Neutral citation [2025] CAT 34

Case No: 1602/7/7/23

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

13 June 2025

Before:

MRS JUSTICE BACON
(Chair)
ANTHONY NEUBERGER
CHARLES BANKES

Sitting as a Tribunal in England and Wales

BETWEEN:

CHRISTINE RIEFA CLASS REPRESENTATIVE LIMITED

Proposed Class Representative

- v -

(1) APPLE INC.

(2) APPLE DISTRIBUTION INTERNATIONAL LIMITED

(3) AMAZON.COM, INC.

(4) AMAZON EUROPE CORE S.À.R.L.

~~**(5) AMAZON SERVICES EUROPE S.À.R.L.**~~

(6) AMAZON EU S.À.R.L.

(7) AMAZON.COM SERVICES LLC

Proposed Defendants

RULING (COSTS)

INTRODUCTION

1. In its judgment handed down on 14 January 2025, [2025] CAT 5 (the **Certification Judgment**), the Tribunal refused the application by Christine Riefa Class Representative Limited (the **PCR**) for a collective proceedings order. (We continue to use the abbreviation PCR in this ruling, although as a result of that judgment Christine Riefa Class Representative Limited is no longer a potential class representative.) The first and second proposed defendants in those proceedings are both members of the Apple group of companies (**Apple**) and the third to seventh proposed defendants are members of the Amazon Group of companies (**Amazon**) (together, the **Proposed Defendants**). The procedural history of these proceedings is set out in the Certification Judgment.

2. On 4 February 2025, the PCR applied to the Tribunal for leave to appeal the Certification Judgment. That application was refused by way of Reasoned Order dated 19 February 2025 (the **PTA Order**).

3. This Ruling addresses the consequential applications by the parties in relation to costs.

4. We have received the following applications:

   (a) Amazon claims a total of £3,368,812.94, which includes solicitors' fees of £2,472,337.91, counsels' fees of £302,758.75 and experts' fees of £629,784.36. It does not include its own costs relating to its unsuccessful application for disclosure (see paragraphs 127–129 of the Certification Judgment).

   (b) Apple claims a total of £2,697,523.58, which includes solicitors' fees of £1,798,418.69, counsel's fees of £586,592.94, experts' fees of £311,071.96 and other disbursements (namely, transcription fees) of £1,439.99.

(c) The PCR claims costs of £109,397.17 for responding to Amazon's unsuccessful disclosure application, which includes £51,178.50 solicitors' fees (including VAT).

5. Both Apple and Amazon request an interim payment of 70% of the sums claimed. The PCR requests an interim payment of 60% of the costs that it claims, to be set off against whatever interim payment it is required to make to Amazon.

6. We invited written submissions from the PCR in response to those applications, and written replies from Apple and Amazon. In its written submissions, the PCR submitted that it should pay only 50% of Apple's costs incurred after the hearing on 12 July 2024, excluding any costs relating to the substantive underlying dispute, and 50% of Amazon's costs incurred after the filing of its response, excluding any costs relating to the substantive underlying dispute and any costs relating to its disclosure application.

7. The PCR submitted that all costs incurred prior to the filing of Apple and Amazon's responses and all costs relating to the substantive underlying dispute incurred thereafter should be reserved to any fresh proceedings issued by a reconstituted PCR, with liberty to apply for a different order if no such proceedings are issued within six months of the Tribunal making a consequential costs order in these proceedings.

8. In support of its position the PCR submitted that:

(a) The basis on which the proceedings were dismissed was one which arose for the first time in the course of the July hearing, out of points raised of the Tribunal's own motion.

(b) Apple was successful on no other points which would have attracted significant costs, and Amazon's success was limited to the definition of "Claim Period" in the draft Amended Claim Form.

(c) The PCR was successful on a number of points which attracted significant costs.

(d) It would be wrong in principle to award the Proposed Defendants any costs of the substantive dispute when (i) no findings have been made about the substantive issues and (ii) the PCR (appropriately reconstituted) intends to issue fresh proceedings raising the same issues.

9. We invited the PCR to submit a reply to the written responses of Apple and Amazon in relation to Amazon's disclosure application only. It declined to do so, but requested a half day hearing, referring to the substantial costs sought by the Proposed Defendants (£6,066,836.52 in total), the unprecedented circumstances giving rise to the Tribunal's dismissal of the PCR's application, the novelty of the parties' submissions in relation to costs in those circumstances, and the fact that the Tribunal's practice and procedure relating to CPO applications remains a developing area of the law. Both Apple and Amazon opposed a further hearing.

10. We have decided to determine these applications on the papers without a hearing. We have had full submissions from all three parties, and we do not consider that it is either necessary or proportionate for further oral submissions to be made. We did, however, ask all three parties to submit updated costs schedules which restricted their solicitors' costs to the Solicitors' Guideline Hourly Rates (the **Guideline Rates**), uplifted by 30%.

