



Neutral citation [2026] CAT 32

Case No: 1643/7/7/24

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

15 April 2026

Before:

JUSTIN TURNER KC
(Chair)
LESLEY FARRELL
PROFESSOR ALASDAIR SMITH

Sitting as a Tribunal in England and Wales

BETWEEN:

WATERSIDE CLASS LIMITED

Proposed Class Representative

- v -

(1) MOWI ASA
(2) MOWI HOLDING AS
(3) GRIEG SEAFOOD ASA
(4) SALMAR ASA
(5) LERØY SEAFOOD GROUP ASA
(6) SCOTTISH SEA FARMS LIMITED

Proposed Defendants

Heard at Salisbury Square House on 4 March 2026

JUDGMENT (CPO)

APPEARANCES

Sarah Abram KC and Camilla Cockerill (instructed by Simmons & Simmons LLP) appeared on behalf of the Proposed Class Representative.

Sarah Ford KC, Emma Mockford and Sean Butler (instructed by Skadden, Arps, Slate, Meagher & Flom (UK) LLP; Freshfields LLP; Schjødt LLP; Cleary Gottlieb Steen & Hamilton LLP, and Shepherd and Wedderburn LLP) appeared on behalf of the Proposed Defendants.

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A. INTRODUCTION

1. This is an application for a collective proceedings order (**CPO**). The claim combines, on an opt-out basis, the stand-alone claims of consumers who have purchased salmon from retailers. Waterside Class Limited (the **PCR**) contends that the members of the class have suffered loss as a result of breaches of statutory duties by the Proposed Defendants, in particular Article 101 of the Treaty on the Functioning of the EU, Article 53 of the European Economic Area Agreement and section 2 of Chapter I of the Competition Act 1998 (the **1998 Act**).
2. The PCR is incorporated for the purpose of acting as a class representative in these proceedings. It has a sole director, Ms Anne Heal, who is experienced in the field of consumer rights. The Proposed Defendants are said to be producers of Atlantic salmon. It is alleged that between April 2013 and February 2019 the Proposed Defendants unlawfully colluded to increase the price paid for Atlantic salmon by retailers and that this increased cost, at least in part, was passed on to consumers.
3. In particular it is alleged:

“9. The broad outline of the claim which the PCR seeks to advance in collective proceedings is as follows:

9.1. The Proposed Defendants (together with Sjó AS and Cermaq Group AS and/or the undertaking of which Cermaq Group AS forms part) unlawfully colluded to increase Atlantic Salmon prices, in particular by means of the manipulation of the NASDAQ Spot Price and through the unlawful exchange of commercially sensitive information regarding the prices and volumes of sales of Atlantic Salmon. Collectively, the Proposed Defendants together with Sjó and Cermaq are referred to as the “Colluding Producers”.

9.2. The NASDAQ Spot Price was generated based on transaction data contributed to the NASDAQ Salmon Index on a weekly basis by ten major producers of Atlantic Salmon. Three of those contributors are fellow members of the same undertakings as the Proposed Defendants Mowi, SalMar and Grieg (as defined below, the “Proposed Contributor Defendants”). All the Colluding Producers (with the exception of Lerøy and SSF) were fellow members of the same undertaking as entities who contributed to the NASDAQ Salmon Index (collectively, the “Colluding Contributor Producers”).

9.3. The NASDAQ Spot Price acts as a key reference point for both Spot Sales and Contract Sales; the prices at which Spot Sales and Contract Sales took place are, and were, very closely linked to the NASDAQ Spot Price. As such, the NASDAQ Spot Price is a strong driver of the market price of Atlantic Salmon.

9.4. All the undertakings of which the Proposed Defendants were members had a commercial interest in increasing the price at which Atlantic Salmon was sold.

9.5. The market for the production of Atlantic Salmon had a number of characteristics that facilitated collusion between producers. The market was highly concentrated, with high barriers to entry. Because Atlantic Salmon is a commodity product, competition is largely focussed on price, and supply of Atlantic Salmon is inelastic in the short term due to lengthy production cycles. Close links between the Proposed Defendants were strengthened by factors including ownership links between undertakings, movements of senior personnel between the Proposed Defendant businesses, and frequent meetings in numerous trade associations.

9.6. During the Relevant Period, the NASDAQ Spot Price, and the price of Norwegian Atlantic Salmon generally, rose substantially without any explanation.

9.7. The rise in the NASDAQ Spot Price and in the price of Norwegian Atlantic Salmon generally was the result of unlawful collusion between the Colluding Producers. This was achieved by the following means in particular:

a) Via transactions pursuant to which the Proposed Contributor Defendants sold Atlantic Salmon to other members of the same undertaking or to other Colluding Producers (as defined below, the “Manipulated Transactions”). It is inferred that there was no legitimate explanation for the Manipulated Transactions: the Colluding Producers are all members of major Atlantic Salmon producing undertakings, and could therefore generally be expected to have met their needs for Atlantic Salmon through internal transfers within their own corporate groups. It is to be inferred that the prices at which Atlantic Salmon was bought and sold in the Manipulated Transactions were inflated above what would otherwise have been the market rate as a result of a collusive scheme between the relevant Colluding Producers to raise the NASDAQ Spot Price. This caused, alternatively contributed to, an increase in the NASDAQ Spot Price.

b) Via “Unlawful Exchanges” (as defined below), by which the Colluding Producers unlawfully exchanged commercially sensitive information regarding the prices and volumes of sales of Atlantic Salmon, and sought to fix the prices at which Atlantic Salmon was sold. The Unlawful Exchanges had the object and effect of increasing the prices at which Atlantic Salmon was sold by the Colluding Producers. It is to be inferred that this also led to an increase in the price at which the transactions reported by the Colluding Contributor Producers were concluded, and in turn caused, alternatively contributed to, an increase in the NASDAQ Spot Price.

