Neutral citation [2025] CAT 52

IN THE COMPETITION APPEAL TRIBUNAL

Case Nos: 1642/12/13/24

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

25 September 2025

Before:

HODGE MALEK KC
(Chair)
SIR IAIN MCMILLAN CBE FRSE DL
TIMOTHY SAWYER CBE

Sitting as a Tribunal in England and Wales

BETWEEN:

MR AUBREY WEIS

Appellant

- v –

GREATER MANCHESTER COMBINED AUTHORITY

Respondent

Determined on the papers

RULING (COSTS)

A. INTRODUCTION

1. On 24 July 2025 the Tribunal issued its judgment, dismissing the Appellant's application for review, under section 70(1) of the Subsidy Control Act 2022 (the "Act"), of the Respondent's decision to grant alleged subsidies, as defined in section 2(1) of the Act, comprising loans to both Trinity and New Jackson (Contour): [2025] CAT 41 ("the Judgment").

2. Pursuant to the Tribunal's Order made on 31 July 2025, the parties filed their submissions on costs on 8 August 2025; responsive submissions were filed by the parties on 29 August 2025.

3. In summary, the Appellant seeks the costs of the application to permit Mr Joel Weis access to certain documents covered by the Confidentiality Ring Order ("CRO"): see [11] and [12] of the Judgment. The Appellant submits that he should be entitled to all of his costs of the CRO application (amounting to £84,363.80). The Appellant does not otherwise dispute that the Respondent should get the costs of the proceedings.

4. The Respondent submits that it was the successful party in respect of both the CRO application and the substantive appeal and so it should be awarded all of its costs (in the sum of £510,364.33), to be the subject of a detailed assessment on the standard basis if not agreed between the parties. The Respondent submits further that the Tribunal should order the Appellant to make a payment on account of 65% of such costs to the Respondent.

5. By a letter dated 15 August 2025, the Tribunal requested that the parties file with their responsive costs submissions a summary schedule of costs in respect of the CRO application. In the case of the Respondent, it was requested to provide a summary costs schedule for the proceedings that separated out the costs of the CRO application.

6. After considering the parties' costs submissions and their submissions in response, the Chair, Hodge Malek KC, instructed the Tribunal Registry to write to the parties. On 2 September 2025 the Tribunal wrote to the parties as follows:

> "The Tribunal has considered the parties' costs submissions and submissions in response and has determined for reasons which will be set out in its Ruling in due course as follows:
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> (1) The Respondent should be awarded its costs of the proceedings, but not the costs of the Confidentiality Ring Order ("CRO") application.
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> (2) The Appellant should be awarded 25% of its costs of the CRO application, summarily assessed at £17,500 inclusive of VAT. This will be offset against (1) by way of deduction from any interim payment on account of costs in the Respondent's favour.
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> (3) The Respondent is directed to prepare a revised summary costs schedule to reflect (1) and (2) above and serve this within 7 days together with any further submission on the quantum of the level of any interim payment on account of costs.
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> (4) The Appellant is directed to file and serve any further submissions on the level of the interim payment on account of costs within 7 days of (3).
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> (5) In principle the Respondent should be granted an interim payment on account of costs which will be determined on paper and incorporated into the Tribunal's written Ruling on costs.
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> Should either party wish to make short written submissions in response to this letter, they are invited to do so by 4pm on 5 September 2025."

7. The Respondent duly filed its updated costs schedule on 5 September 2025. The total costs claimed by the Respondent (taking into account the observations made by the Tribunal in its letter of 2 September 2025 and deducting the £17,500 allowed to the Appellant for the CRO application to be offset against the costs claimed by the Respondent) is £413,027.93.

B. THE PARTIES' SUBMISSIONS

8. On 16 September 2025, the Appellant filed submissions on the level of the interim payment. The Appellant referred to the recent judgment of the Court of Appeal in *Petrofac Ltd (Costs), Re* [2025] EWCA Civ 1106 (14 August 2025) ("***Petrofac***") which sets out the key legal principles to be applied in determining any interim payment in respect of costs. In summary, the Appellant submitted:

(1) CPR 44.2(8) provides that the court, when making an order for costs, must order a payment on account of costs unless there is good reason not to do so.