11. In response:

(a) Amazon submitted a revised claim of £2,542,106.52, including solicitors' fees of £1,630,654.03;

(b) Apple submitted a revised claim of £2,671,430.66, including solicitors' fees of £1,772,325.76; and

(c) The PCR submitted a revised claim of £105,390.42, including solicitors' fees of £47,171.75 (including VAT).

A. LEGAL FRAMEWORK

12. The award of costs by the Tribunal is governed by Rule 104 of the Competition Appeal Tribunal Rules 2015 (the **Tribunal Rules**) which states, insofar as relevant:

> "(2) The Tribunal may at its discretion, subject to rules 48 and 49, at any stage of the proceedings make any order it thinks fit in relation to the payment of costs in respect of the whole or part of the proceedings.
>
> […]
>
> (4) In making an order under paragraph (2) and determining the amount of costs, the Tribunal may take account of—
>
> (a) the conduct of all parties in relation to the proceedings;
>
> (b) any schedule of incurred or estimated costs filed by the parties;
>
> (c) whether a party has succeeded on part of its case, even if that party has not been wholly successful;
>
> (d) any admissible offer to settle made by a party which is drawn to the Tribunal's attention, and which is not a Rule 45 Offer to which costs consequences under rules 48 and 49 apply;
>
> (e) whether costs were proportionately and reasonably incurred; and
>
> (f) whether costs are proportionate and reasonable in amount."

13. The question of costs has been addressed in a number of recent decisions by the Tribunal. The general principles can be summarised in the following way:

(a) The Tribunal has a broad discretion as regards to costs, but in exercising that discretion it should make an order that reflects the overall justice of the case: *Royal Mail v DAF Trucks* [2023] CAT 31, [36].

(b) Although there is no prescribed "general rule" in the Tribunal Rules corresponding to CPR 44.2(2)(a) that the unsuccessful party should pay the costs of the successful party, the Tribunal generally follows the practice of the High Court. Accordingly, where a party has been wholly successful it should generally be awarded its costs. The question of who succeeded should be approached as a matter of common sense, in a practical and

commercially realistic way: *Merricks v Mastercard* [2024] CAT 57 (*Merricks*), [18].

(c) Where there has been a trial of a preliminary issue or a split trial, a party that has been successful on that issue or that stage of the trial should generally be awarded the costs of that issue or that stage: *Merricks*, [19].

(d) An issue-based order may be appropriate where the overall successful party has lost on a discrete issue which caused additional costs to be incurred. In such a case, if the issue was raised unreasonably that will usually justify an adverse costs order. If the issue was raised reasonably, the mere fact that the successful party lost on that issue does not by itself normally make it appropriate to deprive it of its costs; rather, the question is what order in respect of that issue is just and appropriate in all the circumstances of the case: *Merricks*, [20]–[21]. The Tribunal should not adopt an overly-granular approach to the identification of discrete issues: *Merricks*, [22].

(e) In evaluating recoverable costs, only reasonable and proportionate costs are recoverable, and the assessment of costs should pay close regard to the Guideline Rates: *Merricks*, [40]–[41]. As the Court of Appeal observed in *Samsung Electronics v LG Display* [2022] EWCA Civ 466, [6]:

> "If a rate in excess of the guideline rate is to be charged to the paying party, a clear and compelling justification must be provided. It is not enough to say that the case is a commercial case, or a competition case, or that it has an international element, unless there is something about these factors in the case in question which justifies exceeding the guideline rate."

(f) When assessing the amount of an interim payment on account of costs, the Tribunal should take a cautious approach and should seek to make a broad estimate of the reasonable and proportionate costs likely to be determined on detailed assessment, with an appropriate margin to allow for an overestimate: *Merricks*, [40] and [42].

(g) The same principles apply to costs in collective proceedings as in any other competition law claim: *Merricks,* [43].

14. We see no reason why these general principles should not apply in this case.

B. ANALYSIS

(1) General approach

15. Applying the general principles set out above, we accept the submissions of Apple and Amazon that they should be entitled to recover the reasonable costs they have incurred in relation to the unsuccessful application by the PCR. Similarly we find that, as Amazon has already agreed, the PCR should be entitled to recover the reasonable costs incurred in responding to Amazon's unsuccessful disclosure application.

16. In its submissions on costs, the PCR argued for a more granular approach to the allocation of costs. It argued that the basis on which the proceedings were dismissed was one which arose for the first time at the July hearing out of points raised of the Tribunal's own motion, and that each Proposed Defendant should receive costs only in respect of points that it expressly raised and succeeded on.

