



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1304/7/7/2019

BETWEEN:

JUSTIN GUTMANN

Class Representative

– and –

(1) FIRST MTR SOUTH WESTERN TRAINS LIMITED

(2) STAGECOACH SOUTH WESTERN TRAINS LIMITED

Together, the “South Western Defendants”

Case No. 1305/7/7/19

JUSTIN GUTMANN

Class Representative

– and –

LONDON AND SOUTH EASTERN RAILWAY LIMITED

The “Southeastern Defendant”

The South Western Defendants and the Southeastern Defendant together, the “Defendants”

COLLECTIVE PROCEEDINGS ORDER

UPON the Class Representative’s applications for a collective proceedings order (the “**CPO Applications**”) pursuant to section 47B of the Competition Act 1998 (the “**Act**”) and Rule 75 of the Competition Appeal Tribunal Rules 2015 (S.I. No. 1648 of 2015) (the “**Tribunal Rules**”) made in the respective Amended Collective Proceedings Claim Forms dated 26 April 2019 (the “**Amended CPO Claim Forms**”), which combine claims in respect of losses alleged to have been caused by, respectively, the South Western Defendants’ or the Southeastern Defendant’s unlawful conduct in breach of the prohibition in Chapter II of the Act (the “**South Western Collective Proceedings**”, and the “**Southeastern Collective Proceedings**”, together the “**Collective Proceedings**”)

AND UPON the Defendants’ application to strike out the Class Representative’s claims and/or for summary judgment, dated 21 January 2021 (the “**Defendants’ Strike Out Applications**”)

AND UPON hearing counsel for all parties at a hearing on 9 to 12 March 2021 (the “**CPO Hearing**”)

AND UPON the Tribunal handing down judgment on the CPO Applications and the Defendants’ Strike Out Applications on 19 October 2021 (the “**Judgment**”)

AND UPON the Tribunal having decided in accordance with Rule 78 of the Tribunal Rules that it would be just and reasonable for the Applicant to act as class representative in the Collective Proceedings

AND UPON the Tribunal having decided in accordance with Rule 79 of the Tribunal Rules that the claims as described in the CPO Applications are eligible for inclusion in collective proceedings

AND UPON the Class Representative’s applications pursuant to Rule 38 of the Tribunal Rules dated 11 November 2021 to re-amend the Amended CPO Claim Forms and this Order to add FirstGroup plc, MTR Corporation (UK) Limited and Stagecoach Group plc as additional defendants in the South Western Collective Proceedings, and to add Govia Limited, The Go-Ahead Group plc and Keolis (UK) Limited as additional defendants in the Southeastern Collective Proceedings (together, the “**Parent Companies Applications**”)

AND UPON hearing counsel for the parties on 18 November 2021 in respect of consequential matters (the “**Consequentials Hearing**”)

IT IS ORDERED THAT

Authorisation of Class Representative

1. Pursuant to section 47B and Rules 77 and 80 of the Tribunal Rules, Mr Justin Gutmann is authorised to act as the Class Representative and to continue collective proceedings on an opt-out basis claiming damages for loss suffered by the Class Members (as defined below).
2. The remedy sought is an award of aggregate damages pursuant to section 47C(2) of the Act together with interest, an order for the Defendants to cease the infringing conduct, and/or such further or other relief as the Tribunal may see fit.
3. The Class Representative's address for service is c/o Charles Lyndon Limited, FAO: Rodger Burnett, of 22 Eastcheap, London EC3M 1EU.
4. The claims certified for inclusion in the Collective Proceedings are, subject to the amendment of the class definition at paragraph 5 below, the claims as set out in the respective Amended CPO Claim Forms.

Class definition

5. The class of persons (the "**Class**") whose claims are certified for inclusion in the Collective Proceedings includes—

All persons who, at any point during the Relevant Period purchased or paid for a rail fare for themselves and/or another person, which was not a season fare or a Boundary Fare or a fare for the portion of their journey from the last station covered by their Travelcard to their destination, where:

- a. the person for whom the fare was purchased held a Travelcard valid for travel within one or several of TfL's fare zones (the "**Zones**"); and*
- b. the rail fare was for travel in whole or in part on the services of the Defendant(s) from a station within (but not on the outer boundary of) those Zones to a*

destination beyond the outer boundary of those Zones (including fares for return journeys).

Whereby:

“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, or, in Case No. 1305/7/7/19, 2am on 17 October 2021;

“Travelcard” shall mean a Transport for London (“TfL”) zonal ticket; and

“Boundary Fare” shall mean a fare valid for travel to or from the outer boundaries of TfL’s fare zones, intended to be combined with a Travelcard whose validity stretches to the relevant zone boundary.

