



Neutral citation [2026] CAT 70

IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1788/7/7/26

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

18 August 2026

Before:

HODGE MALEK KC
(Chair)

Sitting as a Tribunal in England and Wales

BETWEEN:

BED AND BREAKFAST ASSOCIATION LTD

Applicant/Proposed Class Representative

– and –

(1) BOOKING HOLDINGS INC.

(2) BOOKING.COM B.V.

(3) BOOKING.COM LIMITED

Respondents/Proposed Defendants

RULING (SERVICE OUT OF THE JURISDICTION)

A. INTRODUCTION

1. By an application dated 20 July 2026 the Proposed Class Representative, Bed and Breakfast Association Ltd (the **Applicant**) seeks permission pursuant to r. 31(2) of the Competition Appeal Tribunal Rules 2015 (the **2015 Rules**) to serve the Collective Proceedings Claim Form (**CPCF**) out of the jurisdiction on two of the three Proposed Defendants, both of whom are based outside the jurisdiction (the **Application**). The relevant Proposed Defendants are Booking Holdings Inc. and Booking.com B.V., the First and Second Proposed Defendants respectively (together, the **Proposed Foreign Defendants**). Booking Holdings Inc. is a US corporation incorporated under the laws of Delaware. Booking.com B.V. is incorporated under the laws of The Netherlands.
2. The Applicant relies on the jurisdictional gateways listed in CPR PD6B §3.1(9)(a) (damage was sustained, or will be sustained, within the jurisdiction), §3.1(9)(b) (the damage that has been or will be sustained results from an act committed, or likely to be committed within the jurisdiction), §3.1(9)(c) (the tort claim is governed by the law of England and Wales), and §3.1(3) (where anchor defendants are within the jurisdiction). The Application is supported by the first witness statement of Mr Benjamin James Sigler (a partner in the Applicant's solicitors, Stephenson Harwood LLP) dated 20 July 2026 (**Sigler 1**) in addition to the CPCF and supporting documents. I have also considered the two statements filed in support of the Applicant's application for a collective proceedings order (**CPO**): those of Mr David John Weston, a director of the Applicant, dated 20 July 2026, and Mr Matthew James Denney, on funding, dated 17 July 2026.

B. THE PARTIES

3. The Applicant is a trade association representing operators of hotels, guesthouses, bed and breakfasts, and similar establishments providing overnight accommodation in the UK. Its members include sole traders, partnerships and companies.

4. The Proposed Defendants (collectively **Booking**) are three companies within the multinational economic enterprise that carries on the business of an online travel agency (**OTA**) using online platforms including the well-known platform Booking.com. As to the Proposed Defendants:
- (1) The First Proposed Defendant, Booking Holdings Inc., is and was at all material times a US company with company number 2927585 and a registered office at 800 Connecticut Avenue, Norwalk, Connecticut 06854, United States of America, with its registered agent's address at Corporation Service Company, 51 Little Falls Drive, City of Wilmington, County of New Castle, State of Delaware, 19808, United States of America. The First Proposed Defendant is the parent company of the Booking group of companies and directly or indirectly owns the other Proposed Defendants, over which the Applicant contends that it exerts decisive influence.
 - (2) The Second Proposed Defendant, Booking.com B.V., is and was at all material times a company incorporated in The Netherlands, with company number 31047344 and a registered office at Oosterdokskade 163, 1011 DL, Amsterdam, The Netherlands. The Second Proposed Defendant is wholly owned by its immediate parent company, Priceline.com Bookings Acquisition Company Limited and its ultimate parent company is the First Proposed Defendant, Booking Holdings Inc.
 - (3) The Third Proposed Defendant, Booking.com Limited is and was at all material times a company established in England and Wales with company number 03512889. Its registered office is 7th Floor, The Monument Building, 11 Monument Street, London, England, EC3R 8AF. The Third Proposed Defendant is wholly owned by its immediate parent company, Priceline.com International Limited, and its ultimate parent company is the First Proposed Defendant, Booking Holdings Inc.

