Neutral citation [2024] CAT 64

Case Nos: 1601/7/7/23
1403/7/7/21

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

8 November 2024

Before:

ANDREW LENON KC
(Chair)
BEN TIDSWELL

Sitting as a Tribunal in England and Wales

BETWEEN:

DR RACHAEL KENT

Class Representative

-and-

(1) APPLE INC.
(2) APPLE DISTRIBUTION INTERNATIONAL LTD

Defendants

AND BETWEEN:

DR SEAN ENNIS

Class Representative

-and-

APPLE INC. & OTHERS

Defendants

RULING (CASE MANAGEMENT OF RELATED PROCEEDINGS)

APPEARANCES

Paul Stanley KC, Daniel Carall-Green and Victoria Green (instructed by Geradin Partners Limited) appeared on behalf of the Ennis CR.

Tim Ward KC and Michael Armitage (instructed by Hausfeld & Co. LLP) appeared on behalf of the Kent CR.

Marie Demetriou KC, Daniel Piccinin KC and Hugo Leith (instructed by Gibson Dunn & Crutcher UK LLP) appeared on behalf of the Defendants.

A. INTRODUCTION

1. There are two sets of collective proceedings before the Tribunal in each of which there is a claim for damages in respect of the allegedly excessive commission charged by the Defendants (**"Apple"**) on transactions made through its App Store. This ruling is essentially concerned with the question of whether there should be a joint trial of common issues arising in both sets of proceedings or whether the two sets of proceedings should carry on independently of each other.

2. That question involves the Tribunal weighing up two conflicting considerations. On the one hand, there is the need to avoid, as far as possible, the risk of inconsistent decisions as to the application of competition law to the same or similar facts. On the other hand, there is the need to ensure that cases are conducted fairly and expeditiously in accordance with the overriding objective.

B. THE PROCEEDINGS

3. In the first set of proceedings (**"the Kent proceedings"**), Dr Rachael Kent is the authorised representative of a class of approximately 20 million UK consumers who made purchases using the UK version of the Apple App Store from 1 October 2015 onwards. The claim alleges that Apple abused its dominant position: (i) by imposing restrictive terms which require App developers to distribute Apps for use on Apple's devices exclusively via the Apple App Store and require that all purchases by Apple device users are made using the Apple App Store payment system; and (ii) by charging excessive and unfair prices in the form of commission payments which are ultimately paid by the device users.

4. The Claim Form in the Kent proceedings was filed on 10 May 2021. A Collective Proceedings Order was made on 29 June 2022. In September 2022, case management directions were given leading to an eight-week trial encompassing all issues of both liability and quantum. The trial was listed in December 2022 and is scheduled to start on 13 January 2025 for which the parties are in a state of readiness.

5. In the second set of proceedings (**"the Ennis proceedings"**), Dr Sean Ennis is the authorised representative of a class comprising App Developers domiciled in the UK who

made sales through the App Store anywhere in the world in the six years prior to 25 July 2023. The claim alleges that Apple abused its dominant position by charging prices that are excessive and unfair and which were borne by the App Developers.

6. The Claim Form was filed on 25 July 2023. On 12 April 2024, the Tribunal dismissed applications by Apple inviting the Tribunal to decline jurisdiction over part of the claim and to strike out the remainder of the claim. The first case management conference was held on 7 June 2024. Following a hearing on 16 September 2024, the Tribunal informed the parties of its decision to certify the proceedings and gave reasons for its decision in a judgment dated 18 October 2024.

7. A joint case management conference (**"the CMC"**) was convened by the Tribunal in the two sets of proceedings on 23 September 2024 to consider the interaction between them. It was apparent to the Tribunal that there were likely to be common issues in both sets of proceedings which might be suitable to be tried on a joint basis but it was equally apparent that the Ennis proceedings were at a relatively embryonic stage and it was difficult to see how any issues could be satisfactorily tried on a joint basis in the time scheduled for the Kent trial which was only a matter of months away.

8. In advance of the CMC, the Tribunal indicated to the parties that it was not minded to adjourn the Kent proceedings in their entirety to enable the Ennis proceedings to catch up and invited the parties to consider, amongst other things, whether: (i) there could be a joint trial of any issues in the time scheduled for the trial in the Kent proceedings and, if so, which issues; and (ii) irrespective of whether there was a joint trial of any issues in the Kent trial, whether the issue of pass-on could be tried jointly after the Kent trial, and early in the Ennis proceedings.

