



IN THE COMPETITION
APPEAL TRIBUNAL

B E T W E E N :

Case No.: 1304/7/7/19

JUSTIN GUTMANN

Class Representative

– v –

(1) FIRST MTR SOUTH WESTERN TRAINS LIMITED

“SW Defendant”

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

“SE Defendants”

Case No.: 1425/7/7/21

JUSTIN GUTMANN

Class Representative

– v –

(1) GOVIA THAMESLINK RAILWAY LIMITED

(2) GOVIA LIMITED

(3) THE GO-AHEAD GROUP LIMITED

(4) KEOLIS (UK) LIMITED

“GTR Defendants”

ORDER

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

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

AND UPON the Order of the Tribunal of 5 April 2023 directing that the SW Proceedings, SE Proceedings and GTR Proceedings shall be jointly case managed and tried together (together, the “**Proceedings**”)

AND UPON the Order of the Tribunal of 7 July 2023 directing that the trial of the issues arising in the 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

AND UPON the Order of the Tribunal of 7 July 2023 listing the First Trial to commence on 17 June 2024 (with a time estimate of 3 weeks and with 1 additional week in reserve)

AND UPON the application of the Class Representative for permission to re-amend the Re-Amended Collective Proceedings Claim Forms in the SW and GTR Proceedings in the form of the draft amendments provided to the Defendants on 8 May 2024 (the “**Draft Amendments**”)

AND UPON the application of the Defendants for permission to adduce further factual witness evidence in response to the reply expert report of Timothy Bellenger dated 3 May 2024 (the “**Bellenger Reply Report**”)

AND UPON hearing counsel for the parties at a Pre-Trial Review on 9 May 2024

IT IS ORDERED THAT:

Pleadings

1. The Class Representative has permission to file and serve Re-Re Amended Collective Proceedings Claim Forms in the SW and GTR Proceedings in the form of the Draft Amendments.
2. The Class Representative shall file and serve the Re-Re-Amended Claim Forms by 4pm on 10 May 2024.

Variation to the Original CPOs

3. Paragraph 5 of the Original SW/SE CPO is varied as follows:

“...“Relevant Period” shall mean the period between 1 October 2015 and, in Case No. 1304/7/7/19, ~~the date of final judgment or earlier settlement of the Claims~~ 9 May 2024, or, in Case No. 1305/7/7/19, 2am on 17 October 2021...”

4. Paragraph 5 of the Original GTR CPO is varied as follows:

“...All persons who, at any point during the period between 24 November 2015 and ~~the date of final judgment or earlier settlement of the Claims~~ 9 May 2024 (the “**Relevant Period**”)...”

Notification

5. By 4pm on 13 May 2024, the Class Representative shall file with the Tribunal a draft revised CPO notice. The SW and GTR Defendants shall have the opportunity to review and provide comments on the Class Representative’s draft notice prior to the filing of the draft notice with the Tribunal.

Defendants' application for further evidence

6. By 4pm on 16 May 2024, the Defendants may, if so advised, file and serve further factual evidence in response to Section B and the last two sentences of paragraph 20 of the Bellenger Reply Report.

Directions to First Trial

7. The parties shall use their best endeavours to agree the contents of the trial bundle by 16 May 2024, although they shall have liberty to add further documents after that date if so advised.
8. The Class Representative shall arrange for the electronic trial bundle to be uploaded to Opus by 23 May 2024.
9. By 4pm on 28 May 2024, the Class Representative shall file and serve an opening skeleton argument for trial.
10. By 4pm on 4 June 2024, the Defendants shall file and serve their opening skeleton arguments for trial.
11. The parties' opening skeleton arguments shall be in size 12 font with 1.5 line spacing, and shall be subject to the following page limits:
 - (a) 50 pages for the Class Representative;
 - (b) 40 pages for the Defendant in the SW Proceedings; and
 - (c) 50 pages for the joint skeleton argument of the Defendants in the GTR Proceedings and the Defendants in the SE Proceedings.
12. Subject to any further order, the timetable for the First Trial shall be as set out at Schedule 1.

Second Trial

13. A further CMC shall be listed in the Second Trial for October or November 2024. The parties shall liaise ahead of the CMC about preparations for the Second Trial.

General

14. The costs of the Pre-Trial Review be in the cases.
15. There be liberty to apply.

Mr Justice Roth
Chair of the Competition Appeal Tribunal

Made: 9 May 2024
Drawn: 21 May 2024

Schedule 1: Trial Timetable

	Monday	Tuesday	Wednesday	Thursday	Friday
w/c 17 June	Non-sitting	CR openings	Defendant openings	(Up to 1 hour for Defendant openings) Defendant factual witnesses	Non-sitting
w/c 24 June	Non-sitting	Defendant factual witnesses	Defendant factual witnesses	Defendant factual witnesses	Defendant factual witnesses
w/c 1 July	Non-sitting	Defendant factual witnesses	CR expert witness	CR expert witness (if necessary)	Non-sitting: preparing closings
				Non-sitting: preparing closings	
w/c 8 July	Non-sitting: Serve closings 10am	Non-sitting: Reading closings	CR closings (3.75 hours) Defendant closings (1.25 hours)	Defendant closings (4.25 hours) CR reply (0.75 hours)	Reserve day