C. THE CLAIM

5. The claim is set out in detail in the CPCF issued on 20 July 2026. In summary, the CPCF details a standalone claim for damages under s. 47B of the Competition Act 1998 (**CA 1998**). As set out in the CPCF, the claims which it is proposed to combine in these collective proceedings and for which the Applicant seeks to be class representative under a CPO relate to loss and damage alleged to have been suffered by proposed class members resulting from Booking's conduct allegedly constituting a breach or breaches of its statutory duties under ss. 2 and/or 18 CA 1998 and/or Article 101 and/or 102 of the Treaty on the Functioning of the EU (**TFEU**) (together the **Infringements**).
6. As to the Infringements, the Applicant alleges that Booking's conduct includes elements relating to: (1) its ranking algorithms; (2) the terms on which it provides access to its programmes; and (3) its contractual prohibitions. The allegations are conveniently summarised and set out in the Application at §§27–33:

“27. *First*, Booking's Ranking Algorithms have included (and continue to include) features that directly and/or indirectly: (a) disincentivised [Hotel Operators (**HOs**)] from offering their Hotel Rooms on Rival OTAs' platforms; and/or (b) penalised HOs if they offered their Hotel Rooms on Rival OTAs' platforms at lower prices, or better terms, than the prices/terms at which those (or equivalent) Hotel Rooms in the Accommodation Property were being offered on Booking.com. These features of Booking's Ranking Algorithms have: (i) impeded Rival OTAs from attracting HOs to list their Accommodation Properties on Rival OTAs' platform; (ii) had effects on competition in the Hotel OTA Market similar to those that would have been caused by a 'wide retail parity obligation' (**WRPO**); and (iii) obstructed Rival OTAs from successfully pursuing a Low Prices Strategy.

...

29. *Secondly*, Booking has made HOs' Accommodation Properties' access to, and/or participation in, its *Preferred Partner*, *Preferred Plus*, and *Genius* programmes (together, the '**Programmes**'), which afford higher rankings and/or more prominent display within search results, conditional on the property maintaining compliance with: (a) a requirement not to offer the same (or equivalent) Hotel Rooms in the property at lower prices, or better terms, on other online platforms (including both Rival OTAs' platforms and the HO's own website); and/or (b) a '*competitive pricing*' requirement which permitted no or only small variations between the prices offered on Booking.com and the prices offered on Rival OTAs' platforms and/or other websites. HOs were excluded, or placed at risk of being excluded, from the relevant Programmes if they offered their Hotel Rooms on Rival OTAs' platforms at lower prices (alternatively, significantly lower prices), or better terms (alternatively,

significantly better terms), than the prices/terms at which the same (or equivalent) Hotel Rooms were being offered on Booking.com.

30. These requirements have: (i) impeded Rival OTAs from attracting HOs to list their Accommodation Properties on the Rival OTA's platform; (ii) functioned as, and anyway produced the same or similar effects on competition in the Hotel OTA Market as those that would have been produced by, a WRPO; and (iii) obstructed Rival OTAs from successfully pursuing a Low Prices Strategy.

31. *Thirdly*, Booking has made (and is continuing to make) HOs' Accommodation Properties' access to, and/or participation in, its relevant *Preferred Partner* and *Preferred Plus* Programmes conditional on the Accommodation Property exceeding, and continuing to exceed, a 'Sales Performance Score' threshold calculated partly by reference to the property's 'Conversion Rate' (which measures the percentage of users who, having visited the property page for a property, then go on to make a booking for that property). This has operated to disincentivise HOs from offering their Hotel Rooms on Rival OTAs' platforms at lower prices, or better terms, than the prices/terms at which the same (or equivalent) Hotel Rooms in the Accommodation Property were being offered on Booking.com. That is because an Accommodation Property's Conversion Rate, and thus its Sales Performance Score, could be reduced if consumers who viewed the Accommodation Property's page on Booking.com did not then choose to make their booking for a Room in that Accommodation Property via Booking.com, but instead made their booking on another website on which the same (or equivalent) Hotel Rooms were being offered at lower prices or on better terms.

