Neutral citation [2026] CAT 6

Case No: 1339/7/7/20

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

15 January 2026

Before:

HODGE MALEK KC
(Chair)
EAMONN DORAN
WILLIAM BISHOP

Sitting as a Tribunal in England and Wales

BETWEEN:

MARK MCLAREN CLASS REPRESENTATIVE LIMITED

Joint Applicant / Class Representative

- and -

(1) MOL (EUROPE AFRICA) LTD
(2) MITSUI O.S.K. LINES LIMITED
(3) NISSAN MOTOR CAR CARRIER CO. LTD
(5) NIPPON YUSEN KABUSHIKI KAISHA

Joint Applicants / Defendants

- and -

(4) KAWASAKI KISEN KAISHA LTD
(6) WALLENIUS WILHELMSEN OCEAN AS
(7) EUKOR CAR CARRIERS INC
(8) WALLENIUS LOGISTICS AB
(9) WILHELMSEN SHIPS HOLDING MALTA LIMITED
(10) WALLENIUS LINES AB
(11) WALLENIUS WILHELMSEN ASA
(12) COMPAÑÍA SUD AMERICANA DE VAPORES S.A.

Defendants (stayed)

- and -

WOODSFORD GROUP LIMITED

First Intervener

- and -

(1) LITICA LTD
(2) LAKEHOUSE RISK SERVICES LIMITED

Second Intervener

- and -

THE ACCESS TO JUSTICE FOUNDATION

Third Intervener

Heard at Salisbury Square House on 15 January 2026

JUDGMENT (CSAO APPLICATION) (MOL/NYKK)

APPEARANCES

Sarah Ford KC and Nicholas Gibson (instructed by Scott + Scott UK LLP) appeared on behalf of the Class Representative.

David Bailey and Natalie Nguyen (instructed by Arnold & Porter Kaye Scholer (UK) LLP) appeared on behalf of the First to Third Defendants.

Brendan McGurk KC and Angus Rodger (instructed by Steptoe International (UK) LLP) appeared on behalf of the Fifth Defendant.

Roger Mallalieu KC and Simon Teasdale appeared on behalf of Woodsford Group Limited.

Robert Marven KC appeared on behalf of Litica Ltd and Lakehouse Risk Services Limited.

CONTENTS

A. INTRODUCTION

1. The Tribunal has before it a joint application for a collective settlement approval order ("**CSAO**") made pursuant to Rule 94 of the Competition Appeal Tribunal Rules 2015 No. 1648 (the "**Rules**") (the "**CSAO Application**") by the Class Representative ("**CR**"), the First to Third Defendants ("**MOL**") and the Fifth Defendant ("**NYKK**") (together with MOL, the "**MN Defendants**") (the "**Settling Parties**"). The Settling Parties submit that the terms of their proposed settlement, as set out in the settlement agreement dated 27 October 2025 (the "**Proposed Settlement**" and the "**Settlement Agreement**"), are just and reasonable, and therefore invite the Tribunal to make a CSAO in the terms sought.

2. The CSAO Application is made pursuant to section 47B of the Competition Act 1998 ("**Competition Act**") in the context of collective proceedings combining follow-on claims under section 47A Competition Act for damages for alleged losses caused by the Defendants' breach of statutory duty in infringing Article 101(1) of the Treaty on the Functioning of the European Union ("**TFEU**") and Article 53(1) of the Agreement on the European Economic Area.

3. The CR retained Mr Tom Robinson, formerly of BDO LLP and now at Ankura Consulting (Europe) Limited, to advise on the quantum of claims. Following disclosure, Mr Robinson's estimate of the overall quantum of the claims against all Defendants in these proceedings was in the range of £86.1 million, lower-bound estimate, to £215.8 million, upper-bound estimate.[1]

B. BACKGROUND

(1) Follow-on claims

4. These collective proceedings combine follow-on claims under section 47A of the Competition Act for damages for losses caused by the Defendants' breach

[1] Mr Robinson's initial estimate of the overall quantum of the claims against all of the Defendants in these proceedings (including interest) was between £73.5 million and £147.1 million.

of statutory duty in infringing Article 101 of the TFEU and Article 53 of the Agreement on the European Economic Area.

5. The Defendants' breach of EU law was determined by the European Commission in a settlement infringement decision adopted on 21 February 2018 in Case AT.40009 – *Maritime Car Carriers* (the "**Decision**"). The cartel was found to have operated between 18 October 2006 and 6 September 2012. MOL's participation was found to have ended on 24 May 2012. The Decision made findings of infringement of EU law.

(2) The proceedings

6. On 20 February 2020, the CR filed an application for a collective proceedings order ("**CPO**").

7. On 27 April 2022, the Tribunal ruled that the proceedings were not brought on behalf of natural persons who had died, or companies which had become defunct, before the proceedings were issued: [2022] CAT 18.

8. On 20 May 2022, the Tribunal certified the claims as eligible for inclusion in opt-out collective proceedings and accordingly made the CPO: [2022] CAT 10. Pursuant to paragraphs 5-6 of the CPO, the notice period for persons domiciled within the United Kingdom ("**UK**") wishing to opt out, and persons domiciled outside of the UK wishing to opt in, expired on 12 August 2022.

9. On 8 and 9 November 2022, the Court of Appeal heard an appeal by the First to Eleventh Defendants against the Tribunal's certification decision, and on 21 December 2022 it handed down judgment dismissing the appeal, subject to a matter of case management which was remitted to the Tribunal: *Mark McLaren Class Representative Ltd v MOL (Europe Africa) Ltd* [2022] EWCA Civ 1701; [2023] Bus LR 318 (CA). On 17 July 2023, permission to appeal to the Supreme Court was refused.

10. In its Re-Re-Re-Amended Claim Form, the CR alleges that vehicle shipping costs were unlawfully inflated as a result of the Defendants' anticompetitive

conduct, and that these inflated charges were passed on through the supply chain as part of the delivery charges which are ultimately paid by the first person to purchase or finance a vehicle.

11. On 9 December 2022, the MN Defendants filed their respective Defences. The MN Defendants admitted that they had participated in, and were liable for, the infringement found by the Decision. They disputed, however, whether the represented persons ("**RPs**") had suffered any recoverable loss or, if they had, the extent of any such loss.

12. From 13 January to 13 March 2025, the trial of these collective proceedings took place against the MN Defendants only, with the other defendants having reached settlements with the CR. The key aspects of the dispute between the CR and the MN Defendants concerned, broadly: the level of overcharge; the extent, if any, of umbrella effects on prices across the wider market beyond the cartelised part of the market; the extent of upstream pass-on; the question of "ongoing losses"; the extent to which RPs did not suffer loss by reason of, or they mitigated their losses by, downstream pass-on; and the correct approach to calculating interest. As at the date of this hearing (the "**CSAO Hearing**"), the Trial Judgment is pending, however the Trial Tribunal (as defined at [19] below) has been asked by the CR and MN Defendants not to hand down the Trial Judgment pending the outcome of this CSAO Application.

(3) Prior settlements

13. On 6 December 2023, the Tribunal approved the bilateral collective settlement between the CR and the Twelfth Defendant, Compañía Sud Americana de Vapores S.A. ("**CSAV**") (the "**CSAV Settlement**"), as explained in its judgment dated 6 December 2023 ([2023] CAT 75) (the "***CSAV Settlement Decision***").

14. Pursuant to the CSAV Settlement, the CR and CSAV agreed that CSAV would pay £1.5 million (including costs) in full and final settlement of the claims for damages against CSAV. This was on the basis, as agreed bilaterally between

the CR and CSAV, that the claims against CSAV represented 1.7% of the overall value of the claims against all of the Defendants together.

15. On 6 December 2024, the Tribunal made a second CSAO in respect of a bilateral collective settlement between the CR and the Sixth to Eleventh Defendants ("**WWL/EUKOR**") (the "**WWL Settlement**"), following the joint hearing of that application and the CSAO application relating to the K Line Settlement (as defined at [17] below) on 5 December 2024 (the "**December 2024 Settlement Hearing**"). The WWL Settlement was approved by Order of Hodge Malek KC dated 6 December 2024 (the "**WWL CSAO**") for the reasons set out in the Tribunal's judgment dated 15 January 2025 ([2025] CAT 4) (the "***WWL/EUKOR & K Line Settlement Decision***").

16. Pursuant to the WWL Settlement, the CR and WWL/EUKOR agreed that WWL/EUKOR would pay £24.5 million (including costs) in full and final settlement of the claims for damages against WWL/EUKOR. That settlement sum comprised: (i) £8.75 million which was guaranteed to be distributed to RPs or to an approved charity; (ii) £6.5 million for distribution to RPs if the guaranteed amount and any other sums were not sufficient to compensate all RPs who came forward during the distribution process (of which up to £3.25 million could be used to pay costs, fees and disbursements ("**CFDs**") if not required to pay RPs); (iii) £8.75 million towards payment of costs, fees and disbursements; and (iv) £0.5 million towards distribution costs. This was on the basis, as agreed bilaterally between the CR and WWL/EUKOR, that the claims against WWL/EUKOR represented 33.3% of the overall value of the claims against all of the Defendants together.

17. Also on 6 December 2024, the Tribunal made a CSAO in respect of a bilateral collective settlement between the CR and the Fourth Defendant ("**K Line**") (the "**K Line Settlement**") after the December 2024 Settlement Hearing, for the reasons given in the Tribunal's *WWL/EUKOR & K Line Settlement Decision*.

18. Pursuant to the K Line Settlement, the CR and K Line agreed that K Line would pay £12.75 million (including costs) in full and final settlement of the claims for damages against K Line. That settlement sum comprised: (i) £5.25 million

which was guaranteed to be distributed to RPs or to an approved charity; (ii) £1.75 million for distribution to RPs if the guaranteed amount and any other sums were not sufficient to compensate all RPs who came forward during the distribution process (of which up to £1.75 million could be used to pay costs, fees and disbursements if not required to pay RPs); (iii) £5.25 million towards payment of costs, fees and disbursements; and (iv) £0.5 million towards distribution costs. This was on the basis, as agreed bilaterally between the CR and K Line, that the claims against K Line represented 17.3% of the overall value of the claims against all of the Defendants together.

19. Following those earlier settlements, the CR's position was that 47.7% of the total losses to the class remained subject to the claim. The MN Defendants disputed that figure and contended that their share was significantly lower. Before trial, the Tribunal panel which went on to hear the trial (the "**Trial Tribunal**") directed that attribution of liability among all Defendants would be addressed only after the judgment following the trial of the CR's claims against the MN Defendants (the "**Trial Judgment**").

20. For this CSAO Application, the Settling Parties therefore compare: (A) the amounts payable by the MN Defendants under the Proposed Settlement; and (B) the MN Defendants' potential liability on the alternative assumptions that: (i) the CR is correct (47.7%); or (ii) the MN Defendants are correct (a share lower than 47.7%). Without waiving privilege, MOL considers that the MN Defendants' share of liability, based on value of commerce data, is approximately 40%. NYKK's fully reserves its position. Both the 47.7 and 40% figures are used for comparative purposes in assessing this CSAO Application.

C. THE CSAO APPLICATION

21. It follows that the claims to be settled under the proposed collective settlements are those relating to the damages attributable to MOL and NYKK's share of liability arising from the Decision. As the CR has already reached settlements with the other Defendant groups (as summarised at [13]-[18] above), approval of this Proposed Settlement would conclude the remaining claims, leaving only

matters concerning distribution of the funds received and the payment of costs, fees and disbursements to be decided.

22. In addition to a draft CSAO, the CSAO Application is supported by the following witness statements and privileged and confidential opinions:

(1) the sixth witness statement of Mr Mark McLaren ("**McLaren 6**"), the sole director and sole member of Mark McLaren Class Representative Limited: the CR. McLaren 6 explains why Mr McLaren considers the terms of the Proposed Settlement to be just and reasonable, as required by Rule 94(4)(c), and sets out the steps taken, and to be taken, in preparing the distribution plan, including work on likely take-up rates;

(2) the first witness statement of Mr Douglas Campbell ("**Campbell 1**"), a solicitor then at Scott+Scott UK LLP ("**SSUK**") with conduct of these proceedings for the CR alongside Mr Cian Mansfield. Campbell 1 provides an overview of the proceedings, the claim against the MN Defendants and the live issues at trial, forming the context for the CR's conclusion that the settlement is just and reasonable. It also explains the key features of the proposed settlement sum and how they are said to ensure that the Proposed Settlement is just and reasonable;

(3) the fourth witness statement of Ms Jane Wessel ("**Wessel 4**"), the partner at Arnold & Porter Kaye Scholer LLP who, together with Mr Alastair Brown has conduct of the proceedings for MOL. Wessel 4 addresses the background to the Proceedings and provides an overview of MOL's case. It also sets out the key terms of the Proposed Settlement and explains why they are considered to be just and reasonable;

(4) the privileged and confidential opinion of Ms Sarah Ford KC (the "**Ford Opinion**"), leading counsel for the CR throughout these proceedings; and

(5) the privileged and confidential opinion of Mr Brendan McGurk KC and Mr Angus Rodger (the "**McGurk/Rodger Opinion**"), respectively leading counsel and solicitor advocate for NYKK in these proceedings.

23. The CR filed additional evidence in support of the CSAO Application on the distribution plan and likely take-up rates in the form of the first witness statement of Mr Cian Mansfield ("**Mansfield 1**"), managing partner at SSUK with joint carriage of these proceedings for the CR. Mansfield 1 addresses the CR's work on distribution and the intended next steps; explains the empirical analysis undertaken, and to be undertaken, to inform the CR's approach to distribution (the "**Thorndon Report**"); provides an overview of the individuals and businesses registered as potential claimants and summarises the total costs, fees and disbursements incurred by the CR to date.

24. Among the annexes to Mansfield 1 is the first phase of the Thorndon Report dated 6 January 2026 ("**Survey Phase 1**"**)**. The CR intends to conduct a further post-CSAO survey ("**Survey Phase 2**") to test the best messaging, channels, framing and incentives to maximise participation, informed by the outcomes of Survey Phase 1. The stated aim of Survey Phase 1 was to "assist the Class Representative in formulating its plan for the distribution of damages", with its findings intended to inform the "approach to noticing, publicity, and distribution with a view to maximising take-up among eligible consumers and businesses". Mansfield 1 summarises Survey Phase 1's take-up estimates as follows (reproduced in full at [138] below):

(1) **For consumers**, (i) by reference to 'self-reported awareness' (i.e. those who reported themselves as aware of the present proceedings), 6.8% at a total claim value (i.e. across all vehicles) of £5, 11.5% at a total claim value of £45, and 11.2% at a total claim value of £100; and (ii) by reference to 'adjusted awareness' (i.e. adjusted figured to address 'overclaim' bias), 0.7% at a total claim value of £5, 1.2% at a total claim value of £45, and 1.2% at a total claim value of £100.

(2) **For businesses**, (i) by reference to 'self-reported awareness', 33.3% at a total claim value of £500, 29.8% at a total claim value of £5,000, and

31.9% at a total claim value of £25,000; and (ii) by reference to 'adjusted awareness', 3.5% at a total claim value of £500, 3.8% at a total claim value of £5,000, and 3.9% at a total claim value of £25,000.

