Neutral citation [2025] CAT 55

Case No: 1433/7/7/22

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

30 September 2025

Before:

JUSTIN TURNER KC
(Chair)
GREG OLSEN
DEREK RIDYARD

Sitting as a Tribunal in England and Wales

BETWEEN:

DR LIZA LOVDAHL GORMSEN

Class Representative

- and –

META PLATFORMS, INC.
META PLATFORMS IRELAND LIMITED
FACEBOOK UK LIMITED

Defendants

Heard at Salisbury Square House on 29 September 2025

RULING (PLEADING AMENDMENTS)

APPEARANCES

Niranjan Venkatesan, KC, Mr Ian Simester and Ms Sarah O'Keeffe (instructed by Quinn Emanuel Urquhart & Sullivan UK LLP) appeared on behalf of the Class Representative.

Ms Marie Demetriou, KC, Mr Tony Singla, KC and Mr James White (instructed by Herbert Smith Freehills Kramer LLP) appeared on behalf of the Defendants.

1. Having heard argument on this application yesterday, we now deliver a ruling on the Class Representative's ("CR") application to amend her Amended Claim Form by introducing a new head of damage.

2. The CR's case is that: (i) Meta holds a dominant position in the relevant market; (ii) Meta abused that dominant position by making access to Facebook conditional upon Users giving up access to certain personal data concerning their off-Facebook activities (referred to by the CR as 'Off-Facebook Data') without receiving a value transfer in return; (iii) this constitutes an 'unfairness' abuse contrary to section 18(2)(a) CA 1998 and, until 31 December 2020, article 102 TFEU; and (iv) the unfairness can be analysed either as the imposition of an unfair trading condition or as an unfair price but these are in practice two sides of the same coin.

3. The CR also says that the data taken and used by Meta to run targeted advertisements often included deeply sensitive personal data.

4. Currently the claim to damages is summarised in the Amended Claim Form in the following terms:

> "In short, but for the unfair trading condition and/or the unfair price, Users would, in the counterfactual, have received a transfer of value from Facebook in return for the collection of their Off-Facebook Data. The aggregate value that would have accrued to Users in the counterfactual represents the aggregate loss they have suffered by reason of Facebook's abuse, because Users currently receive nothing in return for the collection of their Off-Facebook Data. Thus, the damage is the difference between: (i) the payment that Users receive for their Off-Facebook Data in the factual (i.e., nothing); and (ii) the payment that would have been made by Facebook to Users in the counterfactual."

5. The amendments arise because Meta will contend at trial, that this is not data it ever would have paid for, in which case the class have suffered no loss on conventional principles.

6. The amendments sought seek to introduce an alternative case. They state at paragraph S.26A of the draft Re-Amended Claim Form:

> "Further or alternatively, it nevertheless wrongfully interfered with the Users' valuable right to control the collection and/or use of their Off-Facebook Data. That being so, the Users are to be compensated for the loss of the value of the exercise of that right. That loss can be quantified by the use of the Nash

> bargaining model to assess the outcome of a hypothetical negotiation between Facebook, as a reasonable and willing buyer, and the Users, as reasonable and willing sellers, for permission to collect and use the Users' Off-Facebook Data."

7. This is a type of claim which the authorities have referred to as *"user damages"*.

8. Meta contend that this claim must fail as a matter of law because user damages are not recoverable for breaches of competition law, and that consequently these amendments should not be allowed. They invite this Tribunal to *"grasp the nettle"* and refuse the amendments.

9. Further or alternatively they submit that the user damages claim does not meet the statutory certification criteria because no proper methodology has been advanced to support the claim.

10. There is no dispute as to the principles which apply the amendments. The amendments must satisfy the test for strike out and/or summary judgment. The test, as set out in *Royal Mail Group Limited v DAF Trucks Limited & Ors* [2021] CAT 10 at [22] is "*whether there is a realistic prospect of the plea succeeding at trial.*"

11. The Supreme Court in *Morris-Garner v One Step* [2018] UKSC 20 ("*One Step*") considered the availability of user damages. The case concerned a non-compete covenant. Damages in such a case are normally awarded on the loss of a chance of the claimant doing more business. The claimant however elected to claim user damages based on the sum that would have been required to release the it from its non-compete covenant. The court held that it was not open to the claimant to make such an election and that damages should be assessed on normal principles.

