



Neutral citation [2026] CAT 36

Case No: 1766/4/12/26

IN THE COMPETITION

APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

23 April 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 17 April 2026

RULING (CONSEQUENTIAL MATTERS)

APPEARANCES

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

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

A. INTRODUCTION

1. On 24 January 2025 the Applicant, Aramark Limited, acquired 90% of the issued share capital of Entier Limited. Following a merger inquiry, on 15 January 2026 the Competition and Markets Authority (“CMA”) published its final report (“the Decision”). This concluded: (i) that the transaction had resulted, or may be expected to result, in a substantial lessening of competition; (ii) that only the sale of Entier to an approved buyer would effectively address the competition concerns.
2. On 13 February 2026, the Applicant’s solicitors sent the Tribunal a notice of application (“the Substantive Application”) for review of the Decision under section 120 of the Enterprise Act 2002 (“the 2002 Act”). It is not now in dispute that the statutory time limit for filing the Application had expired at 5 pm on 12 February 2026. The Applicant applied for an extension of time (“the EoT Application”). On 10 March 2026, the I issued a judgment (“the Judgment”) in which I refused the EoT Application.
3. I now have before me an application (“the PTA Application”) for permission to appeal the Judgment. The CMA has raised a question as to whether the Judgment is susceptible to a statutory appeal or may be challenged only by way of judicial review. I have concluded that an appeal under section 120(6) of the 2002 Act does lie, with permission, against the Judgment. However, for the reasons I set out below, I refuse the PTA Application.

B. STATUTORY PROVISION

4. Section 120 of the 2002 Act provides as follows:

“Review of decisions under Part 3

Any person aggrieved by a decision mentioned in subsection (1A) may apply to the Competition Appeal Tribunal for a review of that decision.

(1A) The decisions are—

- (a) decision of the CMA, OFCOM or the Secretary of State under this Part in connection with a reference or possible reference in relation to a relevant merger situation or a special merger situation;

(aa) a decision of the CMA or the Secretary of State in connection with a foreign state newspaper merger situation;

(b) a decision of the CMA under this Part in connection with transferred EU merger commitments.

(c) a decision of the CMA or the Secretary of State for the purposes of Chapter 2 of Part 5 of the Digital Markets, Competition and Consumers Act 2024 in connection with a request from an overseas regulator (within the meaning of that Chapter) for the CMA to assist the regulator in carrying out functions of the regulator which correspond or are similar to the functions of the CMA under this Part.

(2) For this purpose ‘decision’ —

(a) does not include a decision to impose a penalty under section 94AA(1) or 110(1) or (1A); but

(b) includes a failure to take a decision permitted or required by

(i) this Part in connection with a reference or possible reference or transferred EU merger commitments

(ia) Chapter 3A of this Part;

(ii) Chapter 2 of Part 5 of the Digital Markets, Competition and Consumers Act 2024 in connection with a request from an overseas regulator (within the meaning of that Chapter) for the CMA to assist the regulator in carrying out functions of the regulator which correspond or are similar to the functions of the CMA under this Part.

(3) Except in so far as a direction to the contrary is given by the Competition Appeal Tribunal, the effect of the decision is not suspended by reason of the making of the application.

(4) In determining such an application the Competition Appeal Tribunal shall apply the same principles as would be applied by a court on an application for judicial review.

(5) The Competition Appeal Tribunal may—

(a) dismiss the application or quash the whole or part of the decision to which it relates; and

(b) where it quashes the whole or part of that decision, refer the matter back to the original decision maker with a direction to reconsider and make a new decision in accordance with the ruling of the Competition Appeal Tribunal.

(6) An appeal lies on any point of law arising from a decision of the Competition Appeal Tribunal under this section to the appropriate court.

(7) An appeal under subsection (6) requires the permission of the Tribunal or the appropriate court.

(8) In this section—

‘the appropriate court’ means the Court of Appeal or, in the case of Tribunal proceedings in Scotland, the Court of Session; and

‘Tribunal rules’ has the meaning given by section 15(1).”