32. The Sales Performance Score criterion has thus: (i) produced effects on competition in the Hotel OTA Market similar to those that would have been produced by a WRPO; and (ii) obstructed Rival OTAs from successfully pursuing a Low Prices Strategy.

33. *Fourthly*, Booking has imposed (and is continuing to impose) on HOs offering Rooms on Booking.com a contractual prohibition on the HO offering those Rooms (or equivalent Rooms in the same Accommodation Property) on the HO's direct booking channels (e.g., the HO's own website) at lower prices, or on better terms, than on Booking.com. Such a contractual prohibition constitutes an express contractual 'narrow retail parity obligation' ('NRPO'). The NRPO has artificially limited the scope for Booking's commission rates to be constrained by HOs' ability to respond to such rates by offering their Hotel Rooms to consumers at lower prices, or better terms, on their own websites (thereby incentivising consumers to book via direct channels rather than via Booking.com), and has thereby protected Booking's market power and its ability to charge high commission rates, for the following reasons:

33.1 HOs are naturally incentivised to offer their *most attractive* prices and terms on their own websites (i.e., online direct channels), so as not to risk diverting consumers to make bookings via OTAs' platforms (on which bookings the HO would have to pay a commission to the OTA). In addition, some HOs are, for commercial reasons relating to their reputation and relationships with consumers, averse to displaying prices, or terms, on their own websites which are less favourable to the consumer than the prices/terms being offered on any OTA platforms. Accordingly, the practical consequence and effect of the NRPO imposed by Booking is to disincentivise the HOs from offering, on

Rival OTAs' platforms, lower prices or better terms than the prices/terms being offered on Booking.com. The NRPO has thus: (i) produced effects on competition in the Hotel OTA Market similar to those that would have been produced by a WRPO; and (ii) obstructed Rival OTAs from successfully pursuing a Low Prices Strategy.

33.2 Further, and in any event, HOs have been obstructed from offering lower prices, or better terms, on their own websites and/or other direct channels, than the prices/terms at which the same (or equivalent) Hotel Rooms in the same Accommodation Property which are being offered on Booking.com. This has impeded HOs from incentivising, by offering lower prices or better terms, bookings for their Rooms to be made via direct channels (i.e., channels on which the HO does not incur the costs of paying commission to Booking.com). HOs have thus been unable to respond to, and thus to constrain, Booking's charging of high commission rates, by incentivising consumers to book directly."

7. The Applicant seeks to bring the proceedings on an opt-out basis on behalf of a **Proposed Class**, as defined in §42 of the CPCF:

"all legal or natural persons (including partnerships) who, during the Relevant Period, supplied Rooms in one or more Accommodation Properties located in the UK which they operated, and who received one or more bookings through Booking.com for a Room in such an Accommodation Property in respect of which they incurred a contractual liability to pay a Commission to Booking which they subsequently paid (but excluding Excluded Persons)".

8. It is alleged that as a result of the Infringements, Booking has restricted and/or otherwise harmed competition with the effect of: removing or reducing incentives for rival OTAs to compete on price by pursuing a **Low Prices Strategy**; depriving rival OTAs of the ability to successfully pursue a Low Prices Strategy, hindering entry or expansion by rival OTAs, thus protecting Booking's high market share despite Booking's charging of allegedly high, supra-competitive commission rates; impeding HOs from responding to Booking's charging of such commission rates by offering hotel rooms on their own websites or other direct channels at lower prices or better terms, thereby incentivising consumers to book directly; and, enabling Booking to charge Proposed Class members rates of commission higher than those it would otherwise have been able to charge.
9. The CPCF relies upon an economic expert report prepared by Professor David S Sibley of the University of Texas at Austin, with assistance from Fideres Partners LLP, dated 17 July 2026 (**Sibley 1**) which provides a preliminary view

