COMPETITION APPEAL TRIBUNAL

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

CASE NO. 1305/7/7/18

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 27 February 2019 of an application to commence collective proceedings, under section 47B of the Competition Act 1998 ("the Act"), by Mr Justin Gutmann (the "Applicant/Proposed Class Representative" or "Mr Gutmann") against London and South Eastern Railway Limited ("the Respondent/Proposed Defendant"). The Applicant/Proposed Class Representative is represented by Charles Lyndon Limited, 68 King William Street, London, EC4N 7DZ (Reference: Rodger Burnett) and Hausfeld & Co LLP, 12 Gough Square, London, EC4A 3DW (Reference: Anthony Maton).

The Applicant/Proposed Class Representative makes an application for a collective proceedings order ("CPO") permitting it to act as the class representative bringing opt-out collective proceedings ("the Application").

According to the Application, the proposed collective proceedings are of a standalone nature and would combine the claims for damages ("the Claims") of a large number of rail passengers who have suffered loss as a result of the conduct of the Respondent/Proposed Defendant. The proposed class members are holders of Transport for London ("TfL") zonal tickets ("Travelcards") who have been effectively compelled by circumstances in the control of the Respondent/Proposed Defendant to pay twice for parts of rail journeys which overlapped with the zone of validity of their Travelcards.

The Application states that the Claims relate to so-called 'boundary zone' fares or 'extension tickets', which are fares 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 ("Boundary Fares"). The Applicant/Proposed Class Representative alleges that by not making Boundary Fares sufficiently available for sale, and/or by failing to ensure that customers are aware of the existence of Boundary Fares, and/or buy an appropriate fare in order to avoid being charged twice for part of a journey, the Respondent/Proposed Defendant has abused their position of dominance on the relevant markets in breach of the prohibition in Article 102 of the Treaty on the Functioning of the European Union ("Article 102 TFEU") and or section 18 of the Act ("Chapter II Prohibition").

The proposed class includes all persons who, at any point during the period between 1 October 2015 and the date of final judgment or earlier settlement of the Claims ("the Relevant Period") purchased or paid for, for themselves and/or another person, a rail fare which was not a Boundary Fare, where:

(a) the person for whom the fare was purchased held a Travelcard valid for travel within one or several of TfL's fare zone ("the Zones"); and

(b) the rail fare was for travel in whole or in part on the services of the Respondent/Proposed Defendant 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).

According to the Application, the individual Claims raise common issues in relation to the Respondent/Proposed Defendant's alleged breaches of Article 102 TFEU and/or the Chapter II Prohibition. In particular, the individual Claims raise the same issues of fact or law; the alleged infringement arises out of the conduct of the Respondent/Proposed Defendant taken as a whole: by not making Boundary Fares sufficiently available for sale and/or by failing to ensure that customers are aware of the existence of Boundary Fares and/or buy an appropriate fare in order to avoid being charged twice for part of a journey, the Respondent/Proposed Defendant gave rise to, or allowed to continue, a set of circumstances which in

effect compelled proposed class members to pay twice for part of the service provided to them. All the proposed class members were exposed to the same overall limitations on the availability for sale of Boundary Fares, suffered from the same lack of customer-facing information about Boundary Fares, and ultimately the same failure of the Respondent/Proposed Defendant to ensure a situation, in which large numbers of its customers were double-charged for part of the service provided to the, did not persist. The Claims also raise essentially the same issues of causation and quantum. Members of the proposed class have overpaid because of the Respondent/Proposed Defendant's conduct. It is implausible to assume that members of the proposed class would have willingly paid twice for part of their journey had the Respondent/Proposed Defendant taken sufficient steps to make Boundary Fares available and to make customers aware of them. Quantum equally is determined on a common basis across all members of the proposed class. The loss suffered per journey is simply the difference between the full journey fare and the appropriate Boundary Fare. In most cases, this difference can be derived directly from published fares. Differences in quantum arise solely on the basis of the specific journeys taken by the individual members of the proposed class.

The Applicant/Proposed Class Representative submits that it is just and reasonable for him to be appointed as class representative because:

(a) Mr Gutmann would act fairly and adequately in the interests of the proposed class members considering his extensive experience of championing consumer interests gained over his professional career and knowledge of the issues pertaining to the transport sector.

(b) Mr Gutmann is not a class member and does not have a material interest that is in conflict with the interests of the proposed class members.

(c) Mr Gutmann is not aware of any other applicant to be the representative in connection with the same claims.

(d) Mr Gutmann has sufficient funding arrangements in place in order to ensure that the Respondent/Proposed Defendant's recoverable costs will be paid if ordered to do so.

(e) Mr Gutmann has prepared a litigation plan which includes: (i) a method for bringing the proposed collective proceedings on behalf of the proposed class members and for notifying proposed class members of the progress of the proposed collective proceedings; (ii) a procedure for governance and consultation which takes into account the size and nature of the proposed class; and (iii) estimates of and details of arrangements as to costs, fees or disbursements which the Tribunal orders that the Applicant/Proposed Class Representative shall provide.

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

1. The proposed collective proceedings present an appropriate means for the fair and efficient resolution of the common issues and collective proceedings and, in all likelihood, represent the only economically viable method for the members of the proposed class to obtain compensation for losses suffered as a result of the alleged infringement.

2. The costs associated with bringing the proposed collective proceedings and administering the Claims on behalf of a proposed class with a substantial size remain patently proportionate in view of the aggregate value of the Claims and are outweighed by the benefits to the proposed class members from being able to pursue compensation for losses suffered due to the alleged infringement, which would not otherwise be possible.

3. The Applicant/Proposed Class Representative is not aware of any separate proceedings making claims of the same or a similar nature having been commenced by the members of the proposed class.

4. The proposed class consists of approximately 890,000 members. A group of mostly individuals of this number, each with substantially the same claims, could only bring their claims by way of collective proceedings of this nature. Any other mechanism for grouping together claims would simply not present a viable method of resolving the Claims.

5. The Claims are suitable for an aggregate award of damages and the aggregate loss across the members of the proposed class can be calculated with some precision considering data which the Applicant/Proposed Class Representative understands readily exists for the purposes of the Rail Settlement Plan.

According to the Application, "opt-out" proceedings are the only practical means for bringing the Claims. The proposed class is extremely numerous, and the value of each individual Claim is relatively modest.

The relief sought in these proceedings is:

(1) Damages, to be assessed on an aggregate basis pursuant to section 47C(2) of the Act;
(2) Interest thereon, calculated from the date each individual Claim arose;
(3) The Applicant/Proposed Class Representative's costs;
(4) A declaration that by not making boundary zone fares or extension tickets ("the Fares") sufficiently available for sale, and/or by failing to ensure that customers were aware of the existence of the Fares and/or buy an appropriate fare in order to avoid being charged twice for part of a journey, the Respondent/Proposed Defendant has abused their position of dominance on the relevant markets in breach of the prohibition in Article 102 TFEU and/or the Chapter II Prohibition;
(5) An order for the Respondent/Proposed Defendant to cease the infringing conduct; and/or
(6) 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 Victoria House, Bloomsbury Place, London WC1A 2EB, 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
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