25. The Settling Parties filed a joint skeleton argument for the CSAO Hearing addressing all of the matters the Tribunal must take into account in considering whether the terms of the Proposed Settlement are just and reasonable. The CR also filed a short separate skeleton addressing matters relevant to the CR specifically, namely: the CR's steps towards preparation of its distribution plan and the CR's application for the CFD Sum (defined below) to be paid out of damages prior to distribution.

26. Turning to the substance of the CSAO Application, the CR seeks the Tribunal's approval to settle the CR's claim against the MN Defendants in these proceedings for a total settlement sum of £54 million (the "**Settlement Sum**").

27. The Settlement Sum is comprised of:

(1) **Pot 1**: the "**Guaranteed Damages Sum**" of £20 million, which the CR proposes to distribute in its entirety to the class, or by way of *cy-près* to a charity (or charities) approved by the Tribunal;

(2) **Pot 2**: the "**CFD Sum**" of £20 million, as a contribution towards costs, fees and disbursements in these proceedings, which include the costs of the litigation incurred to date, insurance premiums, funders' fees and success fees;

(3) **Pot 3**: the "**Additional Damages Sum**" of £12.5 million which "shall be available: (1) for distribution in the event that the number of RPs who claim in the distribution means that the sum required to pay them all exceeds the level of the funds available (from the Guaranteed Damages Sum and prior settlements); or (2) for payment of the CR's costs, fees and disbursements"; and

(4) A "**Distribution Costs Contribution**" of £1.5 million, as a contribution to the costs of distribution.

28. Consistent with the Tribunal's approach in *Merricks v Mastercard* [2025] CAT 28 ("***Merricks Settlement Decision***"), the Tribunal adopts the tripartite structure of Pots 1, 2 and 3 for the allocation and distribution of the Settlement Sum.

(1) The Intervenors

29. On 15 and 16 December 2025, the CR's Funder and ATE Insurers, as stakeholders and therefore interested parties, filed applications for permission to intervene at the CSAO Hearing. On 15 December 2025, the Access to Justice Foundation also applied for permission to intervene. The Settling Parties did not object to the applications. On 17 December 2025, the Tribunal granted permission for those interventions by a Reasoned Order: [2025] CAT 82.

30. The Tribunal therefore had the benefit of written evidence from: (i) the Access to Justice Foundation ("**AJF**"); (ii) Woodsford Group Limited (the "**Funder**"); and (iii) Litica Limited and Lakehouse Risk Services Limited (the "**ATE Insurers**"). Their evidence can be summarised as follows:

(1) The first witness statement of Ms Clare Carter ("**Carter 1**"), Chief Executive of AJF. AJF is a registered charity and a potential recipient of undistributed funds from the Proposed Settlement. Carter 1 outlines the nature and scope of AJF's grant-making activities, explains its role in collective proceedings, and provides an overview of AJF's Collective Actions Grants Programme;

(2) The fourth witness statement of Mr Steven Friel ("**Friel 4**"), a solicitor and CEO of the Funder. Friel 4 summarises the CR's costs, fees and disbursements, sets out the Funder's entitlements under the litigation funding agreement (as discussed below), and explains why he considers both the amount and timing of the CFD Sum to be reasonable, and why it is fair and reasonable for the funder to be paid ahead of distribution to the class; and

(3) The second witness statement of Mr Steven Ruffle ("**Ruffle 2**"), co-founder and director of Litica Ltd, one of the ATE Insurers. Ruffle 2 is provided on behalf of both ATE Insurers. It gives an overview of the ATE insurance industry, summarises the key terms and premium structure of the insurance arrangements between the ATE Insurers and the CR; describes the claim made on one of the policies following the Court of Appeal's order requiring the CR to pay the Defendant's costs of a successful appeal; and sets out his view as to why it is fair and reasonable for the ATE Insurers to be paid ahead of distribution to the class.

31. All interveners were given permission to file statements of intervention, evidence and short written submissions for the CSAO Hearing. The Funder and the ATE Insurers were granted permission to make short oral submissions at the CSAO Hearing and were both represented by counsel on the day.

(2) The Settlement Agreement

32. Wessel 4 states that "[t]he terms of the Proposed Settlement Agreement reflect positions which [MOL and NYKK] considered were acceptable to each of them following extensive negotiations".

33. Clause 2 of the Settlement Agreement provides that the CR and the MN Defendants agree that, in full and final settlement of the collective proceedings against the MN Defendants, and subject to the Tribunal making a CSAO, the MN Defendants shall pay the CR, within 28 days of the date of the Tribunal making the CSAO, a total of £54 million (of which 45% is payable by MOL; and 55% by NYKK, on a several basis). As discussed at [27] above, the Settlement Sum comprises the Guaranteed Damages Sum, Additional Damages Sum, CFD Sum and Distribution Costs Contribution.

34. Clause 2.6 provides that subject to the Tribunal making a CSAO and upon payment of the Settlement Sum, the CR, on its own behalf and on behalf of the RPs, irrevocably waives all claims arising out of or relating to the conduct addressed in the Decision.

35. As regards costs, clauses 2.7 and 2.8 provide that, subject to the Tribunal making a CSAO, the MN Defendants waive any right to recover their costs from the CR, RPs, or the Funder in respect of the collective proceedings and related matters. Further, the CR agrees not to seek recovery of its costs from the MN Defendants following approval of the Proposed Settlement, save that if the MN Defendants choose to participate further in the proceedings following the making of a CSAO, any resulting costs claims by the CR are left to agreement between the parties or determination by the Tribunal.

36. Clause 3 relates to distribution and the Additional Damages Sum, and provides that the entirety of the Guaranteed Damages Sum is to be distributed to RPs, either directly or by way of a *cy-près* payment to a charity approved by the Tribunal, pursuant to a Tribunal-approved distribution plan:

> "3.1 McLaren undertakes, and the MN Defendants acknowledge, that McLaren will distribute the entirety of the Guaranteed Damages Sum to the Represented Persons, either directly or by way of cy-près, to a charity approved by the Tribunal.
>
> 3.2 McLaren shall in due course make an application seeking the Tribunal's approval to distribute the Damages Sum to Class Members in accordance with a distribution plan to be prepared by McLaren in conjunction with a claims administrator and in a manner which McLaren considers to be just and reasonable (the Distribution Process and the Distribution Application). McLaren's main objective will be to make as many Represented Persons as possible aware of their right to a share of the Damages Sum and to encourage them to come forward to claim their share of the Damages Sum."

37. Clause 3.4 provides that any unused sums from the Distribution Costs Contribution will revert to the MN Defendants, K Line and WWL/EUKOR at the conclusion of the distribution process, *pro rata* and *pari passu* based on the Defendants' level of contribution:

> "3.4 Any part of the Distribution Costs Contribution which is not used by McLaren to meet the cost of: (i) the Distribution Application and related costs (including preparation of all materials supporting the Distribution Application, including any survey of members of the Class); (ii) distributing the Damages Sum; and/or (iii) distributing any other sums McLaren has obtained from the CSAV, "K" Line and WWL/EUKOR Settlements, will be returned by McLaren to the MN Defendants, "K" Line and WWL/EUKOR at the conclusion of the Distribution Process, *pro rata* and *pari passu* based on the level of contribution, by paying the unused portion of the Distribution Costs Contribution to the respective accounts of the MOL Defendants' solicitors and NYK, […]"

38. Clause 3.5 provides that should the Distribution Costs Contribution together with any contribution to the costs of the distribution process be insufficient, the CR may draw up to £500,000 from the Additional Damages Sum, and further, may seek Tribunal approval for any further amount from the Additional Damages Sum:

> "3.5 If the Distribution Costs Contribution together with any contribution to the costs of the Distribution Process recovered from "K" Line and WWL/EUKOR is not sufficient to meet the entirety of the Distribution Process, McLaren shall use up to £500,000 (five hundred thousand pounds) from the Additional Damages Sum to pay for the costs of the Distribution Process. McLaren may apply to the Tribunal for any further amount in addition to that sum to be paid towards the costs of the Distribution Process from the Additional Damages Sum if necessary."

39. Clause 3.6 provides that if a residual shortfall in CFDs remains at the end of the distribution process, the CR may apply to the Tribunal for payment of the remaining Additional Damages Sum, or part of it, towards that CFD shortfall:

> "3.6 If the CFD Sum together with the sums McLaren obtains to pay costs, fees and disbursements from the CSAV, "K" Line and WWL/EUKOR Settlements (in accordance with those agreements) is not sufficient to meet the entirety of McLaren's costs, fees and disbursements including costs of the Distribution Process (the difference being the CFD Shortfall Amount) then, at the conclusion of the Distribution Process, McLaren may apply to the Tribunal for the Additional Damages Sum (or such lesser amount of the Additional Damages Sum as remains after being used towards the costs of the Distribution Process) to be paid towards the CFD Shortfall Amount."

40. Clauses 3.7 and 3.8 provide as follows:

> "3.7 McLaren will apply, as part of the Approval Application and in accordance with its contractual obligations, to use the CFD Sum (and any other sums McLaren obtains to pay costs, fees and disbursements from the CSAV, "K" Line and WWL/EUKOR Settlements) to pay its costs, fees and disbursements prior to the Distribution Process. The MN Defendants agree not to oppose any such application.
>
> 3.8 The Parties agree that the Settlement Sum shall be held in escrow until the Tribunal approves the payment out of any part of it. Any balance above the amounts directed by the Tribunal to be paid out shall be applied as directed by the Tribunal, including by way of costs, fees and disbursements or being applied to the benefit of the Represented Persons or, by way of cy-près, to a charity approved by the Tribunal."

41. Subject to the Tribunal's approval, clauses 5, 6 and 7 make provision for, respectively, a stay of the collective proceedings against the MN Defendants, release and waiver, and agreements not to sue. Clause 8 is a non-admission

clause, and clause 9 makes provision as to the immediate effect of the agreement once concluded. Clauses 10 to 17 set out boilerplate provisions.

(3) Funding agreements

42. The costs, fees and disbursements in these proceedings arise from three sets of arrangements: the Funder's revised litigation funding agreement dated 9 October 2023, (the "**LFA**"); the solicitors' and counsel's conditional fee agreements ("**CFAs**") and the After-the-Event ("**ATE**") insurance policies that were incepted.

43. The revisions to the original litigation funding agreement dated 18 February 2020 (the "**Original LFA**") were necessitated by the Supreme Court's decision in *R (on the application of PACCAR Inc and others) v Competition Appeal Tribunal and others* [2023] UKSC 28 ("***PACCAR***") which was handed down on 26 July 2023. The LFA supersedes and replaces the Original LFA. The Original LFA was the document before the Tribunal when the CPO was made in these proceedings on 20 May 2022. Following *PACCAR*, the LFA was considered by the Tribunal in its ruling dated 7 February 2024: [2024] CAT 10 (the "***McLaren Funding Ruling***"). In the *McLaren Funding Ruling*, the Tribunal found that the LFA addressed the issues raised in *PACCAR*, and was therefore not a damages based agreement for the purposes of section 58AA of the Courts and Legal Services Act 1990, and therefore was enforceable pursuant to section 47C of the Competition Act. Accordingly, the Tribunal held that the CR and its funding arrangements met the authorisation criteria as regards certification of the proceedings.

44. The *McLaren Funding Ruling* summarised various provisions of the LFA at [11] as follows:

> "(1) For present purposes, the "Proceeds" means "all money, including an Order for damages made pursuant to s47C(3) of the Competition Act 1998 or any agreed settlement sum, interest and costs paid or credited to, in favour of, for the benefit of, or to the order of, the Class Representative or the Class Members" (clause 1.43.1).
>
> (2) The "Costs Limit" means "£15,101,055 (inclusive of VAT) as may be increased from time to time by the Funder in its absolute discretion, and shall

exclude, unless otherwise agreed, Adverse Costs and any provision for security for costs" (clause 1.20).

(3) The "Funder's Outlay" means the amount of "Action Costs" (i.e. the aggregate of reasonable costs incurred by the CR in respect of solicitors' fees, counsels' fees and other disbursements and costs as defined – clause 1.2) paid or payable by the Funder pursuant to a "Funding Notice" (i.e. a funding request made by the CR to the Funder – clause 1.34), plus all third party fees/costs or expenses reasonably incurred by the Funder including before the date of the LFA, excluding the Funders Appeal Outlay, and the Funder's JR Outlay, and internal costs and expenses (clause 1.33).

(4) The "Funder's Total Entitlement" means the "Funder's Outlay", the Funder's Appeal Outlay, the Funder's JR Outlay, the Funder's Fee, the Funder's Appeal Fee, the Funder's JR Fee, the Adverse Costs Fee and the Adverse Costs Exit Fee (all as defined in the Revised LFA) (clause 1.28).

(5) Clause 10 imposes an obligation on the CR to pay the Funder's Total Entitlement by paying the Stakeholder Entitlements (out of which the Funder is paid, pursuant to clause 10) into the Stakeholders' Account, being an account held on trust for the benefit of Stakeholders (clause 10.3, clause 1.49).

(6) The Funder is a Stakeholder under the Revised LFA (clause 1.51). "Stakeholder Entitlements" is defined in clause 1.50 to mean: (i) Recovered Costs (being costs recovered pursuant to Rule 104 of the Competition Appeal Tribunal Rules 2015 (the "Rules") (clause 1.44); (ii) any amount paid or payable to the CR in respect of costs, fees or disbursements ordered pursuant to Rule 93(4) (from undistributed damages) or Rule 94 (in the event of a collective settlement); and (iii) any amount otherwise made available, payable or paid to Stakeholders.

(7) Clause 11 determines the calculation of the Funder's Fee as at the date on which the CR makes any application for an order for the payment of costs, fees and disbursements.

(8) Clause 11 defines the Funder's Fee. Clause 11.1 deals with Payment of Funder's Fee other than from Undistributed Damages. Clause 11.2 deals with Payment of Funder's Fee from Undistributed Damages. Clause 11.1 and 11.2 provide that the Funder's Fee is "the greater of" (i) "a fixed fee" (clauses 11.1.1; 11.2.1) or (ii) "only to the extent enforceable and permitted by applicable law, a percentage of the Proceeds" (clauses 11.1.2; 11.2.2). Each of clause 11.1 and 11.2 contains a table setting out the relevant fixed fees and percentages.

(9) The applicable fixed fee depends on the amount of the Funder's Outlay as at the date when the CR makes any application (there are 4 different bands of outlay in each table, each with a minimum and maximum threshold according to which the relevant fixed fee is determined) in conjunction with whether the CR makes its application: (i) for payment other than from Undistributed Damages (i.e. prior to the distribution of Proceeds to the class), in which case the fixed fees in the tables at clause 11.1 are used); or (ii) for payment out of Undistributed Damages (i.e. post distribution to the class), in which case the fixed fees in the table at clause 11.2 are used.

(10) Clause 36 provides for severance: (i) so that any provision, or part-provision, which is "illegal, invalid or unenforceable" shall be severable

leaving the remainder of the agreement unaffected (clauses 36.1-36.3); and (ii) specifically so that (clause 36.4): "if necessary to ensure the enforceability, legality or validity of this agreement, any provision of this agreement which begins with the words "only to the extent enforceable and permitted by applicable law" shall be severable: (a) without modifying or adding to other terms of this agreement; (b) with the consequence that the remaining terms continue to be supported by adequate consideration; and (c) without changing the nature of the contract, such that it is not the sort of contract that the Parties entered into at all"."