C. PROCEDURE

5. Following the issue of the Judgment, the Applicant indicated its intention to seek permission to appeal. In a letter sent to the Tribunal on 12 March 2026, the CMA raised a question as to whether a statutory appeal lies against the Judgment, on the basis that the Substantive Application was never registered with the Tribunal and there are, so it was suggested, “*no proceedings under section 120*”.
6. The CMA invited me to abridge the period specified in rule 107 of the Competition Appeal Tribunal Rules 2015 (the “Tribunal Rules”) for filing an application for permission to appeal. I refused the CMA’s application to abridge time. I gave the CMA the opportunity to file a written response to the PTA Application and fixed a consequential hearing. In the event, as I explain below, the CMA took a neutral position on the jurisdiction question but advanced a legal analysis of section 120(6) which differed from the Applicant’s. I heard the parties on 17 April 2026.

D. THE PROPOSED GROUNDS OF APPEAL

7. The PTA Application advances two proposed Grounds of Appeal.
 - (1) The Applicant contends, first, that the Tribunal made a number of errors of law in applying the exceptional circumstances test to the facts of this case. Specifically, it is said that:
 - (a) the Tribunal erred in treating the solicitor’s honest mistake in construing the counting rule as equivalent to cases of deliberate or careless conduct;
 - (b) the Tribunal erred in finding that Aramark itself also bore responsibility for the missed deadline;

(c) the Tribunal erred in finding that the severe consequences for Aramark did not support a finding of exceptional circumstances;

(d) the Tribunal erred in its approach to the market and third parties; and

(e) the Tribunal erred by failing to give due consideration to the combination of circumstances relied upon by Aramark.

(2) The Applicant contends, second, that the Tribunal erred in its application of the surrogacy principle. Specifically, it is said that the Tribunal misconstrued the surrogacy principle and erred in law in refusing to disapply that principle.

8. The Applicant submits that these grounds have real prospects of success. It further contends that, in any event, there are compelling reasons for the appeal to be heard, namely: the circumstances of this case are unprecedented; guidance on the correct approach to extensions of time in relation to merger reviews would be of wider significance; and the consequences of the Judgment for Aramark are severe and irreversible. Aramark sets out detailed arguments in support of these contentions in the PTA Application. In its written response, the CMA opposes the PTA Application. Its headline propositions, which it elaborates in the response, are that: (i) whether exceptional circumstances exist is a matter of evaluative judgment, with a high factual content and limited legal content in respect of which the Tribunal's judgment merits weight; and (ii) neither of the proposed grounds of appeal discloses an error in the Tribunal's exercise of evaluative judgment. At the consequential hearing, I heard further oral argument from Ms Kreisberger KC and Mr Williams KC.

E. IS THERE A STATUTORY APPEAL?

9. The first question which I require to address is whether the Judgment is appealable under section 120(6) of the 2002 Act. In the PTA Application, the Applicant invites me to conclude that the effect of the Judgment was in substance to "*dismiss*" the Substantive Application. On that footing, it falls within one of the classes of decision expressly provided for in section 120(5) of

the 2002 Act. It follows that the Judgment was a “*decision of the Competition Appeal Tribunal under this section*” - the key phrase in section 120(6) - and, subject to obtaining permission under section 120(7), is appealable under section 120(6). The Applicant refers to *Evans v. Barclays Bank & Ors* [2023] EWCA Civ 876 (“*Evans*”) at [48] – [57] and *Nippon Yusen Kabushiki Kaishi & Ors v. Mark McLaren Class Representative Ltd* [2023] EWCA Civ 1471, at [38], in support of the proposition that any ambiguity should be resolved in favour of that construction.

