



Neutral citation [2024] CAT 70

IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1689/7/7/24

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

2 December 2024

Before:

HODGE MALEK KC
(Chair)

Sitting as a Tribunal in England and Wales

BETWEEN:

CONSUMERS' ASSOCIATION
("Which?")

Applicant / Proposed Class Representative

- and -

(1) APPLE INC.

(2) APPLE DISTRIBUTION INTERNATIONAL LIMITED

(3) APPLE EUROPE LIMITED

(4) APPLE RETAIL UK LIMITED

Respondents / Proposed Defendants

RULING (SERVICE OUT OF THE JURISDICTION)

A. INTRODUCTION

1. By an application dated 8 November 2024 the Proposed Class Representative, the Consumers' Association ("Which?") ("the Applicant") seeks permission pursuant to Rule 31(2) of the Competition Appeal Tribunal Rules 2015 ("the 2015 Rules") to serve the Collective Proceedings Claim Form ("CPCF") out of the jurisdiction on two out of the four Proposed Defendants, who are based outside the jurisdiction ("the Application"). The relevant Proposed Defendants are Apple Inc. ("Apple Inc") and Apple Distribution International Limited ("Apple Distribution"), the First and Second Proposed Defendants respectively (together "the Proposed Foreign Defendants"). Apple Inc is a US corporation incorporated under the laws of California. Apple Distribution is incorporated under the laws of the Republic of Ireland. The Applicant relies on 3 jurisdictional gateways listed in CPR PD6B: para.3.1(9)(a) (damage suffered within the jurisdiction in respect of a tort), 3.1(9)(c) (tort claim governed by the law of England and Wales), and 3.1(3) (where anchor defendants are within the jurisdiction). The Application is supported by the first witness statement of Ms Elaine Angus Whiteford (partner in the Applicant's solicitors, Wilkie Farr & Gallagher (UK) LLP) dated 8 November 2024, the CPCF, and Wilkie Farr & Gallagher's letter dated 18 November 2024.

B. THE PARTIES

2. The Applicant is a charity and company registered in England and Wales, which seeks permission to act as class representative in a claim against the Proposed Defendants.
3. The Proposed Defendants are all members of the well-known Apple corporate group ("the Apple Group"), which, inter alia, provides cloud storage for mobile devices, known as iCloud. As to the Proposed Defendants:

- (1) The First Proposed Defendant, Apple Inc has its registered office in Cupertino, California, USA. It is the ultimate parent company of all the companies in the Apple Group, including the Second, Third and Fourth Proposed Defendants.
- (2) The Second Proposed Defendant, Apple Distribution has its registered office in Hollyhill, Cork, Republic of Ireland. Its form and name has changed over time. iTunes Sarl which provided App Store services to customers in the EEA and the UK merged into Apple Distribution on 25 September 2016, which began to provide the services to EEA customers. Apple Distribution was converted into an Irish limited liability company on 21 February 2020.
- (3) The Third Proposed Defendant, Apple Europe Limited (“Apple Europe”), is a company incorporated under the laws of England and Wales, with its registered office in London.
- (4) The Fourth Proposed Defendant, Apple Retail UK Limited (“Apple Retail”) is a company incorporated under the laws of England and Wales, with its registered office in London.

C. THE CLAIM

4. The claim is set out in detail in the CPCF issued on 8 November 2024. In summary, the claim which it is proposed to continue in these collective proceedings and for which the Applicant seeks to be class representative under a Collective Proceedings Order (“CPO”) is a standalone claim for damages under Section 47A of the Competition Act 1998 (“CA 1998”). The claim is for loss and damage allegedly caused by breaches of statutory duty by the Proposed Defendants (collectively “Apple”) in relation to its iCloud storage service for its mobile devices in breach of section 18 of the CA 1998 (“the Chapter II Prohibition”) from 1 October 2015 to date and Article 102 of the Treaty on the Functioning of the European Union from 1 October 2015 to 31 December 2020 (“the Infringements”). The CPCF has been served within the jurisdiction on the Third and Fourth Proposed Defendants.

