Neutral citation [2025] CAT 57

IN THE COMPETITION APPEAL TRIBUNAL

Case No: 1379/5/7/20

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

7 October 2025

Before:

THE HONOURABLE MR JUSTICE BUTCHER
(Chair)
PETER ANDERSON
SIMON HOLMES

Sitting as a Tribunal in England and Wales

BETWEEN:

KERILEE INVESTMENTS LIMITED

Claimant

- and -

INTERNATIONAL TIN ASSOCIATION LIMITED

Defendant

Heard remotely on 17 September 2025

RULING (SET ASIDE APPLICATION AND COSTS)

APPEARANCES

Mr Brian Beckett appeared on behalf of the Claimant.

Ms Laura John (instructed by CMS Cameron McKenna Nabarro Olswang LLP) appeared on behalf of the Defendant.

A. INTRODUCTION

1. This Ruling relates to the issues debated at a hearing before the Tribunal on 17 September 2025 ("the hearing").

2. The hearing was originally fixed to consider an application by the Defendant ("the ITA") for an interim payment on account of its costs, following the strike out of the Claimant's ("Kerilee's") claim. In the run-up to the hearing, however, Kerilee sought that the Tribunal should set aside the order striking out its claim, and in addition should, amongst other things, order the ITA to repay all sums previously paid by Kerilee in the course of the case, release back to Kerilee the security for costs held by the Tribunal, and find Kerilee's case proved.

3. While the history of this matter has been referred to in earlier Rulings of the Tribunal, including that of 17 March 2025, it is necessary to set out an outline of that history here again.

B. THE HISTORY OF THE PROCEEDINGS

4. Kerilee's claim was commenced on 30 December 2020. At that point, Kerilee was represented by Berkeley Rowe Ltd. Kerilee's claim was said to arise from an alleged infringement of the prohibition contained in s. 18 of the Competition Act 1998 ("the Act"), the prohibition contained in s. 2(1) of the Act, and Articles 101(1) or 102 of the TFEU in two interrelated markets, said to be (i) the product market for responsibly produced and supplied minerals, specifically tantalum/niobium, tin and tungsten, where the relevant geographic markets included Burundi, the DRC, Rwanda and Uganda, and (ii) the market for accreditation and standardisation of producing and supplying such minerals.

5. According to the claim, Kerilee is or was a metal trading SME, with a business including central Africa, and a "mine to metal" business model designed to maximise income by having minerals smelted and converted to metal products for trade. The ITA is a UK-based trade association which comprises corporate members in the tin producing and processing industry. The ITA is responsible for the governance, policy, financial, executive and secretarial functions of the

International Tin Supply Chain Initiative ("ITSCI") conflict mineral due-diligence programme. The ITA/ITSCI programme was, the claim alleged, set up in 2009 and formalised in 2011, and included within its scope tin, tantalum/niobium and tungsten.

6. The claim alleged that the ITA excluded Kerilee from membership of ITA/ITSCI without due process or justifiable reason. The refusal by the ITA to review Kerilee's membership application amounted, it was said, to an abuse of the ITA's dominant position arising from its position as the leading provider of upstream due-diligence services in the relevant market. Competition in the downstream market was thereby restricted and ongoing loss was caused to Kerilee. It was also said that the refusal by the ITA to include Kerilee as a member of the ITA/ITSCI distorted the competitive playing field by having a direct or indirect bearing on the commodity price(s) for the ultimate consumer.

7. After the service of amended statements of case, at a CMC on 29 October 2021 the Tribunal ordered that there should be a hearing of two preliminary issues, at that stage formulated as follows:

(1) What are the relevant markets for the purposes of these proceedings. In particular:

(a) Is there a single market which covers the entire supply chain for all three of the minerals tin, tantalum and tungsten collectively, originating in Burundi, the DRC, Rwanda and Uganda? Or are there separate markets for at least the following levels of the supply chain, for each of tin, tantalum and tungsten separately, and irrespective of their country of origin: (i) mining and processing of ores and/or concentrates; (ii) exports of concentrates for smelting or other equivalent first stage production processes; (iii) purchasing for further processing and/or transformation and/or use any of the metals and/or intermediates and/or metals products; and/or (iv) purchasing any of the further converted or transformed products downstream?

