



Neutral citation [2023] CAT 74

Case Nos: 1468/7/7/22

IN THE COMPETITION
APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

27 November 2023

Before:

JUSTIN TURNER KC
(Chair)
JANE BURGESS
DEREK RIDYARD

Sitting as a Tribunal in England and Wales

BETWEEN

JUSTIN GUTMANN

Applicant / Proposed Class Representative

-and-

- (1) APPLE INC.**
- (2) APPLE DISTRIBUTION INTERNATIONAL LIMITED**
- (3) APPLE RETAIL UK LIMITED**

Respondents / Proposed Defendants

RULING
(APPLICATION BY APPLE FOR PERMISSION TO APPEAL)

1. Apple has applied for permission to appeal the Tribunal's certification judgment¹ to the Court of Appeal. In a lengthy document in support of its application it takes, or seems to take, every point it argued below, coupled with the submission that each is a point upon which it has reasonable prospects of success on appeal. This broad approach makes it difficult to identify any points of law or principle.
2. Apple refers to five grounds being that:
 1. The Tribunal erred in failing to strike out the PCR's primary case (Ground 1);
 2. The Tribunal erred in concluding that the PCR's alternative case had a real prospect of success (Ground 2);
 3. The Tribunal erred in failing to strike out the allegation of abuse after 28 December 2017 (Ground 3);
 4. The Tribunal erred in its analysis of the PCR's methodology (Ground 4);
and
 5. The Tribunal erred in authorising Mr Gutmann as the class representative (Ground 5).
3. Having carefully reviewed these submissions we decline to grant permission to appeal. The matters raised in the application are matters which we have considered at length in the certification judgment, and which turn, in most part, upon an assessment of the pleaded facts. If Apple wishes to pursue this matter it will need to seek permission from the Court of Appeal.

¹ See the Tribunal's Judgment of 1 November 2023 ([2023] CAT 67), which terminology and definitions are adopted in this Ruling.

4. We decline to grant a stay of proceedings while permission to appeal is sought. In the event that permission is granted the timing of that appeal may impact the timing of directions at the next case management conference. The Tribunal is mindful that the question of certification remains subject to resolution of the question of the funding arrangements.

Justin Turner KC
Chair

Jane Burgess

Derek Ridyard

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

Date: 27 November 2023