IN THE COMPETITION APPEAL TRIBUNAL

Case No: 1433/7/7/22

BETWEEN:

DR LIZA LOVDAHL GORMSEN

Proposed Class Representative

- v -

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

Proposed Defendants

REASONED ORDER (COSTS AND STAY)

UPON the Proposed Class Representative's (the "**PCR**") application for a collective proceedings order dated 11 February 2022 (the "**CPO Application**") pursuant to section 47B of the Competition Act 1998 and Rule 75 of the Competition Appeal Tribunal Rules 2015 (the "**Tribunal Rules**")

AND UPON judgment in these proceedings having been handed down on 20 February 2023 under Neutral Citation Number [2023] CAT 10 (the "**Judgment**")

AND UPON the Tribunal having received the parties' consequential applications in regard to the Judgment, including in particular in relation to costs

AND UPON the PCR having requested that the period of six months for which the CPO Application is to be stayed, pursuant to paragraph 62 of the Judgment, runs from the date of any order on consequential applications rather than the date of the Judgment

AND UPON the Tribunal having considered the applications on the papers filed with the Tribunal

AND UPON the Tribunal considering it appropriate to determine the applications on the papers

IT IS ORDERED THAT:

1. The PCR shall pay the Proposed Defendants the sum of £650,000 in respect of the Proposed Defendants' costs in these proceedings within 28 days of the date of this Order being made.

2. The remainder of the Proposed Defendants' costs in these proceedings be reserved.

3. The PCR's costs relating to the CPO Application are irrecoverable.

4. The proceedings are stayed for six months from the date of this Order.

5. Liberty to apply.

REASONS

1. The Tribunal's jurisdiction to award costs is set out in Rule 104 of the Tribunal Rules. Rule 104 provides the Tribunal has a discretion to make any order it thinks fit in relation to the payment of costs.

2. The CPO Application concerned only the question of certification. The various factors under consideration by the Tribunal in the Judgment went to two questions – whether the test in *Pro-Sys Consultants v. Microsoft* was met, and whether, under Rule 79(2)(b) of the Tribunal Rules, the proceedings could be justified in terms of cost/benefit.

3. The Judgment found that the PCR had unequivocally failed the *Pro-Sys* test. It also found that, although it was not appropriate to consider whether Rule 79(2)(b) was satisfied given the methodological problems identified, if obliged to make a ruling, then Rule 79(2)(b) was not met because the Tribunal could see no point in permitting an untriable case to proceed to trial.

4. The Judgment made clear that in the absence of a revised CPO application which sets out a new and better blueprint leading to trial, then the Tribunal would lift any stay and reject the CPO Application. Therefore, the Proposed Defendants' submissions largely succeeded.

5. Accordingly, the starting point is that the Tribunal found that the Proposed Defendants were the winners, and the PCR the loser, on the questions at issue in the CPO Application. In these circumstances, costs should follow the event: *Merricks v Mastercard Incorporated & Others (Costs)* [2017] CAT 27.

6. The Proposed Defendants seek a payment on account of 70% of their costs, which they have assessed as totalling £1,966,016.49 (inclusive of VAT) in relation to the CPO Application. The principles governing the amount of costs to be ordered on account require that the Tribunal seek to order a realistic estimate of the reasonable costs likely to be determined on detailed assessment, with appropriate margin to allow for an overestimate: *Excalibur Ventures LLC v Texas Keystone Inc* [2015] EWHC 566 (Comm). This is not a summary assessment of costs and we have regard to the fact that the remainder of the Proposed Defendants' costs are to be reserved. Taking a broad-brush approach, the Tribunal orders the PCR to make a payment of £650,000, which amounts to roughly 33% of the Proposed Defendants' costs relating to the CPO Application, according to their assessment. The Tribunal is not, for the avoidance any doubt, making an order that the Proposed Defendants recover the difference between £1,966,016.49 and £650,000 on a detailed assessment. The payment of £650,000 represents a broad-brush assessment of the costs pointlessly incurred by the Proposed Defendants in responding to a CPO application deficient in the manner described in the Judgment, which should be paid in any event. The order in relation to the difference between £1,966,016.49 and £650,000 is "costs reserved" so that, on a later occasion, both parties can make submissions on these (and on any other) costs.

7. Regarding the PCR's costs, the Judgment found that the methodology proposed for the three abuse claims in the CPO Application, namely abuse by the "Unfair Data Requirement", the "Unfair Price", and the "Other Unfair Trading Conditions" failed to provide a blueprint for trial. It found that in the case of the Unfair Data Requirement and the Other Unfair Trading Conditions, the *Pro-Sys* test had not even been addressed. In relation to the Unfair Price abuse, the Judgment found that the significant difficulties meant that the proposed methodology also failed to meet the *Pro-Sys* test. The Judgment made clear that a "*root and branch*" re-evaluation of the CPO Application is necessary. In these circumstances, none of the PCR's costs relating to the CPO Application should be recoverable.

Sir Marcus Smith **Derek Ridyard** **Timothy Sawyer, CBE**

President

Made: 22 March 2023

Drawn: 22 March 2023