12. Lord Reed, who gave the leading and majority judgment, reviewed the circumstances when user damages are available including the tortious invasion of interests in property, damages under Lord Cairn's act, and patent infringement. He concluded at [30]:

> "In these cases, the courts have treated user damages as providing compensation for loss, albeit not loss of a conventional kind. Where property is damaged, the loss suffered can be measured in terms of the cost of repair or the diminution in value, and damages can be assessed accordingly. Where on the other hand an unlawful use is made of property, and the right to control such use is a valuable asset, the owner suffers a loss of a different kind, which calls for a different method of assessing damages. In such circumstances, the person who makes wrongful use of the property prevents the owner from exercising his right to obtain the economic value of the use in question, and should therefore compensate him for the consequent loss. Put shortly, he takes something for nothing, for which the owner was entitled to require payment."

13. Infringement of a patent is a statutory tort. A patentee who establishes infringement will typically claim damages for lost profits from sales it would have made had the infringer not entered the market. However, in some cases the patentee may not be in competition with the infringer and would not have achieved those sales which the infringer had made. In these circumstances the courts do not say the patentee has failed in its claim to be awarded damages but instead award a reasonable royalty for use of the patented right. Lord Reed identified this approach in *Meters v Metropolitan Gas Meters Limited* (1911) 28 RPC 157 and the speech of Lord Shaw in *Watson Laidlaw & Co v Potts Cassels & Williamson* [1914] 31 RPC 104. Lord Reed cited the following passages from that speech at [28]:

> "Lord Shaw described the second principle as follows, in a passage at p 31 subsequently quoted by Brightman J in *Wrotham Park*:
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> > "It is at this stage of the case, however, that a second principle comes into play. It is not exactly the principle of restoration, either directly or expressed through compensation, but it is the principle underlying price or hire. It plainly extends - and I am inclined to think not infrequently extends - to patent cases. But, indeed, it is not confined to them. For wherever an abstraction or invasion of property has occurred, then, unless such abstraction or invasion were to be sanctioned by law, the law ought to yield a recompense under the category or principle, as I say, either of price or of hire."
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> He illustrated this by the example of the liveryman's horse, also at p 31:
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> > "If A, being a liveryman, keeps his horse standing idle in the stable, and B, against his wish or without his knowledge, rides or drives it out, it is no answer to A for B to say: 'Against what loss do you want to be restored? I restore the horse. There is no loss. The horse is none the worse; it is the better for the exercise.'"
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> Lord Shaw also endorsed the view expressed by Fletcher Moulton LJ *in Meters Ltd v Metropolitan Gas Meters Ltd* (1911) 28 RPC 157 at 165 that, even if it was not the claimant's practice to grant licences, "it would be right for the court

to consider what would have been the price at which - although no price was actually quoted - could have reasonably been charged for that permission, and estimate the damage in that way"."

14. In *One Step* Lord Sumption reached the same result but for different reasons. He also had regard to intellectual property cases. He stated at [119] to [120]:

