



IN THE COMPETITION
APPEAL TRIBUNAL

Case No.: 1304/7/7/19

BETWEEN:

JUSTIN GUTMANN

Class Representative

– and –

(1) FIRST MTR SOUTH WESTERN TRAINS LIMITED

First Defendant / Non-Settling Defendant

(2) STAGECOACH SOUTH WESTERN TRAINS LIMITED

Second Defendant (“SSWT”)

COLLECTIVE SETTLEMENT APPROVAL ORDER

UPON the making of an order dated 18 January 2022, pursuant to section 47B of the Competition Act 1998 (the “**1998 Act**”) and Rules 77 and 80 of the Competition Appeal Tribunal Rules 2015 (the “**Tribunal Rules**”), that Justin Gutmann (the “**Class Representative**”) be authorised to act as class representative to continue collective proceedings on an opt-out basis (the “**CPO**”)

AND UPON the Order made on 3 July 2023 varying paragraph 8 of CPO and directing the Class Representative to publish a revised notice of the CPO (the “**Revised Notice**”)

AND UPON the Revised Notice specifying a deadline of 7 November 2023 by when (i) persons satisfying the class definition who are domiciled within the UK as of 19 October 2021 must notify

an intention to opt out and (ii) persons satisfying the class definition who are domiciled outside the UK as of 19 October 2021 must notify an intention to opt in

AND UPON the Class Representative and SSWT reaching a settlement in principle and finalising the terms of their proposed settlement agreement on 27 March 2024 (the “**Proposed Collective Settlement**”)

AND UPON the Class Representative and SSWT making a joint application dated 27 March 2024, pursuant to Rule 94 of the Tribunal Rules (the “**Tribunal Rules**”), for a collective settlement approval order (“**CSAO**”) in respect of the Proposed Collective Settlement (the “**Approval Application**”)

AND UPON the Tribunal considering the Proposed Collective Settlement, the Approval Application and the supporting evidence at a hearing on 29 April 2024

AND UPON the Class Representative and SSWT agreeing upon a revised settlement in principle and finalising the terms of their revised proposed settlement agreement on 30 April 2024 as amended by side letter dated 3 May 2024 (the “**Revised Proposed Collective Settlement**”)

AND UPON the Class Representative undertaking to file a revised notice and distribution plan (the “**Revised Notice and Distribution Plan**”) by no later than 4:00pm on 2 May 2024

AND UPON the Class Representative and SSWT making a revised joint application dated 30 April 2024

AND UPON the Tribunal being satisfied that the terms of the Revised Proposed Collective Settlement are just and reasonable

IT IS ORDERED THAT:

Approval of the Revised Proposed Collective Settlement

1. Pursuant to section 49A(5) of the 1998 Act, the Revised Proposed Collective Settlement is approved in the terms of the settlement agreement between the Class Representative and SSWT which is annexed to this Order (the “**Collective Settlement**”)

2. SSWT has liberty to apply, should the CPO be revoked as a result of the challenge to the funding arrangements raised by the First Defendant and the Defendants in Case Nos.: *1305/7/7/19 Justin Gutmann v London & South Eastern Railway Limited* (the "**SE Proceedings**") and *1425/7/7/21 Justin Gutmann v Govia Thameslink Railway Limited, Govia Limited, The Go-Ahead Group Limited and Keolis (UK) Limited* (the "**GTR Proceedings**").

Damages

3. Pursuant to the Collective Settlement:
 - (a) Every Represented Person (as defined in the Collective Settlement) shall be entitled to submit a claim or claims for payment in accordance with the provisions set out in the Revised Notice and Administration Plan and by no later than 6 months after the beginning of the Claim Period.
 - (b) Within 4 months from the end of the Claim Period, the Class Representative shall notify SSWT of the total amount claimed by Represented Persons in accordance with the provisions set out in the Revised Notice and Administration Plan, up to a maximum of £25,000,000 (the "**Notified Damages Sum**").
 - (c) Within 21 days from the date of receipt of such notification (the "**Damages Sum Notification Date**"), SSWT shall pay the Class Representative the Notified Damages Sum in full and final settlement of the claims for damages as against SSWT in these collective proceedings.

Stay of collective proceedings against SSWT

4. These collective proceedings against SSWT shall be stayed upon the terms of the Collective Settlement, except for the purpose of enforcing those terms.

