



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1702/5/7/25 (T)

BETWEEN:

LENZING AG & OTHERS

Claimants

- v -

WESTLAKE VINNOLIT GMBH & CO. KG & OTHERS

Defendants

Part 20 Claimants/Defendants

REASONED ORDER (PERMISSION TO APPEAL)

UPON the Ruling of the Chair at the case management conference on 6 July 2026 (the “CMC3 Ruling”)

AND UPON the Order of the Chair, Mr Hodge Malek KC, dated 11 August 2026 giving effect to the CMC3 Ruling (the “CMC3 Order”)

AND UPON the application by the Defendants dated 21 August 2026 for Permission to Appeal the CMC3 Ruling, as reflected in the CMC3 Order (the “PTA Application”)

AND UPON reading the Claimants’ submissions in response to the PTA Application dated 4 September 2026

IT IS ORDERED THAT:

1. The PTA Application is refused.

REASONS:

I. Introduction

1. The Defendants have applied for permission to appeal the CMC3 Ruling as reflected in the CMC3 Order on the following grounds:

Ground 1 – mobile phones

2. The Defendants seek permission to appeal orders:
 - (a) directing Mr Kempf and Mr Luderer to provide statements setting out the circumstances in which their work mobile devices were wiped;
 - (b) directing that the Defendants should make enquiries as to the extent to which relevant data is available from relevant telecommunication service providers and directing that reasonable endeavours should be made to obtain such data in relation to the mobile phones of four individuals; and
 - (c) directing Westlake to request former employees to make their “personal mobile phones and data available for review and collection” with a filtering review to be carried out by an independent expert.
3. The Defendants submit that:
 - (a) the Tribunal has no power to compel evidence from non-party individuals who are German nationals domiciled in Germany;
 - (b) the Tribunal did not have the power to make directions about mobile devices that are not in the Defendants’ control;
 - (c) the orders are disproportionate and therefore contrary to Section 8 of the Human Rights Act 1998;
 - (d) the Tribunal erred in its approach to the privilege against self-incrimination;

- (e) the Tribunal does not have the power to make its order regarding personal mobile phones; and
- (f) the order is overbroad, disproportionate (and insufficiently precise) in its material and temporal scope, it intrudes disproportionately into the privacy of former employees (and others), and impermissibly captures personal data.

Ground 2 – LRS1 and LRS6

- 4. The Defendants also appeal orders relating to further disclosure arising from LRS1 and LRS6. LRS1 and LRS6 are each existing disclosure categories in respect of which further searches and disclosure were ordered following oral submissions from the parties at a case management conference.
- 5. The Defendants allege that the orders are overly broad and disproportionate having regard to the scope of the Claimants' pleaded case and the cost of disclosure.

Ground 3 – Ethylene Decision

- 6. The Defendants oppose disclosure of certain information in respect of the European Commission's Ethylene Decision. The orders were made following oral submissions from the parties at a case management conference.
- 7. The Defendants allege that this material has no relevance to the Claimants' pleaded case.

Ground 4 – Internal Investigation

- 8. The Defendants oppose direction requiring them to describe the subject-matter of an internal investigation referred to in their disclosure statement, and to explain the basis on which it is said that the investigation is legally privileged.
- 9. The Defendants allege that the Tribunal has breached the principle of natural justice by making this order because the CMC3 Order addressing this lacks a reasoned basis, was not addressed in the CMC3 Ruling and was not sought by the Claimants.

II. The law

10. Appeals from the Tribunal (other than in relation to a penalty) may only arise in respect of a point of law. In considering whether to grant permission to appeal, the Tribunal applies the test in CPR Rule 52.3(6). Permission to appeal may only be granted where:
- (a) the Tribunal considers that the appeal would have a real prospect of success; or
 - (b) there is some other compelling reason why the appeal should be heard.

III. Determination

11. As can be seen from the summary of Ground 1 above, the Defendants have taken a less than constructive approach in opposing inquiries relating to mobile phones. However, Ground 1 can be dealt with relatively shortly. Tribunal Rule 53(1) provides the Tribunal with a general power to make such directions as it thinks fit to secure that proceedings are dealt with justly and at proportionate cost. The destruction of data after notice has been given to preserve documents is a matter of concern to the Tribunal. The Tribunal has the power to direct the Defendants, a party to these proceedings, to provide witness statements from its employees, and the CMC3 Order also contains adequate protections regarding the right against self-incrimination. The Tribunal also clearly has the power to direct the Defendants to make enquiries with third party telecommunication providers and use reasonable endeavours to obtain available data, which is not equivalent to requiring disclosure of material not in the Defendants' control as alleged. The main telecommunication firms are well used to providing call data at the request of their customers. Similarly, in relation to personal mobile phones the CMC3 Order merely requires the Defendants to write to individuals requesting that they make their personal mobile devices available, and then inform the claimants of the outcome of these enquiries, providing disclosure if it is obtained. There can be no serious assertion that the Tribunal does not have the power to direct the Defendants to make such enquiries. The enquiries required by the CMC3 Order are relatively limited and are not overbroad or disproportionate. In cartel cases the incriminating evidence is often fragmentary and in the control of the alleged cartelists who may make efforts to keep their communications secret. Mobile phone data is generally an important source of

information and orders on disclosure are often made. The types of orders made in this case are, in the experience of the Chair not unusual, particularly in fraud and cartel cases.

12. Grounds 2 and 3 can be dealt with together. In both grounds, the Defendants have suggested that disclosure or the directions made by the Tribunal are too broad and do not align with the Claimants' pleaded case. The Tribunal considered arguments of relevance and proportionality in relation to these grounds at CMC3 and provided its reasons for the orders that it made in the CMC3 Ruling. Tribunal Rule 53(1) provides the Tribunal with a general power to make such directions as it thinks fit to secure that proceedings are dealt with justly and at proportionate cost. This includes making assessments about the relevance and proportionality of the directions that it makes regarding disclosure. It is not an error of law for the Tribunal to reach a case management decision that the Defendants do not like.
13. In relation to ground 4, I made a relatively limited direction to provide further information regarding an internal investigation referred to in the Defendants' disclosure statement. These enquiries will assist in establishing the relevance of this material to the claim, and the basis of the legal professional privilege claimed. It cannot seriously be suggested that there is a breach of natural justice for the Tribunal to make further enquiries about a document referred to by the Defendants in a statement before the Tribunal. Such information is sought in furtherance of the active case management of these proceedings allowed by Tribunal Rule 53(1), which specifically permits the Tribunal to make directions "*of its own initiative*". Again, this amounts to no more than a complaint by the Defendants about a case management decision that they do not like, rather than a reasonably arguable ground of appeal.

IV. Disposition

14. For the reasons set out above, the grounds of appeal raised by the Defendants have no realistic prospects of success in relation to decisions reached as part of the Tribunal's case management of the proceedings. They lack merit and there is no other compelling reason why they should be heard by the Court of Appeal. The PTA Application is therefore refused.

Mr Hodge Malek KC

Chair of the Competition Appeal Tribunal

Made: 10 September 2026

Drawn: 10 September 2026