



COMPETITION APPEAL TRIBUNAL

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

CASE NO. 1381/7/7/21

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 15 January 2021 of an application to commence collective proceedings, under section 47B of the Competition Act 1998 (“the Act”), by Justin Le Patourel (the “Applicant/Proposed Class Representative”) against BT Group PLC (the “Respondent/Proposed Defendant” or “BT”). The Applicant/Proposed Class Representative is represented by Mishcon de Reya LLP of Africa House, 70 Kingsway, London, WC2B 6AH (Reference: Rob Murray/Natasha Pearman).

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

The proposed collective proceedings would combine “standalone claims” under section 47A of the Act for damages caused by alleged breaches of statutory duty by the Respondent/Proposed Defendant in charging unfair prices to certain of its customers in breach of s.18 of the Act (the “Chapter II Prohibition”).

The Application states that BT has throughout the Claim Period (as defined below) charged excessive prices to customers supplied with certain residential landline services.

Although the claims are not “follow on” claims, they arise out of a review, conducted by Ofcom in 2017, of “the market for standalone landline telephone services” (“the 2017 Review”). Ofcom conducted the 2017 Review pursuant to its powers under the Communications Act 2003 to review communications markets for the purposes of deciding whether to impose *ex ante* regulation.

The 2017 Review addressed the prices paid by consumers for certain residential landline telephone services, where those services are brought by the customer on a standalone basis, rather than as part of a bundle with non-voice services such as broadband. In summary, Ofcom found that prices for standalone residential landline telephone services were above the competitive level, thereby causing consumer detriment. In February 2017, Ofcom provisionally concluded that a three-year retail price control was necessary to reduce the prices charged by BT for those landline services. Subsequently, in October 2017, Ofcom accepted a set of voluntary commitments from BT which involved, amongst other things, a forward-looking price reduction for a certain segment of customers (known as “Voice Only Customers”) who buy certain standalone residential landline services and do not buy broadband at all, from BT or any other provider. Ofcom recently launched a consultation to review and consider the renewal of the existing commitments.

The Proposed Class includes all persons domiciled in the United Kingdom (except in the Hull Area) who, during the Claim Period, bought a BT Standalone Fixed Voice Service (“BT SFV Service”), excluding BT Basic and BT Home Phone Saver (“Excluded Services”). A BT SFV Service means any residential landline calling plan service provided by BT, except for the Excluded Services, which (i) includes landline line rental and (ii) has not been sold as part of a bundle with broadband.

The Proposed Class is split into two Proposed Sub-classes, namely:

- (a) BT Voice Only Customers: Members of the Proposed Class who, during the applicable Claim Period as defined below, bought a BT SFV Service but did not, at the same time, buy a broadband service, either from BT or any other provider.

- (b) BT Split Purchase Customers: Members of the Proposed Class who, during the applicable Claim Period as defined below, have bought at the same time both (i) a BT SFV Service; and (ii) a broadband service, either from BT or any other provider.

The Claim Period means:

- (a) for residential BT Voice Only Customers, between 1 October 2015 and 1 April 2018 inclusive;
- (b) for business BT Voice Only Customers, between 1 October 2015 and the date of the Tribunal's final determination of the claims made by the Proposed Sub-class of BT Voice Only Customers or their earlier settlement (or settlement of any part thereof); and
- (c) for BT Split Purchase Customers, between 1 October 2015 and the date of the Tribunal's final determination of the claims made by the Proposed Sub-class of BT Split Purchase Customers or their earlier settlement (or settlement of any part thereof).

According to the Application, the members of the Proposed Class have characteristics which suggest many of them are in groups that are considered to be vulnerable. Ofcom noted that BT SFV Service Customers tended to be elderly, in lower socio-economic groups and disengaged.

It is estimated that the size of the Proposed Class across the Claim Period is around 2.31 million individuals, with the BT Voice Only sub-class estimated at around 1.23 million and the BT Split Purchase sub-class estimated at around 1.08 million.

