IN THE COURT OF APPEAL (CIVIL DIVISION) **Appeal number: CA-2025-001656**

ON APPEAL FROM THE COMPETITION APPEAL TRIBUNAL

Case 1570/5/7/22 (T)

B E T W E E N :

JJH ENTERPRISES LIMITED

(trading as VALUELICENSING)

Respondent / Claimant

- v -

(1) MICROSOFT CORPORATION

(2) MICROSOFT LIMITED

(3) MICROSOFT IRELAND OPERATIONS LIMITED

Appellants / Defendants

- and –

MR. ALEXANDER WOLFSON

Proposed Intervener

WRITTEN SUBMISSIONS OF THE PROPOSED INTERVENER

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1. In this appeal, Microsoft contends that the Competition Appeal Tribunal ("**the Tribunal**") has jurisdiction to determine non-competition law issues that arise in a claim under section 47A of the Competition Act 1998 (**"CA 1998"**) only if those issues do not amount to a separate cause of action. If non-competition law issues arise that amount to a cause of action, Microsoft says, the Tribunal cannot determine those issues – instead, it is obliged to exercise its powers under Rule 71 of the Competition Appeal Tribunal Rules 2015 ("**the Rules**") to transfer those issues to the High Court.[1]

2. Microsoft states that the implications of the approach for which it contends are essentially procedural. Thus Microsoft submits:

[1] Microsoft's Skeleton Argument, ¶¶60 *et seq*.

"The limitation on the Tribunal's jurisdiction submitted by Microsoft is compatible with the wording of the statute. Section 47A provides that a person may make a claim in the Tribunal for damages, an injunction or a declaration in respect of an alleged breach of Chapter I or II of the 1998 Act. Such claims could still be brought, on Microsoft's approach. Microsoft's approach would entail specific issues arising in /those proceedings being determined by the High Court where those issues amounted, as a matter of substance, to a cause of action in and of themselves (which may be relatively unusual). That approach is also consistent with the Tribunal's rules, which provide that even where s.47A proceedings are before the Tribunal, part of those proceedings may be transferred to the High Court: Rule 71." [2] (emphasis added).

3. This submission materially misstates the serious implications of the approach for which Microsoft contends. It is also in conflict with Microsoft's stated position in the closely-related proposed collective proceedings against Microsoft which were filed in the Tribunal by the Proposed Intervener on 12 May 2025 ("**the Proposed Collective Proceedings**").

4. Attached to these Written Submissions are:

   4.1. *Annex A:* Microsoft's application of 15 September 2025 ("**Microsoft's Application**"), which seeks to challenge the Tribunal's jurisdiction to determine non-competition law issues in the Proposed Collective Proceedings; and

   4.2. *Annex B:* two letters from Willkie Farr & Gallagher (UK) LLP, who represent Microsoft in the Proposed Collective Proceedings, sent to Stewarts Law LLP who represent the Proposed Intervener, dated 9 and 10 September 2025 ("**WFG Letters**"), in which Microsoft sets out its position on the implications of the present appeal for the Proposed Collective Proceedings.

5. These documents make clear, contrary to the impression given by Microsoft in its Skeleton Argument ¶71, that this appeal is not merely a procedural matter concerning the delineation of jurisdiction as between the Tribunal and the High Court. In fact, this appeal raises an issue with important, and significant, substantive implications for future cases.

6. In summary, in the Proposed Collective Proceedings Microsoft contends that:

   6.1. Rule 71 of the Competition Appeal Tribunal Rules, which gives the Tribunal power to

[2] Microsoft's Skeleton Argument, ¶71.

transfer all or part of proceedings before it to the High Court, does not apply to collective proceedings;[3] and

6.2. The consequence of this is that if there is a non-competition law issue amounting to a separate cause of action which requires determination in collective proceedings, then the entire proceedings must fail. The Tribunal has no jurisdiction to determine them, and there is no jurisdiction to transfer the non-competition law issue to the High Court, so the application for a collective proceedings order must be dismissed altogether.[4]

7. In short, Microsoft has announced its intention to argue in due course that the limitation on the Tribunal's jurisdiction for which it now contends is not compatible with the operation of section 47B of the CA 1998. The Court will readily appreciate that this does not square with Microsoft's Skeleton Argument ¶71 in this appeal. When Microsoft states in its Skeleton that its position is "*compatible with the statute",* that "*such claims could still be brought"* and that part of them "*may be transferred to the High Court"* it is referring only to claims under section 47A of the CA 1998, and not to claims under section 47B.

