Neutral citation [2025] CAT 76

Case No: 1698/7/7/24

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

12 November 2025

CLARE MARY JOAN SPOTTISWOODE CBE

Applicant/Class Representative

-and-

(1) AIRWAVE SOLUTIONS LIMITED

(2) MOTOROLA SOLUTIONS UK LIMITED

(3) MOTOROLA SOLUTIONS, INC

Respondents/Defendants

RULING (CPO COSTS)

A. INTRODUCTION

1. In its judgment handed down on 13 October 2025 [2025] CAT 60 (the **Judgment**), the Tribunal granted the application by Clare Mary Joan Spottiswoode CBE as the Class Representative (the **CR**) for a collective proceedings order (**CPO**) in respect of the CR's claim against the Defendants (collectively **Motorola**). The Judgment sets out the background to the CPO application in detail. This ruling addresses the consequential application of the CR for costs incurred in responding to: (i) Motorola's opposition to her CPO

application; and (ii) Motorola's strike out application in respect of the claim for the first nine months of the claim period.

2. The CR's position is that costs that were incurred before Motorola's opposition to the CPO application was filed on 13 June 2025 (the **pre-opposition costs**) should be costs in the case. In respect of the costs incurred after that date (the **post-opposition costs**), the CR says that costs which did not flow from Motorola's opposition to the CPO application or its strike out application and/or that would have been incurred in any event should also be costs in the case. The CR submits that a 10% reduction to her post-opposition costs would be reasonable in that regard.

3. Applying that reduction, the CR claimed a total sum of £1,766,900.28 (including VAT), with solicitors' fees for two sets of solicitors, Ashurst LLP and White & Case LLP, calculated on the basis of London band 1 of the 2025 Solicitors' Guideline Hourly Rates (the **Guideline Rates**) plus an uplift of 30%. The CR sought a payment on account of 65% of the total amount, giving a sum of £1,148,485.18 (including VAT), and said that the remainder should be subject to detailed assessment.

4. Following indication from the Tribunal that it was minded to summarily assess the costs of the CPO application, the CR filed supplemental submissions and revised statements of costs which recalculated her total costs claimed at this stage, inclusive of costs incurred post-hearing, to £1,791,760 (including VAT). The CR also (at the Tribunal's request) filed costs statements by reference to the Guideline Rates for solicitors' fees with no uplift. That produced a total figure of £1,541,739.76 (including VAT). The CR maintained, however, that her costs should be assessed by reference to a 30% uplift on the Guideline Rates.

5. Motorola filed responsive submissions, following which the CR filed a reply. Motorola agreed with the CR that her pre-opposition costs and costs that would have been incurred in any event should be costs in the case. It submitted, however, that the percentage reduction in respect of the latter should be increased to 35%, and that the overall costs total was extremely high and plainly

disproportionate. Its submission was that the CR's costs should be summarily assessed in the sum of £540,000 (including VAT).

B. RELEVANT PRINCIPLES

6. The award of costs by the Tribunal is governed by Rule 104 of the Competition Appeal Tribunal Rules 2015 which states, in so far as relevant:

> "(2) The Tribunal may at its discretion, subject to rules 48 and 49, at any stage of the proceedings make any order it thinks fit in relation to the payment of costs in respect of the whole or part of the proceedings.
>
> […]
>
> (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;
> >
> > (b) any schedule of incurred or estimated costs filed by the parties;
> >
> > (c) whether a party has succeeded on part of its case, even if that party has not been wholly successful;
> >
> > (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;
> >
> > (e) whether costs were proportionately and reasonably incurred; and
> >
> > (f) whether costs are proportionate and reasonable in amount."

7. The general principles relevant to the making of costs orders pursuant to Rule 104 are summarised in the Tribunal's ruling in *Riefa v Apple* [2025] CAT 34 at §13, to which both parties have made reference. Both parties also referred to *Neill v Sony* [2024] CAT 13 which at §§13 and 14 set out the general approach of the Tribunal to costs relating to CPO applications which have been made following opposition by proposed defendants, as follows:

(1) The applicant's costs relating to the CPO application which would be incurred in any event (that is, in the absence of opposition to the CPO) should be costs in the case.

(2) The applicant should be awarded its costs incurred by reason of meeting the opposition to the CPO, discounted to reflect significant or material issues on which the respondent has succeeded.

(3) Costs prior to the date of filing a response objecting to the CPO application will generally be treated as being costs in the case.