(b) What is the geographic scope of the market(s) identified in (a) above? Which, if any, includes the UK and/or the EU?

(c) Is there a single market for services of the sort supplied by the ITA, which includes the supply of services to undertakings throughout the entire supply chain for tin, tantalum and tungsten collectively; or is there a separate market complementary to each of the mining and processing market(s) and the export market(s)?

(d) What is the geographic scope of the market(s) identified in (c) above?

(2) If the ITA were to have engaged in the putative conduct alleged in the Amended Claim, would the market affected or likely to be affected by that conduct be in the UK, for the purposes of English law being applicable under Article 6(3)(a) of Regulation 864/2007?

8. Before the CMC of 29 October 2021, the ITA had issued an application for Kerilee to provide security for costs. At the CMC on 29 October 2021, the Tribunal gave directions for the hearing of that application. In the event, that application was compromised by consent, and Kerilee agreed to pay security for the ITA's costs up to the conclusion of the expert process in the preliminary issues trial in the sum of £400,000. Kerilee paid £400,000 into the Tribunal in instalments between January and April 2022.

9. Progress towards the preliminary issues trial was much slower than originally anticipated. A number of extensions of time for the service of factual witness statements and expert reports on mineral supply chains were granted to Kerilee. A final extension for the service of Kerilee's evidence was granted on unless terms by the Tribunal's Order of 31 January 2024. Kerilee did not properly comply with that deadline, and the claim was struck out, subject to relief from sanction which, in the event, the Tribunal granted by its Ruling of 21 May 2024 ([2024] CAT 35). There arose further issues about whether that which Kerilee had served by way of factual and expert evidence complied with the Competition Appeal Rules 2015 ("the Tribunal Rules") and/or reflected

Kerilee's pleaded case, and this led to Kerilee re-amending its Statement of Claim, serving a second witness statement of Mr Brian Beckett, and serving a replacement expert report of Tim Williams and Anton de Feuardent.

10. On 18 October 2024, in anticipation of the conclusion of the process of adducing experts' reports for the purpose of the preliminary issues, the ITA made an application for the provision of security for costs in respect of its costs to be incurred from the conclusion of the expert process up to the conclusion of the preliminary issues trial. At a CMC on 1 November 2024, Kerilee, by Mr Beckett, agreed that it should, in principle, provide further security for the ITA's costs, and confirmed that its opposition to the ITA's application for further security would be limited to matters of quantum and timing. On that basis, the Tribunal adjourned the further hearing of the ITA's application for security for costs, so that the issues of the amount and the timing of such security could be the subject of further consideration by the parties, negotiation between them and, in the absence of agreement, the service of written submissions and a determination by the Tribunal on the papers.

11. The trial of the preliminary issues was fixed to take place between 14-31 July 2025.

12. The parties were not able to agree on the issues as to the amount or the timing of provision of security. The parties served written submissions in relation to these matters on 13 December 2024, and the ITA served responsive submissions on 20 December 2024. The Tribunal also received a letter from Kerilee dated 6 January 2025 and a responsive letter from the ITA dated 9 January 2025 dealing with the form in which security should be provided.

13. By its Ruling of 10 January 2025 ([2025] CAT 2), the Tribunal ordered that:

    (1) Kerilee was to pay further security for costs into the Tribunal in the sum of £575,000 by 21 February 2025;

    (2) in the event that Kerilee failed to comply with that order, the ITA would be at liberty to apply to have the claim struck out; and

(3) Kerilee was to pay the ITA's costs of its application for security for costs in the sum of £38,000 by 24 January 2025.