17. We do not accept that the basis on which the proceedings were dismissed arose for the first time on at the hearing in July 2024, nor that it arose only out of points raised by the Tribunal. Many of the points on which we made our final decision arose prior to the July hearing. In particular, both of the Proposed Defendants raised concerns about the nature of the PCR's funding arrangements and ATE policy in their written submissions in advance of that hearing. Those submissions were then developed at the July hearing, where the Proposed Defendants' submissions expressly questioned Prof. Riefa's understanding of the funding arrangements and the adequacy of the PCR's evidence as to those arrangements.

18. Furthermore, after the July hearing the PCR submitted further evidence and Prof. Riefa was subsequently cross-examined at the September hearing as set out in the Certification Judgment. The PCR's further written and oral evidence was the basis of further submissions by the Proposed Defendants, both in writing before the September hearing and orally at that hearing. Other points that were raised by the PCR, such as the disputed application to amend the

Claim Form which took up half of the July hearing, were conceded by the PCR before the September hearing.

19. Accordingly we do not think that this is a case where it is appropriate to allocate costs on an issue by issue basis:

(a) Both Proposed Defendants were put to the cost of defending the PCR's application for certification.

(b) We do not accept the PCR's characterisation of the outcome as one in which the Proposed Defendants had only limited success on the points which they raised.

(c) This is not a case in which it is appropriate to identify separate discrete issues on which the Proposed Defendants succeeded or otherwise. As set out at [91] of the Certification Judgment, our decision was based on cumulative concerns about the PCR's ability to represent the proposed class members, rather than any single point advanced by the Proposed Defendants. That created a fundamental, irremediable flaw in the application: see [5] of the reasons for the PTA Order.

(2) Treatment of costs relating to the preparation of a substantive defence

20. A significant proportion of the costs of each Proposed Defendant relates to work undertaken to prepare a defence to the substantive issues. The PCR states that it intends to reconstitute its membership (to replace Prof. Riefa) and issue a fresh application for the same claim using the same corporate entity. On that basis, it argues that the costs of the Proposed Defendants' substantive defences should be reserved to the reissued proceedings. In the alternative, it submits that there should be no order in relation to these costs at this stage, but that the Tribunal should make clear that it remains open to all parties to seek to recover them in reissued proceedings.

21. We do not accept either of these suggestions. While the PCR may currently intend to issue fresh proceedings, it has provided no evidence as to its proposals

in that regard, or as to the progress of any arrangements which the PCR is putting in place (in particular funding arrangements) to achieve that. The Tribunal cannot, therefore, assume that a new claim against the same defendants will indeed be forthcoming, or that that claim will be brought on exactly the same basis. The intention expressed by the PCR in its submissions does not, therefore, provide a solid basis for the Tribunal to make a costs order which fundamentally departs from the usual principle that the successful party should be awarded its costs. Furthermore, we express no view on the practicality or admissibility of a new claim brought by the same corporate entity.

22. More importantly, in the present case the PCR has failed entirely in its application for certification and should bear the costs associated with that failure. It is difficult to see how it could possibly be right for costs which have been incurred in these proceedings to be transferred to a future hypothetical claim brought by an entirely different PCR, or a differently constituted PCR. It is true that if future proceedings are issued on grounds very similar to those pursued by the PCR in this case, there will be savings for the Proposed Defendants through the reuse of material prepared for the first proceedings. That will, however, always be the case when similar successive proceedings are brought against the same defendants.

23. It is also true that the costs incurred by the Proposed Defendants in relation to the substantive issues are significant. It is, however, appropriate for a defendant to start work on its substantive defence as soon as a claim form has been received – indeed, it is inevitable that a defendant will do so, in order to respond to the application for certification of the collective proceedings, to address any issues which the Tribunal itself might raise at the certification stage, and to avoid delay if the proceedings are certified. It is therefore appropriate that the Proposed Defendants in this case carried out work to investigate and prepare their defence to the substantive issues; and having done so they should be able to recover their reasonable and proportionate costs at this stage, and in this action.

(3) Quantum of costs sought and interim payment on account

24. This is not a case where it is appropriate to award indemnity costs, and no party has asked for them. Costs are to be subject to detailed assessment on a standard basis.

25. As noted above, it is the usual practice of the Tribunal to order an interim payment on account of costs, following the approach of CPR r.44.2(8). That was the approach taken in *Professor Carolyn Roberts v Severn Trent Water (Permission to appeal and costs)* [2025] CAT 29, [38], and we consider that it is appropriate to adopt the same approach in this case.

26. We consider in turn the costs of the Proposed Defendants and the PCR's costs of the disclosure application.

(a) The Proposed Defendants' costs

27. We have considered carefully the detailed points made by the PCR in relation to the Proposed Defendants' costs. Two issues in particular stand out.