(2) It is for the receiving party to provide adequate information to allow the court to consider what is likely to be recoverable at assessment, to include as to whether costs and disbursements are reasonable and proportionate. Where there is a lack of information "the court must err on the side of caution in estimating what might be recoverable at detailed assessment".

(3) Counsel fees must be reasonable and proportionate. Where there is a lack of detail as to the work undertaken by Counsel including time spent and/or hourly rate charged then the court will err on the side of caution.

(4) The level of costs sought to be recovered by the Respondent (£413,027.93) are extraordinarily high for a 2-day judicial review hearing. No adequate explanation is provided to support recovery of these sums. These costs would be expected to be in a range of £100, 000 - £200,000. The case was not particularly document heavy – the core documents comprised c. 150-200 pages. The Respondent has access to a variety of legal services framework agreement that allow it to engage the services of its external solicitors or other suitably qualified firms of solicitors at heavily discounted rates.

(5) No sufficient supporting information has been provided by the Respondent. in relation to solicitor's fees, £258,489 (i.e. c. 63% of the costs being claimed) are simply described as "work on documents". There is no detailed or proper description of what specific work has been undertaken and it is not appropriate to make an order for interim payment in respect of these sums.

(6) The Respondent appears to seek recovery in respect of multiple external solicitor attendees at the trial at partner, director and associate levels.

This appears to refer to total costs of £35,732.90 but is difficult to ascertain what is being claimed for attendance at trial or work on documents. This is another example of the lack of clarity making it impossible to ascertain what the reasonable level of recoverable costs would be on a detailed assessment.

9. The Respondent filed short written submissions in response on 18 September 2025. The Respondent asks the Tribunal to consider and apply the *Petrofac* with the appropriate weight. One of the key points in this judgment was the 'very significant' costs: see [3], with the total amount claimed for interim payment being roughly £3.75 million. The scale of interim payment in this case is notably different (c. £400k).

10. Further, and as distinguished from *Petrofac*, the Respondent's summary cost schedule, while a summary, is more detailed than having "simply listed the total amounts billed by their solicitors…" as was at issue in that case.

11. The Appellant's claim that "the level of costs sought to be recovered by [the Respondent] (£413,027.93) are extraordinarily high" is incorrect. As pointed out in *Petrofac* itself, the test of what is reasonable is an objective, not a subjective one. The Appellant also makes a specific reference to the partner and legal director time spent on the case. This case is only the second case heard in the Tribunal on the Subsidy Control Act 2022, and the first on the commercial operator principle, and as such was, and still is, a largely untested area of the law which necessarily required senior input and supervision. Further, the Appellant's case was amended and restated multiple times, as recognised by the Tribunal of the Judgment: "However, many of the grounds were not particularised in the ANoA and the Appellant's submissions were of a general nature": see the Judgment at [137]. Moreover, the case involved allegations of breach of candour on the part of the Respondent to which the Respondent as a public authority was required to give a full and detailed response. This required consistent recalibration and strategic decisions to be made by senior members of the team.

C. LEGAL PRINCIPLES

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

> "(2) The Tribunal may at its discretion…make any order it thinks fit in relation to the payment of costs in respect of the whole or part of the proceedings.
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> (4) In making an order under paragraph (2) and determining the amount of costs, the Tribunal may take account of –
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> (a) the conduct of all parties in relation to the proceedings;
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> (b) any schedule of incurred or estimated costs filed by the parties;
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> (c) whether a party has succeeded on part of its case, even if that party has not been wholly successful;
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> (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;
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> (e) whether costs were proportionately and reasonably incurred; and
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> (f) whether costs are proportionate and reasonable in amount.
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> …"

13. These provisions give the Tribunal a broad discretion as regards costs. In exercising that discretion in an English case, the Tribunal generally follows the practice of the High Court applying the Civil Procedure Rules.

14. In *Riefa v Apple Inc. and Others* [2025] CAT 34 ("***Riefa***"), the Tribunal (chaired by the current CAT President, Bacon J) recently summarised the general principles in her Ruling on costs at [13]:

> "(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]."

