Neutral citation [2026] CAT 18

Case No: 1766/4/12/26

IN THE COMPETITION

APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

10 March 2026

Before:

JAMES WOLFFE KC
Chair

Sitting as a Tribunal in Scotland

BETWEEN:

ARAMARK LIMITED

Applicant

- v -

COMPETITION AND MARKETS AUTHORITY

Respondent

Heard at Salisbury Square House on 19 February 2026

JUDGMENT (EXTENSION OF TIME)

APPEARANCES

Ms Ronit Kreisberger KC and Mr Charlie Coverman (instructed by Simpson Thacher & Bartlett LLP and Latham & Watkins LLP) appeared on behalf of the Applicant.

Mr Rob Williams KC and Mr James Bourke (instructed by the Competition and Markets Authority) appeared on behalf of the Respondent.

A. INTRODUCTION

1. This judgment concerns an application for an extension of time under rule 25(3) of the Competition Appeal Tribunal Rules 2015 ("the Tribunal Rules").

2. The Applicant, Aramark Limited ("Aramark") is a subsidiary of a global food and facilities management service provider headquartered in the United States. On 24 January 2025, Aramark acquired 90% of the issued share capital of Entier Limited ("Entier"). I refer to this acquisition as "the Transaction". Aramark and Entier are both engaged in the supply of offshore catering and ancillary facilities management services to customers, including in the UK offshore continental shelf.

3. On 23 May 2025, the Competition and Markets Authority ("CMA"), exercising powers under the Enterprise Act 2002 ("the 2002 Act"), launched a merger inquiry into the Transaction. On 22 July 2025 the CMA issued a decision referring the Transaction for a phase 2 investigation. At 16:52 on Thursday, 15 January 2026, the CMA published its final report on the CMA website. At 17:52 and 18:34 on the same date the CMA issued to Aramark's legal advisers respectively the fully unredacted (confidentiality ring) version and the parties unredacted version of the report.

4. The report recorded the CMA's conclusions: (i) that the Transaction has resulted, or may be expected to result, in a substantial lessening of competition in the relevant market; and (ii) that only a sale of Entier to an approved buyer would effectively address the competition concerns. In this judgment, I refer to the CMA's final report as "the Decision".

5. As a "*person aggrieved"*, Aramark may apply, under section 120 of the 2002 Act, to the Tribunal for a review of the Decision. Rule 25 of the Tribunal Rules specifies the statutory time limit for making such an application. It provides, so far as relevant:

> "(1) *An application under section 120(1) of the 2002 Act for the review of a decision in connection with—*
>
> *(a) a reference … in relation to a relevant merger situation …*

> *shall be made by filing a notice of application within four weeks of the date on which the applicant was notified of the disputed decision, or the date of publication of the decision, whichever is the earlier.*
>
> …
>
> *(3)* The Tribunal may not extend the time limit provided under *paragraph (1)* … unless it is satisfied that the circumstances are exceptional."

6. At 12.02 on Friday, 13 February 2026, Aramark's solicitors sent the Tribunal Registry a notice of application for review of the Decision ("the Notice"). The Registry took the view that the time limit specified in rule 25 had expired at 5 pm on Thursday, 12 February 2026 and that the Notice was accordingly late. The Registry declined to register the Notice.

7. On Sunday, 15 February 2026, Aramark's solicitors, Simpson Thacher & Bartlett, filed an application ("the Application"): (i) contending that, on a correct interpretation of the Tribunal Rules, the notice had been filed timeously; and (ii) in the alternative, seeking an extension of the time limit specified in rule 25(1) to 13:00 on 13 February 2026. Later on the same date, Latham & Watkins LLP, also acting for Aramark, filed a written submission ("the Latham & Watkins Submission") in support of the Application.

8. On Tuesday, 17 February 2026, the CMA filed a response, inviting the Tribunal: (i) to hold that the Notice had not been filed timeously; and (ii) to dismiss the application for an extension of time. On Wednesday, 18 February 2026, Aramark filed reply submissions drafted by counsel. These state that Aramark now accepts that the deadline for filing the Notice was indeed 5 pm on Thursday, 12 February 2026. Contrary to its initial position, Aramark accordingly now accepts that the Notice was filed late. The reply submissions advance further argument in support of Aramark's application for an extension of time.

9. The Application came before me for a hearing ("the Hearing") on Thursday, 19 February 2026, where I heard counsel on behalf of both parties. Following the Hearing, I instructed the Registry to draw to parties' attention certain authorities on the so-called "surrogacy principle" (the principle which imputes to a party things done by that party's legal representative) and to invite the parties to file

written submissions on that principle. Both parties did so, and each also filed a short reply.

10. For the reasons I set out below, I refuse the Application.

B. THE TRIBUNAL RULES AND GUIDE TO PROCEEDINGS

11. I have quoted rule 25 of the Tribunal Rules at paragraph 5 above. Rule 25(1) provides that an application under section 120 of the 2002 Act "*shall be made by filing a notice of application within four weeks of the date on which the applicant was notified of the disputed decision, or the date of publication of the decision, whichever is the earlier".* Rule 25(3) provides that the Tribunal "*may not extend the time limit provided under paragraph (1) … unless it is satisfied that the circumstances are exceptional."*

12. The Tribunal has a general power to extend time limits by virtue of rule 19(2)(m). Rule 25(3) precludes the Tribunal from exercising that power to extend the time limit in rule 25(1) unless it is satisfied that the circumstances are exceptional. The same formula is used in rule 9(2) and cases under rule 9(2) may therefore be of assistance when considering rule 25(3). The same formula is also used in rules 98A(7) and 98B(5), provisions inserted into the Tribunal Rules by, respectively, the Subsidy Control Act 2022 and the Football Governance Act 2025.

13. Rule 112 contains the following provisions on the computation of time:

> "(1) Unless otherwise specified, an act required by the Tribunal, the President, a chairman or the Registrar, or by these Rules, to be done on or by a particular day shall be done before 5pm on that day.
>
> (2) Where a period expressed in days, weeks or months is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place is not to be counted as falling within the period in question.
>
> (3) A period expressed in weeks or months ends with the expiry of whichever day in the last week or month is the same day of the week or falls on the same date in the month, as the day during which the event or action from which the period is to be calculated occurred or took place; and if, in a period expressed in months, the day on which it should expire does not occur in the last month, the period ends with the expiry of the last day of that month.

(4) "*Month*" means calendar month.

(5) Where the time prescribed for doing any act expires on a Saturday, Sunday or Bank Holiday, the act is in time if done on the next following day which is not a Saturday, Sunday or Bank Holiday."

14. The Tribunal's Guide to Proceedings 2015 ("the Guide"), which has the status of a Practice Direction issued by the President of the Tribunal under rule 115(3) of the Tribunal Rules, contains the following passages:

> "**Time limits for commencing proceedings under the 1998, 2002 and 2003 Acts**
>
> 4.5. The following paragraphs set out the time limits for commencing proceedings and the manner of calculating them. The time limits vary according to the decision in respect of which a legal challenge is raised. As well as consulting this Guide, advisers must ensure they have taken into account the relevant statutory provisions.
>
> …
>
> 4.7. Parties are also strongly advised not to wait to the last possible moment to commence proceedings. The Tribunal is only permitted to extend the relevant time limits if it is satisfied that the circumstances are exceptional.
>
> …
>
> *Applications for review under the 2002 Act: Mergers*
>
> 4.12. These applications must be made within a much shorter period than other types of proceedings.
>
> 4.13. An application for a review under section 120 of the 2002 Act must be made by filing a notice of application within four weeks of the date on which the applicant was notified of the disputed decision, or the date of publication of the decision, whichever is the earlier: Rule 25(1).
>
> 4.14 The Tribunal may not extend this time limit unless it is satisfied that the circumstances are exceptional: Rule 25(3).
>
> **Calculation of time limits for commencing proceedings governed by Rules 9 and 25**
>
> …
>
> 4.17. In respect of applications pursuant to section 120 of the 2002 Act (mergers), the last day for filing the application is normally the day which falls on the same day in the fourth week after the date on which the applicant was notified of the disputed decision. In *Federation of Wholesale Distributors v OFT* [2004] CAT 11, the Tribunal indicated that for the purpose of Rule 25(1) time starts to run from the date on which the reasoned decision is notified to the applicant or published (and not from the date of the press announcement of the fact of the decision).

> 4.18 The effect of Rule 112(3) is that if the last day for filing proceedings falls on a Saturday, Sunday or Bank Holiday, time expires on the following day which is not a Saturday, Sunday or Bank Holiday. Thus for a decision under the 1998 Act notified on 28 March, the last day for filing the appeal would normally be 28 May. Suppose, however, that 28 May is a Saturday and that 30 May is the Spring Bank Holiday Monday: in this hypothetical example the last day for filing the notice of appeal would be Tuesday, 31 May.
>
> …
>
> 4.20. As noted above, under Rule 9(2) and Rule 25(3), the Tribunal may not extend the time limit for commencing proceedings 'unless it is satisfied that the circumstances are exceptional'. Any application for an extension of time must be made a reasonable time before the prescribed period has expired and reasons for the application must be given.
>
> 4.21. In *Hasbro v. DGFT* [2003] CAT 1, the President indicated that respect for the deadline for commencing proceedings is, in many ways, the keystone of the whole procedure. The possibilities of obtaining an extension of the time limit for commencing proceedings are thus extremely limited. In order to demonstrate the existence of unforeseen circumstances, the party concerned may have to point to an excusable error or a situation of force majeure which prevented it from complying with the time limit. For examples of cases where the Tribunal has considered the concept of exceptional circumstances see orders of the President in: *Prater v OFT* [2006] CAT 11; *Fish Holdings v OFT* [2009] CAT 34; and *Somerfield Stores & others v OFT* [2013] CAT 5 (and the Court of Appeal judgment [2014] EWCA Civ 400). In the context of an application for review under section 120 of the 2002 Act, see *British Sky Broadcasting v CC & the Secretary of State* [2008] CAT 1."

C. EVIDENCE

15. The Application was supported by a short statement by Mr Antonio Bavasso, a partner of Simpson Thacher & Bartlett. The CMA's reply was supported by a short statement by Mr Barnett, Interim Senior Litigation Director at the CMA, exhibiting copies of email correspondence between the parties. The two statements disclose information about exchanges between Aramark's advisers and the CMA. It suffices to note the following:

- On 20 January 2026, Mr Bavasso advised the CMA by email that Aramark were considering appealing the decision.

- On 4 February, Mr Bavasso informed the CMA by email of the identity of Aramark's senior counsel and invited consideration of listing dates. Mr Barnett responded to the effect that this would be premature when the CMA had not seen the terms of the appeal.

- On Tuesday, 10 February, Mr Bavasso advised Mr Barnett by email that Aramark would proceed to lodge its notice of application "*by the end of the week*" and invited the CMA to advise when counsels' clerks could liaise about a hearing date. Mr Barnett did not reply to that email.