9. At the conclusion of the CMC, the Tribunal informed the parties that it had decided not to alter the existing timetable in the Kent proceedings, that it would not case manage the two sets of proceedings jointly and would allow both sets of proceedings to continue independently of each other. This ruling sets out the Tribunal's reasons for that decision.

C. SUMMARY OF THE PARTIES' POSITIONS

Dr Kent's position

10. Dr Kent's primary submission was that it was too late for the Ennis proceedings to catch up with the Kent proceedings, there could be no joint trial of any issues in January 2025, in the time scheduled for the Kent trial, and it would be neither fair nor proportionate for the issue of pass-on to be deferred to a later occasion. The Kent proceedings were started three years ago and are now almost ready for trial whereas the Ennis proceedings had scarcely started. Apple has not even filed a Defence in the Ennis proceedings. In the Kent proceedings, Apple has disclosed over 1.7 million documents and filed over 1,200 pages of witness statements which Dr Ennis has not yet seen and which he would not be able to read and digest in time for the trial. There are thousands of pages of expert reports across multiple disciplines. Eleven without-prejudice meetings between the experts took place between 30 September and 4 October 2024 and seven Joint Expert Statements were filed in October 2024. There is no prospect that Dr Ennis's expert evidence could be ready in time to allow participation in this process. Moreover, there is insufficient time for Dr Ennis to comply with the statutory obligations to publish a notice of the proceedings to those class members he seeks to represent or for the class members to be given a meaningful opportunity to opt out of the proceedings.

11. Dr Kent submitted that an adjournment of the Kent trial or deferring the trial of any issues would be neither fair nor proportionate. It would substantially delay the final resolution of the damages claim brought by Dr Kent which has taken almost four years to come to trial. It would also substantially increase the costs of the Kent proceedings and disrupt the third-party funding arrangements entered into by Dr Kent as well as being disruptive for the Tribunal.

12. Dr Kent accepted that allowing both sets of proceedings to proceed independently could give rise to a risk of inconsistent outcomes but she submitted that this risk should not be overstated. In relation to the issue of pass-on, the claims are significantly different. Dr Kent is claiming damages on behalf of UK consumers who have made purchases through the UK storefront of the App Store from app developers around the world whereas Dr Ennis is claiming damages on behalf of UK-domiciled app developers who made sales on any global storefront of the App Store. Dr Kent submitted that the risk of inconsistency could be mitigated by the Tribunal in the Ennis proceedings taking account of the findings of the Tribunal in the Kent proceedings and by allowing Dr Ennis to participate in the trial of the Kent proceedings in a limited capacity.

Dr Ennis's position

13. Dr Ennis's position was that there are significant overlapping issues between the two sets of proceedings, including issues as to the definition of the relevant markets, Apple's dominance in those market, whether Apple's prices were excessive and unfair, what the counterfactual fair price would be and whether developers passed on any unfair price to device users. Determining these issues in two separate trials would be procedurally inefficient and give rise to a risk of inconsistent outcomes.

14. It was accepted on behalf of Dr Ennis by the time of the CMC that it was not realistic to suppose that there could be a joint trial of any issues in January 2025. Nor was it feasible to determine pass-on issues before determining the amount of any overcharge in the Ennis proceedings.

15. Allowing Dr Ennis to play a restricted role in the Kent proceedings, without the opportunity to adduce his own evidence, would not avoid the risk of inconsistent outcomes. It would not be fair to the Ennis class for the Tribunal to treat as binding any determinations made following the trial of the Kent proceedings in which Dr Ennis had not fully participated.

16. Dr Ennis's position was therefore that there should be a joint trial of both sets of proceedings starting in October 2025.

Apple's position

17. Apple agreed with Dr Ennis's position as to the significant overlap in the issues in the Kent and Ennis proceedings as to infringement and causation/quantum and that a joint trial was the only way to achieve finality and legal certainty. There was insufficient time to try any common issues on a joint basis in January 2025. A trial in January 2025 on common issues would only be feasible if Dr Ennis's participation was strictly limited. It was not workable to determine pass-on separately from infringement as there was no clean split between them.