14. On 5 February 2025, the Tribunal granted a 7 day extension of the deadline for Kerilee to pay the further security for costs into the Tribunal (i.e. until 28 February 2025). Kerilee failed to pay the security for costs into the Tribunal or the costs of the security for costs application by the respective deadlines. Instead, Kerilee made an application on 26 February 2025 seeking to vary the Tribunal's order in relation to security for costs (i) to extend the deadline for the provision of security, and (ii) to allow for security to be provided in a form other than a payment into the Tribunal (namely by way of a personal guarantee from Mr Beckett secured over a property in Mexborough). On 5 March 2025, the ITA made an application to strike out the claim as a result of Kerilee's failure to pay the security for costs in accordance with the Tribunal's ruling.

15. Kerilee's application to vary and the ITA's application to strike out were heard on 13 March 2025. By its Ruling of 17 March 2025 ([2025] CAT 20), the Tribunal dismissed Kerilee's application to vary, and ordered that, unless Kerilee by 4 pm on 21 March 2025 paid both (i) the outstanding £575,000 into the Tribunal as security for costs, and (ii) the outstanding £38,000 to the ITA in respect of its costs ordered by the Tribunal in its Ruling of 10 January 2025, the claim would be struck out without further order and judgment entered for the ITA with costs of the claim to be assessed if not agreed. The Tribunal also ordered that Kerilee was to pay the ITA's costs of the variation application in the sum of £37,500 and of the strike out application in the sum of £25,000 by 10 April 2025.

16. Kerilee failed either to pay the security into the Tribunal or the costs of the security for costs application by the deadline of 21 March 2025. Instead, on the day of the deadline, Kerilee applied for a 7 day extension. That application was withdrawn on 25 March 2025. On 26 March 2025, the Tribunal confirmed that its Ruling striking out the claim stood unvaried. On 3 April 2025, Kerilee made an application seeking permission to appeal the Ruling striking out the claim. The ITA opposed that application by letter of 8 April 2025. On 25 April 2025, Kerilee, which had not had legal representation since 1 October 2024, filed a

Notice of Change of Legal Representative, confirming that Spencer West LLP were instructed to represent it. On 2 May 2025, Kerilee withdrew its application for permission to appeal.

17. On the basis that it had been awarded its costs of the claim, to be assessed if not agreed, by the Tribunal's Ruling of 17 March 2025, the ITA, on 4 July 2025, made an application for an order that Kerilee should pay it £2,100,000 on account of its costs of the claim, and that the Tribunal should release the sum of £400,000 held by way of security for costs, with £100,500 to be allocated to outstanding costs awards owed by Kerilee, and the balance to be offset against the payment on account. It was sought also that Kerilee should pay the costs of the application. That application was supported by the Fourth Witness Statement of Kenneth Henderson.

18. The hearing of the ITA's application was fixed for 17 September 2025; and on 28 July 2025 the Tribunal gave directions for the service of submissions in relation to it. These included that Kerilee was to file submissions in response to the application by 4 pm on 27 August 2025; the ITA was to file submissions in reply by 4 pm on 3 September 2025; the ITA was to file a statement of costs in relation to its application by 4 pm on 10 September 2025; and electronic hearing bundles were to be filed by 4 pm on 11 September 2025.

19. On 28 August 2025, Mr Beckett sent an email to the Tribunal, requesting "a further one week pause to provide details of our costs". On the following day Spencer West wrote to the Tribunal to confirm that that firm was "no longer instructed by [Kerilee], which is now a litigant in person represented by Mr Brian Beckett." On 1 September 2025, the Tribunal informed the parties that it would consider Kerilee's application to extend time on or after 8 September 2025, and said that Kerilee should, in any event, endeavour to file and serve its responsive submissions as soon as possible.

20. Thereafter, Mr Beckett on behalf of Kerilee sent a series of messages to the Tribunal, copied to the ITA. These included in particular:

(1) An email of 2 September 2025, which alleged that there was evidence that the ITA's scheme had been "hijacked for strategic anti competitive purposes, by enemies of UK & EU."