8. As the parties noted, a practice has developed in the Tribunal of making a percentage reduction to a class representative's costs of meeting opposition to a CPO application to reflect costs which would have been incurred in any event, with the appropriate reduction depending on the facts. That approach has been followed in *Gutmann v First MTR* [2021] CAT 36 (reduction of 35%), *Le Patourel v BT* [2021] CAT 32 (20%), *McClaren v MOL* [2022] CAT 18 (15%), *Neill v Sony* (15%), and *Kent v Apple* [2022] CAT 38 (10%).

C. ANALYSIS

(1) Pre-opposition costs and costs that would have been incurred in any event

9. It is common ground that the CR's pre-opposition costs should be costs in the case.

10. As regards the post-opposition costs, as noted above, the CR has applied a 10% reduction to those costs to reflect costs which would have been incurred in any event. She sets out these costs as being: (a) those addressing the issues raised by clause 7.1 of her LFA; (b) the costs of corresponding with Motorola and the Home Office in relation to the User Survey and User Report and the application for disclosure in relation thereto; and (c) all costs associated with the administration of her claim.

11. Motorola submits that the CR's proposed 10% reduction is too low. It contends that the entirety of the costs of the CR's second economic expert report, from Mr Bell of Oxera, responding to Motorola's preliminary objections to the CR's economic methodology, should be costs in the case, on the basis that Motorola's concerns were reasonably raised. These costs amounted to £175,740.56

(including VAT). In relation to the remainder of the CR's post-opposition costs, Motorola submits that a reduction of 35% should be applied.

12. The CR in her reply says that she should recover her costs of Mr Bell's second report in full. She also objects to a reduction of 35% for costs that would have been incurred in any event, noting that this level of reduction had only been applied once, in *Gutmann,* and in very different circumstances.

13. The Tribunal considers that the costs of Mr Bell's second report should be recoverable in full by the CR. We agree with the CR that the matters raised by Motorola regarding Mr Bell's methodology were matters for trial; and it is notable that (as recorded at §3 of the Judgment) by the time of the hearing Motorola did not pursue any arguments as to the CR's economic methodology.

14. As regards the remainder of the CR's post-opposition costs, we consider that an appropriate overall reduction reflecting the costs incurred in any event would be 20%. This reflects the fact that the Tribunal would have needed to be satisfied of a number of matters in any event, including the class definition, the question as to whether to certify on an opt-out basis, and the funding arrangements. We agree with Motorola that some of the additional evidence filed by the CR covered matters which the Tribunal was likely to need to consider and which should therefore have been addressed from the outset, such as the user survey and evidence of engagement with prospective class members. Motorola's concerns about the funding arrangements were also, in our judgment, reasonably raised and (as the CR recognises) led to the amendment of the LFA.

(2) Summary assessment of costs

15. The costs incurred and claimed by the CR, after making the adjustments resulting from our conclusions above, amount to £1,452,083.11 (including VAT). That is an extraordinarily large amount, especially where the disputed issues relating to the CPO application were ultimately limited, such that the hearing took only one day; and also bearing in mind the exclusion from that figure of the initial costs of preparing the CPO application and 20% of the post-opposition costs.

16. The mere fact that a significant damages figure is being claimed on behalf of the class does not justify a kitchen sink approach to the litigation. We note that the costs incurred are far higher than the costs claimed in other cases where significantly more complex issues were raised at the certification stage, such as *Kent v Apple* (£958,415.38) and *Neill v Sony* (£939,394). We also note that in the *Gutmann* case the Tribunal described the CPO costs claim of over £1.7 million as "staggering" (§52). We consider the following adjustments to be necessary.

17. First, in relation to the solicitors' costs, the starting point for summary assessment should be the Guideline Rates. The Tribunal is bound by the Court of Appeal's guidance in *Samsung Electronics v LG Display* [2022] EWCA Civ 466, §6, which requires a "clear and compelling" justification for the application of a rate in excess of the Guideline Rates. As the Court of Appeal explicitly noted, it is not enough to say that the case is a competition case. The London band 1 rate is already calibrated to reflect "heavy commercial and corporate work centrally based in London firms".

18. The issues raised in this case are not, in our judgment, so complex as to justify an uplift above that benchmark. The fact that some of the specific issues addressed at the hearing have not been considered in other cases does not render the case an unusually complex one: that is routinely the case for commercial litigation, including competition proceedings. The large sum claimed by the CR is also not in itself a reason to uplift the Guideline Rates, where that does not translate into a particularly complex hearing. Nor does the fact that a significant amount of work had to be done to prepare for the hearing justify an uplift: that is already taken into account by consideration of the time spent by the solicitor team (although that was also excessive, as we consider below).

19. While the Tribunal has, in certain other cases, based its assessment on an uplift to the Guideline Rates, that should not be seen as creating any sort of expectation that in every case before the Tribunal the assessment of costs will take an uplift to the Guideline Rates as the starting point. Rather, it will be a

matter for the Tribunal in each case, considering the particular facts and circumstances of that case.

