



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1468/7/7/22

BETWEEN:

JUSTIN GUTMANN

Class Representative

- v -

(1) APPLE INC.

(2) APPLE DISTRIBUTION INTERNATIONAL LIMITED

(3) APPLE RETAIL UK LIMITED

Defendants

COLLECTIVE PROCEEDINGS ORDER

UPON the Class Representative’s application for a collective proceedings order (the “**CPO Application**”) 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 Collective Proceedings Claim Form dated 17 June 2022 (the “**Claim Form**”), which combine claims in respect of losses alleged to have been caused by the Defendants’ alleged unlawful conduct in breach of the prohibition in Chapter II of the Act and, until 31 December 2020, Article 102 of the Treaty on the Functioning of the European Union (the proposed “**Collective Proceedings**”)

AND UPON the Defendants’ application dated 10 February 2023 (revised on 18 August 2023) for reverse summary judgment and/or to strike out the Class Representative’s claim (the “**Defendants’ Reverse Summary Judgment and/or Strike Out Application**”)

AND UPON the Class Representative having filed a draft Amended Claim Form dated 25 April 2023

AND UPON the Tribunal adjourning the hearing of the CPO Application by its judgment dated 2 May 2023

AND UPON the Class Representative having filed a draft Amended Claim Form on 3 August 2023

AND UPON hearing counsel for the parties at a hearing on 11 to 12 September 2023 (the “**Adjourned CPO Hearing**”)

AND UPON the Tribunal handing down judgment on the CPO Application and the Defendants’ Reverse Summary Judgment and/or Strike Out Application on 1 November 2023 ([2023] CAT 67) certifying the Collective Proceedings subject to the resolution of the Class Representative’s terms of funding (the “**Certification Judgment**”)

AND UPON the Tribunal having directed, at paragraph 71 of the Certification Judgment, that the question of abuse shall be determined at a first trial in these Proceedings (“**Trial 1**”)

AND UPON hearing counsel for the parties at a hearing on 1 March 2024 (the “**Funding Hearing**”)

AND UPON the Tribunal handing down judgment with respect to the Class Representative’s funding arrangements on 12 March 2024 ([2024] CAT 18) (the “**Funding Ruling**”)

AND UPON the Tribunal’s ruling of 8 April 2024 ([2024] CAT 22) concerning, *inter alia*, the costs of the CPO Application

AND UPON the judgment dated 21 June 2024 ([2024] EWCA Civ 702) (the “**CA Judgment**”) by which the Court of Appeal, *inter alia*, permitted the Class Representative to apply for permission to re-amend his draft re-amended Claim Form

AND UPON the Class Representative’s application of 12 July 2024 to the Court of Appeal, pursuant to paragraph 45 of the CA Judgment, for permission to re-amend his draft Amended Claim Form, as proposed in the draft re-amended Claim Form dated 12 July 2024 (the “**Re-Amended Claim Form**”)

AND UPON the Court of Appeal granting, by order dated 5 August 2024, the Class Representative permission to amend the Claim Form in the form proposed in the Re-Amended Claim Form

AND UPON the Class Representative filing and serving the Re-Amended Claim Form on the Defendants and the Competition Appeal Tribunal on 9 August 2024

AND UPON the Tribunal having decided in accordance with Rule 78 of the Tribunal Rules that it would be just and reasonable for Mr Justin Gutmann to act as a 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 Application are eligible for inclusion in collective proceedings

IT IS ORDERED THAT:

Strike Out and/or Reverse Summary Judgment Application

1. The Defendants' application for reverse summary judgment and/or to strike out the claim is dismissed.
2. The Defendants' application for reverse summary judgment or to strike out the allegation of abuse after 28 December 2017 is dismissed.

Authorisation of the Class Representative

3. 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 allegedly suffered by the Class Members (as defined below).
4. The remedy sought is an award of aggregate damages pursuant to section 47C(2) of the Competition Act 1998 together with interest and/or such further or other relief as the Tribunal may see fit to provide.
5. The Class Representative's address for service is c/o Charles Lyndon Limited, FAO: Rodger Burnett, of 110 Cannon Street, London, EC4N 6EU.
6. The claims certified for inclusion in the Collective Proceedings are the claims as set out in the Re-Amended Claim Form dated 12 July 2024 (save that the "Relevant Period" for the claims is as defined in paragraph [9] below).

Class Definitions

Consumer Class

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

All Consumers who:

- (a) Acquired one or more Affected iPhones in the United Kingdom for use wholly or mainly outside their business;
- (b) Entered into standard iOS software licence terms with the First Proposed Defendant and/or were registered as an Apple ID account holder, in connection with their Affected iPhone(s); and
- (c) During the Relevant Period, used one or more of the Affected iPhones, incorporating any Apple iOS update from iOS 10.2.1 onwards, whether such updates were Pre-Installed or Subsequently Downloaded.