9.8. Further:

a) There were frequent contacts between the Colluding Producers in which the attendees agreed to take unspecified steps involving “cooperation” or “coordination” (as defined below, the “Co-ordination Contacts”).

b) There were meetings between representatives of the Colluding Producers, the subject matter of which is currently unknown (as defined below, the “Unexplained Meetings”),

9.9. The Manipulated Transactions, the Unlawful Exchanges, the Co-ordination Contacts and the Unexplained Meetings are collectively the “Collusive Contacts” or the “Infringement”. It is to be inferred that, along with the Unlawful Exchanges, the Co-ordination Contacts and Unexplained Meetings, alternatively some of them, had the object and effect of increasing the prices at which the Colluding Producers sold Atlantic Salmon. It is further to be inferred that this led to an increase in the price at which the transactions reported by the Colluding Contributor Producers to the NASDAQ Salmon Index were concluded, and in turn caused, alternatively contributed to, an increase in the NASDAQ Spot Price.

9.10. The unlawful collusion between the Colluding Producers affected the wholesale prices of Atlantic Salmon. Those price rises were passed through, in significant part, to consumers who purchased Salmon Products in retail settings (i.e. the members of the Proposed Class). [...]”

4. The PCR makes reference in its Claim Form to dawn raids by the European Commission (the **Commission**) in February 2019 and a subsequent Statement of Objections of 24 January 2024 in which the Commission expressed the preliminary view that certain companies associated with the Proposed Defendants breached antitrust rules by colluding to distort competition in the market for spot sales of Norwegian farmed Atlantic salmon. The recent observations of the Supreme Court in *Evans v Barclays Bank Plc* [2025] UKSC 48 [2026] Bus. L.R. 328 make clear that it is not open to this Tribunal to attach weight to the evaluative decisions of another decision maker.
5. There are two other claims issued in this Tribunal brought by supermarkets arising out of essentially the same facts. These are *Asda Stores Limited and Others v Bremnes Seashore AS and Others* 1632/5/7/24 (the **Asda Proceedings**) and *Tesco Stores Limited v Cermaq Group AS and Others* 1756/5/7/25 (the **Tesco Proceedings**). On 5 March 2025 we rejected a jurisdictional challenge and strike out application brought by the defendants in the *Asda Proceedings* ([2025] CAT 14). There is some overlap in the defendants in the *Asda Proceedings*, the defendants in the *Tesco Proceedings* and the Proposed Defendants in these proceedings. These are tabulated below:

Party	<i>Asda Proceedings</i>	<i>Tesco Proceedings</i>	These Proceedings
Bremnes Seashore AS	Defendant	Defendant	
Cermaq Group AS	Defendant	Defendant	
Grieg Seafood ASA	Defendant	Defendant	Proposed Defendant
Grieg Seafood UK Ltd	Defendant	Defendant	
Lerøy Seafood Group ASA	Defendant	Defendant	Proposed Defendant
Salmar ASA	Defendant	Defendant	Proposed Defendant
Mowi ASA	Defendant		Proposed Defendant
Mowi Holding AS			Proposed Defendant
Mowi Consumer Products UK Ltd	Defendant		
Mowi Scotland Ltd	Defendant		
Scottish Sea Farms Ltd	Defendant	Defendant	Proposed Defendant
SSF Hjalmland UK Ltd	Defendant		
SSF Shetland Ltd	Defendant		
Sjór AS		Defendant	

6. The following defendants appear in all three proceedings: Grieg Seafood ASA; Lerøy Seafood Group ASA; Salmar ASA; and Scottish Sea Farms Limited. It is notable that Bremnes Seashore AS and Cermaq Group AS (or defendants within their company groups) are not Proposed Defendants in these proposed collective proceedings.

7. Although this matter has not yet arisen for formal determination, this Tribunal has indicated a provisional view that it anticipates that the *Asda Proceedings*, the *Tesco Proceedings* and these collective proceedings (if certified) will be jointly case managed.

B. THE ISSUES WHICH ARISE ON CERTIFICATION

8. Section 47B of the 1998 Act and Rule 77 of the Competition Appeal Tribunal Rules 2015 (the **Tribunal Rules**) set out the requirements that must be fulfilled in order for the Tribunal to make a CPO. The Tribunal must be satisfied:

(1) That it is “just and reasonable” for the entity bringing the proceedings to be authorised as the class representative, under section 47B(5)(a) of the 1998 Act and Rule 77(1)(a) of the Tribunal Rules (the **Authorisation Condition**); and

(2) That the claims are eligible for inclusion in collective proceedings, under section 47B(5)(b) of the 1998 Act and Rule 77(1)(b) of the Tribunal Rules (the **Eligibility Condition**).

9. In considering whether to make a CPO the Tribunal must consider whether the requirements of both the Authorisation and Eligibility Conditions are satisfied, regardless of whether these are raised by the parties (see *Gormsen v Meta* [2024] CAT 11 at [2]).

10. Relevant to the Tribunal’s decision to certify collective proceedings is whether the class representative’s proposed methodology to assess damages satisfies the test articulated by the Supreme Court of Canada in *Pro-Sys Consultants Ltd v Microsoft Corp* [2013] SCC 57 (**Microsoft**) as interpreted and applied by the Court of Appeal in *London & South Eastern Railway Limited v Gutmann* [2022] EWCA Civ 1077 (**Gutmann CA**).

11. In *Microsoft*, Rothstein J stated at [118]:

“118. In my view, the expert methodology must be sufficiently credible or plausible to establish some basis in fact for the commonality requirement. This means that the methodology must offer a realistic prospect of establishing loss on a class-wide basis so that, if the overcharge is eventually established at the trial of the common issues, there is a means by which to demonstrate that it is common to the class (i.e. that passing on has occurred). The methodology cannot be purely theoretical or hypothetical but must be grounded in the facts of the particular case in question. There must be some evidence of the availability of the data to which the methodology is to be applied.”

C. THE ELIGIBILITY CONDITION

12. Rule 79 of the Tribunal Rules provides:

“79.—(1) The Tribunal may certify claims as eligible for inclusion in collective proceedings where, having regard to all the circumstances, it is satisfied by the proposed class representative that the claims sought to be included in the collective proceedings—

- (a) are brought on behalf of an identifiable class of persons;
- (b) raise common issues; and
- (c) are suitable to be brought in collective proceedings.