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

1. The Applicant/Proposed Class Representative will act fairly and reasonably in the interests of the class members:
 - (a) The Applicant/Proposed Class Representative has considerable experience in the telecoms industry with a specific focus on matters which stop consumers from switching from one service provider to another in order to get a better deal, including the conduct of the communications providers themselves. As a result, he has an in-depth understanding of the motivations, behaviours and difficulties faced by telecoms consumers, particularly those who are vulnerable, elderly or less comfortable with technology. He believes that this is directly relevant to the experience of SFV Customers during and prior to the Claim Period and enables him to understand the members of the Proposed Class, and act fairly and adequately in their interests.
 - (b) The Applicant/Proposed Class Representative wishes to represent the proposed class in order to secure justice for them.
 - (c) The Applicant/Proposed Class Representative has the benefit of the expertise of the advisory panel, which he has started to assemble to assist. He has identified certain individuals with specific expertise and experience in consumer rights, particularly in the context of vulnerable consumer matters, to assist him.
 - (d) The Applicant/Proposed Class Representative has prepared a plan for the proposed collective proceedings in accordance with rule 78(3)(c) of the Rules.
2. The Applicant/Proposed Class Representative does not have a material interest that is in conflict with the interests of class members.
3. At the time of filing the Application, the Applicant/Proposed Class Representative is not aware of any other applicant seeking approval to act as the class representative in respect of the same claims.
4. The Applicant/Proposed Class Representative has funding arrangements in place to pay the Respondent/Proposed Defendants' recoverable costs if ordered to do so.

The Application states that the claims are eligible to be brought in collective proceedings because:

1. The proposed collective proceedings are brought on behalf of an objectively identifiable class of persons. It is possible to identify whether any person falls within the Proposed Class (and Proposed Sub-Classes) based on objective and straightforward factual enquiries;
2. The claims raise common issues:
 - (a) whether BT's prices for BT SFV Services and/or SFV access charged to BT Voice Only Customers and BT Split Purchase Customers are excessive in breach of the Chapter II Prohibition;
 - (b) the amount of damages which should be awarded to compensate members of the Proposed Class for the unlawful overcharge paid by them to BT;
 - (c) the rate of interest to be awarded to members of the Proposed Class; and
 - (d) whether interest should be awarded on a simple basis, or as damages on a compound basis.
3. The claims are suitable to be brought in collective proceedings:
 - (a) The proposed collective proceedings are an appropriate means for the fair and efficient resolution of the common issues. The claims are individually low in value (estimated as between £148 and £333 per person). It would be unviable for individual consumers to pursue such claims separately considering the complexity and corresponding costs and time required to bring such a claim.
 - (b) The benefits of continuing the collective proceedings outweigh any costs for the members of the Proposed Class, Proposed Defendant and Tribunal. These costs are fair and proportionate in light of: (a) the loss suffered as a result of the infringement which would otherwise go unredressed; (b) the size of the class; and (c) the aggregate value of the claims.
 - (c) The Applicant/Proposed Class Representative is not aware of any separate proceedings making claims of the same or a similar nature having been commenced.
 - (d) The size and nature of the Proposed Class mean that the claims are suitable to be brought by way of (opt-out) collective proceedings.
 - (e) It is possible to determine in respect of any person whether that person is or is not a member of the Proposed Class.
 - (f) The claims are suitable for an aggregate award of damages.

The proposed collective proceedings should proceed on an opt-out basis because (i) the claims are strong, and (ii) opt-in proceedings are not practicable.

The relief sought in the Proposed Collective Proceedings is:

1. Damages to be assessed on an aggregate basis pursuant to section 47C(2) of the Act;
2. interest, calculated from the date each individual claim arose on either a compound, or alternatively simple, basis;
3. the Proposed Class Representative's costs; and/or
4. any such further or other relief as the Tribunal may see fit.

Aggregate damages have been given a preliminary estimate of £589 million (on the basis of 8% simple interest, comprised of £238 million for BT Voice Only Customers and £351 million for BT Split Purchase Customers).

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, QC (Hon)

Registrar

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