45. Pursuant to the LFA, the Funder has provided funding in relation to the CR's claim against all Defendants in these proceedings. The Funder committed to providing the CR with funding for its own costs and disbursements up to £15.101 million, and an adverse costs indemnity up to £15 million. In return for the Funder's commitment of capital, the LFA provided for the reimbursement of the "Funder's Outlay" (and "Appeal Outlay"/"JR Outlay"), plus a return on each form of investment, from any Proceeds.

46. The forms of reimbursement and return available to the Funder are referred to collectively under the LFA as the "Funder's Total Entitlement". The Tribunal has been assisted by Friel 4, which provides calculations of the "Funder's Total Entitlement" pursuant to the LFA, an extract of which is reproduced below.

Table 1: The Funder's calculation of the "Funder's Total Entitlement"

Contractual Term	**LFA Cl**	**Amount and Notes**	**£**
Funder's Outlay*	1.33	As defined	11,608,716.79
Funder's Fee^	1.29, 11.1	Fixed fee (applies where Outlay is between £7m and £12m)	25,000,000.00
Funder's Appeal Outlay*	1.27	As defined	104,055.00
Funder's JR Outlay*	1.32	As defined	132,813.00
Funder's Appeal Fee^	1.26	3x £104,055.38	312,166.00
Funder's JR Fee^	1.31	3x £147,000	441,000.00
Adverse Costs Fee	1.6, 8.2	Adverse Costs Limit £15m. £15m ATE cover placed so fee is £0	0.00
Adverse Costs Exit Fee^	1.5, 8.3	7% of £12m (post-19/5/2020 ATE)	840,000.00
Funder's Total Entitlement	***1.28***	***Sum of above***	***38,438,750.79***
**** Forms of reimbursement*** ***^ Forms of return***			

47. The figures in Table 1 reflect the contractual position absent any exercise of discretion by the Funder to increase the Costs Limit or vary funding terms. Any payments to the Funder which is to come out of CFDs is subject to the approval of the Tribunal.

48. Clause 10 of the LFA provides as follows regarding "Stakeholder Entitlements":

> "10. **Stakeholder Entitlements**
>
> 10.1 If:
>
> 10.1.1 the Class Representative makes an application for a Collective Settlement Approval Order; and/or
>
> 10.1.2 any Proceeds are to be paid pursuant to a Judgment or other Order,
>
> the Class Representative will, unless otherwise agreed by all Stakeholders, simultaneously apply for an Order that its costs, fees and disbursements incurred in connection with the Action, including the Funder's Total Entitlement and any ATE Insurance premiums (including IPT) due, will be paid from any Proceeds prior to the distribution of any Proceeds to the Class Members.
>
> 10.2 If at any time there are Undistributed Damages and any part of the Class Representative's costs, fees and disbursements incurred in connection with the Action, including the Funder's Total Entitlement and any ATE Insurance premiums (including IPT) due, have not yet been paid, the Class Representative shall apply for an Order that those unpaid costs, fees and disbursements are paid from such Undistributed Damages.
>
> 10.3 The Class Representative shall pay any Stakeholder Entitlements into the Stakeholders' Account within 10 Business Days of their receipt."

49. Clauses 1.50 and 1.51 of the LFA define "Stakeholder Entitlements" and "Stakeholders" as follows:

> "1.50 "**Stakeholder Entitlements**" means:
>
> 1.50.1 any Recovered Costs; and
>
> 1.50.2 any amount paid or payable to the Class Representative pursuant to an Order of the Court in respect of the costs, fees or disbursements incurred by the Class Representative within the meaning of CAT Rule 93(4) or CAT Rule 94; and
>
> 1.50.3 any amount otherwise made available for, or payable or paid to, Stakeholders by or under an Order of the Court, for Stakeholders.

1.51 "**Stakeholders**" means the Funder, the Solicitors, Counsel, any provider of ATE Insurance and any other person that those parties agree has an interest in the Stakeholder Entitlements."

50. Finally, clause 3 provides for the CR's obligations, and states as follows:

"3. **The Class Representative's obligations**

3.1 The Class Representative will:

3.1.1 act fairly and justly in the interests of the Class Members at all times;

3.1.2 immediately make the Solicitors aware of any issue which may compromise the Class Representative's obligations to the Class Members, in accordance with the CAT Rules;

3.1.3 act with the utmost good faith in all its dealings with the Funder, the Solicitors and Counsel and act reasonably in pursuit of the Action, with reasonableness judged by reference to the object standard of a prudent uninsured litigant;

3.1.4 comply with the terms of this Agreement;

3.1.5 comply with the reasonable advice of the Solicitors and Counsel, and assist their professional conduct of the Action;

3.1.6 in the event of receipt (or prospective receipt) of Proceeds and unless otherwise agreed by all Stakeholders, apply (including under clauses 10.1 or 10.2) for an Order for payment of the Class Representative's costs, fees and/or disbursements;

3.1.7 pay Stakeholder Entitlements into the Stakeholders' Account within 10 Business Days of receipt or such any such longer period as may be agreed in writing;

3.1.8 Subject to Clauses 3.1.1 to 3.1.7 (inclusive):

3.1.8.1 prosecute the Action diligently to its conclusion;

3.1.8.2 use all reasonable endeavours, in accordance with the terms of this Agreement, to achieve the recovery of Proceeds as soon as reasonably possible and in the best interests of Class Members;

3.1.8.3 take all reasonable steps to incur only reasonable and proportionate costs and control the quantum of the Action Costs and the Additional Action Costs (if any);

3.1.8.4 take all reasonable steps to achieve the authorisation of the Class Representative and the certification of the Action pursuant to Rules 78 and 79 of the CAT Rules respectively;

3.1.8.5 enforce and recover any Judgment or settlement in the Action (if the Class Representative has sufficient funding for the same);

3.1.8.6 take all reasonable steps to ensure that the Solicitors comply with the Legal Costs Agreement;

> 3.1.8.7 take all reasonable steps to ensure that the Solicitors, Counsel and other third parties do not exceed their estimated and agreed costs, expenses and fees and/or the Costs Limit;
>
> 3.1.8.8 subject to any Order of the Court to the contrary, seek payment of any and all Proceeds into the Client Account;
>
> 3.1.8.9 in and following an application to the Court for a Collective Settlement Approval Order, pursuant to CAT Rule 94 or 97, seek to satisfy the Court that the terms of the settlement insofar as they relate to costs and expenses are in accordance with the content of this Agreement, unless otherwise agreed by the Funder, and are just and reasonable;
>
> 3.1.8.10 ensure that the Action is conducted so as to minimise the quantum of any Adverse Costs and the likelihood of the Class Representative, the Funder or any ATE insurers being liable to pay Adverse Costs;
>
> 3.1.8.11 subject also to Clause 15.1, not seek an Order that would adversely affect the Funder's rights under this Agreement; and
>
> 3.1.8.12 to notify the Funder of all offers and proposed offers to settle the Action without delay;
>
> 3.1.9 use the funding provided under this Agreement for lawful purposes only, and only for the purposes contemplated by this Agreement."

51. The unconditional and non-deferred fees of both solicitors and counsel have been funded and paid by the Funder during the course of the proceedings, and form part of the Funder's Outlay set out above. As discussed at [179]-[182] below, both solicitors and counsel are now eligible for substantial further payments of both deferred base costs and success fees under the terms of their CFAs, in light of the outcome in the proceedings. It is a matter for the Tribunal to review these costs and success fees in determining what sums may be taken out of the CFD amounts for the benefit of solicitors and counsel.

52. Further, the deposit premia for the ATE policies were funded by the Funder and form part of the Funder's Outlay. In addition, the ATE Insurers are now eligible for substantial deferred/contingent premia under the terms of the policy, in light of the outcome in the proceedings. These sums, to the extent that they are to come out of the CFD amounts, are subject to the approval of the Tribunal.

D. LEGAL PRINCIPLES

(1) Legal framework

53. Section 49A of the Competition Act and Rule 94 empower the Tribunal to approve the settlement of claims in collective proceedings. That power arises where: (i) a CPO has been made in respect of the claims; and (ii) the Tribunal has certified the proceedings as opt-out collective proceedings: section 49A Competition Act and Rule 94(1).

54. Specifically, Rule 94 provides as follows:

> **"Collective settlement where a collective proceedings order has been made: opt-out collective proceedings**
>
> 94. – (1) Where a collective proceedings order has been made and the Tribunal has specified that the proceedings are opt-out collective proceedings, the claims which are the subject of the collective proceedings, may not be settled other than by a collective settlement approval order issued in accordance with this rule.
>
> (2) Any offer to settle by a defendant in the collective proceedings shall be made to the class representative.
>
> (3) An application for a collective settlement approval order shall be made to the Tribunal by—
>
> (a) the class representative; and
> (b) the defendant in the collective proceedings, or if there is more than one defendant, such of them as wish to be bound by the proposed collective settlement.
>
> (4) The application referred to in paragraph (3) shall –
>
> (a) provide details of the claims to be settled by the proposed collective settlement;
> (b) set out the terms of the proposed collective settlement, including any related provisions as to the payment of costs, fees and disbursements;
> (c) contain a statement that the applicants believe that the terms of the proposed settlement are just and reasonable, supported by evidence which may include any report by an independent expert or any opinion of the applicants' legal representatives as to the merits of the collective settlement;
> (d) specify how any sums received under the collective settlement are to be paid and distributed;
> (e) have annexed to it a draft collective settlement approval order; and
> (f) set out the form and manner by which the class representative proposes to give notice of the application to—

(i) represented persons, in a case where it is expected that paragraph (11) will apply; or
(ii) Class Members, in a case where it is expected that paragraph (12) will apply.

(5) Unless the Tribunal otherwise directs, the signed original of the application for a collective settlement approval order shall be accompanied by five copies of the application and its annexes certified by the class representative or its legal representative as conforming to the original.

(6) On receiving an application for a collective settlement approval order, the Tribunal may give any directions it thinks fit, including—

(a) for the confidential treatment of any part of an application for a collective settlement approval order;
(b) for the giving of or dispensing with the notice referred to in paragraph (4)(f);
(c) for further evidence to be filed on the merits of the proposed collective settlement;
(d) for the hearing of the application.

(7) Any represented person or, in a case where paragraph (12) applies, any class member may apply to make submissions either in writing or orally at the hearing of the application for a collective settlement approval order.

(8) At the hearing of the application, the Tribunal may make a collective settlement approval order where it is satisfied that the terms of the collective settlement are just and reasonable.

(9) In determining whether the terms are just and reasonable, the Tribunal shall take account of all relevant circumstances, including—

(a) the amount and terms of the settlement, including any related provisions as to the payment of costs, fees and disbursements;
(b) the number or estimated number of persons likely to be entitled to a share of the settlement;
(c) the likelihood of judgment being obtained in the collective proceedings for an amount significantly in excess of the amount of the settlement;
(d) the likely duration and cost of the collective proceedings if they proceeded to trial;
(e) any opinion by an independent expert and any legal representative of the applicants;
(f) the views of any represented person in a case to which paragraph (11) applies, or of any class member in a case to which paragraph (12) applies; and
(g) the provisions regarding the disposition of any unclaimed balance of the settlement, but a provision that any unclaimed balance of the settlement amount reverts to the defendants shall not of itself be considered unreasonable.

(10) A collective settlement approval order may specify the time and manner by which—

(a) a represented person or class member, as the case may be, who is domiciled in the United Kingdom on the domicile date may opt out of the collective settlement; and
(b) a represented person or class member, as the case may be, who is not domiciled in the United Kingdom on the domicile date may opt in to the collective settlement."

55. A proposed collective settlement may only be approved if the Tribunal is satisfied that its terms are "just and reasonable": section 49A(5) Competition Act and Rule 94(8). Further, Rule 94(9) provides specific factors the Tribunal is required to take into account in determining whether the terms of a CSAO are just and reasonable: see also paragraph 6.125 of the Guide to Proceedings 2015 (the "**Guide**") which expands upon these factors.

56. An application for approval must be made jointly by the class representative and any defendant(s) who wish to be bound by the settlement, and must include agreed details of the claims to be settled and the terms of the proposed settlement: section 49A(2)–(4) Competition Act and Rule 94(3)–(4).

57. The persons who will be bound by an approved settlement depend on whether, at the date of approval, the relevant opt-out and opt-in periods have expired: section 49A(6) Competition Act. Where those periods have expired, the settlement binds all persons within the class defined in the CPO who, at the relevant time, either were domiciled in the UK and did not opt out, or were domiciled elsewhere and opted in. It is also binding on those persons unless they exercise any further opportunity to opt out (or, if non-UK domiciled, to opt in) within the specified manner and time: section 49A(8), (10), (12) Competition Act and Rules 94(11), (13).

58. The statutory purposes underpinning this regime are twofold: encouraging settlement (*Gutmann v First MTR South Western Trains Ltd* [2024] CAT 32 at [40]) and protecting the interests of the class: Guide at [6.96]. Rule 94 reflects those purposes by requiring the Tribunal to consider "all relevant circumstances" when assessing whether a collective settlement is just and reasonable. This includes the monetary and non-monetary benefits offered by any settling defendant and any related provisions concerning costs, fees and disbursements: Guide at [6.125].

59. The degree of success is an important factor in assessing reasonableness and in determining payments to stakeholders: *WWL/EUKOR & K Line Settlement Decision* at [21], approved by the Court of Appeal in *Gutmann v Apple CA* at [93]. Success is not limited to funding arrangements but includes whether the proceedings delivered meaningful benefit for the class, considering damages available, likely and actual take-up, and treatment of unclaimed sums—whether by reversion, charity, or *cy-près* distribution. The Tribunal recognises that collective proceedings may fail at trial or settle for modest sums for various reasons: such outcomes reflect litigation risk and do not preclude approval where the settlement is, on the evidence, just and reasonable for the class as a whole.

60. Ultimately, collective proceedings are intended to benefit class members rather than just stakeholders (*WWL/EUKOR & K Line Settlement Decision* at [22]). The Tribunal will necessarily be mindful to avoid outcomes where class members receive little or nothing, and stakeholders become the main beneficiaries. A low take-up does not justify paying the remaining settlement sum to stakeholders; instead, the Tribunal expects consideration of alternative distributions, such as directing that a proportion be paid to charity or other mechanisms, rather than allowing the entire balance to revert to stakeholders or defendants.

(2) The Tribunal's prior settlement decisions

61. The Tribunal now has a small body of judgments on CSAOs that provide a helpful framework for assessing the CSAO Application.

(a) CSAV Settlement Decision

62. In the *CSAV Settlement Decision*, the Tribunal granted a CSAO in these proceedings in respect of the settlement between the CR and the Twelfth Defendant, CSAV. In considering whether the settlement sum was within a reasonable range and whether the allocation between damages and costs was appropriate, the Tribunal emphasised that approval hearings are not mini trials. It is not the Tribunal's role to substitute its own view of the merits for those who

have already scrutinised the settlement in significant detail. It explained at [20(4)] that:

> "20(4). […] It is very difficult for us as a Tribunal at this early stage to take a definitive view as to whether a judgment will be significantly in excess of the sum that has been agreed and it is not for us to substitute our own view as to the merits in place of the parties' solicitors and counsel, and independent counsel, who have looked at this in a great deal more than we can in a relatively short hearing".