18. Separate trials would give rise to a serious risk of inconsistent decisions which would leave the parties in a state of uncertainty as to the application of competition law to Apple's business practices and would be corrosive to public confidence in the administration of justice. Double-recovery or under-recovery would be all but inevitable if pass-on were not determined jointly in both cases. Separate trials would be unfair and oppressive to Apple's witnesses who would have to give evidence at both trials. Separate trials would demand significant additional Tribunal time causing prejudice to other Tribunal users. Apple also raised the possibility (which was not supported by any evidence) of some individuals in the Ennis class also being members of the Kent class and hence bound by the Tribunal's determinations in the Kent proceedings.

19. Apple's position was therefore that an adjourned single trial of both sets of proceedings starting in October 2025 was the least bad of the alternatives that the Tribunal is faced with.

D. THE TRIBUNAL'S ANALYSIS

(1) The Tribunal's Approach to Common Issues

20. As the Tribunal observed in *Mark McLaren Class Representative Limited v MOL (Europe Africa) Ltd and Volkswagen AG v MOL (Europe Africa) Ltd* [2023] CAT 25, it is inherent in competition law that a single infringement may well generate multiple claims by different claimants against the same group of defendants. For example, an overcharge by a cartelist may cause distinct harm to multiple persons, whether direct customers of the cartelist or customers at different levels in the supply chain. This gives rise to a risk of inconsistent outcomes unless common issues are heard by the same court or Tribunal.

21. The risk of inconsistent outcomes is particularly acute where claims are made which involve pass-on. As explained by the Tribunal in *Re Merchant Interchange Fee Umbrella Proceedings* [2022] CAT 31 (**"*the Interchange Fee Umbrella Proceedings*"**), at [3]:

> "Where there has been a competition law infringement by infringer *A*, and as a result party *B* has paid more for a good or service than *B* would, but for the infringement, have paid, then *prima facie* it appears to be the case that *B* has a claim, against *A*, for the amount of the overcharge. However, *A* may contend that the *prima facie* case does not hold, in that *B* has passed

on the loss (sustained by *B*), in whole or in part, to party *C*. *C* could be someone who bought a good or service from *B* where the price paid by *C* to *B* included, in whole or in part, the overcharge which was originally paid by *B* to *A*. Matters are complicated by the fact that *if* the overcharge was indeed passed on by *B* to *C*, then *C* has a self-standing claim against *A*, as the party who has in fact borne the loss arising out of *A*'s infringement."

22. The Tribunal went on to consider how best to determine the issue of pass-on in relation to the same overcharge:

> "13. Such are the perils of bilateral dispute resolution, where *B*'s claim and *C*'s claim in respect of the same loss are progressed in separate proceedings. Of course, the courts are alive to this risk, and will seek to avoid inconsistency of outcome by consolidating related proceedings or hearing them together. But that may not always be possible: *B* may commence proceedings in one jurisdiction, and *C* in another. Of course, courts of differing jurisdictions will conscientiously apply their own laws, but it is important that the principles by which this jurisdiction at least operates be articulated, so as to assist (if no more than that) in achieving consistency of outcome. Equally, it may be that *B*'s claim and *C*'s claim are commenced in the same jurisdiction, but so far apart in time that it is not practically possible to hear both claims together. Here, the importance of a clear articulation of the relevant principles is, if anything, even more important, so as to achieve consistency of outcome.
>
> 14. Accordingly, when framing the appropriate principles for dealing with pass on in relation to the same overcharge, it is incumbent upon the court to have regard to, and to seek to achieve, consistency of outcome so that *A* does not pay too much, and that neither *B* nor *C* receive too little."

23. The Tribunal proceeded on the assumption that, on the facts of that case, there was no risk of either over or under compensation because of the different time periods to which the claims related but emphasised that consistency of outcomes in the broader sense of deciding like cases alike was nevertheless a goal worth striving for. This was for the following two reasons (at [15]):

> "(1) The first reason – founded in principle and the rule of law – is that it is important to the credibility of a legal system that similar cases have similar outcomes. One of the issues that competition law regularly gives rise to is that a single infringement (here, alleged overcharges in Merchant Interchange Fees) can give rise to multiple, independent, claims that are all, broadly speaking, the same. It is critical that such cases have similar outcomes, and that is why … the Court of Appeal indicated that cases such as the interchange fee cases be heard under "one roof" in this Tribunal … But having a single tribunal hear similar cases is but the first step: it is incumbent upon that tribunal to take the necessary procedural steps to ensure consistency of outcome in all of these cases, to the extent this can

be achieved in accordance with the other objectives that guide and inform that tribunal in the exercise of its functions.