15. As regards the award of an interim payment, in *Merricks v Mastercard* [2024] CAT 57, Roth J explained that two broad principles apply to the evaluation of recoverable costs:

> "40… First, although any party is free to spend as much as it chooses on litigation, only reasonable and proportionate costs are recoverable from the other side (except where indemnity costs are awarded). Accordingly, when determining the amount to be awarded by way of interim payment, it is appropriate to take a cautious approach. As Leggatt J (as he then was) said in *Kazakhstan Kagazy Plc v Zhunus* [2015] EWHC 404 (Comm), when determining an application for payment on account in 'hard fought' litigation:
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> > "13. In a case such as this where very large amounts of money are at stake, it may be entirely reasonable from the point of view of a party incurring costs to spare no expense that might possibly help to influence the result of the proceedings. It does not follow, however, that such expense should be regarded as reasonably or proportionately incurred or reasonable and proportionate in amount when it comes to determining what costs are recoverable from the other party. What is reasonable and proportionate in that context must be judged objectively. The touchstone is not the amount

> of costs which it was in a party's best interests to incur but the lowest amount which it could reasonably have been expected to spend in order to have its case conducted and presented proficiently, having regard to all the relevant circumstances. Expenditure over and above this level should be for a party's own account and not recoverable from the other party. This approach is first of all fair. It is fair to distinguish between, on the one hand, costs which are reasonably attributable to the other party's conduct in bringing or contesting the proceeding or otherwise causing costs to be incurred and, on the other hand, costs which are attributable to a party's own choice about how best to advance its interests. There are also good policy reasons for drawing this distinction, which include discouraging waste and seeking to deter the escalation of costs for the overall benefit for litigants.
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> 14. Where, as here, the court is not actually assessing the amount of costs to be recovered and has nothing like the level of information that could be required on a detailed assessment, there is additional reason to be conservative. The fact that the total costs claimed are very high cannot by itself be allowed to increase the sum awarded as an interim payment. I am sure that the costs claimed by the main group of defendants are neither reasonable nor proportionate. By what factor they should be discounted, however, to arrive at a reasonable and proportionate amount can only properly be determined by a detailed assessment."

41. Secondly, the assessment of costs should pay close regard to the Guideline rates, which are published and updated as an appendix to the Guide to the Summary Assessment of Costs. Updated rates were published in December 2023 to take effect on 1 January 2024. In *Samsung Electronics Co Ltd v LG Display Co Ltd* [2022] EWCA Civ 466, Males LJ, with the concurrence of Lewison and Snowden LJJ, said at [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."
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> That was a competition case between major international companies. The court reduced the costs claimed by 24 per cent.

42. In addition, when assessing the amount of an interim payment on account of costs, the Tribunal 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 v Mastercard (Costs) [2022] CAT 27* at [10], following *Excalibur Ventures LLC v Keystone Inc* [2015] EWHC 566 (Comm)."

16. The principles set out above were applied by the Tribunal in *Professor Carolyn Roberts v Severn Trent Water (Permission to appeal and costs)* [2025] CAT 29, [38].

17. In *Petrofac* the Court of Appeal recently affirmed the salient legal principles to be applied in determining any interim payment in respect of costs. The Court

referred at [22] to the observations of Christopher Clarke LJ in *Excalibur Ventures LLC v Texas Keystone Inc.* [2015] EWHC 566 (Comm) at [23] (cited in *Merricks* above at [42]): "What is a reasonable amount will depend on their circumstances, the chief of which is that there will, by definition, have been no detailed assessment and thus an element of uncertainty, the extent of which may differ widely from case to case as to what will be allowed on detailed assessment. Any sum will have to be an estimate. A reasonable sum would often be one that was an estimate of the likely level of recovery subject, as the costs claimants accept, to an appropriate margin to allow for error in the estimation."

18. In relation to the application of the reasonableness and proportionality tests to the quantum of any costs sought to be recovered, the Court referred at [25] to the observations of Leggatt J (as he then was) in *Kazakhstan Kagazyy* (again, referred to in *Merricks*): "…what a party might subjectively consider reasonable to pay to advance its own interests in litigation is not the relevant test. The relevant test when assessing recoverable costs between the parties is an objective one, and is the lowest sum that the receiving party could reasonably have been expected to spend in order to have its case conducted and presented proficiently…"