> "119. It is right to say that a patent is a species of property, albeit incorporeal. It can be assigned like any other item of property, or the benefit transferred by license. But that is entirely irrelevant to the present issue, because the concept of awarding a notional royalty as damages for infringement does not depend on the characterisation of a patent as a species of property. The infringer has not appropriated or used the patent like the man who trespasses on the claimant's land or takes or damages his chattels. The patentee does not have an interest in the observance of his patent exceeding its financial value, in the way that a landowner may. He is not entitled to any more than his actual pecuniary loss. What he has is a personal claim against the infringer for competing with him unlawfully. In cases of diverted sales (Lord Wilberforce's category 1) the measure of damages for the infringement is precisely the same as it is in this case, namely the profit lost by the diverted sales. And the value of those diverted sales may be measured by the amount that the patentee could reasonably charge the infringer for not enforcing his monopoly against him.
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> 120. The same principle has been applied in other cases of tortious competition, which involve no invasion of property rights unless property is so broadly defined as to encompass any right whatever. For example, confidential information is not property in the proper sense of the word, for there is no title against the world but only a personal right against the person owing the duty of confidence. However, a notional royalty (or its capitalised value) is commonly awarded as damages for breach of a duty not to misuse confidential information, whether that duty arises from contract or from equitable doctrines: *Seager v Copydex Ltd (No 2)* [1969] 1 WLR 809, 813; *Force India Formula One Team Ltd v 1 Malaysia Racing Team Sdn Bhd* [2012] RPC 29, paras 383-387, 424, approved without consideration of this point, [2013] EWCA Civ 780; [2013] RPC 38. This is not because of some principle peculiar to equitable relief. Nor is it because the claims were in reality for restitution. These were expressed to be, and in fact were awards of compensatory damages. *Irvine v Talksport Ltd* [2003] 1 WLR 1576 was a passing off action. The defendant had published a photograph of the claimant, a racing driver, thereby falsely suggesting that he had endorsed their radio station. The Court of Appeal awarded a notional endorsement fee. In a loose sense, passing off can be described as an appropriation of the claimant's property in his goodwill, which is how the judge had characterised it at first instance in that case. The same could probably be said of the breach of confidence cases. But I doubt whether this characterisation contributes anything to the argument. In one sense almost any legal right can be described as a right of property, including the business and goodwill which the Morris-Garners may be said to have appropriated by their breach of the non-compete covenant."

15. An issue which arose in this case is whether the list of torts in which user damages are available is exhaustive. In *Gulati v MGM Ltd* [2015] EWCA Civ 1291; [2017] QB 149 ("*Gulati*") damages were awarded for misuse of private information following incidents of phone hacking. Although not described as "user damages" in that case they were referred to as such by the Supreme Court in *Lloyd v Google* [2021] UKSC 50 ("*Lloyd*"). The judgment in *Gulati* at [141] stated:

> "A claim in tort for misuse of private information based on the factual allegations made in this case, such as was made in Vidal-Hall, would naturally lend itself to an award of user damages. The decision in Gulati shows that damages may be awarded for the misuse of private information itself on the basis that, apart from any material damage or distress that it may cause, it prevents the claimant from exercising his or her right to control the use of the information. Nor can it be doubted that information about a persons internet browsing history is a commercially valuable asset. What was described by the Chancellor in the Court of Appeal [2020] QB 747, para 46, as "the underlying reality of this case" is that Google was allegedly able to make a lot of money by tracking the browsing history of iPhone users without their consent and selling the information collected to advertisers."

16. As the CR submits, this is inconsistent with the proposition that user damages are limited to those proprietary torts identified in *One Step*.

17. The CR's case is one of analogy. She submitted that user damages should be available in this case because the case is materially indistinguishable from the wrongdoing identified in the cases reviewed in *One Step*. The CR pointed out that this claim concerns the tort of a breach of the statutory duty identified in section 18 of the Competition Act 1998 (the "Chapter II Prohibition"). She does not say that user damages are available in every competition case or in every case concerning a Chapter II Prohibition. She submitted that the nature of the abuse means that user damages are an appropriate way of assessing damages in this case.

18. Additionally, the CR submitted that if this matter is not clear in its favour – a position it did not press – then the question of whether user damages are available is a complex one in a developing area of law and therefore is not suitable for summary determination. She argued that the amendments should be permitted and the matter should proceed to trial.

19. Meta submitted that the law is clear in its favour and that user damages are not available in competition cases. It pointed out that competition cases are not one of the categories identified in *One Step* and that there is no precedent for the award of user damages in competition cases.

20. It submitted in particular that user damages in competition cases are precluded by *Stoke-on-Trent v W&J Wass Limited* [1988] 1 WLR 1406 ("*Wass*") which is binding on this Tribunal. To arrive at this position, it relied not only on *Wass* but on the interpretation which was put on *Wass* by Arden LJ in *Devenish Nutrition v Sanofie-Aventis* [2008] EWCA 1086; [2009] Ch 390 ("*Devenish*").

21. Care needs to be taken not to over-interpret *Wass*. It predates important cases in this area including *Attorney General v Blake* ("*Blake*"),[1] *One Step* and *Lloyd* all of which have refined this area of law.