(2) In determining whether the claims are suitable to be brought in collective proceedings for the purposes of paragraph (1)(c), the Tribunal shall take into account all matters it thinks fit, including—

- (a) whether collective proceedings are an appropriate means for the fair and efficient resolution of the common issues;
- (b) the costs and the benefits of continuing the collective proceedings;
- (c) whether any separate proceedings making claims of the same or a similar nature have already been commenced by members of the class;
- (d) the size and the nature of the class;
- (e) whether it is possible to determine in respect of any person whether that person is or is not a member of the class;
- (f) whether the claims are suitable for an aggregate award of damages; and
- (g) the availability of alternative dispute resolution and any other means of resolving the dispute, including the availability of redress through voluntary schemes whether approved by the CMA under section 49C of the 1998 Act or otherwise.

(3) In determining whether collective proceedings should be opt-in or opt-out proceedings, the Tribunal may take into account all matters it thinks fit, including the following matters additional to those set out in paragraph (2)—

- (a) the strength of the claims; and
- (b) whether it is practicable for the proceedings to be brought as opt-in collective proceedings, having regard to all the circumstances, including the estimated amount of damages that individual class members may recover.

(4) At the hearing of the application for a collective proceedings order, the Tribunal may hear any application by the defendant—

- (a) under rule 41(1), to strike out in whole or part any or all of the claims sought to be included in the collective proceedings; or

(b) under rule 43(1), for summary judgment.

(5) Any member of the proposed class may apply to make submissions either in writing or orally at the hearing of the application for a collective proceedings order.”

13. The proposed class of persons identified in the Claim Form is:

“All persons (other than Excluded Persons) who between 1 October 2015 and 31 May 2019 (inclusive) purchased Salmon Products for the purpose of Personal Consumption from Grocery Retailers in the United Kingdom, together with the personal or Authorised Representative of the estate of any individual who meets that description and would be in the class but for their death.”

14. Definitions of “Salmon Products”, “Grocery Retailers” and “Personal Consumption” are provided in the Claim Form. Although the manipulation of prices is said to have occurred in respect of Norwegian salmon it is said that the export prices of Norwegian salmon impact the price of Atlantic salmon from other origins. The relative proportions of salmon sold in the UK is pleaded as:

Norwegian Atlantic Salmon: 36%

Scottish Atlantic Salmon: 56%

Chilean Atlantic Salmon: 3%

Faroese Atlantic Salmon: 3%

Other (including Ireland): 2%

Only 4% of the salmon consumed in the UK is said to be Pacific Salmon.

15. The class is, unsurprisingly, large, estimated to comprise between approximately 35–44 million people or between approximately 18–23 million households.

16. Of concern are the costs and benefits to the class of continuing these proposed collective proceedings and whether consequently collective proceedings are an appropriate means for the fair and efficient resolution of the common issues: Tribunal Rules 79(2)(a), (b) and (f). At the heart of our concerns are the proposed legal costs of these proceedings as weighed against the anticipated sums which will be returned to the class.

17. We are alert to the reality that the principal motivation to pursue collective proceedings will sometimes be the benefits those proceedings bring to lawyers and funders. In a non-funded private action, an astute litigant will have in mind the costs and benefits of bringing legal proceedings and will continuously review the balance of these factors to ensure the litigation makes sense to its business. In a funded class action, the importance of striking this balance may be overlooked. Experience suggests that class representatives, who may not consider themselves personally at risk of an adverse costs order, may pay insufficient attention to such matters.
18. In *Gutmann v First MTR Southwestern Trains Limited* [2025] CAT 72 (*Gutmann (Stakeholder Entitlement)*) the class, on certification, was estimated to be between approximately 1–10 million consumers. A settlement was reached which provided for a payment of up to £25 million in damages to the class, against which class members were required to submit a claim. Although efforts were made to advertise the settlement, take-up was very low with only 7,290 valid claims being made to a value of £216,725. As recorded in *Gutmann (Stakeholder Entitlement)* from [65]:

“65. The CR says that the poor level of uptake was despite considerable efforts made throughout the claim processing period to improve the claims process and maximise publicity of the settlement, as explained in the second witness statement of Mr Rodger Burnett. These efforts included re-launching the claim website with a more user-friendly interface, removing the proof of residency documentation requirement, and an extensive out-of-home advertising campaign on the London Underground.

66. The CR is disappointed by that outcome but states that there are a number of reasons which likely explain the low uptake. The settlement was the first of its kind to go to distribution. This meant that members of the class were unfamiliar with the process. They may also have been more reluctant, than may be the case in the future, to share bank details on an unfamiliar website, especially given the frequent and prominent public warnings about the risk of financial scams. In addition to the general delay in the claims, the settlement also concerned the most historic part of the overall Boundary Fare claims pursued by the CR. SSWT operated the South Western franchise until August 2017, when First MTR took over its operation. This means that the claims related to a period now eight or more years in the past, which may have made it difficult for many potential claimants to recall even the limited necessary detail required under Pot 3 and to truthfully affirm claims they may rightfully have had.

67. It is important to note, at the outset, that in the Tribunal’s view this case cannot be considered a success overall. Although the Settlement was positive, in that some recovery was made in a case where the merits did not appear to

be strongly in favour of the CR, and it avoided an expensive trial for SSWT, in particular, the way things have unfolded since then undermines the positives. The level of uptake by the class of the settlement has been extremely disappointing. The CR has incurred costs of £18,788,166 and only 7,290 valid claims were made by class members, amounting to £216,724.91. This level of uptake falls significantly short of the hoped-for 10% to 20% of Represented Persons, which on Mr Holt's estimate of the class size would have amounted to c.140,000 to 280,000 claims (*CSAO Judgment* at [76]). In future, far more work needs to be done on the likely level of uptake at the stage of settlement approval, and in appropriate cases at the earlier certification stage. This was not done in this case, because the settlement needed to be approved shortly before trial and, had the CSAO been refused, the CR would have been, in effect, compelled to forgo the sums SSWT was willing to pay by way of settlement and proceed to trial, which, at best, had an uncertain prospect of winning. The Tribunal fully appreciated that this was not a follow-on damages case with strong prospects of succeeding on liability and causation. At that stage the Tribunal was reticent in expressing a view on the merits and potential weaknesses in the CR's case as it was conscious that claims continued to be made against the non-settling defendants which were to be determined by a separate panel of the Tribunal.