- At 18:03 on Thursday, 12 February, a legal director of Shoosmiths, also acting for Aramark, emailed the CMA case officer in connection with the remedies process which was following upon the Decision. The email sought an extension to a deadline for providing comments on proposed draft undertakings. The email intimated that: "*Aramark is also heavily engaged in finalising the appeal submission, which is due imminently."*

- At 10:43 on Friday, 13 February, Matthew Weighill, Assistant Director, Mergers, of the CMA, responded to that email by agreeing to the request for further time in relation the draft undertakings. The email also said: "*As regards a potential appeal, having had regard to Rule 25(1) of the CAT Rules and paragraphs 4.15-4.19 of the Tribunal's Guide to Proceedings, we consider that the deadline for filing an application for review under s 120 of the Enterprise Act 2002 was 5pm yesterday evening (12 February 2026), and that deadline has now passed".*

- At 11:34, Mr Bavasso emailed Mr Barnett to request a discussion. Following receipt of that email, Mr Barnett phoned Mr Bavasso who explained that, in "*our view",* filing on 13 February was within the requirements of the Tribunal Rules, and asked Mr Barnett if he would consider not pursuing the point further. Mr Barnett said he would consider the matter internally and revert.

- At 14:51 Mr Barnett emailed Mr Bavasso stating that the CMA's position would be that it would not be open to Aramark to enter into any inter partes agreement to extend time, that being a matter for the Tribunal.

- At 15:52 Mr Bavasso emailed Mr Barnett stating "*For the record we do not accept that the NoA has been filed out of time under Rule 112(2) of the CAT Rules"*, and intimating that, without prejudice to that primary position, Simpson Thacher would file a protective application under rule 25(3).

16. In addition to these communications between the parties, Simpson Thacher & Bartlett had emailed the Tribunal on Monday, 9 February 2026 as follows:

> "This is to provide advance notice that we, on behalf of Aramark Limited, are seeking to submit a notice of appeal to the CAT on Thursday 12 February 2026 as regards the CMA's final decision in Case ME/2241/25 (Completed Acquisition by Aramark Limited of Entier Limited. Final Report, 15 February 2026)."

At the outset of the Hearing, I instructed the Registry to disclose this email to the parties.

17. At the Hearing, Ms Kreisberger KC, evidently on instructions and in the presence of Mr Bavasso, told me that the reason why the deadline was missed in this case was because the legal team working on the matter had been proceeding on an interpretation of rule 112 of the Tribunal Rules which Aramark now accepts was erroneous. She was at pains to assert that this was not a case where there had been a careless failure to meet the deadline. She told me that "*minds were applied"* to rule 112. She explained that Simpson Thacher & Bartlett understood the effect of rule 112(2) to be that the day on which the Report was published and notified to the parties (i.e. Thursday, 15 January 2026) should not be counted at all. Against the background of that reading of rule 112(2), they read the phrase "*day during which the event or action from which the period is to be calculated occurred or took place"* in rule 112(3) as referring to Friday, 16 January 2026.

18. Ms Kreisberger focused particularly on the phrase "*from which the period is to be calculated"* in rule 112(3) as providing an explanation for the solicitors' understanding of the rules. She submitted that this was an honest mistake, involving "*an unfortunate linguistic confusion"* which had some basis in the language of the rule and was "*not wholly irrational".* She also told me that: "*there was no sense that this was in some way ambiguous or there was uncertainty or there was risk attached. It was simply read that way and that was the deadline, and Aramark proceeded on that basis, that that was the deadline".* The firm's erroneous reading of the rule was "*accepted wisdom"* for Aramark's legal team. Aramark's legal team, and Aramark itself, had, on this basis, been working to a deadline of 5 pm on Friday, 13 February 2026.

19. Ms Kreisberger told me that, as the email to the Tribunal sent on Monday, 9 February indicated, the team had hoped that the Notice would be ready to file on Thursday, 12 February - ie on their interpretation of the rule, with a day in hand. The reason this did not happen was because "*people were commenting, their client's in the States, there's time difference, and different people were commenting on the document and it was believed, well that's okay, because the deadline is 5 pm on the Friday and then the hope was always to submit several hours ahead of the deadline"*. Had the legal team correctly interpreted rule 112, the Notice could and would have been finalised and filed before 5 pm on Thursday, 12 February. The essential reason why the deadline was missed was accordingly the solicitors' good faith misinterpretation of rule 112.

20. Following the Hearing, Aramark applied for leave to file a statement by Shakamal Miah, Aramark's Vice President and Assistant General Counsel. The CMA criticised the timing of this application and the basis upon which it was advanced but did not oppose the admission of the statement. I have accordingly taken it into account. Among other things, Mr Miah states the following:

- Aramark had been informed by Simpson Thacher & Bartlett that the statutory deadline to file the Notice was 5 pm on 13 February 2026 and had no cause to doubt this position.

- Aramark agreed to an internal administration plan with its legal advisors to file the Notice on 12 February 2026, a day ahead of what it understood to be the statutory deadline.

- On 12 February 2026, during a call at 2 pm, Aramark discussed with its legal advisors whether any additional comments from its management team in the United States might be incorporated into the Notice.

- The Notice was submitted at 12:02 pm on 13 February 2026 before Aramark had been informed by its legal advisors that the CMA had emailed them to express the view that the filing deadline had been missed.

- As soon as Aramark learned of the position of the CMA, it immediately sought a second opinion from Shoosmiths LLP.

- On the evening of 13 February 2026 Aramark instructed Latham & Watkins seeking legal advice on the deadline for submitting the Notice and on possible next steps for redress if the deadline had been missed.

- Aramark instructed Simpson Thacher & Bartlett and Latham & Watkins to make an application for extension of time which was submitted on the evening of 15 February 2026.

21. The reason why the statutory time limit was not met in this case was not addressed in Mr Bavasso's statement. The Tribunal has no power to grant an extension of time under rule 25(3) unless it is satisfied that the circumstances are exceptional. In the case of a retrospective application which is effectively intended to cure a failure to comply with the statutory time limit, an obvious first question will be why the applicant did not meet the deadline. Any applicant seeking such an extension should anticipate that the Tribunal will require a full, specific and acceptable account of the factual position in that regard, supported by a statement of truth. In *Fish Holdings Ltd v. OFT* [2009] CAT 34 (*"Fish Holdings"*), the applicant filed a witness statement from the solicitor concerned which provided a detailed explanation. A similar statement should have been provided in the present case in support of the Application.

22. Mr Miah's statement confirms that Simpson Thacher & Bartlett had advised Aramark that the statutory deadline was 5 pm on Friday, 13 February, and that Aramark and its legal team had been working to an internal administration plan to file by 5 pm on Thursday, 12 February. Understandably, the statement provides no insight into the reason why its solicitors had made that mistake or precisely when and how "*minds were applied"* (as Ms Kreisberger put it) by the solicitors to the statutory filing deadline. However, Mr Miah's statement does not disclose why, notwithstanding the internal administration plan, additional comments from Aramark's US management were being provided only after 2 pm on the intended filing date. It does not disclose when those comments were provided thereafter. Nor does it disclose whether any consideration was given at that time to any possible risks attendant on departing from the agreed internal administration plan and filing on what Aramark and its advisers believed (erroneously) to be the last day for filing.

23. Mr Williams KC accepted at the Hearing that I should proceed on the basis of Ms Kreisberger's explanation that the essential reason why Aramark had not complied with the statutory time limit was its solicitor's misinterpretation of rule 112. Indeed, he founded on that explanation as the basis for his own submissions. In light of Mr Williams' position, I am prepared to proceed on the basis of the explanations provided by Ms Kreisberger, to the extent that those supplement the evidence contained in Mr Miah's statement.

D. FORUM

24. Aramark, though incorporated in England & Wales and with an office in London, conducts its offshore catering and facilities management business from premises in Aberdeen. Entier Limited is a company incorporated in Scotland with its head office and place of business in Aberdeenshire. The market affected by the Transaction is the provision of offshore catering and other services on the UK Continental Shelf. The CMA, for its part, is the UK competition regulator and has its head office in London.

25. In the Notice, Aramark proposes, without any supporting argument, that these should be proceedings in England & Wales. At the Hearing, I gave the parties an opportunity to address me on the appropriate forum. Mr Williams told me that the CMA did not take a strong position either way. Whilst the CMA did not object to England & Wales being the forum, he did not seek to persuade me against my preliminary conclusion that Scotland is the appropriate forum. Ms Kreisberger, on behalf of Aramark, did not wish to add anything.

26. I have taken counsel's observations into account. On the face of the information available to me at this stage, the balance favours treating these as proceedings in Scotland. Whilst both parties have offices in London, the Transaction concerns the acquisition of a Scottish company, trading in Scotland, by a company which, though it has an office in London, also conducts its relevant business activities from a base in Scotland. Mr Williams acknowledged, in my view rightly, that the location of the CMA's head office is not a strong factor when the CMA is the regulator for the UK as a whole.

27. I accordingly determine that, for the purposes of this application, these are proceedings in Scotland.

E. THE TRIBUNAL RULES ON THE COMPUTATION OF TIME

28. Although the parties are now in agreement about the interpretation of rule 112 of the Tribunal Rules, I propose to record the argument which was advanced on behalf of Aramark, the agreed position of the parties and my own reading of the rule. I do so for two reasons. First, Ms Kreisberger, whilst making clear that she did not dispute the CMA's interpretation of the rule, made a submission with a view to supporting the contention that Simpson Thacher & Bartlett's erroneous interpretation had "*some basis in the language"* of the rule. Second, Mr Williams, on behalf of the CMA, specifically asked me to write on the issue, on the basis that this may be of assistance in the future.

29. In the Application, Aramark advanced two alternative arguments in support of the contention that the filing deadline was 5 pm on Friday, 13 February 2026:

    (i) First, Aramark contended that the relevant point in time for the purposes of the running of time was when the CMA sent Aramark's advisers the fully unredacted (confidentiality ring) version of the CMA's final report. It was only when Aramark had received that version that it could make a full assessment of the merits of applying for a review of the Decision. Reference was made to *Federation of Wholesalers v. OFT* [2004] CAT 11, [24] and *Meta Platforms Inc v. CMA* [2022] CAT 26, [148]. Since that version was received after 5 pm on Thursday, 15 January 2026, the appropriate starting date for calculating the four-week period was the following day, Friday, 16 January 2026, with the consequence that the time for filing the Notice expired at 5 pm on Friday, 13 February 2026.

    (ii) Second, Aramark contended that, in any event, the period of time stated in rule 25(1) is expressed in weeks, and therefore rules 112(2) and (3) apply. Rule 112(2) excludes the day of notification from the period of time in question. Rule 112(3) should be read in light of rule 112(2), which excluded Thursday, 15 January 2026 from consideration. For the purposes of rule 112(3), the four-week period accordingly commenced on Friday 16 January 2026, with the consequence that the time for filing the Notice expired at 5 pm on Friday 13 February 2026.

30. In its written reply to the Application, the CMA advanced the following submission on the interpretation of rule 112:

(i) Rule 25(1) requires a notice of application to be filed "*within"* four weeks of *"the date on which the applicant was notified of the disputed decision or the date of publication of the decision, whichever is earlier"*.

(ii) A requirement to do an act "*within"* four weeks of a given date requires the act to be done before the expiry of four weeks from that date. Thus, a requirement to take a step within four weeks of a Thursday (the "first Thursday") means that the step must, other things being equal, be taken before the end of the Wednesday on the fourth week.

(iii) However, rule 112(2) has the effect that the first day of the four-week period is not counted. In the example given, the first Thursday does not count, and the period, which would otherwise have expired on the fourth Wednesday after the first Thursday, expires on the fifth Thursday. This ensures that the applicant has the full period of four weeks available, regardless of when in the first Thursday the disputed decision was notified to it.