5. As to the Infringements, the allegations are summarised in paragraphs 11 to 15 of Ms Whiteford’s statement as follows:

“11. Apple is a multinational technology company headquartered in the US. Apple develops and markets mobile devices – especially high-end ones (most notably its iPhone and iPad devices) – and is the monopolist developer of the “operating system” (“OS”) running exclusively on those devices (known as “iOS”). Apple also operates cloud services for storage and/or backup of iOS devices, known as “iCloud”. These services are referred to as “iCloud Services”.

12. For the purposes of this claim, Apple operates in relevant markets at two levels of the supply chain. The Proposed Class Representative’s case as to market definition is as follows:

12.1. At the level of the OS, there is a relevant market for the supply of OS for Apple-branded mobile devices (i.e. iOS Devices), alternatively relevant markets for the supply of OS for Apple-branded smartphones and the iPod Touch on the one hand and for the supply of OS for Apple-branded tablets (iPads) on the other hand (“the Apple OS market(s)”). See further paragraphs 99 to 102 of the CPCF.

12.2. At the level of cloud storage services there have at all material times been relevant markets both for (a) the retail provision of cloud storage services for the storage and/or back up of all data types (i.e. both Restricted Files, as defined below, and Accessible Files¹) on an iOS Device (“Full-Service Cloud Solutions for iOS”); and (b) the retail provision of other cloud storage services for us on iOS Devices (“Other Cloud Solutions for iOS”) (i.e. cloud storage services usable on IOS including for the storage and/or backup of Accessible Files). See further paragraphs 99 to 108 of the CPCF.

13. Apple has engaged in conduct that amounts to the abuse of its dominant position in the market for Full-Service Cloud Solutions for iOS and the market for Other Cloud Solutions for iOS (together, the “Relevant Markets”). Apple has leveraged its control of iOS to grant itself preferential treatment to its own cloud storage offering, iCloud, to the exclusion of rivals or would-be rivals and the exclusion of effective choice in respect of cloud storage of iOS Users, through designing and operating both technical restrictions and a choice architecture in respect of iOS and cloud storage for iOS Users. Apple has therefore leveraged its dominant position in respect of iOS to exclude or limit competition in the markets for cloud storage services to iOS Users (“the Preferential Treatment Abuse”). The preferential treatment consists in particular of:

13.1 a set of technical restrictions and practices that prevent users of iOS from storing certain key file types (known as “Restricted Files”) on any cloud storage service other than its own iCloud and thus ensuring that users have no choice but to use iCloud (a complete monopolist in respect of these Restricted Files) if they wish to meet all their cloud storage and/or back up needs, in particular in order to conduct a complete back-up of the device (“the Restricted File Conduct”); and/or

¹ “Accessible Files” are files that can be accessed by both iCloud and third party alternatives providing cloud storage services on iOS Devices.

13.2 an unfair choice architecture, which individually and cumulatively steer iOS Users towards using and purchasing iCloud rather than other cloud storage services, and/or limit their effective choice, and/or exclude or disadvantage rivals or would-be rivals (“the Choice Architecture Conduct”). See further paragraphs 6 to 9 and 97 to 132 of the CPCF.

14. The scope and features of the relevant markets will be a matter for substantial expert evidence at trial, if the CPO is granted.

15. There is no plausible technological or security justification for Apple privileging its own iCloud Services in any of these ways to the exclusion of would-be competitors and the exploitation of its users by inhibiting their effective choices and steering them towards Apple’s own service. The Proposed Class Representative alleges that Apple’s conduct can be explained only as an attempt to stifle competition, shield itself from any remaining competition, and reap trading benefits that it would not achieve in conditions of fair and effective competition.”

6. The Applicant seeks to bring the proceedings on an opt-out basis on behalf of a large number of users, comprising the Proposed Class:

“All iOS Users who, at any time during the Claim Period obtained iCloud Services for use on an iOS Device on which the United Kingdom was selected as the “Country/Region” in the Apple ID account settings (or Personal Representatives of such persons), save that any iOS Users who first obtained iCloud Services after [date of certification of the Claim] are not Class Members”.