69. At the CSAO application hearing, the Tribunal expressed scepticism at whether even a 10% uptake would be achieved. It recorded in the CSAO Judgment at [100]: “*the Tribunal doubts that the figure of £10.2 million is at all likely to be exceeded and the actual class member claims may well be significantly lower than a 10 per cent take up.*” In the end, only £216,724.91 was distributed, representing c.0.9% of the settlement sum – being c.11.5 times less than the lower range estimate of 10%. The figure of £216,724.91 can be contrasted with the £9,983,515 unclaimed sums, and the £5,848,996 already paid to Woodsford from sums paid to the CR in these proceedings to date.”
(emphasis added)

19. As concluded at [183] of *Gutmann (Stakeholder Entitlement)*:

“183. It is appreciated that none of the Stakeholders will receive what they may have hoped for out of the Non-Ringfenced Costs and there seemed to the Tribunal to be an air of unreality in the positions taken by the Stakeholders as to what sums that would be reasonable and proportionate for each of them to be awarded out of that sum. There are certainly lessons to be learned, if not already learned, in terms of the management and settlement of collective proceedings. At the CPO stage and certainly at the CSAO stage more work in the future needs to be done on likely take up of settlement amounts by class members and how any damages may be distributed. In LFAs and settlements placed before the Tribunal the ability to pay sums out of unclaimed damages to charity or *cy-pres* should be expressly covered. Outcomes which appear to be predominantly for the benefit of stakeholders rather than class members or charity are not in the public interest or for the benefit of the collective settlement regime which is there to make justice available for those who cannot afford to bring such claims on their own.”

(emphasis added)

20. We take from this that when considering the costs and benefits of the proceedings it is appropriate, at certification, to consider how damages are to be

distributed. Outcomes which appear predominantly for the benefit of lawyers and litigation funders, rather than class members, are not in the public interest.

21. In *Spottiswoode v Nexans France* [2024] CAT 31 (*Spottiswoode*) the Tribunal was concerned with a follow-on claim relating to the pricing of high voltage power cables and whether an overcharge was passed on to domestic consumers of electricity. In considering certification the Tribunal stated:

“43. It is axiomatic that, in order for collective proceedings to fulfil their primary objective of compensating members of the Class, there must be an effective method of distribution, enabling members of the Class to be identified and contacted and maximising the take-up of compensation.

45. The Tribunal considers that there may well be particular challenges to effective distribution in this case, given the large size of the class and the potential difficulties for consumers in recalling and proving what, if any, electricity bills they paid over the course of an infringement period going back over twenty years, as well as recalling and proving when they first started paying, which may be relevant for limitation purposes. Even if the aggregate amount of any settlement or damages award is large, there is a risk that if that aggregate award is simply distributed in cash among all members of the Class, each individual member might regard the amount receivable as small and so may not be sufficiently incentivised to engage actively in the distribution process leading to a small take up. It would obviously be unattractive if tens of millions of pounds of legal and funder’s fees, and lots of Tribunal time, are spent on complicated proceedings only to find that few consumers actually come forward to claim damages. If that were the outcome, it might fairly be said that the litigation has benefitted no-one but the lawyers and funders.

22. The proposed class representative in *Spottiswoode* submitted that it was premature to consider issues relating to distribution at the certification stage and that the method of distribution should not be developed until damages had been awarded. The Tribunal went on to state in *Spottiswoode*:

“55. Having regard to the novelty of Collective Proceedings, the possible difficulties in distributing a settlement or damages award to the Class in this case, the need to explore innovative and creative methods of distribution and the substantial costs which are predicted to be incurred, the PCR should give detailed consideration to plans for the distribution now so that the Tribunal is in a position to make a properly informed assessment of the costs/benefit balance as the proceedings progress. It would be unsatisfactory to defer consideration of proposals for distribution until after an award has been made by which time the majority of the costs will already have been incurred. The Tribunal does not regard the current absence of a developed plan for distribution as precluding certification, but it has directed the PCR to report to the Tribunal within three months on her proposals. The PCR’s response will be relevant to the Tribunal’s ongoing “gatekeeper” function in relation to these proceedings. If a proposal for distribution does not emerge that addresses the

Tribunal's concerns, one option available will be to revoke the CPO under Rule 85.

(emphasis added)

23. In *McLaren v MOL Europe Africa* [2026] CAT 6 (**McLaren**) the Tribunal was again required to approve the terms of a collective settlement approval order. The Tribunal in *McLaren* observed at [60]:

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

And at [196]:

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

(emphasis added)

24. In response to the suggestion that a class representative should have a distribution plan available at certification Ms Abram KC for the PCR submitted that this would not normally be the case. She referred us to the judgment of Lord Briggs JSC in *Mastercard v Merricks* [2020] UKSC 51 [2021] 3 All E.R. 285:

“77. For reasons already given, I consider that this approach discloses a clear error in law. A central purpose of the power to award aggregate damages in collective proceedings is to avoid the need for individual assessment of loss. While there may be many cases in which some approximation towards individual loss may be achieved by a proposed distribution method, there will be some where the mechanics will be likely to be so difficult and disproportionate, eg because of the modest amounts likely to be recovered by individuals in a large class, that some other method may be more reasonable, fair and therefore more just. For that purpose the statutory scheme provides scope for members within the class to be heard about the proposed distribution method. In many cases the selection of the fairest method will best be left until the size of the class and the amount of the aggregate damages are known.

[...]

80. Finally, the Court of Appeal regarded any consideration of distribution proposals at, and for the purposes of, the certification stage as premature. I

agree that this will generally be true, not least because issues about distribution mainly engage the interests of the represented class *inter se*, rather than those of the proposed defendant. But there may be cases where the issues as to suitability of the claims for collective proceedings will be better addressed when the whole of the representative's proposed scheme, including distribution proposals, are looked at in the round. In the present case there was nothing in the proposals for distribution which militated against certification, and an inappropriate element in the distribution proposals would normally be better dealt with at a later stage."

25. Lord Briggs is contemplating that in many, if not most, cases ("generally true") the manner of distribution need not be considered at the certification stage. Importantly he is focusing on the *inter se* interests of the class. He is not specifically addressing the problem of failing to identify an effective mechanism of getting an award to the class at all. This is the problem which confronted the Tribunal in *Gutmann (Stakeholder Entitlement)* and the failure to address it sufficiently at certification meant that the benefit to the class was limited such that the only victors were the lawyers and funders.

