



Neutral citation [2025] CAT 78

Case No: 1403/7/7/21

IN THE COMPETITION
APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

13 November 2025

BETWEEN:

DR. RACHAEL KENT

Class Representative

and

(1) APPLE INC.

(2) APPLE DISTRIBUTION INTERNATIONAL LTD

Defendants

REASONED ORDER

UPON the Tribunal's Collective Proceedings Order of 29 June 2022 and the claims thereby combined

AND UPON the Tribunal hearing the claims at a trial held between 13 January and 28 February 2025

AND UPON the Tribunal handing down its judgment of 23 October 2025 ([2025] CAT 67) (the "Judgment")

AND UPON Apple's application for permission to appeal and the grounds therein dated 11 November 2025

AND UPON hearing the submissions of counsel for the parties on 13 November 2025

AND HAVING REGARD TO paragraph 8.1 of Practice Direction 52D and CPR 52.12

IT IS ORDERED THAT:

1. The Defendants' application for permission to appeal is refused.
2. Pursuant to CPR 52.12(2)(a) the time for filing an appellant's notice at the Court of Appeal be extended to 5 December 2025.

REASONS

(1) Introduction

1. The grounds on which permission to appeal is sought are numerous. A large proportion of them involve challenges to the exercise which the Tribunal has carried out of weighing multiple strands of evidence following an eight-week trial, much of which has been divergent and some of which has been inconsistent. At least in so far as they relate to questions other than quantum, they seem to us to be challenges to our evaluative judgement, rather than identifying perversity, irrationality or other irregularity which might amount to an appeal on a point of law. In so far as they relate to quantum, we consider that position to be all the more clear, given the wide margin of discretion which the case law permits the Tribunal to assess the extent of damages by using our powers of informed, skilled "guesstimation" where that is required. None of the grounds falling into these categories has a real prospect of success.
2. To the extent there are points of law advanced by Apple, none of those grounds has a real prospect of success.
3. Nor is there any other compelling ground for an appeal. Apple advances the public importance of its business model for consumers and in relation to IP rights, and the size of the damages award, as giving rise to compelling reasons

why an appeal should be allowed. We do not consider those matters as justifying the grant of permission to appeal.

4. In this Reasoned Order, we will use the same defined terms as are used in the Judgment. Cross-references to numbers in square brackets are to paragraphs of the Judgment unless we specify otherwise.
5. Turning to the eight grounds advanced:

(2) Ground 1

6. Ground 1 is a wide-ranging challenge to the Tribunal's findings on market definition and dominance.
7. Ground 1(a), that comparators do not provide tools and technology comparable to Apple: Apple did not run a positive case in respect of the HMT (see [149]). It did not put forward any specific amount of the Commission as attributable to the tools and technology (see [475]). It did not identify any particular provision of its contractual arrangements with developers which linked the tools and technology expressly with the Commission (see [73]). The tools and technology are provided in a separate market from the iOS app distribution services (see [477]). The Tribunal has not treated the tools and technology as part of the focal product, by which iOS app distribution services are provided to developers. Self-evidently, it is iOS app distribution services which are the subject of the SSNIP test, which operates on the identified focal product to assess whether there are any likely substitutes. The comparators used by the Tribunal for that purpose were assessed by reference to the similarity of their service to the focal product.
8. Apple may be able to identify reasons why the Commission exceeds the likely competitive level of the price for iOS app distribution services, including potentially its intention to recover some of the costs incurred in providing Apple's tools and technology to developers. That does not mean that those items are properly included in the analysis of comparators for the purposes of identifying the likely competitive price level. Instead, the Tribunal has chosen

to deal with the implications of a potential charge for tools and technology in the context of the assessment of abuse – and of course in the assessment of quantum, where it is dealt with in considerable detail. To approach the matter otherwise, as Apple now suggests, would, in the Tribunal’s view, artificially distort the market definition exercise, and, in particular, the exercise of considering product differentiation.

