IN THE COURT OF APPEAL (CIVIL DIVISION) **Appeal No:** CA-2025-002757
ON APPEAL FROM THE COMPETITION APPEAL TRIBUNAL
Case 1433/7/7/22
Justin Turner KC, Mr Ridyard, Mr Olsen

BETWEEN:

(1) META PLATFORMS INC
(2) META PLATFORMS IRELAND LIMITED
(3) FACEBOOK UK LIMITED

Appellants / Defendants

-and-

DR LIZA LOVDAHL GORMSEN

Respondents / Class Representative

SKELETON ARGUMENT OF THE APPELLANTS

A. INTRODUCTION AND SUMMARY

1. This is the skeleton argument of the Appellants ("**Meta**") in support of their appeal against the order of the Competition Appeal Tribunal (the "**Tribunal**") dated 30 September 2025 (the "**Order**") **[CB/4(a)]**. Pursuant to the Order, the Tribunal acceded to an application by the Respondent (the "**CR**") for permission to re-amend her Amended Claim Form so as to seek user damages in her collective competition law claim against Meta (the "**Amendment Application**") **[SB/1]**. The Tribunal granted permission to amend, such that a user damages claim now features as part of the CR's Re-Amended Claim Form, dated 3 October 2025 **[SB/12]**. The reasons of the Tribunal are set out in its judgment [2025] CAT 55 (the "**Judgment**") **[CB/4(b)]**.

2. On 23 October 2025, in a reasoned order, the Tribunal refused Meta's application for permission to appeal (the "**Reasoned Order**") **[CB/5(d)]**. Meta renewed its application for permission to appeal before this Court and, pursuant to an order dated 16 December 2025 **[CB/7]**, this Court granted Meta permission to appeal.

3. In summary, Meta submits that the Tribunal erred in law in granting the CR permission to re-amend. In particular:

a. The Tribunal was wrong to hold that it is "*arguable*" that user damages are available to the CR because user damages are in fact unavailable in non-proprietary statutory torts, including competition claims. Indeed, as explained below, the Tribunal was bound by appellate authority – the decision of the Court of Appeal in Devenish Nutrition v Sanofi-Aventis [2008] EWCA 1086; [2009] Ch 390 ("***Devenish***") **[AB/8]** – to so hold. *Devenish* is also binding on this Court pursuant to the principle of *stare decisis*, consistently with the decision in Young v Bristol Aeroplane Company Limited [1944] KB 718 ("***Young***") **[AB/3]**.[1]

b. Further and in any event, the Tribunal was wrong to hold that the ultimate determination of whether user damages are available (including as a matter of law) "*needs to be answered in the context of specific facts*". Neither the CR nor the Tribunal identified any facts which might emerge at trial that would affect the availability of user damages. Moreover, insofar as the Tribunal held that the availability of user damages might depend on whether "*a conventional claim to damages is not, or may not be, available*", that was plainly wrong. Whether or not the CR's claim for conventional damages succeeds at trial is irrelevant to the legal question of whether the CR is in principle entitled to plead a claim for user damages.

4. Accordingly, the Tribunal erred in law. As a matter of law, user damages are not available in competition law claims and it follows that the Tribunal ought to have refused the Amendment Application.

B. BACKGROUND

(i) The CR's case against Meta

High level overview of the Facebook service

5. Facebook is an online social service which is accessible via a web browser or on mobile devices via the Facebook application. Facebook is a multi-sided platform which provides services to end users, advertisers and other business users.

6. Facebook's services to users are predominantly funded by advertising revenue. Accordingly, personalised advertising is the foundation of the multi-sided business model

[1] *Young* **[AB/3]** is addressed further in paragraph 34 below.

which allows Facebook's services to be offered to users without charge. The advertising and user sides of the platform are closely intertwined because: **(i)** the utility of the platform for an advertiser depends on the ability to direct ads to a relevant and engaged user audience; and **(ii)** users benefit from the Facebook service, which is continuously iterated upon and improved to ensure the best possible user experience, through investments funded by advertising revenue.

The collective proceedings[2]

7. The competition law claims brought by the CR concern what the CR terms "*Off-Facebook Data*", which is defined in the ACF, at §61 **[SB/12/234]**, as "*detailed User data concerning their activities off Facebook's social media site, including in particular data on User activity from (i) other Meta products and services (e.g., Instagram); and (ii) third-party websites and apps*". The CR alleges that Meta's conduct in respect of "*Off-Facebook Data*" constitutes an abuse of a dominant position under UK and/or EU competition law. In particular, the CR contends that: **(i)** through its provision of Facebook to UK Facebook users on terms that grant Facebook access to and use of "*Off-Facebook Data*", Meta charges UK Facebook users an unfair "price" for the purposes of Case C-27/76 *United Brands v Commission* EU:C:1978:22 ("***United Brands***"); and/or **(ii)** the provision of Facebook to UK Facebook users on so-called "*take-it or leave-it*" terms and conditions through which Facebook "collects and uses *Off-Facebook Data*" constitutes an unfair trading condition: ACF, §§150, 152-153 **[SB/12/303, 308-321]**. The CR contends that the alleged unfair price and the alleged unfair trading condition are "*two sides of the same coin*".

8. The CR pleads that the alleged abuse of dominance caused users to sustain "**conventional damages**", i.e., damages that would in fact have been avoided by UK Facebook users "but for" the alleged abuse. In particular, the CR contends that, absent the alleged abuse, Facebook would have been offered to users through what the CR terms a "*fair bargain*"

[2] Below, Meta refers to the CR's Amended Claim Form, dated 2 May 2024 (the "**ACF**"), rather than to the CR's Re-Amended Claim Form, dated 3 October 2025. As above, the latter document now includes a claim for user damages further to the Order against which Meta now appeals, whereas the ACF was the pleading before the Tribunal when it heard the CR's application to amend.

pursuant to which Facebook "*would have paid*" users for "*Off-Facebook Data*": ACF, S.24, S.25, and §§175-176 **[SB/12/208-209, 331-335]**. The CR proposes to ascertain the amount of the alleged counterfactual payment (i.e., the alleged conventional damage) through a Nash bargaining model, which models a hypothetical negotiation between all UK Facebook users on one side of the negotiation, and Facebook on the other side of the negotiation.

9. For the avoidance of doubt, Meta denies the CR's existing claim in its entirety: the CR's proposed market definition is denied, it is denied that Meta is dominant as alleged or at all, it is denied that the provision of Facebook to UK Facebook users (which is a service that is provided free of any monetary charge) constitutes an abuse of dominance as alleged, and, in any event, it is denied that any conventional damages are recoverable.