26. We acknowledge that there may be cases where it is self-evident that an effective distribution method may be devised such that it is unnecessary at certification to focus on the details of distribution. But that is not this case. Here the distribution method proposed, being not dissimilar to that in the *Gutmann* proceedings, raises immediate concerns about what proportion of damages will be distributed to members of the class.

(1) The PCR's evidence relating to distribution and take-up

27. The application for this CPO was supported by an expert report from Mr Robin Noble and Mr Joseph Bell of Oxera LLP (the **Oxera Experts**). The main body of the report is 165 pages, not including annexes. The report considers the nature of the Atlantic salmon industry and the likely effect of the alleged conduct. It sets out an overcharge methodology using a regression analysis with a dummy variable to estimate the cartel effect. Before periods and after periods are proposed as comparators. It also includes a sensitivity analysis and the measurement of umbrella effects.

28. Prior to conducting that analysis, the Oxera Experts make observations on trends in the Norwegian salmon price indices which they say indicate a substantial price increase in the relevant claim period. They also refer to a paper by Asmat and Levenstein (2023)¹ which makes reference to an implied overcharge of between 7% and 23%. They conclude that a plausible range for the overcharge is 10–20%. This preliminary observation will in due course require proper analysis using the methods they propose.
29. The value of commerce is estimated at £1,291 million up until February 2019 or £1,394 million if an overhang period is included. The Oxera Experts have arrived at a preliminary estimate of pass-on of between 60% and 90% which results in an estimate of harm suffered by the class of between £71 million and £382 million. The loss per class member is estimated to range between £1.61 and £8.77 (using an interest rate of base rate +2%) depending on the variables used for overcharge, pass-on and class size. Alternatively, this can be expressed as an estimated loss of between £3.10 and £16.91 per household.
30. The PCR also served a report from Angeion Group International (**Angeion**) to explain, *inter alia*, how any award would be publicised and distributed. Angeion states that it has considerable expertise in class actions having overseen more than 2,000 class action settlements. Its report contained the following background:

“2.1 Angeion is an experienced class action notice and claims administration company formed in 2013 by a team of executives with extensive experience at five other nationally recognised claims administration companies in the US. Collectively, the management team at Angeion has overseen more than 2,000 class action settlements and distributed over USD 15 billion to class members. In the UK, Angeion has worked with proposed class representatives to design and implement notice and administration plans in the following collective proceedings:

<i>CAT No.</i>	<i>Case name</i>
1634/7/7/24	<i>Rowntree v the Performing Right Society Limited</i>
1631/7/7/23	<i>Roberts v Anglian Water Services Limited</i>
1630/7/7/23	<i>Roberts v Northumbrian Water Limited</i>

¹ D Asmat, MC Levenstein, VY Suslow and Z (Helen) Wang, ‘Swimming in Pools: Collusion in the Salmon Market’ (2023) 68 *Antitrust Bulletin* 137.

1629/7/7/23	<i>Roberts v Yorkshire Water Services Limited</i>
1628/7/7/23	<i>Roberts v United Utilities Water Limited</i>
1603/7/7/23	<i>Roberts v Severn Trent Water Limited</i>
1601/7/7/23	<i>Ennis v Apple Inc.</i>
1599/7/7/23	<i>Taylor v Black Horse Limited</i>
1595/7/7/23	<i>Hammond v Amazon.com, Inc.</i>
1582/7/7/23	<i>Arthur v Alphabet Inc.</i>
1572/7/7/22	<i>Pollack v Alphabet Inc.</i>
1527/7/7/22	<i>Alex Neill Class Representative Limited v Sony Interactive Entertainment Europe Limited</i>
1523/7/7/22	<i>BSV UK Claims Limited v Bittylicious Limited</i>
1468/7/7/22	<i>Gutmann v Apple Inc.</i>
1336/7/7/19	<i>Evans v Barclays Bank PLC</i>

Further information about Angeion’s background and experience is included at Appendix A. The executive team’s profiles, as well as the company overview, are available at <https://www.angeiongroup.com/>.

2.2 Steven Weisbrot, Angeion’s President and Chief Executive Officer, is a recognised class action notice expert. He has authored numerous articles in legal publications on topics including class action notice programmes, using digital media to notify class members, class action claims administration, and proper claim form design. He has also lectured at many of the largest law firms in the world, bar associations and to in-house counsel on class action notice and claims procedures. A list of judicial recognition from multiple jurisdictions of Mr Weisbrot’s notice plans is also included in Appendix A.”

31. Angeion explain that if there is a distribution phase of the proceedings, class members will be notified through a claims website. In addition, there will be direct notification (where class members have provided an email address), publicity through digital and print media, and publicity through video advertisements. Those seeking to make a claim will not be required to provide proof of purchase but will need to file a claim online or by filling in a paper form, providing personal details including details of their bank account. A factor which will necessarily impact the level of take-up is that the sums being awarded will be small.

32. The approach to distribution in this case is similar to *Gutmann* in that the sums of money are relatively small and claiming requires members of the class to take a proactive step and fill in a form. The PCR suggests that take-up might be higher in this case because the forms may be more user-friendly and it may be

more readily understandable whether or not a person is a member of the class. That may or may not be the case but there is no evidence directed to the proposition that levels of take-up will be materially different.

33. As made clear in the recent authorities, including *McLaren* and *Spottiswoode*, it is necessary at certification to consider the likely take-up as part of the cost-benefit analysis. Angeion was instructed to consider this matter. They stated at [11.1] of their report:

“11.1 This section sets out a provisional proposal for how any aggregate award of damages might be distributed, as well as outlining the claim filing and validation processes. Angeion has given careful consideration to its proposal for the distribution of damages, having regard to the recent decision of the Tribunal in *Spottiswoode v Nexans France S.A.S.* and, in particular, the Tribunal’s observation that there must be an effective method of distribution which enables members of the class to be identified, contacted and which maximises the take-up of compensation.”