9. Ground 1(b), the selection of rates of 20% for Steam and 12% for Epic: there is nothing in Apple’s point that large developers pay on a sliding scale. The point is that they are able to access a rate of 20% above a certain revenue level, which is indicative of competitive forces operating on Steam to produce what may be considered evidence of a competitive price. The Tribunal dealt at some length (in several places) with its assessment of the evidence about Steam and Epic and its reasons for preferring those rates. The exercise of performing a SSNIP test is not a finely calibrated one and the HMT is a multifactorial exercise of judgement taking into account all the evidence.
10. Ground 1(c), price dispersion and product differentiation: the Tribunal’s assessment was based on analysis of the significant difference between a SSNIP applied to the comparator rates and the Commission. That was ample evidence to form a view on the plausibility of product differentiation or price dispersion as a reason for the difference.
11. Ground 1(d), rejection of Apple’s comparators: the CMA’s conclusion in relation to Google’s market power was a sufficient basis to exclude the Android ecosystem as a comparator. The reliance on the MEM Study will be addressed in relation to ground 8 below.
12. Ground 1(e), iOS in-app payment services in a separate market: the Tribunal made findings of fact in [302] and then reached its conclusion on the basis of those facts. There is no error of law in that exercise.
13. Ground 1(f), no HMT for iOS in-app payment services: the Tribunal addressed the arguments about a separate market for iOS in-app payment services in the same way the point was argued by the parties. Having carried out the SSNIP

analysis in relation to iOS app distribution services, there was nothing further to be gained by reperforming that exercise for iOS in-app payment services.

14. Ground 1(g), the use of Mr Dudney's evidence: this was a legitimate exercise of taking evidence available to the Tribunal and using it as corroboration.
15. Ground 1(h), the level of Commission in 2008: the Tribunal reached the view that the market structure and conditions in 2008 were sufficiently different from conditions in 2015 that they provided little assistance on the questions of market definition and dominance. That was a legitimate conclusion on the evidence before it and displays no error of law.
16. Ground 1(i), competition in the devices market: the Tribunal considered in detail the possibility of a systems market (see [263]-[278]) and the potential of the devices market otherwise to act as a constraint as part of its assessment of dominance [323]-[349]. That included a review of the evidence, including the Accent Survey (which Apple had encouraged the Tribunal to accept as reliable evidence – see [136]). The conclusions reached about the application of the *EFIM* conditions and the potential for constraint reflect the Tribunal's evaluation of the evidence and do not disclose an error of law. It was Apple's case that high value users would respond differently from the generality of users, about whom there was evidence in the form of the Accent Survey. However, it failed to produce any evidence to contradict the conclusions of the Accent Survey, which was therefore the evidence on which the Tribunal relied.
17. Ground 1(j), the alternative channels: the Tribunal considered the evidence in relation to the constraint imposed by the Reader Rule, the MSR (see for example [345] and [346] and other alternative channels (see [280]-[293])). It is not correct, as Apple now suggests, that these were rejected on the basis that they were only available to part of the developer population or were not the same as the focal product. They were rejected on the basis that the evidence did not disclose any substitute product or other constraint which might condition Apple's dominance. That was an evaluative judgement which does not disclose an error of law.