(iv) Rule 112(3) provides clarity by spelling out when the four-week period ends.

31. At the Hearing, Ms Kreisberger expressly intimated that she agreed with the CMA's analysis of the rules. Although I have accordingly not heard oral argument on the point beyond a brief discussion with counsel about the interpretation of rule 112(2), I have considered the competing written submissions which were filed. In my view, Aramark was plainly right to accept that the Notice was filed late.

32. The first argument advanced in the Application – that because the fully unredacted (confidentiality ring) version of the CMA's final report was sent to Aramark's advisers after 5 pm on Thursday, 15 January, time only started to run on Friday, 16 January – is plainly wrong. Rule 112(1) provides: "*Unless otherwise specified, an act required by the Tribunal, the President, a chairman or the Registrar, or by these Rules, to be done on or by a particular day shall be done before 5pm on that day."* It has no bearing on the start point for the running of time under rule 25(1). Its only relevance is to require the notice of

application to be filed before 5 pm on the last day for filing. In any event, the CMA's decision was published before 5 pm on Thursday, 15 January.

33. The second argument – that rule 112(2) required Thursday, 15 January to be excluded from consideration and that against that background rule 112(3) meant that time started to run from Friday, 16 January – is also wrong. Rule 25(1) provides, so far as relevant, that an application under section 120 of the 2002 Act "*shall be made by filing a notice of application within four weeks of the date on which the applicant was notified of the disputed decision or the date of publication of the decision, whichever is earlier*". This is "*a period expressed in weeks"*. Rule 112(3) accordingly clearly applies. That rule, read short, provides: "*A period expressed in weeks … ends with the expiry of whichever day in the last week … is the same day of the week … as the day during which the event or action from which the period is to be calculated occurred or took place …"* (emphasis added).

34. The Decision was published (and notified to Aramark's advisers) on Thursday, 15 January 2026. This was "*the day during which the event or action from which the period*" specified in rule 25(1) is to be calculated "*occurred or took place"*. Thursday, 12 February 2026 was the "*day in the last week*" (ie four weeks later) which was "*the same day of the week*" as that day. It follows that the period specified in rule 25(1) ended "*with the expiry of*" Thursday, 12 February 2026. By virtue of rule 112(1) time expired at 5 pm on that day. The Notice, sent to the Registry on 13 February 2026, was accordingly filed out of time.

35. Paragraph 4.17 of the Guide states the position as follows: "*In respect of applications pursuant to section 120 of the 2002 Act … the last day for filing the application is normally the day which falls on the same day in the fourth week after the date on which the applicant was notified of the disputed decision."* Apart from the elision of notification and publication (both of which, in this case, occurred on Thursday, 15 January), this passage accurately states the position. The word "*normally"* is explained by reference to rule 112(5), by virtue of which, if, in a case to which rule 112(3) applies, the "*same day in the fourth week"* is a Bank Holiday, the application is filed in time if it is filed on the next following day which is not a Saturday, Sunday or Bank Holiday.

36. The CMA contends that rule 112(2) also applies to the present case with the same effect as rule 112(3); and Ms Kreisberger accepts that this interpretation is correct. Mr Williams submitted that the phrase "*moment at which an event occurs or an action takes place"* in rule 112(2) can be read to apply to rule 25(1) in which time runs from "*the date on which the applicant was notified of the disputed decision, or the date of publication of the decision, whichever is the earlier".* Rule 112(2), he said, is concerned with the start date of the relevant period; rule 112(3) with the end date.

37. On the hypothesis that rule 112(2) applies to the present case, I accept the agreed position of counsel that, for the reasons explained in the CMA's written submission, this would also have the consequence that the time limit expired at 5 pm on Thursday, 12 February. But I am not convinced that rule 112(2) does apply to this case, and I accordingly reserve my position in that regard. Rule 112(2) is concerned with a time period which "*is to be calculated from the moment at which an event occurs or an action takes place"* (emphasis added). In such a case, rule 112(2) excludes from consideration the day on which the event occurs or action takes place. It accordingly displaces any argument, which might otherwise be advanced, that in such a case time runs from moment to moment – the approach to the computation of time which in Scots law is called *naturalis computatio:* see *Stair Memorial Encyclopaedia of the Laws of Scotland*, vol. 22, s.v. "Time", para. 820.

38. Rule 25(1) does not specify a "*period expressed in days, weeks or months"* which *"is to be calculated from the moment at which an event occurs or an action takes place"* (emphasis added). Rather, it specifies that a notice of application is to be filed within four weeks of "*the date on which the applicant was notified of the disputed decision, or the date of publication of the decision, whichever is the earlier"* (emphasis added). It would follow, if rule 112(2) has the meaning and purpose which I have suggested, that, contrary to the common position of the parties at the Hearing, it does not apply to the running of time for the purposes of rule 25(1). Since rule 112(3) was plainly engaged, with the effect which I have already explained, my reservation about the application of rule 112(2) would have no practical impact on the outcome of the present case.

39. Although, for this reason, I doubt whether rule 112(2) applies to the circumstances of this case, I do not consider there to be reasonable room for debate as to the effect of rule 112(3).

F. THE TIMING OF ARAMARK'S APPLICATION UNDER RULE 25(3)

40. Paragraph 4.20 of the Guide states: "*Any application for an extension of time must be made a reasonable time before the prescribed period has expired and reasons for the application must be given.*" In *Lyons v Office of Communications* [2025] CAT 30 (*"Lyons"*), [18]-[20], Roth J observed that the Tribunal Rules themselves do not require an application to be made before the expiry of the relevant time limit and that the Guide cannot over-ride the Rules. I agree with him.

41. Rule 25(3) is framed as a limit on the power of the Tribunal to extend time. The Tribunal's power to extend time limits is to be found in rule 19(2)(m) and this power explicitly applies whether or not the time limit has expired. I do not consider that a requirement to bring an application to extend the time limit specified in rule 25(1) before the time limit has expired can or should be implied into rule 25(3) or otherwise. Consistent with that view, the Tribunal has considered a number of retrospective applications, three of which are referred to in paragraph 4.21 of the Guide: *Prater Ltd v. OFT* [2006] CAT 11 (*"Prater"*); *Fish Holdings*; *Somerfield Stores Ltd & Others v. OFT* [2013] CAT 5, on appeal [2014] EWCA Civ 400 (*"Somerfield Stores"*).

G. ARAMARK'S APPLICATION TO EXTEND THE TIME LIMIT: THE PARTIES' SUBMISSIONS

42. Aramark's position changed markedly in the short period between the filing of the Application and the Hearing. Not only did it accept that it had been proceeding on a mistaken interpretation of rule 112; it also significantly altered the grounds upon which it contended that the Tribunal should conclude that the circumstances are exceptional. By the Hearing, the issues were focused principally by the CMA's written reply and the reply submissions prepared by Aramark's counsel. I had the benefit of counsel's oral submissions at the

Hearing. In addition, as I have explained, I also have written submissions, filed after the Hearing, addressing the surrogacy principle.

The Application

43. The Application advances the following points in support of Aramark's contention that the circumstances are exceptional:

- The CMA provided Aramarks' external advisers with the fully unredacted (confidentiality ring) version of the Decision after 17:00 on 15 January.
- That version of the Decision has been heavily relied on in the preparation of the notice of application.
- The applicant's interpretation of rule 112 was reasonable, in particular to reconcile rules 112(2) and (3).
- Simpson Thacher & Bartlett had alerted the CMA to their intention to file by the end of the week.
- No prejudice has been caused to the CMA given Simpson Thacher & Bartlett's early and constructive engagement with the CMA.

The Application also points out that the extension which Aramark seeks is a short one, namely from 17:00 on 12 February 2026 to 13:00 on 13 February 2026. Although the Application advances the argument, which I have set out above, to the effect that the Notice was filed timeously, it does not explain why the Notice was not filed before 17:00 on 12 February 2026.

The Latham & Watkins Submission

44. The Latham & Watkins Submission invites me to apply the approach taken to relief from sanctions under CPR 3.9, specifically that articulated in *Denton v. TH White Ltd* [2014] EWCA Civ 906 ("*Denton"*). Applying the *Denton* framework, Latham & Watkins invite me to consider: (a) the seriousness and significance of the breach; (b) the reasons for the breach; and (c) all the circumstances of the case.

45. As regards the seriousness and significance of the breach, Latham & Watkins advance the following arguments in support of their contention that the delay was not serious or significant:

- Lateness should be measured by reference to the working day, and on that footing, the notice of application was filed three hours and three minutes later than a filing at 16:49 on 12 February.
- The CMA was well aware of the pending appeal and could not in good faith contend that it had sustained any prejudice.
- The late filing has caused no delay to the running of the case, nor any prejudice which could be deemed to contravene the over-riding objective of the efficient conduct of proceedings.
- The application for relief has been made expeditiously.

Latham & Watkins rely on the following as examples of the cases concerning missed deadlines where the Courts have retrospectively granted relief from sanctions: *R (Good Law Project) v. Minister for Cabinet Office* [2022] EWCA Civ 21; *Walker v. Official Receiver* [2021] EWHC 2868 (Ch); and *Crichton v. Wellingborough BC* [2002] EWHC 2988 (Admin).

46. Latham & Watkins rely on "*the explanation for the breach*" provided by Simpson Thacher & Bartlett (although, as I have observed above, no such explanation appears either in the Application or in Mr Bavasso's statement). Latham & Watkins contend that regardless of the view taken by the Tribunal as to whether there were good reasons for the breach, the analysis need not turn on this limb in isolation given what they contend to be the compelling nature of the first and third limb of the *Denton* analysis.

47. Latham & Watkins advance the following additional submissions:

- The appeal is against a decision which ordered divestment of Entier Ltd's UK business. This is merger control's most serious and onerous remedial outcome. It affects freedom of contract and enjoyment of property.
- A successful challenge would be of utmost importance not only to Aramark, but to the wider public interest in the judicial accountability of the CMA in the exercise of its most onerous powers.

- In the context of recent debate about the proportionality of the CMA's merger control interventions, it would be regrettable if an investor into the UK were to be unable to exercise its limited right to challenge the Decision because its application had been filed a matter of hours late.
- Whilst the loss of an appeal by reason of "*counsel error"* could give rise to a claim against the lawyers concerned, a remedy against Aramark's lawyers would manifestly be inadequate in a case such as the present.

Latham & Watkins conclude by observing that access to the Tribunal is the only means of providing Aramark with access to justice, that there is a wider public interest in effective judicial review of CMA's use of its strongest merger control power, and that the relief sought is in respect of a breach which cannot reasonably be said to have caused the CMA any prejudice, which, say Latham & Watkin, is "*not worthy of being treated as an outcome-determinative 'serious' or 'significant' mistake".*

The CMA

48. In its written reply, the CMA contends that "*[n]one of the circumstances identified by Aramark comes close to meeting the threshold for an exceptional circumstance".* It observes that the time limits in the Tribunal Rules reflect the need for finality and legal certainty in decision-making. The short time limit in rule 25 recognises the urgency with which applications for review of merger decisions must proceed. Relying on *British Sky Broadcasting Group plc v. CMA* [2008] CAT 1 ("*BSkyB*"), [27], the CMA contends that the time limits are and should be applied strictly, and that "*exceptional circumstances*" is a narrow test which will arise rarely. The CMA contends that if the time limits were disapplied for "*weak reasons such as those advanced by Aramark"* they would cease to have any meaning.