34. They then make the observation that it is to be expected that 98% of class members will not have documentation and it will therefore be necessary to allow them to self-certify. They state:

“11.6 Whilst this approach may result in relatively modest payment amounts for the majority of eligible claimants, in Angeion’s experience this is ubiquitous in consumer product litigations and has not been a barrier to recovery in US consumer product litigations. As illustrated in the chart below, it is commonplace in US consumer product litigations to receive hundreds of thousands of claims from self-certifying purchasers who can only receive a modest sum of damages. The antiperspirant, deodorant and cleaning products cases involved minimal direct notice via class member contact information held by the defendants due to their recall efforts prior to settlement but otherwise notice was disseminated via media tactics.

Product Type	Maximum Recovery (USD) Self-Certifying Purchasers	Number of Valid Self-Certifying Claims Received
Ramen/Soup Bowls	\$15.00	422,557
Spray Antiperspirant	\$8.75	346,454
Deodorant	\$21.50	328,161
Cleaning Products	\$7.14	287,209
Sunscreen Products	\$59.00	265,240
Fruit Cups	\$9.00	260,386
Cleaning Products	\$13.32	185,562
Soap	\$20.00	187,045

Non-Dairy Drinks	\$11.50	180,508
Salmon	\$25.00	160,552
Hand Soap	\$8.10	149,838
Dry Shampoo	\$10.00	129,940
Seasoning	\$15.00	81,284
Snacks	\$20.00	70,330
Almond Milk	\$5.00	47,176

11.6 It is anticipated that the notification efforts will focus on directing Proposed Class Members to the Claims Website to file claims online.

11.7 The claim filing pages of the Claims Website, alongside all other pages, will be designed so they are easy to access, use and understand. Efforts will be focused on making the claim form short and simple so that the claim filing experience is as minimally burdensome as possible. The online claim form will have clear instructions that are written in plain language and are easy for Proposed Class Members to follow and understand. Moreover, it is anticipated that submission of any claim form online will be restricted so that it cannot be submitted with missing information and each required field is populated. This will drastically reduce the incidences of incomplete claims. Proposed Class Members will be prompted if some information is missing and then directed to provide additional information if it may assist with their claim.”

35. Angeion provide no information about the class sizes in the claims identified in the table above, so it is not possible to deduce, in those cases, what proportion of the class made a claim. The high point of Angeion’s evidence, when addressing the points made in *Spottiswoode*, is that “*it is commonplace in US consumer product litigations to receive hundreds of thousands of claims from self-certifying purchasers...*”. The authors do not say that it is their expectation that the level of take-up in this case would be more than this. Indeed, it is reasonable to infer that they reference the absolute number of claims in the table for the purpose of providing context to what they consider is likely to happen in this case.
36. Ms Abram did not have an alternative explanation of why Angeion advanced these figures but made it plain that the PCR was not advancing any particular level of take-up. She explained that the reason for this is that the level of take-up is likely to depend on the size of the award.
37. If the level of take-up was similar to that in *Gutmann* – we do not say it will be but put this forward as an illustration – that is to say a take-up of 1%, then, at

an interest rate of base rate +2%, the sums going to the class will be between approximately £712,000 and £3,128,000. As we shall see these figures are dwarfed by the proposed costs of these proceedings. If the rate of uptake was 5x greater than in *Gutmann* then the range is approximately between £3,560,000 and £15,640,000. Again, this is just for illustration.

(2) The PCR's cost budget

38. In order to determine the balance of the costs and benefits of the proceedings it is necessary to consider the costs of pursuing this claim. We find the costs spent by the PCR to date, and the proposed costs to be spent in the future, to be inexplicably high. As we have explained above there are already the *Asda* and *Tesco Proceedings* afoot. Those claims will necessarily seek to prove the existence of a cartel between the defendant groups and measure the size of any overcharge. It is to be expected that they will rely on expert evidence, deploying methods broadly similar to those proposed by Oxera. In the *Tesco* and *Asda Proceedings* there will be applications for disclosure and a detailed review of documents produced. The interests of the proposed class appear to be the same as those of the Claimants in the *Asda* and *Tesco Proceedings* in relation to these matters. Their interests will divide when it comes to arguing whether any overcharge was passed on by the supermarkets to consumers and if so, how much was passed on.

39. Prior to the question of pass-on the proposed class has various options open to it to minimise its costs and to seek to maximise return to the class. For example, it might piggy-back on the liability claim and keep only a watching brief until the question of pass-on is argued. Alternatively, if the PCR concludes it is necessary to take an active role in the liability phase, then it could share counsel, share disclosure and share expert witnesses. Indeed, if these matters are heard together, which is our expectation, it is likely to be obliged so to do. We have not been addressed on which of these options is appropriate and make no ruling in that regard today, but we make two observations: first, it is not appropriate for the PCR to assume the position, at the outset, that it has to prepare all aspects of its case independently of the *Asda* and *Tesco Proceedings* at – as we shall see – enormous costs to the class; second, it is incumbent upon a class representative

and their legal advisers actively to address these matters and look for the most cost-efficient manner of pursuing this litigation. This has not been done. We raised this matter with Ms Abram during this hearing and she agreed that there would be potential to cooperate with the Claimants in the *Asda* and *Tesco Proceedings*. Nevertheless, no plans have yet been made and we were provided with no details of what that cooperation might involve and what a likely costs budget would be required if unnecessary duplication was avoided.

40. A Litigation Costs Budget is annexed to the Litigation Plan, which is itself exhibited to Ms Heal's first witness statement. It identifies litigation costs of £15,751,483 plus VAT. That does not include the costs of ATE insurance deposit premium which is an additional £5,264,000. No account is taken in the budget of the fact that these proceedings are likely to be heard at the same time as the *Asda* and *Tesco Proceedings*. Costs up until certification are budgeted to be £3,094,444 plus VAT. This includes £366,832 of expert fees. On its face this sum is unexpectedly high, particularly when it is considered that the PCR has not yet addressed its mind to the level of take-up which is to be expected, and therefore the total sums which will be returned to the class if the action is successful.
41. By letter dated 19 March 2026, following this hearing, Simmons & Simmons, for the PCR, provided some further information. First, it is explained that costs spent leading up to this point were "approximately 25% less than the total budgeted costs," i.e. £2,482,083. We still consider these to be high. In the same letter, and following direct questions from the Tribunal at the hearing, the PCR provided further information on the various "success and other contingent fees" which were not detailed in the Litigation Costs Budget. These include an additional 50% success fee for solicitors, an additional 30% success fee for counsel and contingent ATE premia of up to £19.4 million (excluding IPT). These sums only came to light following questions from this Tribunal at the certification hearing. It was wrong, and potentially misleading, not to present these contingent sums, alongside other legal costs, on the application for certification.