22. *Wass* concerned the infringement of the local council's statutory right to hold a market. That right had been infringed by the defendant. No conventional loss had been suffered. The question was whether user damages were payable, being the sum which would have been paid to obtain permission to hold the market.

23. The *ratio* of the case is that the user principle ought not to be applied to the infringement of a right to hold a market where no loss had been suffered by the market owner.

24. The *ratio* of the case does not extend as far as Meta contended. No part of the judgment addresses whether user damages can ever be available in competition cases. That is really the end of the point, but, in deference to the subtlety of Meta's arguments, we consider its analysis of this case further. There was a judgment by Nourse LJ, and a judgment by Nicholls LJ. Mann LJ agreed with both judgments. Nicholls LJ stated at page 1416:

> "It is an established principle concerning the assessment of damages that a person who had wrongfully used another's property without causing the latter any pecuniary loss may still be liable to that other for more than nominal damages. In general, he is liable to pay, as damages, a reasonable sum for the

[1] [2001] 1 AC 268; [2000] 3 WLR 625; [2000] 4 All ER 385; [2000] 2 All ER (Comm) 487, HL(E).

> wrongful use he has made of the other's property. The law has reached this conclusion by giving to the concept of loss or damage in such a case a wider meaning than merely financial loss calculated by comparing the property owner's financial position after the wrongdoing with what it would have been had the wrongdoing never occurred. Furthermore, in such a case it is no answer for the wrongdoer to show that the property owner would probably not have used the property himself had the wrongdoer not done so. In The Mediana [1900] A.C. 113, 117, Lord Halsbury made the famous observation that a defendant who had deprived the plaintiff of one of the chairs in his room for 12 months could not diminish the damages by showing that the plaintiff did not usually sit upon that chair or that there were plenty of other chairs in the room."

25. He went on to hold that the appropriate remedy in the case of a market right was an injunction, and that to award damages on user principle in the case of a market right would lead the owner of the market right to obtain a greater measure of relief than would be justified by the nature of his right.

26. It is the judgment of Nourse LJ in *Wass*, which Meta relies upon. Nourse LJ identified two general rules at 1410:

> "The levying of an unlawful rival market is a tort. Whether it should properly be categorised as a nuisance or a trespass is probably not a question of importance. The better view must be that it is a nuisance. The general rule is that a successful plaintiff in an action in tort recovers damages equivalent to the loss which he has suffered, no more and no less. If he has suffered no loss, the most he can recover are nominal damages. A second general rule is that where the plaintiff has suffered loss to his property or some proprietary right, he recovers damages equivalent to the diminution in value of the property or right."

27. The learned judge then identifies exceptions to these rules, the first being trespass in respect of which it is not necessary to show damage. He then considers detinue, patents and the decision of Brightman J in *Wrotham Park Estate Co. Ltd v Parkside Homes Ltd* [1974] 1 WLR 798.

28. He summarises the authorities as follows at 1413:

> "As I understand these authorities, their broad effect is this. In cases of trespass to land and patent infringement and in some cases of detinue and nuisance the court will award damages in accordance with what Nicholls L.J. has aptly termed "the user principle." On an analogous principle, in a case where there was a breach of a restrictive covenant the court has, in lieu of a permanent mandatory injunction to restore the breach, awarded damages equivalent to the sum which the plaintiffs might reasonably have demanded for a relaxation of the covenant. But it is only in the last-mentioned case and in the trespass cases

> that damages have been awarded in accordance with either principle without proof of loss to the plaintiff."

29. It is unclear why the learned judge did not include an award of a royalty in a patent case in this list of cases which do not require proof of damage.

30. He then considers those cases where there is proof of loss, and which therefore fall within the scope of the first general rule. He continues, at 1414:

> "In all the other cases, the plaintiff having established his loss, the real question has not been whether substantial damages should be awarded at all, but whether they should be assessed in accordance with the user principle or by reference to the diminution in value of the property or right. In other words, those other cases are exceptions to the second, but not to the first, of the general rules stated above."

31. Although Norse LJ does not describe further exceptions we do not read the passage from 1412 to 1414 as stating that no other exceptions can exist.