49. The CMA advances the following arguments in answer to the points made in the Application:

- Since 15 January 2026 does not count towards the four-week time limit, the fact that the unredacted decision was notified after 5 pm on that date "*goes nowhere".*

- Aramark's interpretation of the rules was not reasonable. The rules have been in similar form since 2003. The interpretation advanced by Aramark has not been advanced in any decided case. The rules have not caused practical difficulty.
- Aramark's interpretation is contradicted by the Tribunal's Guide to Procedure. It was not reasonable for Aramark to rely on a novel and untested interpretation of the rules which is at odds with the Tribunal's published guidance.
- Aramark does not explain why its communication to the CMA of its intention to file "*by the end of the week"* or the communications about potential hearing dates justify an extension of time.
- The absence of prejudice to the CMA is not an exceptional circumstance. The logic of Aramark's position would be that a time limit is not meaningful as long as it causes no specific prejudice. This fails to recognise the inherent prejudice to the regime if time limits are undermined. The CMA relies on observations in *Fish Holdings*, at paragraphs [21] and [22]. Those observations apply, say the CMA, with even greater force to the merger regime.

50. The CMA contends that the Latham & Watkins Submission does not address the relevant legal framework, specifically the exceptional circumstances test under rule 25(3). The authorities upon which Latham & Watkins rely were concerned with a materially different test under different rules. To the extent that Latham & Watkins rely on "*counsel error",* that is not an exceptional circumstance.

Aramark's reply submissions

51. Counsel's written reply submissions on behalf of Aramark draw attention to the governing principles in rule 4 of the Tribunal Rules. They note that the Tribunal has previously granted applications for an extension of time, including retrospectively (*Prater*) and in respect of merger decisions (*BSkyB*; *Lexon (UK) Ltd v. CMA,* Case 1344/1/12/20 ("*Lexon (UK"*); *Sabre Corporation v. CMA,* Case 1345/4/12/20 ("*Sabre Corporation"*); *JD Sports Fashion plc v. CMA,* Case 1354/4/12/20 ("*JD Sports Fashion"*); *Accord-UK Ltd v. CMA.* Case 1413/1/12/21 ("*Accord-UK"*); *Flynn Pharma v. CMA,* Case 1525/1/12/22 ("*Flynn Pharma"*); *Advanz Pharma Corp v. CMA,* Case 2021-22 ("*Advanz Pharma"*)). Counsel contend that the question of whether the exceptional

circumstances test is met necessarily depends on the facts of each case. In *BSkyB* the threshold was met by reason of a combination of circumstances. Counsel do not maintain the position advanced by Latham & Watkins that the *Denton* principles apply to rule 25(3), although they contend that the criteria identified in *Denton* are helpful when considering whether the circumstances are exceptional. These are, they say, the very matters to which the Tribunal has regard when deciding whether there are exceptional circumstances.

52. Counsel advance the following contentions in support of the contention that the Tribunal should be satisfied that the circumstances in this case are exceptional:

- The delay was minimal. Aramark derived no advantage from it and acted quickly once the error was highlighted.
- The delay will have no impact on the conduct of the litigation. Mr Bavasso had engaged constructively with the CMA and had identified a possible listing window which remains viable.
- The CMA has suffered no prejudice. Throughout the four-week period the CMA was aware that an application for review was in contemplation. The CMA did not respond to the statement on 10 February that Aramark intended to file "*by the end of the week"* to raise any concerns.
- This is not a case where the observation in *Fish Holdings* that there is inevitable prejudice to legal certainty whenever time is extended applies. The CMA was on notice and could not reasonably assume that the Decision was definitive and unchallenged.
- The reason for delay was a genuine error about the effect of rules 112(2) and 112(3). The error arose from a good faith interpretation of the rules. Aramark acted promptly when the error came to light, urgently filing an application for an extension of time and instructing another law firm to assist.
- The consequences of refusing relief would be extreme and irreversible. Aramark would lose the right to challenge the unwinding of its UK acquisition. Divestment is the most intrusive merger remedy. It interferes with property rights and the market. The severity of the consequences is, say counsel, a relevant consideration; otherwise, there would no distinction between, say, a challenge to a divestment order and a reporting requirement. They contend that the Tribunal's decision should be grounded on the relevant facts, including the impact on the applicant, the market and third parties.

Oral submissions for Aramark

53. At the Hearing, Ms Kreisberger developed the position contained in the reply submission. She pointed out that none of the previous cases considered by the Tribunal contains the features of this case, namely, a genuine mistake about the counting rules, a very short extension the grant of which would cause no prejudice, and very severe consequences for Aramark, with structural consequences for the market, if the Application is refused. She referred to *BSkyB,* for the following propositions:

(i) each case turns on its own facts;

(ii) the test of exceptional circumstances sets a high bar; and

(iii) the assessment of the facts is a broad one, which takes account of all the circumstances.

Ms Kreisberger accepted the observations in *BSkyB* about the importance of respect for deadlines; but noted that in that case an extension of time was granted essentially for reasons of case management and convenience. She argued that the present case was not a case of a failure to treat the deadline with importance; on the contrary, Aramark's legal team were working to meet what they in good faith believed to be the deadline.

54. Ms Kreisberger made five observations arising from the caselaw.

(i) Under reference to *Lyons,* she observed that there is no statutory bar to a retrospective application. She argued that the retrospective nature of the application made no difference to the approach: the same points would have arisen had the mistake been identified at 16:50 on Thursday, 12 February, too late to file timeously.

(ii) She observed that the extensions of time which have been granted have differed widely in duration. She noted that in *Advanz Pharma* a fifteen-day extension was described as a "*modest period"*.

(iii) Under reference to *Allergan plc v. CMA* [2021] CAT 26*,* she submitted that the CMA's position on the Application is not determinative. The assessment of whether the circumstances are exceptional is for the Tribunal.

(iv) She noted, giving the example of *Flynn Pharma*, that a number of cases rely on the absence of prejudice to the respondent.

(v) Under reference to *Fish Holdings Ltd* she submitted that the CMA had not been entitled, at any stage, to assume that the decision was definitive and final. From an early stage, Mr Bavasso was warning the CMA that a notice of application would be coming and was seeking early and proactive engagement.

55. Ms Kreisberger made clear that she was not relying on the *Denton* line of authority. She contended that the authorities support a holistic assessment of circumstances and that the following factors, in combination, justify characterising the circumstances of the present case as exceptional:

(i) Aramark's lawyers made a good faith mistake about the interpretation of rule 112. I should not, said Ms Kreisberger, artificially conflate Aramark and its lawyers. Whilst the error was made by the lawyers, it is Aramark which will suffer the adverse impact if the Application is refused.

(ii) The mistake was immediately identified. The short period of extension required will have no impact on the proceedings. The parties had been liaising with a view to a hearing in June 2026.

(iii) There would be no prejudice to the CMA in granting the Application. Aramark's lawyers engaged in a prompt and transparent dialogue with the CMA. The CMA could not have assumed that its decision was definitive. Ms Kreisberger drew my attention to the email to Mr Barnett on Tuesday, 10 February which intimated an intention to file the Notice "*by the end of the week".* She stated that "*for whatever reason"* the CMA "*remained silent*" and "*chose not to respond"* until the deadline had passed.

(iv) If the Application is refused, Aramark will suffer what Ms Kreisberger characterised as "*extreme"* and irreversible consequences. Aramark would have no possibility of redress against the forced unwinding of the Transaction. Ms Kreisberger observed that a divestment order is the most onerous remedy the CMA can impose. It is a serious interference with freedom of property. The nub of the case, she said, is that Aramark seeks a very modest extension of a few hours which would cause no material prejudice to the CMA, to the Tribunal or to the progress of the case but would avoid far-reaching and permanent consequences for Aramark.

(v) The ramifications would, Ms Kreisberger said, extend beyond Aramark's interests. There would be an effect on the market for offshore catering services, for third parties operating in that market and for buyers and consumers. If the Decision is, as Aramark contends, irrational, refusing the extension would enshrine the adverse effect of the Decision

on the market. For this reason, Ms Kreisberger contends that the case engages a wider public interest.

Ms Kreisberger submitted that this particular combination of factors had not previously arisen in the Tribunal and that granting the application would not have any impact on other cases.

Oral submissions for the CMA

56. Mr Williams' headline submission was that circumstances do not, individually or in aggregate, meet the threshold for exceptional circumstances. He noted, under reference to *Prater*, [30], and *BSkyB*, [27], that the Tribunal expects strict adherence to time limits. He referred to paragraphs [32] and [41] of Vos LJ's judgment in *Somerfield Stores,* for the public interest in finality and certainty. This was particularly stark, he said, in merger cases because these affect not only the parties but competitors and other stakeholders. There is, in such cases, a particular need for clarity, for strict time limits and for those to be robustly maintained.

57. Mr Williams drew my attention to *BSkyB,* paragraphs [25] and [27], in support of the proposition that exceptions will be rare. He noted that in *Somerfield Stores,* at paragraph [41] and elsewhere, Vos LJ had referred to "*exceptional circumstances justifying an appeal out of time".* He submitted that this formulation recognised that, in the context of rule 9 or rule 25, the exceptional circumstances must be such as to justify an appeal out of time. At paragraphs [26], [43], [44] and [46], Vos LJ had made clear that the first question in considering a retrospective application is "Why did the applicant not lodge an appeal in time?" Whilst Mr Williams made clear that he was not contending that this is a "*gateway*" in the sense that there is a "*two-stage test",* nevertheless he submitted that it is a "*fundamental part of the inquiry*" to ask whether there is an exceptional reason why the time limit was not complied with and why additional time should be granted.

58. Mr Williams accepted that the reason in this case why the time limit was not complied with was that Aramark, through its advisers, had mis-read the Rules. He submitted that their good faith makes no difference. He contended that the

mis-reading was unreasonable. Aramark's ultimate position suggests that it has concluded that there is no real ambiguity in the rules and that the point is not seriously arguable. In any event, the Guide makes the position clear. Mr Williams invited me to take the view that an important point of principle arises – namely, whether the exceptional circumstances doctrine can operate to excuse parties where their advisers have mis-read the rules. He urged me to take the view that it could not. The rules apply to everyone. Aramark have given no good reason why the rules should not be applied to them. At least as a general proposition the exceptional circumstances doctrine does not, he said, operate to excuse parties from their own mistakes or mistakes of their advisers.

59. Mr Williams referred me to paragraphs [25] and [26] of *BSkyB* for observations by previous Presidents of the Tribunal about *force majeure.* Whilst he did not suggest that an extension of time could only be granted where there was *force majeure,* he submitted that the extent to which events were within a party's control or not is highly relevant. He supported that submission by reference to *Fish Holdings, Prater, Somerfield Stores* and *RG Carter Ltd v. OFT* [2011] CAT 25 (*"RG Carter*"). He noted that *Fish Holdings* (in which the application was refused) concerned a simple error by the party's representatives; and that in *Prater* it was only the intervention by the Tribunal Registry which justified the extension. He submitted that there is no reason why a party which, through its lawyers, misreads the rules should be in a better position than a party whose lawyers get the Tribunal's address wrong (as in *Fish Holdings)* or get stuck in traffic (as in *Prater*).