7. It is alleged that Apple’s conduct, individually or cumulatively, has directly and indirectly caused loss and damage to the Proposed Class including, in particular, by: (a) enabling Apple to charge inflated fees for iCloud services; and/or (b) depriving Class Members who did not in fact purchase iCloud services at such inflated fees of the opportunity to purchase iCloud services at lower prices from the benefits of cloud storage services, including iCloud services, at a competitive price (or a greater amount of free storage).
8. The Applicant relies on an expert report of Max Hughes of Alix Partners dated 8 November 2024 to provide an estimate of the losses suffered by members of the Proposed Class at £51.50 under the cost-based methodology and £71.33 under the comparator-based methodology based on the information available to the Applicant and its expert at this early stage (“the Hughes Expert Report”). This report covers a wide range of economic evidence, including a preliminary analysis of market definition, dominance and abuse, as well as a proposed methodology for the quantification of aggregate/damages. It is likely that Apple

will contest much of this report and preliminary conclusions both at the certification stage, and if a CPO is granted in the collective proceedings.

D. LEGAL FRAMEWORK

9. As the Proposed Foreign Defendants are not based within the jurisdiction, permission of the Tribunal is required for service of the CPCF on them outside the jurisdiction pursuant to Rule 31(2)-(3) of the 2015 Rules. So far as is material to the Application Rule 31(2)-(3) provides as follows:

“(2) Where the permission of the Tribunal is required for service of the claim form on one or more foreign defendants out of the jurisdiction, the claimant shall make an application for permission verified by a statement of truth setting out—

- (a) the address of such foreign defendant or, if not known, in what place that defendant is, or is likely, to be found; and
- (b) that the claimant believes that the claim against any such foreign defendant has a reasonable prospect of success; and
- (c) if under rule 30(3)(b), the claimant contends that the proceedings are to be treated as taking place in England and Wales, which ground set out in paragraph 3.1 of Practice Direction 6B of the CPR is relied on;

...

- (f) any material facts relied on.

(3) Where paragraph (2) applies, the Tribunal shall not give permission for service out of the jurisdiction unless satisfied that the Tribunal is the proper place in which to bring the claim.”

10. The Applicant contends that the current proceedings are to be treated as taking place in England and Wales for the purpose of Rule 18 of the 2015 Rules. In such a case, the Tribunal approaches service out of the jurisdiction on the same basis as the High Court under the CPR: *DSG Retail Ltd v. Mastercard Inc* [2015] CAT 7 at [17]-[18].
11. There are numerous cases both in the High Court and the Tribunal dealing with the requirements for service out of the jurisdiction. The principles and relevant test have been helpfully summarised by the Tribunal in *Epic Games v. Apple* [2021] CAT 4 at [78]:

- (1) There is a serious issue to be tried on the merits of the claim: i.e. that there is a real as opposed to fanciful prospect of success on the claim. This is the same test as would be applied if the claimant were resisting a summary judgment application by the defendant: *AK Investment CJSC v Kyrgyz Mobile Tel Ltd* [2011] UKPC 7 at [71].
- (2) There is a good arguable case that the claim falls within one or more of the categories of case, generally referred to as “gateways”, set out in CPR Practice Direction 6B at para 3.1. For this requirement, “good arguable case” means that the claimant has the better of the argument on whether the claim comes within the gateway(s) relied upon. Where this depends on an issue of law, the Tribunal would normally decide that issue as opposed to determining whether there is a good arguable case 7 on it: *AK Investment CJSC* at [81]. Insofar as this involves an issue on the facts, the effect of the test is as follows:

“(i) that the claimant must supply a plausible evidential basis for the application of a relevant jurisdictional gateway; (ii) that if there is an issue of fact about it, or some other reason for doubting whether it applies, the court must take a view on the material available if it can reliably do so; but (iii) the nature of the issue and the limitations of the material available at the interlocutory stage may be such that no reliable assessment can be made, in which case there is a good arguable case for the application of the gateway if there is a plausible (albeit contested) evidential basis for it.”