63. That approach accords with paragraph 6.125 of the Guide, which encourages a broad-brush assessment at the settlement stage, rather than detailed analysis:

> "6.125. […] When considering the likelihood of judgment being obtained in collective proceedings for more than the amount of the settlement, the Tribunal need not conduct a detailed analysis of the claims to determine what it would have awarded in damages (if anything) following a trial. Rather, the Tribunal will adopt a broad brush assessment of the position, having regard to the prospect of success and estimated quantum of damages."

64. The key principle is that protracted and expensive approval hearings would undermine the purpose of settlement proceedings and the wider public policy of encouraging settlement. The Tribunal's focus is, and should remain, on ensuring that settlements are fair and reasonable overall, rather than perfect in every respect.

(b) CSAV Related Costs Decision

65. In its subsequent judgment dated 12 July 2024 [2024] CAT 47 ("***CSAV Related Costs Decision***"), the Tribunal recognised the importance of third-party funding to the collective proceedings regime:

> "21. […] Funding will dry up if funders are unable to recover their costs and disbursements and make a profit even on cases where there is a successful outcome overall. The importance of funders to collective proceedings and of proceedings being economically viable for them has been repeatedly remarked upon in the authorities, including *O'Higgins v Barclays Bank plc* [2020] EWCA 876 at [129]; *Consumers Association v Qualcomm* [2022] CAT 20 at [100]; and *UK Trucks Claim Limited v Stellantis* [2022] CAT 25 at [110]."

66. The Tribunal went on to consider its powers to approve the payment of costs, fees and disbursements in a proposed settlement. It concluded that Rules 94(4)(b) and 94(9)(a) were sufficiently broad to permit such payments and that the Tribunal's general case management powers under Rule 53(2)(n) gave it

discretion to approve stakeholder entitlements. However, it decided not to exercise that discretion in the circumstances of the case: *CSAV Related Costs Decision* at [48]-[53].

67. In reaching that decision, the Tribunal acknowledged that early payment could provide benefits, such as allowing partial recovery of outlay for the Funder, and therefore reducing interest costs for the CR. Nevertheless, the Tribunal chose not to exercise its discretion in the circumstances of the case on the basis that the sums involved were too small to materially reduce the Funder's exposure or duration risk, particularly given its continuing obligation to fund proceedings against the remaining defendants. The Tribunal concluded that the appropriate time to assess any payments to funders would be once the outcome of the proceedings was known: *CSAV Related Costs Decision* at [56].

(c) Stagecoach Settlement Decision (Ringfenced Costs)

68. On 10 May 2024, the Tribunal issued its ruling in *Justin Gutmann v First MTR South Western Trains Limited and Another* [2024] CAT 32 ("***Stagecoach Settlement Decision (Ringfenced Costs)***") approving a modified settlement proposal between the class representative and the second defendant in those proceedings, Stagecoach South Western Trains Limited.

69. Unlike the *CSAV Settlement Decision*, the Tribunal was asked to approve a distribution plan and settlement structure under which the settlement amount was expressed as an "up to" figure, determined by the value of valid claims submitted by RPs. Because payment was capped by the level of claims, the Tribunal stressed the need to scrutinise both the distribution plan and the claims mechanism, which must be well publicised: *Stagecoach Settlement Decision (Ringfenced Costs)* at [48]-[49].

70. In assessing the requirement under section 49A(5) that a collective settlement must be "just and reasonable", the Tribunal once again explained that the emphasis is on overall fairness rather than perfection:

> "58. […] at the end of the day, it may be that it is a question of going through these criteria and stepping back and saying: looking at everything overall,

> whilst the settlement may not be perfect or ideal, this is a settlement that is fair and reasonable. There may be a range of settlements that are fair and reasonable and not necessarily the ideal settlement that the Tribunal would otherwise be seeking to get."

71. On the reasonableness of an "up to" settlement figure, the Tribunal concluded that such a structure may be fair and reasonable where the merits of the claim are not manifestly strong. However, where the merits are strong, the Tribunal may not be satisfied with limiting payment to actual claims under a distribution plan, particularly where take-up is likely to represent only a small proportion of the total loss to the class: *Stagecoach Settlement Decision (Ringfenced Costs)* at [59].

72. Where damages are limited by the number and value of valid claims, the Tribunal expects a properly reasoned and researched estimate of likely take-up to enable assessment of the probable range of total claims. Where incentives exist for the class representative's lawyers and funders, the Tribunal also expects a clear picture of the sums likely to be available to them under different take-up scenarios, subject to later approval and control. Empirical research on the likelihood of class members making claims—and their willingness to meet evidence requirements—is important, even if time constraints may limit such work. Finally, the Tribunal expects a full breakdown of amounts ultimately allocated to legal expenses and funders: *Stagecoach Settlement Decision (Ringfenced Costs)* at [65].

(d) WWL/EUKOR and K Line Settlement Decision

73. In *WWL/EUKOR & K Line Settlement Decision*, the Tribunal approved a proposed settlement between the CR, K Line and WWL/EUKOR.

74. Before addressing the specific issues in that case, the Tribunal provided guidance on how parties should assist in future CSAO applications. It stated:

> "65. An overarching observation of the Tribunal on its third occasion scrutinising CSAOs is the need for the settling parties to provide full and frank disclosure to the Settlement Tribunal. This obligation tracks through to the supporting documentation put before the Tribunal by the parties and their experts, which must be rigorous in its assessment of both the points in favour and against the approval of a settlement. The supporting documents, notably in

> relation to the settlement structure and the approach to distribution (even in the absence of a worked-up Distribution Plan) should enable the Settlement Tribunal to understand with clarity the mechanics of that settlement and the likely amounts that will be apportioned to stakeholders relative to Class Members under that structure. The relative prioritisation between Class Members and stakeholders should be evidence from the face of the supporting documents and, where Class Members' interests are subordinated, that conflict of interests should be put candidly before the Tribunal. An estimate, with empirical evidence or by survey of the Class Members, of the likely take-up is critically important. A transparent settlement structure will also clarify what happens in relation to unused sums in ring-fenced pots that are not distributed to either Class Members or Stakeholders. A Settlement Tribunal is likely to consider, with approval, a mechanism to distribute to a charity or a cy-près scheme (approved by the Tribunal) any unclaimed damages that had been guaranteed to Class Members. A Settlement Tribunal will closely scrutinise the reasonableness of any reverter of funds to Settling Defendants out of sums ostensibly guaranteed to Class Members."

75. The Tribunal ultimately approved the settlement structure, but only after clarifications and amendments were made during hearing and following the filing of a "Settlement Agreement Variation Addendum" confirming that unused sums would go to charity: *WWL/EUKOR & K Line Settlement Decision* at [69]-[70].

76. The Tribunal also confirmed that the absence of a distribution plan was not, at that stage, an absolute bar to approval. It nevertheless made clear that no damages could be distributed until a distribution plan had been reviewed and approved, and the Tribunal considered it sensible to defer the plan until the outcome of the proceedings as a whole was known. The Tribunal also gave general guidance on what it would expect from any future plan:

> "85. […] When formulating a Distribution Plan, we invite the parties to bear in mind the observations the Tribunal has already made in the SSWT Settlement Decision in the Gutmann Trains Collective Proceedings that Distribution Plans should be researched, and proper evidence be given. It is not satisfactory to rely on data on general outcomes or percentages gleaned from American experience or Canadian experience. An estimate of the likely take-up by Class Members on the facts of the particular case should be put before the Tribunal; it will vary from case to case and will require empirical evidence.
>
> 86. We appreciate that this will lead to additional costs in formulating Distribution Plans, but it is imperative to support the highest possible take-up by Class Members. It would be unsatisfactory if, after considerable expense and effort, only a small proportion of Class Members makes a claim, or the amount of claims is tiny, which would be a bad outcome for the collective actions regime in general. Although we acknowledge that, in percentage terms, the take-up in most cases is not going to be particularly high, it is in the public interest to encourage substantial numbers of Class Members to take up their

> entitlements. However, even where there is a small take up, substantial payments to charity from unclaimed sums can assist in providing a positive outcome."

(e) Merricks Settlement Decision

77. In the *Merricks Settlement Decision*, the Tribunal approved a modified settlement proposal between the class representative in those collective proceedings and the defendants, all of which were companies within the Mastercard group.

78. In that case, the Tribunal rejected the submission that the settlement had to be just and reasonable to all stakeholders involved. The statutory focus, it explained, is on the interests of the class members:

> "81. […] the focus of the statutory rest is on the class members. It is because the CMs are not actually involved in the proceedings, and neither the CR nor the CR's lawyers can take instructions from them, that the Tribunal has to scrutinise a proposed settlement, by which every CM will be bound (unless he or she expressly opts out) and the settlement will not be effective without the Tribunal's approval. […]"

79. The Tribunal also rejected the argument that it faced a "binary choice" between approving the order as submitted or dismissing the application, describing that contention as "fundamentally misconceived": *Merricks Settlement Decision* at [112]. Rather, it emphasised that the Tribunal itself must determine the appropriate order in each case, guided by the statutory framework and the interests of the class.

80. Finally, the Tribunal reiterated the importance of evidence from the settling parties that addresses both the arguments for and against approval. It considered that future CSAO applications should include a section on full and frank disclosure and stated its expectation that the class representative will ordinarily provide a "comprehensive opinion" from its counsel—privileged and protected from disclosure to the defendants—setting out the considerations on which counsel has advised that the proposed settlement is reasonably in the interests of the class: *Merricks Settlement Decision* at [210]-[212].

81. Read together, the authorities make clear that the Tribunal's role in considering a collective settlement is not to conduct a mini-trial or to substitute its own view of the merits for that of the parties and their advisers. Rather, the task is to adopt a broad and principled assessment of whether the proposed settlement is "just and reasonable" in all the circumstances. That assessment must be holistic. It begins with full and frank disclosure, supported by material that is rigorous and balanced, so that the Tribunal can properly evaluate the settlement. It also requires a coherent explanation of how the settlement will operate in practice, including the anticipated division between class members and stakeholders and any potential conflicts of interest. The treatment of any unused sums should be transparent and consistent with the statutory objectives, ideally by directing them to charity or through a *cy-près* mechanism rather than permitting reversion. The Tribunal expects estimates of likely take-up to be grounded in empirical analysis and tailored to the circumstances of the case, and it looks for proper arrangements for timing and governance of distribution through a plan that can be approved once the broader proceedings permit an informed evaluation. Taken together, these elements ensure that the settlement delivers meaningful benefit to the class and aligns with the purposes of the collective proceedings regime.

82. These principles, drawn from the statutory framework and reinforced by the decisions set out above, reflect the dual objectives of encouraging settlement while safeguarding the interests of the class. They underpin the Tribunal's approach to collective settlement approval and guide its scrutiny of the present application.

E. ISSUE 1: ARE THE TERMS OF THE SETTLEMENT AGREEMENT "JUST AND REASONABLE"?

83. The first issue to be determined is whether the Settlement Sum falls within a reasonable range such that, in broad terms, the Tribunal should approve it.

84. The general principles from the Tribunal's prior decisions in relation to CSAO applications have been summarised above. Certain of those principles bear re-

emphasis in relation to the present CSAO Application, and they will be addressed below at the relevant point in the Tribunal's analysis.

85. Under section 49(A)(5) of the Competition Act and Rule 94(8), this Tribunal may only make a CSAO if it is satisfied that the terms are just and reasonable. In the *CSAV Settlement Decision* at [17], the Tribunal noted that it is not its function to conduct a detailed assessment of the merits at settlement stage. That observation was made at a much earlier point in these proceedings and in the context of a relatively modest bilateral settlement, when the claim was still proceeding against the remaining Defendants. At that stage, it was neither necessary nor appropriate for the Tribunal to reach a view on the likely outcome of the proceedings.

86. In contrast, the present application arises post-trial. If the Proposed Settlement is approved, no judgment on the merits will be handed down. The Tribunal has had the benefit of reviewing the expert evidence adduced at trial, together with the parties' post-hearing written submissions. Having done so, the Tribunal considers that the CR has a strong case on liability and causation and that, on the merits, the class would most probably be awarded a sum significantly higher than the upper figures advanced by the Defendants and their experts at trial, though likely lower than the headline £215.8 million upper bound estimate by the CR's expert.

87. It is therefore necessary to address the filing requirements as prescribed by Rule 94(4), before turning to the substantive factors listed in Rule 94(9).

(1) Details and terms of the Proposed Settlement

88. Rule 94(a) requires the CSAO Application to "provide details of the claims to be settled by the proposed collective settlement". The Proposed Settlement resolves the remainder of the CR's claims that remain outstanding following the earlier settlements in these proceedings. This requirement is satisfied.

89. Rule 94(b) requires the CSAO Application to "set out the terms of the proposed collective settlement, including any related provisions as to the payment of

costs, fees and disbursements". The Proposed Settlement is exhibited to McLaren 6, and its terms are summarised in the CSAO Application and discussed in detail in both McLaren 6 and Wessel 4. Those terms are extracted and summarised above at [32]-[41]. Accordingly, this requirement is clearly satisfied.

90. Rule 94(e) requires that the CSAO Application annex a draft CSAO. The draft CSAO filed does not specify a time or manner by which a RP must opt out (for UK-domiciled persons) or opt in (for non-UK-domiciled persons): cf. Rule 94(10) and Guide at [6.132]. The CR submits that it would not be fair and reasonable to set a deadline by which RPs must opt out or be bound by the CSAO at this stage, principally because, if the Proposed Settlement is approved, the next step will be for the CR to prepare and execute its plan for the distribution of the sums available to RPs. Pending confirmation of the amount that will be available for each RP, RPs cannot yet make a properly informed decision as to whether to opt out, which decision may be based on their likely recovery. Instead, the CR proposes that an opt-out deadline be set after the Tribunal has approved the distribution proposal.

91. Taking these matters together, the Tribunal is satisfied that the filing requirements in Rule 94(4) are met. The application identifies the claims to be settled, sets out the settlement terms (including costs, fees and disbursements), and explains the proposed approach to giving notice and to the deferred opt-out/opt-in period. In the circumstances, postponing the opt-out/opt-in window until a distribution proposal is available is both fair and sensible.

(2) The applicants' belief that the terms are just and reasonable

92. Rule 94(c) requires that the settling parties state in the application that they believe the terms of the proposed settlement are just and reasonable, and that this belief is supported by evidence. The CSAO Application contains the required statement, and the Settling Parties have filed supporting evidence as described above at [22].