28. First, in Amazon's case, the substantial solicitors' fees are a reflection, in part, of very high hourly charge out rates. In particular, the most expensive hourly rate for a Grade A fee earner charged by Amazon's solicitors was £1,254.78. The relevant Guideline Rates for 2023–2025 ranged from £512–£566.

29. Whilst we accept that this case is high value and involves a significant degree of complexity, there is nothing in the submissions of Amazon which provides clear and compelling justification for fees which exceed the Guideline Rates by such substantial amounts. In *Merricks*, an uplift of 30% on the guideline rates was deemed acceptable, and that seems to us to be appropriate also in this case, for the purposes of assessment of an appropriate interim payment.

30. In Amazon's case, capping the solicitors' fees at the relevant Guideline Rates results in a significant reduction in the hourly rate for every fee earner engaged on the case, at every level. In Apple's case, there was only one fee earner whose hourly rate (£805.53) exceeded the relevant guideline rate uplifted by 30%. All

other fee earners engaged on the case charged hourly rates below the uplifted guideline rate.

31. Second, both Proposed Defendants have included substantial amounts of experts' fees in their costs (Amazon £629,784.36 and Apple £311,071.96). Whilst it is entirely appropriate that experts should have been engaged and undertaken some work, neither Proposed Defendant has provided any detail to explain these substantial sums. Without any detail of their work we do not think that it is appropriate to take these numbers at full value when assessing an interim payment. We therefore consider that the starting point in respect of experts instructed by each Proposed Defendant, for the purpose of assessing an interim payment, should be capped at £250,000.

32. The solicitor, counsel and expert fees adjusted (where necessary) on the basis set out above are as follows:

(a) Amazon

	Claimed	Adjusted
Solicitors	£2,472,337.91	£1,630,654.03
Less Amazon's costs of the Disclosure Application	- £36,068.08	- £21,090.61
Counsel	£302,758.75	£302,758.75
Experts	£629,784.36	£250,000.00
Total	**£3,368,812.94**	**£2,162,322.17**

(b) Apple

	Claimed	Adjusted
Solicitors	£1,798,418.69	£1,772,325.76
Counsel	£586,592.94	£586,592.94
Experts and other disbursements	£312,511.95	£250,000.00
Total	**£2,697,523.58**	**£2,608,918.70**

33. The Proposed Defendants have applied for an interim payment of 70%. We consider that it is both just and appropriate that interim payments be ordered on 65% of the adjusted values of the claim, set out above.

34. The relevant interim payments for the Proposed Defendants' costs are therefore £1,695,797.16 for Apple and £1,405,834.41 for Amazon.

(b) The costs of Amazon's disclosure application

35. As noted above, Amazon has reduced its costs claim by £21,090.61, reflecting the work undertaken by it in relation to its failed application for disclosure of advice given by Hausfeld to the PCR in connection with the funding arrangements put in place for these proceedings.

36. The PCR claimed its costs of £109,397.17 (which was reduced to £105,390.42, see [11] above) in relation to work done in response to that application. More than half of this amount (£58,218.67) relates to the costs of the five barristers, including three King's Counsel, from whom it sought advice in relation to the application. This seems to us to be an excessive number of counsel for a procedural application of that nature. For the purposes of an interim payment we will therefore adjust the counsel costs to £30,000 as a starting point.

37. The PCR's solicitors also charged rates higher than the guideline rates, albeit lower than those charged by the Proposed Defendants' solicitors: the most expensive fee earner had an hourly charge out rate of £750 per hour. It is appropriate to apply the same 30% uplift cap to these rates as we have done for the costs of the Proposed Defendants.

38. The adjusted costs are therefore as follows:

	Claimed	Adjusted
Solicitors	£51,178.50	£47,171.75
Counsel	£58,218.67	£30,000
Total	**£109,397.17**	**£77,171.75**

39. The PCR has asked for 60% of its costs for responding to Amazon's disclosure application, by way of interim payment. We consider that it is appropriate to allow 65% of the adjusted costs, for parity with our calculation of interim payments for the Proposed Defendants' costs and having regard to the fact that we have already adjusted the costs down as a starting point. That gives a total of £50,161.64 payable by Amazon to the PCR, which should be set off against the interim payment due from the PCR to Amazon as set out above.

(c) Conclusion on interim payments

40. The PCR is therefore required to make an interim payment of £1,695,797.16 to Apple and £1,355,347.77 to Amazon within 21 days of the date on which this ruling is handed down.

41. We leave it to the parties to agree a suitable order for the Tribunal to make to reflect this Ruling.

The Honourable Mrs Justice Bacon

Chair

Charles Bankes

Anthony Neuberger

Charles Dhanowa C.B.E., K.C. (*Hon*)
Registrar

Date: 13 June 2025