Per Lord Sumption in *Brownlie v Four Seasons Holdings Inc* [2017] UKSC 80 at [7], as approved in *Goldman Sachs International v Novo Banco SA* [2018] UKSC 34 at [9].

- (3) In all the circumstances, England is clearly or distinctly the appropriate forum for the trial of the claim and the Tribunal ought to exercise its discretion to permit service of proceedings out of the jurisdiction. This is reflected in rule 31(3) of the 2015 Rules. As regards this requirement, the task of the Tribunal is first, to identify the forum in which the case can be suitably tried for the interests of all the parties and for the ends of justice; and then to determine whether England is clearly or distinctly the appropriate forum: *VTB Capital Plc v Nutritek International Corp* [2012] EWCA Civ 808 at [101].”

See also Dicey, Morris & Collins, *The Conflicts of Laws* (16th ed.), paras.11-100 and Rule 31(2) of the 2015 Rules.

12. On each of these requirements the burden of proof is on the Claimants.

E. THE TRIBUNAL'S ASSESSMENT

13. The Application itself contains the information required by Rule 31(2)(a)-(c) as well as the material facts relied upon within Rule 31(2)(f). I am satisfied that it is likely that the proceedings are to be treated as taking place in England and Wales for the purpose of Rule 18 of the 2015 Rules.

(1) Serious issues to be tried on the merits

14. In support of its contention that there are serious issues to be tried, the Applicant relies on a significant amount of evidence and material, including:

- (1) The matters set out in Ms Whiteford's statement, the CPCF, and the Hughes Expert Report already referred to.
- (2) The Expert Report of Dr Stefan Hunt of Keystone dated 7 November 2024, which sets out a detailed preliminary analysis of behavioural economics and choice architecture, in particular how Apple has designed and implemented its user interface, and how this design impacts consumer decision-making. Dr Hunt's preliminary view is that Apple appears to be steering users into iCloud Services and away from competitor cloud services, which he expects influences a significant share of iOS Users.
- (3) The Expert Report of Professor James Mickens of Harvard University dated 6 November 2024, which sets out a detailed preliminary analysis of the extent to which Apple has designed backup storage for Apple mobile devices in a way that prevents third-party backup providers from accessing all of the data on a user's device. His analysis finds that

Apple's current design does in fact prevent third-party backup providers from accessing all of the data on an iPhone. As a result, if a iPhone user wants to perform a full data backup via a single backup providers, the user is forced by Apple's design to use Apple's own iCloud service.

(4) The European Commission finding that Apple is dominant on the market for the provision to developers of distribution platforms for music streaming apps to iOS users, and fine on Apple in March 2024 for abusing its dominant position.

(5) The Australian Competition & Consumer Commission ("ACCC") ongoing inquiry into digital platforms, which is looking into the cloud storage services market as part of its remit. The ACCC interim report considers the ways in which Apple's iCloud storage servers are integrated into the iOS ecosystem and the impact this can have on consumer choices.²

15. A separate claim has been filed in the District of California on 2 March 2024 on behalf of US consumers against Apple alleging violation of the Sherman Act and California's Unfair Competition Law by manipulating app data and device settings such that US users cannot back up their phones to third party cloud providers ("the US Claim"). The US Claim is brought on behalf of a class of residents of the USA and a sub-class of residents of California, who purchased any iCloud plan to store any iPhone or iPad data in the relevant period. The US Claim will to a certain extent raise the same or similar issues to those set out in the CPCF. The US Claim is strenuously resisted by Apple as is evident from Apple's Motion to Dismiss dated 22 August 2024. Whilst the Motion focuses on the questions as to whether the US Claim as pleaded amounts to a plausible claim and one which meets the jurisdictional tests for unfairness, it is clear from that that Apple in these proceedings will contend that its systems and practices do not infringe competition law in the ways alleged in the CPCF. Apple will

² See ACCC Digital Platform Services Inquiry Interim Report Summary dated September 2023, <https://www.accc.gov.au/system/files/Digital%20platform%20services%20inquiry%20-%20September%202023%20report%20-%20Summary%20of%20consumer%20issues%20discussion.pdf>.

point out that its users have a choice, there are other providers of cloud storage which are reasonable accessible by iPhone and iPad users to store commonly used files like photos and videos. When it comes to the core app data and device files needed to use an Apple device, Apple has required this data to be backed up by iCloud or other non-cloud based solutions in order to guarantee a high level of security. Apple denies anti-competitive conduct in the US Claim and will do so in the current proceedings.