(ii) <u>The CR's application to re-amend her pleading so as to seek user damages</u>

10. Following the close of pleadings, the CR brought an application to re-amend her ACF so as to seek user damages. The re-amendments contend that UK Facebook users were "*prevented from exercising their valuable right to control the collection and/or use of their Off-Facebook Data*" such that those users allegedly sustained "*the loss of a valuable opportunity to exercise the right to control the collection and/or use of their Off-Facebook Data*", which is a loss that the CR alleges to be "*quantified by a hypothetical negotiation between Facebook, as a reasonable and willing buyer, and the Users, as reasonable and willing sellers, for such permission*": ACF, §176 **[SB/12/331-335]**.[3] It is not in dispute that the effect of those amendments is to introduce a claim for "**user damages**"[4] that had not previously been pleaded or certified.

11. Before the Tribunal, Meta opposed the CR's application to re-amend on grounds that, as a matter of law, user damages are not available in competition claims. In summary, Meta

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[3] The CR does not particularise how the alleged "*valuable right to control the collection and/or use of their Off-Facebook Data*" is said to arise; nor does the CR particularise the nature of that alleged right.

[4] By "user damages", Meta means damages that represent the amount that a claimant might reasonably have demanded in a hypothetical negotiation with the defendant to compensate for the defendant having infringed the claimant's right, where the right in question is considered as an asset.

contended that: **(i)** the Tribunal was bound to conclude that user damages are not available in competition claims by reason of the Court of Appeal's decision in *Devenish*; and **(ii)** in any event a claim for user damages in a competition claim is manifestly inconsistent with the Supreme Court's decision in *One-Step (Support) Ltd v Morris-Garner & Another* [2018] UKSC 20, [2019] AC 649 ("***Morris-Garner***") **[AB/11]** where the Supreme Court rationalised the law on user damages and considered the categories of case in which they are, and are not, available. So far as claims in tort are concerned, the Supreme Court held that user damages are available for invasion of rights to tangible moveable or immoveable property, as well as for the invasion of intellectual property rights.[5]

(iii) The Judgment

12. As above, the Tribunal acceded to the CR's application for permission to re-amend so as to seek user damages. In particular, the Tribunal concluded that:

    a. The authorities which Meta cited do not mean that "*user damages are unarguably not available for the statutory tort of breach of the Chapter II Prohibition in circumstances where a conventional claim to damages is not, or may not be, available*": Judgment, §43 **[CB/4(b)/58]**.

    b. "*Whether user damages are available in the context of this case is far from straightforward in our view. We agree with the CR that there are parallels which can be drawn with the reward of user damages in relation to other torts*": Judgment, §44 **[CB/4(b)/58]**.

    c. "*[…] this is a developing area of law and therefore not one which is amenable to summary determination*": Judgment, §45 **[CB/4(b)/58]**.

    d. The CR's application to re-amend "*does raise a question of law [but] that question needs to be answered in the context of specific facts. We have no agreed statement of facts and it is premature to say what facts may impact the decision. For example, a*

[5] Before the Tribunal, Meta also contended that the CR's proposed amendment fails to satisfy the certification criteria because the methodology is designed to ascertain conventional damage rather than user damages. The Tribunal rejected Meta's position. Meta does not seek to appeal on certification issues, but Meta maintains that the CR's methodology is unfit for a user damages claim and Meta's position in that regard is reserved.

relevant consideration to whether user damages are available might be whether or not conventional damages are available. That will of course turn on the facts": Judgment, §46 **[CB/4(b)/58]**.

(iv) Permission to appeal before the Tribunal

13. Meta sought permission to appeal from the Tribunal on the ground of appeal now brought before this Court. In the Reasoned Order (which contains a single substantive paragraph) **[CB/5(d)/74]**, the Tribunal refused permission as follows: "*[f]or the reasons given in the Ruling, the Tribunal considers that this claim to user damages is plainly arguable. Further the claim raises a legal question which is properly to be determined in the light of findings of fact and is not suitable for summary determination*".

C. TEST FOR APPEALS AND TEST FOR PERMISSION TO AMEND

14. Per CPR Rule 52.21(3):

> *The appeal court will allow an appeal where the decision of the lower court was–*
>
> *(a) wrong; or*
>
> *(b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court.*

15. Because the point of law about the CR's entitlement to plead a claim for user damages arose in the context of an application for permission to re-amend, it is also necessary to have regard to the test for permission to amend. Permission to amend will not be granted unless the proposed amendments satisfy the test for summary judgment and/or strike out, namely that the CR has a real prospect of success on the case introduced by the amendment and/or that the CR has reasonable grounds for bringing the case introduced by the proposed amendment: e.g., see *Royal Mail Group Limited v DAF Trucks Limited & Others* [2021] CAT 10, at §22.

D. SUBMISSIONS

16. The Tribunal erred in law by granting the CR permission to re-amend so as to introduce a claim for user damages. The Tribunal ought to have concluded that user damages are not available for breaches of competition law. The Tribunal was bound to reach that conclusion by the Court of Appeal's decision in *Devenish*, and this Court is similarly bound to so find;

further and in any event the authorities are clear that user damages are not available in competition claims.

(i) *Devenish* is binding authority on the issue in the Amendment Application

Devenish: background[6]

17. *Devenish* was a follow-on damages action arising from the European Commission's cartel findings against certain vitamin manufacturers. The cause of action was a breach of competition law. The claimants sought "*damages or a restitutionary award*" (§9) **[AB/8/156]**.

18. A preliminary issue hearing was listed to determine whether, as a matter of law, the claimants were entitled to claim the following remedies: "*(a) an account of profits; (b) restitution of unjust enrichment; (c) exemplary damages*" (§10) **[AB/8/156]**.[7] At the first instance hearing of that preliminary issue, Lewison J concluded[8] that he "*was precluded by two decisions of [the Court of Appeal] from granting a restitutionary award or an account of profits*". The two Court of Appeal decisions that precluded such a finding were *Stoke-on-Trent City Council v W&J Wass Limited* [1988] 1 WLR 1406 ("***Wass***") **[AB/6]** and *Halifax Building Society v Thomas* [1996] Ch 217 ("***Halifax***") **[AB/25]**.[9] The decision in

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6 Unless otherwise specified, paragraph references in the form "§[ ]" are references to paragraphs in the decision of the Court of Appeal in *Devenish*.

