



**Amended pursuant to Rule 114(3) of the Competition Appeal Tribunal Rules 2015**

**Case No: 1696/7/7/24**

**IN THE COMPETITION APPEAL TRIBUNAL**

BETWEEN:

**DR MARIA LUISA STASI**

Class Representative

- v -

**(1) MICROSOFT CORPORATION**

(a company incorporated under the laws of Washington State, USA)

**(2) MICROSOFT LIMITED**

(a company incorporated under the laws of England & Wales)

**(3) MICROSOFT IRELAND OPERATIONS LIMITED**

(a company incorporated under the laws of Ireland)

Defendants

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**REASONED ORDER**

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**UPON** the Class Representative’s application for a collective proceedings order (the “**CPO Application**”) pursuant to section 47B of the Competition Act 1998 and Rule 75 of the Competition Appeal Tribunal Rules 2015

**AND UPON** the judgment of the Tribunal made on 21 April 2026 granting a collective proceedings order in case 1696/7/7/24 (the “**Judgment**”)

**AND UPON** the collective proceedings order made on 21 April 2026 in case 1696/7/7/24 (the “**Order**”)

**AND UPON** the Class Representative’s application for costs dated 1 May 2026

**AND UPON** the Defendants’ application for permission to appeal dated 12 May 2026

**AND UPON** hearing counsel for the Class Representative and counsel for the Defendants at a hearing on 20 May 2026 (the “**Consequential Hearing**”)

**AND UPON** the rulings of the Tribunal of 20 May 2026

**IT IS ORDERED THAT:**

1. The Defendants shall pay 80% of the Class Representative’s costs of the CPO Application incurred between 25 July 2025 and 23 January 2026, those costs to be subject to detailed assessment if not agreed. The balance of the Class Representative’s costs are costs in the case.
2. The Defendants shall make a payment on account of the costs awarded under paragraph 1 above in the amount of £274,246.00, to be paid within 28 days from the date of this order.
3. The Defendants’ application for permission to appeal is refused.
4. The Defendants shall file and serve their Defence by 4pm on 11 September 2026.
5. The Class Representative shall (if so advised) file and serve a Reply by 4pm on 20 November 2026.
6. A CMC shall be listed on the first available date in December 2026.
7. The costs of the Consequential Hearing shall be costs in the case.
8. There be liberty to apply.

**REASONS**

**Permission to Appeal Application**

9. Microsoft seeks permission to appeal our Order certifying the present proceedings as suitable to be brought as collective proceedings on an opt-out basis. Our Judgment on the CPO application is reported at [2026] CAT 34.

10. We refuse permission to appeal. Two grounds are relied on. Taking them in turn, we comment as follows.

*Ground 1*

11. The basic submission made is that the Tribunal relied on inadmissible evidence in forming its judgment, *viz.*, it is said it relied on aspects of the Final Report of the Competition and Markets Authority dated 31 July 2025.
12. The Class Representative raises a preliminary objection, that this is a new point not taken below. We agree it is a new point, but in our discretion would allow it anyway. It is a new point because at the hearing below, Microsoft's position was that the CMA's findings could be relied upon, although little weight could be placed on them. In its written submissions filed in January this year after the Evans decision (*Evans v. Barclays Bank Plc and others* [2025] UKSC 48), Microsoft said (by reference to Evans at §§144-167) that "*whether weight can fairly be placed on such investigations is doubtful*", but this was not a submission in the form now advanced. All the same, we see little prejudice to the Class Representative in permitting the point to be raised: it is a pure point of law, which can be addressed on its own terms by reference to the decision we have given.
13. Turning then to the substance, we think that Ground 1 rests on a misapprehension. There was no reliance on inadmissible evidence. The CMA's Final Report was relied on only as an indicator of the evidence likely to be available at trial in these proceedings (see for example, the CPO Judgment at §80: "*... even allowing for these limitations, we consider that the CMA's conclusions tell us something about the likelihood of evidence being available at trial to substantiate the claim that there has been an abuse of dominant position by means of exclusionary conduct, resulting in loss on a class-wide basis*"). It is perfectly permissible to rely on the CMA's Final Report for that purpose (see Evans at §§158-159). There is no real prospect of arguing the contrary, and no point of principle arises: the relevant principle has recently been stated at the highest level. That is the principle we applied.

