Neutral citation [2026] CAT 83

IN THE COMPETITION APPEAL TRIBUNAL

Case No: 1757/5/7/25

BETWEEN:

MORETHANAV LIMITED

Claimant

- v -

BANG & OLUFSEN A/S

Defendant

REASONED ORDER

UPON the Defendant's Application for Security for Costs dated 26 June 2026 (the Security Application); the Claimant's Applications: (1) seeking Disclosure from the Defendant dated 28 August 2026 (the **Disclosure Application**); (2) to Re-Amend its Amended Claim Form dated 9 September 2026 (the **Amendment Application**) (together, the **Applications**)

AND UPON reading the materials filed herein by the parties in connection with the Applications

AND UPON hearing the representative of the Claimant and counsel for the Defendant at a Case Management Conference on 25 September 2026 (the **CMC**)

AND UPON the Tribunal indicating to the Claimant that if it is to be represented by any person other than a qualified lawyer at the CMC it must seek permission pursuant to Rule 8 of the Competition Appeal Tribunal Rules 2015 (the **Rules**)

AND UPON Ian D Grace the owner and director of the Claimant undertaking to the Tribunal that, for the purpose of the Claimant providing security for the Defendant's costs up to the amount of security agreed or determined in accordance with this Order (the **Security**), until the conclusion of the proceedings before the Tribunal, he will:

(a) preserve the value in the properties registered in his sole name known as Unit 1, The Bell Centre, Newton Road, Crawley RH10 9FZ registered with HM Land Registry with title number WSX161980 and Unit 14, Kelvin Business Centre, Kelvin Way, Crawley RH10 9SF registered with HM Land Registry with title number WSX143153 (the **Assets**);

(b) not sell, transfer, charge, or otherwise dispose of or part with any interest in the Assets; and

(c) take all reasonable steps to ensure that the realisable value of the Assets is maintained, so as to provide the Security.

AND UPON the Tribunal inviting the parties to address it in relation to allocation of the proceedings to the fast-track procedure pursuant to Rule 58 of the Rules

AND UPON the parties making further submissions as to the form of this Order and the amount to be given by the Claimant as to security for costs.

IT IS ORDERED THAT:

(1) Representation of the Claimant

1. Permission is granted to Mr Ian D Grace to represent the Claimant at the CMC. The question of who may be permitted to represent the Claimant at any future hearings is reserved.

(2) Amendment Application

2. The Claimant shall have permission to re-amend the Amended Claim Form dated 20 February 2026.

3. By 4pm on 2 October 2026 the Claimant shall file and serve its Re-Amended Claim Form (including any exhibits) on the Defendant.

4. By 4pm on 30 October 2026 the Defendant shall file and serve its Amended Defence on the Claimant.

5. By 4pm on 20 November 2026 the Claimant shall file and serve any Reply.

6. The Claimant shall pay the Defendant's costs of and occasioned by the amendments to the Amended Claim Form to be the subject of summary assessment on the standard basis if not agreed.

(3) Security Application

7. The Claimant shall provide security for the Defendant's costs by the undertaking in respect of the Assets given to the Tribunal by Mr Grace.

8. The amount of security for costs to be provided by the Claimant has been determined by the Tribunal at £92,315.39.

9. There be no order for costs on the Security Application.

(4) Disclosure Application

10. The Disclosure Application is dismissed.

11. There be no order for costs on the Disclosure Application.

(5) Further Directions

12. A further case management conference with a time estimate of half a day shall be listed on or after 14 December 2026. It shall consider the further directions required for the trial of the claim and address the question of whether the proceedings should be allocated to the fast-track.

13. The parties are directed to each inform the Tribunal of their availability for such a case management conference by 4pm on 11 November 2026.

14. Liberty to Apply

REASONS FOR THE AMOUNT OF SECURITY

(1) Introduction

1. By an application dated 26 June 2026 (the **Application**), the Defendant in this case has asked that security be provided by the Claimant for its costs. On the basis of costs that it says have been incurred and allowing in addition for certain costs that will inevitably

be sustained because of work to be carried out on amended pleadings, the amount claimed is £213,495.

2. In its written submissions to the Tribunal dated 16 October 2026, the Claimant submits that "at most" the sum of £68,041 is appropriate.

(2) Background

3. Before the Tribunal is a claim for damages for infringements of Section 2(1) of the Competition Act 1998 (the **Chapter I prohibition**) relating to the Defendant's operation of a selective distribution system (**SDS**). The Claimant asserts that it provides procurement and purchasing support, logistics/export coordination and related services in respect of the Defendant's products.

