COMPETITION APPEAL TRIBUNAL

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

CASE NO. 1698/7/7/24

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 5 December 2024 of an application to commence collective proceedings, under section 47B of the Competition Act 1998 (the "Act"), by Clare Spottiswoode CBE (the "Proposed Class Representative" or "PCR") against: (1) Airwave Solutions Limited; (2) Motorola Solutions UK Limited; and (3) Motorola Solutions, Inc (together, "Motorola" or the "Proposed Defendants"). The PCR is represented by Ashurst LLP, London Fruit & Wool Exchange, 1 Duval Square, London, E1 6PW (Reference: Max Strasberg/Harriet Martin/Euan Burrows).

The Collective Proceedings Claim Form ("CPCF") states that the claims it is proposed to combine (the "Claims") in the proposed collective proceedings are for damages resulting from Motorola's alleged breaches of the Chapter II prohibition under section 18 of the Act.

The CPCF states that Motorola, through the First Proposed Defendant, provides Land Mobile Radio ("LMR") network services, including ancillary services, which are essential for public safety in Great Britain (the "Airwave Services"), to purchasers. The Airwave Services were and continue to be provided by the First Proposed Defendant using or in relation to a bespoke, closed, secure, proprietary, terrestrial trunked radio LMR network (the "Airwave Network"). The CPCF states that the Airwave Network is considered by both Motorola and His Majesty's Government to be part of the UK's critical national infrastructure.

The PCR contends that Motorola occupied a dominant position on the relevant market and has charged excessive and unfair prices for Airwave Services. Although the Claims are not follow-on, it is said they arise out of breaches of competition law which are closely analogous to the findings in a market investigation conducted by the Competition and Markets Authority (the "CMA") in 2021-2023, which found that there were behavioural and structural features of the relevant market giving rise to an adverse effect on competition.

The CPCF states that purchasers of the Airwave Services include organisations such as emergency services, namely, police forces, fire and rescue services and ambulance services, as well as other organisations, including central government departments, local authorities, charities, maritime and coastguard organisations, mountain search and rescue organisations, and private companies. The Claims are also brought on behalf of those who purchased Airwave Services on behalf of such organisations. The PCR contends the effect of Motorola's conduct is that the organisations have paid more for Airwave Services than they would otherwise have paid, causing them harm.

The CPCF refers to Motorola's conduct as being the subject of a market investigation conducted by the CMA under sections 131 and 133 of the Enterprise Act 2002, which resulted in the imposition (with effect from 1 August 2023) of a charge control on Motorola on a forward-looking basis, limiting the revenue that Motorola could earn from the Airwave Services to the level that would apply in a competitive market. Motorola's application for judicial review of some of the CMA's findings was dismissed in its entirety by the Tribunal ([2023] CAT 76), and the Court of Appeal heard a rolled-up application on permission and substance in respect of Motorola's appeal against the Tribunal's decision

on 11 November 2024, judgment in respect of which is pending. The PCR relies on the CMA's findings in support of the allegations and theory of harm on which she relies in the Claims.

The PCR seeks to bring these proceedings on an opt-out basis on behalf of a class of purchasers (the "Proposed Class" or "Proposed Class Members") who purchased Airwave Services between 1 January 2020 and 31 July 2023 (the "Claim Period"), or such later date as the Tribunal may order. The PCR's proposed class definition is: "All Purchasers of Airwave Services during the Claim Period".

The PCR contends that the Proposed Class Members are entitled to the difference between the prices which they in fact paid for the Airwave Services and the prices which they would have paid for those services but for the unlawfulness of Motorola's conduct. The CPCF states that the current best estimate of the loss and damage incurred by the Proposed Class is in the region of £600-650 million on the illustrative basis of 8% simple interest.

According to the CPCF, it would be just and reasonable for the PCR to act as the class representative in the proposed collective proceedings. In summary:

1. The PCR is not a class member.

2. The PCR will act fairly and reasonably in the interests of the Proposed Class Members for the following reasons:

    a) The PCR has a deep understanding of the workings of the public sector and regulatory frameworks and a strong pedigree of acting in the public interest and in the interest of consumers and other unrepresented groups.

    b) The PCR has a proven track record of assimilating and communicating complex information to specialist as well as non-specialist audiences, as well as considerable experience working with and instructing lawyers including in contentious proceedings which may have costs consequences, and she is already a class representative in another case before the Tribunal (Case 1440/7/7/22 *Clare Mary Joan Spottiswoode CBE v Nexans France S.A.S. & Others*).

    c) The PCR has an in-depth understanding of the motivations, behaviours and difficulties faced by customers operating in the public and para-public sector.

    d) The PCR has the benefit of the expertise of the Advisory Panel, individuals with specific expertise and experience in telecoms infrastructure, local government, and competition law.