93. In light of that evidence, the Tribunal is satisfied that the Settling Parties have complied with Rule 94(c). The application contains the required confirmation of their belief that the settlement is just and reasonable, and that belief is supported by witness evidence and counsel's opinions. It is therefore appropriate to proceed to consider the broader evaluative factors set out in Rule 94(9), which provides:

> "(9) In determining whether the terms are just and reasonable, the Tribunal shall take account of all relevant circumstances, including—
>
> (a) the amount and terms of the settlement, including any related provisions as to the payment of costs, fees and disbursements;
>
> (b) the number or estimated number of persons likely to be entitled to a share of the settlement;
>
> (c) the likelihood of judgment being obtained in the collective proceedings for an amount significantly in excess of the amount of the settlement;
>
> (d) the likely duration and cost of the collective proceedings if they proceeded to trial;
>
> (e) any opinion by an independent expert and any legal representative of the applicants;
>
> (f) the views of any represented person in a case to which paragraph (11) applies, or of any class member in a case to which paragraph 15 (12) applies; and
>
> (g) the provisions regarding the disposition of any unclaimed balance of the settlement, but a provision that any unclaimed balance of the settlement amount reverts to the defendants shall not of itself be considered unreasonable."

(a) The amount and terms of the settlement, including any related provisions as to the payment of costs, fees and disbursements

94. As discussed above at [26]-[27], the Proposed Settlement provides for a total Settlement Sum of £54 million split into various pots, payable within 28 days of the Tribunal's CSAO, on a several basis: 45% by MOL and 55% by NYKK. The Settlement Sum is to be held in escrow pending any payment-out directions of the Tribunal. The Settlement Agreement makes provision for a stay of the proceedings against the MN Defendants, release and waiver, and agreements not to sue, and includes a non-admission clause. The Proposed Settlement settles

the remainder of the CR's claims that are currently outstanding following the prior settlements in these proceedings.

95. The CR and the MN Defendants submit that the amount and structure of the Settlement Sum are just and reasonable. In aggregate across all settlements (including CSAV, WWL/EUKOR and K Line), over £92.75 million (inclusive of costs, fees and disbursements) has been secured, of which £34 million is guaranteed for distribution to RPs or charity, £20 million of which derives from the present settlement. A table summarising all settlements in these proceedings is set out below:

Table 2: Summary of settlements in these proceedings

Settlement	Damages	Additional damages	CFDs	Distribution costs	Total
CSAV	**£1.139m** *Payable to CFDs with CAT approval*	NA	**£0.361m** *Already applied to CFDs*	NA	***£1.5m***
WWL / EUKOR	**£8.75m** *Guaranteed*	**£6.5m** *Up to £3.25m payable to CFDs with CAT approval*	**£8.75m**	**£0.5m**	***£24.5m***
K Line	**£5.25m** *Guaranteed*	**£1.75m** *Up to £1.75m payable to CFDs with CAT approval*	**£5.25m**	**£0.5m**	***£12.75m***
MOL / NYKK *Subject to CAT approval*	**£20.0m** *Guaranteed*	**£12.5m** *Up to £12.5m payable to CFDs with CAT approval*[2]	**£20.0m**	**£1.5m**	***£54.0m***
Total	***£35.139m***	***£20.75m***	***£34.361m***	***£2.5m***	***£92.75m***

96. At trial, the total damages claimed in relation to all Defendants was approximately £215.8 million. That estimate, produced by Mr Robinson, incorporated interest to March 2024. His revised interest methodology

[2] Further, the CR can use £0.5m for shortfall in distribution costs, and more by application to the Tribunal.

(reflecting gradual repayment of overcharge through financing) tended to reduce the headline figure, while additional interest accruing on the MN Defendants' share after March 2024 would tend to increase it. The net effect of these opposing adjustments would have required a further post-trial calculation, which could reasonably have produced a figure above or below £215.8 million. Accordingly, £215.8 million has been adopted for this CSAO Application as a reasonable proxy for the total claim value, even though the MN Defendants maintain that the correct figure would be lower.

97. The CR seeks approval to settle its claim against the MN Defendants on the basis that their share of total damages lies between 40% and 47.7%.[3] On that basis, the MN Defendants' share would be between £86.3 million and £102.9 million if the CR were wholly successful.

98. As the £54 million Settlement Sum includes *inter partes* costs, whereas Mr Robinson's figures did not, it may be appropriate to add the CR's estimated recoverable costs of approximately £15.8 million to the £215.8 million claim figure. This yields an overall value of approximately £231.6 million. As Mr Campbell explains at paragraph 63 of Campbell 1:

> "63. As set out above, I understand from our accounts team and the Funder that the Class Representative has incurred *inter partes* costs of approximately £15.8 million, including VAT. This includes solicitors' and counsel fees at base rates, plus expert and factual witness fees and costs, claims administrator costs, the Class Representative's costs and other recoverable costs in pursuit of the litigation. […]"

99. The Tribunal observes that the following comparative figures illustrate the degree of recovery achieved under the Proposed Settlement, whether measured against the £215.8 million aggregate damages claim or against the £231.6 million figure incorporating *inter partes* costs:

[3] The percentage share of liability is a matter of dispute between the CR and the MN Defendants. The CR's position is that 47.7% of the total losses to the Class remains subject to the claim. The MN Defendants have contested that figure, arguing that their share would be significantly lower than 47.7%. Without waiving privilege, it is MOL's position that the MN Defendants' share of liability, based on value of commerce data, is approximately 40%. NYKK's position as to the MN Defendants' shares of liability is fully reserved.

Table 3: Comparative class recovery rates under the Proposed Settlement

Assumed MN Defendants share of total claim	% of MN Defendants share of the full claim recoverable by the class		
	Guaranteed only (£20m)	Guaranteed + Additional (£32.5m)	Total Settlement Sum (£54m)
40.0% of £215.8m = **£86.3m**	23.2%	37.7%	62.6%
47.7% of £215.8m = **£102.9m**	19.4%	31.6%	52.5%
40.0% of (£215.8m + £15.8m) = **£92.6m**	21.6%	35.1%	58.3%
47.7% of (£215.8m + £15.8m) = **£110.5m**	18.1%	29.4%	48.9%

101. Under the Proposed Settlement, RPs receiving only the Guaranteed Damages Sum (Pot 1) would recover between 19.4% and 23.2% of the MN Defendants' share of the full claim; if they receive both Pot 1 and the Additional Damages Sum (Pot 3), the recovery increases to between 31.6% and 37.7%.

102. The Tribunal appreciates that the chosen basis for percentage-of-loss recovery can materially affect the analysis. Looking solely at the guaranteed £20 million can make the percentage appear low, especially given the CR's strong prospects at trial. However, the £215.8 million figure itself is far from certain; several material components of total loss were strongly contested. The most convenient summary of how the damages figure might vary—depending on the Tribunal's ultimate findings—is set out in Wessel 4 at [37]:

Table 4: Illustrative aggregate damages outcomes under alternative scenarios

Total asserted value of the Claims and illustrative alternative scenarios			
	Total asserted value	Illustrative example 1	Illustrative example 2
Run-off period	4 years	4 years	2 years
Umbrella effects	100%	25%	25%

Upstream pass-on	Scenario 1 (73-92%)	Scenario 3 (33.7%)	Scenario 3 (33.7%)
Interest	Mr Robinson's model	Dr Bagci's adjustments	Dr Bagci's adjustments
Downstream pass-on (discounts and loss mitigation)	Zero	Zero	Zero
Damages value	**£215m**	**£53.2m**	**£11.6m**
MN Defendants' share of liability at 50%		**£26.6m**	**£5.8m**

103. The CR and its lawyers have explained why they consider the settlement to be just and reasonable, including the sums payable by the MN Defendants. The Tribunal accepts that the CR might have secured a higher sum at trial, but that outcome was not guaranteed. There are advantages in achieving certainty at this late stage and avoiding the risks and costs of further litigation.

104. The Tribunal considers that the total valid claims submitted by RPs are likely to fall well below the guaranteed damages of approximately £34 million. Should that occur, the balance will be paid to AJF, a well-established and reputable charity whose activities are explained in Carter 1. To the extent that sums would otherwise fall to be applied to CFDs, clause 3.8 of the Settlement Agreement provides that any part not approved for CFDs will instead be directed to charity.

105. It would assist the Tribunal for AJF to report, in due course, on the use of any funds received under this Judgment and the *Stagecoach Settlement Decision (Ringfenced Costs)*, so that the Tribunal can be confident that such funds have been applied to appropriate causes.

106. Looking at matters in the round, the Tribunal concludes that the amount and structure of the Settlement Sum are just and reasonable. While the sums payable to RPs (and, if applicable, to charity) are at the lower end of an acceptable range, they are not unreasonably so. The level of take-up will remain an important factor when the Tribunal later assesses both the success of the proceedings and any application for payment of remaining CFDs.

(b) The number or estimated number of persons likely to be entitled to a share of the settlement

107. The CR's pleaded estimate, as restated at paragraph 115 of Campbell 1, is that the class will "number in the millions". It is the CR's position that the number of persons likely to be entitled to share in any distribution will also be in the millions (subject to the Tribunal's earlier ruling excluding deceased persons and defunct companies, see at [6] above). Campbell 1 at paragraph 78 notes that "the Class comprises persons who purchased or financed a relevant vehicle in the period from October 2006 to September 2015. During that period, approximately 18.5 million relevant vehicles were registered". It may be that up to 25 million vehicles are ultimately involved. It has not been possible to be more precise at this stage as to the number RPs, as many will have purchased more than one vehicle, such that the number of vehicles will exceed the number of RPs.

108. Whichever way one looks at it, a very significant number of persons are likely to be entitled to a share of the settlement. However, many of those individuals will have small claims, and that is likely to have a material effect on take-up. If, for example, each vehicle is ultimately worth only £5 for the purposes of a claim, and the vehicles in question were purchased more than ten years ago, take-up by individual consumers may be extremely low. On the other hand, these proceedings also involve fleet purchasers, including large businesses with substantial numbers of vehicles, and this is likely to result in a higher uptake than that considered in the *Stagecoach Settlement Decision (Ringfenced Costs*).

109. This issue will be examined in considerably more detail at the next stage, when the CR applies for approval of its distribution plan. It would be prudent for the CR to provide the Tribunal with a draft distribution plan in advance, so that any necessary modifications can be proposed before it is formally submitted.

(c) The likelihood of judgment being obtained in the collective proceedings from amounts significantly in excess of the amount of the settlement

110. The CR and MN Defendant submit that, while it remains possible that a judgment delivered following the trial in these proceedings could exceed the Settlement Sum, "it is not likely that any damages award following the Trial Judgment would be significantly in excess of the amount agreed in the Proposed Settlement and there are circumstances in which it could be lower".

111. The CR relies on the Ford Opinion and Campbell 1, the latter of which states at paragraph 32:

> "32. […] For completeness, I consider that, it is possible that judgment could be obtained for an amount significantly in excess of the amount of the settlement, if the Class Representative were to succeed entirely on all of the issues summarised above. I do not consider this to be the most likely outcome. If the Class Representative were to succeed entirely on many, but not all, of the above issues; or were to succeed on any or all of the above issues in part, but not in whole, the excess is not likely to be "significant" and there are circumstances in which the amount could be lower."

112. MOL adopts similar reasoning in Wessel 4 at paragraph 51:

> "51. On balance, I consider this is a just and appropriate outcome, indeed a generous one, for Class Members, because it is possible that the Class Representative would have recovered very significantly less if the remainder of the Claims had proceeded to final judgment. Due to the uncertain nature of litigation and the impossibility of predicting the final judgment of the Tribunal, no one can be sure what the precise amount of damages, if any, would be awarded by the trial Tribunal. However, for the reasons summarised in paragraphs 16-37 above there were material weaknesses in the CR's case that created a real risk that the Class would recover a substantially smaller sum than the Settlement Sum that has been agreed. On the contrary; and even if one were to make (generous) assumptions in the Class Representative's favour in the calculation of any aggregate damages, there are a number of plausible outcomes in which the award could have been lower or indeed significantly lower than this sum (see paragraph 37 above)."

113. NYKK's assessment is contained in the McGurk/Rodger Opinion.

114. The Ford and McGurk/Rodger Opinions are privileged and have been considered by the Tribunal. The Tribunal has also undertaken its own assessment, in particular of the expert evidence adduced at trial and the Settling

Parties' post-trial written submissions. All the Opinions appear to reflect good-faith analyses from the respective legal teams. It is unsurprising that the Settling Parties hold differing views as to the likely outcome at trial.

115. Consistent with the guidance provided by the Tribunal in the *Merricks Settlement Decision*, the Tribunal would like to make clear that prior to settling proceedings the class representative should be provided with a written opinion or memorandum analysing the terms of the proposed settlement and the reasons why, after balancing the pros and cons in the light of the merits, the terms of the settlement are reasonable and are in the best interests of the class. In future settlement approval applications, the Tribunal may call for such advice to be made available to the Tribunal without any waiver of privilege as against the defendants and third parties.

116. The Tribunal's assessment is that there is a reasonably good prospect of a judgment awarding a figure higher than that reflected in the Proposed Settlement; however, this is far from certain, and there remains a real risk that any award could be materially lower. In these circumstances, the Settling Parties are justified in seeking to buy certainty at this stage and to avoid the additional costs and uncertainties associated with determining the MN Defendants' market-share liability and any appeals from the Trial Judgment, including appeals directed to attribution of liability.

(d) The likely duration and cost of the collective proceedings if they proceeded to trial

117. On one view, this factor does not apply in this case because there has already been a lengthy and expensive trial of the collective proceedings, with the Trial Judgment currently reserved.

118. However, the Settling Parties submit that, absent the Proposed Settlement being approved, material post-trial steps would remain. In particular, the issue of attribution of liability share among defendants would require a further short hearing which may involve factual and/or expert evidence. The Settling Parties estimate that following the trial judgment being delivered, resolving the

attribution of liability issue could take a further six months or more, and could cost in excess of a further £300,000 for the CR and a substantial amount for the MN Defendants. There would also be the risk of applications for permission to appeal and potential substantive appeals, entailing further delay and cost before final determination.

119. Accordingly, the Settling Parties submit that the Proposed Settlement would avoid significant further delay, cost and uncertainty that continued litigation would otherwise entail.

120. In all the circumstances, the avoidance of a further attribution phase and potential appellate steps weighs in favour of the settlement when assessing overall proportionality and efficiency.

(e) Any opinion by an independent expert and any legal representative of the applicants

121. As noted above at [22], the CSAO Application is supported by witness evidence from Mr Campbell for the CR and Ms Wessel for MOL. It is also supported by the Ford Opinion and the McGurk/Rodger Opinion provided by leading counsel for the CR and leading counsel and solicitor-advocate for NYKK, respectively.

122. As already noted, the Tribunal accepts that these are all good-faith analyses. As regards the CR's lawyers, they may be said to have a personal interest in that they may have the benefit of deferred fees and any uplift contingent upon success in the proceedings in the event that the settlement is approved. That said, the Tribunal has already noted that it has been able to undertake its own assessment of the merits of the case and to review a substantial proportion of the key evidence adduced at trial, albeit it has not reviewed the full transcripts of the witness evidence.

123. The CR did not commission a further independent expert opinion specifically for this CSAO Hearing. As noted in the *Merricks Settlement Decision* at [106] "there is no requirement for there to be an independent opinion" filed in support of a CSAO application, particularly where there have been multiple judgments

and complex proceedings. Mr Campbell's evidence was that an outsider would face inherent difficulties in assessing the conduct and tenor of a long trial solely from the paper record, and that commissioning such an opinion would incur significant additional cost. The Settling Parties therefore rely on the existing expert reports and counsel's opinions.