20. Secondly, we consider that the time spent by the solicitors and the counsel team on behalf of the CR was at all stages excessive, over-resourced and indicative of duplication. As Motorola has pointed out, the CR's junior counsel appears to have spent over 270 hours at the stage of producing the Reply to Motorola's Response to the CPO application, and accompanying documents. That is wholly disproportionate for a Reply document of 67 pages, especially given that it appears that, in addition to the work of junior counsel, over 182 hours appear to have been spent on the Reply by the two leading counsel instructed by the CR. Nor do we consider it necessary for the CR to have filed a Reply of that length, in any event. Even allowing for some time spent by the counsel team in reviewing the factual and expert evidence submitted in support of the Reply, we consider the amount of counsel time at this stage to be clearly excessive.

21. We also consider it unnecessary for the CR to have incurred the costs of instructing two leading counsel in any event (in addition to junior counsel). That is likely to have led to duplication at the preparatory stages. It was also unnecessary for the purposes of a hearing lasting a single day in relation to (as we have noted) relatively confined issues that were not, in our view, unusually complex. An overall reduction of 40% in respect of counsel's fees is therefore, in our view, appropriate.

22. The costs of Ashurst LLP for this stage of the proceedings are likewise entirely disproportionate. In addition to the large amount of time spent by counsel, it appears that the Ashurst team spent 979 hours on the preparation of the Reply and associated evidence (the equivalent of over 20 working weeks, assuming 45 hours per week). There is no justification for such significant work, given the time already spent by the counsel team and by Oxera. While we appreciate that the Reply and Mr Bell's second report were accompanied by four witness statements, the length and complexity of those does not justify the time apparently spent producing them.

23. Nor is there any good reason for a further 512 hours to have been spent by the Ashurst team in the period prior to the filing of the CR's skeleton argument (for which the primary responsibility of drafting should have been with counsel) and 150 hours in the week leading up to the CPO hearing (when again the bulk of the work should have been done by counsel). Nor, given the relative lack of complexity of the issues raised at that hearing, is there any reason for five fee earners to have attended the hearing. We consider a reduction of 50% of the costs of Ashurst LLP to be appropriate.

24. The Tribunal also considers that the instruction of White & Case LLP in addition to Ashurst LLP is likely to have given rise to unnecessary and duplicative costs. The CR states that she and her funder wished to maintain the involvement of Mr Burrows, who moved to White & Case LLP following the filing of the CPO application. However, the fact that the CR and her funder wished Mr Burrows to remain on the case because of his "residual knowledge" does not mean that the costs associated with retaining him (and an accompanying associate at White & Case LLP), alongside an experienced team at Ashurst LLP, should be borne by Motorola. We therefore agree with Motorola that the costs of White & Case LLP should be disallowed in their entirety.

25. Finally, considering the costs overall, it appears that the CR has already significantly overspent her litigation budget for this phase of the proceedings. That is very surprising, given that the litigation budget envisaged a CPO hearing of three to four days, and a case management conference prior to the CPO hearing. In the event, directions for the CPO hearing were agreed (avoiding the need for a pre-hearing case management conference) and the CPO hearing lasted, as we have noted, a single day. If anything, therefore, this should have resulted in an underspend against the litigation budget. This raises concerns about the level of control that is being exercised by the CR and the funder in relation to the costs of these proceedings. Going forward the Tribunal will expect far more rigorous control over costs, and will scrutinise these as necessary in respect of all parties to the proceedings.

D. CONCLUSION

26. Taking the starting point of Guideline Rates for solicitors' fees, the adjusted costs are therefore as follows (all figures including VAT):

	Claimed	**Less 20% (where applicable)**	**Adjusted**
Ashurst fees	£855,843.72	£684,674.98	£342,337.49 (reduced by 50%)
Counsel's fees	£527,728	£422,182.40	£253,309.44 (reduced by 40%)
White & Case fees	£138,416.52	N/A (disallowed)	£0 (disallowed)
Oxera fees	£175,740.56	N/A (no change)	£175,740.56 (no change)
Other costs	£15,315.37	£12,252.30	£12,252.30 (no change)
Total			**£783,639.79**

27. Motorola is therefore required to pay the CR's costs in the sum of £783,639.79 by no later than 21 days from the date of this Order.

28. The pre-opposition costs and the costs incurred in any event will, as set out above, be costs in the case.

The Hon Mrs Justice Bacon President	Robert Herga	Professor Anthony Neuberger

Charles Dhanowa, CBE., KC (Hon) Registrar	Date: 12 November 2025