(2) The second reason – a practical one – is simply this. Where a tribunal is faced with a claim brought by [a direct purchaser] against [the defendant], that tribunal cannot know whether, some time down the line, there will not also be a claim brought by [an indirect purchaser] against [the defendant] (whether before that or another tribunal). Such an outcome is certainly "on the cards" in any given case, and it is incumbent upon the tribunal seised of the first case to do all that it can to ensure that later cases can be decided consistently."

24. To give effect to those principles, the Tribunal has issued Practice Direction 2/2022, which expanded upon the Tribunal's extensive case management techniques (such as consolidation) by providing for the making of an "Umbrella Proceedings Order" (**"UPO"**), pursuant to which common issues (known as **"Ubiquitous Matters"**) in multiple "Host Cases" can be decided together. The consequence of making a UPO is that an Umbrella Proceedings Tribunal has conduct of the Ubiquitous Matters, and decisions that it makes on those matters bind the parties in all of the individual "Host Cases". None of the parties in the Kent and Ennis proceedings suggested that there should be a UPO where there are only two sets of proceedings, but it was submitted by Apple that the Practice Direction illustrates the breadth of the Tribunal's concern for consistency.

25. In *Sportradar AG & Another v Football Dataco Ltd & Others* [2022] CAT 12 (**"*Sportradar*"**) the Tribunal was faced with different sets of proceedings, at different stages of progress, but in which there were overlapping competition law issues. The Tribunal considered that there were three options ranging from (i) "complete detachment", i.e. "try[ing] two or more actions raising related claims or issues as if they were separate… tak[ing] no account of any synergies or similarities" through to (ii) complete consolidation, whereby common issues are articulated across all relevant proceedings, so that they can be heard and tried together (see [14] to [15]). The Tribunal also recognised a possible "third way", namely "Read-Across" which was envisaged as an informal process whereby there would be a liberty to the court in the second action effectively to translate or read across facts, matters and decisions from one set of proceedings to another.

26. In *Sportradar*, the more advanced proceedings had only eight months to run until trial while the less advanced action was "in the relative foothills of preparation". In those circumstances, the "synergies" between the two relevant actions were held not to justify

the adjournment of a trial that could otherwise take place, and there was also no suggestion that there should be any joint trial. Instead, a "Read-Across" approach was adopted by the Tribunal, whereby the President would sit on the panels respectively hearing the two sets of proceedings. As a result, the "synergies or commonality that exist or may exist" between two actions would be reflected in the same or a similarly constituted Tribunal having the "potential… for reading across findings, analysis and legal conclusions" from an earlier to a later action, in order to "ensure, or at least facilitate, consistency between related or common issues in independent actions".

(2) The Tribunal's approach to adjournments

27. The Tribunal has the power to give a range of procedural directions as set out in Rule 19(2) of the Competition Appeal Tribunal Rules 2015 or "such other directions as it thinks fit to secure that proceedings are dealt with justly and at proportionate cost": Rule 19(1). The Tribunal therefore has "specific but flexible powers", which include the power to adjourn the trial of particular issues, but in exercising its powers the Tribunal must "at all times be guided by the governing principles set out in Rule 4, particularly the need to "ensure that each case is dealt with justly and at proportionate cost"": cf. *Royal Mail Plc v Ofcom* [2019] CAT 19 (**"*Royal Mail*"**) at [19]. In relation to the question of when an adjournment is necessary or appropriate, the Tribunal must "stand back and take a view of what is sensible and proportionate and in the interests of justice to all parties, and also to other litigants before the CAT": *Royal Mail* at [33], citing *UK Trucks Claim Limited v Fiat Chrysler & Others* [2019] CAT 15 at [22]. Subject to an "…overall requirement of fairness, each situation has to be judged on its own facts…": *Royal Mail* at [34].