124. In previous hearings, an independent opinion provided by the parties was of assistance. However, in the context of the present CSAO Application, the Tribunal does not consider it necessary to obtain a further independent opinion, given the evidence already before it and the advanced stage of these proceedings. It would be an unnecessary expense. The Tribunal's practice has been to review carefully any application for a CSAO upon filing and to identify what further information and evidence it requires to determine the application. It then requests what further clarification and materials that it requires before the hearing. In the present case, had the Tribunal considered that such an opinion would assist it, it would have requested one.

125. In the circumstances, the Tribunal is satisfied that it has before it sufficient expert and legal material to assess the Proposed Settlement without the need for any additional independent opinion.

(f) The views of any represented person

126. The CR notified RPs of the CSAO Hearing, and of their right to apply for permission to make submissions, by way of a notice published on the CR's claim website (www.cardeliverycharges.com). No RPs applied for permission to intervene or to make submissions. Accordingly, this factor does not apply.

(g) The provision of any unclaimed balance of the settlement amount reverts to the defendants shall not of itself be considered unreasonable

127. Consistent with the most recent CSAO application in these proceedings, as approved by the *K Line Settlement*, there is no reversion of any surplus from either the Guaranteed Damages Sum or the Additional Damages Sum under the

Proposed Settlement once distribution and payment of costs, fees and disbursements have taken place. This is a positive feature of the settlement structure and one that the Tribunal encourages.

128. Specifically, as regards the Guaranteed Damages Sum of £20 million, any part not paid directly to RPs during the distribution process is guaranteed to be paid to charity. As for the Additional Damages Sum of £12.5 million, that sum is also fully available for RPs. If a surplus remains after the distribution process, the CR may seek permission to apply the remaining balance toward outstanding CFDs. To the extent that such approval is not granted, any residual balance will go to charity in accordance with clause 3.8 of the Settlement Agreement. This approach ensures that no part of the Damages Sum (comprising the Guaranteed Damages Sum and the Additional Damages Sum) reverts to the settling Defendants.

129. As discussed at [37] above, any unused sums from the Distribution Costs Contribution will revert to the MN Defendants, K Line and WWL/EUKOR at the conclusion of the distribution process, *pro rata* and *pari passu* based on the Defendants' level of contribution. The Tribunal does not consider that any significant sum is likely to revert given the likely level of costs that will be incurred in the distribution process.

(3) How any sums received are to be paid and distributed

130. Rule 94(d) requires that the CSAO Application "specify how any sums received under the collective settlement are to be paid and distributed".

131. McLaren 6 and Campbell 1 set out the CR's proposals for formulating and executing a distribution plan in respect of the sums received under this Proposed Settlement, as well as those received under the earlier settlements with CSAV, WWL/EUKOR and K Line.

132. In short, having taken advice from Case Pilots (as Claims Administrator) and Thorndon (as survey specialists), the CR considers that a distribution plan can only be prepared meaningfully once the total funds available for distribution are

known. Accordingly, the CR proposes that, if and when the Proposed Settlement is approved, it will carry out Survey Phase 2 and then produce a final distribution plan, at which point it anticipates being able to provide a more definitive analysis of likely take-up rates.

133. The Tribunal is in a difficult position, as it had expected clearer evidence on the likely range of take-up expressed in monetary terms. The CR, having taken expert advice, maintains that it is not yet in a position to provide a meaningful estimate of likely take-up or the amounts likely to be claimed. The Tribunal had requested this information prior to the CSAO Hearing, but the evidence provided did not adequately address the point. Further correspondence submitted on the day of the CSAO Hearing produced a very wide range of potential outcomes, which the Tribunal does not consider productive. This issue is discussed further at [142]-[149] below.

134. The Tribunal's assessment is that take-up by individual consumers is likely to be very low, while take-up by fleet RPs will, hopefully, be significantly higher, but even then the total amount of valid claims in monetary terms overall is likely to be well below the sums guaranteed under the various settlements. It will be important for the CR and its experts to ensure meaningful engagement with major fleet operators, and for that engagement to inform the design of the distribution plan.

135. In the interim, the CR has sought to progress matters as far as practicable by taking preparatory steps with Case Pilots, Thorndon, and Questor Consulting (the CR's public relations advisers), and by preparing a detailed budget for the distribution plan. Following the Tribunal's indication on 15 October 2025 that it was minded to approve a payment of £325,000 for the CR to prepare that plan, the CR promptly instructed Thorndon to conduct Survey Phase 1. The CR confirmed that it does not seek any determination relating to distribution at this CSAO Hearing; instead, it will apply separately for approval of the distribution plan in due course.

136. On 8 December 2025, the Tribunal wrote to the Settling Parties directing that the CR serve the following evidence by 4:00pm on 6 January 2026:

"**Class Representative evidence**

The Tribunal directs that the Class Representative serve evidence on the following by 4:00pm on 6 January 2026:

• research into likely take-up rates, providing an estimated range and its proposal for the amount to be paid per vehicle;

• the number of individuals registered via its website (or otherwise) as potential claimants; and

• for the 20 largest potential class members (by number of vehicles affected):

  • indication of the number of vehicles involved for each; and

  • whether the Class Representative, or its distribution advisors, have contacted them and can determine the likely take-up from them."

(a) Survey Phase 1: evidence on research into likely take-up rates

137. Thorndon has now completed Survey Phase 1, the stated aim of which, as noted at [24] above, was to "assist the [CR] in formulating its plan for the distribution of damages", with the results and insights to be used to inform "the approach to noticing, publicity, and distribution with a view to maximising take-up among eligible consumers and businesses". The Thorndon Report is dated January 2026.

138. Table A and Table B of the Thorndon Report provide analysis of the potential take-up for consumers and fleet managers, respectively:

Table A: Estimated percentages of take-up for consumers that may seek to make a claim, across three recovery scenarios absent steps to improve awareness of and interest in the Proceedings

Segment	Average across scenarios	Scenario A: amount is £5	Scenario B: amount is £45	Scenario C: amount is £100
1. Willing to claim	57.6%	39.8%	67.1%	64.9%
2. Self-reported aware and willing to claim	16.4%	11.1%	19.1%	18.5%
3. Behaviourally likely and willing to claim	34.8%	24.0%	40.5%	39.2%
4. Self-reported aware, behaviourally likely, and willing to claim	9.7%	6.8%	11.5%	11.2%
5. Adjusted-awareness, behaviourally likely, and willing to claim	**1.0%**	**0.7%**	**1.2%**	**1.2%**

Table B: Estimated percentages of take-up rates for fleet managers that may seek to make a claim across three recovery scenarios absent steps to improve awareness of and interest in the Proceedings

Segment	Average across scenarios	Scenario A: amount is £500	Scenario B: amount is £5,000	Scenario C: amount is £25,000
1. Willing to claim	90.7%	86.3%	92.1%	93.6%
2. Self-reported aware and willing to claim	53.3%	50.7%	54.2%	55.0%
3. Behaviourally likely and willing to claim	53.3%	50.7%	54.2%	55.0%
4. Self-reported aware, behaviourally likely, and willing to claim	33.3%	29.8%	31.9%	32.3%
5. Adjusted-awareness, behaviourally likely, and willing to claim	**3.7%**	**3.5%**	**3.8%**	**3.9%**

139. As regards the "adjusted awareness" results, Mansfield 1 explains at paragraph 22 that:

> "22. The Thorndon Report added a further layer to the Merricks Report methodology: 'adjusted awareness'. This is an adjustment to the results to address potential 'overclaim' bias in the self-reported levels of awareness of the claim. Further explanation of this methodology is set out in the Thorndon Report, at paragraphs 50-57. However, in short, survey respondents were asked if they had heard of a fictional group action relating to online delivery charges and, if they reported 'yes', that respondent's self-reported awareness of the present Claim was not taken into account. The outcome of the 'adjusted awareness' methodology is to give a conservative lowball figure (since a respondent might in fact be legitimately aware of the Claim despite also claiming awareness of the fictitious claim)."
>
> (Footnotes omitted)

(b) Estimated range and proposal for the amount to be paid per vehicle

140. As canvassed above, the Tribunal requested that the CR serve evidence for the CSAO Hearing on an estimated range and proposal for the amount to be paid per vehicle.

141. Paragraph 33 of Mansfield 1 explains that the "CR is not yet in a position to provide a definitive proposal on the amount to be paid per vehicle", and that the "CR will provide a further update regarding its proposal for the amount to be paid per vehicle as part of its Distribution Approval Plan Application in due course".

142. In light of the absence of a clear proposal, the Tribunal wrote to the Settling Parties on the morning of the CSAO Hearing to seek further clarification. The letter requested detailed information on two matters: first, how funds would be sourced and allocated across the various settlement pots at different levels of take-up; and second, an estimated range of individual recoveries together with the basis for those estimates:

> **"1. Funding Sources and Allocation by Take-Up Levels**
>
> The Tribunal notes that aspects of this issue have been touched upon in the evidence, but is not satisfied that an adequate answer has been provided. Accordingly, for all settlements reached in these proceedings, please provide a detailed explanation of how funds will be sourced and allocated depending on varying levels of take-up. Specifically, for each of the following take-up figures (£2m, £5m, £10m, £15m, £20m, £30m, £40m, £50m), identify:

(i) The settlement funds or "pots" from which payments will be drawn;

(ii) The order in which those funds will be applied, specifying the sequence in relation to which settlement pot will be used first, second, and so on.

(iii) Any assumptions underlying this allocation.

The Tribunal would be assisted by a schedule setting this out clearly.

2. Estimated Range of Individual Recoveries

We note that this point has also been hinted at in the evidence, but again the Tribunal is not satisfied that an adequate answer has been provided. Please provide the Class Representative's estimate as to the likely minimum and maximum estimated total take-up by Class Member in terms of pounds sterling. Please also provide the basis for these estimates."

143. On the first question, Ms Ford KC explained that a total of £34 million across all settlements represents guaranteed damages, and that take-up up to that amount would be met entirely from those sums. Beyond that, an additional £20.75 million is available from settlement pots designated as additional or deferred damages. RPs have first priority over those sums. This means that take-up of up to £50 million—the highest figure identified in the scenarios posited by the Tribunal—could be met within the existing structure. Any further take-up above that level would continue to be met from the additional damages sums. This analysis was confirmed in correspondence on the day of the CSAO Hearing.

144. On the second question, Ms Ford KC explained that the CR's current working assumption is a provisional flat-rate figure of £3.59 per vehicle, as set out at paragraph 84(f) of Campbell 1. That figure is derived by dividing the anticipated recovery across the approximately 25 million relevant vehicles registered during the period October 2006–September 2019. When it comes to the distribution plan, alternatives should also be considered, but the Tribunal would want to know a range of the estimated actual loss per vehicle (looking at the various different types of vehicles which will vary in price considerably). Simply dividing the sums potentially available to class members by the number of vehicles is unlikely to be acceptable.

145. In response to the Tribunal's request, the CR also produced tables of indicative recovery calculations for private and business customers, illustrating how total take-up would vary under different assumed claim values and take-up rates. The tables below were provided under cover of a letter on the day of the CSAO Hearing and are reproduced below:

Table 5: Private customers indicative recovery calculations

Description	Calculation A	Calculation B	Calculation C	Calculation D
Number of vehicles	12,017,385	12,017,385	12,017,385	12,017,385
Claim per vehicle	£5.00	£5.00	£45.00	£45.00
Take up rate	6.80%	0.70%	11.50%	1.20%
Amount taken up	**£4,085,911**	**£420,608**	**£62,189,969**	**£6,489,388**

Table 6: Business customers indicative recovery calculations

Description	Calculation E	Calculation F	Calculation G
Number of vehicles	13,098,224	13,098,224	13,098,224
Claim per vehicle	£3.59	£3.59	£3.59
Take up rate	50.00%	33.30%	3.80%
Amount taken up	**£23,511,312**	**£15,658,534**	**£1,786,860**

146. The tables above are necessarily illustrative only, but the Tribunal notes that they demonstrate the wide range of plausible outcomes and the sensitivity of overall take-up to relatively small variations in assumptions.

147. The CR also filed limited indicative evidence on per-vehicle entitlement prior to the CSAO Hearing. Mr Campbell explained that, on a strictly compensatory basis (which may not reflect the method ultimately adopted in the distribution plan), losses divided equally among the 18,592,826 relevant vehicles registered during the cartel period (October 2006–September 2015) would equate to £4.85 per vehicle. If the calculation is extended to the broader period used by Ms Ford KC (25,115,609 vehicles registered between 2006–2019), the indicative figure aligns with the £3.59 per-vehicle estimate.

148. The Tribunal understands that these indicative figures are derived from Mr Robinson's fifth expert report dated 22 March 2024 and filed as part of the CR's "Positive Case" and accepts that they do not constitute the CR's final distribution proposal, which may incorporate elements of over-compensation or alternative allocation methodologies. They nonetheless provide a useful benchmark in the current absence of a firm estimate of likely take-up and may assist in assessing proportionality and fairness as the distribution plan is developed.

149. Ms Ford KC emphasised that the CR does not intend to proceed automatically on a flat-rate basis. There remain significant unknowns—most notably, the average number of vehicles purchased per Class Member—and any final proposal must be informed by maximising take-up. The CR's focus, she explained, is on identifying the level of per-person recovery likely to encourage participation by both consumers and businesses.

150. Stepping back, the Tribunal considers that the material now before it provides only a preliminary indication of the potential range of recoveries per vehicle and overall take-up. While necessarily provisional, the evidence demonstrates both the substantial uncertainty inherent in forecasting participation rates and the importance of the CR's forthcoming distribution plan. The Tribunal will therefore expect the CR's final proposal to be supported by a clear methodology, informed by the results of Survey Phase 2, and designed to maximise participation by both consumers and businesses.

(c) The number of individuals registered as potential claimants

151. It is the CR's evidence, per Mansfield 1, that as of 1 January 2026, there were 1,390 potential RPs registered on the claims website, of whom 66 had identified themselves as businesses. Further, Mansfield 1 at paragraph 38 states:

> "38. […] Between the publication of the notice of the Proposed Settlement on 10 December 2025 [and 1 January 2026], and without any concerted publicity campaign having yet been undertaken, we have seen an increase in the number of registrants (46 new registrants). […]"

152. This is a particularly low number of registered persons, indicating that interest in and awareness of the present proceedings remain limited at this stage. It is, however, for the CR and its advisers to seek to improve that position as far as possible. This is in the interests of all stakeholders, because the Tribunal will take into account the amounts actually claimed when it ultimately determines the CFDs, and that will be an important measure of the overall success of the proceedings. The Tribunal does not wish to see collective actions in which the principal beneficiaries are stakeholders rather than RPs.

153. The Tribunal is also aware that, particularly for individual consumers, take-up is likely to be challenging, given the relatively low per-vehicle claim values and the fact that the underlying events occurred many years ago.

(d) Information concerning the largest potential class members / represented persons

154. As noted above, the Tribunal expressly requested that the CR file evidence for this CSAO Hearing regarding the largest potential class members / RPs. In response, the CR filed a list of fleet purchasers who registered 500 vehicles or more with the Driver and Vehicle Licensing Agency between 2006–2015 (Annex 1 to Mansfield 1). However, the CR has not verified which of those vehicles fall within the class definition, nor attempted to do so at this stage.