42. The aforesaid costs do not include the funder's fee under the Amended Litigation Funding Agreement (**LFA**) with Erso Capital PCC Limited (the **Funder**). Under the LFA the Funder is entitled to claim up to 5x its initial outlay according to a Deed of Priority.
43. The PCR stated, prior to the conclusion of this hearing, that they intend to procure an order that the Funder's costs and expenses (including the Funder's fee) are only to be recovered from any undistributed damages, insofar as those costs and expenses are not recovered. That may sound like a concession but equally it might be said to underscore an expectation that there will be significant sums which are undistributed.
44. It is within reasonable contemplation that take-up may be measured in the hundreds of thousands. That would mean the sums returned to the lawyers and funder would be likely to swamp the relatively small sums that would be returned to the class. The litigation in those circumstances would have principally benefitted the lawyers and funder.

(3) Analysis

45. Turning to the matters which fall for consideration under Rule 79 of the Tribunal Rules, we accept that collective proceedings are *prima facie* appropriate. If, in the *Asda* and *Tesco Proceedings*, there is a finding of cartel activity, and an overcharge, then it seems inevitable, as matters stand, that strenuous arguments will be deployed by the defendants in those proceedings in support of the proposition that all or part of the overcharge would have been passed-on to consumers. If this is the case, then it is desirable that the class should be able to make a claim to the proportion of the overcharge which would have been passed on; otherwise it will be retained by the cartel.
46. For reasons we have explained we do not consider that, as currently formulated, the costs and benefits of the proposed collective proceedings come out in favour of certifying the claim. Ms Abram submits that the cost-benefit analysis is not an independent threshold issue and it needs to be considered in the context of the other factors listed in Rule 79(2). She points to the decision of this Tribunal

when it certified *Gutmann v First MTR South Western Trains* [2021] CAT 31 (*Gutmann (CPO)*) where it was held at [178] that “the cost-benefit analysis comes out slightly against the grant of a CPO”. It is submitted that it follows that failing the cost-benefit analysis is not a bar to the claim being certified.

47. A relevant consideration in *Gutmann (CPO)* was that the cost-benefit analysis was only “slightly” against grant of a CPO. Moreover, given the subsequent experience of this Tribunal in class actions, including in *Gutmann (Stakeholder Entitlement)*, it is unclear whether the same result would have been reached today. We accept that there may be cases where questions of cost-benefit analysis are finely balanced and that falling just on the wrong side of the line does not necessarily mean a case cannot be certified: analyses at certification necessarily carry a penumbra of uncertainty. Nevertheless in those cases where an assessment of the evidence indicates that the cost-benefit balance is plainly against continuation of the proceedings it would not ordinarily be appropriate to certify those proceedings.
48. Here we are faced with a case where there is no evidence to support an expectation that the amount which will be returned to the class will be proportionate to and/or exceed the costs being spent, irrespective of whether account is taken of the funder’s fee. In the context of a private action between rational and experienced commercial interests the cost-benefit balance of the proceedings would be scrutinised at the outset and a legal claim would not be initiated unless there were good commercial reasons for so doing. A problem with many class actions is that they offer enormous and irresistible commercial benefit to the lawyers and funders, whereas the commercial benefit to individual members of the class is relatively small. This can distort the incentive to pursue such proceedings. This distortion arises in part because many class actions are initiated by legal teams and not by the class itself.
49. For this reason, it is important, on an application for a CPO, for this Tribunal to consider the financial benefit to the class as a whole in the event that these proceedings are successful. That inevitably requires addressing the level of take-up, of damages awarded, by individual class members. The failure of the PCR

to address this while at the same time advancing a cost budget of over £20 million means this case is not currently suitable for a CPO.

D. THE AUTHORISATION CONDITION

50. The sole director of the PCR, Waterside Class Limited, is Ms Heal. Ms Heal has filed a witness statement in support of the PCR's application for a CPO. In section D of Ms Heal's witness statement, she explains that she believes consumers deserve to pay fair prices and that businesses should be held to account. She says that she has championed the interests of consumers throughout her career and since leaving full time employment in 2015 has taken up non-executive positions, the majority of which have involved serving the public in some way. These positions include her being chair of the Thames Water Customer Challenge Group, chair of the Market Operator of England's Non-Household Water Market, a non-executive director of the Office of Rail and Road, a lay member of the General Dental Council, a member of the Regulatory Decision Making Committee of the FCA and a Member of the Bank of England's Enforcement Decision Making Committee. Ms Heal has also been a volunteer for various charities.
51. Ms Heal does not explain how, and at what stage, she became involved in these proceedings. She references the Litigation Plan which was drawn up with the help of her advisers. Neither her witness statement nor the Litigation Plan address the cost-benefit of the proceedings by reference to the sums of money which are likely to be returned to the class if the litigation is successful. Ms Heal fails to address what costs synergies there may be if this action is heard at the same time as the *Asda* and *Tesco Proceedings*. She refers to the Costs Budget but does not explain how it was arrived at and what steps she has taken to manage costs.
52. In *Christine Riefa v Apple Inc* [2025] CAT 5 [2025] Bus. L.R. 417 (*Riefa*), this Tribunal refused to authorise the proposed class representative, Ms Riefa, because she had not evidenced that she was sufficiently independent and robust to act in the interest of the class. It was emphasised (at [106] of *Riefa*) that a class representative must demonstrate that they have a clear view of the interests

of the class and can engage robustly and independently with the advice received. In this case Ms Heal has, with her advisers, advanced an enormous budget for litigation without addressing the costs and benefits of spending that money in the context of the sums that are likely to be returned to the class.