7 As above, on the facts in *Devenish*, the claimants also sought "*damages*" and (unsurprisingly) no preliminary issue arose as to "*the availability (subject to proof of loss at trial) of a claim for damages*" (§9) **[AB/8/156]**. In context, it is clear that the claim for "*damages*" in *Devenish* was a claim for conventional damages. Finally, whilst the remedies sought in *Devenish* included an account of profits and also restitution of unjust enrichment, any distinction that the claimant in *Devenish* considered there to be as between those two remedies is not relevant to this appeal. Meta does not understand the CR to contend otherwise.

8 As summarised by Arden LJ at §16 **[AB/8/157-158]**, who gave the lead judgment of the Court of Appeal in *Devenish*, and with whom Tuckey LJ agreed in his own reasoned judgment.

9 In the *Halifax* case **[AB/25]**, the Court of Appeal held that the claimant mortgage provider, who lent mortgage monies to the defendant in reliance on the defendant's fraudulent representations, was ***not*** entitled to an account of profits from the defendant's acquisition of a property with those

Wass concerned the availability of user damages. The reason that this was considered to be directly relevant to the question whether a restitutionary remedy was available for breach of competition law was that, at the time, user damages were widely regarded as a restitutionary remedy.[10]

19. Thus:[11]

a. At §106 of his judgment **[AB/8/146]**, Lewison J held: "*[Wass and the Halifax case] do, in my judgment, show that a restitutionary award is not yet generally available in all cases of tort [and] [b]oth these cases are decisions of the Court of Appeal and hence binding on me*"; and

b. At §108 of his judgment **[AB/8/147]**, Lewison J held: "*[o]n the basis of the decisions of the Court of Appeal in [Wass and Halifax] I conclude that whatever the law ought to be, it is not (yet) the law that a restitutionary award is available in all cases of tort. In my judgment a restitutionary award is not an available remedy in an antitrust case. If the law is to be changed it must be done by a higher court than this one. Moreover, even where a restitutionary award is available, it is generally awarded where an award of more traditionally based compensatory damages would be inadequate to compensate the claimant for the invasion of his rights. Yet in the present case [the expert of one of the claimants] says that the measure of restitutionary damages is the same as the measure of compensatory damages. If that is so, then on the assumed facts compensatory damages would be an adequate remedy*".[12]

20. It is clear from the foregoing that the Court of Appeal's earlier decision in *Wass* formed an

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mortgage monies, *inter alia* because the defendant's benefit had not been obtained at the claimant's expense.

[10] For example, see *Attorney General v Blake* [2001] AC 268, 279E, read with 278D-E **[AB/26/698, 697]**. The Supreme Court in *Morris-Garner* **[AB/11]** has, since then, clarified that user damages are properly characterised as compensatory in nature.

[11] As copied into the Court of Appeal's judgment, per Arden LJ at §16 **[AB/8/157-158]**.

[12] In the Judgment, at §35 **[CB/4(b)/56]**, the Tribunal incorrectly attributes this finding to Arden LJ, whereas, as above, this is in fact a finding of Lewison J at first instance, which Arden LJ copied into her judgment.

essential part of Lewison J's determination of the preliminary issue in *Devenish*. *Wass* was a case concerning the availability of user damages in a claim in alleged breach of a local council's statutory right[13] to hold a market in the absence of any rival market within 6 $\frac{2}{3}$ miles. Before the Court of Appeal, the only remedy sought was user damages.[14] The Court of Appeal unanimously held that user damages were ***not*** available because user damages are only available for proprietary torts and the cause of action being advanced was not a proprietary tort. Instead, the Court of Appeal held that the only available remedy in respect of the alleged infringement of the council's statutory right was conventional damages, which, on the facts, had not been sustained and were therefore not recoverable; instead, the council was entitled only to nominal damages and an injunction.

21. Returning to *Devenish* **[AB/8]**, the claimants appealed the decision of Lewison J to the Court of Appeal. Before the Court of Appeal, the claimants contended that, contrary to the findings of Lewison J, an account of profits and restitutionary damages could be claimed as a remedy for the competition claim. The claimants adopted that position on grounds that "*English law recognises that in certain circumstances a wrongdoer should not profit from his wrong, whether the wrong is a breach of contract, tort or equitable wrong*", citing Attorney General v Blake [2001] AC 268 ("***Blake***") **[AB/26]**;[15] and the competition law

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[13] Specifically, a right under section 49 of the Food and Drugs Act 1955: see *Wass*, 1409F **[AB/6/85]**.

[14] The first instance judge having found that no conventional damage was sustained, with that finding having not been appealed: *Wass*, 1410D **[AB/6/86]**. See further footnote 17 below.

[15] *Blake* was a breach of contract case in which an account of profits was found to be available to the claimant given the exceptional circumstances of *Blake*. The cause of action in *Devenish*, and the cause of action in these proceedings, is an alleged infringement of competition law and not an alleged breach of contract. Thus, consistently with the findings in *Devenish* (as further set out below), *Blake* is not determinative of the remedies available in a competition law claim. Further and in any event, subsequently to *Devenish*, the Supreme Court in *Morris-Garner*, at §48 **[AB/11/289-290]**, observed that "*seeds of uncertainty were sown*" in *Blake* as to the circumstances in which user damages may be sought. The Supreme Court's answer to those "*seeds of uncertainty*" was to confirm that *Blake* is ***not*** authority as to the availability of user damages at all because "*[w]hat Attorney General v Blake decided was that in exceptional*

claim in *Devenish* "*is one where a restitutionary award should be available*" having regard to "*(1) the fact that compensatory damages are not an adequate response to the wrong in this case, and (2) the conduct of the defendants*" (§22) **[AB/8/159-160]**. The claimants also argued before the Court of Appeal that *Wass* was not binding as to the answer to the preliminary issue in *Devenish* because *Wass* "*must be taken to have been overruled by Blake's case*" (§23) **[AB/8/160]**.

22. Among the arguments advanced before the Court of Appeal by the defendants was that "*this court [i.e., the Court of Appeal] is bound by the Wass case to hold that there is no remedy for breach of statutory duty save in damages*", and that "*Blake's case […] concerns an account of profits for a breach of contract. There was no suggestion that the House of Lords [in Blake] was developing the law across the board for tort*" (§25) **[AB/8/161]**. Further, the defendants argued that *Wass* illustrates that "*there is a distinction between the expropriation of a person's right and the mere interference with it. In the Wass case, there could not be a notional bargain where the right in question is the right to hold the market*" (§30) **[AB/8/162]**.