155. The Tribunal understands that, as at the date of the CSAO Hearing, the CR has not yet contacted any of the fleet purchasers identified in Annex 1. The CR's evidence is that it "intends to review the list alongside the Claims Administrator once the distribution plan has been approved, with a view to contacting as many of them as is practicable and proportionate to encourage them to apply to participate in the distribution".

156. Additionally, Wessel 4 notes at paragraph 48, citing Dr Pinar Bagci's second expert report in these proceedings dated 26 July 2024 ("**Bagci 2**") that RPs include approximately 52% business purchasers:

Wessel 4

"48. In addition, I have also considered factors which are likely to be relevant to the rate of take-up by the Class. The Class includes approximately 48% individual purchasers, the remaining 52% being business purchasers.[5] Some of those business purchasers (such as car dealerships and rental companies) may be expected to have purchased hundreds and in some cases thousands of vehicles. In my view, this is likely to be a significant factor in that large business purchasers with very substantial claims on a per vehicle basis are far more likely than individual purchasers to take up the opportunity of making a claim. This factor is likely to increase the take up rates that may be achieved over those for a purely consumer class (such as in *Trains*). […]

FN 5: Bagci 2 paragraph 143."

Bagci 2

"143. Downstream pass-on by business Class Members would significantly impact losses given that business purchases account for 52% of the total vehicle registrations in Mr. Robinson's loss estimates. Table 12 below shows the total number of vehicle registrations that Mr. Robinson attributes to business Class Members, split by type of business. It shows that:

> a. 23% of the vehicles are registered to car rental companies. In Bagci Pass-on 1, I explained that car rental companies would likely pass on Overcharge to their downstream customers because the Overcharge would be industry-wide and the cost of vehicles represent a significant variable cost. Furthermore, car rental companies are also able to revise their prices frequently, which enable them to pass-on cost increases contemporaneously.
>
> b. 24% of the vehicles are registered to leasing and contract hire companies, where similar considerations apply.
>
> c. 11% of the vehicles are demonstrators (i.e., dealers' vehicles used either for test drives or by dealers' staff). These vehicles are typically resold after few months and can retain a high resale value, which would allow dealers to recoup a high share of their losses."

(Footnotes omitted)

TABLE 12: BUSINESS VEHICLE REGISTRATIONS BY BUSINESS TYPE

		Vehicles in Robinson 5 loss calculations attributed to business Class Members	
		Million [A] See note	**Share** [B] [A]/[A][5]
Rental	[1]	3.0	23%
Leasing / Contract hire	[2]	3.2	24%
Demonstrator	[3]	1.4	11%
Other	[4]	5.5	42%
Total	**[5]**	**13.1**	**100%**

157. In light of the above, the Tribunal expects the CR's distribution plan to prioritise targeted engagement with major fleet operators and to report, so far as practicable, which listed fleets fall within the class definition and their expected participation, so that the likely contribution of large business claimants to overall take-up can be properly assessed.

(4) Form and manner by which the class representative proposes to give notice to represented persons

158. Rule 94(f) requires that the CSAO Application "set out the form and manner by which the class representative proposes to give notice of the application to" RPs or class members.

159. The Tribunal acknowledges that, in accordance with Mr McLaren's witness statement, a notice in a form approved by the Tribunal was published on the claim website following the filing of the CSAO Application. The Tribunal further understands that the CR's social media pages were updated and that an email update was sent to all individuals who had previously registered their interest on the claim website or by other means. The CR proposes to undertake further and more extensive noticing of RPs in due course if the Tribunal approves the Proposed Settlement.

160. The Tribunal is content with the CR's proposed approach and has reviewed the form of the proposed notice. It is satisfied with its contents. Accordingly, this requirement is met.

161. Taking all the Rule 94(9) factors into account, the terms of the Proposed Settlement fall within a just and reasonable range. The Tribunal therefore proceeds to Issue 2.

F. ISSUE 2: CR'S APPLICATION FOR THE CFD SUM TO BE PAID OUT OF DAMAGES PRIOR TO DISTRIBUTION

162. The CR has applied for payment of the CFD Sum of £20 million, as a contribution towards the costs, fees and disbursements incurred in these

proceedings, prior to the class distribution exercise. The CR and the Funder made extensive written and oral submissions on this issue, contending that the Tribunal has jurisdiction to do so and that, in light of authority and policy, this course is just and reasonable.

163. Further the CR and Funder submit that payment of the CFD Sum of £20 million at this stage in the proceedings, being after the final settlement in the collective proceedings, but before distribution to the class, would be (i) consistent with authority, (ii) consistent with policy and principle, and (iii) just and reasonable in all the circumstances of this particular case.

164. On 8 December 2025 the Tribunal wrote to the Settling Parties with the following directions regarding payment out of the CFD Sum:

> "**Costs and payment out of the CFD Sum**
>
> Should stakeholders seek any order permitting payment out of the CFD Sum, they must provide a summary schedule showing each relevant billing lawyer's rates, and steps taken to ensure costs incurred were reasonable and reviewed. The detail required should be no more than that typically used for a summary assessment of costs."

165. In accordance with the Tribunal's directions, Mansfield 1 addresses costs at paragraphs 44-61 and provides a costs schedule at Annex 2. The Tribunal notes that the CFD schedule provided at Annex 2 to Mansfield 1 has been updated by way of the third letter from SSUK dated 14 January 2026.

(1) Relevant legal principles

(a) Jurisdiction to order payment of CFDs in priority of the class

166. The Tribunal is empowered, in an appropriate case, to order that a proportion of damages be applied to stakeholders prior to distribution to class members. That power arises under section 47C(3)(a)–(b) of the Competition Act, as explained by the Court of Appeal in *Gutmann v Apple* [2025] EWCA Civ 459 ("***Gutmann v Apple CA*")** at [78], [81]-[82] and [97]:

> "78. Ingenious though the arguments on jurisdiction advanced by Lord Wolfson KC were, I am unable to accept them. Payment of the funder's return

> and lawyers' fees from the award of damages in priority to payment to the class is clearly permitted under section 47C(3)(a) and (b) CA 1998. Sub-section (3)(a) contemplates that the CAT will make an order for the damages to be paid on behalf of the represented persons (i.e. the class) to the CR. It does not prescribe what the CR does with the damages once received and accordingly it would be open to him to pay the funder and the lawyers, subject always to the control of the CAT under its supervisory jurisdiction. Sub-section (3)(b) contemplates that the CAT will make an order for a proportion of the damages to be paid on behalf of the class to such third party as the CAT thinks fit. These are wide unrestricted powers given to the CAT which can clearly include payment to the funder or the lawyers of a proportion of the damages in priority to the class. There is no basis for limiting the scope of "such person other than the represented person" to a claims administrator or similar as Lord Wolfson KC suggested. Whilst what this Court said in *Le Patourel* at [99] was *obiter*, it was clearly correct in concluding that: "the CAT has a wide discretion to make any case management order it sees fit and it is within its power to ensure that funders and representatives are paid". […]
>
> 81. There is nothing surprising or unusual about the CAT ordering payment to funders or lawyers from the award in priority to the class. […]
>
> 82. The wide powers conferred on the CAT by section 47C(3) are reflected in the CAT Rules. These include not just Rule 93 which deals with distribution of an award but, as Green LJ pointed out in argument, Rules 2 and 4 which impose a free-standing duty on the CAT to apply the general principles set out in Rule 4. The general principles give the CAT broad overarching powers to ensure that costs and expenses are dealt with fairly and proportionately and in accordance with the principles of justice. This would include ordering that the funder and the lawyers are paid in priority to the class, a form of order which might be particularly necessary where the CAT considers that the takeup of the damages award by the class may be high because, for example, the CAT is proposing to order distribution by way of an account credit, which was a course which this Court considered in *Le Patourel* at [99] would be open to the CAT. In those circumstances, contrary to Apple's submission, the funder and the lawyers could not be properly and appropriately remunerated from unclaimed damages under section 47C(6). […]
>
> 97. In all the circumstances, I have concluded that the CAT does have jurisdiction to order that the funder's fee or return can be paid out of the damages awarded to the class in priority to the class. Whether or not such an order should be made would be a matter for the CAT in the exercise of its supervisory jurisdiction, in the event that it made an award of damages in favour of the class."

167. The Tribunal's discretion must be exercised, *inter alia*, against the background of the recognised role of litigation funding in collective proceedings. The courts have repeatedly acknowledged the importance of allowing a sufficient recovery for those who assume significant financial risk, and the Tribunal has succinctly summarised the position in the following way: *Consumers' Association v Qualcomm* [2022] CAT 20 at [110]:

> "110. […] third-party funding is inevitable in this sort of consumer litigation, and a commercial funder will not take the significant financial risk involved without the potential for significant profit in return. […]"

168. For completeness, the Funder submits that the Tribunal has the jurisdiction to make an order providing for the CFD Sum to be paid to the CR towards its CFDs prior to distribution on the following bases:

(1) **Rule 53(2)(n):** which recognises a general case-management power to give such directions. The Funder cites [51]-[53] of the *CSAV Related Costs Decision*, as support for this. Rule 53(2)(n) provides:

> "53.—(1) The Tribunal may, at any time, on the request of a party or of its own initiative, at a case management conference, pre-hearing review or otherwise, give such directions as are provided for in paragraph (2) or such other directions as it thinks fit to secure that the proceedings are dealt with justly and at proportionate cost.
>
> (2) The Tribunal may give directions—[…]
>
> > (n) for the award of costs or expenses, including any allowances payable to persons in connection with their attendance before the Tribunal; […]"

(2) **Rule 94(4)(b):** where, as is the case in the Proposed Settlement, the settlement terms themselves make provision for costs, fees and disbursements and the Tribunal is approving a CSAO. The Funder cites [45]-[50] of the *CSAV Related Costs Decision*, as support for this basis. Rule 94(4)(b) provides as follows:

> "94.— […](4) The [CSAO] application referred to in paragraph (3) shall—[…]
>
> > (b) set out the terms of the proposed collective settlement, including any related provisions as to the payment of costs, fees and disbursements; […]"

169. Read together, these authorities clearly establish that the Tribunal has jurisdiction to authorise payment of a CFD sum to stakeholders from damages in priority to class distribution. However, as discussed further below, that power is discretionary and must be exercised under the Tribunal's supervisory control and by reference to the interests of the class. In general, the Tribunal will expect cogent justification for any pre-distribution payment, including evidence of the extent of any costs shortfall, the adequacy of remaining funds for class

compensation, and the safeguards governing any unused sums. Ultimately, the question is fact-sensitive and turns on whether such payment can be made consistently with the statutory objectives of collective proceedings: ensuring fair compensation for the class while recognising the legitimate role of funding in enabling access to justice.

(b) The Tribunal's supervisory jurisdiction

170. It is now well established that the Tribunal has a significant supervisory role at the distribution phase of collective proceedings. In *Justin Gutmann v Apple Inc and others* [2024] CAT 18 ("***Gutmann v Apple CAT***"), the Tribunal stated at [12]:

> "12. […] the Tribunal has a supervisory role in determining how proceeds are to be distributed at the end of the proceedings. This means the Tribunal can, at the end of proceedings, revisit whether it is prepared to endorse the payment of the agreed sums to the Funder. At this stage it may have better visibility as to the proportionality of the Funder's fee in relation to the damages awarded and the complexity of the proceedings and can, if necessary, require further evidence to be presented in relation to the appropriateness of the Funder's fee."

171. Further, in the *CSAV Related Costs Decision* the Tribunal stated at [17]:

> "17. Collective proceeding are subject to the close supervision of the Tribunal, not just because of their complexity, but also because of the inherent potential conflicts of interests between the class members and those who work together to make such proceedings possible in a practical sense. The CR cannot realistically bring these proceedings without lawyers, funders and insurers. The lawyers all need to be paid and funders must have a good chance of recovering their outlay, plus interest and any funders fees for it to be worthwhile for them to put their capital at stake. Funders work on a portfolio basis recognising that they may lose some actions, but in others they may do well such that as a minimum they make a reasonable rate of return. Lawyers and funders may agree terms with the CR, but at the end of the day the payment of costs and expenses is subject to the approval of the Tribunal, which must balance the interests of not just the class members and the stakeholders, but in doing so must bear in mind the importance of having a workable collective proceedings regime. As noted by Green LJ in *Le Patourel v BT Group plc* [2022] EWCA Civ 593 ("*Le Patourel*"), at [29]:
>
> > "29. Pulling the threads together, the principal object of the collective action regime is to facilitate access to justice for those (in particular consumers) who would otherwise not be able to access legal redress. Embraced within this broad description is the proposition that the scheme exists to facilitate the vindication but not the impeding of rights. Also included is the proposition that a scheme which facilitates access to redress will increase *ex ante* incentives of those subject to the law to secure early compliance;

> prevention being better than cure. Finally, emphasis is laid on the benefits to judicial efficiency brought about by the ability to aggregate claims.""

172. In the *Stagecoach Settlement Decision (Ringfenced Costs)*,[4] the Tribunal underscored the inherent conflicts of interest that can arise between the class and the lawyers and funders to collective proceedings. In so doing, the Tribunal highlighted the importance of its supervisory role in ensuring that distributions of funds in collective proceedings are fair and reasonable, for both the class and stakeholders:

> "42. So why do we have this settlement approval process? Well, it is largely because we have these apparent conflicts of interest. The CR here, Mr Gutmann, is the champion of the class. He has an overriding obligation and interest to ensure that the class is properly represented, and good claims are pursued for the benefit of the class. He has to enter into arrangements with lawyers, experts and funders - as a result of which he judges there is the best chance for them to obtain damages so that class members are compensated as fully as possible, taking into account the inherent risks in litigation.
>
> 43. […] Here, the parties are all represented by very capable and experienced lawyers. There is no question in our mind that, whilst there is a conflict, they have done their best to serve the interests of the class over and above their own interests.
>
> 44. Here the conflict is more acute, given the existence of a partial conditional fee agreement ("CFA"), under which the lawyers are being paid […] per cent of their usual rates on an ongoing basis but, if they are successful, they get paid more usual rates. This type of arrangement is not unusual.
>
> […]
>
> 53. "Because of the conflicts we have identified, it is all the more important that we have full and frank disclosure of all the material before the Tribunal, so the Tribunal is in the best possible position to ensure that any settlements and distribution plans are fair and reasonable for the class members. Not just fair and reasonable for the class representatives themselves and for the defendants, but we will not ignore the interests of others such as the lawyers, the experts and the funders, because we have an interest not just in this case but in future cases. If the lawyers and the funders are not going to get a return in this case, then they may be deterred from acting in further cases."

173. As noted above at [79], this Tribunal does not face a "binary choice" between approving the order as submitted or dismissing the application, see *Merricks Settlement Decision* at [112]:

> "112. […] The argument that when there is an application before the Tribunal and the parties provide a draft order then the Tribunal must either accept or

[4] Cited with approval by the Court of Appeal in *Gutmann v Apple CA* at [87].

> reject the terms of that order is in our view fundamentally misconceived. The Tribunal must determine the application, but just because the parties have agreed on the terms of the order which they seek, that does not tie the hands of the Tribunal. The Tribunal must itself decide what is the appropriate order to make in the circumstances, in accordance with the governing statutory provisions."