32. We turn next to the submissions made in relation to *Devenish*. It is necessary to remind ourselves that the reference to user damages occurs in at least two different contexts. The modern use is principally that described in *One Step,* and sought in this case, being a claim to compensatory damages arising from unlawful use of property. The other is a claim to the profits gained by unlawful use. It was a claim for an account of profits which arose in *Devenish* and provides the context for Arden LJ's observations.

33. *Devenish* concerned the hearing of a preliminary issue in the context of a follow-on claim for damages, following findings of the commission that there were cartels to raise the price of vitamins. The claim was brought by purchasers of vitamins. It was suggested that conventional damages may be difficult to assess and that it may be said that the claimants had passed the additional costs on to their customers and so had suffered no loss in the conventional sense. The claim being made was restitutionary seeking to attach the profits made by the cartel.

34. It was held this that was not an available remedy. Arden LJ stated:

> 104. In *Halifax Building Society v Thomas* [1996] Ch 217 the defendant had obtained a mortgage by means of fraudulent representations. He defaulted on the mortgage and the mortgagee sold the mortgaged

property in exercise of its power of sale. The sales proceeds exceeded the amount of the mortgage debt; and the mortgagee claimed the surplus as a restitutionary award. The Court of Appeal rejected the claim. Peter Gibson LJ said, at pp 227—228:

> "Further I am not satisfied that in the circumstances of the present case it would be right to treat the unjust enrichment of Mr Thomas as having been gained 'at the expense of' the society, even allowing for the possibility of an extended meaning for those words to apply to cases of non-subtractive restitution for a wrong. There is no decided authority that comes anywhere near to covering the present circumstances. I do not overlook the fact that the policy of law is to view with disfavour a wrongdoer benefiting from his wrong, the more so when the wrong amounts to fraud, but it cannot be suggested that there is a universally applicable principle that in every case there will be restitution of benefit from a wrong. As Professor Birks says (An Introduction to the Law of Restitution (1985), p 24): 'there are some circumstances in which enrichment by wrongdoing has to be given up. That is, the wrong itself is not always in itself a sufficient factor to call for restitution. On the facts of the present case, in my judgment, the fraud is not in itself a sufficient factor to allow the society to require Mr Thomas to account to it."

35. As to the problem of pass-on which may or may not have been pleaded in the future she held:

> "108. On the basis of the decisions of the Court of Appeal in *Stoke-on-Trent City Council v W & J Wass Ltd* [1988] 1 WLR 1406 and *Halifax Building Society v Thomas* [1996] Ch 217 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, Dr Veljanovski 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.
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> 109. I conclude therefore that, on the assumptions I am required to make, a restitutionary award is not available in the present case."

36. If the potential loss had been passed on, the Claimants were not entitled to be compensated for that loss be an account of profits. That is very different from this case where there is no restitutionary claim to profits but a compensatory claim to user damages. Furthermore, it is difficult to envisage something equivalent to pass-on in the context of an invasion of privacy.

37. The passage that Meta relies upon to bolster its position on *Wass* is from earlier in the judgment at [71] – [76]. Arden LJ notes that she is bound by the ratio in *Wass* at the end of [71]. She then identifies the ratio at [74] as:

> "The ratio of the judgment of Nourse LJ, which Mann LJ agreed, is therefore that the user principle ought not to be applied to the infringement of a right to hold a market where no loss had been suffered by the market owner."

38. The passage particularly relied upon by Meta is at [76]:

> "None the less, it was an essential part of Nourse LJ's reasoning that damages by reference to the benefit obtained by the defendant could only be awarded in those limited situations, 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, see *Young v Bristol Aeroplane* [1944] KB 718 at 729. I do not consider that this can be shown. Blake's case does not discuss non-proprietary torts."

39. Arden LJ then refers to *Blake* and concluded:

> "…it cannot be said that a case 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."

40. There was a dispute as to what this passage meant. It is observed by the CR that if the "*benefit obtained by the defendant*" is a reference to a claim to profits then that is difficult to reconcile with the contents of *Wass* as no reference was made to an account of profits in that case. We think the better view is that Arden LJ was considering those cases where there was no damage to the claimant when she made reference to "*benefit obtained by the defendant*". Be that as it may, and on any interpretation, we do not accept this passage when read in conjunction with *Wass* means that compensatory user damages are not available on the facts of this case.