23. Accordingly, although the *Wass* case was concerned with user damages and no such claim was being pursued in *Devenish*, nevertheless the defendants in *Devenish* relied on *Wass* in support of their position that an account of profits could not be claimed.

<u>*Devenish*: the Court of Appeal's decision</u>

24. The Court of Appeal unanimously (Arden, Longmore, Tuckey LJJ) dismissed the claimant's appeal.

25. So far as the claim for an account of profits was concerned, the Court of Appeal concluded that an account of profits was ***not*** an available remedy in claims in breach of competition legislation. The majority (Arden and Tuckey LJJ) reached that conclusion ***because*** the Court of Appeal's decision in *Wass* "*is binding on us*" (§156, per Tuckey LJ **[AB/8/198]**; also see §§4, 42, 71, 76, per Arden LJ **[AB/8/155, 165, 175, 177-178]**).

26. The key findings in *Devenish* **[AB/8]** are as follows (all emphases added):

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circumstances an account of profits can be ordered as a remedy for breach of contract. The soundness of that decision is not an issue in this appeal": *Morris-Garner*, §82 **[AB/11/298-299]**.

a. "*The overall holding in Blake's case is that the law on remedies for interference with property, damages in lieu of an injunction, damages for breach of fiduciary duty and breach of contract should be coherent and that the same remedies should be available in the same circumstances, even if the cause of action is different.*[16] *On that basis,* ***a restitutionary award is available in tort unless it is precluded by the Wass case*** *[…] or the Halifax case […]* ***In my judgment, it is precluded by the Wass case***" (§4) **[AB/8/155]**.

b. "***I conclude*** *[…] that* ***it is consistent with Blake's case for a restitutionary award to be available in the case of a non-proprietary tort*** *(see para 58 below),* ***but that the decision of this court in [Wass] precludes this court from reaching that conclusion****: see para 76 below*" (§42) **[AB/8/165]**.

c. "*[In Wass] the council had a statutory right to licence markets in a particular area […] The defendant operated an unauthorised market […] The judge found as a fact that the council suffered no loss as a result of the holding of the unauthorised market. However, he made an award of user damages, that is, an award of damages, calculated by reference to the licence fee that the council could reasonably have required for the operation of the defendant's market. The question on appeal was whether the council was entitled to user damages. [The Court of Appeal] held that, while a person could obtain as damages a reasonable sum for the wrongful use made of his property, no damages would be awarded here [i.e., in Wass] because the council could not show that it had suffered loss by reason of the infringement.*[17] *Therefore nominal damages only were awarded. Nourse and Nicholls LJJ both gave reasoned judgments […] Accordingly,* ***this court is bound by the ratio of either of the reasoned judgments***" (§71) **[AB/8/175]**.

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16 As to *Blake* **[AB/26]**, see footnote 15 above.

17 In context, the absence of "*loss*" to which this passage refers is an absence of conventional damage. This is clear from findings in *Wass* that the absence of "*loss*" in that case was the absence of any lost "*stallage or […] tolls […]*" (see *Wass*, 1419A-B) **[AB/6/95]**, which are forms of conventional damage (i.e., they are fees that the holder of a market right stands to lose in circumstances where their market right is infringed, but which, on the facts in *Wass*, had not been lost by the claimant).

d. In reference to the judgment of Nourse LJ in *Wass* (but not to the separate judgment of Nicholls LJ in *Wass*): "*[t]he ratio of the judgment of Nourse LJ, with which Mann LJ agreed, is […] that the user principle ought not be applied to the infringement of a right to hold a market where no loss has been suffered by the market owner*" (§74) **[AB/8/177]**.

e. Additionally: "*[…] it was an essential part of Nourse LJ's reasoning that damages by reference to the benefit obtained by the defendant*[18] *could only be awarded in those limited situations [identified by Nourse LJ*[19]*], and it would in my judgment have to be shown that his circumscription of the cases where damages were not assessed on a purely compensatory basis could not stand with Blake's case […] I do not think this can be shown.* ***Blake's case does not discuss non-proprietary torts***" (§76) **[AB/8/177-178]**.

f. Then: "*[…] [i]n my judgment,* ***while an extension of Blake's case to non-proprietary torts on the same basis would likely be consistent with Blake's case*** *[…]* ***it cannot be said that a case [i.e., Wass] that holds that damages assessed on a purely compensatory basis are the only damages available for the torts other than proprietary torts is necessarily overruled [by Blake]***" (§76) **[AB/8/177-178]**.[20]

27. Tuckey LJ agreed with the foregoing and, in his own reasoned judgment, held that, as to the question of "*[a]re we bound by [Wass] to hold that an account of profits cannot be awarded for a non-proprietary tort*", the answer is "*[Wass] is binding on us*" and "*[…]*

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18 In context, *"damages by reference to the benefit obtained by the defendant*" should be understood to mean damages in circumstances where no conventional damage is sustained by the claimant. This is consistent with the view of the Tribunal in the Judgment at §40, second sentence **[CB/4(b)/57]**.

19 Which concern proprietary torts (*Wass*, 1410H-1412G **[AB/6/86-88]**) and damages in lieu of an injunction (*Wass*, 1412H-G **[AB/6/88]**).

20 In the context of the findings in *Devenish*, at §76 **[AB/8/177-178]**, Meta refers again to the argument that had been advanced by the defendants in *Devenish*, that "*there is a distinction between the expropriation of a person's right and the mere interference with it. In the Wass case, there could not be a notional bargain where the right in question is the right to hold the market*". See paragraph 21 above.

Non-proprietary torts do still therefore fall to be considered as an exception to the general principles articulated by Lord Nicholls of Birkenhead in Blake's case unless and until the Wass case is overruled" (§156) **[AB/8/198]**.[21]

Both the Tribunal and the Court of Appeal are bound by *Devenish*

28. Further to the above, the majority in *Devenish* held that:

    a. the Court of Appeal was bound by *Wass* to find that user damages are not available for breaches of non-proprietary torts, including competition claims; and

    b. it followed from this that an account of profits and restitutionary damages (i.e. the remedies sought by the claimants in *Devenish*, which were not conventional damages) were not available in competition claims.