174. The authorities establish that funding arrangements merely set the parameters and that the Tribunal must, at the conclusion of proceedings, assess costs, fees and disbursements fairly and proportionately. They also recognise the indispensability of the lawyers, funders and insurers who support collective proceedings, each of whom must be able to operate sustainably if the regime is to function effectively. These principles inform the Tribunal's broader task of balancing stakeholder interests while safeguarding fairness to class members: *Gutmann v First MTR South Western Trains Ltd* [2025] CAT 72 ("***Gutmann Trains (Stakeholder Entitlement)***"):

> "86. It is clear from a consistent line of recent appellate and Tribunal authority that (i) funding arrangements set parameters, not outcomes; and (ii) at the end of the proceedings the Tribunal must determine costs, fees and disbursements "fairly and proportionately and in accordance with the principles of justice" (*Gutmann v Apple CA* at [82] and [99])."
>
> […]
>
> "89. It is axiomatic that the Tribunal must have due regard to the legitimate interests of <u>all</u> stakeholders in maintaining a viable collective proceedings regime. Class representatives cannot bring collective proceedings without lawyers, funders and insurers and they all need to make adequate returns overall. Funders, for example, operate on a portfolio basis and aim to make a good rate of return across their portfolio over time. This means that they recognise that there are cases where they make no return at all at one end and a very good rate of return on others, where the case is a success overall. […]"
>
> […]
>
> "91. […] the importance and value of solicitors and counsel cannot be underestimated. Frequently it is the law firm that conceives of the claim and, with the assistance of counsel and economists, develops the case to the point where it can be presented to the funding market. It is the law firm that typically brings together all elements of the claim. ATE Insurers also have an important role which should not be ignored."
>
> "92. The Tribunal must ensure that collective settlements and distribution plans are fair and reasonable for class members, but the Tribunal must also consider and balance the interests of the other stakeholders and ensure that the collective actions regime operates effectively as a whole. […]"
>
> […]

> 171. The collective proceedings regime stands on a three-legged stool: the CR, lawyers, and the funder/ATE insurers. If any single leg is removed or unsupported the entire structure collapses. Hence, funders and lawyers must work together in a constructive way to find and maintain equilibrium within this framework, ensuring that all stakeholders achieve a fair outcome, if at all possible, covering each party's outlay. […]"

175. Finally, in *Gutmann Trains (Stakeholder Entitlement)*, the Tribunal noted that the funding instruments in those collective proceedings expressly contemplated the Tribunal's supervisory role and discretionary oversight regarding stakeholder payments. In those circumstances, the Tribunal stated that its supervisory role involved assessing each stakeholder's entitlement from a limited pot and striking a balance between their respective interests. It also highlighted the need to preserve the stability of the collective proceedings regime by ensuring that the CR, funders and lawyers each receive fair treatment.

> "93. In the Tribunal's view, both the Revised Deed of Priority and the Trains 1 LFA expressly confer power on the Tribunal to intervene in this case and ensure that the costs, fees and disbursements claimed by all Stakeholders are determined fairly and proportionately and in accordance with the principles of justice. The Revised Deed of Priority and the Trains 1 LFA both make payment obligations subject to any Order of the Court. Clause 3 of the Revised Deed of Priority provides that "[i]t is agreed that, subject to any Order of the Court to the contrary, all sums due to any of the Parties pursuant to the Agreements shall be paid out of any Stakeholder Proceeds in accordance with the terms of this agreement …in accordance with and subject to the following order of priorities" (emphasis added). The Trains 1 LFA has a similar term, as clause 3.1.8 states that "the Class Representative's obligation to pay the Funder's Fee is reduced to the extent that the amount which the CAT orders and/or approves should be paid to the Class Representative in respect of this obligation falls below the amount of the Funder's Fee" (emphasis added).
>
> 94. The funding agreements, therefore, expressly provide for the Tribunal's discretionary oversight. Accordingly, the Tribunal's task is to strike the right balance between all the interests involved and reach an outcome that is fair to all Stakeholders: see the *Intervention I and II Rulings.*
>
> 95. In addition, in dealing with what sums each Stakeholder is to be allocated from a limited pot in a case with a far from successful outcome, the Tribunal will want to look at the position and claim of each Stakeholder, to determine what sum that it would be fair, reasonable and proportionate to receive. […]
>
> 96. The Tribunal wishes to make clear that it is not seeking to rewrite the contracts agreed by the parties and the Tribunal will naturally attach substantial weight to any prior agreement reached by sophisticated parties. If the Tribunal decides that a particular sum for funders is, in fact, reasonable and proportionate and should be no higher, it is open to the Tribunal to award the balance to other stakeholders. In doing so, the Tribunal would be mindful not to award other stakeholders sums over and above what it considers reasonable and proportionate in all the circumstances."

(2) Analysis

176. As noted above, this Tribunal clearly has the power to order the payment of CFDs prior to the distribution of damages in favour of class members. Similarly, the Tribunal may also defer such payment until after it has determined the amount claimed and to be paid to class members. In these proceedings, there is a great deal of uncertainty as to the likely take-up by class members and the amounts which may ultimately be paid to class members.

177. The Court of Appeal in *Gutmann v Apple CA* at [97] stressed that the Tribunal has a broad discretion to determine how any award or settlement should be dealt with in terms of distribution to class members, and payment of costs and expenses including any return to the funder, in the exercise of its wide supervisory jurisdiction. The Court of Appeal further stated at [81] that "[t]he supervisory jurisdiction of the CAT will ensure that what is recovered is not excessive". Furthermore, on determining the amount of the CFDs awarded, the Tribunal may consider the success of the proceedings overall: *Merricks Settlement Decision* at [184].

178. Success includes whether or not it can be said that the proceedings have been brought for the benefit of class members, rather than predominantly for stakeholders such as lawyers and funders. The Tribunal, having approved the CSAO Application, is faced by an Application by the CR, supported by the Funder and the ATE Insurers, that the entirety of the approved £20 million CFD Sum (Pot 2) be paid out now to the CR, who will then pass on a significant proportion of that sum to the Funder and, as appropriate, to the ATE Insurers.

179. The CFDs claimed exceeds £61 million and are as follows:

Table 7: CFDs claimed (figures accurate as at 14 January 2026)

Item	CFDs	Amount (inc. VAT / IPT)
A*	Solicitors' fees (non-deferred)	£2,832,240.00
B	Solicitors' fees (deferred)	£5,917,458.83
C	Solicitors' uplift	£5,917,458.83
D*	Counsel's fees (non-deferred)	£2,579,013.09
E	Counsel's fees (deferred)	£1,423,891.32

F	Counsel's uplift	£1,423,891.32
G*	Expert fees and factual witness costs	£3,389,836.18
H*	Claims administration and noticing	£181,889.11
I*	CR's costs (inc. salary and advisory committee fees)	£150,320.44
J*	Other costs incurred by the CR	£500,754.80
K*	Other costs incurred by Funder in relation to the action (fees of Robert Marven KC)	£77,599.98
L*	ATE insurance deposit premiums (including IPT)	£1,988,000.00
M	ATE deferred and contingent premiums (including IPT)	£8,008,000.00
N	Adverse costs paid by ATE Insurers	£210,000.00
O	Funder's Fees	£26,593,166.00
	TOTAL	**£61,193,519.91**
**** CFDs paid by the Funder***		

180. As regards solicitors' and counsel's fees, the Funder has already paid out Items A and D which are, respectively, the solicitor and counsel base non-deferred fees. The Tribunal considers that there is not enough information at this stage to determine the reasonableness of these fees overall. In due course the CR will need to file a more detailed breakdown of their costs claimed in these proceedings. In the case of the solicitors' fees, the CR shall provide information on how their solicitors' rates compare with the Solicitors' Guideline Hourly Rates (the "**Guideline Rates**"), and to the extent they are above the Guideline Rates, to justify them: see e.g. *Spottiswoode v Airwave Solutions* [2025] CAT 76.

181. The Tribunal is satisfied that it is appropriate that the Funder, in effect, be paid out now the sums that they have already paid out to the solicitors and counsel under Items A and D respectively. Therefore, the Tribunal approves Items A and D and refuses to approve Items C, E and F at this stage.

182. During the CSAO Hearing, counsel for the Funder made the point that a significant portion of the solicitors' fees are deferred. The solicitors' non-deferred fees are roughly £2.8 million, while the deferred element is roughly £5.9 million. The deferred element represents a substantial amount of work that has been performed, billed and not paid. It is a substantial amount for any law firm to carry. Therefore, in these circumstances and at this stage in the proceedings, the Tribunal is willing to approve £2 million under Item B. It is

the Tribunal's expectation that of the portion of the CFD Sum approved for distribution, £2 million be distributed to the CR's solicitors, SSUK, in respect of their deferred fees.

183. As regards the expert fees and the factual witness costs (Item G), the Tribunal has reviewed the expert evidence and notes that a significant amount of expert work has been carried out, and the roughly £3.4 million claimed in respect of such work is not surprising to the Tribunal. On the limited evidence before this Tribunal regarding expert fees and factual witness costs, they seem reasonable. Accordingly, Item G is approved.

184. Further, the Tribunal considers that Item H, claims administration and noticing, and Item I, the CR's costs, to be of a reasonable amount, and are accordingly both approved. Regarding Item I, CR's costs, including CR salary and advisory committee fees, the Tribunal considers that these costs are modest given these proceedings have gone on for six years, and the excellent job that has been done by the CR.

185. As regards Item J, other costs incurred by the CR, the Tribunal has reviewed an itemised breakdown of these disbursements and is not fully satisfied as to all of them. In particular, the Tribunal is satisfied in relation to the following items, fees for: KL Discovery (£133,464); Opus 2 (£75,391); and Jon Lawrence (£99,155), totalling £308,010. As regards Mr Lawrence's fees in this case, the Tribunal has seen previous opinions he has filed in relation to the earlier CSAO applications and consider his fees are entirely reasonable. As at the time of the CSAO Hearing, the Tribunal does not have before it enough detail to approve the other disbursements falling within Item J. Therefore, the Tribunal approves £400,000 of Item J now. If, at the approval of the distribution plan stage, further details on the remaining disbursements under Item J can be provided, then the Tribunal may approve further sums. Alternatively, the remaining disbursements under Item J can be dealt with at the end of the case, once the amount of the claims made by RPs is known.

186. During the CSAO Hearing Mr Mallalieu KC appearing for the Funder confirmed that Item K consists of Mr Marven KC's fees for various appearances

in these proceedings. The Tribunal has seen the amount of work Mr Marven KC has put into these proceedings, and accordingly consider his fees are entirely reasonable and approves them accordingly.

187. As regards Item L, the ATE insurance deposit premiums, the Tribunal considers these sums and reasonable and approves them accordingly. The Tribunal notes that those sums have already been paid by the Funder.

188. As regards Item M, the ATE deferred and contingent premiums, the Tribunal acknowledges that the premium was reached after a competitive exercise in a competitive and highly regulated market, and that the ATE Insurers were taking a risk in providing £15 million cover. At this stage in the proceedings, the Tribunal is willing to approve £2 million under Item M. It is the Tribunal's expectation that of the portion of the CFD Sum approved for distribution, £2 million be distributed to the ATE Insurers.

189. The Tribunal approves Item N in relation to adverse costs paid by ATE Insurers. It is the Tribunal's expectation that of the portion of the CFD Sum approved for distribution, £210,000 be distributed to the ATE Insurers in respect of Item N.

190. As regards Item O, the Funder's fees, the Tribunal acknowledges that the Funder has taken on a degree of risk in these proceedings. The items approved above mostly relate to expenses the Funder has already incurred and paid, specifically Items A, D, G-L (inclusive), which total £11,699,653.60. The Tribunal considers it is reasonable at this stage to recognise that the Funder has had at least some success in these proceedings. Therefore, in these circumstances, the Tribunal approves £2 million under Item O.

191. Finally, over the course of the proceedings, the CR has recovered costs of £1,434,731.39, comprising:

    (1) £590,000 as a payment on account from the CR's successful CPO application;

(2) £100,000 as payments on account following the Defendants' unsuccessful appeal of the CPO;

(3) £5,109.00 as payment following MOL, NYK and WWL/EUKOR's unsuccessful permission to appeal application to the Supreme Court concerning the CPO;

(4) £59,852.39, being the balance of the CR's costs of its application dated 3 August 2022 in relation to the Defendants' communications with class members;

(5) £361,000 for the CR's costs of the CSAV CSAO Application; and

(6) £318,770 for the CR's costs of the WWL and K Line CSAO Applications (including £28,770 for the Funder and ATE Insurers' costs as interested parties).

The Tribunal considers that the CR's recovered costs to date should be deducted from the amount approved by the Tribunal regarding sums to be paid as a contribution towards the CFDs incurred in these proceedings.

192. The below table summarises the CFDs approved at the CSAO Hearing:

Table 8: CFDs approved for distribution at the CSAO Hearing

Item	CFDs	Amount approved (inc. VAT / IPT)
A	Solicitors' fees (non-deferred)	£2,832,240.00
B	Solicitors' fees (deferred)	£2,000,000.00
C	Solicitors' uplift	–
D	Counsel's fees (non-deferred)	£2,579,013.09
E	Counsel's fees (deferred)	–
F	Counsel's uplift	–
G	Expert fees and factual witness costs	£3,389,836.18
H	Claims administration and noticing	£181,889.11
I	CR's costs (inc. salary and advisory committee fees)	£150,320.44
J	Other costs incurred by the CR	£400,000.00
K	Other costs incurred by Funder in relation to the action (fees of Robert Marven KC)	£77,599.98
L	ATE insurance deposit premiums (including IPT)	£1,988,000.00

M	ATE deferred and contingent premiums (including IPT)	£2,000,000.00
N	Adverse costs paid by ATE Insurers	£210,000.00
O	Funder's Fees	£2,000,000.00
	Sub-total	**£17,808,898.80**
	Less recovered costs	**(£1,434,731.39)**
	TOTAL	**£16,374,167.41**

193. Therefore, in summary, the Tribunal approves the payment of £16,374,167.41 from the CFD Sum (Pot 2) as a contribution towards the CFDs incurred in these proceedings. Appreciating the "waterfall" structure in the LFA, it is the Tribunal's expectation that of the £16,374,167.41 total sum approved for distribution at this stage: £2 million will be distributed to the CR's solicitors on account of their deferred fees; £2 million will be distributed to the ATE Insurers on account of their deferred and contingent premiums; and £210,000 will be distributed to the ATE Insurers on account of adverse costs paid by them. The Tribunal further expects that the remaining sums are to be distributed in accordance with the LFA.

194. As regards the unapproved Items and parts thereof, there is liberty to apply, at the hearing of the distribution plan approval stage.

G. DISPOSITION

195. For the foregoing reasons, the CSAO Application is unanimously approved.

196. The Tribunal thanks the solicitor and counsel teams for the work they have done in these proceedings. These have been long, drawn-out proceedings. There is no doubt that there are lessons to be learned at the certification stage, particularly regarding the likely take-up by RPs. However, the CPO in these proceedings was granted six years ago and the Tribunal did not have the experience that it now has.

197. This judgment is unanimous.

Hodge Malek KC
Chair

Eamonn Doran

William Bishop

Charles Dhanowa CBE, KC (*Hon*)
Registrar

Date: 15 January 2026