect of their consumer products, Apple operate a dual-distribution system where it sells its products through its own online and physical stores ("Apple Stores") and indirectly through third-party distributors.

The Third Proposed Defendant, Amazon.com, Inc. (together with its group of companies, "Amazon"), is a US company incorporated in the state of Delaware and operates in Europe through the Fourth to Seventh Proposed Defendants. Amazon owns and operates a series of electronic commerce platforms and online shops operated through websites such as amazon.com and amazon.co.uk. The Fourth Proposed Defendant, Amazon Europe Core S.à.r.l ("Amazon EC"), is incorporated in Luxembourg and is responsible for managing the websites of Amazon's European shops, including in the United Kingdom. The Fifth Proposed Defendant, Amazon Services Europe S.à.r.l ("Amazon SE"), is incorporated in Luxembourg and is responsible for the operation of the amazon.com Marketplace and various national Amazon Marketplaces active in Europe. The Sixth Proposed Defendant, Amazon EU S.à.r.l ("Amazon EU"), is incorporated in Luxembourg and operates the amazon.co.uk website. The

Seventh Proposed Defendant, Amazon.com Services LLC ("Amazon Services"), is incorporated in the state of Delaware and is a wholly owned subsidiary of the Third Proposed Defendant.

Amazon operates the digital platform, Amazon Marketplace, which is the largest online marketplace for the purchase and sale of goods. According to the Application, the Amazon Marketplace involves a two-sided market, one side of the market is business to business, where the majority of third-party merchants have delegated their delivery and logistics in whole or in part to Amazon's delivery and logistics service known as Fulfilment by Amazon ("FBA"). The other side of the Amazon Marketplace is business to consumer in nature and involves Amazon providing customers with, among other service offerings, a platform on which to shop for goods.

The Proposed Class Representative states that the Proposed Collective Proceedings are prompted and assisted by information and analysis contained in a decision dated 16 November 2021 by the Italian competition authority, Autorità Garante della Concurrenza e del Mercato ("AGCM") (the "AGCM Decision"). The AGCM Decision found that the Proposed First and Second Defendants entered into and implemented unlawful horizontal agreements with the Proposed Third to Seventh Defendants in breach of Article 101 TFEU.

The Application alleges that since 2012, Apple DI and Amazon EU have been parties to an agreement pursuant to which Apple DI appointed Amazon EU as an Apple Authorised Reseller in the territory of the EU (the "Apple Authorised Reseller Agreement"). Apple and Amazon agreed to supplement the Apple Authorised Reseller Agreement and to amend it to reflect the terms of a Global Tenets Agreement dated 31 October 2018 (the "GTA"and together with the Apple Authorised Reseller Agreement – "the Restrictive Agreements"). The GTA was to be valid in any country in which the two groups had an official distribution agreement, including the United Kingdom. The GTA provides that:

a. Apple would identify Apple Authorised Resellers for each region that may sell Apple Products ("Permitted Authorised Apple Resellers") on Amazon's website and mobile shopping app ("Authorised Electronic Locations"). These Permitted Authorised Apple Resellers would be selected from among Apple Authorised Resellers and at least two Permitted Authorised Apple Resellers would be selected for each Apple Product with Apple retaining discretion to modify the list of Permitted Apple Authorised Resellers.

b. Amazon is not permitted to allow any third-party Resellers other than the Permitted Apple Authorised Resellers to sell Apple Products on the Amazon Marketplaces ("Prohibited Apple Resellers") and will remove any Prohibited Apple Resellers which it or Apple discovered on the applicable Authorised Electronic Locations.

The PCR also claims that the GTA also provides for limitations on advertising on the applicable Amazon Marketplaces in respect of Apple Products and that the Restrictive Agreements grant further economic incentives to Amazon in the form of additional discounts on Amazon's purchase of Apple products for complying with certain contractual provisions in the Restrictive Agreements.

The Application asserts that the Restrictive Agreements have the object or effect of preventing, restricting, or distorting competition in the United Kingdom. In particular, the purpose and effect of the Restrictive Agreements was to bar from the Amazon UK Marketplace all Resellers of Apple Products other than a limited number of Resellers hand-picked by Apple and Amazon based on quantitative criteria which were neither objective nor non-discriminatory. The Restrictive Agreements are claimed to therefore amount in effect to a boycott with exclusionary intent, which has foreclosed from the pre-eminent online platform in the United Kingdom Resellers which competed with Amazon and Apple in the sale of Apple Products.