60. Mr Williams questioned whether an applicant which does not have a satisfactory answer to the "*fundamental question*" identified by Vos LJ in *Somerfield Stores* could ever satisfy the test. He noted, under reference to paragraphs [50] and [51] of the Tribunal's decision in *Somerfield Stores*, that the Tribunal had not even accepted the EU doctrine of excusable error; it followed, he said, that "*errors don't cut it".* In *Fish Holdings* and *Prater* no distinction had been drawn between the lawyers (who were responsible for the error) and their clients (who suffered the consequences). Mr Williams contended that if the Tribunal were to draw such a distinction, it would effectively lead to the "*collapse of the time limits*".

61. Mr Williams contended that the cases in which a prospective application for extension had been granted were of no assistance in the present case. He argued that the shortness of the extension sought in this case could not, in itself, be a material factor: this would lead to a "*collapse of the time limits".* As to prejudice, he contended that this is not considered only from the point of view of the CMA, and that erosion of the time limits is itself prejudicial to the statutory regime. He argued that "*exceptional circumstances"* is a narrow gateway, which was properly construed by the Court of Appeal in *Somerfield Stores.* Further, he argued that the need for finality and certainty does not fall away simply because a party has intimated its intention to appeal; Mr Williams told me that such statements, in practice, are not always followed through.

62. Mr Williams told me that a divestment remedy (or a prohibition remedy in the case of an anticipated merger) is not exceptional – indeed, he said that such a remedy is "*extremely common"* in cases where a section 120 challenge is brought. He contended that the weight attached by Ms Kreisberger to this consideration did not reflect the relevant legal test, which is not concerned with the balance of justice, or proportionality, but with whether there are exceptional circumstances justifying an extension of time. He said: "*in a regime which applies specifically to these sorts of transactions and which is specifically used to challenge these sorts of decisions, the applicant can't get any mileage out of the fact that they want to challenge the very sort of measure which is the sort of measure one sees in these sorts of cases".*

63. Whilst Mr Williams did not suggest that I should shut my mind to these considerations, his submission was that unless I was persuaded there was a good reason to justify an extension of time, the shortness of the extension required and the nature of the divestment order would not be factors *"capable of moving the dial in favour of an extension of time".* Nor, in his submission, did the exchanges of emails with the CMA affect the position. His submission was that "*if the subtext is that in some way the CMA has contributed to Aramark's error or to a situation where the rules weren't complied with, it is wrong".* He contended that, fairly read, the correspondence did not put the CMA on notice that Aramark was proceeding on a misinterpretation of the rules. Even if the

correspondence had done so, this would not have been a weighty factor: it is not, he said, the CMA's responsibility to advise parties on the rules.

Aramark's reply

64. In her short reply, Ms Kreisberger, among other things, accepted that the formulation, "*exceptional circumstances justifying an extension of time"*, used by Vos LJ in *Somerfield Stores* correctly encapsulates what needs to be shown in order to justify an extension of time.

Aramark's submission on the surrogacy principle

65. In its written submission on the surrogacy principle, Aramark advanced the following contentions:

(i) It would be incorrect to say that in all circumstances the fault of a client's legal representatives is imputed to the client: *Public Prosecutor's Office of the Athens Court of Appeal v. O'Connor* [2022] 1 WLR 903 ("*O'Connor"*) at [38]; *FP (Iran) v. Home Secretary* [2007] EWCA Civ 13 ("*FP (Iran)"*), at [41], [46], [48]; *Pomiechowski v. District Court of Legnica, Poland* [2012] 1 WLR 3156 ("*Pomiechowski"*) at [37] – [39].

(ii) In a number of cases, the Court has declined to apply the surrogacy principle, and has concluded that it would be unjust not to grant an extension of time where a filing deadline has been missed as a result of the fault of the legal representative: *O'Connor; Sun v. GMC* [2023] EWHC 1515 (Admin) ("*Sun"*); *MacCallum v. Education Secretary* [2024] EWHC 87 (Admin) ("*MacCallum"*); *Thilliainayagam v. GMC* [2025] EWHC 1253 (Admin) ("*Thilliainayagam")*.

(iii) In *R (Good Law Project Ltd) v. Health Secretary* [2022] EWCA Civ 355 ("*Good Law Project"*), the Court of Appeal fixed the client with the acts and omissions of its solicitors. But the Court in that case did not consider *Pomiechowski* or *FP (Iran).* It was a case which involved "*serious carelessness"* and, in any event, the claimant, a stranger to the procurement process under challenge, had not suffered any prejudice on its own behalf.

(iv) Whether or not the surrogacy principle is formally engaged in proceedings before this Tribunal, the Tribunal has a broad discretion to weigh up all the material considerations (including who bears responsibility for the error) and to reach an evaluative judgment as to whether the circumstances as a whole are "*exceptional"*.

(v) The authorities show that there should be no imputation of solicitor fault to the party where, taking account of the relevant facts, such imputation would be unjust. In particular, the courts have declined to impute fault to the party where one or more of the following considerations exist: (a) the fault is entirely that of the lawyer; (b) the party is blameless; and (c) damages, by way of a professional negligence claim against the solicitor, would not be adequate compensation.

(vi) Each of these considerations applies in the present case. In combination, they amount to exceptional circumstances. The error was the solicitor's alone. Aramark is blameless. Damages would not be an adequate remedy. The divestment, once effected, could not be undone; the injustice, if it is an unlawful interference with Aramark's property rights, would be "*irredeemable".* The harm would not be confined to Aramark but would affect the market.

(vii) With only one exception, the cases where retrospective extensions have been refused by the Tribunal have involved delay resulting from the party's conduct, not solicitor error (*Hasbro UK Ltd v. Director General of Fair Trading* [2003] CAT 1*; RG Carter*; *Somerfield Stores; Lyons*). The one exception, *Fish Holdings,* predated the cases on the surrogacy principle upon which Aramark relies; further, all of these cases concerned financial penalties, where, if the opportunity to challenge the decision had been lost as a result of lawyer negligence, damages would be an adequate remedy.

The CMA's submissions on the surrogacy principle

66. In its written submissions on the surrogacy principle, the CMA advanced the following contentions:

(i) Whilst the surrogacy principle is not a universal rule, there is a strong line of appellate authority that it should be applied where errors have been made by lawyers in commencing proceedings, so as to maintain the effectiveness of strict time limits: *Atkas v. Adepta* [2010] EWCA Civ 1170 ("*Atkas"*) at [71]; *Ideal Shopping Direct Ltd a.o. v. Visa Europe Ltd* [2020] EWHC 3399 (Ch), on appeal [2022] EWCA Civ 14 ("*Ideal Shopping Direct"*); *Good Law Project*. These cases specifically reject the proposition that solicitor error would be a reason to grant an extension of time.

(ii) Consistently with these authorities, the Tribunal has not allowed parties to escape from deadlines because of lawyer error: *Fish Holdings.* The Employment Appeal Tribunal has adopted a similar approach, which has been upheld in the Court of Appeal: *United Arab Emirates v.*

Abdelghafar [1995] ICR 65; *Green v. Mears* [2018] EWCA Civ 751, at [9], [21] and [39]; *Jurkowska v. Himad Ltd* [2008] EWCA Civ 231 at [65]. This Tribunal's approach is consistent with the general approach of the civil courts and tribunals.

(iii) There are obvious reasons of public policy for fixing clients with the acts and omissions of solicitors where those errors result in a failure to comply with strict time limits even by a very brief period. In the Tribunal proceedings tend to be complex and led by specialist external lawyers. If time limits were capable of being disapplied because of the errors of lawyers, they would be seriously undermined and the time limits would risk becoming meaningless.

(iv) The right of access to courts under Article 6 ECHR may be subject to limitations, including time limits, provided these do not impair the very essence of the right: *Tolstoy Mitoslavsky v. UK* (1995) 20 EHRR 442 ("*Tolstoy Mitoslavsky"*); *Stubbings v. UK* (1997) 23 EHRR 213 ("*Stubbings"*), [48]-[50]; *Barton v. Wright Hassall* [2018] UKSC 12, [24].

(v) Applying this law, there is a line of authority where individual applicants have had recourse to Article 6 to avoid the injustice which would arise from inflexible time limits which do not accommodate an extension even in exceptional circumstances. In some of these the Court has declined to apply the surrogacy principle: *Pomiechowski; R (Adesina) v. Nursing and Midwifery Council* [2013] EWCA Civ 818 ("*Adesina"*); *Stuewe v. Health and Care Professions Council* [2022] EWCA Civ 1605 ("*Stuewe"*); *MacCallum; Sun; Thilliainayagam*.

(vi) The present case is materially different, because the Tribunal has express power to extend time in exceptional circumstances and an established approach to the exercise of that power. Article 6 does not demand the disapplication of the surrogacy principle whenever the issue is whether the claimant should be allowed to initiate proceedings out of time. The appellate authorities proceed on the basis that an error by a lawyer is a bad and inadequate reason for an extension of time in the context of time limits that are strictly applied for strong reasons of public policy.

(vii) There is nothing in the line of authority following *Pomiechowski* which requires a different approach. Maintaining the strictness of the time limit in the present case could not impair the very essence of Aramark's access to the Tribunal. There is manifestly a reasonable relationship between not permitting an extension on the present facts and the objective of maintaining strict time limits.

(viii) The following features of the present case support the conclusion that Aramark should not be allowed to rely on its lawyers' error:

(a) Merger proceedings are specialist proceedings that are invariably led and managed by external lawyers. The lawyers play a central role. If parties were able to distance themselves from the actions of their lawyers, the Tribunal's time limits would be severely compromised.

(b) Urgency is a distinctive and over-riding feature of merger cases. There is a particularly strong need for speed and certainty. There is manifestly a reasonable relationship between maintaining the time limit in this case and a legitimate aim. The *Pomiechowski* line of authority does not require a departure from the strict approach taken to time limits in contexts such as the present (*Adesina,* [15]).

(c) The four-week time limit is short but proportionate. Parties do not bring forward applications from a standing start. Aramark was seeking to file on 12 February 2026. Refusing an extension would not impair the very essence of Aramark's right of access to the Tribunal.

(d) In each of the Article 6 cases where the Court departed from the surrogacy principle there were particular circumstances which impaired the applicant's access to the court. The present case is a "*simple case of lawyer error"* which has more in common with the cases under the CPR.

(e) The consequences for Aramark of not being able to challenge the CMA's merger decision are not equivalent to the serious consequences for individuals in the *Pomiechowski* line of cases, where the consequences included loss of liberty and loss of employment or professional standing. In the present case, the divestment of Entier will be for consideration. The CMA concluded there were likely purchasers. Applying the *Pomiechowski* line to cases solely concerned with commercial interests would be a marked expansion of the principle applied in those cases.

(f) Because of the dearth of evidence, the Tribunal is unable in the present case to make a finding that the client personally did everything it could to bring the application timeously. The internal deadline of 12 February was not met because the lawyers needed to obtain instructions. In *Ideal Shopping Direct* the Court held that "*difficulties in obtaining instructions"* was not a good reason for leaving filing until the last minute.

Aramark's reply

67. In reply, Aramark reiterated that there is no general principle of law requiring the imputation of solicitor error to the client. It contended that the only question for the court is whether or not exceptional circumstances exist. Any gloss is

unhelpful (*Stuewe,* [52]). Among other points in response to the CMA's submissions, it contended that the CMA's reliance on the Employment Appeal Tribunal caselaw is misplaced, that a decision to grant the present application would not open the floodgates and that the material factors in the present case are unlikely to be replicated widely or at all. Aramark criticised the CMA for minimising the "*gravity"* of a divestment order, which would result in what it characterised as a "*compulsory fire sale"*. The majority of section 120 applications were filed on the date of the deadline.