(3) Ground 2

18. Ground 2 is again a wide-ranging challenge to the Tribunal's findings of exclusionary conduct.
19. Ground 2(a), misstatement of the *Magill* criteria: Apple's closing written submissions acknowledged the relationship between: (i) the question of reservation of property rights; and (ii) the imposition of anti-competitive restrictions in a licence. It now seems to be arguing that any reservation of a property right excludes the possibility of an abusive restriction, which is not in the Tribunal's view consistent with the cases (including *Magill* and *IMS*). The Tribunal's reasoning in relation to the relevance of tools and technology needs to be read as a whole (see [419]-[423], [431]-[437] and [421]). The Tribunal did not conclude simply that the activities of iOS app distribution and iOS in-app payments involved no use of Apple's IP. It determined that there had not been a reservation of use by Apple which was sufficient to justify the protections afforded by the *Magill* criteria, and instead that Apple was imposing anti-competitive restrictions by way of conditions to access to that property which had already been provided. That position was most obvious in relation to iOS in-app payment services, where Apple sought to restrict the use of iOS in-app payment services which would not involve any property reserved for itself. It was also, in the Tribunal's view, by reference to the facts found, the position for iOS app distribution services.
20. Ground 2(b), competition on the merits: the Tribunal did not discount Apple's intention to differentiate itself in the devices market; see [495] and [496]. It decided that that was irrelevant to the question of whether the exclusionary conduct in the markets for iOS app distribution services and iOS in-app payment services could be justified by reason of competition on the merits in those markets. Apple has advanced no valid reason as to why that conclusion was wrong. In relation to those markets, there can of course be no competition as there are no potential competitors, given Apple is a monopolist.
21. Ground 2(c), tying: it was common ground between the experts that a requirement that a customer must not buy the tied product from another firm is

a tie, regardless of whether the customer actually purchases the tied product; see [509] and [518]-[522]. Apple’s position on this is also contrary to legal authority such as *Microsoft* at [970], referred to at [506] of the Judgment.

(4) Ground 3

22. Ground 3 relates to Apple’s justification defences.
23. Ground 3(a), the integrated and centralised service: this sub-ground mischaracterises the Tribunal’s findings in [784] and [785]. The Tribunal did not purport to decide what consumers might consider they need. Instead, it was simply pointing out that demand for safety and security was not necessarily the same thing as demand for an integrated or centralised service. Or to put it another way, the safety and security benefits could be delivered in a system which is not integrated and centralised.
24. Ground 3(b), findings about degradation in the counterfactual: Apple again mischaracterises the findings in [787]. The Tribunal said that a degree of fragmentation and dispersion was a marginal issue in the context of absolute restrictions. [789] makes it plain that this discussion concerns whether less anti-competitive alternatives are available.
25. It is unfortunate that what is now said to be an error in [787(1)] was not identified in the embargo process in the course of which comments were provided by the parties in respect of a draft of the Judgment. However, we do not consider the potential correction (inserting the word “after” in place of the word “by”) to lead to any change in the reasoning. Apple’s other points display a disagreement with our factual findings, not any appealable point of law.
26. Ground 3(c), findings about threats in the counterfactual: the Tribunal expressly addressed the possibility of malicious actors in [788]. The basis for the Tribunal’s finding about security and privacy threats in relation to iOS in-app payments services was an industry-wide payments standard which provided adequate provision for security and privacy; see [792].

- 27. Ground 3(d), *Hilti* and *Tetra Pak*: Apple incorrectly summarises the principle emerging from these cases, as the Tribunal found in [707]. The restrictions do exclude competing products.
- 28. Ground 3(e), reliance on the MEM Study: this is addressed in relation to Ground 8 below.

(5) Ground 4

- 29. Ground 4 concerns the excessive and unfair pricing part of the Judgment.
- 30. Ground 4(a)-(e), the findings in relation to Limb 2 generally: this encompasses all five sub-grounds and involves the assessment of Mr Dudney's evidence on profitability, the evidence of demand side value, comparator evidence, the relevance of tools and technology and the characterisation of the DPLA.
- 31. The Limb 2 analysis was an assessment of a wide range of evidence before the Tribunal. The Tribunal dealt with the question of demand side value at considerable length, both as a matter of law and by reference to the evidence. The Tribunal conducted a multifactorial evaluative analysis to reach its conclusion. No one consideration was determinative and the outcome represents the overall judgement of the Tribunal in weighing the different pieces of evidence before it (including the paucity of evidence on some aspects which Apple urged it to take into consideration). Apple does not seem to suggest that the Tribunal's analysis of the general legal principles was in any material way in error. Instead, it challenges the application of those principles. That appears to be a thinly disguised disagreement with the factual findings made by the Tribunal. There is no error of law involved.