Opting out and opting in

5. Any Represented Person who is domiciled in the United Kingdom on 30 April 2024 (the "**Settlement Domicile Date**") may opt out of the Collective Settlement by giving the Class Representative notice in writing of their decision to opt out in accordance with the attached

Collective Settlement Notice and by no later than 3 months after the date of publication of the Collective Settlement Notice.

6. Any Represented Person who is not domiciled in the United Kingdom on the Settlement Domicile Date may opt into the Collective Settlement by giving the Class Representative notice in writing of their decision in accordance with the attached Collective Settlement Notice and by no later than 8 months after the date of publication of the Collective Settlement Notice.

Notification

7. The Class Representative is to publicise this Order using the attached Collective Settlement Notice approved by the Tribunal and in accordance with the proposal set out in the Revised Notice and Distribution Plan.

Costs

8. Pursuant to the Collective Settlement:
 - (a) Within 21 days of the notice being given under Rule 94(13) of the Tribunal Rules, SSWT shall pay the Class Representative:
 - (i) £4,750,000 in respect of costs, fees or disbursements incurred by the Class Representative in connection with these proceedings (within the meaning of Rule 93(4) of the Tribunal Rules and excluding any costs awards already made and settled between the Class Representative and SSWT and/or the First Defendant); and
 - (ii) £750,000 by way of contribution to the Class Representative's costs in respect of the Revised Notice and Administration Plan's implementation and any associated costs;
 - (b) To the extent that the Notified Damages Sum is less than £10,200,000 (the "**Non-Ringfenced Costs Limit**"), the CR may apply to the Tribunal for a Stakeholder Hearing for an order to allocate any undistributed sum from the balance (up to the Non-Ringfenced Costs Limit) towards costs, fees, and disbursements following the

distribution of the Notified Damages Sum to the eligible Represented Persons.

General

9. There be liberty to apply, including without limitation for each party to the Collective Settlement to apply to the Tribunal for the purpose of enforcing the terms of the Collective Settlement without the need to bring a new claim.

IT IS FURTHER ORDERED BY CONSENT THAT:

10. The Non-Settling Defendant shall not claim contribution from SSWT in relation to the allegations presently advanced in these proceedings, the GTR Proceedings or SE Proceedings (together, the “**Trains Proceedings**”).
11. SSWT shall not claim contribution from the Non-Settling Defendant in relation to the allegations presently advanced in the Trains Proceedings.
12. The defendants in the GTR Proceedings and SE Proceedings (the “**GTR Defendants**” and the “**SE Defendants**” respectively) shall not claim contribution from SSWT in relation to the Trains proceedings.
13. SSWT shall not claim contribution from the GTR Defendants or the SE Defendants in relation to the Trains Proceedings.
14. The Class Representative shall not, in its own capacity or on behalf of any members of the Class, bring, make, assist or pursue (or cause to be brought, made, assisted or pursued) any claim, demand, action or proceeding against the Non-Settling Defendant, the GTR Defendants or the SE Defendants in relation to any claim which the Class Representative has brought or asserted against SSWT and/or any claim which the Class Representative could bring or assert against SSWT and/or any Stagecoach affiliate arising from or in connection with SSWT’s alleged abusive conduct in relation to Boundary Fares for travel in whole or in part on the services of SSWT during SSWT’s franchise period (the “**SSWT Defendant Claims**”).
15. The Class Representative irrevocably waives any and all of his rights against the Non-Settling Defendant, the GTR Defendants or the SE Defendants in relation to the SSWT

Defendant Claims.

16. In the event that the Tribunal determines that the Non-Settling Defendant and/or the GTR Defendants and/or the SE Defendants are liable for damages in relation to any ticket sales made by third-party retailers, then the damages which the Class Representative may seek from the Non-Settling Defendant and/or the GTR Defendants and/or the SE Defendants shall exclude:
 - (a) any sales made by third-party retailers of fares for use on SSWT's services; and
 - (b) any sales by SSWT acting as a third-party retailer of fares for use on the services of the Non-Settling Defendant, the GTR Defendants and/or the SE Defendants.
17. The Class Representative shall not seek to recover from the Non-Settling Defendant (and/or any of its direct or indirect shareholders, and/or other members of their corporate groups), the SE Defendants and/or the GTR Defendants any costs, fees or disbursements to the extent attributable to the claim against SSWT.