10. Notwithstanding the position foreshadowed in the CMA’s letter of 12 March 2026, the CMA now adopts a neutral position as to whether any recourse against the Judgment should be by way of an appeal under section 120 or an application for judicial review. However, the CMA contends that if there is a statutory appeal, that would not arise because the Judgment falls within section 120(5). The CMA contends that section 120(5) is concerned only with decisions on the merits of an application. Rather, the CMA says that if there is an appeal it arises because: (i) section 120 is engaged once a person applies to the Tribunal under section 120(1); and (ii) any decision of the Tribunal in respect of that application which raises an appealable point of law may (subject to permission) be brought under appeal by reference to section 120(6). On that interpretation, an appeal would (subject to permission) lie against interlocutory and procedural decisions.
11. The CMA submits that there is nevertheless doubt as to whether the Judgment is appealable under section 120(6) because no effective proceedings under section 120 were ever commenced or served on the CMA. Aramark did not file its notice of application within the time limit specified in rule 25 of the Tribunal Rules and was not granted an extension. It follows, the CMA argues, that no proceedings under section 120 have ever been validly commenced. If there were to be an appeal against the Judgment, this would, says the CMA, place it in the anomalous position of being respondent to an appeal arising from proceedings which have never been served on it. All that said, the CMA notes that in *Somerfield Stores Ltd v. OFT* [2014] EWCA Civ 400 (“*Somerfield Stores*”), the OFT was given permission to appeal a judgment of the Tribunal granting a retroactive extension of time. In that case, by reason of the grant of the extension of time, there were live proceedings before the Tribunal. Nevertheless, Mr

Williams acknowledged at the consequential hearing that Parliament may be taken to have intended the position, as regards appealing a decision on an application for extension of time, to be the same regardless of the outcome.

12. At the consequential hearing, Ms Kreisberger, for the Applicant, adhered to the position that the effect of the Judgment was to “*dismiss*” the Application, such that an appeal plainly lies under section 120(6). It is, she said, unnecessary on that footing for the Tribunal to consider what the position would be in the case of other procedural or interlocutory orders. However, she did not resist the interpretation advanced by the CMA, and accepted that on that interpretation, the Judgment would, in any event, be appealable, with permission, under section 120(6).
13. I have concluded that the Judgment is appealable under section 120(6) of the 2002 Act. Under that subsection, subject to permission, an appeal lies to the appropriate court on any point of law “*arising from a decision of the Competition Appeal Tribunal under this section*”. The first question of interpretation is accordingly whether the phrase “*decision of the Competition Appeal Tribunal under this section*” refers only to the specific orders referred to in section 120(5) or whether it applies to any decision which the Tribunal may make in respect of an application for review under section 120(1). It seems to me that the latter is the correct interpretation.
14. Section 120(6) refers generically to a decision of the Tribunal “*under this section*” – i.e. under section 120 taken as a whole - and not to a decision “*under section 120(5)*”. Parliament may be taken to have understood that if a person aggrieved makes an application to the Tribunal under section 120(1), the Tribunal will make various decisions of a procedural or interlocutory nature in the course of the proceedings. Indeed, the 2002 Act itself, in section 15, contains the legal basis for the Tribunal Rules which regulate those proceedings and provide for such decisions. The generic phrase “*decision of the Competition Appeal Tribunal under this section*” may readily be understood to encompass all such decisions. It would follow that an appeal would lie, with permission, under section 120(6) on any point of law arising from any such decision.

15. That interpretation is strongly supported by considerations of legal policy. In *Evans*, which concerned section 49(1A) of the Competition Act 1998 (“the 1998 Act”), Green LJ observed (at [57]) that:

“...the statutory right of appeal should be construed broadly in order to minimise the scope of judicial review.”

He elaborated on that proposition in terms which, though formulated by reference to collective proceedings under the 1998 Act and to the position in England & Wales, apply equally to merger cases under the 2002 Act and (with the substitution of “Court of Session judge” for “High Court judge” and deletion of the reference to the Administrative Court) to the position in Scotland:

“57. One of the legislative purposes identified by the Supreme Court in *Merricks* as guiding the operation of the regime was judicial efficiency. Judged through this optic there is only judicial inefficiency flowing from forcing litigants seeking to challenge CAT decisions to go via judicial review or ... even worse, proceed simultaneously via judicial review and a statutory appeal.