29. As referred to at paragraph 18 above, the reason why the majority found that proposition (b) followed from (a) was because, at that time, user damages were widely considered to be restitutionary in nature.[22] That position has now moved on in light of the Supreme Court's judgment *Morris-Garner*, §95(1) **[AB/11/302]**, which makes clear that user damages are to be analysed as compensatory in nature. Crucially, however, it is the Court of Appeal's decision at step (a) that is relevant in the present case and which Meta submits was binding on the Tribunal and is binding on this Court.

30. **In other words, the ratio in *Devenish* encompasses both the conclusion on the issue on the pleadings in that case (i.e., that an account of profits and an award of restitutionary damages were not available in competition claims) and also, importantly, the basis for that conclusion, which was the anterior point that the Court**

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[21] In context, it is clear that "*the general principles articulated by Lord Nicholls […] in Blake's case*" refer to the point made by Arden LJ that "*[t]he overall holding in Blake's case is that the law on remedies for interference with property, damages in lieu of an injunction, damages for breach of fiduciary duty and breach of contract should be coherent and that the same remedies should be available in the same circumstances, even if the cause of action is different*" (per Arden LJ, at §4 **[AB/8/155]**, as cited above). As to *Blake*, Meta again refers to footnote 15 above.

[22] For example, see *Blake*, 279E **[AB/26/698]**, read with 278D-E **[AB/26/697]**.

of Appeal was bound by *Wass* to hold that user damages were not available in competition law claims.

31. For the avoidance of doubt, it is clear that the latter point, being a necessary step in the Court of Appeal reaching the conclusion that it did on the facts of *Devenish*, forms part of the *ratio decidendi*. In support of this, Meta relies on:

    a. "*[t]he ratio decidendi of a case is any rule of law expressly or impliedly treated by the judge as a necessary step in reaching his conclusion, having regard to the line of reasoning adopted by him*";[23] where

    b. "*necessary step*" should not be understood to be limited to what is "*logically or causally necessary*" to the decision, and it should instead be understood more broadly to refer to "*the best or preferred justification for the conclusion reached: it is necessary in the sense that the justification for that conclusion would be, if not altogether lacking, then at any rate weaker if a different rule were adopted*".[24]

32. The finding in *Devenish* that *Wass* (a user damages claim) was binding was plainly a "*necessary step*" and the "*best or preferred justification for the conclusion reached*" in the Court of Appeal's decision. This is evident from the judgment extracts cited in paragraphs 26 to 27 above, e.g., "*a restitutionary award is available in tort unless it is precluded by the Wass case […] or the Halifax case […] In my judgment, it is precluded by the Wass case*".

33. By reason of the foregoing, the Tribunal erred in finding that *Devenish* was not binding on the Tribunal for the proposition that user damages are unavailable in competition claims. In those circumstances, the Tribunal erred in law by granting the CR permission to re-amend so as to seek user damages in these competition law proceedings. Putting the same

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[23] *R (Kadhim) v Brent London Borough Council Housing Benefit Review Board* [2001] QB 955, §16 **[AB/7/103]**. Also see (e.g.,) *R (on the application of Youngsam) v Parole Board* [2019] EWCA Civ 229 ("***Youngsam***"), §§21-22 **[AB/12/337]**, and, most recently, *White v Alder* [2025] EWCA Civ 392, §18 **[AB/50/1890]**.

[24] See *Youngsam*, §51 **[AB/12/345]**, per Leggatt LJ (as he then was), cited with approval in *Churchill v Merthyr Tydfil County Borough Council* [2023] EWCA Civ 1416, [2024] 1 WLR 3827, §17 **[AB/46/1727]**.

point another way: once the *ratio* in *Devenish* is correctly understood, it is clear that a user damages claim in competition proceedings has no real prospect of success and/or is brought in the absence of any reasonable grounds.

34. Similarly, *Devenish* **[AB/8]**, as a prior decision of the Court of Appeal, is binding on this Court. The limited exceptions where the Court of Appeal is not bound by its own decisions are not applicable. As is authoritatively stated in *Young* **[AB/3]**, the Court of Appeal is bound by its previous decisions[25] save for where:[26]

    a. There are conflicting Court of Appeal decisions on the relevant issue, in which case the Court must determine which of its previous decisions it will follow. In this case, there are no conflicting Court of Appeal decisions and this exception does not apply.

    b. A previous decision of the Court of Appeal conflicts with a subsequent decision of the House of Lords or the Supreme Court. Again, in this case, there is no House of Lords or Supreme Court decision that conflicts with the finding in *Devenish* that *Wass* is binding as to the lack of availability of user damages in a competition law claim.

    c. A previous decision of the Court of Appeal was given *per incuriam* (i.e., through lack of care), which, per *Young*, 729 **[AB/3/44]**, are "*of the rarest occurrence*". Far from having been decided through lack of care, the Court of Appeal's decision in *Devenish* is detailed, it has regard to detailed submissions made by Leading Counsel in that case, and it takes into account all relevant case law at the time *Devenish* was decided.

(ii) <u>In any event, the authorities are clear that user damages are not available in competition claims</u>

<u>In tort, user damages are available only in respect of proprietary torts (which exclude competition law claims)</u>

35. Further and in any event, the authorities are clear that, in the context of tort law, user damages are only capable of being sought in proprietary torts. User damages are not available for non-proprietary torts, including breaches of competition law.

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25 *Young*, 723 **[AB/3/38]**.

26 See *Young*, 725-726; 729-730 **[AB/3/40-41, 44-45]**.

36. In *Morris-Garner*, the Supreme Court comprehensively reviewed more than a century of authority on user damages, against a backdrop of what Lord Reed described as "*the confused state of the authorities [which has] reflected a lack of clarity as to the theoretical underpinning of such awards, and consequent uncertainty as to when they are available*": *Morris-Garner*, §1 **[AB/11/277]**. Following that review, Lord Reed went on to identify specific types of action in which user damages have been and are recognised as the proper remedy, thereby bringing clarity to the law.

37. As regards torts, Lord Reed (with whom Baroness Hale, Lord Wilson and Lord Carnwath agreed) stated that user damages are available in torts that concern the "*wrongful use of property*", with detinue, conversion and trespass being listed as specific examples: *Morris-Garner*, §95(1) **[AB/11/302]**. Lord Reed also noted that user damages are similarly available in respect of "*patent infringement and breaches of other intellectual property rights*": *Morris-Garner*, §95(2) **[AB/11/302]**. Those torts have an inherently proprietary character through their protection of an individual property right.