4. The Defendant is a well-known manufacturer and supplier of consumer electronics headquartered in Denmark. The Claimant's case is that it has traded in the Defendant's goods since at least 2006 in various capacities, as was well known and accepted by the Defendant, until December 2025. Thereafter, the Claimant alleges that the Defendant instructed authorised dealers to refuse to supply it. The Claimant alleges this refusal breaches the Chapter I prohibition as it is discriminatory and is contrary to the SDS as the refusal also applies to second hand goods.

5. The Claimant seeks damages in respect of losses already suffered and continuing losses arising from the pleaded conduct, with quantum to be assessed. It also seeks a declaration that the Defendant's conduct infringes the Chapter I prohibition.

(3) The Application

6. The Application was heard at the Case Management Conference held at the Competition Appeal Tribunal in London on 25 September 2026. As a result of an open offer made by Mr Grace who has been representing the Claimant, it was agreed that security would be provided. An order was made in these terms:

   (a) By 9 October 2026 the parties shall seek to agree an appropriate amount by way of security for the Defendant's costs.

   (b) If the parties cannot agree an appropriate amount by way of security for the Defendant's costs by 9 October 2026 the Tribunal shall determine the appropriate amount.

   (c) The parties shall file and serve their submissions as to the appropriate amount of security that the Claimant shall be ordered to provide by 4pm on 16 October 2026.

7. The Tribunal has been informed that no agreement has been reached as to the level of security to be provided. It therefore falls to the Tribunal to determine the appropriate amount. The Application of 26 June 2026 relies upon the Witness Statement of Mr Charlie Markillie, as Partner in the firm of Solicitors, Knights. This statement produced two costs budgets as the foundation for the Application.

(4) The Law

8. Rule 59(3) of the Competition Appeal Tribunal Rules 2015, provides that where the Tribunal makes an order for security for costs, it shall:

> (a) Determine the amount of security; and
>
> (b) Direct -
>
> (i) the manner in which, and
>
> (ii) the time within which,
>
> the security must be given.

9. It has been generally accepted that the approach of the Tribunal in the case of *BCL Old Co Ltd and others v Aventis SA, and others* [2005] CAT 2, provided sensible guidance in cases where the Tribunal is asked to order security and also consider the level at which to set that security. At §44 the Tribunal said this:

> "Under Rule 45(3) this Tribunal has a discretion as to the amount to be ordered and must exercise that discretion on a judicial basis. In exercising that discretion this Tribunal will determine the amount of security it considers to be just having regard to all the circumstances. Where the Claimant is impecunious the Tribunal will not fix a sum which the Claimant cannot pay and which may therefore have the effect of stifling a genuine claim. Any amount ordered should not be illusory or oppressive but should reflect a proper evaluation of the Defendants' likely exposure to costs."

10. It is quite clear from the following passages in the judgment, that the Tribunal felt that where sums were advanced as being costs for a particular stage of the proceedings, they would only be properly assisted to the extent that detailed cost breakdowns were provided.

(5) The submissions

11. The Defendant set out its position on the amount of costs to be ordered by way of a letter from its solicitors, Knights, on 16 October 2026. That letter explained that the amount of security originally asked for was in the aggregate sum of £116,961.50.

Reliance was placed upon the two costs budgets put in evidence before the Tribunal, by Mr Markillie. The first budget recorded the incurred costs to the date of the witness statement (absent counsel fees) and went on to estimate costs up to and including a possible strike out or summary judgment application. The second budget addressed the incurred and estimated costs up to the conclusion of the case in the total sum of £941,104.33.

12. From 27 June 2026, that is to say the date of the security application, to 8 October 2026, the Defendant claims to have incurred further legal costs of £107,794.80. That figure is made up of solicitor's costs in the sum of £47,108.80 and Counsel's fees of £60,686. From the total sum of £224,756.30, the Defendant is willing to deduct £38,581.65 to allow for applications where no order for costs was made. The resulting total sum claimed at the date of the hearing of the application, is therefore £186,174.65.

13. In addition to the costs incurred to 8 October 2026, accounted for as has already been explained, the Defendant also seeks a further sum to allow for the work it will do in amending its Defence as a consequence of the permission granted at the CMC for the Claimant to once again amend its Claim. The Defendant says that half of the costs it incurred in preparing the original Defence would be £27,321; this it says, would be a sensible value to ascribe to the new work it is now called upon to carry out. The total amount claimed therefore is £213,495.

14. In its submissions to the Tribunal, the Defendant recognises that the amounts it claims do not provide a real cushion of security for the costs that will inevitably be incurred in resisting the claim. Much work remains to be done; various hearings and applications will have to be dealt with; witness statements and other documentary evidence will have to be attended to. Whilst making the application on a costs to date basis, it has signalled that the amount of security may have to be revisited.