58. There is no logic in a conclusion that Parliament wished to give an appeal route a narrow scope leaving judicial review with a concomitantly broader scope. To the contrary, there are good reasons why an appeal should take precedence over judicial review. First, in terms of judicial hierarchy it makes sense for challenges to CAT decisions to flow, to the greatest degree possible and consistent with the legislative purpose, to the Court of Appeal. Institutionally the CAT is presided over by a specialist High Court judge and in individual cases High Court judges with suitable experience are routinely appointed to sit as the presiding judge. Judges who sit in the CAT acquire specialist skills and receive specialist training. A CAT panel routinely includes an economist. If judicial review were a normal route of challenge this would entail a challenge from a three person specialist CAT, to a non-specialist High Court judge sitting in the Administrative Court which could then lead to an appeal to the Court of Appeal. Judicial review inserts an unnecessary non-specialist step in the progress of a CAT decision to an appeal. Secondly, it is relevant that in practical terms there is not a great deal of difference (if any) between an appeal on a point of law and judicial review. There is no clear benefit in permitting judicial review to have broad scope where there is no inherent forensic value to the exercise. Both proceed upon the basis of facts as found by the lower court or tribunal and in both an appropriate margin of discretion or appreciation is accorded to the first level trier of fact, especially if it is a specialist body. The traditional ground of an appeal on a point of law are closely related to the traditional grounds of judicial review. The authors of *De Smith’s Judicial Review* ... observe ... that the powers of an appellate court will encompass all the grounds of judicial review within the rubric ‘points of law’ and might ‘perhaps’ even be greater.”

16. These considerations provide strong support for giving the phrase “*decision of the Competition Appeal Tribunal under this section*” in section 120(6) of the 2002 Act a broad interpretation so as to encompass not only those orders

explicitly identified in section 120(5) but any interlocutory or procedural decision which the Tribunal may make in the course of addressing an application under section 120. The requirement for permission in section 120(7) enables the Tribunal (and the appropriate appeal court) to control interlocutory appeals and thereby ensure the orderly and fair management of the proceedings. By contrast, if there were to be no statutory appeal, merger proceedings would be susceptible to applications (over which neither the Tribunal nor the appellate court would have any control) for judicial review of procedural and interlocutory decisions. These would fall to be determined (both at permission stage and on the merits) by a Court of Session or High Court judge who, as Green LJ observed, may well be a non-specialist.

17. In my view, there is no good reason why the phrase “*decision of the Competition Appeal Tribunal under this section*”, so construed, should not extend to a decision refusing an extension of time for filing a notice of application under section 120(1). I recognise that until a notice of application has been registered by the Tribunal, there are no extant proceedings before the Tribunal to which the CMA is a respondent. Nevertheless, a decision refusing an extension of time is a decision by the Tribunal in respect of an application which has been presented to the Tribunal under section 120(1). It can properly be regarded as a “*decision of the Competition Appeal Tribunal under this section*”. It is a material consideration in support of that interpretation that it would treat the grant and refusal of an application for an extension of time symmetrically.
18. Against that background, I turn to section 120(5), upon which Ms Kreisberger specifically relied. In my view, that subsection identifies the orders which the Tribunal may make which will dispose finally of an application which is pending before the Tribunal. There may be various bases upon which an application may be “*dismissed*”; but any such order will finally dispose of the application. That seems to me to be the ordinary reading of the subsection. The Judgment was not an order of that character. It did not “*dismiss*” the Substantive Application. Rather, it refused an application, brought under the Tribunal Rules, for an extension of time for filing the Substantive Application. There is no need to give the word “*dismiss*” a broad or extended meaning so as to encompass the

Judgment when it is, in any event, susceptible to an appeal under section 120(6) on the basis which I have already explained.

F. THE TEST FOR PERMISSION TO APPEAL

19. In the Judgment, the Tribunal ruled that Scotland is the forum. The parties are at one that the Tribunal should apply the test for permission to appeal articulated by Lord Pentland, sitting in the Inner House of the Court of Session, in *Swindells v. Scottish Legal Complaints Commission* [2021] CSIH 5 at [16], namely that permission should be granted if: (i) the appeal has a real (or realistic) prospect of success; or (ii) there is some other compelling reason why the appeal should be heard.

G. DECISION ON PERMISSION

20. I have taken into account all of the arguments set out in the PTA Application and Response and in the oral submissions. I have concluded that neither of the two Grounds of Appeal advanced by the Applicant has realistic prospects of success.

