

NOTICE OF THE COLLECTIVE PROCEEDINGS APPLICATION AND HEARING

*This is a legal notice that has been issued at the direction of the Competition Appeal Tribunal
In Case Nos.1624-1627/7/7/23*

If you stayed on a Combined Handset and Airtime contract after the contractual minimum term ended, you could benefit from this claim.

HEARING DATE: 31 March 2025 to 2 April 2025

- This notice contains information about a proposed ‘collective action’ and steps you can take.
- The proposed class representative, Mr Justin Gutmann, has filed with the Competition Appeal Tribunal (the “**Tribunal**”), four collective proceedings claim forms, against each of the four mobile network operators (“**MNOs**”), active in the UK.¹ In particular, Mr Gutmann has filed claims against:
 - (a) Vodafone Limited and Vodafone Group Plc (“**Vodafone**”);
 - (b) EE Limited and BT Group Plc (“**EE**”);
 - (c) Hutchison 3G UK Limited (“**Three**”); and
 - (d) Telefonica UK Limited (“**O2**”).
- The law allows collective proceedings to be brought on behalf of a group or groups of persons who are alleged to have suffered loss as a result of unlawful anticompetitive conduct. For collective proceedings to be brought, the Tribunal must first make a collective proceedings order (a “**Collective Proceedings Order**”) authorising a person to act as a representative of everyone who has been affected. Mr Gutmann has applied to be that representative. If the Collective Proceedings Order is granted, it would allow each of Mr Gutmann’s four claims to proceed to trial.
- In this Notice, the four claims described above are referred to, together, as the “**Four Related Proceedings**”. Individually, each of the Proposed Claims is referred to as a “**Proposed Proceedings**”. Further: (i) the respondents and proposed defendants in the Four Related Proceedings are referred to as the “**Proposed Defendants**”; and (ii) each of the separate Proposed Defendants is referred to as a “**Proposed Defendant**”.

¹MNOs are telecommunication service providers that operate their own mobile networks and offer wireless voice and data communication services for their mobile customers on their respective networks.

- The Four Related Proceedings are brought on behalf of natural persons, (including sole traders but excluding a natural person in a business partnership), who entered into at least one mobile phone contract with one of the Proposed Defendants (and/or with another company that was, from time to time, within the same corporate group as one of the Proposed Defendants), under an Included Brand, pursuant to which the customer:
 - agreed to make regular payments over a minimum contractual term (“**Minimum Term**”) to pay for: (i) a mobile telephone handset or device (“**Handset**”) acquired by the customer; and, as part of the same contract, (ii) other mobile telephony services (in particular, services that enable the customer to make telephone calls, send text messages and/or use mobile data) (“**Airtime Services**”); and
 - continued, even after the Minimum Term had expired, to be required to pay, and to pay, an amount in excess of the sum payable in respect of the supply of Airtime Services i.e., a charge that was not reduced to reflect that the customer had, by the end of the Minimum Term, already paid for the Handset.
- These contracts are referred to as “**Combined Handsets and Airtime Contracts**” or “**CHA Contracts**” because they reflect that these contracts provide for periodic payments paid in consideration for the Handset supplied under the contract in addition to payments made in respect of the supply of Airtime Services.
- The CHA Contracts that are included in these claims are those where:
 - (a) The CHA Contracts included provision for a Minimum Term and for periodic payments to be made to the relevant Proposed Defendant.
 - (b) Each single periodic payment related to both (i) the Handset and (ii) the Airtime Services provided over the period to which the payments related, with the periodic charges set at a level to ensure that, at the end of the Minimum Term, the Handset would have been paid for.
 - (c) During the Minimum Term, the customer had to continue to pay the periodic payments, unless they chose to end the CHA Contract by paying an early termination fee. Customers who cancel their CHA Contract within the Minimum Term are able to retain the Handset, subject to the payment of the early termination charge.