38. In stark contrast, competition law claims do not have a proprietary character at all: the relevant legislation does not exist to protect property rights, but rather its purpose is to impose duties on economic undertakings not to distort competition in the market. Therefore, a claim in breach of competition law is fundamentally distinct from the torts in which user damages have been recognised to be available. Indeed, in the present case, the claim is that Meta abused an alleged dominant position by imposing an alleged unfair price and/or an alleged unfair trading condition in the relevant market; that is self-evidently not a proprietary cause of action and it is striking (in the context of her asserted entitlement to user damages) that the CR does not plead a case that Meta has infringed the property rights of Facebook users.

39. Notwithstanding the above, the Tribunal held at Judgment §44 **[CB/4(b)/58]** that, in a competition law claim, "*[w]e agree with the CR that there are parallels which can be drawn with the reward of user damages in relation to other torts and that the [the CR's user damages] case has reasonable prospects of succeeding at trial*". In so holding, the Tribunal fell into error. In particular, the Tribunal overlooked the crucial distinction between the ***proprietary*** torts in relation to which user damages have been recognised as an available remedy and the ***non-proprietary*** tort of an infringement of competition law. Indeed, in the Judgment the Tribunal failed either to identify any particular tort which it

considered to have "*parallels*" with the CR's competition claim or to provide any positive articulation as to why, as a matter of principle, user damages should even arguably be available in competition claims.

40. As regards the latter point, it is stark that the Tribunal failed to positively explain why user damages might arguably be available in the present case. In fact, Meta submits that there are fundamental conceptual difficulties with the CR's attempt to claim user damages in the present case. The CR's principal allegation is that Meta abused a dominant position by imposing a "price" that is unfair for the purpose of *United Brands* and that, in the counterfactual, the "price" would have involved the payment of a positive sum by Meta to users. The claim for conventional damages is therefore explained by the CR on the basis that the users have suffered a loss in the form of the payment which they would have received from Meta but for the allegedly abusive conduct. But it makes no sense at all to ask what reasonable licence fee would have been agreed between a Facebook user and Meta in exchange for the release of Meta's obligation not to charge a "price" that is unfair under *United Brands*. The "price" is either unfair or it is not and, if it is unfair, one would move on to consider what the counterfactual price would have been, not the hypothetical fee that Meta would have paid in order to charge the unfair price. It is very difficult to see what role a hypothetical negotiation would or could play at all. Neither the Tribunal nor the CR sought to explain this.

41. The same conceptual problem can be illustrated in reference to competition law claims more generally: because competition law serves to protect the public generally (see *Garden Cottage Foods v Milk Marketing Board* [1984] 1 AC 130 ("***Garden Cottage Foods***") **[AB/5]**, as further cited in paragraph 52 below), rather than competition law serving to protect individual property rights or other individual asset rights, it is simply not in the gift of any given person to agree to a hypothetical licence fee as a waiver of alleged abusive conduct by an alleged dominant firm where the abusive conduct affects an entire market. Again, it is entirely unclear how user damages ought to work in such a case and the Tribunal and CR have failed even to attempt to explain.

The availability of user damages turns on the nature of the cause of action advanced and it does not turn on the facts of individual cases

42. A further and related error appears in the Judgment, at §46 **[CB/4(b)/58]**, where the Tribunal erroneously held that the ultimate question of whether user damages may be

sought by the CR "*needs to be answered in the context of specific facts*", and that "*a relevant consideration as to whether user damages are available might be whether or not conventional damages are available*": Judgment, §45 **[CB/4(b)/58]**.[27] In respect of this, Meta makes two main points.

43. ***First***, whether or not user damages are available as a matter of principle to the CR turns on the nature of the pleaded cause of action and not on the "*specific facts*"; still less is it relevant whether or not the CR ultimately succeeds at trial in her claim for conventional damages. This is trite. See *Halsbury's Laws of England*, (5th edn, 2024) vol 29, at para 312: "*[t]he question whether particular types of pecuniary or non-pecuniary loss are recoverable depends on the cause of action involved*". That position is clear from the Supreme Court's decision *Lloyd v Google LLC* [2021] UKSC 50; [2022] AC 1217 ("***Lloyd***") **[AB/13]**:

    a. In *Lloyd*, the claimant brought a claim in breach of statutory duty under the Data Protection Act 1998 (the "**DPA98**") and sought damages under section 13 of the DPA98. The claimant's DPA98 claim was the only cause of action pursued.

    b. As part of that action, the claimant also sought user damages (see *Lloyd*, 1224D, §154 **[AB/13/357, 401]**). In support of his claim for user damages, the claimant argued that because: **(i)** user damages are available in misuse of private information claims ("**MOPI**"); **(ii)** MOPI and the DPA98 seek to protect the same type of interest (*viz.,* a right to privacy derived from Article 8 ECHR); and **(iii)** the pleaded facts of the claimant's DPA98 claim might have been (but were not) formulated to plead a claim in MOPI, it followed that user damages should be available in the claimant's DPA98 claim: *Lloyd*, 1223E-G, §§111-112 **[AB/13/356, 390]**.

    c. For the reasons in *Lloyd* at §§114-118 **[AB/13/391-392]**, the Supreme Court held that a proper construction of section 13 of the DPA98 is such that the claimant could seek

[27] Relatedly, the Tribunal was also wrong to suggest during the course of the hearing that user damages might be available because Meta contends that the facts and evidence at trial will demonstrate that conventional damage was ***not*** sustained by UK Facebook users. See Transcript of the Amendment Application Hearing, Day 1, p.125, line 21 to p.126, line 9 **[SB/11/196-197]**.

a remedy in respect of "*material damage*"[28] and, if material damage is sustained, also damages for "*distress*".[29]

d. Consistently with the finding immediately above, the claimant's argument in support of a claim for user damages was rejected, even though the Supreme Court recognised that: "*[a] claim in tort for misuse of private information based on the factual allegations made in this case […] would naturally lend itself to an award of user damages*" **[AB/13/398]**. As explained by Lord Leggatt, user damages "*[do] not arise […] because the claimant is not claiming damages for misuse of private information. As discussed, the only claim advanced is under the DPA 1998 […] user damages are not available [under the DPA98] […] compensation can only be awarded under section 13 of the DPA 1998 for material damage or distress caused by an infringement of a claimant's right to have his or her personal data processed in accordance with the requirements of the Act, and not for the infringement itself […] the principles on which user damages are awarded do not apply to a claim for compensation under the DPA 1998*" **[AB/13/398]**.