15. The Claimant takes a different view as to the amount to be ordered. In its submissions put before the Tribunal by Mr Grace on 16 October 2026, the sum of £68,041 is said to be an appropriate amount. Amounts should be deducted for the security for costs application - so far as I can see the Defendant is willing to do so - and a further reduction should be made because the costs attendant upon the further amendment to the Defence

are payable now: that amount is £27,321. It is also argued that the costs included for a proposed strike out/summary judgment application should be deducted, as in essence the costs have not been incurred; if they ever are, then the question of security can be dealt with at the appropriate time: that time is not now.

16. The Claimant also takes issue with the rates claimed, said to be variously 44% and 86% above the Guideline Rates for the location of the Defendant's solicitors. Making the appropriate adjustment, means that only 60% of the amount claimed should be allowed. On the Claimant's case, the sum of £68,041 is the appropriate amount to be provided as security, because this value represents 60% of the balance of costs claimed, having first deducted the costs relating to the security for costs application, the strike out application which has yet to be launched and the costs relating to the amendment of the Defence.

(6) Discussion

17. Unfortunately, the fee budgets submitted by Mr Markillie are not as helpful as they could have been. They do not provide a full and proper breakdown of the costs claimed. Two tables have been put forward that set out estimated and incurred time costs. There is no breakdown of what work is involved by which fee earner and at what rate. The result is that the Tribunal appears to be in a similar position to the one it faced in BCL Old Co Ltd. In that case, had it been just to do so, Sir Christopher Bellamy made it clear that he would have found difficulty in calculating the proper amount [47]. A security for costs application should be supported by such breakdown evidence, was his clear view and, with the greatest respect, I agree with him.

18. In the absence of a breakdown provided in the costs budgets, the Claimant makes his case based upon three Statements of Costs prepared for Summary Assessment, proffered by the Defendant in September 2026. Here, Mr Grace can see the rates claimed by the various fee-earners engaged on the matter at the Defendant's solicitors; the fees of counsel are also particularised. What these rates show are values being claimed that are well above the Guideline Rates for Leeds, Leeds being the address of the Defendant's solicitors. The Grade A claim is £550 whereas the current Guideline Rate is £295; for Grade C £335 as against £201; and for Grade D £195 as against £142.

19. The Court of Appeal has made it clear that any claim for costs above the Guideline Rates must be supported by a "clear and compelling" justification (see in *Samsung Electronics v LG Display* [2022] EWCA Civ 466, §6). I have to say that I see nothing in the evidence of Mr Markillie that passes the threshold of clear and compelling evidence; indeed I see no evidence whatsoever as might persuade me that there are good grounds for accepting rates that are self-evidently far in excess of the applicable Guidelines Rates.

20. Rule 59 of the Competition Appeal Rules 2015 is clear: a defendant may seek security for its costs of the proceedings, and the Tribunal must determine the amount. The Tribunal will make an order for security if it is satisfied having regard to all the circumstances of the case that it is just to do so; expressing that in another way, the amount that the Tribunal orders must be just in all the circumstances.

21. That the Claimant must provide security has already been decided. I need not revisit that here; nor need I revisit the fact that the security will be provided by reliance upon the value of certain identified real property owned by the Claimant. There can be no question, or not at this stage at any rate, of the security operating so as to stifle the claim.

22. So what then is an amount that is just in all the circumstances? Given the state of the evidence before it, the Tribunal must do the best that it can. It seems to me that the Claimant has sensibly and constructively placed reliance upon the rates appearing in the Statements of Costs; he has not sought to take tactical advantage of the inchoate costs budgets, but rather has pointed to the fee rates that he can see in subsequently filed Statements of Costs. The Claimant also puts forward a pragmatic adjustment to the various rates which differ in the degree to which they are at variance to the Guideline Rates. The result is that the value that emerges from the Claimant's arithmetic exercise has, with one adjustment, every appearance of being a figure that is appropriate and just in all the circumstances. The 60% adjustment, suggested by the Claimant to take account of the differential to the Guideline Rates, is in all the circumstances a practical approach to the adjustment required and the Tribunal will adopt it.

23. It is therefore right in my judgment that the amount claimed by the Defendant is reduced to reflect the differential to the Guideline Rates; however, the Guideline Rate reduction can only be applied to the Solicitors' Costs and not to counsel's fees. The amount that is subject to the Guideline Rate reduction is therefore £ 52,715.65. This is the sum that results from taking the total costs claimed (£213,495.65), subtracting the amounts deducted by the Claimant (resulting in £113,401.65), and then deducting counsels' fees). Allowing 60% of £52,715.65 gives a figure of £31,629.39, to which must be added back £60,686 as counsel fees: this gives a total of £92,315.39.

24. In conclusion, the Tribunal will order that security be provided by the Claimant in the value of £92,315.39, being the sum calculated on the basis of the costs claimed to 8 October 2026, having first made the various deductions as I have described.

Mr Charles Morrison Made: 6 November 2026

Chair of the Competition Appeal Tribunal Drawn: 9 November 2026