<u>**IN THE COMPETITION APPEAL TRIBUNAL**</u>

Case No: 1602/7/7/23

BETWEEN:

CHRISTINE RIEFA CLASS REPRESENTATIVE LIMITED

<u>Class Representative</u>

- v -

(1) APPLE INC.

(2) APPLE DISTRIBUTION INTERNATIONAL LTD

(3) AMAZON.COM, INC.

(4) AMAZON EUROPE CORE S.À.R.L.

(5) ~~AMAZON SERVIVES EUROPE SÀRL~~

(6) AMAZON EU S.À.R.L.

(7) AMAZON.COM SERVICES LLC

<u>Proposed Defendants</u>

REASONED ORDER (PERMISSION TO APPEAL)

UPON the Tribunal's Judgment dated 14 January 2025 ([2025] CAT 5) refusing the application by Christina Riefa Class Representative Limited (the "PCR") for a collective proceedings order pursuant to section 47B of the Competition Act 1998 (the "CPO Judgment")

AND UPON the PCR having filed an application on 4 February 2025 seeking permission to appeal the CPO Judgment (the "PTA Application")

AND UPON the Proposed Defendants having filed responses to the PTA Application on 14 February 2025

IT IS ORDERED THAT:

1. The PCR's application for permission to appeal is dismissed.

REASONS

1. The PCR's application is made on a single ground, namely that the Tribunal erred in law in deciding to dismiss the application for a collective proceedings order rather than give the PCR an opportunity to remedy the issues which led the Tribunal to conclude that the authorisation condition set out in Section 47B(5)(a) of the Competition Act 1998 was not satisfied.

2. The PCR asserts that the Tribunal erred in law by adopting an incorrect and disproportionate approach when faced with a PCR which it considered did not satisfy the authorisation condition, where the prospective collective proceedings could otherwise have been certified, particularly bearing in mind the purpose of the statutory regime is to facilitate rather than impede the rights of consumers arising out of a competition law infringement. In particular, the PCR says that:

    2.1 The Tribunal did not consider sufficiently or at all the history of the matter especially when the issues that caused the Tribunal to refuse to certify emerged at a late stage in proceedings;

    2.2 The Tribunal departed without justification from the approach which has been taken in other cases where the "package" with which the Tribunal is presented was not capable of immediate approval; and

    2.3 The Tribunal did not carry out the necessary balancing exercise in order to decide whether simply refusing to make a CPO was proportionate in the light of the purpose of the statutory regime and, in particular, failed to take into

account the interests of the proposed class members in having the proceedings continue.

3. It is not right to say that the Tribunal departed from the traditional approach of allowing the PCR an opportunity to amend before refusing certification: the PCR was given two months to address the issues identified during the July hearing, followed by a second bite at the cherry during the September hearing. In any event, there is no rule requiring the Tribunal to give the PCR yet another opportunity to amend after that. The statutory scheme does not require the Tribunal to give a PCR multiple attempts to meet the certification condition.

4. It is also wrong to say that the issues that caused the Tribunal to refuse to certify only emerged at a late stage in the certification proceedings. Prof Riefa's suitability was firmly in issue from the first certification hearing in July (e.g. the error in her first witness statement). It was her general misunderstanding of her own claim that led to the application to cross-examine her. Furthermore, it is for the PCR to persuade the Tribunal of its ability to meet the authorisation condition; and the Tribunal is required to exercise a proactive role in relation to the criteria for certification.

5. The proceedings were not dismissed because of some small technicality: there was a fundamental, irremediable flaw in the application, i.e. that the PCR did not satisfy the authorisation condition. It is no answer to this to say that she would appoint a consultative committee if certified; that would not address many of the concerns set out in the judgment.

6. As for the suggestion that the PCR might be fundamentally reconstituted by appointing additional directors or replacing Prof Riefa, any newly constituted PCR would need to take a fresh decision as to whether to bring these proceedings, and the funding arrangements required to do so. If there are, as the PCR describes it, "fundamental changes in the operation of the current PCR", or even a wholly new PCR, the question of whether that PCR meets the authorisation condition will be a matter for decision on a new application for certification, if made. The Tribunal certainly cannot speculate, at this stage, on how the PCR might be reconstituted or what decisions that reconstituted PCR might take.

7. Ultimately, the Tribunal does not consider that it would be in the best interests of consumers for this PCR to be certified. The PCR has failed to demonstrate that it has sufficient independence or robustness to act fairly and adequately in the interests of those consumers who would be members of the class, whose rights of action in relation to the alleged breach of competition law would have been extinguished unless they opted out of the class. The Tribunal's decision does not prevent a renewed application for certification, whether by a reconstituted version of this PCR, or an entirely different PCR.

8. We are unanimously of the view that this application does not reveal any grounds of appeal with a real prospect of success. Nor is there any other compelling ground for an appeal.

The Honourable Mrs Justice Bacon	Charles Bankes	Anthony Neuberger

Made: 19 February 2025

Drawn: 19 February 2025