16. Whilst I am satisfied on the basis of the material relied upon in the Application that there are serious issues to be tried in the merits, I note that this is a relatively low threshold and the issue of merits will no doubt arise and be reviewed at the certification stage and in the proceedings themselves in the event a CPO is granted.

17. CPR PD 6B, paragraph 3.1 so far as is relied upon by the Applicant provides as follows:

“3.1 The claimant may serve a claim form out of the jurisdiction with permission of the court under rule 6.36 where:

...

(3) A claim is made against a person (“the defendant”) on whom the claim form has been or will be served (otherwise than in reliance on this paragraph) and -

(a) there is between the claimant and the defendant a real issue which it is reasonable for the court to try; and

(b) the claimant wishes to serve the claim form on another person who is a necessary or proper party to that claim.

...

A claim is made in tort where –

(a) damage was sustained, or will be sustained, within the jurisdiction;

(b) damage which has been or will be sustained results from an act committed, or likely to be committed, within the jurisdiction; or

(c) the claim is governed by the law of England and Wales.”

(2) The Gateways

18. I am satisfied that there is a good arguable case that the claim falls within each of the 3 gateways relied upon by the Applicant.

(a) *Damage sustained within the jurisdiction (para.3.1(9)(a))*

19. As regards the gateway in para.3.1(9)(a) (damage sustained within the jurisdiction), the Tribunal is a UK jurisdiction. “Damage” in this gateway refers to “actionable harm, direct or indirect, caused by the wrongful act alleged”: *FS Cairo (Nile Plaza) LLC v. Brownlie* [2021] UKSC 45 at [81]. In relation to this gateway, it has been held in the context of an abuse of dominance claim alleging an overcharge for goods supplied that if the loss is paying an overcharge when buying the goods, the loss would seem to be made where the goods are bought: *Apple Retail UK Ltd v. Qualcomm (UK) Ltd* [2018] EWHC 1188 (Pat) at [99]. In the present case there is a good arguable case that damages have been sustained within the jurisdiction (in this case, the UK) as the Proposed Class Members are based in the UK, have made allegedly inflated payments for using Apple’s iCloud services or deprived of accessing or buying such services at a lower cost or being given access to a greater amount of free storage.

(b) *Claim governed by the law of England and Wales (para.3.1(9)(c))*

20. As regards the gateway in para.3.1(9)(c) (claim governed by the law of England and Wales), as the Tribunal is a UK jurisdiction, it is enough that the claim is governed by the law of any part of the UK.

21. Losses sustained by the Claimants which predate 11pm on 31 January 2020 are governed by Regulation (EC) No 864/2007 of 11 July 2007 on the law applicable to non-contractual obligations (“Rome II”). Losses which postdate 11pm on 31 January 2020 are governed by the retained version of Rome II (Regulation (EC) 864/2007 on the law applicable to non-contractual obligations (Rome II) (Retained EU Legislation) (“Retained Rome II”)), which is in equivalent terms to Rome II. References below to provisions in Rome II are also to the equivalent provisions in Retained Rome II.

22. Article 4(1) of Rome II sets out the general rule that, unless otherwise provided for:

“...the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur”.

23. Article 6(3)(a) of Rome II makes specific provision for competition claims, and states that states that “[t]he law applicable to a non-contractual obligation arising out of a restriction of competition shall be the law of the country where the market is, or is likely to be, affected”.