on matters relevant to the claim, including: the relevant market(s) affected by the alleged conduct; whether Booking holds a dominant position in those market(s); whether there is economic evidence to suggest that Booking has abused its dominance in those markets or that the alleged conduct constitutes an anti-competitive agreement or concerted practice; whether there is a credible theory of harm to support the allegation that the alleged conduct caused harm to the Proposed Class; and, whether there is a methodology offering a realistic prospect of establishing the anti-competitive effect of the conduct and quantifying loss on a Proposed Class-wide basis. Sibley 1 estimates that the losses suffered by members of the Proposed Class amount to between £1.087 and £1.797 billion in aggregate, including compound interest, and between £12,212 and £20,183 on average for each Proposed Class member. It is estimated by Professor Sibley that the Proposed Class comprises approximately 114,930 members.

D. LEGAL FRAMEWORK

10. As the Proposed Foreign Defendants are not based within the jurisdiction, the Tribunal's permission is required for service of the CPCF on them outside the jurisdiction pursuant to r. 31(2)–(3) of the 2015 Rules. So far as is material to the Application, r. 31(2)–(3) provides as follows:

“(2) Where the permission of the Tribunal is required for service of the claim form on one or more foreign defendants out of the jurisdiction, the claimant shall make an application for permission verified by a statement of truth setting out—

- (a) the address of such foreign defendant or, if not known, in what place that defendant is, or is likely, to be found; and
- (b) that the claimant believes that the claim against any such foreign defendant has a reasonable prospect of success; and
- (c) if under rule 30(3)(b), the claimant contends that the proceedings are to be treated as taking place in England and Wales, which ground set out in paragraph 3.1 of Practice Direction 6B of the CPR is relied on;

...

- (f) any material facts relied on.

(3) Where paragraph (2) applies, the Tribunal shall not give permission for service out of the jurisdiction unless satisfied that the Tribunal is the proper place in which to bring the claim.”

11. The Applicant contends that the proposed proceedings are to be treated as taking place in England and Wales for the purpose of r. 18 of the 2015 Rules. In such a case, the Tribunal approaches service out of the jurisdiction on the same basis as the High Court under the CPR: *DSG Retail Ltd v. Mastercard Inc* [2015] CAT 7 at §§17–19.
12. There are numerous cases both in the High Court and the Tribunal dealing with the requirements for service out of the jurisdiction. The principles and relevant test have been helpfully summarised by the Tribunal in *Epic Games v. Apple* [2021] CAT 4 (*Epic*), and again in *Which? v Apple* [2024] CAT 70 (*Which*) at §11:

“(1) There is a serious issue to be tried on the merits of the claim: i.e. that there is a real as opposed to fanciful prospect of success on the claim. This is the same test as would be applied if the PCR were resisting a summary judgment application by the defendant: *AK Investment CJSC v Kyrgyz Mobile Tel Ltd* [2011] UKPC 7 at [71].

(2) There is a good arguable case that the claim falls within one or more of the categories of case, generally referred to as ‘gateways’, set out in CPR Practice Direction 6B at para. 3.1. For this requirement, ‘good arguable case’ means that the PCR has the better of the argument on whether the claim comes within the gateway(s) relied upon. Where this depends on an issue of law, the Tribunal would normally decide that issue as opposed to determining whether there is a good arguable case on it: *AK Investment CJSC* at [81]. Insofar as this involves an issue on the facts, the effect of the test is as follows:

‘(i) that the claimant must supply a plausible evidential basis for the application of a relevant jurisdictional gateway; (ii) that if there is an issue of fact about it, or some other reason for doubting whether it applies, the court must take a view on the material available if it can reliably do so; but (iii) the nature of the issue and the limitations of the material available at the interlocutory stage may be such that no reliable assessment can be made, in which case there is a good arguable case for the application of the gateway if there is a plausible (albeit contested) evidential basis for it.’

Per Lord Sumption in *Brownlie v Four Seasons Holdings Inc* [2017] UKSC 80 at [7], as approved in *Goldman Sachs International v Novo Banco SA* [2018] UKSC 34 at [9].