(2) A letter of 5 September 2025, which alleged that the Cronimet Group, which was a member of the governance committee of the ITSCI scheme, had been guilty of illegality.

(3) A letter of 7 September 2025, which, amongst other things, referred to a link to globalwitness.org, and made allegations that "White Coltan" had been trafficked by Cronimet via the ITSCI scheme since 2011; and sought the setting aside of the order striking out the claim, attaching an article entitled "Recent developments in setting aside judgments for fraud" by Catherine Gibaud KC and Devon Airey.

(4) A letter of 8 September 2025, seeking a further extension until 10 September 2025 to "further corroborate" the information provided about Cronimet.

(5) A letter of 9 September 2025, referring to the Cronimet group having been convicted in UK courts in 2011/12 "of systemic anti competitive offences including metal theft and trafficking", and alleging that "the appointment of Cronimet to defendant scheme governance committee as a convicted felon represents a gross breach of UK/EU and international anti competition law".

21. On 9 September 2025, the Tribunal informed the parties that it was granting Kerilee a final extension until 5:30 pm on 10 September 2025 to file submissions in response to the ITA's application, and made adjustments to the timings for electronic bundles and the service of the ITA's statement of costs of its application.

22. Kerilee sent further documents, including in particular:

(1) A letter dated 10 September 2025 (received on 11 September 2025), contending that the Tribunal had jurisdiction to consider its allegations, including about "organised crime infiltration of the defendant governance committee, 2010 to date".

(2) Emails of 12 September 2025, referring to email exchanges between "K Nimmo of ITA", "R Chavasse of TIC", "C Owens of Cronimet", who were said to be "members of defendant governance Committee", and "Whistleblower".

(3) An email of 12 September 2025, which alleged, inter alia, that Traxys had mothballed their Australian tantalite resource for a decade.

(4) An email of 12 September 2025 attaching a copy of a judgment of Hon Mr Justice Bashaija K Andrew of the High Court of Uganda of 29 April 2020, which had dismissed an action brought in defamation by Kerilee against the ITA in Uganda, on jurisdictional grounds.

(5) An email of 15 September 2025, referring to "post strike out independent reports by UN Group of Experts and US Secretary of Treasury, in turn noted by EU Commissioner seeking additional information in view of breaches of EU laws and bilateral agreements with Rwanda".

(6) An email of 15 September 2025, which stated that false statements had been made to the Uganda High Court, in particular that Kerilee had been a member of the ITA scheme.

(7) A letter of 16 September 2025, enclosing a witness statement from Mr Beckett, which again referred to allegations against K Nimmo in relation to representations to the Uganda High Court, against Traxys, against Cronimet and in relation to the ITA's "tainted governance committee".

(8) An "Extraordinary Witness Statement" from Mr Beckett, provided on 17 September 2025.

23. These communications had included applications by Kerilee to set aside the strike out of the claim, to order the return to Kerilee of the security it had provided, to grant summary judgment to Kerilee on its claim, and to order the ITA to pay to Kerilee the sum of £25 million by way of damages, costs, and the repayment of all costs paid by Kerilee during the action. The ITA served submissions in relation to those applications dated 15 September 2025.

24. Mr Beckett for Kerilee sent to the Tribunal and the ITA a further witness statement dated 17 September 2025 referring to attempts in 2015 and 2018 on the part of the ITA and its legal representatives to "blackmail and/or coerce" Kerilee "and/or a universally respected head of an international group which provides independent due diligence quality control cargo supervision services." In a letter of the same date, Kerilee attached what were said to be a "blackmail offer" made and relayed by the ITA's former lawyers, Sherrards, in 2015.

25. After the hearing, we directed that, given that the parties had had ample opportunity to make submissions before and at the hearing, and that considerable latitude had been afforded to Kerilee to serve submissions which were not provided for in any order, we would not consider any further submissions relating to the applications made. We have, accordingly, not done so.