- (d) At the end of the Minimum Term, unless the customer terminated the CHA Contract, the customer was contractually required to continue to pay the relevant Proposed Defendant's charges at a rate that did not take into account the fact that the Minimum Term had expired and the customer had already paid for the Handset.
- Accordingly, Mr Gutmann alleges that customers who did not immediately terminate their CHA Contract at the end of the Minimum Term were required on an ongoing basis to overpay, and have overpaid, for the Airtime Services that they continued to receive. This is because their periodic charges were not reduced at the end of the Minimum Term to the relevant SIM-only price and were maintained at the same level as had been set during the Minimum Term to pay for both a Handset and the Airtime Services, despite the Handset having already been paid for over the Minimum Term. Mr Gutmann refers to this overpayment as a "**Loyalty Penalty**" and to multiple periodic payments (normally monthly) of a Loyalty Penalty as "**Loyalty Penalties**".
 - Mr Gutmann alleges that the charging of Loyalty Penalties by the Proposed Defendants to customers is an unfair and anticompetitive practice that breached (and, unless and until terminated, continues to breach) competition law. In particular, Mr Gutmann alleges that the charging of Loyalty Penalties infringes the prohibition against abuses of a dominant position pursuant to section 18 of the Competition Act 1998.
 - Mr Gutmann alleges that the MNOs infringed competition law on two alternative bases: (1) the MNOs abused an individually held dominant position on the market for their own customers on CHA Contracts who continued to make payments under those contracts after the expiry of the Minimum Term; and/or (2) the MNOs abused a collective dominant position on the broader market for the provision of retail mobile telecommunication services.
 - Although Mr Gutmann has issued four separate claims against each of the four MNOs, the central basis for each claim is the same and common to the four claims (as explained below). Mr Gutmann will ask for the four claims to be consolidated or to be dealt with together.
 - If a Collective Proceedings Order is granted, persons affected will be bound by the Tribunal's final judgment deciding the outcome of the claims, unless they choose to opt out. Persons included in the claims are known as members of the "**Proposed Classes**".
 - A hearing has been set for three days commencing on 31 March 2025, with one additional day held in reserve to decide whether Mr Gutmann's Four Related Proceedings against each of the four MNOs should proceed. The hearing will

take place at the Competition Appeal Tribunal, Salisbury Square House, 8 Salisbury Square, London EC4Y 8AP.

- To learn more about Mr Gutmann’s claims, please visit www.loyaltypenaltyclaim.com or www.catribunal.org.uk.

A Summary of Your Rights and Choices:

Please read this notice carefully.

Your legal rights may be affected whether you act or you do not act.

YOU MAY:	YOUR LEGAL RIGHTS AND CHOICES EXPLAINED	DEADLINE:
OBJECT TO THE APPLICATION OR THE CLASS REPRESENTATIVE	Any person with an interest (including any members of the Proposed Classes) may object to one or more of Mr Gutmann’s applications for a Collective Proceedings Order, or the authorisation of Mr Gutmann to act as class representative. For further information on how to do this, see section 11 below.	31 October 2024
APPLY TO MAKE ORAL / WRITTEN SUBMISSIONS TO THE TRIBUNAL	<p>Any person with an interest (including any member of the Proposed Classes) who wishes to object, to one or more of Mr Gutmann’s applications for a Collective Proceedings Order or the authorisation of Mr Gutmann may also ask to make submissions (either verbally or in writing) to the Tribunal at the hearing on 31 March to 2 April 2025.</p> <p>Any third party with a legitimate interest (who is not a member of the Proposed Classes) may also ask to make submissions (either verbally or in writing) at the hearing on 31 March to 2 April 2025. Any such application must be made in writing, supported by reasons, to be received by the Tribunal by 31 October 2024.</p>	31 October 2024

Further details on how to sign up for updates, object or apply to make submissions are available at www.loyaltypenaltyclaim.com.

GENERAL INFORMATION

1. Why has this notice been issued?

The Tribunal has directed that this notice be issued following Mr Gutmann's applications for a Collective Proceedings Order in each of the four claims described above. Each of the applications for a Collective Proceedings Order asks the Tribunal: (i) to approve the relevant claim as suitable to proceed as a collective claim on behalf of eligible class members; and (ii) to approve Mr Gutmann as the class representative.

This notice has been issued to inform you of your right to object to one or more of the applications for a Collective Proceedings Order or the authorisation of Mr Gutmann, as the proposed class representative. This notice explains the Four Related Proceedings, who is covered by those proceedings, your right to object to those proceedings, how to object, and any related deadlines. Please read this notice carefully.

2. What is the Competition Appeal Tribunal?

The Tribunal is a specialist tribunal based in London that covers the whole of the UK and hears disputes such as these. The Tribunal publishes its Rules and Guidance, together with information about what it does, on its website www.catribunal.org.uk

3. Who are the proposed collective actions against?

The Proposed Proceedings are brought against each of the four mobile network operators (MNOs) operating in the UK namely: Vodafone; EE; Three; and O2.