(6) Ground 5

- 32. Apple's fifth ground concerns the Tribunal's overcharge analysis.
- 33. Ground 5(a), single overcharge for exclusionary and unfair pricing abuses: the Tribunal addressed the rationale for this in [872] and [873], expressing the view

that in this case, contrary to Apple's current challenge, there was a logical basis for approaching the task as a single exercise and justification for doing so in order to reduce the complexity of the exercise.

34. Ground 5(b), comparators: this issue is already dealt with in relation to grounds 1 and 4 above.
35. Ground 5(c), a lower overcharge for payment services: the Tribunal addressed the rationale for this in [877]. It was a matter of discretion for the Tribunal to select the counterfactuals it thought best reflected the proper calculation of the overcharge.
36. Ground 5(d), Google as a comparator: to the extent this repeats ground 1, it has already been dealt with. In relation to [911], the Tribunal there explained its reasons for the weight (or lack of that) which it gave to Google as a comparator. Apple's challenge to these are challenges to the Tribunal's evaluation of the evidence and disclose no error of law.
37. Ground 5(e), the finding that Apple would not materially change its charging structure for tools and technology: the Tribunal's analysis of the evidence relating to this issue is set out at length in [891] and [892]. The Tribunal evaluated all this evidence (including the paucity of evidence on some aspects which Apple now says are important) and reached a conclusion about Apple's incentives in the counterfactual. Apple's challenge is really a challenge to the Tribunal's evaluation of the evidence and discloses no error of law.

(7) Ground 6

38. Ground 6 relates to incidence.
39. Ground 6(a), selection of the 50% rate: as set out in [1057], the Tribunal considered a range of evidence which included economic theory, natural experiments by Professor Hitt and Dr Singer, the Spotify Decision, Apple's internal documents and Mr Howell's evidence. The Tribunal's treatment of that

was well within the margin of discretion afforded by the principle of the “broad axe”.

40. Ground 6(b), the proceedings in Case 1601/7/7/23 *Ennis v Apple Inc & Ors* (“*Ennis*”): the Tribunal did not refer to *Ennis* and to do so would have been improper, given the way the arguments were put before it.
41. Ground 6(c), the weight put on evidence: self-evidently, a ground of appeal which complains about the weight the Tribunal has given when applying the “broad axe” is unlikely to have a real prospect of success.

(8) Ground 7

42. Ground 7 concerns the Tribunal’s ruling on interest. Apple does not suggest that the Tribunal has misapplied the law or that there is any deficiency in its treatment of the evidence before it. The challenge that the outcome is unreasonable seems to be aimed at the discretion which the Tribunal has to determine the appropriate rate, which does not suggest any real prospect of success.

(9) Ground 8

43. Ground 8 concerns the treatment of the MEM Study and the Spotify Decision.
44. Ground 8(a), the Tribunal applied the wrong legal principle and/or departed from that principle: sub-ground (a) appears primarily to be based on the hope and expectation that the Supreme Court will reverse the Court of Appeal in *Evans v Barclays Bank* [2024] 1 All ER (Comm) 573, [2023] EWCA Civ 876 (“*Evans*”). Unless and until that happens, *Evans* represents the law which the Tribunal is bound to apply.
45. In relation to sub grounds (a) and (b), the Tribunal explained its approach to these decisions in section C of the Judgment and, in the case of reliance on the decisions, explained why and to what extent they should be relied on.

(10) Conclusion

46. For these reasons, Apple’s application or permission to appeal the judgment is refused in its entirety.

Ben Tidswell
Chair

William
Bishop

Tim Frazer

Charles Dhanowa, CBE, KC (Hon)
Registrar

Made: 13 November 2025
Drawn: 14 November 2025