Neutral Citation Number: [2025] EWHC 1512 (Comm)

Case No: CL-2022-000069

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 18th June 2025

Before :

Peter MacDonald Eggers KC
(sitting as a Deputy Judge of the High Court)

- -

Between :

(1) HUNGRYPANDA AU PTY LTD **(2) HUNGRYPANDA JAPAN LTD** **(3) HUNGRYPANDA (NZ) LTD**	**Claimants**
- and -	
(1) YAN LIU **(2) JIE SHEN** **(3) EASI GLOBAL LIMITED** **(4) CHONGQING MEIKELAIFUYIREER TECHNOLOGY CO LTD**	**Defendants**

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William Edwards KC (instructed by **Fieldfisher LLP**) for the **Claimants**
The First and Third Defendants attended the trial by **Duan & Duan UK LLP**, but otherwise the Defendants were not represented at the trial

Hearing date: 13th May 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 18th June 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Peter MacDonald Eggers KC :

Introduction:

1. The Claimants operate the "HungryPanda" food delivery business, with customers ordering via the "HungryPanda" and "PandaFresh" apps and online platform. HungryPanda was founded in 2017 and grew rapidly. By 2021, it was operating in more than 60 cities across the United Kingdom, France, Italy, the United States, Australia, New Zealand, Japan, South Korea, and Singapore.

2. In these proceedings, the Claimants seek to recover damages for breaches of the Asset Purchase Agreement dated 15th October 2021 ("**the APA**") entered into between the Claimants as purchasers and the Defendants as sellers of the Business and Assets of the Defendants.

3. The Defendants' Business represented an online take-away food order platform ("**the EASI Business**") and the Defendants' Assets represented the contracts, goodwill, IT systems, intellectual property, and the like, by which the EASI Business was carried on.

4. The Defendants, together with subsidiaries, joint venturers and franchisees, previously operated the EASI Business, primarily based in Australia, but with less substantial operations in New Zealand, Japan, the United Kingdom, the United States, and Canada. The Third Defendant (EASI Global Ltd), incorporated in Hong Kong, is the principal company through which the EASI Business was conducted. The Fourth Defendant (referred to as "*EASI China*"), incorporated in China and a wholly-owned subsidiary of the Third Defendant, was the IT centre for the EASI Business. The First and Second Defendants (Yan Liu and Jie Shen) between them held an 87% stake in the Third Defendant, in each case through a corporate vehicle they own. Mr Junquan Xu (also known as Mr Peter Liu) is the First Defendant's husband and the Second Defendant's business partner. The Claimants allege that Mr Peter Liu "*was the directing mind and will of all corporate entities in the Sellers' Group … including the negotiations, execution and performance of the APA*". Indeed, Mr Peter Liu has described himself as the Founder and Chief Executive Officer of the EASI Group. Mr Peter Liu's precise role, however, does not need to be determined at this trial. However, Mr Peter Liu did act on behalf of the Defendants in respect of the events described below.

5. At the trial, the Claimants were represented by Mr William Edwards KC.

6. The Defendants did not actively participate in the trial. Further, the Defendants have not filed a Defence. Their previously instructed solicitors, DLA Piper UK LLP, came off the record by the order of Foxton, J on 21st December 2022. In fact, on 13th January 2023, Foxton, J further ordered that the Defendants be debarred from defending the Claimants' claim by reason of their failure to comply with a previous of this Court requiring the payment of costs relating to an interlocutory application.