The Proposed class is defined as all purchasers (other than Excluded Persons as defined in the Application) who purchased one or more Apple Products at Retail Level in the United Kingdom from 31 October 2018 to the date of the final judgment or earlier settlement of the proceedings (the "Relevant Period"). The PCR estimates that there are over 36 million PCMs.

The PCR states that it would be just and reasonable for it to act as the class representative in the Proposed Collective Proceedings. In summary:

1) The PCR is a specially incorporated vehicle whose sole director is Professor Christine Riefa, currently Professor of Law at the University of Reading and a consumer law expert.

2) Professor Riefa is part of the consultative group advising the class representative in *Elizabeth Helen Coll v Alphabet Inc and others*, and therefore has direct, hands-on experience of the role and responsibilities of a class representative.

3) The PCR has engaged leading competition counsel and solicitors to pursue the proposed collective proceedings on behalf of the class members.

4) The PCR has entered into a Litigation Funding Agreement and has produced a litigation plan for the proceedings which includes:

    a) A method for bringing the proceedings on behalf of represented persons and for notifying represented persons of the progress of the proceedings;
    b) a procedure for governance and consultation which takes into account the size and nature of the class;
    c) the PCR's proposals in respect of disclosure, witness statements, expert reports, other evidentiary matters, and the litigation timetable; and
    d) an estimate of, and details of arrangements as to costs, fees, or disbursements which the Tribunal may order that the PCR shall provide.

5) The PCR has no material interest that conflicts with the interests of the PCMs in relation to common issues.

6) The PCR is not aware of any other applicant seeking to be representative in connection with the same claims.

7) The PCR has obtained After The Event insurance that means that it will be able to pay the Proposed Defendants' recoverable costs if ordered to do so.

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

a. All issues to be determined in the Proposed Collective Proceedings are common issues that can fairly, efficiently, and proportionately be dealt with in collective proceedings. There are no individual issues to be determined.

b. Individual proceedings on behalf of the PCMs are plainly not a viable alternative to the Proposed Collective Proceedings. The claims are individually low in value and it would be practically inconceivable for individuals to bring what would be complex competition law damages actions against the Proposed Defendants.

c. The impact of the Infringements can be assessed on a class wide basis pursuant to common methodologies applied across all PCMs. To assess the overcharge incurred by each PCM on an individual basis would be impracticable and disproportionate, having regard to the substantial number of PCMs and affected transactions.

d. The claims are suitable for an aggregate award of damages pursuant to s.47C(2) of the Act and Rule 73(2).

e. The benefits of continuing the Proposed Collective Proceedings outweigh any costs for the PCMs, the Proposed Defendants, and the Tribunal. The costs are fair and proportionate in light of the loss suffered as a result of the Infringements which would otherwise not be addressed, the size of the proposed class, and the aggregate value of the claims.

f. The PCR is not aware of any separate proceedings making claims of the same nature having been commenced.

g. 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.

h. The PCR is not aware of any available means of alternative dispute resolution or other ways of resolving the dispute, including the availability of redress through voluntary schemes whether approved by the Competition and Markets Authority under s.49C CA98 or otherwise. The PCR nevertheless remains prepared to enter into constructive discussions with the Proposed Defendants with respect to the resolution of the claims and the fair compensation of the PCMs.

The PCR seeks permission to bring the collective proceedings as opt-out proceedings.

The relief sought in these proposed collective proceedings is:

1. An aggregate award of damages for the proposed class pursuant to s.47C(2) CA98.

2. Interest. The PCR claims simple interest under s.35A of the Senior Courts Act 1981 and Rule 105.

3. The PCR's costs.

4. Such further or other relief as the Tribunal may see 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 post at Salisbury Square House, 8 Salisbury Square, London EC4Y 8AP, or by telephone (020 7979 7979) or email (registry@catribunal.org.uk). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, QC (Hon)
Registrar
Published 28 November 2023