Whilst Mr Gutmann has issued separate claims against each of Vodafone, EE, Three, and O2, the central basis for each claim is the same and common to the four claims. (See Question 4 below.)

4. What did the Proposed Defendants do wrong? What are the claims?

Mr Gutmann alleges that, in breach of section 18 of the Competition Act 1998, each of the MNOs abused a dominant market position by charging a Loyalty Penalty in that they required customers who did not immediately terminate their CHA Contracts at the end of the Minimum Term to overpay for their Airtime Services.

Mr Gutmann alleges that the MNOs infringed competition law on two alternative bases: (1) the MNOs each abused an individually held dominant position on the market for their own customers with CHA Contracts who continued to make payments under those contracts after the expiry of the Minimum Term; and/or (2)

the MNOs abused a jointly held dominant position on the broader market for the provision of retail mobile telecommunication services.

5. Who is the proposed class representative?

The proposed class representative in each of the Four Related Proceedings is Mr Justin Gutmann. The four applications for a Collective Proceedings Order request that Mr Gutmann be authorised to act as the class representative.

Mr Gutmann has spent a large part of his professional life dedicated to public policy, market research and, specifically, to consumer welfare. His final post prior to retirement was as Head of Research and Insight at Citizens Advice, the UK's statutory consumer champion.

As the class representative, Mr Gutmann will conduct the claims against the Proposed Defendants on behalf of all the Proposed Classes who become represented persons (see Question 6 below). Mr Gutmann has instructed lawyers and experts, and, if the applications for Collective Proceedings Orders are successful, Mr Gutmann would continue to instruct those lawyers and experts in the Four Related Proceedings on behalf of Proposed Classes. Further, Mr Gutmann would make decisions regarding the conduct of the claims, and, in particular, he would decide whether to present any settlement proposal(s) to the Tribunal for its approval.

If the applications for a Collective Proceedings Order are granted (or if some of those applications are granted), during the case, Mr Gutmann would be responsible for communicating with the Proposed Classes and for issuing formal notices such as this notice. Mr Gutmann will update the Proposed Classes about the claims via the website www.loyaltypenaltyclaim.com, through the media and on social media.

6. Who is in the Proposed Classes?

The Consumer Rights Act 2015 (the “**2015 Act**”) introduced into the UK Competition Act 1998 a collective proceedings regime, whereby claims are able to be brought on behalf of a group of individuals who are alleged to have suffered a common loss. The group is the ‘class’ and all individuals within the group are ‘class members.’

Through the collective proceedings regime, groups of persons who have all suffered a similar loss, do not each need to bring an individual claim to obtain compensation. Instead, these persons may all receive compensation through a single, collective claim brought on their behalf by a class representative.

The four applications for Collective Proceedings Orders brought by Mr Gutmann ask the Tribunal to allow the Four Related Proceedings to proceed on an ‘opt-out’

basis on behalf of the Proposed Classes who are people who fall within the Class Definition above in respect of one or more of the four Proposed Proceedings against the four MNOs respectively.

The Persons on whose behalf the Claims are brought

- In each of the Four Related Proceedings against the four MNOs, Mr Gutmann makes the same core allegation, namely, that the Proposed Defendants breached competition law by charging Loyalty Penalties pursuant to CHA Contracts, whereby at the end of the Minimum Term, unless the customer terminated the CHA Contract, the customer was contractually required to continue to pay the relevant Proposed Defendant's charges at a rate that did not reflect the fact that the Minimum Term had expired and the customer had already paid for the Handset. Accordingly, the proposed class definitions in each of the four claims are identical save that the class definition in each claim focuses on the customers of the specific MNO named as the Proposed Defendant in that claim, i.e., the customers of each of Vodafone, EE (including Orange and T-Mobile), Three and O2.
- Further to the summary above, in more detail, the persons on whose behalf Mr Gutmann brings the Four Related Proceedings are:

Any Relevant Customer who in the Relevant Period (i) entered into at least one Combined Handset and Airtime Contract with one of the Proposed Defendants (and/or any other company which was, from time to time, within the same corporate group as the Proposed Defendants) under an Included Brand, and (ii) pursuant to the Combined Handset and Airtime Contract(s), made one or more periodic payments in excess of the relevant SIM Only Price after the expiry of the Minimum Term; or, in the case of such a deceased Relevant Customer, the Personal Representative of that deceased Relevant Customer.