24. Recitals (21) and (22) of Rome II explain that Article 6 is a clarification of the general rule in Article 4(1), i.e. Article 6 is intended to state a version of the principle that the applicable law is that of the country where the damage occurs, particularized for competition law. Thus, in *Westover v Mastercard* [2021] CAT 12 at [50], the Tribunal stated:

“The general rule is that the governing law is the law of the country where the damage occurs: Art 4. That is considered to strike a fair balance between the defendant and the claimant: recital (16). Thus Art 6(3)(a) can be seen as a particular application of this approach: where there is a restriction of competition then the market affected is likely to correspond to the place where the anti-competitive damage occurs.”

25. There is a good arguable case that this gateway is satisfied:

- (1) The geographic scope of the market is at least as wide as the UK as explained in the Hughes Expert Report. Therefore, both the country where the competitive relations are or are likely to be affected and the country where the market is, or is likely to be affected is England and Wales. Insofar as the relevant conduct occurred in Northern Ireland or Scotland, the relevant law is materially the same and this Tribunal is a UK tribunal.
- (2) Insofar as the claim is brought by iCloud users where they are bound by Apple’s iCloud T&C’s providing that for UK citizens they are governed

by a English choice of law and jurisdiction clause. The T&Cs specify that claims are to be brought in their usual place of residence.

(c) Necessary or proper party

26. As regards the gateway in para.3.1(3) (necessary or proper party where anchor defendant), Apple Europe and Apple Retail are potential anchor defendants who are domiciled in the UK and are capable of being served with the CPCF within the jurisdiction. Companies within the same corporate group may be liable for competition law infringements on a joint and several liability basis as alleged here: *Sainsbury's Supermarkets Ltd v. Mastercard Inc* [2016] CAT 11 at [363]; *JJH Enterprises Ltd v. Microsoft Corp.* [2022] EWHC 929 (Comm) at [35]-[38]; *CMA v. Volkswagen AG* [2023] EWCA Civ 1506 at [84]. Apple Inc and Apple Distribution form part of the same economic undertaking as these UK based companies that are alleged to be direct participants in the alleged infringements. Apple Europe and Apple UK are therefore potential anchor defendants, who have been or will soon be served within the jurisdiction as of right by the Applicant.
27. Apple Europe and Apple Retail are alleged to be liable on the basis that they are part of the same economic entity or undertaking as the Proposed Foreign Defendants. They are both subsidiaries of Apple Inc and the undertaking that they all represent is alleged to have infringed competition law and to be liable on a joint and several liability basis. The CPCF and Witness Statement of Ms Whiteford particularise the commercial activities of Apple Europe and Apple Retail which are directly referable to the infringing conduct alleged. I am satisfied that there are real issues to be tried between the Applicant and Apple Europe and Apple Retail, the anchor defendants.
28. As regards the “necessary or proper party” requirement, in *Altimo Holdings v Krygyz Mobil Tel Ltd* [2011] UKPC 7 at [87] the Privy Council considered the “proper party” test as follows:

“...the question whether D2 is a proper party is answered by asking: “supposing both parties had been within the jurisdiction would they both have been proper parties to the action?”: *Massey v Heynes & Co* 21 QBD 330 ,

338...D2 will be a proper party if the claims against D1 and D2 involve one investigation: ...and in *Carvill America Inc v Camperdown UK Ltd* [2005] 2 Lloyd's Rep 257, para 48, where Clarke LJ also used, or approved, in this connection the expressions "closely bound up" and "a common thread": at paras. 46, 49."

29. In *Iiyama (UK) Ltd v. Samsung Electronics Co. Ltd* [2018] EWCA Civ 220 at [121], the Court of Appeal found that this requirement was satisfied:

"121. We are also satisfied that Morgan J was correct to conclude that the two South Korean companies, SECL and LGD, were and are proper parties to have been joined to the existing claims against SEL, SEL(UK) and Semiconductor in the LCD Action, for the reasons he gave at [73] of his judgment. In the same way, Samsung SDI, Samsung SDI Malaysia and LG Inc were in our judgment proper parties to be joined to the claims in the CRT Action against LG UK and LG Wales. They were all parties to the relevant cartel, were either addressees or associated with addressees of the CRT Decision, and were involved directly or indirectly in the manufacture, selling and distribution of CDTs. Furthermore, just as in the LCD Action, the claims against Samsung SDI, Samsung SDI Malaysia and LG Inc involve the same or substantially the same issues as would be raised in a trial elsewhere, such a trial would involve substantially the same witnesses and experts (if any), and it would be undesirable to require the parties to litigate the claims against LG UK and LG Wales in England and Wales and the claims against the other defendants elsewhere. The conditions of "gateway 3" contained in paragraph 3.1(3) of CPR PD 6B are therefore satisfied. It is unnecessary to consider "gateway 9" in paragraph 3.1(9) in addition."