Proposed Ground of Appeal 1: alleged misapplication of the “exceptional circumstances” test

21. As Ms Kreisberger acknowledged during the hearing on the EoT Application, the question of whether the facts of this case present exceptional circumstances for the purposes of rule 25(3) is a question of evaluative judgment. The constraints on appellate review of an evaluative judgment by a specialist tribunal are well-established: see e.g. *Advocate General for Scotland v. Murray Group Holdings Ltd* 2016 SC 201.
22. I observe that the Applicant does not challenge the legal analysis of the statutory provision set out at paragraphs 72 to 85 of the Judgment. In particular, the Applicant does not challenge the following:

- (i) The Tribunal’s adoption of Vos LJ’s formulation, accepted by the parties, that the circumstances in question must be “*exceptional circumstances justifying an appeal out of time*” (see paragraph 72).
 - (ii) The Tribunal’s assessment of the public interest served by adherence to the statutory time limits and the implications of that public interest for the approach to be taken to assessing whether the “*exceptional circumstances*” test has been satisfied (see paragraphs 72-76).
 - (iii) The significance, in the context of a retrospective application seeking to relieve the applicant from the consequences of failure to meet the time limit, of the reasons why the time limit was not met (see paragraphs 77-78).
23. In proposed Ground of Appeal 1, the Applicant challenges the evaluative assessment reflected in the Judgment by challenging the five specific features of the Judgment mentioned in paragraph 7 above. It does not seem to me that the arguments advanced have realistic prospects of success.
- (a) ***The Tribunal erred in treating the solicitor’s honest mistake in construing the counting rule as equivalent to cases of deliberate or careless conduct.***
24. The Applicant does not point to any part of the Judgment where the Tribunal explicitly treated the solicitor’s mistake as equivalent to cases of “*deliberate or careless conduct*”. The submission is that the type of mistake made here should have been regarded as materially different from other types of error which would not be excusable. It is, though, not said that the Tribunal misunderstood or mischaracterised the factual position. Failure to meet a time limit will rarely, if ever, be deliberate and will almost invariably arise from a good faith or honest error. It does not follow that such an error falls to be regarded as an exceptional circumstance justifying an extension of time (or, indeed, that it is not careless). In the present case the error was as to the computation rules. The Applicant has not challenged the view, recorded at paragraph 90 of the Judgment, that there was no reasonable room for doubt as to the effect of the rules in this case (an effect which, as noted at paragraph 35 of the Judgment, is reflected in paragraph

4.17 of the Tribunal's Guide to Proceedings 2015), or that even if, contrary that view, there was room for doubt or ambiguity, this should have been resolved in favour of filing before the earliest possible deadline. In these circumstances, it seems to me that the view that the nature of the error did not amount to an exceptional circumstance justifying an extension to the statutory time limit was one which was open to the Tribunal.

(b) The Tribunal erred in finding that Aramark itself also bore responsibility for the missed deadline.

25. Ms Kreisberger made clear at the consequential hearing that the Applicant does not challenge the factual findings, at paragraphs 91 and 97 of the Judgment, that the solicitor's error was compounded by the departure from the Applicant's internal administration plan and that the departure from the intention to file on 12 February 2026 was in order to take into account comments from the Applicant's parent company. She contended that the Tribunal erred in law in holding that the Applicant was "*culpable*", and in relying on that determination when holding that there were no exceptional circumstances. Paragraph 92 of the Judgment states: "... *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*". Ms Kreisberger contended that the double negative in this statement involved a positive finding that the Applicant had responsibility for missing the deadline.

26. Ms Kreisberger argued that the Applicant acted reasonably given that it had provided comments well in advance of what it had been advised was the deadline. In the context of the four-week period for appealing, there was, she said, nothing risky or unusual about providing comments on a call which took place a day and a half before what was understood to be the deadline. She drew my attention to the proportion of section 120 appeals in the last ten years which had been filed on the last day (seven out of thirteen; with an eighth apparently filed a day late). These submissions supplemented the written argument that, having instructed merger specialists, the Applicant was entitled to rely on their

advice as to the deadline and that the Tribunal erred in not focusing on the Applicant's state of knowledge at the time.