41. As restated in *One Step* at [82]:

> "… As the Earl of Halsbury LC observed in Quinn v Leathem [1901] AC 495, 506, "a case is only an authority for what it actually decides"…"

42. Meta also referred to the Supreme Court's in *Lloyd* in which it was held that a right to compensation under section 13 of the Data Protection Act 1998 required material damage. Analogies drawn with misuse of private information were

rejected. But as stated by Lord Leggatt in [114] *"the only question in the case is what the words of the relevant statutory provision mean"*. Consequently, it was a case about statutory interpretations and does not provide a direct answer to this case.

43. In our judgment it is not possible to extract from these cases (or any other cases cited by Meta) a principle 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.

44. 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 and that the case has reasonable prospects of succeeding at trial.

45. Furthermore, this is a developing area of law and therefore not one which is amenable to summary determination.

46. We are not beguiled by Meta's suggestion that the facts are irrelevant and that this is a pure question of law such that we should *"grasp the nettle"*. Whereas this does raise a question of law, 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 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.

47. For these reasons we permit the amendments to the claim form subject to the question of certification.

48. The next question to consider is whether the methodology being advanced by which damages are to be assessed is sufficiently credible or plausible to a establish some basis in fact for the commonality requirement.

49. In her third report Professor Scott Morton for the class representative stated that the assessment will involve a similar application of her Nash bargaining model

used to assess conventional damages. David Parker for Meta disagreed. He contended that user damages have to be assessed individually and are therefore not suitable for an award of aggregate damages. He also contended that assessment of a collective bargaining will overstate individual bargains.

50. The assessment of conventional damages as pleaded seeks to identify the sum that Meta would have paid to users in the counterfactual. The assessment of user damages requires an assessment of the value of the user's right to control their own data. In each case, a notional bargain will need to be envisaged, and as a practical matter, we do not see how those calculations will necessarily differ.

51. Further, we do not agree that user damages can only be assessed individually in the context of a class action. It is well established in a class action that individualised assessment of damages is not required under section 47C(2) of the Competition Act 1998. As stated in *Merricks v Mastercard Inc* [2019] EWCA Civ 674; [2019] Bus LR 3025:

> "46. The CAT has, as I have said, avoided that controversy in this case by accepting that not all of the issues need to be common issues in order for the collective claim to be certified. But, as indicated above, there is no requirement under s.47C(2) to approach the assessment of an aggregate award through the medium of a calculation of individual loss and the appellant's experts have not attempted to do so. In that they have the support of the Canadian authorities which in cases like Microsoft have approved a top-down method of calculation on the basis that the level of pass-on to the class as a whole will be a common issue for all individual claimants. It seems to us that the same approach should be adopted in relation to collective proceedings under s.47B of the CA. Although the purpose of such proceedings is to combine into a single action what would otherwise be individual follow-on claims and that to be eligible for inclusion in collective proceedings they must raise common issues of fact or law (see s.47B(6)), the issue of whether the MIF overcharge was passed-on to consumers generally and in what amounts is an issue common to all such individual claims as a necessary step in establishing loss by the class as a whole.
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> 47. To require each individual claimant to establish loss in relation to his or her own spending and therefore to base eligibility under Rule 79 on a comparison of each individual claim would, as I have said, run counter to the provisions of s.47C(2) and require an analysis of the pass-on to individual consumers at a detailed individual level which is unnecessary when what is claimed is an aggregate award. Pass-on to consumers generally satisfies the test of commonality of issue necessary for certification."

52. Furthermore, these arguments appear to be essentially the same as objections taken during certification of respect of conventional damages and which were rejected by this Tribunal.

53. This claim is already certified and is going to trial. Certification is an active process, but we see no reason why, on *Microsoft*[2] principles, certification should not embrace the claim to user damages.

54. This ruling is unanimous.

Justin Turner KC
Chair

Greg Olsen

Derek Ridyard

Charles Dhanowa, CBE, KC (Hon)
Registrar

Date: 30 September 2025

[2] *Pro-Sys Consultants Ltd v. Microsoft Corp* [2013] SCC 57.