3. The PCR has prepared a litigation plan.

4. The PCR does not have a material interest that is in conflict with the interests of Proposed Class Members, and she has entered into an agreement with the Secretary of State for the Home Department under which the Home Office has agreed to fund her legal, expert and other costs.

5. The PCR will be able to pay Motorola's costs if ordered to do so.

The PCR submits that:

1. The Proposed Class has been defined in such a way as to allow for the ready identification of its membership. By applying this straightforward definition, it is possible both for the Tribunal and for Proposed Class Members objectively to ascertain whether any given person falls within the Proposed Class.

2. The common issues are as follows:

a) Whether the prices charged by Motorola for the Airwave Network during the Claim Period are excessive and in breach of section 18 of the Act, requiring consideration of the definition of the relevant market, whether Motorola held a dominant position in the relevant market, and whether Motorola's prices for providing the Airwave Network were excessive and unfair during the Claim Period.

b) The provision by Motorola of the same type of overall service to Proposed Class Members, with the same essential purpose, drawing on a substantially common underlying asset.

c) The amount of aggregate damages which should be awarded to compensate Proposed Class Members for the alleged unlawful overcharge paid by them to Motorola.

d) The rate, measure and duration of the Proposed Class Members' entitlement to pre-judgment interest.

The PCR further submits that the proposed collective proceedings are not only an appropriate means for the fair and efficient resolution common issues, but the only viable means for many individual Proposed Class Members to claim redress. In summary:

1. The common issues are ones of mixed law, fact and expert evidence that would be very costly for individual Proposed Class Members (and the Tribunal) to undertake on an individual basis, and would need to be jointly case managed before the Tribunal, imposing a very significant burden on the parties and the Tribunal, and giving rise to obvious risks of duplication and/or inconsistency of outcome.

2. Each of the common issues are capable of being determined on a common basis, and resolution of each of them will advance the interests of every Proposed Class Member.

3. There is unlikely to be any need for Proposed Class Members to produce any evidence in order to establish the infringement or the quantum of aggregate damages.

4. Some of the individual claims of Proposed Class Members are likely to be modest in value when considered on an individual basis, but very substantial in the aggregate, and the costs of adducing expert economic analysis and litigating each of the Claims on an individual basis would be very substantial and, in many cases, wholly disproportionate.

5. The scale of the likely loss suffered by the great majority of Proposed Class Members, coupled with the costs of litigation, would render individual proceedings a practical impossibility and would leave unremedied the widespread loss caused by Motorola's conduct, in particular to small individual Proposed Class Members.

6. The fact that some of the Proposed Class Members are substantial entities that could in principle bring individual proceedings does not alter the overall strength of the case for collective proceedings.

The PCR submits that the substantial costs of bringing the Claims are considerably outweighed by the very substantial benefits of doing so, and that as far as the PCR is aware, there are no separate proceedings making claims of a similar nature. Furthermore, the size and nature of the Proposed Class (on the best data currently available to the PCR, estimated at between 400 and 2,000 Proposed Class Members) are such as to make the Claims suitable to be brought in collective proceedings.

The CPCF states that the Claims are suitable for an aggregate award of damages because the PCR proposes a plausible and credible methodology for estimating the loss that the Proposed Class Members have suffered in aggregate.

Further, the CPCF states the proposed collective proceedings should proceed on an opt-out basis because:

1. The Claims are of sufficient strength: although they are brought on a stand-alone basis, the conduct complained of has been subject to a detailed market investigation by the CMA which culminated in the CMA issuing a comprehensive final report after an 18 month investigation and imposing a Charge Control, a decision which was unsuccessfully challenged before the Tribunal.

2. The PCR relies on evidence which clearly explains the advantages of an aggregate assessment of both liability and quantum.

3. The most natural and efficient way to quantify the harm to Proposed Class Members will be on an aggregate basis, which would avoid the need to calculate individualised counterfactuals, or to allocate costs between them.

4. It would not be practicable for the proposed collective proceedings to be brought on an opt-in basis, as the size of the Proposed Class, the fact that the Proposed Class includes smaller and less engaged entities, and the relatively modest amounts individual Proposed Class Members could recover, would mean many would not opt-in.

5. It is unlikely to be feasible or efficient for Proposed Class Members to conduct their own assessment of the merits of the Claims, as the Tribunal, in its Guide to Proceedings, presumes to be the case for opt-in members of the Proposed Class.

6. Motorola is likely to hold comprehensive records and data needed to make the relevant calculations, which supports an opt-out model where there is significant information asymmetry between the Proposed Defendants and the wide range of Proposed Class Members.

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 on the damages pursuant to section 35A of the Senior Courts Act 1981 and/or Rule 105 of the Rules, calculated from the date each individual claim arose on a simple basis;

3. The PCR's costs; and

4. Any 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, KC (Hon)
Registrar
Published 30 December 2024