28. Where necessary to inform the application of its own rules, the Tribunal may also have regard to the corresponding rules in the High Court: *Royal Mail* at [23]. Dr Kent referred us to the decision of Coulson J (as he then was) in *Fitzroy Robinson Limited v Mentmore Towers Limited* [2009] EWHC 3070 (TCC) in which he held that a court when considering a contested application at the 11th hour to adjourn the trial, should have specific regard to the following:

> "a) The parties' conduct and the reason for the delays;
>
> b) The extent to which the consequences of the delays can be overcome before the trial;

c) The extent to which a fair trial may have been jeopardised by the delays;

d) Specific matters affecting the trial, such as illness of a critical witness and the like;

e) The consequences of an adjournment for the claimant, the defendant, and the court."

(3) Overlapping Issues

29. As Dr Kent submitted, there are significant differences between the claims in the Kent and Ennis proceedings. The Kent proceedings, unlike the Ennis proceedings, include claims of exclusionary abuse. The geographic scope of the excessive pricing claims is different with the consequence that the only transactions that would be the subject of both claims would be transactions entered by UK domiciled App Developers via the UK App Store which is only a fraction of each claim. It is nevertheless clear that both sets of proceedings raise a number of similar if not identical common issues as to market definition, dominance, overcharge and pass-on. Had both sets of proceedings been started at about the same time, a UPO or a direction that common issues be determined at a joint trial would almost certainly have been appropriate.

30. Whilst the cases advanced by Dr Kent and Dr Ennis in relation to market definition, dominance and overcharge may be closely aligned, there is a real risk of the Tribunal in the Ennis proceedings, faced with different evidence, coming to inconsistent conclusions on these issues. The risk clearly arises even though the Tribunal in the Ennis proceedings could take account of findings on similar issues in the Kent proceedings to the extent relevant and appropriate: see *Mr Phillip Evans v Barclays Bank Plc & Others* [2023] EWCA Civ 876 (***"Evans"***), in which the Court of Appeal held that proceedings before the Tribunal are not subject to the common law rule in *Hollington v Hewthorn* and emphasised that "if confronted with prior findings said to be relevant, [the CAT] will carefully decide what weight can be attached to those findings" (*Evans* at [100]-[102]). The experience of the three interchange fee cases heard separately in the Tribunal and in the Commercial Court in 2016 and 2017 is illustrative of the potential for reaching inconsistent conclusions on the same or similar facts.

(4) The Options

31. The three main options canvassed at the CMC for the future case management of the two sets of proceedings, were (i) directions for a joint trial of certain common issues in January 2025 (the time allocated for the trial of the Kent proceedings); (ii) directions for an adjournment of the trial of the Kent proceedings so as to enable both sets of proceedings to be tried at the same time; or (iii) no directions for joint case management with the result that the Kent trial would proceed independently of the Ennis proceedings which would be tried at a later date.

32. It became clear at the CMC that a joint trial of any of the common issues in the time allocated for the trial of the Kent proceedings was not workable. Ultimately none of the parties advocated this option. There is plainly not enough time for Dr Ennis to be ready for a trial of any common issues by January 2025 bearing in mind the huge volume of disclosure, witness statements and expert evidence in the Kent proceedings which has not yet been considered by Dr Ennis's legal team and his expert witness and the need to notify class members of the opt-out proceedings. Nor is there time for Apple satisfactorily to address Dr Ennis's case on the common issues.

33. Apple mooted the possibility of Dr Ennis taking a limited role in the trial of the Kent proceedings in January 2025, allowing Dr Ennis, for example, to make non-duplicative submissions on the evidence. There was, however, unsurprisingly no agreement by Dr Ennis to be bound by the outcome of the Kent proceedings in circumstances where he had only played a limited role at the trial as it would be unfair and contrary to natural justice. This arrangement would therefore not overcome the risk of inconsistency of outcomes. "Reading across" determinations in the Kent proceedings to the Ennis proceedings, as envisaged in *Sportradar*, would be equally unfair unless Dr Ennis had had a full opportunity to put forward his case, deploy factual and expert evidence and challenge the evidence of the other parties.

34. Prior to the CMC the Tribunal had raised the possibility of the issue of pass-on being tried jointly in 2025 after the conclusion of the trial in the Kent proceedings, at a time by which the Ennis proceedings would have had more time to catch up but before the trial of other issues in the Ennis proceedings. It became apparent, however, that this was not a workable

suggestion because of the difficulty of separating out issues of pass-on and infringement. We were taken by Apple to an expert report of Dr Hal Singer filed on behalf of Dr Kent addressing, amongst other things, what Apple's commission rate would have been, absent Apple's allegedly anti-competitive conduct. The report relies on a simulation model with various inputs including an alleged pass-on rate. The pass-on rate also has a potential bearing on market definition and dominance, damages and the question of whether a lower commission rate would benefit consumers or developers. Apple also contended that it wishes to rely on Dr Singer's analysis of pass-on in the context of making submissions as to his credibility as an expert.