44. Thus, in *Lloyd* **[AB/13]**, the reason why the claimant's attempt to recover user damages was rejected was because the claimant incorrectly sought to import a remedy available under one cause of action (i.e., MOPI) to a claim brought under an entirely different cause of action (i.e., a DPA98 claim), whereas the two causes of action are substantively different from one another.[30]

45. The Judgment is inconsistent with this aspect of *Lloyd*. In this case, the only cause of action

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[28] Per *Lloyd*, §92 **[AB/13/384-385]**: "*financial loss or physical or psychological injury [...] excluding distress*".

[29] For completeness (and noting the Judgment, §42 **[CB/4(b)/57-58]**), the reasons for construing section 13 of the DPA98 in this way are not relevant to the present application for permission to appeal. The relevant point for present purposes is that the Supreme Court in *Lloyd* determined that the specific cause of action pleaded by the claimant was determinative of the remedies that could (and could not) be sought; analogies between the facts of the claimant's case and the facts that might have been (but were not) pleaded in support of another cause of action were irrelevant.

[30] For detail on the differences between the causes of action, see *Lloyd*, §§124, 130-131 **[AB/13/393-394, 395]**.

advanced is an alleged breach of competition law. User damages are either available or not as a matter of principle for competition claims. Contrary to the findings of the Tribunal, any alleged factual analogies with cases pleaded under entirely different causes of action and/or any more general speculation as to what "*specific facts*" might be established at trial does not change the cause of action that the CR has in fact pleaded and the remedies that are available in respect of that cause of action.[31]

46. ***Second***, the CR did not identify any "*specific facts*" which might emerge at trial and which might affect the availability of user damages, and nor did the Tribunal. It was not open to the Tribunal to allow the CR's claim for user damages to proceed to trial without identifying the "*specific facts*" that the Tribunal considered to be relevant to the analysis of the legal issue in the Amendment Application. It is Meta's position that a proper assessment of the legal issue in the Amendment Application does not require an analysis of any "*specific facts*" at trial; instead, the availability of user damages as a matter of principle is determined in reference to the nature of the cause of action advanced (and, as above, the nature of a competition law claim is such that user damages are not available). In those circumstances, the Tribunal was wrong to defer a decision on the availability of user damages to trial.

47. The only point the Tribunal made in relation to "*specific facts*" is that the CR's claim for conventional damages might ultimately fail, which the Tribunal treated as relevant to the question of whether user damages are available as a matter of principle. However, the question of whether the CR establishes loss in the form of conventional damage at trial is a wholly irrelevant consideration. It is clear from the authorities that whether or not a claimant is entitled to user damages does not depend on the merits of its claim for conventional damages. This is consistent with the approach taken by the Court of Appeal in *Wass* itself. There the Court of Appeal held that the mere fact that the claimant could not prove conventional damage provided no legal basis on which to recognise a right on the part of the claimant to seek user damages in respect of his cause of action in breach of a statutory right to hold a market. Specifically:

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[31] Indeed, the position in the present proceedings is even more stark than the position in *Lloyd* **[AB/13]**: here, the pleaded facts (i.e., that UK Facebook users were charged an unfair price and/or were subject to an alleged unfair trading condition) could not, even in principle, be formulated so as to advance a different cause of action that recognises a remedy of user damages.

a. Nicholls LJ explained that user damages ***are*** available where "*a person […] has wrongfully used another's* ***property*** *without causing [that person] any pecuniary loss*" (emphasis added), and Nourse LJ explained that the particular tortious causes of action in which user damages ***are*** available include "*trespass*", "*detinue*" and "*infringement of patents*".

b. Those proprietary torts were contrasted by both Nicholls LJ and Nourse LJ with the cause of action in *Wass* itself, which concerned the local council's statutory right to hold a market (see paragraph 20 above). Having regard to the differing natures of the proprietary torts in which user damages ***are*** available and the action in *Wass* itself, Nicholls LJ concluded that the council's claim for user damages would have effect to "*extend the user principle by applying it to a case of disturbance of market rights*" (1418B **[AB/6/94]**), which Nicholls LJ considered to be inappropriate because it would "*not accord with the basic principles applicable to that cause of action*" (1418G **[AB/6/94]**).

c. For this reason, the council had a right to seek "*damages to compensate for the disturbance [of the right to hold the market]*" (1419A **[AB/6/95]**) which are damages to compensate for loss that is "*in fact caused*" by that disturbance (1419D **[AB/6/95]**); but where "*the [disturbance] has caused and is causing no loss […] then there is no cause of action*" and there is "*no scope for the application of the user principle*" because any application of the user principle "*would lead to the [council] obtaining a greater measure of relief than would be justified by the nature of his right*" (1419A-F **[AB/6/95]**).[32]

d. Thus, a fundamental distinction was drawn between the proprietary torts identified above (in which user damages are available) and the statutory action in *Wass* (in which user damages are not available).

e. Importantly, the factual position of the claimant in *Wass* (including as to whether the claimant sustained conventional damage) was found to play no role in the proper assessment of the remedies that the claimant was able to seek as part of his pleaded

[32] Also see footnote 17 above, which confirms for the avoidance of any doubt that the form of "*damages*" that were capable of being sought in *Wass* are conventional damages rather than anything else.

cause of action.

Relatedly, user damages is not a remedy available at the discretion of the trial judge

48. Moreover, it is important to emphasise that, as the Supreme Court held in *Morris-Garner* at §97 **[AB/11/303]**, user damages is ***not*** a discretionary remedy: "*[t]he idea that damages based on a hypothetical release fee are available whenever that is a just response, that being a matter to be decided by the judge on a broad brush basis, is […] mistaken. The basis on which damages are awarded cannot be a matter for the discretion of the primary judge*".

49. Accordingly, the Tribunal was wrong to conclude that the question of whether user damages are capable of being sought is not "*amenable to summary determination*".

The issue in the Amendment Application is not a developing area of law

50. The Tribunal erred in finding that the question of whether user damages are capable of being sought in a competition claim (which was the question before the Tribunal) is "*far from straightforward*" and that "*this is a developing area of law and therefore not one which is amenable to summary determination*": Judgment, §§44-45 **[CB/4(b)/58]**. That finding is wrong in law because it ***is*** in fact "*straightforward*" that user damages are ***not*** available in competition claims, and the law is ***not*** developing on that issue. Instead, as above, it is already clear that, in tort claims, user damages are available where the tort is proprietary in its nature, which excludes competition claims.