***"Relevant Customer"** means a natural person (including a sole trader but excluding a natural person in a business partnership) who enters into a personal or business Combined Handset and Airtime Contract for the supply of mobile telecommunications services during the Relevant Period.*

***"Relevant Period"** means any date up to [(i) the date of filing of the CPO application or (ii) such later date as may be ordered.]*

***"Combined Handset and Airtime Contract"** means a contract offered to customers in the United Kingdom for the provision of both (i) a Handset and (ii) Airtime Services, pursuant to which the customer makes an indefinite sequence of single periodic payments in respect of both the Handset and*

Airtime Services at a rate calculated to pay for the Handset over the Minimum Term.

*“**Handset**” means a mobile telephone device or another device which, with a SIM card, enables the user to access a mobile communications network.*

*“**Airtime Services**” means retail telecommunication services that enable customers, through a SIM card, to use their Handsets to make and receive telephone calls, send and receive text messages and/or use mobile data.*

*“**Included Brand**” means:*

In the claim against Vodafone: the Vodafone brand;

In the claim against EE, the EE: Orange and T-Mobile brands;

In the case against Three, the Three brand; and

In the case against O2: the O2 brand.

*“**Minimum Term**” means the period during which the customer is liable to pay a charge for early termination of a Combined Handset and Airtime Contract.*

*“**Proposed Defendant**” means:*

In the claim against Vodafone: Vodafone Limited and Vodafone Group Plc;

In the claim against EE: EE Limited and BT Group Plc;

In the claim against Three: Hutchison 3G UK Limited; and

In the claim against O2: Telefonica UK Limited.

*“**SIM Only Price**” means the periodic charge payable to the Proposed Defendants (and/or any other company which was, from time to time, within the same corporate group as the Proposed Defendants) in respect of Airtime Services only (i.e. without the supply of a Handset).*

*“**Personal Representative**” means the representative of the estate of a deceased Relevant Customer.*

- If you are a person who falls within the class definition described above in respect of one or more of the MNOs, then (i) subject to the points noted below, you will automatically be part of one or more of the Proposed Proceedings, and (ii) you will be described as a member of the “**Proposed Classes**”.
- It is possible that you will fall within more than one of the four Proposed Proceedings described above. For example:
 - If you took out a CHA Contract with EE and you made payments after the expiry of the Minimum Term of that CHA Contract, you would fall within the class in the Proposed Proceedings against EE.

- If you also took out a separate CHA Contract with Three and you made payments after the expiry of the Minimum Term of that CHA Contract, you would also fall within the class in the Proposed Proceedings against Three.
- Consequently, in this example, subject to the points noted below, you would have two opportunities to seek damages as part of the Proposed Proceedings: one opportunity in the Proposed Proceedings against EE and another opportunity in the Proposed Proceedings against Three.

As explained above, it is possible that the same person could fall within the proposed class covered by more than one of the four Proposed Proceedings.

For each of the Four Related Proceedings, members of the Proposed Classes who are domiciled in the United Kingdom as at a date to be specified by the Tribunal (“**Domicile Date**”) will remain within the class(es) unless they opt out by a further date specified by the Tribunal for making that decision.

Members of the Proposed Classes who are not domiciled in the United Kingdom as at the Domicile Date will only become part of the class(es) if they opt into the Four Related Proceedings by a further date specified by the Tribunal for making that decision. Details on how to opt out of or opt into the Four Related Proceedings will be provided in a subsequent Notice issued by Mr Gutmann once the applications for a Collective Proceedings Order have been determined.

7. Who is excluded from the Proposed Classes?

The following persons are excluded from the Proposed Classes on whose behalf the Four Related Proceedings are brought:

- Members and staff of the Tribunal assigned to the Four Related Proceedings and members and staff of any other courts assigned to hear any appeals and/or other challenges against decisions taken in one or more of the Four Related Proceedings;
- Officers, directors or employees of:
 - the Proposed Defendants,
 - any entities which have a (direct or indirect) interest in any of the Proposed Defendants that give rise to significant control, and
 - any entities in which any of the Proposed Defendants have such an interest;

- Mr Gutmann's and the Proposed Defendants' respective legal representatives as well as any experts or other professional advisers instructed in the Four Related Proceedings, including the professional staff assisting them; and
- Mr Gutmann as the Proposed Class Representative.

The Tribunal will assess the four applications for a Collective Proceedings Order to determine that the claims sought to be included in the Four Related Proceedings: (i) are brought on behalf of an identifiable class of persons; (ii) raise common issues; and (iii) are suitable to be brought in collective proceedings.