The CMA's reply

68. The CMA's reply addressed Mr Miah's statement. It contended that the evidence filed by Aramark lacks detail and does not candidly explain why the stated plan to file on Thursday 12 February slipped. It does not show that Aramark did everything it could to ensure the application was filed on time. It tends to confirm that Aramark materially contributed to the delay by providing late comments or instructions. These considerations bolster the CMA's submission that no exceptional circumstances exist, and provide grounds, said the CMA, in any event, to reject the application as a matter of discretion. The CMA further took issue with the analysis of the law presented by Aramark, responding in detail to the points which had been advanced by Aramark in its written submission.

H. DISCUSSION

Rule 25(1)

69. Rule 25 imposes a time limit for initiating proceedings under section 120 of the 2002 Act before the Tribunal. Such a time limit is not incompatible with Article 6 of the European Convention on Human Rights provided it satisfies two conditions (*Tolstoy Mitoslavsky*, [59]*; Stubbings*, [48]-[50]):

(i) The limitation must pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.

(ii) The limitation must not restrict or reduce access to such an extent as to impair the very essence of the right.

Ms Kreisberger has not suggested that rule 25 does not satisfy these requirements.

70. The statutory time limit for initiating proceedings under section 120 promotes legal certainty and finality. As is the case generally with applications for judicial review (of which the right to apply to the Tribunal under section 120 of the 2002 Act may be regarded as a species), there is a public interest in any challenge to a relevant decision of the CMA being brought promptly: *Good Law Project Ltd*, [39]. The specific time limit provided for in rule 25, although relatively short as compared with the time limit under rule 9, reflects the compelling public interest in the speedy resolution of disputes in relation to merger decisions. Legal certainty and finality, and the speedy resolution of disputes in relation to merger decisions are legitimate aims.

71. The Tribunal Rules proceed on the basis that four weeks is generally sufficient time to allow an aggrieved person to initiate proceedings to which rule 25 applies. As the CMA observed, parties do not bring forward such an application from a "*standing start"* but do so on the basis of engagement with the issues during the CMA's inquiry. The Tribunal Rules also provide for time to be extended were the Tribunal is satisfied that the circumstances are exceptional. Ms Kreisberger told me that if Aramark had understood that the deadline for filing the Notice was 5 pm on Thursday, 12 February, it could and would have met that deadline. There were no features of this case which meant that Aramark needed more time than the statutory four weeks to file the Notice.

Rule 25(3)

72. Rule 25(3) permits the Tribunal to extend the time limit only if it is satisfied that the circumstances are exceptional. The word "exceptional" is an ordinary adjective. It describes circumstances which are such as to form an exception, which are out of the ordinary course of things, unusual or uncommon. In the context of rule 25(3), what is *"exceptional"* about the circumstances must be such as to justify a departure from the statutory time limit. The circumstances

in question must be *"exceptional circumstances justifying an appeal out of time"*, to use the formulation articulated by Vos LJ, giving the judgment of the Court of Appeal in *Somerfield Stores* (see paragraphs [41], [42], [56]). Both parties accepted that this formulation encapsulates the test which I should apply.

73. The terms of rule 25(3) makes clear that, unless the Tribunal is satisfied that the circumstances are exceptional, parties must comply with the time limits for initiating proceedings. The Tribunal has repeatedly emphasised the importance of meeting those time limits:

(i) In *Hasbro UK*, the President (Sir Christopher Bellamy) observed:

> "*In my judgment, the general intention behind the Tribunal's rules is that the initial time limit for lodging an appeal is intended to be strict. Cases that do not involve force majeure in the strict sense will, in my judgment, only rarely give rise to 'exceptional circumstances'. As far as the Tribunal is concerned, respect for the deadline in commencing proceedings is, in many ways, the keystone of the whole procedure. In my judgment, therefore, derogations can be granted only exceptionally … That principle, important as it is under the Competition Act, is likely to be even more important when the Tribunal assumes its various new jurisdictions under the Enterprise Act later this year."*

(ii) In *Prater,* the same President made similar observations (at paragraph 30):

> "*The time limit for commencing an appeal under rule 8(1) [now 9(1)] is central to the Tribunal's Rules and the entire case management system operated by the Tribunal. In that context the need for clarity and certainty is paramount. The Tribunal receives a great number of complex and lengthy documents in many different kinds of cases, often within short deadlines. It is imperative that the present Rules be strictly observed."*

(iii) In *BSkyB,* the President (Sir Gerald Barling) observed (paragraph 27):

> "*As the Tribunal has emphasised on more than one occasion … respect for the deadline for commencing an appeal under the Competition Act 1998 and an application under section 120 of the [2002] Act is crucial given the importance and urgency of the matters which are in issue in many such cases. Such deadlines must therefore be strictly adhered to."*

(iv) In *Fish Holdings,* the same President observed (paragraphs 16 and 21):

> "*The Tribunal Rules are clear as to the time within which a notice of appeal has to be received. The importance of adhering to those time limits (which are for the benefit of all litigants as well as the Tribunal, and which are in the interests of legal certainty) has been emphasised on a good many occasions by the Tribunal …"*

74. In *Somerfield Stores,* Vos LJ stated, at [26], that "*it is clear that the words 'exceptional circumstances' should be strictly construed"* albeit "*they are apt to apply to any circumstances that are shown to be truly exceptional".* The Court of Appeal endorsed the Tribunal's analysis of the legal principles in [2013] CAT 5, which included the following observation at [53](1):

> "*The 'exceptional circumstances' test represents a high standard. The mere fact that the Tribunal might have sympathy with the position of an applicant will not be enough (Fish). Nor is it enough that there may be case management advantages in harmonising deadlines for the filing of notices of appeal (Hasbro; BT). Nor, even, where an application is not opposed will the 'exceptional circumstances' test necessarily be satisfied, although this is a circumstance that will be taken into account (Prater; BSkyB).*"

In *BSkyB* the President (Sir Gerald Barling) observed (at [27]): "*... although such circumstances should not be restricted to cases of force majeure, the cases where exceptional circumstances are found to exist are likely, by their nature, to be rare".*

75. Observations to the effect that the words "*exceptional circumstances*" should be "*strictly construed",* that the test represents a "*high standard"* and that cases where exceptional circumstances are found to exist are likely to be "*rare"* do not provide a touchstone for decision-making in individual cases. Such comments do, though, emphasise the public interest which is served by adherence to the statutory time limits, and the requirement for the Tribunal to be satisfied that the circumstances are indeed "*truly exceptional"*, as Vos LJ put it in *Somerfield Stores,* before it may grant an extension of time.

76. In *Somerfield Stores,* another passage in the Tribunal's statement of the legal position which was approved by the Court of Appeal states:

> "*Although the 'exceptional circumstances' test is a high one, there is no numerus clausus: the list of 'exceptional circumstances' is not closed (Hasbro…). It is probably impossible to produce any indicative, let alone comprehensive definition of what is meant by 'the circumstances are exceptional' …"*

I accept this as an accurate statement of the legal position. The Court of Appeal decision in *Somerfield Stores* provides guidance as to the approach which the Tribunal should take where an application is made for an extension of time after

the statutory time limit has expired. In that case, the Office of Fair Trading ("OFT") had issued a decision directed against the applicants and other companies. The applicants had entered into an early resolution agreement, which gave them a discount on penalty if they did not appeal. They chose not to appeal the decision. Other companies did appeal the decision and the appeal was successful. The decision undermined the basis upon which the OFT had proceeded against the applicants. The applicants applied for an extension of time so that they could bring an appeal long out of time. The Tribunal concluded that the circumstances were exceptional and granted an extension of time to allow the late appeal to be brought.

77. The Court of Appeal reversed the Tribunal. Whilst acknowledging, at paragraph [26], that the statutory test did not "*inevitably have any temporal consequence",* Vos LJ observed:

> "*… the first question that must be answered in seeking to establish exceptional circumstances will, as it seems to me, always be: 'why did the appellant not lodge an appeal in time?'"*

The essential error which the Tribunal had made was in not addressing and answering that question. At paragraph [43], Vos LJ stated:

> "*… it seems to me that [the Tribunal] fell into error … It started by employing incorrectly the concept of legitimate expectation, and then placed too much emphasis on the ultimate unfortunate, even messy, outcome, rather than concentrating on whether there was any justification, bearing in mind the need for legal certainty, for the respondents having failed to appeal in time, knowing what they knew at the time."*

At paragraph [44], he observed:

> "*I am far from sure that the Ruling can properly be described as irrational, but I do think, as I have said, that the CAT failed adequately to focus on the reasons why an appeal was not brought within time."*

At paragraph [46], he summed the position up as follows:

> "*Whilst I do not, as I say, think the CAT's decision was irrational, in my judgment neither the ERAs nor the subsequent events undermined the Respondents' ability to bring a timely appeal. This ought, I think, to have been a central feature of the CAT's decision as to exceptional circumstances."*

78. These observations fall to be read in the context of the particular circumstances of that case. Nevertheless, they signal that where an applicant has failed to meet the statutory time limit and seeks an extension of time under rule 25(3), in effect to relieve it from the consequences of that failure, "*the first question will always be: 'why did the appellant not lodge an appeal in time?"* The Tribunal should address its mind to whether there was a "*justification"* for the failure to meet the statutory time limit and to whether there were factors which "*undermined the Respondents' ability to bring a timely appeal".*

79. This is consistent with the approach taken in the two previous cases – *Prater* and *Fish Holdings* - in which the Tribunal has considered applications for a retrospective extension of time following the late filing of an appeal. In each of these cases, the Tribunal focused closely on the circumstances which led to the appeal being filed late, and the outcome of the application was, in those cases, effectively determined by the Tribunal's assessment of responsibility for those circumstances.

80. In *Prater,* the last day for lodging the appeal was Monday 24 April 2006. At 4.30 pm on that date, a representative of the applicant's solicitor attended at the Tribunal's premises and enquired whether it would be a problem if the notice of appeal arrived (which was being conveyed by taxi from Reading) a little later than 5 pm, there being traffic problems. The representative was told that the appeal had to be received by 5 pm to be deemed filed on that day. On reiterating the enquiry at 4.40 pm, the Registry advised that the main body of the notice of appeal could be emailed by the 5 pm deadline, and this was done. The principal documents arrived at 5.39 pm. This was the time of filing in accordance with the then Tribunal Rules.

81. The President (Sir Christopher Bellamy) analysed the reasons why the appeal had been filed late. He would not have accepted that traffic delays would constitute "*exceptional circumstances*". He did not accept the justification advanced for the late preparation of the appeal. But he was unable to rule out the possibility that a hard copy of the notice of appeal could have been filed in time (via the solicitor's office in London or by counsel), if the conversation with the Registry which led to the notice of appeal being emailed had not taken place.

On those "*unusual facts"* he was, "*not without hesitation"*, prepared to regard the circumstances as exceptional.

82. In *Fish Holdings,* the last day for lodging the appeal was Monday, 23 November 2009. The appeal was received by the Registry on Thursday, 26 November. Although the Tribunal considered (at paragraph 21) certain other points made on behalf of the applicant (as regards the complexity and length of the decision being challenged and the absence of prejudice to the OFT), its analysis focused primarily on the reasons why the appeal had been filed late.