7. In *Al Saud v Gibbs* [2024] EWHC 123 (Comm), at para. 7-8, Calver, J explained the significance and consequence of a debarring order of this nature:

> "*7. … the principles which are applicable to this application are as follows:*

i) When determining the effect of a debarring order the court should first consider the terms of the order. What does the order state the relevant party is debarred from doing? …

ii) If an order debars a defendant from defending the proceedings (like the one here), at the trial the defendant should not be permitted to adduce evidence, cross-examine the claimant's witnesses, or make submissions in defence of the claim.

iii) Moreover, the defendant will usually be prevented not just from advancing a positive case, but also from making any submissions that challenge the claimant's case …

iv) The prohibition on making submissions (and cross-examining) applies to issues of quantum just as it does to issues of liability …

v) There appears to be a narrow, residual discretion or trial management power to permit a debarred defendant to take some part in the relevant proceedings …

vi) The court may also have regard to the nature of the pleaded defence of the debarred defendant for the purposes of understanding the nature and extent of the relevant claim …

vii) But in exercising this narrow power, the court should have regard to the importance of ensuring that a debarring order, which is an important sanction available to the court in the exercise of its case management powers, and an important method of ensuring that the court's case management orders are respected, means what it says and is not undermined by permitting the defendant to escape its effect by purporting to make supposedly "clarificatory" submissions.

viii) Of course, where a defendant is not permitted to participate in the trial, by reason of an order debarring him from defending a claim, the claimant does not automatically win by default. At the trial, the claimant must satisfy the court that he is entitled to the relief sought. In this case it remains for the Claimant to prove her claim and her entitlement to the damages sought.

8. The debarring order is not only an important method of ensuring that the court's case management orders are respected, but it is also of important practical effect as the facts of this case show. Allowing the Defendant in this case to have a limited form of participation at trial by defending both the merits of the claim and quantum of liability, would be unfair to the Claimant. It would allow the Defendant to participate in the trial despite his refusal to comply with court orders concerning disclosure in a case where disclosure is central to the claim …"

8. Having these principles in mind, the 13 January 2023 Order therefore has the effect of depriving the Defendants of any substantial participation in the trial in adducing evidence, challenging the Claimants' evidence, and in making submissions. The

important consequence of the debarring order to bear in mind is that if the proceedings had been contested with the full participation of the Defendants, it is well possible that there may have been a different result, whether the difference is in favour of the Claimants or the Defendants; equally, it is well possible that the result may have been the same. In any case, the Court's role is the same, namely to adjudge the claims based on the evidence and arguments legitimately before it.

9. Shortly before the commencement of the trial, the First and Third Defendants instructed solicitors, Duan & Duan UK LLP, and by their counsel, Mr Akash Gohil, applied for relief from the sanction imposed by the order dated 13th January 2023. I dismissed that application. The result is that although the Defendants were free to attend the trial (the First and Third Defendants' newly instructed solicitors attended during the trial), they were not permitted by reason of the order dated 13th January 2023 to defend the claim either by interrogating the evidence or making submissions.

10. The First and Third Defendants, or indeed any of the Defendants, did not apply for permission to participate in the trial even in the limited sphere identified by Calver, J in *Al Saud v Gibbs*.

11. The Claimants have served both factual and expert evidence. By a further order of Mr Justice Henshaw dated 22nd October 2024, the Claimants' witnesses were not required to attend to give oral evidence unless the Defendants gave notice to the contrary by 21st February 2025. No such notice was tendered.

12. The Claimants served and relied on witness statements of Mr Frank McGlade, the Chief Financial Officer of HungryPanda Ltd, the parent of the Claimants, and Mr Kelu Liu, the founder and Chief Executive Officer of the HungryPanda group.

13. The Claimants have also served, in accordance with the Court's order dated 22nd October 2024, an expert's report in respect of the calculation of their losses which forms the basis of the Claimants' claim for damages. The expert's report was prepared by Ms Katherine Hart who is a Chartered Accountant and a Managing Director in the Disputes, Investigations and Valuations team at Quantuma Advisory Limited.

14. I have reviewed the written evidence of the Claimants' factual and expert witnesses, but as they were not required to attend the trial, I have not heard their oral testimony.