8. Are businesses included in the Proposed Classes?

Mr Gutmann is bringing the Four Related Proceedings on behalf of Relevant Customers who are defined as natural persons (including sole traders but excluding natural persons in a business partnership) who purchased mobile telecommunications services under a personal or business CHA Contract.

Accordingly, both incorporated businesses and natural persons in business partnerships are excluded from the Proposed Classes.

Conversely, natural persons (including sole traders) who used their mobile phone in the course of business are included within the Proposed Classes.

9. How much money does the claim ask for?

The Proposed Proceedings seek compensation for all those who have been affected by the Proposed Defendants' allegedly anti-competitive behaviour. The aggregate damages sought in the Four Related Proceedings is around £2,822 million excluding interest, or £3,285 million including interest. These figures are preliminary estimates calculated using publicly available data from Ofcom, which date back to 1 January 2007 and are subject to change.

The preliminary damages estimate in each of the Four Related Proceedings can be summarised as follows:

- (a) In the Proceedings against Vodafone: £1,218 million excluding interest or £1,415 million including interest;
- (b) In the Proceedings against EE: £951 million excluding interest or £1,107 million including simple interest;
- (c) In the Proceedings against Three: £436 million excluding interest or £507 million including interest; and
- (d) In the Proceedings against O2: £217 million excluding interest or £256 million including interest.

If the Four Related Proceedings (or any one of the individual Proposed Proceedings) are successful, all persons who have an eligible claim in each of the Four Related Proceedings will be able to seek their share of the damages in the applicable Proposed Proceedings as awarded by the Tribunal. The amount of any individual claims will depend on the level of any overcharge and the period during which the overcharge continued.

10. How do I get a payment?

No money is available now and there is no guarantee that money will be available in the future. Each of the Four Related Proceedings will have to be proven before the Tribunal, unless settlements can be agreed.

The progress of Four Related Proceedings can take time, so please be patient. If and when money becomes available, members of the Classes will be notified about how to obtain a payment. Please register at www.loyaltypenaltyclaim.com to stay up to date.

HOW TO OBJECT TO THE COLLECTIVE PROCEEDINGS ORDER APPLICATION OR THE CLASS REPRESENTATIVE

11. Can I object and what can I object to?

Any person with an interest (including any proposed class member) may object to the application for a Collective Proceedings Order or the authorisation of Mr Gutmann as the class representative.

If you wish to file an objection, you must write to the Tribunal stating your reasons for objecting and send your objection, **so it is received by no later than 4 pm on 31 October 2024** by email to registry@catribunal.org.uk or by post, to the following address:

The Registrar
Competition Appeal Tribunal
Salisbury Square House
8 Salisbury Square
London ECC4Y 8AP

When writing to the Tribunal you must include reference to the “**proposed collective claim (Mr Gutmann) against EE, Vodafone, Three and O2, Case Nos. 1624-1627/7/7/23**”.

DEADLINE TO OBJECT: 4pm on 31 October 2024

Any proposed class member may ask to make submissions to the Competition Appeal Tribunal (either verbally or in writing) at the hearing of the application for a Collective Proceedings Order, in addition to making written objections.

Any third party with a legitimate interest who is not a member of the Proposed Classes may also ask to make submissions to the Competition Appeal Tribunal (either verbally or in writing) at the hearing of the application for a Collective Proceedings Order, in addition to making written objections.

Any such request to make submissions must be sent to the Tribunal in writing to the address above, supported by reasons.

DEADLINE TO REQUEST TO MAKE SUBMISSIONS AT THE HEARING: 4 PM ON 31 OCTOBER 2024

WOULD YOU LIKE MORE INFORMATION?

12. How can I stay updated on the progress of the claim?

There are several ways that you can receive updates:

- a. You can visit www.loyaltypenaltyclaim.com and register; and
- b. You can follow our social media channels on Facebook and X at <https://www.facebook.com/LoyaltyPenalty/> and <https://twitter.com/LoyaltyPenalty>.

13. Who is funding the claim?

Mr Gutmann is not able to fund the Four Related Proceedings himself. Therefore, Mr Gutmann is working with a specialist litigation funder, LCM Funding Limited, to bring the Four Related Proceedings.

Mr Gutmann has also secured insurance to cover potential adverse costs liability to the Proposed Defendants, in the event that any of the claims are unsuccessful.