## *Ground 2*

14. Ground 2 is a challenge to the Tribunal's exercise of discretion, in determining that opt-out proceedings were appropriate. We do not consider there is any real prospect of arguing that the discretion was exercised improperly.
15. The basic logic of our decision, apparent from a review of the CPO Judgment as a whole, was as follows:
  - (1) the claim is a viable one which properly identifies a basis for claiming loss on a class-wide basis, and although not strong, neither is it weak – we described it at §125 as an apparently viable claim with a good prospect of success;
  - (2) there was little reliable data about the make-up of the Proposed Class – the Proposed Class Representative had not been able to provide any for understandable reasons (see at §144), and the limited (and late) data provided by Microsoft itself was not a reliable guide (see at §131), and certainly did not support Microsoft's main submission that customers spending more than US\$100k per annum could safely be differentiated from those spending less, for the purpose of assessing the practicability of them bringing opt-in proceedings (see §§131-136);
  - (3) that being so, and while acknowledging the inherent uncertainties, an order for opt-out certification was an appropriate way of holding the balance of fairness between the parties because (a) there was no real unfairness in requiring Microsoft as Defendant to engage with a viable and promising claim on its own terms, even if brought on an opt-out basis with all the practical consequences that involves (see at §139), and (b) as to the Claimants, there being no clear and reliable way of differentiating between them, there was a risk of serious unfairness to them by trying to fragment the class in an arbitrary way, in particular given the potential consequences for their funding arrangements.
16. That exercise involved just the sort of discretionary evaluation, requiring the balancing of competing objectives in light of imperfect information and obvious

uncertainty, contemplated in the Evans decision, and reflected in the CPO Judgment at §115. We are not persuaded there is any real prospect of that evaluation being challenged.

17. Turning to the specific points relied on by Microsoft:

- (1) Merits: Point (i) challenges the Tribunal's evaluation of the merits, on the basis that the evaluation made improper use of the findings in the CMA's Final Report. This adds nothing to Ground 1.
- (2) Evidence: Point (ii) is a little unclear, but seems to assert that the Tribunal did not properly (or fully) engage with the evidence as to the composition of the class. That is not correct. It did so engage. The evidence itself was limited and on analysis did not provide a robust basis for identifying sub-groups, and certainly not at the level suggested by Microsoft. The Tribunal exercised its discretion within the limitations of the evidence available to it, which is what the Supreme Court in Evans proposed should happen (*"the Tribunal has to seek to advance the interests of justice overall in circumstances of uncertainty"* – see at §113).
- (3) Leveraging Effect: Point (iii) is that the Tribunal failed to weigh in the balance the possible pressures on Microsoft created by the leveraging effect of opt-out proceedings. That is not correct. It expressly addressed the position of Microsoft at §139. While accepting the leveraging effect, it did not think that a matter of sufficient weight to tip the balance in Microsoft's favour, given the relative strength of the claim, the ability of Microsoft to look after its own interests, and the potential for unfairness to the claimants in refusing opt-out certification.
- (4) Risks to claimants: Point (iv) is that the risks to the claimants identified by the Tribunal – specifically, the potential for disruption to their funding arrangements in fragmenting the proposed class – were speculative only. That is not correct. This is a further example of the Tribunal seeking to balance competing interests on the basis of the information presented to it by the parties, even bearing in mind its limitations. The nub of the Tribunal's point

was that fragmenting the class would potentially disrupt the proposed funding arrangements, with the risk that they might even collapse entirely at some levels (see at §141). The problem identified by the Tribunal was that arising from taking steps having unknown but potentially serious consequences. The resultant risk was a real and material one arising from the fact of the uncertainty. Microsoft had itself contributed to the uncertainty because it only made its suggestion of a US\$100,000 threshold at a late stage, during the course of the hearing.

- (5) Discretion: Point (v) seems to be a suggestion that the Tribunal somehow fettered its discretion, by adopting a mandatory “*all-or-nothing*” approach (i.e., by forcing itself to choose only between opt-out for all members of the class, or for none of them). That is not correct. We have summarised the basic logic of the CPO Judgment above. It involved a careful balancing of the competing factors in a manner designed to achieve practical fairness, having regard to the available evidence, including its limitations.

The Hon. Mr Justice Johnson  
Chair

Lesley Farrell

John Davies

Charles Dhanowa C.B.E., K.C. (*Hon*)  
Registrar

Made: 20 May 2026  
Drawn: 28 May 2026