



Neutral citation [2026] CAT 57

IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1403/7/7/21

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

15 July 2026

Before:

BEN TIDSWELL
(Chair)
WILLIAM BISHOP
TIM FRAZER

BETWEEN:

DR. RACHAEL KENT

Class Representative

-v-

(1) APPLE INC.
(2) APPLE DISTRIBUTION INTERNATIONAL LTD

Defendants

Heard on 27 May 2026

RULING (PLEADING AMENDMENT)

APPEARANCES

Tim Ward KC (instructed by Hausfeld & Co. LLP) appeared on behalf of the Class Representative.

Brian Kennelly KC and Hugo Leith (instructed by Gibson, Dunn & Crutcher UK LLP) appeared on behalf of the Defendants.

A. INTRODUCTION

1. This Ruling concerns the second application by the Class Representative to amend her claim form following the delivery of the Tribunal's substantive **Judgment** ([2025] CAT 67) in which the Class Representative was successful in establishing abuses of dominance by the Defendants (**Apple**) and her consequent claim for damages.
2. The first amendment application sought to extend the class membership to include those users who made relevant transactions for the first time after the date of the pre-trial review up to any time before delivery of the Judgment. The Tribunal declined to extend the class membership in that way. See the **First Amendment Ruling** at [2026] CAT 1.
3. This second application concerns the continuing transactions made by users who were already class members by the time of the pre-trial review, so as to capture the further losses suffered as a result of transactions made by those class members in the period up until delivery of the Judgment.
4. If allowed, the amendment would extend by approximately 11 months the period within which the Class Representative seeks damages on behalf of class members, to 23 October 2025 (being the date of the Judgment), instead of its current end-date of 15 November 2024. The additional damages sought as a consequence amount to some £227 million, before interest is applied.

B. ARGUMENTS OF THE PARTIES

5. The Class Representative submitted that the Tribunal should exercise its discretion to allow the amendment, as the Tribunal has already confirmed it has jurisdiction to do so (in the First Amendment Ruling). She submitted that it would be just and proportionate to avoid the significant costs and use of Tribunal resources which would be expended if class members were required to issue new proceedings to recover losses in the period between 15 November 2024 and the Judgment.

6. The Class Representative said that it is fair to allow the application as Apple has not identified any factual matter which has changed since the trial, despite having had ample opportunity to do so. She also maintained that it would not have been possible for her to make the amendment application at an earlier stage.
7. Apple submitted that the Class Representative seeks to invert the burden of proof by requiring Apple to show what has changed since the trial, given that the Tribunal has received no evidence and made no findings of fact about matters occurring subsequent to the trial. It submitted that there may well be a proper basis on which Apple could contest liability for a claim in that period and that it cannot fairly or safely be assumed that the Judgment would have the effect of preventing such defences from being raised.
8. Apple emphasised the importance of finality in judgments. While it recognised that the Tribunal decided in the First Amendment Application that it has jurisdiction to reopen final orders, it argued that there are heavy factors weighing against reopening the Judgment in these circumstances.

C. RELEVANT LEGAL PRINCIPLES

(1) The ability to claim for continuing losses after issue

9. We will first consider the law in relation to the ability of a claimant to seek to recover losses suffered after the date of issue of the claim form, and up until the date of assessment or judgment. It is common ground that competition infringements such as the abuses of dominance found in the Judgment are continuing tortious infringements, in respect of which a new cause of action occurs each time a user makes a relevant transaction. See for example *Phonographic Performance Ltd v Department of Trade and Industry & another* [2004] EWHC 1795 (Ch), [2004] 1 WLR 2983.
10. It is also accepted by both parties that it is common practice in competition cases for claims to seek damages for a period up to the date of assessment (meaning, in practical terms, the date of the Judgment in this case). This is notwithstanding

the uncertainty created by the decision of the Court of Appeal in *Battishill v Reed* (1856) CB 696, which held that a claimant could only obtain damages up to the date of issue of the claim in respect of a continuing wrong. As *McGregor on Damages* (22nd Edn, 12.027) notes, this outcome from the decision in *Battishill* was for a considerable period modified by a provision in the Rules of the Supreme Court, which was not expressly carried over into the Civil Procedure Rules (**CPR**) (or indeed the Competition Appeal Tribunal Rules 2015 (the **Tribunal Rules**)). However, the approach set out in *Battishill* is viewed as outdated and the effect of the decision regarded as something which is overcome, if necessary, by the governing principles in CPR 1.1 (and by analogy r. 4 of the Tribunal Rules).