35. The two remaining options before the Tribunal, namely allowing both sets of proceedings to run their course independently of each other or adjourning the Kent proceedings to allow a joint trial of both proceedings to take place at a later date, each have significant drawbacks.

36. If the proceedings carry on independently there is, as noted above, a real risk of inconsistent outcomes in relation to the common issues, particularly in relation to pass-on. Inconsistent judgments might well lead to significant uncertainty as to the legality of Apple's ongoing business practices prospectively and undermine public confidence in the justice system. Inconsistency of outcome as to pass-on could create obvious injustice since it may lead to significant over-compensation or under-compensation given the divergent positions of Dr Kent and Dr Ennis.

37. The principle that inconsistency of outcomes should be avoided by ensuring that common issues are tried together is not, however, an absolute one as the ruling in the *Interchange Fee Umbrella Proceedings* case makes clear. It may in practice not be possible to determine common issues jointly, one example of impracticality being when proceedings are far apart in time. The aim of achieving consistency may have to yield to the aim of dealing with cases expeditiously and fairly in accordance with the overriding objective.

38. The parties are on the eve of the Kent trial to which they have been working for the last three years. The Ennis proceedings have hardly started. An adjournment of the Kent trial would significantly delay the final resolution of Dr Kent's claim. It is unclear when an adjourned trial of all common issues in both sets of proceedings would take place. It was

submitted on behalf of Dr Ennis and Apple that the Ennis proceedings could be ready for trial in October 2025. We consider that this was an over-optimistic assessment. In our view, a start date of January 2026 would be more realistic. As well as the unpredictable incidents of litigation which might throw this projected timetable off course, Apple has indicated that it may seek to appeal both the certification of the Ennis proceedings and this ruling. These appeals would in all likelihood delay matters still further.

39. We reject as over-speculative Apple's argument that an adjournment of the Kent proceedings would not necessarily result in any delay because of the likelihood that the Court of Appeal would need to consider the judgments in both proceedings and hear both appeals together before a final resolution of the Kent proceedings. We similarly reject Apple's argument that any prejudice to members of the Kent class is relatively inconsequential because the only relief claimed is damages and the damages recoverable by individual members of the class will be relatively small. In our view, the members of the Kent class are entitled to have their claim determined without an indefinite period of delay. We accept that there would be inconvenience and wastage of time for Apple's witnesses called to give evidence at two separate trials but that is not, in itself, a compelling reason for adjourning the Kent proceedings. Moreover, in the absence of any explanation as to why it took over two years after the commencement of the Kent proceedings for Dr Ennis to issue his claim, we consider that Dr Ennis must be regarded as having some responsibility for that delay. It should be noted that when issuing his claim in July 2023, Dr Ennis included a timetable designed to facilitate catch up with the Kent proceedings by July 2024. It is perhaps doubtful whether that timetable was ever realistic but it was certainly not possible to adhere to it following Apple's application challenge jurisdiction over part of the claim/strike out the remainder of the claim.

40. Although we consider that delay is the main prejudice to the Kent class if the trial is adjourned, we accept that Dr Kent would be further prejudiced by the impact of an adjournment on costs. The Kent proceedings are funder-backed, they are far advanced and it is likely an adjournment would have implications for Dr Kent's funders although there was no evidence about this. An adjournment would involve some wastage of sunk costs such as brief fees and costs of preparing trial bundles. More significantly, proceedings involving three parties would significantly increase Dr Kent's costs of preparing for and attending the trial.

41. In the circumstances set out above, we consider the considerations of overall fairness point firmly against the adjournment of the Kent proceedings notwithstanding the risk of inconsistent outcomes.

E. CONCLUSION

42. For the reasons set out above, we have therefore concluded that the Kent proceedings should continue in accordance with the existing timetable independently of the Ennis proceedings which will be case managed separately.

43. This ruling is unanimous.

Andrew Lenon KC
Chair

Ben Tidswell

Charles Dhanowa O.B.E., K.C. (*Hon*)
Registrar

Date: 8 November 2024