83. The reasons for the late arrival of the appeal were threefold. First, the applicant's solicitor had addressed the appeal to the Tribunal's former address (an address which was quoted in the Tribunal Rules). Although he had been advised by counsel of the correct address, and the documents had been amended, in error the address on the covering letter had not been changed. Secondly, the appeal had been sent on Friday, 20 November by Royal Mail Guaranteed Next Day Delivery. Despite the "guarantee" of next day delivery, the package arrived at the Tribunal's former address on Tuesday, 24 November. Thirdly, instead of refusing the package, the current occupier of those premises accepted it and forwarded it by post to the Tribunal's then current address.

84. The President (Sir Gerald Barling) rejected the contention that these were exceptional circumstances. He emphasised that "*it is the sole responsibility of the parties and their legal representatives to ensure that the time limits for filing court documents are complied with. The Guide to Proceedings expressly recommends … that appellants do not wait to the last possible. Moment to lodge appeals – this ensures that any last minute hitches can be avoided".* He observed that even if the Royal Mail had delivered the package in accordance with its "guarantee" and the occupier had rejected the package, there was no certainty that they would have reached the Registry within the few hours remaining: "*it all seems rather predictable given that the documents were sent to the wrong address with a view to their being delivered there only just before the expiry of the time limit".*

85. The President addressed a submission that there would be no prejudice to the OFT in granting the extension in the following terms (at [21]):

> "*As to the argument that there would be no prejudice to the OFT by extending time, I do not agree. Where no challenge to a decision is lodged with the Tribunal within the time allowed for doing so, the OFT and everyone else is entitled to assume that the decision in question is definitive. Where, exceptionally, time is extended that assumption is undermined. It seems to me that there is inevitably some prejudice to legal certainty in that regard, as well as in the effort and expense entailed in defending the decision and processing the appeal. It is for these reasons that the circumstances must be exceptional before time can be extended."*

86. The Latham & Watkins Submission relied on *Denton* and certain cases applying that authority. Those cases are concerned with relief from sanctions under CPR 3.9, which is not limited to "*exceptional circumstances*". They are accordingly not of direct assistance when considering the test which I require to apply. I note, though, that, if those principles were to be applied to the present case, the relevant context would be a failure timeously to invoke the jurisdiction of the Tribunal in respect of an application for review of a decision of the CMA. In *Good Law Project,* Carr LJ (at [82]) observed that, in the analogous case of defective service of a judicial review claim form, the claimant's "*failure to take all reasonable steps to serve would be the first and dominant feature"* in the context of the *Denton* principles. The CMA, for its part, relied on cases articulating the approach taken by the Employment Appeal Tribunal to late appeals. I agree with Ms Kreisberger that the context of these cases is likewise different, and that they are accordingly also not of direct assistance in respect of the issue which I require to address.

Aramark's case for an extension of time

87. I have set out Aramark's case for an extension of time above. In summary, Ms Kreisberger argues that the following circumstances, taken together, properly justify characterisation as "*exceptional*":

(i) the essential reason for the late filing was a good faith misinterpretation of the rules on the computation of time;

(ii) the mistake was immediately identified, and the short period of extension required would have no impact on the proceedings;

(iii) there is no prejudice to the CMA;

(iv) if the Application is refused, Aramark will suffer extreme and irreversible consequences; and

(v) this would not only engage Aramark's interests but would affect the market.

She emphasises that whilst the error was made by Aramark's solicitors, the consequences will be felt by Aramark and other affected third parties. She rightly contends that this particular combination of factors has not previously been considered by the Tribunal in the present context.

88. Before I address the reasons for late filing in the present case, I observe that neither party has invited me to take any preliminary view on the merits of Aramark's challenge to the Decision. I recognise the significant prejudice to Aramark of losing the opportunity to challenge the Decision, which it contends is unlawful. I also recognise that a divestment order is the most intrusive order available to the CMA, and that if the Decision stands, Aramark will be compulsorily required to dispose of its investment in Entier. However, whilst recognising the significant prejudice to Aramark in losing the opportunity to challenge the Decision and, if successful, to have the Decision set aside, I can make no assumption one way or the other as to the outcome of the challenge if it were to proceed.

The reasons for late filing in the present case

89. The first question which I require to address is the reason why the Notice was filed late. I accept that the underlying reason was the solicitor's misinterpretation of the rules on the computation of time. That misinterpretation resulted in Aramark and its solicitors proceeding on the basis that the deadline was 5 pm on Friday 13 February 2026 when it was truly 5 pm on Thursday 12 February 2026. When I asked Ms Kreisberger directly whether she would characterise the interpretation adopted by Aramark's solicitors as reasonable, she was not prepared to go further than to submit that it "*wasn't an unreasonable interpretation*". It is telling that, notwithstanding what is at stake, Aramark no longer seeks to support its solicitor's interpretation of the rules.

90. I accept Ms Kreisberger's explanation of how the error came to be made. Nevertheless, it could not reasonably have been thought, as Ms Kreisberger put it, that "*there was no sense that this was in some way ambiguous or there was uncertainty or there was risk attached*". I do not myself consider that there is reasonable room for doubt as to the effect of rule 112(3) in this case, but even if (contrary to my view) the interpretation of the rules did give rise to doubt or ambiguity, that doubt should have been resolved in favour of filing before the earliest possible deadline – ie by 5 pm on Thursday, 12 February 2026.

91. The error in applying the rules on the computation of time was compounded by the departure from Aramark's internal administration plan. It would appear that until 2 pm on Thursday, 12 February 2026, Aramark intended to file the Notice on that date. Had it done so, the solicitor's misinterpretation of the rules would have had no adverse effect. It would appear that Aramark departed from that plan in order to accommodate comments made by its US management.

92. The evidence does not disclose why Aramark had further comments which it wished to provide to its solicitors only after 2 pm on the very day which the internal administration plan had identified as the filing date. Nor does the evidence disclose whether any consideration was given at that stage to the risk attendant on departing from the internal administration plan and delaying filing to 13 February. In these circumstances, I cannot hold that Aramark itself had no responsibility for the fact that the Notice was filed on 13 February rather than on 12 February, even if, in reliance on its solicitor's advice, Aramark believed that filing on 13 February would be timeous.

93. I recognise that the four-week period prescribed in rule 25 is a demanding one. But paragraph 4.7 of the Guide advises parties not to leave filing until the last minute. Consistent with that advice, Aramark and its solicitors were working to an internal administration plan which would have resulted in the Notice being filed on Thursday, 12 February 2026. In the event, for reasons which have been explained only in outline, a decision appears to have been made at the last minute to defer filing to what was understood (erroneously) to be the last day. As Sir Julian Flaux C observed in *Ideal Shopping Direct*, at [155]:

> "*... where a claimant leaves the filing of claim forms until the last day for service ... it courts disaster and has a limited claim on the indulgence of the court. This is all the more so where the failure ... was due to a mistake on the part of the claimant's solicitor as in this case."*

94. In its reply submissions, Aramark states: "*Nor did the CMA raise any objection when Mr Bavasso candidly informed it of his 'end of the week deadline' but waited until the deadline had passed before doing so".* The suggestion appears to be that, by not responding to Mr Bavasso's email of 10 February 2026, in which he intimated the intention to file "*by the end of the week"*, the CMA bore some responsibility for Aramark's failure to meet the filing deadline.

95. I do not consider that the correspondence supports this submission. The phrase "*by the end of the week",* which Mr Bavasso used in his email of 10 February, is a broad one. At the time, the intention was to file on Thursday 12 February, which would indeed have been "*by the end of the week"* but in time. The email of 10 February invited the CMA to advise when counsel's clerks could liaise about a hearing date. This request did not call for an immediate response when the CMA had the previous week advised that such a discussion would be premature when the CMA had not yet seen the appeal. Mr Weighill's email of 13 February, which noted that the appeal appeared to be out of time, was on the face of it sent in response to the email sent to the CMA at 18:03 on Thursday 12 February, intimating that the application, "*due imminently"* was being finalised.

96. In any event, as the President (Sir Gerald Barling) observed in *Fish Holdings:*

> *"... it is the sole responsibility of the parties and the legal representatives to ensure that the time limits for filing documents are complied with."*

By contrast with the position in *Prater,* where the applicant might have filed the hard copy appeal timeously had it not received advice from the Registry to send it by email, there is no basis for a finding that Aramark was diverted from filing timeously by reliance on anything said or not said by the CMA, or indeed by any other external factor.

97. The reasons why Aramark failed to meet the filing deadline were: (i) their solicitor's misinterpretation of the rules; and (ii) the decision to depart from the

internal administration plan to file the Notice on 12 February. I accept that the solicitor's misinterpretation of the rules was a good faith error and that Aramark and its solicitors were earnestly working to comply with the deadline as they understood it. The solicitor's error was compounded by a late decision to defer filing until what was understood (erroneously) to be the last day for filing. Subject to consideration of the surrogacy principle – the question of whether the solicitor's error should be attributed to its client (which I address below), these features do not distinguish the present case from other cases where a mistake – which will almost invariably be a good faith mistake – combined with filing on the last day results in a court deadline being missed. They are not exceptional circumstances such as to justify an extension to the statutory time limit.

Aramark's swift response and the short period of extension sought

98. Ms Kreisberger relies on the speedy response to the error, and the short period of extension sought. She drew my attention to extensions of time which the Tribunal had granted and which were significantly longer than the extension required in this case. In *Accord-UK* a three-week extension was described as "*a modest period"*. I was shown other cases where extensions of one week (*JD Sports Fashion; Lexon (UK))* and 14 days (*Sabre Corporation*) were granted. The extension required in this case was only to 13:00 on Friday, 13 February.

99. The cases to which Ms Kreisberger referred were prospective applications where the Tribunal was satisfied that there were exceptional circumstances which justified giving the applicant more time to prepare and file the application. I do not consider that these are directly comparable to a retrospective application such as this one, where the issue is not whether the applicant requires more than the statutory four weeks to file the notice (Aramark did not), but is essentially whether the applicant's failure to file timeously should, by reason of exceptional circumstances, be excused.

100. I acknowledge that the period of extension sought is very short and that Aramark immediately took steps to seek that extension. These circumstances are intrinsic to the nature of the error. Where an appeal under rule 9 or a notice of application under rule 25 has been filed late, that is likely to become apparent immediately,

because the Registry should decline to register the case. It is wholly unsurprising that steps should then be taken without delay to seek an appropriate extension, and that the extension sought is short. These are not, as such, exceptional circumstances justifying an extension of time.

Absence of prejudice to the CMA

101. Ms Kreisberger submitted that there would be no prejudice to the CMA were the application to be granted. She pointed out that Aramark's advisers had clearly foreshadowed that there would be an application for review. She made the point that this was not a case where the CMA had been *"entitled to assume that the decision in question is definitive",* to use the phraseology of the President in *Fish Holdings,* in the passage which I have quoted above. Further, she pointed out that the very short extension sought would, if granted, have no practical impact on the progress of the proceedings.

102. I accept Ms Kreisberger's submission that the CMA could not, in this case, reasonably have assumed that its decision would not be challenged. It knew that an appeal was likely to be forthcoming. Further, although the Notice was not filed timeously, it was immediately clear that Aramark would seek to rectify the position. I also accept that the very short extension, if granted, would be unlikely to have a practical impact on the progress of proceedings.