11. Mr Ward KC suggested that there was something inherent in the nature of collective proceedings under s. 47B of the Competition Act 1998 which meant that claims could not be pleaded until they were actually in existence. In this, he sought to rely on the Tribunal's decision in *Neill v Sony* [2023] CAT 73. However, that judgment was dealing with something quite different, which was the composition of the class, and not the period for which existing class members could claim losses. That is clear from the discussion of the case in the First Amendment Ruling at §19.
12. Further, we are unable to see any reason why there should be a different position for claims under s. 47B and claims under s. 47A of the same Act. Section 47B simply combines claims which could be brought under s. 47A. There was no serious suggestion that s. 47A claims could not include a pleading seeking damages after the date of issue or indeed trial. Indeed, as noted above, the parties agreed this was common practice in many cases. It seems to us that s. 47B must operate on the same basis.
13. We therefore proceed on the basis that there is no legal impediment to a claim which pleads loss and damage beyond the date of issue of the claim form and up until the date of judgment.

(2) The reopening of final judgments

14. In the First Amendment Ruling, we decided that the Tribunal has jurisdiction under r. 115(2) of the Tribunal Rules to reopen final judgments. However, given that we decided not to exercise our discretion to reopen the Judgment in respect of that application, it was not necessary to consider the authorities in any detail, save to note that the jurisdiction must be used carefully and sparingly.
15. We do now need to consider the principles in detail, which is most conveniently done by reference to the Supreme Court's decision in *AIC Limited v Federal Airports Authority of Nigeria* [2022] UKSC 16, [2022] 4 All ER 777. The judgment of Lord Briggs and Lord Sales JJSC restates the applicable principles for reopening final orders and judgments.
16. The key points that emerge from *AIC*, and in particular §§29–40 are as follows:
 - (1) There is an important and longstanding principle that there should be finality in litigation.
 - (2) As a result, any request to reopen a final order or judgment does not start from a neutral position, but rather from the position that there is a significant weight to be given to the finality principle in any exercise of discretion.
 - (3) The extent of such weight will vary depending on the nature of the order, the type of hearing following which it is made and the type of proceedings in which it is made. Finality is likely to be at its highest importance in relation to orders made at the end of a full trial.
 - (4) The key question is whether the factors favouring reopening of the order are sufficient to overcome the weight of the finality principle, together with any factors pointing towards leaving the order in place.

17. While the case was decided by reference to the CPR, we consider the principles to be of general application and applicable to the exercise of discretion under r. 115(2) of the Tribunal Rules.

(3) Abuse of process

18. There was some argument before us about the application of the various rules relating to abuse of process (using that term in its widest sense). It is not necessary to discuss the various authorities relating to this subject, save to note that both parties accepted that any assessment of whether there was an abuse of process would invariably require a close examination of the matters which were said to be relitigated and their relationship with the findings in the Judgment. It was accepted by both parties that it would be premature to undertake any such exercise at present.

D. ANALYSIS

19. As set out in *AIC*, the starting point is to assess the significance or weight to be given to the principle of finality in the balancing exercise required by the application.
20. The Judgment is almost 400 pages long. It represents the outcome of an eight-week trial, in which many factual and expert witnesses participated. The proceedings are very substantial ones, with some 36 million class members represented and a claim for over £2 billion. It seems to us that this is the type of final judgment or order in respect of which the finality principle should be accorded very significant weight indeed.
21. The Class Representative argues that the application does not require any change in the findings of the Tribunal as recorded in the Judgment, but rather simply the extension of those findings to cover a longer period of time. She also notes that in some respects this is an easier exercise than addressing the question of the claim period at, say, trial, because that inevitably involves speculation about the future, while the present application is backward-looking and allows

Apple the opportunity to address any important factual developments since the trial.

22. Putting aside the question of fairness to Apple (to which we will return), it seems to us that neither argument assists the Class Representative's position in respect of the weight to be given to the finality principle.
23. Instead, those arguments highlight the difficulty of dealing with the question of the claim period at such a late stage of proceedings. If the issue had been a live one at the commencement of the trial, it is possible that there would have been a discussion between the parties and the Tribunal about the practical consequences of a claim period that extended beyond trial. That might well have involved the production of some evidence (even if it was somewhat speculative evidence) about likely future events.
24. It might also have led to a ruling by the Tribunal which limited the period in which damages could be claimed after trial, recognising the uncertainty about future events, and also recognising the uncertainty about how long the Tribunal might take to produce a judgment. By way of example, the pricing approaches taken by comparator services was an important factual matter in the Tribunal's finding of infringement by Apple. Another example of factual uncertainty is the relevant market context for the purposes of market definition, which can be crucial in abuse of dominance cases.
25. It seems to us by no means certain that the Tribunal should assume that there will be a continuing infringement for significant periods of future time in a case in which certain facts are critical to the question of liability and are potentially open to change. That is a matter, of course, for each Tribunal when confronted by this question, but it does emphasise the importance of the issue being raised before the trial starts (and preferably well before that time).
26. Instead, the application seeks to apply findings in the Judgment to a set of facts which were not considered at all during the trial or mentioned in any way in the Judgment. In those circumstances, it seems incorrect to suggest that the application simply seeks to extend the findings in the Judgment. In reality, it