(3) In all the circumstances, England is clearly or distinctly the appropriate forum for the trial of the claim and the Tribunal ought to exercise its discretion to permit service of proceedings out of the jurisdiction. This is reflected in rule 31(3) of the [2015 Rules]. As regards this requirement, the task of the Tribunal

is first, to identify the forum in which the case can be suitably tried for the interests of all the parties and for the ends of justice; and then to determine whether England is clearly or distinctly the appropriate forum: *VTB Capital Plc v Nutritek International Corp* [2012] EWCA Civ 808 at [101].”

13. As noted at §12 of *Which?*, for each of these requirements, the burden of proof is on the PCR.

E. THE TRIBUNAL’S ASSESSMENT

14. The Application contains the information required by r. 31(2)(a)–(c) as well as the material facts relied upon within r. 31(2)(f). I am satisfied that it is likely that the proceedings are to be treated as taking place in England and Wales for the purpose of r. 18 of the 2015 Rules.

(1) Serious issues to be tried on the merits

15. In support of its contention that the claims have real prospects of success and that there are serious issues to be tried on the merits, the Applicant relies on the following evidence and materials:

- (1) The CPCF and evidence including Sigler 1.
- (2) The economic analysis (described at §9 above) underpinning the CPCF which supports the Applicant’s case that the conduct is likely to have infringed the CA 1998 and the TFEU, and likely to have caused loss to the Proposed Class members.
- (3) The contention that the first, second and third elements of the conduct outlined at §6 above contain obligations of the kind presumed to distort competition under UK competition law.
- (4) The fact that elements of the conduct have been the subject of investigations and regulatory interventions across a number of jurisdictions. These include:

- (a) the European Commission's 2021 market study on the distribution practices of hotels in the EU;
- (b) the Spanish competition authority fining Booking €413m for abusing its dominance in July 2024;
- (c) the Italian competition authority investigating some aspects of the alleged conduct and accepting commitments from Booking in December 2024;
- (d) the Chilean competition authority investigating Booking's price parity conditions and reaching a settlement with Booking in 2026;
- (e) the Greek competition authority investigating some aspects of the alleged conduct and reaching a settlement with Booking in 2026;
- (f) the Swiss price supervisor investigating Booking's commissions and concluding they were excessive in 2025;
- (g) the European Commission indicating that Booking is able to charge higher commissions because of its dominance; and
- (h) several class actions being brought against Booking in Europe in relation to historic behaviour and/or the alleged conduct.

16. In light of the Applicant's reliance on the abovementioned regulatory and legal proceedings against Booking, I am cognisant of the Supreme Court's judgment in *Evans v Barclays Bank plc & Ors* [2025] UKSC 48, which amongst other things confirmed that the general common law rule from *Hollington v Hewthorn & Co Ltd* [1943] KB 587 applies to this Tribunal (§152). Whilst such regulatory and legal proceedings may give rise to rulings and judgments which may or may not be consistent with the Applicant's case in these proceedings, the Tribunal will at the end of the day have to form its own view as to the facts and law. It

should not be assumed that such material will be admissible let alone binding at trial. This will be a matter to be determined later in the proceedings.

17. I am satisfied on the basis of the material relied upon in the Application that there are serious issues to be tried on the merits, though I note that this is a low threshold and the issue of the merits will arise at certification and in the proceedings should a CPO be granted.

(2) The gateways

18. CPR PD 6B, §3.1 relied upon by the Applicant provides as follows:

“3.1 The claimant may serve a claim form out of the jurisdiction with the permission of the court under rule 6.36 where:

...

(3) A claim is made against a person (“the defendant”) on whom the claim form has been or will be served (otherwise than in reliance on this paragraph) and –

(a) there is between the claimant and the defendant a real issue which it is reasonable for the court to try; and

(b) the claimant wishes to serve the claim form on another person who is a necessary or proper party to that claim.

...