8. Microsoft's position in the Proposed Collective Proceedings underlines that the Tribunal's judgment in the present proceedings, and the submissions of the Respondent / Claimant (**"VL**") in its Skeleton Argument in this appeal, are correct. The Tribunal has jurisdiction under section 47A of the CA 1998 to determine claims for damages which are based on infringements of competition law, not only to determine the "competition issues" within such claims. That entails that it has jurisdiction to determine all the issues that arise in the context of such claims; or, where the claim is transferred from the High Court under section 16(4) of the Enterprise Act 2002, to determine all the issues that are "*related to*" the claim and have been transferred accordingly. The same is also true of the Tribunal's jurisdiction under section 47B of the CA 1998 to determine collective proceedings. However, the position is *a fortiori* in respect of collective proceedings. If Microsoft were correct, claims brought under section 47A of the CA 1998 would potentially have to be inefficiently bifurcated between the Tribunal and the High Court, but claims brought using the mechanism under section 47B of the CA 1998 would be defeated entirely.

[3] WFG Letter of 10 September 2025, p.1 final paragraph to p.2 first paragraph. Microsoft relies on Rule 74(3)(e), which states that Rule 71 does not apply to collective proceedings, and on Rule 71(1) which states that it concerns claims made in proceedings brought under section 47A of the CA 1998 whereas collective proceedings are brought under section 47B of the CA 1998.
[4] Microsoft's Application, ¶32; and WFG Letter of 9 September 2025, p.3 first paragraph.

9. Further, the Supreme Court in *MasterCard v Merricks* [2020] UKSC 51 warned against an approach to the Tribunal's jurisdiction which leaves claimants in a less favourable position as a result of their claims being brought alongside other claims under section 47B of the CA 1998, rather than individually. Lord Briggs (with whom Lord Thomas and Lord Kerr agreed) stated:

> *"45. … it should not lightly be assumed that the collective process imposes restrictions upon claimants as a class which the law and rules of procedure for individual claims would not impose."* and
>
> *"54. … The evident purpose of the statutory scheme was to facilitate rather than to impede the vindication of those rights."*

10. The logic of Microsoft's position is that a claim brought individually could be dealt with in part by the Tribunal and in part by the High Court, but if that same claim were to be brought alongside another claim under section 47B of the CA 1998 it could not proceed. That cannot be right. The regime must be interpreted as a coherent whole, and the Supreme Court has made clear that unless there is a good reason to conclude otherwise claimants should have equal access to the Tribunal irrespective of whether they elect to proceed individually or collectively.

11. Moreover, if Microsoft's approach were to be accepted, it would substantially undermine the effectiveness of the collective proceedings regime, allowing defendants to oust the Tribunal's jurisdiction by the simple expedient of pleading facts that give rise to a non-competition law cause of action. Given that the essential purpose of the collective action regime is to improve access to justice, by providing a mechanism for bringing claims that would not be cost-effective if brought individually, Microsoft's approach would mark a return to the situation where there are valid legal rights to vindicate but no effective remedy. The scope for abuse is real, and serious.

12. Finally, contrary to Microsoft's submission,[5] it is not "*unusual*" for competition law claims to involve the need to determine legal issues in other areas that amount to a cause of action and that provide the essential context for the competition law issues. In Case C-252/21 *Meta Platforms v. BKA* ECLI:EU:C:2023:537, [2023] 5 CMLR 22 at [48] the Court of Justice of the European Union ("**CJEU**") held that:

[5] Microsoft's Skeleton Argument, ¶¶13 and 71.

"*…in the context of the examination of an abuse of a dominant position by an undertaking on a particular market, it may be necessary for the competition authority of the Member State concerned also to examine whether that undertaking's conduct complies with rules other than those relating to competition law*".

13. In Case C-21/23 *ND v DR* ECLI:EU:C:2024:846 at [62] the CJEU confirmed that the approach set out in *Meta* applies equally in claims between private parties. Like *Meta, ND* concerned allegations that data protection obligations in the GDPR had been infringed in such a way as to amount to an infringement of applicable competition law. The Tribunal has followed this approach: see the judgment of the Tribunal chaired by Mr. Justice Roth in *Gutmann v. London & South Eastern Rwy Ltd. and ors* [2025] CAT 64, at [63] et seq, a collective action in which allegations were raised of breach of the Consumer Protection and Unfair Trading Regulations 2008. As these cases illustrate, it is not only causes of action under copyright or contract law which arise on the claims and/or defences pleaded in damages claims for breach of competition law.

14. Further, if the CMA were to follow the approach set out in *Meta* and determine a non-competition issue as part of an infringement decision, there can be no question that the Tribunal would have jurisdiction to consider an appeal against that decision and to resolve the non-competition issue in the course of doing so.

15. For these reasons, as well as the reasons set out by VL in its Skeleton Argument, the Proposed Intervener respectfully submits that the appeal should be dismissed.

JON TURNER KC
LAURA ELIZABETH JOHN
Monckton Chambers
10 March 2026