



Neutral citation [2026] CAT 69

Case No: 1601/7/7/23

IN THE COMPETITION APPEAL TRIBUNAL

BETWEEN:

DR SEAN ENNIS

Class Representative

- v -

**(1) APPLE INC.
(2) APPLE DISTRIBUTION INTERNATIONAL LIMITED
(3) APPLE CANADA INC.
(4) APPLE PTY LIMITED
(5) APPLE SERVICES LATAM LLC
(6) ITUNES K.K.
(7) APPLE (UK) LIMITED
(8) APPLE EUROPE LIMITED**

Defendants

REASONED ORDER

UPON the Class Representative's application to commence collective proceedings dated 25 July 2023

AND UPON the Collective Proceedings Order made on 29 November 2024

AND UPON the Supreme Court issuing its judgment in *Evans v. Barclays Bank Plc* on 18 December 2025 ([2025] UKSC 48) (*Evans*)

AND UPON the Defendants filing an application to decertify these proceedings on 23 February 2026 (the **Decertification Application**)

AND UPON the hearing held at the Tribunal on 22 April 2026 to address the Defendants' Decertification Application

AND UPON the Tribunal’s judgment dismissing the Defendants’ Decertification Application ([2026] CAT 55) (the **Decertification Judgment**) and the Tribunal’s order made on 25 June 2026 reflecting the Decertification Judgment

AND UPON The Defendants’ application for permission to appeal from the Decertification Judgment dated 9 July 2026 (the **PTA Application**)

AND UPON the Class Representative’s response to the PTA Application dated 16 July 2026

IT IS ORDERED THAT:

1. The Defendants’ PTA Application is refused.

REASONS:

2. Apple has applied for permission to appeal the Tribunal’s order dated 25 June 2026 dismissing Apple’s Decertification Application. The Decertification Judgment is reported at [2026] CAT 55.
3. Apple relies on a single ground of appeal: that the Tribunal “failed to apply the principles stated by the Supreme Court in *Evans* [124]-[126] in relation to classes containing ‘large entities with substantial claims’”. The issues raised in the PTA Application were well-ventilated during the hearing of the Decertification Application, and we are accordingly content to determine this application on the papers.
4. The ultimate question for the Tribunal was whether to revoke the CPO under r. 85 of the Competition Appeal Tribunal Rules 2015. This involved an exercise of evaluative judgment.
5. Apple contends that the Supreme Court’s judgment in *Evans* mandates a mechanistic approach such that, if the bulk of the claim value is comprised of large claims which could be advanced on an opt-in or standalone basis, there is only one “lawful answer”. We do not agree, and do not consider that the argument has real prospects of success. At §[112] of its judgment, the Supreme Court made the point that practicability, like the strength of the

claim, is only one factor (though potentially an important one) which feeds into the overall evaluation which the Tribunal has to make. And at §[120], it made the point that where there are different groups of claimants, for some of whom, but not for others, opt-in proceedings would be practicable, the Tribunal “should ... stand back and make an overall assessment of the balance of justice having regard to those underlying assessments”. The Supreme Court’s judgment in *Evans* emphasises, at §[169] that the Tribunal “has a broad discretion when making the relevant judgments” and that the Court of Appeal should not allow an appeal against the exercise of such a discretion simply because it might have reached a different conclusion if it had been conducting the exercise.

6. This case differs markedly from that which was before the Supreme Court in *Evans* in an important respect – namely, the strength of the claims. It is not a case, like *Evans*, where the defendants are faced with the specific unfair leveraging effect which opt-out proceedings have where the claim is weak or unmeritorious: see §§[66]-[68] of the Decertification Judgment. This was one factor, and an important one, which fed into the overall evaluation which we made in this case.
7. We also addressed practicability. In that regard, we took into account the composition of the class and specifically the fact that a small number of significant claims, which could be advanced on an opt-in or standalone basis, accounts for a very significant proportion of the aggregate value of the claim. We acknowledged the materiality of that consideration. We took it into account along with other considerations (including the existence also of a significant cohort of viable and non-trivial claims which could not realistically be pursued other than on an opt-out basis), in making an overall assessment of the balance of justice in this particular case and, accordingly, in deciding whether or not to vary or revoke the CPO.
8. Apple advances some specific criticisms of the Decertification Judgment at §§8 and 9 of the PTA Application. For the following reasons, we do not consider that, individually or cumulatively, these affect our overall conclusion.
 - 8.1. §8a. This is, effectively, a reiteration of Apple’s mechanistic approach, which, for the reasons set out above, we reject.

8.2. §8b. The Tribunal was well aware of, and took fully into account, the claim size distribution within the class, and that the large claims could have been pursued on an opt-in basis. The points made about the homogeneity of the class at §[84(2)] of the Decertification Judgment identified other features of the class which were, in our view, relevant to the overall assessment of the balance of justice which we made.

8.3. §8c. We did not regard the potential collapse of the proceedings as a “trump card” in favour of retaining opt-out proceedings: §[84(4)] of the Judgment. However, this did lead us to consider carefully the other factors and in particular the access to justice interest of the numerically larger number of claimants, with viable and serious claims – claims which, so far as arising from sales through UK/EU storefronts, we considered “relatively, even unusually strong”: §[84(1)] – which could not realistically proceed other than by way of opt-out proceedings.

8.4. §8d. Apple criticises our observations at §[84(5)]. These observations fall to be read along with the rest of §[84]. We were not elevating an “unfair litigation burden” to a test for allowing the proceedings to continue. Rather, had we concluded that the continuation of the proceedings imposed an unfair litigation burden on Apple, we would have granted the application: see §[87].

8.5. §9. Apple criticises the Tribunal for taking into account the evidence before it of the expression of public concern about the risk of retaliation by Apple. The PTA Application contends that, in doing so, we were taking account of “evidence about the subjective state of mind of ... individual potential claimants”. We do not agree. We took that evidence into account not as a proxy for the subjective states of mind of individual potential claimants but as “an objective feature of the environment” which bore, along with the other considerations referred to in the Decertification Judgment, on the practicability of opt-in proceedings.

9. For all these reasons, we refuse the PTA Application.

James Wolffe KC
Chair

Tim Frazer

Anthony Neuberger

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

Made: 18 August 2026
Drawn: 18 August 2026