6. The following categories of persons (as constituted from time to time) shall be excluded from the proposed class:
 - a. members and staff of the Tribunal assigned to these Proceedings;
 - b. officers, directors or employees of:
 - i. the Defendants,
 - ii. any entities which have a (direct or indirect) interest in any of the Defendants that gives rise to significant control, and
 - iii. any entities in which any of the Defendants have such an interest;
 - c. the Class Representative’s and Defendants’ legal representatives as well as any experts or other professional advisers instructed in these proceedings, including the professional staff assisting them.

Forum

7. The Collective Proceedings shall be treated as taking place in England.

Notification

8. Subject to paragraph 15 below, the Class Representative shall publish a notice of the Collective Proceedings in the form attached to this Order in accordance with Rule 81 of the Tribunal's Rules.

Opting-out and opting-in

9. Every person falling within the description of the Class who is domiciled in the United Kingdom on 19 October 2021 ("**the Domicile Date**") shall be included in these collective proceedings.
10. Any person falling within the description of the Class who is domiciled in the United Kingdom on the Domicile Date may opt-out of either or both of the Collective Proceedings (as applicable) giving the Class Representative notice in writing of their decision to opt out in accordance with the attached Notice and by no later than 4pm on the date 3 months after the date of publication of the Notice.
11. Every Class member who is not domiciled in the United Kingdom on the Domicile Date may opt-in to either or both of the Collective Proceedings (as applicable) by giving the Class Representative notice in writing of their decision in accordance with the attached Notice and by no later than 4pm on the date 3 months after the date of publication of the Notice.

Strike-out Applications

12. The Defendants' Strike-out Applications are dismissed.

Permission to appeal and stay of notification requirement

13. The Defendants' applications for permission to appeal against the Judgment are refused.

14. The 14-day period under Practice Direction 52D of the Civil Procedure Rules shall not begin to run until the Tribunal has delivered its written reasons for refusing permission to appeal.
15. Paragraph 8 above is stayed until the deadline for renewing the Defendants' applications for permission to appeal to the Court of Appeal has expired or, if any such applications are made, permission is denied or until any appeal is finally determined.

Amendment of the Claim Form

16. The Class Representative has permission pursuant to Rules 32 and 74 of the Tribunal Rules to amend the Collective Proceedings Claim Form in the form attached to this Order, save for the draft amendments shown in square brackets, which are subject to the Parent Company Applications or the Season Tickets Application (as defined below).

Season ticket fares

17. The Class Representative shall file and serve any application under Rule 85 of the Tribunal Rules to amend the class definition so as to include season ticket fares ("**Season Tickets Application**") including any supporting evidence by 4pm on 10 December 2021.
18. The Defendants are to file and serve any response to such an application (if made) by 4pm on 21 January 2022.

Parent Company Applications

19. The respondents to the Parent Company Applications in Case No. 1304/7/7/19 shall file and serve any response to the respective applications by 4pm on 10 December 2021.
20. The respondents to the Parent Company Application in Case No. 1305/7/7/19 shall indicate by 6 December 2021 whether they intend to resist that application and, if so, file and serve any response to the application by 4pm on 17 December 2021.
21. Any responses to the Parent Company Applications shall indicate whether the respondents are content for the applications to be decided on the papers.

22. The Class Representative is to file and serve any reply to the responses by 4pm on 14 January 2022.
23. There shall be a hearing (time estimate: one day) on 10 February 2022 to determine the Parent Company Applications (if not agreed or decided on the papers) and/or the Season Tickets Application (if made).

Defences and Reply

24. The Defendants shall file and serve Defences to the Re-Amended CPO Claim Forms by the later of 4pm on 11 February 2022 or the date 3 weeks after the determination of the Season Tickets Application (if made) and/or the Parent Company Applications (if not agreed or decided on the papers), whichever is the later.
25. The Class Representative shall file and serve a Reply (if so advised) by 4pm on the date 6 weeks after the filing of the Defences.

Costs

26. The Defendants shall pay the Class Representative's costs of the summary judgment/ strike out applications and 65% of his costs of his CPO applications incurred between 1 July 2019 and 17 March 2021, those costs to be subject to detailed assessment if not agreed. The balance of the Class Representative's costs are costs in the case.
27. The Defendants shall make a payment on account of the costs awarded under paragraph 26 above in the amount of £780,000, that sum to be paid by 24 December 2021.
28. Subject to paragraph 29 below, the costs of the Consequential Hearing shall be costs in the case.
29. The costs of and occasioned by the amendments to the Claim Form are reserved to the hearing referred to at paragraph 23 above, or (in the absence of such hearing) to be determined on the papers if necessary.

General

30. There be liberty to apply.

The Honourable Mr Justice Roth
Chairman of the Competition Appeal Tribunal

Made: 18 January 2022
Drawn: 18 January 2022