seeks to apply the reasoning behind those findings to wholly untraversed facts about for example, competitive dynamics in a market which is not necessarily static or the commercial approach of certain competitors which could be subject to change, some of which could at least have been addressed if the matter had been dealt with in a different way.

27. The Class Representative devoted some considerable effort in arguing that she could not have brought the application at an earlier stage, relying variously on *Battishill*, *Neill* and the nature of the s. 47B regime. As already discussed in this Ruling, we do not consider any of these to provide the assistance sought.
28. In response to *Neill* and the issue of proper definition of the class, the Class Representative decided to use the same defined Claim Period to identify both the membership of the class and the time over which damages were claimed. That was not an approach which was required by *Neill* and it would have been possible at some stage before the trial for the Class Representative to separate the two concepts, so as to address the question of a claim period for the loss of existing class members separately from the membership of the class. We make no criticism of the Class Representative or her team in this regard, but we do not think she can seek to diminish the significance of reopening the Judgment, without there having been any discussion at or before trial about the issue, by suggesting that the issue could not be raised earlier. That is clearly not correct.
29. The Class Representative also said that it would be just and proportionate and consistent with the policy objectives of the collective proceedings regime to allow class members to recover losses without the time and expense, including the resources of the Tribunal, of issuing fresh proceedings.
30. Mr Ward KC sought to argue that the policy considerations gave rise to something other than an efficiency point. This seemed to be based on the concept that the collective proceedings regime involved the vindication of rights of large numbers of members of the public, giving rise to a public interest in facilitating that vindication. This does not in our view add anything material to the analysis of whether reopening the Judgment is desirable. The vindication of rights should not come at the expense of the usual practice and procedure of the

courts, other than where clearly indicated by the implementing legislation. It is not a card to be played to obtain preferential treatment for a certain type of litigant.

31. There is no doubt that there is an inherent efficiency in avoiding further litigation. However, we do not consider that to be sufficient to counteract the considerable weight we attach to the finality principle. This is not a case where there is some obvious injustice, unfairness or inconsistency in the Judgment which needs to be addressed. This can be contrasted with *AIC*, where the basis on which an order was made was very obviously undermined by events which occurred almost immediately after the order was made.
32. While efficiency is of course important in many respects, we do not think it warrants the significant step which the Class Representative urges on us, especially when the point could have been dealt with at a different stage and in a different way, as described above. One can test this point by assuming that (on the Class Representative's case) the infringement by Apple is continuing some time after the Judgment and potentially for some time to come. No one could sensibly suggest that the claim for damages could persist after the Judgment was delivered, even if that might be an efficient way to resolve the continuing claims.
33. In our view, the arguments advanced by the Class Representative fall well short of counteracting the significant weight to be given to the finality principle in the balancing process, in the circumstances of the present case.
34. That makes it unnecessary to consider in any detail the arguments advanced by Apple about unfairness to it in reopening the Judgment. It would in any event have been difficult to make any assessment of these arguments in the abstract, without actually knowing what points Apple might seek to advance in respect of any fresh claim. The question of abuse of process can only be answered by reference to specific arguments and it is not in our view unreasonable for Apple to have declined to develop those in anticipation of some further claim. That is consistent with our view that this application has not been made at the most

appropriate time and has therefore made the issue considerably more complex that it needs to be.

E. DISPOSITION

35. In light of the considerable weight we attach to the finality principle in the circumstances of the Judgment, the trial and the proceedings, we consider that this weight overrides the Class Representative's arguments about the benefits of reopening the Judgment. We therefore decline to exercise our discretion in that way and the Class Representative's application is refused.
36. This Ruling is unanimous.

Ben Tidswell
Chair

William Bishop

Tim Frazer

Charles Dhanowa, CBE, KC (Hon)
Registrar

Date: 15 July 2026