27. I do not consider that this argument has realistic prospects of success. The Applicant does not challenge the observations in the Judgment at paragraph 21, to the effect that it was incumbent on it to provide the Tribunal with a full, specific and acceptable account of the factual position explaining why the statutory deadline had not been met. The evidence before the Tribunal disclosed (paragraph 20): (i) that the Applicant had agreed an internal administration plan with its advisers to file on 12 February; and (ii) that at 2 pm on 12 February the Applicant discussed with its legal advisers whether any additional comments from its management team in the United States might be incorporated into the notice. The evidence contained no further explanation. It did not, for example, explain why, having agreed the internal administration plan, the Applicant was coming forward with a request to consider further comments only at 2 pm on the intended filing day. There was simply no further evidence about the matter.
28. In light of the evidential position, it seems to me that the Tribunal was entitled to make the observations which are challenged in this proposed Ground of Appeal. Fairly read, those did not make a positive finding of culpability on the part of the Applicant; rather they record that in light of the evidence before the Tribunal, it could not make a positive finding that the Applicant itself had no responsibility for the fact that the notice was filed on 13 February instead of on 12 February, as had been intended. That, it seems to me, is a fair reading of the sentence to which Ms Kreisberger referred in paragraph 92, read in context. The point is reiterated explicitly in those terms at paragraph 115.
29. The Judgment recognised (at paragraph 93) that the four-week period is a demanding one. That other applicants have filed on the last day, but timeously, does not detract from the general proposition – the wisdom of which is disclosed by the circumstances of this case – that filing on the last day “*courts disaster*”. At paragraph 97, the Judgment identifies the reasons why Aramark failed to meet the filing deadline. At that point the Judgment points out that the combination of solicitor error with the late decision to defer filing until what was erroneously understood to be the last day for filing does not distinguish the

case from any other where a mistake – almost invariably a good faith mistake – combined with filing on the last day results in a court deadline being missed. The view that these were not exceptional circumstances such as to justify an extension of time was, it seems to me, one which was readily open to the Tribunal.

(c) *The Tribunal erred in finding that the severe consequences for Aramark did not support a finding of exceptional circumstances.*

30. Under this head, the Applicant criticises paragraphs 107 to 109 of the Judgment. Specifically, it criticises the observations at the end of paragraph 107 about the adequacy of a damages remedy, and the observations in paragraph 108 that there was no relevant distinction to be drawn in this context between this case and other cases involving divestment orders or, indeed, other types of order which the CMA may make following a merger inquiry.
31. In support of the former point, the Applicant contends that damages are an inadequate remedy because they would not fully restore the Applicant to the position it would have been in absent the error. It argues that the issue is not simply one of complexity but the difficulty of fully compensating the Applicant for the true scale of its losses. At the consequential hearing, Ms Kreisberger drew to my attention some observations of Mance LJ in *Bath and North East Somerset District Council v. Mowlem plc* [2015] 1 WLR 785 at [16]: “*the fact that difficulty of quantification is an acknowledged basis for treating damages as an inadequate remedy means that the court recognises, when deciding whether to grant an interlocutory injunction, that it can be unjust to leave a party to a claim to damages which the court would if necessary have to quantify. The court may in other words be sufficiently lacking in confidence about its own ability fairly and adequately to quantify damage after the event to prefer to grant an injunction*”.
32. Mance LJ’s remarks were made in the context of considering an interlocutory injunction. The observations in the Judgment about the adequacy of a damages remedy were, by contrast, made in the context of a failure to meet a statutory deadline and considering whether the “exceptional circumstances” test has been

satisfied. As the Judgment records at paragraph 106, as part of her submission about the serious consequences for the Applicant, Ms Kreisberger contended that a professional negligence claim against the Applicant’s solicitors would not “*restore the position*”. It is in that context that the observations in paragraph 107 fall to be read and against that background, it seems to me that the observation at paragraph 107 which is criticised was one which, it seems to me, was open to the Tribunal.