C. KERILEE'S APPLICATIONS

(1) The parties' submissions

26. At the hearing on 17 September 2025, Ms John for the ITA indicated that, as Kerilee's applications were logically anterior to the ITA's application for an interim payment, she was content that Mr Beckett should present those applications first.

27. Mr Beckett referred to the material he had submitted in writing. In answer to questions from the Tribunal, he explained rather more about Kerilee's case in relation to the proceedings in Uganda, and in relation to Cronimet. He submitted that Kerilee should have the opportunity of having the evidence in

relation to the ITA's scheme and what he submitted were clearly fraudulent statements to the Ugandan court heard.

28. For the ITA, Ms John submitted that the materials put in by Mr Beckett were confused and confusing; much of what was said was irrelevant; that the relevant individuals had answers to it, which they would want to make if such allegations were made in an appropriate forum; but that there were short answers to Kerilee's reliance on such materials in the present context. Thus, she submitted, the first use to which Kerilee apparently sought to put those materials was to allege that there had been fraud in the present proceedings, and that the orders for security for costs and to strike out had been obtained by fraud. There was, she submitted, no evidence whatsoever to support that. The second was to point to alleged misrepresentations to the High Court of Uganda, but this was irrelevant to the matters before the Tribunal.

(2) Analysis

29. The Tribunal's Orders of 10 January 2025 and of 17 March 2025 for the provision of security, and for the consequences if security was not provided, have not been successfully appealed. Those orders are, accordingly, not capable of challenge, unless one of the limited grounds for revisiting unappealed orders is made out.

30. Insofar as Kerilee's case is that those orders should be set aside on the basis of fraud by the ITA, and assuming that an application to set aside on such grounds can be brought in the proceedings in which the orders were made, as opposed to separate proceedings, it would be necessary for Kerilee to show the matters summarised in *Tinkler v Esken Ltd* [2022] EWHC 1375 (Ch) at [11] per Leech J, namely:

(1) that the ITA, or someone for whom it must take responsibility, committed conscious and deliberate dishonesty;

(2) the dishonest conduct was material to the original decision(s); and

(3) there was new evidence before the Tribunal.

31. We are in no doubt that these matters have not been shown. There has been no showing of any dishonesty in relation to any matter material to the decisions in question. Those decisions were as to the provision of security for costs and as to the consequences of non-provision of such security. The matters to which Kerilee has pointed were not material to the making of those orders. Most, insofar as they could be of any relevance to the case, would go to the underlying merits of Kerilee's claim, and not to the question of whether security should be provided. As to that, it was accepted by Kerilee in November 2024 that security should, in principle, be provided. There was no fraud involved in the subsequent determination by the Tribunal as to what should be the consequences of non-provision of security. That sanction was determined by the Tribunal bearing in mind (i) the imminence of the end of the phase of the claim which the existing security was to cover, and of the preliminary issues hearing; and (ii) the history of the proceedings, which included that Kerilee had not provided the security which it had been ordered to provide, and had not paid certain costs orders previously made against it. There is no doubt that the security was not in fact provided. There is thus no basis at all for any suggestion that there was fraud in relation to any matters material to the relevant decisions.

32. We have considered whether Kerilee's complaints might be formulated as an application to set aside our earlier decisions pursuant to Rule 115(2) of the Tribunal Rules. We considered this rule in our Ruling of 17 March 2025, making reference to the guidance given in *Tibbles v SIG plc* [2012] 1 WLR 2591, [2012] EWCA Civ 518, which has been applied in relation to Rule 115(2) of the Tribunal Rules in *British Telecommunications plc v Office of Communications* [2018] CAT 1, especially at [73]-[79]. This guidance emphasises that considerations of finality, the undesirability of allowing litigants to have two bites at the cherry, and the need to avoid undermining the concept of appeal, all push towards a principled curtailment of an otherwise apparently open discretion; and that it is normally necessary for it to be shown that (a) there has been a material change of circumstances since the relevant order was made, or (b) that the facts on which the original decision was made were misstated.