53. Ms Heal makes reference to her desire to serve the public interest. We note that she is to be paid a considerable sum for her services. Being a class representative carries with it solemn responsibilities and is likely to be time-consuming, and for that reason a class representative may desire to receive remuneration. But the receipt of remuneration at the levels claimed by Ms Heal gives the appearance of a motivation beyond pursuing the interests of the class. Being paid a commercial hourly rate, while the case is on-going, may be seen as aligning the class representative's interests with those of the legal advisers who are also charging commercial hourly rates.²
54. In these proposed collective proceedings Ms Heal is charging £300 per hour for her services. It follows that if she works a full month, say during trial, her charges could be in excess of £50,000 for that month. The Costs Budget contemplates Ms Heal's total charges of being up to **£316,950** for these proceedings. These *may* seem unremarkable sums when compared to those charged by litigators in commercial law firms, but the median monthly income in the UK (and which might well approximate to the median income of the class) is in the region of £3,253³ and in that context this is an enormous sum of money. Moreover a charge of £300 an hour vastly exceeds the remuneration that would ordinarily be expected for a person engaged in public service.
55. It is unclear who authorised Ms Heal to be remunerated at £300 an hour. This is not explained in her evidence. We have not been told that this remuneration has been subject to independent scrutiny. We consider that the trend towards class representatives self-authorising fees of this magnitude is undesirable and gives rise to a potential blurring of the lines between the interests of the class representative and the interests of the legal advisers and funders which they are

² We have not been told that Ms Heal has significant overheads.

³ ONS figures for 2025.

required to scrutinise. If the class representative is, by reason of the existence of the claim, engaged in a highly profitable activity, their interests are not the same as those of the class. Ordinarily we would expect the remuneration of a class representative to be in line with levels of remuneration received for work in the public sector.

56. After the hearing of this application, in its letter of 19 March 2026, Simmons & Simmons report that Ms Heal would be willing to cap the amount charged at £900 per day but as we understand it the hourly rate otherwise remains unchanged.

57. Rule 78 of the Tribunal Rules provides:

“78.—(1) The Tribunal may authorise an applicant to act as the class representative—

(a) whether or not the applicant is a class member, but

(b) only if the Tribunal considers that it is just and reasonable for the applicant to act as a class representative in the collective proceedings.

(2) In determining whether it is just and reasonable for the applicant to act as the class representative, the Tribunal shall consider whether that person—

(a) would fairly and adequately act in the interests of the class members;

(b) does not have, in relation to the common issues for the class members, a material interest that is in conflict with the interests of class members;

(c) if there is more than one applicant seeking approval to act as the class representative in respect of the same claims, would be the most suitable;

(d) will be able to pay the defendant’s recoverable costs if ordered to do so; and

(e) where an interim injunction is sought, will be able to satisfy any undertaking as to damages required by the Tribunal.

(3) In determining whether the proposed class representative would act fairly and adequately in the interests of the class members for the purposes of paragraph (2)(a), the Tribunal shall take into account all the circumstances, including—

(a) whether the proposed class representative is a member of the class, and if so, its suitability to manage the proceedings;

(b) if the proposed class representative is not a member of the class, whether it is a pre-existing body and the nature and functions of that body;

(c) whether the proposed class representative has prepared a plan for the collective proceedings that satisfactorily includes—

(i) a method for bringing the proceedings on behalf of represented persons and for notifying represented persons of the progress of the proceedings; and

(ii) a procedure for governance and consultation which takes into account the size and nature of the class; and

(iii) any estimate of and details of arrangements as to costs, fees or disbursements which the Tribunal orders that the proposed class representative shall provide. [...]"

58. In authorising a person to act as a class representative we need to consider whether the applicant would act “fairly and adequately in the interest of class members” and that requires, *inter alia*, considering whether the class representative has produced a satisfactory litigation plan relating to the costs and benefits of the proceedings. In this case, for the reasons given above, we do not consider the PCR has, to date, adequately addressed this balance and consequently we are not willing to authorise it as a class representative.

E. LITIGATION FUNDING AGREEMENT AND ATE INSURANCE

59. We have reviewed the LFA and at the end of this hearing indicated that it needed to be revised to bring it in line with observations made in other cases. We drew the PCR’s legal advisers’ attention to *Rodger v Alphabet* [2025] CAT 45, *Bulk Mail Claim v International Distribution Services* [2025] CAT 19 [2025] Bus. L.R. 571, and *Roberts v Severn Trent Water* [2025] CAT 17. Simmons & Simmons have indicated that they are seeking to address these issues. The PCR has in place ATE insurance which is said to provide protection of up to £34 million against the risk of an adverse costs order.

60. An advisory panel has been constituted, and we have been shown an agreement with the advisory panel members. These include Ms Kate Wellington a former lawyer at Which?, Ms Helen Charlton a former partner at Dentons and Mr Nicholas Spearing a former partner at Freshfields Bruckhaus Deringer LLP. They are authorised to spend up to 20 hours a year at an hourly rate of £150 per hour. The Costs Budget identifies fees of £262,500 for a “consultative panel”. In the event this matter progresses we require further information as to how this

sum has been arrived at. The PCR should also provide greater clarity as to the relevant skills of members of the advisory panel and how they inter-relate. The PCR should also make clear who, if anyone, on the advisory panel is in a position to scrutinise costs as they are incurred (see *Bulk Mail* at [40]).

F. A FURTHER APPLICATION

61. For the reasons we have given, and subject to the matters set out above, it is *prima facie* appropriate that this class is represented in opt out proceedings alongside the *Asda* and *Tesco Proceedings*. We see scope for advancing a costs budget much smaller than the one which has so far been advanced by the PCR. Moreover, we see an opportunity for a more creative mechanism for returning damages to the class. Subject to further consideration we see no reason why a scheme could not be devised, perhaps with the cooperation of retail outlets, which has the potential to return close to 100% of damages to members of the class (with appropriate deductions for unrecoverable costs and a funder's fee). If these matters were addressed then the costs and benefits of the proceedings could be revisited.
62. We do not propose to strike out this claim today. We invite the PCR to reconsider how these proceedings could be reformulated to meet the Tribunal's concerns. We propose a directions hearing on the first available date after 13 May 2026 at which we expect to be informed whether or not the Proposed Class Representative intends to make a further application for a collective proceedings order and the scope of that application.
63. This judgment is unanimous.

Justin Turner KC
Chair

Lesley Farrell

Professor Alasdair Smith

Charles Dhanowa CBE, KC. (*Hon*)
Registrar

Date: 15 April 2026