Further reasons why Meta's appeal should be allowed

51. ***First***, as above, the Supreme Court in *Morris-Garner* **[AB/11]** clarified the "*the confused state of the authorities*" in respect of user damages by: **(i)** specifying the type of torts in which user damages are available, all of which are proprietary in their nature; **(ii)** specifying certain other types of action in which damages in the form of a hypothetical licence fee are available, namely, certain contractual claims and a claim under Lord Cairns's Act;[33] and **(iii)** confirming that user damages are ***not*** a discretionary remedy to be awarded wherever

[33] *Morris-Garner*, §§95(3)-(5) and 95(10)-(12) **[AB/11/302, 303]**. Self-evidently these cases bear no relation to a competition law claim: contractual actions and claims under Lord Cairns's Act are not even torts, let alone are they non-proprietary torts.

the trial judge considers it just to do so. The Judgment (if upheld) would upend that clarity through the finding that it is "*arguable*" that user damages may be sought in competition claims, which, as above, are non-proprietary statutory torts. Indeed the Judgment (if upheld) would result in the law returning to the "*confused state*" that existed before *Morris-Garner* **[AB/11]**, with user damages being sought in non-proprietary tort claims without any legal certainty as to whether that remedy will ultimately be granted at trial. In this way the Judgment is inconsistent both with the legal findings in *Morris-Garner* and also with the Supreme Court's broader objective to bring clarity as to the actions in which user damages may and may not be sought.

52. ***Second***, there is a very long line of case law, going back to the seminal House of Lords decision in *Garden Cottage Foods* **[AB/5]** in which conventional damages have been recognised as the remedy to compensate for financial loss suffered by a claimant in a competition claim. In that case, on the question of whether infringements of competition law are actionable in damages at all, Lord Diplock held at 141E **[AB/5/66]** that "*[a] breach of the duty imposed by [the predecessor provision to Article 102 TFEU] not to abuse a dominant position in the common market or in a substantial part of it, can [...] be categorised in English law as a breach of statutory duty that is imposed not only for the purpose of promoting the general economic prosperity of the common market but also for the benefit of private individuals to whom loss or damage is caused by a breach of that duty*". The "*loss or damage*" to which Lord Diplock referred is conventional damage; this is clear from 143A-B **[AB/5/68]**, where Lord Diplock described the damage that was found to be actionable as the potential loss by the claimant of "*sums of money*" that the claimant would have earned "but for" the alleged abuse. EU law likewise recognises conventional damages as the remedy to compensate claimants in competition claims.[34]

53. In holding for the first time that user damages might arguably be available in a competition case, the Judgment is not only manifestly inconsistent with prior authority (e.g., *Devenish*, *Wass*, *Morris-Garner*, *Lloyd*) but it is also wholly out of step with prior competition

[34] E.g., see the EU's Damages Directive, which, at Article 3(2) **[AB/64/2273]** (and under the heading "*Right to full compensation*") provides that: "*[f]ull compensation shall place a person who has suffered harm in the position in which that person would have been had the infringement of competition law not been committed. It shall therefore cover the right to compensation for actual loss and for loss of profit, plus the payment of interest*".

authority, including leading authority of the House of Lords (i.e., *Garden Cottage Foods*).

54. ***Third***, and relatedly, the legal position as stated in the Judgment is liable to lead to highly unpredictable and/or arbitrary results in future cases. This is because the Tribunal found that it is "*arguable*" that user damages may be sought in competition claims but that the ultimate question of whether user damages are available will need to await a trial on the "*specific facts*" of a given case.[35] Among the obvious questions that arise from this are: how does one ascertain whether user damages are capable of being sought in any given competition claim?.[36] If the availability of user damages may depend on whether the claimant's claim for conventional damages fails at trial, does it follow that a plea of user damages is now "*arguable*" in all competition claims in the alternative to conventional damages? If not, why not? The Tribunal failed to grapple with any of these issues. Instead, in its wake, the Judgment leaves a wholly unclear legal landscape.

55. By way of illustration, Meta refers to the Tribunal's recent decision in *Cabo Concepts Limited & Another v MGA Entertainment (UK) Limited* [2025] EWHC 1451 (Ch) ("***Cabo***") **[AB/51]**. There, the claimant alleged that the defendant infringed competition law by restricting the ability of the claimant to sell its product in retail stores. Bacon J concluded that the alleged infringement had been proven, ***but***, on the facts and evidence at trial, the claimant had failed to demonstrate that conventional damage had been sustained by reason of that infringement. Accordingly, Bacon J held that the claimant's claim failed due to the absence of proof of conventional damage: *Cabo*, §593 **[AB/51/2029]**. However, now in light of the Judgment, it is uncertain whether the same outcome would hold if the claimant in *Cabo* (or the claimant in an equivalent case) were to have sought user damages in the

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[35] Similarly, the Judgment at §43 **[CB/4(b)/58]** suggests that user damages might be available in a competition claim where conventional damages are ***not*** proven at trial, which implies that user damages might not be available where conventional damages ***are*** proven at trial.

[36] Noting the critical distinction between: **(i)** the remedy that a claimant is ***capable*** of seeking pursuant to his pleaded cause of action; and **(ii)** the relief (if any) that a claimant ultimately achieves at trial, once the court has assessed the facts, evidence and submissions in the case. For example, conventional damages are ***capable*** of being sought in a competition claim, and conventional damages may or may not ultimately be awarded depending on the facts and evidence at trial. The issue in this appeal concerns whether user damages are ***capable*** of being sought.

alternative. For example, might the claimant have been on "*arguable*" ground to contend that, if conventional damages were not sustained (as was found by Bacon J), the claimant could nevertheless seek user damages because the infringement of competition law impacted the claimant's alleged right to sell its product through retailers? If so, how would any such user damages (i.e., a hypothetical licence fee) stand to be assessed? And if the position is in fact that the claimant in *Cabo* **[AB/51]** could not have sought user damages, why is that so whilst (per the Judgment) it is "*arguable*" that the CR in the present competition law claim can seek user damages from Meta? These are among the very real questions that would arise in future competition law claims if the Tribunal's decision and its absence of any governing principle were to stand.

56. The foregoing illustrates precisely why competition law claims are not among the actions in which user damages are an available remedy at all.

(iii) The Tribunal was wrong

57. For all of the reasons above, the Tribunal's decision to grant the CR permission to re-amend so as to seek user damages in these competition law proceedings is wrong in law and Meta's appeal should be allowed.

E. CONCLUSION

58. Meta respectfully invites the Tribunal to allow this appeal and vary the Order such that the Amendment Application is refused.

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27 February 2026