33. In our view, neither (a) nor (b) is applicable here. The facts on which the original decisions were made were not misstated. Once it is appreciated what those decisions were, namely that security should be provided, and as to the sanction for non-provision, this is both clear and unsurprising. Equally, there has been no material change of circumstance. Nothing has changed in relation to the matters making the provision of security appropriate, or as to what sanctions might be appropriate for its non-provision since our decisions on those points. Insofar as Kerilee points to any matters which have occurred since the striking out of the claim, they are matters going to the merits of the claim, but they are not such as to turn this into one of those cases in which a consideration of the merits is relevant to whether there should be security for costs. None of the material adduced has turned this case into one in which it can be said, without even a hearing of the preliminary issues, that there is a high probability of the claim succeeding.

34. We have also considered the other way in which the ITA, at least, understood Kerilee to be putting its case, namely that the ITA's defence of these proceedings in toto has been an abuse of process, on the basis that the ITA had responded to the proceedings that Kerilee had brought against it in the High Court of Uganda by contesting jurisdiction, relying on the signature by Mr Beckett on behalf of Kerilee of a Declaration of Accession to the Membership of ITA's programme on 14 January 2014, and contending that the courts of England and Wales were the appropriate forum for any defamation claim.

35. We cannot see that these matters are relevant to the present applications. There may be an argument as to whether it was appropriate for the ITA to refer to Kerilee's signature of the Declaration of Accession to the Membership, in circumstances where Kerilee was, as it alleges, ultimately refused membership. We express no view on the merits of such a complaint. What does appear to us clear, however, is that it is not relevant in the present context. It does not constitute a change of circumstances since our relevant decisions: the ITA's reliance on the Declaration of Accession occurred in the course of Ugandan proceedings which culminated with a judgment dated 29 April 2020, and was of course known about by Kerilee at or shortly after the time it occurred. Nor is it, or any of the jurisdictional arguments raised by the ITA in Uganda, material

to our relevant decisions, particularly in circumstances where the present case had been brought before the Tribunal by Kerilee itself and where the jurisdiction of the Tribunal was not in issue.

36. For these reasons we refuse Kerilee's applications. The Tribunal's previous decision to strike out the claim stands. Insofar as Kerilee complains that that means that its case will not be heard, that is the result of it not having provided security in circumstances where there were compelling grounds for the provision of security, and where Kerilee had itself accepted that security was, in principle, appropriate.

D. THE ITA'S APPLICATION

37. The ITA seeks an order for the payment by Kerilee of £2,100,000 on account of its costs of the claim. It has served a schedule summarising what it contends are its incurred costs. These are said to total £3,511,833.30, and to be comprised of: (a) Sherrards' fees - £119,867.00; (b) CMS's fees - £1,805,061.01; (c) Counsel's fees - £379,354.00; (d) Experts' fees - £1,089,118.49; and (e) Other disbursements - £118,432.80. These costs are said to exclude any costs which are the subject of any existing costs order by the Tribunal, any other costs previously included within any Form N260 Statements of Costs provided in respect of hearings or applications insofar as such costs have been disallowed by the Tribunal or compromised by the parties, and any costs subject to a "no order as to costs" ruling by the Tribunal.

38. The ITA contends that a reasonable payment on account of its incurred costs is in the region of 60% of the costs. It is said that this is a reasonable proportion, particularly in light of the fact that the Tribunal has awarded in the region of 70% or above of claimed costs in previous summary assessments. While both CMS's fees and the experts' fees reflected a considerable number of hours, this was in part the product of the width of the markets alleged, and the length of the period to which the claim was said to relate. As to the solicitors' hourly rates, Ms John contended that these were almost all within the Guideline hourly rate uplifted by 30%, which had been considered acceptable by the Tribunal in *Merricks v Mastercard* [2024] CAT 57 and in *Christine Riefa Class*

Representative Ltd v Apple Inc. [2025] CAT 34 ("*Riefa*"). Restraint had been shown in the ITA's use only of junior counsel.