30. The Proposed Foreign Defendants are both proper parties to the claim in that:
- (1) They participated in and implemented the alleged infringements of competition law.
 - (2) Apple Inc is the ultimate holding company for the Apple Group. It is responsible for developing iOS Devices, licensing the Apple iOS software and operating iCloud. It is a party to the iCloud T&Cs and is the registered owner of iCloud and the iCloud logo.
 - (3) Apple Distribution is a wholly owned subsidiary of Apple Inc and provides Apple's App Store services to customers in the EEA and UK. It is responsible for managing iCloud subscriptions and importing iPhones.

- (4) All the Proposed Defendants are alleged to be liable for the alleged infringements of competition law on a joint and several liability basis.

(3) Proper Forum

31. The factors that may be taken into account in determining the proper forum are wide ranging. As stated by the Tribunal in *Epic Games v. Apple* [2021] CAT 4 at [132]:

“The governing approach to determination of whether England is clearly the appropriate forum derives from Lord Goff’s classic speech in *The Spiliada* [1987] AC 460. Lord Goff there emphasised that the fundamental consideration is the interests of all the parties and the ends of justice. As numerous judgments have subsequently shown, a range of factors may therefore be taken into account, including (i) the residence or place of business of the parties; (ii) the location of likely witnesses; (iii) the existence of parallel proceedings; (iv) the applicable law (v) the cost and delay; (vi) a legitimate personal or juridical advantage; and (vii) the jurisdictional gateway relied on. See note 6.37.16 in *Civil Procedure 2020 (the “White Book”)*, However, this is not an exhaustive list, and the relevance and importance of any factor will vary significantly from one case to another in the “evaluative or balancing exercise” which the court or tribunal has to carry out: per Lord Neuberger in *VTB Capital* at [97].”

32. The UK and specifically the Tribunal sitting in England and Wales is clearly the proper forum for the determination of the claims set out in the CPCF in view of the following in particular:

- (1) Two anchor defendants are based in the UK. The Proposed Class Representative is incorporated and based in the UK.
- (2) It would be undesirable for the same claims to be litigated across multiple jurisdictions with the two of the Proposed Defendants in England and Wales, and Apple Inc and Apple Distribution in USA and the Republic of Ireland.
- (3) The Proposed Class members are based in the UK and are to claim in respect of loss and damages suffered in the UK.
- (4) The claim sought to be proceeded with relates to an alleged abuse of a dominant position within the UK.

(5) The applicable law is English law.

F. CONCLUSION

33. In all the circumstances it is appropriate for the Tribunal to exercise its jurisdiction to permit the service out of the CPCF on Apple Inc and Apple Distribution. Accordingly, the Applicant is permitted to serve them out of the jurisdiction at the following addresses:

(1) Apple Inc at One Apple Park Way, Cupertino, California, CA 95014, USA.

(2) Apple Distribution at Hollyhill Industrial Estate, Hollyhill, Cork, T23 YK84, Republic of Ireland.

34. As applications for service out are usually determined *ex parte* on the papers, applicants are reminded of their duty of full and frank disclosure. This entails disclosing potential defences which are either known as having already been advanced or are likely to be taken on the merits, particularly in the context of standalone claims.

35. As this Application has been determined on the papers *ex parte*, the Proposed Foreign Defendants may apply to set aside this decision on the basis that the Tribunal does not have jurisdiction, or such jurisdiction should not be exercised pursuant to Rule 34 of the 2015 Rules.

Hodge Malek KC
Chair

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

Date: 2 December 2024