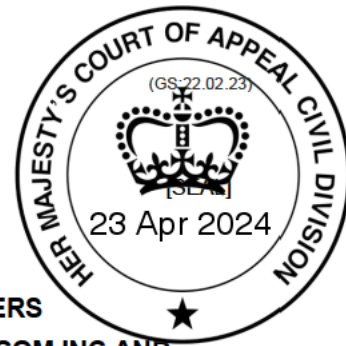PTA Template 269C1 - First Appeal

IN THE COURT OF APPEAL, CIVIL DIVISION

REF: **CA-2024-00539**

HUNTER –v– AMAZON.COM.INC AND OTHERS

HAMMOND -v- AMAZON.COM.INC AND OTHERS

CA-2024-000539

(seal: HER MAJESTY'S COURT OF APPEAL CIVIL DIVISION — 23 Apr 2024)

ORDER made by the Rt. Hon. The Chancellor of the High Court

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal against the Ruling of the Competrition Appeal Tribunal ("CAT") on Carriage dated 5 February 2024

Decision:

Permission to appeal refused

Reasons

1. As Green LJ said in *Evans v Barclays Bank* [2023] EWCA Civ 876 at [146] (a case which also concerned a "carriage" dispute as to which of two candidates should be the class representative in collective proceedings): "The choice made by the CAT majority was a quintessential multifactorial evaluation. The CAT considered in the round a variety of factors relevant to who could conduct the proceedings best. The challenge is as to the weight the CAT attached to the various considerations as to which the CAT, as the expert in how proceedings play out at the nuts and bolts level, is vastly better placed than the Court of Appeal to form a view. The threshold for persuading the Court of Appeal to reverse the CAT's decision is commensurately high." That statement of principle is equally applicable here, where the CAT has engaged in exactly that multifactorial evaluation and has preferred the methodology of Mr Hammond and his expert to that of Ms Hunter and her expert.

2. Ms Hunter's proposed appeal alleges that Mr Hammond's expert proposes a methodology on loss and damage which proposes only to compare the prices of the offers that would have won the Amazon Buy Box in the counterfactual with the prices that won in fact. It is alleged that there is a critical error in this methodology because it leaves entirely out of account all other aspects of competition between sellers on the Amazon marketplace specifically delivery speed. I agree with Mr Hammond's counsel that this allegation is simply incorrect. As Mr Hammond's expert explained, his modelling of a counterfactual unbiased version of the Amazon algorithm would take account of consumer preferences including delivery speed.

3. Furthermore, the CAT did not omit the assessment of whether Mr Hammond's expert's methodology was capable of assessing loss to the class robustly or at all as is alleged by Ms Hunter. As the CAT said at [19] of its Ruling: "There are substantial differences in the methodology proposed [by the two experts] in relation to the proof of abuse and/or quantification of the overall loss suffered by consumers. [20] of the Ruling then goes on to consider how Mr Hammond's expert methodology quantifies "the consumer loss".

4. Accordingly, I do not consider that there was any error in the Ruling, let lone an error of law. The CAT simply preferred Mr Hammond's expert's methodology, a multifactorial evaluation which it was entitled to make. The proposed appeal comes nowhere near satisfying the high threshold for interference by the Court of Appeal to which *Evans* refers.

Signed: BY THE COURT

Date: 22 April 2024

Notes

(1) Rule 52.6(1) provides that permission to appeal may be given only where –
   a) the Court considers that the appeal would have a real prospect of success; or
   b) there is some other compelling reason why the appeal should be heard.

(2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.

(3)   Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).

Case Number: **CA-2024-00539**