Business Entities Class

8. The class of business users (the "**Business Entities Class**") whose claims are certified for inclusion in the Collective Proceedings includes:

All Business Entities who:

- (a) Acquired one or more Affected iPhones in the United Kingdom for use, whether for themselves or by their employees, in the course of business;
- (b) Entered into (or employed an individual who entered into) standard iOS software licence terms with the First Proposed Defendant and/or were registered (or employed an individual who was registered) as an Apple ID account holder, in connection with their Affected iPhone(s); and
- (c) During the Relevant Period, used one or more of the Affected iPhones, incorporating any Apple iOS update, from iOS 10.2.1 onwards, whether such updates were Pre-Installed or Subsequently Downloaded.

9. Whereby:

“Acquired” includes:

(a) Paying, or incurring a liability to pay, or providing reimbursement for, or incurring a liability to provide reimbursement for, all or part of the purchase price of an Affected iPhone. For the avoidance of doubt, this:

- (i) includes both payments for an Affected iPhone made or liable to be made in one single amount or by instalments, and payments made or liable to be made in respect of a bundled or split mobile communications contract including the supply of voice and/or data telecommunications services with an Affected iPhone;
- (ii) excludes purchases of used and refurbished Affected iPhones; and
- (iii) excludes purchases where the Affected iPhones were delivered outside the United Kingdom.

(b) Receiving an Affected iPhone by way of a gift. For the avoidance of doubt, the exclusions listed at paragraph 9(a)(ii)-(iii) equally apply to an Affected iPhone received by way of a gift.

For the avoidance of doubt, where a purchaser pays for and uses an Affected iPhone for a certain period of time and then transfers it to another family member by way of a temporary transfer of ownership, for example where an adult who is a member of the Consumer Class subsequently gives their Affected iPhone to a child or other relative, the claim shall only be actionable by the initial purchaser.

“Affected iPhones” shall mean models iPhone 6, iPhone 6 Plus, iPhone 6s, iPhone 6s Plus, iPhone SE, iPhone 7 and iPhone 7 Plus.

“Business Entity” means a legal or natural person carrying out a trade, business, craft or profession, including self employed contractors and sole traders.

“Consumers” shall mean natural persons (or in the event such a person has died during the Relevant Period, the personal or authorised representative of his or her estate) habitually resident in the United Kingdom acting wholly or mainly other than in the course of business and includes children, represented by their legal guardian.

“**Relevant Period**” shall mean the period from 12 December 2016 to 17 June 2022. iOS Updates were: (i) “**Pre-Installed**” where one of the relevant iOS Updates was already installed on the Affected iPhone at the point it was acquired; and (ii) “**Subsequently Downloaded**” where a user downloaded and installed one of the relevant iOS Updates to the Affected iPhone after it was acquired.

Exclusions from the two proposed classes

10. 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; and
 - 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; and
 - c. The Class Representative’s and Defendants’ legal representatives as well as any experts or other professional advisors instructed in these proceedings, including the professional staff assisting them.

Forum

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

Opting-out and Opting-in

12. Every person falling within the description of the class who is domiciled within the United Kingdom on 12 March 2024 (the “**Domicile Date**”) shall be included in these collective proceedings.
13. Any person falling within the description of the Class who is domiciled in the United Kingdom on the Domicile Date may opt-out of the Collective Proceedings (as applicable) by giving the Class Representative notice in writing of their decision to opt out in accordance with the Notice of the Collective Proceedings (“**Notice**”) and by no later than 3 months after the date of publication of the Notice.
14. Every Class member who is not domiciled in the United Kingdom on the Domicile Date may opt-in to the Collective Proceedings (as applicable) by giving the Class Representative notice in writing of their decision to opt-in in accordance with the Notice and by no later than 3 months after the date of publication of the Notice.

Notification

15. Subject to paragraph 16 below, the Class Representative shall publish a Notice of the Collective Proceedings which has been approved by the Tribunal.

Stay of notification requirement

16. Paragraph 15 above is stayed until 45 days after this Order is made.

Directions

17. By 30 January 2025, the Defendants shall serve on the Class Representative a draft List of Issues for Disclosure which shall identify all issues for disclosure relating to the matters to be determined at Trial 1.
18. The parties shall seek to agree the draft List of Issues for Disclosure by 20 February 2025.
19. By 5 March 2025, the parties shall file at the Tribunal an agreed draft List of Issues for Disclosure, if necessary, identifying any areas of disagreement between the parties about the content of that list.
20. Any outstanding issues between the parties and further directions for disclosure shall be determined at a Case Management Conference to be listed at a convenient date (with a time estimate of 1 day) (“**CMC**”).
21. The parties shall liaise ahead of the CMC to seek to agree further directions relating to disclosure and directions to Trial 1.

General

22. The costs of the CPO Application shall be costs in the case.
23. There be liberty to apply.

Justin Turner KC

Chair of the Competition Appeal Tribunal

Made: 23 January 2025

Drawn: 23 January 2025