103. The position of the CMA in responding to proceedings under section 120 of the 2002 Act is not on all fours that of a private litigant in ordinary civil proceedings, where an extension of time for initiating proceedings may well (as would have been the case in *Ideal Shopping Direct*) deprive the defendant of a limitation defence. The CMA is a public authority, which, ultimately, has no private interest in the outcome of a challenge to its decisions. Its ultimate interest, if the application were to proceed, should be no more and no less than that the law should be properly applied and the correct conclusion reached.

104. But that is not to say that no prejudice would be caused by an extension of time. The CMA, like any public authority facing a judicial review application, is entitled to take a time bar point which will secure finality and certainty for the

CMA and for all others concerned. Whilst the short extension sought in the present case would not, as Ms Kreisberger submitted, disrupt or delay the ensuing proceedings, a consequence of granting an extension would be that proceedings would ensue. The CMA would have to expend time and resources in responding to the application, albeit that if the application were to be unsuccessful the CMA would likely benefit from an award of costs. There would, further, be ongoing uncertainty, for the CMA, for Aramark and Entier, and for other parties in the market, until the litigation is finally determined.

105. It would be intrinsic to extending the statutory time limit that the CMA would require to respond to the ensuing litigation; and intrinsic to refusing the application that the CMA would not require to do so. These are simply incidents of the decision which I require to make. The rules deliberately require the Tribunal to be satisfied that there are exceptional circumstances before it may consider granting an extension of time. The question is not to be determined simply by balancing the relative prejudice to the parties. For these reasons, the absence of any additional specific prejudice to the CMA in this case does not, in my view, advance materially, one way or the other, the question of whether the circumstances are exceptional.

The consequences for Aramark

106. Ms Kreisberger emphasises the seriousness of the consequences for Aramark. She founds strongly on the fact that a divestment order is the most onerous and intrusive remedy available to the CMA. If the order is unlawful, it is a serious interference with Aramark's right to the peaceful enjoyment of its possessions under Article 1 of the First Protocol to the European Convention on Human Rights. If Aramark is not granted an extension of time, it will lose the opportunity to challenge the Decision. It will require to divest itself of Entier. Whilst this will be for consideration, the sale will not be voluntary, nor at a time of Aramark's choosing. Ms Kreisberger contends that a professional negligence claim against Aramark's solicitors would not, in the circumstances of this case, be an adequate remedy. It would not "*restore the position"*.

107. I recognise that, if the divestment order is unlawful, then it interferes with Aramark's right to the peaceful enjoyment of its possessions under Article 1 of the First Protocol. As I have explained, I cannot prejudge the outcome of Aramark's application if it were allowed to proceed; but I recognise the very significant prejudice to Aramark of losing the opportunity to challenge the Decision, and the consequences for Aramark of requiring to comply with the Decision. I accept Ms Kreisberger's point that, whilst Aramark will receive consideration for the disposal of its shareholding in Entier, the disposal is not voluntary, nor at a time of Aramark's choosing. That would likely be the case wherever a divestment order is in issue. I am not convinced, though, that a damages action against Aramark's solicitors is an inadequate remedy for the loss of the opportunity to challenge the Decision. Aramark's interest is essentially commercial or economic. The assessment of Aramark's loss, by reason of the loss of that opportunity, may raise complex questions, but Courts routinely assess damages in situations of complexity and uncertainty, including, where appropriate, by reference to the loss of a chance.

108. It is of the nature of a time limit for initiating proceedings that failure to comply with that time limit is liable to result in the loss of a claim which may be of great significance to the party concerned. The claim may well be one for which the party concerned might reasonably regard a professional negligence action a poor substitute. It is, specifically, of the nature of the time limit specified in rule 25 that failure to comply is liable to result in the loss of the opportunity to seek a review of decisions made by the CMA in merger cases, including structural orders such as the order made in this case. I have not been shown anything which would distinguish this case from other cases involving a divestment order. Further, though a divestment order is the most intrusive order which the CMA can make, I am not convinced that a relevant distinction falls to be drawn between a divestment order and other types of order which the CMA may make following a merger inquiry. Such orders may often have significant commercial impact; and the assessment of the loss which the party concerned sustains by reason of losing the opportunity to challenge such orders may often raise complex issues.

109. For these reasons, whilst I recognise the significant consequences for Aramark of the loss of the opportunity to challenge the Decision, it does not seem to me that those consequences justify characterising the circumstances as exceptional.

110. I recognise that implementing the Decision will have consequences for the market, and for other market participants. The points which Ms Kreisberger made in that regard assume that the Decision would, following a review, be found to be unlawful. Similar points could no doubt be made in respect of any case where a divestment order is made and is not challenged. Whilst I take these points into account, they do not, in my view materially alter the assessment of whether the circumstances of this case are exceptional.

The surrogacy principle

111. Parties to civil litigation often have to live with the consequences of errors made by their lawyers, including errors involving a failure to comply with time limits which result in the loss of a valuable claim. Were that not to be the general position, procedural rules and time limits, including time limits for raising proceedings, would readily be undermined. In *Good Law Project,* the claimant's solicitors had failed to serve the claim form properly in time. The claimant criticised a finding by the first instance judge that it had failed to take reasonable steps to effect valid service. Carr LJ, giving the judgment of the Court of Appeal observed ([61]), "*This is unsustainable. … Good Law is fixed with the acts and omissions of its solicitors."* The same point is illustrated by the circumstances of *Ideal Shopping Direct*. In that case, by reason of a good faith misunderstanding on the part of the solicitor of the requirements for effective service, the claimants lost the opportunity to pursue their claims for breaches of competition law.

112. In *Atkas*, at [71], Rix LJ, having considered cases under CPR 7.6 observed: "*The negligence of a claimant's solicitor is no excuse. It is not a good reason for an extension of time … It is a bad reason, a reason for declining an extension".* This consequence did not flow simply from the terms of the relevant rules. It "*flows from the philosophy that time limits are to be strictly enforced",* a philosophy which, as I have explained above, applies also to the time limit in

rule 25. It is in that context, said Rix LJ, "*a matter of public policy, in the belief that more damage will in the long run be done in the generality of cases not only to the administration of justice as a whole, let alone to judicial resources, but also to the fair adjudication of disputes. It is a policy which, like the law of limitation itself, is in the public interest even if it produces unfortunate results in individual cases. It is mitigated by the claimant's remedy against his solicitor, where he acts through one."*

113. Ms Kreisberger notes, correctly, that this is not a universal principle. In *O'Connor*, Lord Stephens JSC, giving the judgment of the UK Supreme Court, made the point, at paragraph [38], that: "*it is incorrect to say that in all circumstances the fault of a client's legal representatives is imputed to the client".* Lord Stephens referred to earlier cases, notably *FP (Iran)* and *Pomiechowski* which vouch that proposition. *Sun, McCallum* and *Thilliainayagam* are cases where the Court declined to impute a solicitor's error to a blameless client, on the footing that this was necessary to respect the client's Article 6 rights. Ms Kreisberger contends that the authorities support the proposition that the solicitor's error will not be imputed to the client where to do so would be "*unjust*". She notes that the courts have declined to impute fault to the party where one or more of the following considerations exist: (i) the fault is entirely that of the solicitor; (ii) the party is blameless; and (iii) damages would not be adequate compensation. She contends that, in the circumstances of the present case, all of these considerations are present and that it would, in the circumstances, be unjust to impute Simpson Thacher & Bartlett's error to Aramark.

114. I accept that the surrogacy principle is not a universal principle. Specifically, I accept that it would not fall to be applied where doing so would be incompatible with Article 6. I do not otherwise accept Ms Kreisberger's submission. In proceedings to which rule 25 applies there are compelling considerations of legal policy for proceeding, as a general rule, on the footing that errors made by a solicitor will be imputed to the client. As I have already observed, the Tribunal, for good reasons of public policy, attaches significant importance to compliance with the statutory time limits for initiating proceedings. Merger proceedings are specialist proceedings that are (as in this case) invariably

managed by external lawyers. In practice, it is the parties' lawyers who are responsible for ensuring that the procedural requirements of the Tribunal (including the time limits for initiating proceedings) are complied with. If parties were to be permitted to distance themselves from errors made by their lawyers, this would significantly compromise the Tribunal's ability to insist on compliance with its procedures, including with the time limits for initiating proceedings which, as I have explained, themselves serve an important public interest. Put another way, the mere fact that it is inevitably the client which will bear the consequences of an error by the applicant's solicitor would not, generally speaking, be an exceptional circumstance justifying an extension of time under rule 25(3).

115. Nor do I consider that the particular circumstances of the present case justify a departure from that general rule. As Mr Williams observed, the cases in which the court has departed from the surrogacy principle have involved natural persons facing significant personal consequences, such as a potential loss of liberty or professional status. It is not to minimise the significant implications for Aramark to observe that this case, by contrast, concerns a corporate entity, whose interests are essentially economic and commercial. In any event, the circumstances do not satisfy the criteria which Ms Kreisberger articulated for departing from the surrogacy principle. As I have explained in paragraphs 91 to 94 above, I cannot hold that Aramark itself had no responsibility for the fact that the Notice was filed on 13 February rather than on 12 February. I cannot accordingly hold positively on the evidence before me that Aramark was entirely "*blameless"* for the situation in which it finds itself. Further, for the reasons I have explained at paragraph 107, I am not convinced that a professional negligence action against Aramark's solicitors would be an inadequate remedy for the loss of the opportunity to challenge the Decision. At any rate, as Rix LJ put it in the passage from *Atkas* which I have quoted above, the consequences for Aramark of the failure to file timeously are mitigated by the availability of that claim. In all the circumstances, it would not in my view be unjust to fix Aramark with the consequences of its solicitor's error. Nor would it be incompatible with Aramark's Article 6 rights to apply the statutory

provision in accordance with its terms, to hold that the circumstances of this case are not exceptional and that, accordingly, the application should be refused.

The circumstances considered cumulatively

116. Ms Kreisberger emphasised that it is the cumulative effect of all the circumstances to which I have referred, in combination, which she contends justifies the characterisation as "*exceptional"*. I recognise that a combination of circumstances, none of which in itself is exceptional, may fall to be characterised as exceptional. Whether that is the case involves, as Ms Kreisberger submitted, an exercise of evaluative judgment. In my judgment, the combination of circumstances which I have discussed at paragraphs 98 to 110 above is not "*exceptional"* in the context of a failure to comply with the time limit in rule 25. These are all ordinary and natural consequences of a failure to comply with that time limit such as occurred in the present case. This is a combination of circumstances which is liable to occur in such a case.

117. The central issue is, accordingly, whether there is anything in the reasons why the time limit was missed in this case which, taken along with those other factors, would justify characterising these as "*exceptional"* circumstances which would justify an extension of time. I have identified those reasons at paragraph 97 above. Although I have rejected Ms Kreisberger's invitation to disapply the surrogacy principle, I take fully into account the substantial prejudice which Aramark sustains by reason of losing the opportunity to obtain a review of the Decision, and that the underlying reason why this has happened is an error by its solicitor in computing the time limits. Taking account of this, and of all of the matters upon which Ms Kreisberger has founded, I do not consider that these are exceptional circumstances which justify an extension to the statutory time limit. It follows that I have no power to grant an extension of time under rule 25(3).

118. I accordingly refuse the Application.

James Wolffe KC
Chair

Charles Dhanowa CBE, KC (*Hon*)
Registrar

Date: 10 March 2026