33. The remarks in paragraph 108 of the Judgment which are criticised also fall to be read in the context of the exercise upon which the Tribunal was engaged – namely, in assessing whether the circumstances were “exceptional” for the purposes of rule 25(3). It is plain from paragraphs 107, 109 and 117 that the Tribunal recognised the very significant prejudicial consequences for Aramark. The essential point being made at paragraph 108 is that it is of the nature of the statutory time limit that a failure to comply is liable to result in the loss of an opportunity to seek a review of decisions made by the CMA in merger cases, including structural orders such as that made in this case, and that this may often have significant commercial impact. It is in that context that the observations about other types of order fall to be read. Again, it does not seem to me that these betray an error of approach such as to vitiate the Tribunal’s assessment of the circumstances.

(d) The Tribunal erred in its approach to the market and third parties.

34. The Judgment recognised (at paragraph 110) that implementing the Decision would have consequences for the market and other market participants; and took into account the points which Ms Kreisberger had advanced. In the context of asking whether the circumstances were exceptional, the Judgment notes that “*similar*” points could be made about other cases. It also observes that the market effects relied upon would follow only if the Decision were, following review, found to be unlawful. These were, I would suggest, legitimate comments open to the Tribunal.

(e) The Tribunal erred by failing to give due consideration to the combination of circumstances relied upon by Aramark.

35. This is incorrect. The Judgment considered each of the factors relied upon by the Applicant and reached conclusions about them (paragraphs 97, 100, 102-5, 107-110). It then explicitly, at paragraphs 116 to 117 addresses, against that background, the cumulative effect of all of those circumstances.

Ground of Appeal 2: the surrogacy principle

36. Aramark contends that the Tribunal misconstrued the surrogacy principle and erred in law in failing to apply it to the circumstances. The Tribunal's discussion of the surrogacy principle falls to be considered against the background of the points made at paragraphs 69-71 of the Judgment, to the effect (not challenged by the Applicant) that rule 25(3) is compatible with Article 6. That is the context for the final sentence of paragraph 115, to which exception is taken, that it would not be incompatible with Article 6 to apply the provision in accordance with its terms and to hold that there are no exceptional circumstances. In the context of paragraphs 69-71, that does not seem to me to betray an error of law.
37. The PTA Application does not take issue with the observations at paragraph 114 of the Judgment, which explain the compelling reasons of legal policy, particularly applicable to merger proceedings before the Tribunal, for proceeding, as a general rule, on the footing that errors made by a solicitor will be imputed to the client. The Judgment then goes on, at paragraph 115, to consider whether the particular circumstances of this case justify a departure from that general rule. The difficulty with this Ground of Appeal is that, ultimately, Ms Kreisberger's submission on the surrogacy principle failed on the facts for the reasons set out in that paragraph. The Judgment specifically made a finding (at paragraph 115) that in all the circumstances it would not be unjust to fix the Applicant with the consequences of the solicitor's error.

Some other compelling reason

38. I do not consider that there is a compelling reason for granting permission to appeal in circumstances where I do not consider that the proposed Grounds of Appeal have realistic prospects of success. Although the fact pattern presented by this case had not been considered by the Tribunal previously, that does not seem to me to be a reason for granting permission. Ultimately, this was, as Mr Williams argues, a “*simple case of lawyer error*”. It is of the nature of a failure to meet a time limit, in such a case, that there may be serious consequences, as there are here. Further, whilst the surrogacy principle has not previously been considered in relation to the Tribunal, no issue is taken with the policy considerations identified at paragraph 114; and, ultimately, the argument failed on the facts. In these circumstances I do not consider that I should grant permission for an appeal which I do not consider has a realistic prospect of success.

H. COSTS

39. The parties are agreed that the Applicant should meet the CMA’s costs of dealing with the EoT Application in the amount of £54,941.10. They also agreed that in the event that the PTA Application is refused, the Applicant should meet the CMA’s costs of dealing with that Application in the amount of £21,877.80. The CMA submits that its costs should be paid within 28 days. That seems to me to be appropriate; and I accordingly order the Applicant to pay the CMA £76,818.90 within 28 days of the Tribunal’s order.

James Wolffe KC
Chair

Charles Dhanowa CBE, KC (*Hon*)
Registrar

Date: 23 April 2026