(9) A claim is made in tort where –

(a) damage was sustained, or will be sustained, within the jurisdiction;

(b) damage which has been or will be sustained results from an act committed, or likely to be committed, within the jurisdiction; or

(c) the claim is governed by the law of England and Wales.”

(a) *Damage sustained within the jurisdiction (§3.1(9)(a))*

19. As regards the gateway in §3.1(9)(a) (damage sustained within the jurisdiction), the Tribunal is a UK jurisdiction. “Damage” in this gateway refers to “actionable harm, direct or indirect, caused by the wrongful act alleged”: *FS Cairo (Nile Plaza) LLC v. Brownlie* [2021] UKSC 45 at §81. The Applicant’s case is that

because of the alleged conduct of Booking, members of the Proposed Class have suffered loss and damage by mechanisms including paying higher commissions to Booking than they would have paid in the absence thereof. The Application also notes that the class definition requires members of the Proposed Class to be natural or legal persons who incurred liabilities to pay commission to Booking in respect of sales of rooms in “Accommodation Properties” located in the UK during the relevant period. As the Proposed Class members are predominantly based in the UK, there is a good arguable case that members of the Proposed Class sustained damage within the UK thereby satisfying the gateway that the damage was sustained within the jurisdiction.

(b) *Damage results from an act committed within the jurisdiction*
(§3.1(9)(b))

20. The Application notes that it must be shown that damage has resulted from substantial and efficacious acts committed within the jurisdiction by the defendants against whom the gateway is relied on, whether or not substantial or efficacious acts have been committed elsewhere, by reference to *Metall und Rohstoff A.G. v Donaldson* [1990] 1 QB 391 at §437E–F. The Application contends, in summary, that the terms and policies on which Booking has chosen to apply to accommodation properties located in the UK constitute conduct directed towards the UK, and that it follows that damage has been suffered resulting from acts committed within the jurisdiction. I am therefore satisfied that there is a good arguable case that members of the Proposed Class sustained damage resulting from acts committed within the UK for the purpose of §3.1(9)(b).

(c) *Claim governed by the laws of England and Wales* (§3.1(9)(c))

21. As regards the gateway in §3.1(9)(c) (claim governed by the law of England and Wales), as the Tribunal is a UK jurisdiction, the Application notes that it is sufficient that the claim is governed by the law of any part of the UK, referring to *Spottiswoode v Motorola* [2024] CAT 72 at §21.

22. Losses sustained by the members of the Proposed Class which predate 11pm on 31 January 2020 are governed by Regulation (EC) No 864/2007 of 11 July 2007 on the law applicable to non-contractual obligations (**Rome II**). Losses which postdate 11pm on 31 January 2020 are governed by the retained version of Rome II (Regulation (EC) 864/2007 on the law applicable to non-contractual obligations (Rome II) (Retained EU Legislation) (**Retained Rome II**)), which is in equivalent terms to Rome II. References below to provisions in Rome II are also to the equivalent provisions in Retained Rome II.
23. Article 4(1) of Rome II sets out the general rule that, unless otherwise provided for:
- “...the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur”.
24. The Application notes that Article 6(3)(a) of Rome II makes specific provision for competition claims, and states that:
- “[t]he law applicable to a non-contractual obligation arising out of a restriction of competition shall be the law of the country where the market is, or is likely to be, affected”.
25. Recitals (21) and (22) of Rome II explain that Article 6 is a clarification of the general rule in Article 4(1), i.e. Article 6 is intended to state a version of the principle that the applicable law is that of the country where the damage occurs, particularised for competition law. In *Westover v Mastercard* [2021] CAT 12 at §50, the Tribunal stated:
- “The general rule is that the governing law is the law of the country where the damage occurs: Art 4. That is considered to strike a fair balance between the defendant and the claimant: recital (16). Thus Art 6(3)(a) can be seen as a particular application of this approach: where there is a restriction of competition then the market affected is likely to correspond to the place where the anti-competitive damage occurs.”
26. I am satisfied that there is a good arguable case that this gateway is satisfied for the following reasons, as set out in the Application:

- (1) The claims relate to the commission rates and terms on which Booking supplied online intermediation services to HOs and other APs in the UK.
- (2) The claims allege that the conduct harmed competition in relation to the supply of online hotel intermediation services in the UK.
- (3) The Tribunal has held that where loss takes the form of an overcharge, damage is sustained in the place where the relevant purchases were made. The relevant commissions were charged by Booking in the UK and that is where the damage caused by such commissions has been sustained.
- (4) Members of the Proposed Class are all, or at least predominantly, persons based in the UK.
- (5) Accordingly, losses suffered by members of the Proposed Class at the places where they carry on business, are incorporated, and/or file their accounts, are likely to have been suffered mostly within the UK (predominantly within England and Wales).

(d) Necessary or proper party (§3.1(3))

27. The jurisdictional gateway under §3.1(3) is satisfied where: (1) there is a defendant on whom the claim form can be served within the UK (i.e., an “anchor” defendant); (2) there is a real issue between the PCR and the anchor defendant to be tried on the merits that is reasonable for the court to try; and (3) the foreign defendant(s) would be necessary or proper parties to the claim.
28. As to (1), the Application notes that the Third Proposed Defendant is a private limited company incorporated in the UK with its registered office in London, England, which can therefore be served in England. In summary, the Application contends the Third Proposed Defendant is an appropriate defendant because its principal business activity is to provide “UK support services to Booking.com B.V. for the Booking.com website”, it “represents the local partner services organisation which is key for the success of the

Booking Group in the UK market” and it, together with the Second Proposed Defendant, provided undertakings to the Competition and Markets Authority at the conclusion of its consumer law investigation into hotel booking sites.

29. As to (2), whether there is a real issue to be tried against the anchor defendant, the Application first refers to the alternative bases set out in §20(d) of the Tribunal’s reasoned order of 20 September 2023 in Case 1606/7/7/23 *Ennis v Apple*:

“(i) they knowingly and intentionally participated in and/or implemented the infringements; (ii) they themselves lacked some requisite knowledge or intention, but that knowledge or intention was present in another Apple entity and is therefore treated as theirs, as part of the same, single undertaking; (iii) even in the absence of knowledge or intention, they could be liable on the basis that they were part of the infringing undertaking.”

30. First, the Application contends that it is arguable that the Third Proposed Defendant knowingly and intentionally implemented or gave effect to the conduct by offering support services to the Second Proposed Defendant in relation to the platform on which the relevant price parity policies were implemented. Second, even if the Third Proposed Defendant lacked some knowledge or intention, that knowledge or intention was present in another Booking entity and is therefore treated as theirs as they are part of the same, single undertaking. Third, even in the absence of knowledge or intention, the Third Proposed Defendant could be liable given it is part of the same infringing undertaking as the Proposed Foreign Defendants. I am satisfied on these alternative bases that there are real issues to be tried between the Applicant and the Third Proposed Defendant as the anchor defendant.

31. As to (3), the determination of whether the Proposed Foreign Defendants are necessary or proper parties to the claim depends on the test as set out in *Altimo Holdings v Kyrgyz Mobil Tel Ltd* [2012] 1 WLR 1804 at §87:

“[...] the question whether D2 is a proper party is answered by asking: ‘Supposing both parties had been within the jurisdiction would they both have been proper parties to the action?’: *Massey v Heynes & Co* (1888) 21 QBD 330 at 338...D2 will be a proper party if the claims against D1 and D2 involve one investigation...and in *Carvill America Inc v Camperdown UK Ltd* [2005] EWCA Civ 645, [2005] 2 Lloyd’s Rep 457, at [48], where Clarke LJ also used, or approved, in this connection the expressions ‘closely bound up’ and ‘a common thread’: at [46], [49].”