D. THE TRIBUNAL'S ANALYSIS

(1) Costs of the CRO application

19. In its Ruling on the Appellant's application to permit Mr Joel Weis access to certain documents covered by the CRO: [2025] CAT 27, the Tribunal explained that the material sought to be disclosed to and reviewed by Mr Joel Weis was the type of information that the Tribunal would not ordinarily allow someone who is active in the same business to access directly, particularly here where the Appellant and Renaker are competitor developers in the same district. The CRO limited access to the confidential material relating to Renaker's business and the pricing terms of the lending to external counsel and any experts retained by the Appellant. The Appellant had initially instructed experts who in fact accessed the material and provided some preliminary advice before it was decided by the Appellant not to proceed with their retainer on costs grounds. With no experts

and the Appellant's legal team stating that they did not have the requisite specialist knowledge to assess the significance of the key material as to pricing with the assistance of Mr Joel Wies, who could also provide them with instructions, the application was made for access be given to, Mr Joel Weis, who has a significant role in running the relevant business of the Appellant.

20. In the circumstances, the Tribunal had to balance "the undesirability of Mr Joel Weis having access to this material against what is fair to Mr Aubrey Weis in terms of being able to advance these proceedings properly and have the requisite information to give instructions as to whether to proceed with the litigation and if so in what direction" and "to take into account and balance the interests of the third party Renaker, who whilst not formally a party to these proceedings, has a major stake in their outcome and it is their confidential information that is sought to be reviewed by Mr Joel Weis." ([39]).

21. The Tribunal was satisfied that the information that Mr Joel Weis sought access to was highly important for assessing the merits of the case and in deciding what points to take or not take ([43]). The Tribunal also acknowledged that there were competition risks in allowing Mr Joel Weis to have access to this material and this could be prejudicial to Renaker ([58]). The Tribunal decided that Mr Joel Weis should be admitted to the CRO (limited in respect of certain documents). However, in order to mitigate the risk to competition and the confidentiality rights of a third party, Renaker, the Tribunal imposed two protections to mitigate against those risks ([58]-[60]).

22. As Mr Joel Weis was admitted to the CRO, we are of the view that the Appellant was the successful party in respect of the CRO application in the sense that limited and conditional access was provided to certain documents to Mr Joel Weis. However, the Tribunal had to carefully balance the competing interests, and Mr Joel Weis was admitted to the CRO limited only in respect of certain documents and information. Moreover, protections were imposed in order to protect the interests of Renaker. It is both fair and reasonable that the Appellant is awarded only part of the costs of the application. We consider that the Appellant should be awarded 25% of its costs of the CRO application, summarily assessed at £17,500 inclusive of VAT. We do not consider that the

Respondent should be awarded the costs of the CRO application, even though it was reasonable for the Respondent to oppose the application and in the end the Tribunal was only willing to permit access subject to conditions.

(2) Interim payment

23. It is the usual practice for the Tribunal to order an interim payment on account of costs, following the approach of CPR r. 44.2(8): see *Riefa* at [25].

24. The Respondent seeks an interim payment of 65% of its costs i.e. £268,468 (65% of £413,027.93). The Appellant does challenge the level of costs claimed and it is likely that there will be some reduction in the sum awarded on a detailed assessment.

25. We are prepared to order an interim payment on account of these costs, and consider that an interim payment of £250,000 is appropriate. We do not consider it at all likely that costs will be assessed at a lower sum than the sum we are awarding by way of interim payment. This was an important case for both sides and there was a significant amount of material to consider given the extent of disclosure as evidenced by the bundles before the Tribunal. The case was prepared and argued well by both sides. Counsel fees appear entirely reasonable and the levels of seniority at the solicitor level used in the legal team are what the Tribunal would expect in all the circumstances.

E. CONCLUSION

26. Accordingly:

(1) The Appellant is required to pay the Respondent's costs of the proceedings, to be the subject of a detailed assessment if not agreed. The £17,500 allowed to the Appellant for the CRO application has been offset against the costs claimed by the Respondent: see para 7 above.

(2) The Appellant shall make a payment on account of costs to the Respondent of £250,000 within 28 days from the date of release of this ruling.

Hodge Malek KC
Chair

Sir Iain McMillan CBE FRSE DL

Timothy Sawyer CBE

Charles Dhanowa CBE, KC (*Hon*)
Registrar

Date: 25 September 2025