39. Mr Beckett for Kerilee made the submission that there should not be an order for a payment on account of costs because, as he contended, the ITA already held the amount claimed as a result of Kerilee's assets being trapped in the scheme. We could not accept that submission. We had no material to show that there was any fund of Kerilee's "trapped" in the ITA's possession or control. The essential claim made in the Re-Amended Statement of Claim is that Kerilee was excluded from the ITSCI Programme and as a result suffered financial loss, namely what Kerilee might have received in the non-infringement scenario, as well as harm to its reputation (see Re-Amended Statement of Claim, para. 96 and Annexure R). The financial loss is said to have resulted from the loss of the benefit of the services and levy discounts under the ITSCI Programme; from the loss of the business which Kerilee says it would have done in the counter-factual scenario; and some losses from its dealings with Britcon. There is no claim that Kerilee paid over sums to the ITA. Nor were we provided with any other basis for considering that there is any fund of Kerilee's money which might be said to be in the ITA's possession or control. Accordingly, we could see no reason here for Kerilee not to make a payment on account of the costs which it has been ordered to pay.

40. It is the usual practice of the Tribunal to make orders for an interim payment on account of costs: see *Riefa* at [25]. It appears to us that there is no reason in the present case to depart from that usual practice. When assessing the amount of such an interim payment, "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" (ibid., [13(f)]).

41. We have considered all the submissions made by Ms John in relation to the costs incurred by the ITA, and have noted that in *Riefa* an interim payment of 65% of the amounts claimed was awarded. We are nevertheless concerned at the number of hours spent, and the experts' fees claimed in this case. We also have reservations as to whether hourly rates of up to the Guideline plus 30% should

be regarded as reasonable in the present case. That is not to say that any of these matters will, on assessment, be found to be unreasonable or disproportionate; but it does mean that, adopting a cautious approach, and allowing a margin, we consider that the interim payment should be of roughly 55% of the amounts claimed, namely £1,930,000.

42. The sum of £400,000 currently held by way of security for the ITA's costs should be released to the ITA within 14 days of the date of this Ruling. Of that amount, £100,500 should be allocated to the outstanding costs awards payable but unpaid by Kerilee, and the balance is to be offset against the payment on account of costs. The balance of the amount which we have ordered to be paid by way of an interim payment on account of costs, namely £1,630,500 should be paid by Kerilee within 21 days of the date of this order.

43. In the event of failure on the part of Kerilee to pay the amount provided for in the last paragraph, interest shall accrue on any outstanding amount at 8% per annum from the date upon which the payment fell due until the date of actual payment. Kerilee should also pay, within 21 days of the date of this Ruling, interest on the unpaid costs orders at the rate of 8% per annum from the date upon which payments fell due under the Tribunal's 10 January 2025 and 17 March 2025 Rulings until the date of actual payment.

E. COSTS OF THE APPLICATION FOR A PAYMENT ON ACCOUNT AND OF KERILEE'S APPLICATIONS

44. The ITA seeks, and having been successful is entitled to, the costs of the application for a payment on account of costs, as well as its costs in dealing with Kerilee's applications seeking to set aside the Tribunal's orders striking out the claim.

45. The ITA provided Statements of the costs for these two aspects of the case. They were in the amounts of £71,822.00 and £10,324.00 respectively. Given that much of the former was referable to the preparation of a breakdown of the costs of the claim, these amounts appeared to us not to be greatly outside what we would have expected, and we propose summarily to assess these costs at

£70,000 and £10,000 respectively. Therefore, Kerilee shall make payment on account of £80,000 in respect of such costs within 21 days of the date of this Ruling.

The Hon. Mr Justice Butcher
Chair

Peter Anderson

Simon Holmes

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

Date: 7 October 2025