32. The Proposed Foreign Defendants are necessary and proper parties to the proceedings because:

- (1) The claims against the Proposed Foreign Defendants involve the same alleged conduct entailing the same factual inquiries as would be raised at a trial of the Applicant's claims against the Third Proposed Defendant held elsewhere.
- (2) The Proposed Foreign Defendants were involved in the conduct.
- (3) It is anticipated that the claims against the Proposed Foreign Defendants would involve the same witnesses and experts as in the claims against the Third Proposed Defendant taken elsewhere.
- (4) It would be undesirable to require the Applicant to litigate against the Third Proposed Defendant in the UK and pursue the claims against the Proposed Foreign Defendants elsewhere.
- (5) The Proposed Foreign Defendants arguably bear joint and several liability for the damages sustained by the Proposed Class members as a result of the alleged conduct. Therefore, even if it could be said that the infringement was committed by only one of the Proposed Foreign Defendants, all of them are necessary or proper parties to the claims.

(3) Proper Forum

33. The Applicant contends that the UK is clearly or distinctly the most natural and appropriate forum for the claims. As stated in *Epic* at §132 as to the factors that may be taken into account in determining the proper forum:

“The governing approach to determination of whether England is clearly the appropriate forum derives from Lord Goff's classic speech in *The Spiliada* [1987] AC 460. Lord Goff there emphasised that the fundamental consideration is the interests of all the parties and the ends of justice. As numerous judgments have subsequently shown, a range of factors may therefore be taken into account, including (i) the residence or place of business of the parties; (ii) the location of likely witnesses; (iii) the existence of parallel proceedings; (iv) the applicable law (v) the cost and delay; (vi) a legitimate personal or juridical advantage; and (vii) the jurisdictional gateway relied on.

See note 6.37.16 in *Civil Procedure 2020* (the ‘White Book’). However, this is not an exhaustive list, and the relevance and importance of any factor will vary significantly from one case to another in the ‘evaluative or balancing exercise’ which the court or tribunal has to carry out: per Lord Neuberger in *VTB Capital Plc v Nutritek International Corp* [2012] EWCA Civ 808] at [97].”

34. I am satisfied that there are multiple reasons as to why the UK, and specifically the Tribunal sitting in England and Wales, is the forum with which the claim has the most real and substantial connection and is therefore the proper forum for determination of the claims. Those reasons are:

- (1) The subject matter of the action is commercial conduct, effects on competition and loss which all occurred in the UK and predominantly England and Wales.
- (2) The Applicant is incorporated in England and Wales, the vast majority of the members of the Proposed Class are located in the UK, the majority within England and Wales, and the Third Proposed Defendant is a company registered in England and Wales.
- (3) Witnesses of fact that may be called by the Applicant are likely to be based in the UK.
- (4) There are practical advantages of the action being tried in the UK, given the UK has a specialist competition tribunal with a well-developed procedural regime for collective actions.
- (5) The UK is likely to be in practice the only forum in which the claim could be brought.
- (6) The claim is governed by and concerns breaches of UK competition law, and the Tribunal is best placed to resolve such questions relating to UK law.

F. CONCLUSION

35. In all the circumstances it is appropriate for the Tribunal to exercise its jurisdiction to permit the service out of the CPCF on the Proposed Foreign Defendants. Accordingly, the Applicant is permitted to serve the CPCF out of the jurisdiction at the following addresses:

- (1) Booking Holdings Inc. (on its registered agent) at Corporation Service Company, 51 Little Falls Drive, City of Wilmington, County of New Castle, State of Delaware, 19808, United States of America.
- (2) Booking.com B.V. at Oosterdokskade 163, 1011 DL, Amsterdam, The Netherlands.

36. As the Application has been determined *ex parte* on the papers, first, the Applicant is reminded of its duty of full and frank disclosure. This entails disclosing potential defences which are either known to have already been advanced or are likely to be raised on the merits, particularly in the context of standalone claims. Second, the Proposed Foreign Defendants may apply to set aside this decision on the basis that the Tribunal does not have jurisdiction, or that such jurisdiction should not be exercised, pursuant to r. 34 of the 2015 Rules.

Hodge Malek KC
Chair

Charles Dhanowa CBE, KC (*Hon*)
Registrar

Date: 18 August 2026