15. As the Defendants did not appear at the trial, and I would add as they were not permitted to defend the proceedings, the Claimants are required to draw the attention of the Court to factual and legal points which have been referred to by the Defendants and points which might be to the benefit of the Defendants (*Braspetro Oil Services v FPSO Construction Inc* [2007] EWHC 1359 (Comm); [2007] 2 All ER (Comm) 924, para. 33, and *CMOC Sales v Persons Unknown* [2018] EWHC 2230 (Comm), para. 14).

The APA

16. Under the APA, the Claimants agreed to purchase, and the Defendants agreed to sell, the EASI Business, as a going concern, and the Assets of the Defendants.

17. The EASI Business was managed by an electronic platform, namely a "*front end*" accessed by customers, delivery drivers and restaurants and a "*back end*" of administration, management, and finance systems; the EASI Business held valuable

information in database form consisting of information about merchants (restaurants, etc), delivery drivers, and customers (Mr McGlade's first witness statement, para. 11).

18. According to Mr McGlade, the Claimants' purchase of the EASI Business was undertaken with a view to enable the Claimants' growth in the Australian market by combining two existing businesses. Prior to the APA, HungryPanda and EASI collectively serviced substantially all of the overseas Chinese food delivery market in Australia (Mr McGlade's first witness statement, para. 26). The Claimants sought to acquire the EASI Business at the time of the Covid-19 pandemic, as the EASI Business competed with the Claimants' own HungryPanda business in the Australian market (Mr McGlade's first witness statement, para. 26-28).

19. The APA defined the "*Business*" to mean:

> "*(a) all business activities carried on by the Sellers and any other member of the Sellers' Group on the date of this Agreement in Australia;*
>
> *(b) the online take-away food ordering service business carried on by the JV Entities and the Franchisees on the date of this Agreement in Australia; and*
>
> *(c) the online take-away food ordering service business carried on by the Sellers, any other member of the Sellers' Group, the JV Entities and the Franchisees on the date of this Agreement in the Target Countries other than Australia*"

20. According to Mr Kelu Liu in his first with statement, at para. 21, a large part of the EASI Business was conducted through franchisees and joint venture entities, operated by third-party stakeholders, which were provided with access to sections of the back-end of the EASI online platform, compartmentalised by region. Through such access, the franchisees and joint venture entities exercised operational control over the EASI Business in their exclusive territories, subject to the Defendants' overarching control as administrators of the back-end systems. The "*JV Entities and the Franchises*" were identified with their individual agreed values in Schedule 4 to the APA.

21. By clauses 2.1, 2.2, 9.2 and 10.2 of the APA, the Defendants agreed to transfer the legal and beneficial title to the Assets in two phases:

> (1) On the First Closing Date, on which the Defendants were to transfer to the Claimants the First Closing Assets (including certain Contracts, Goodwill, Books and Records, Business Information, Owned Business Intellectual Property Rights and Bank Accounts).
>
> (2) On the Second Closing Date, on which the Defendants were to transfer to the Claimants the Second Closing Assets (including IT Systems, "*IT Business IP and all Related Rights*", and the IT Contracts).

22. The IT Systems and the IT Business IP and all Related Rights which were to be transferred on the Second Closing Date were critical to the operation of the EASI Business and without them, the Claimants could not carry on that business. The "*IT Systems*" were defined to mean "*the Hardware, Software, networks, peripherals and*

other information technology equipment which in each case are used exclusively or predominantly in the operation of the Business, including the Merchant Hardware".

23. Clause 4.1 of the APA provided that:

> "*The Sellers undertake to the Purchasers that between the date of this Agreement and the Second Closing Date they will use their best endeavours to procure that:*
>
> *(a) one or more member of the Sellers' Group acquires full legal and beneficial title to the entire Franchise Business of each Franchisee prior to the Second Closing Date on an unconditional basis and on terms satisfactory to the Purchaser's Representative at its sole discretion; and*
>
> *(b) one or more member of the Sellers' Group acquires the full legal and beneficial interests in each JV Entity that are not already owned by a member of the Sellers' Group (the "JV Equity Interests") prior to the Second Closing Date on an unconditional basis and on terms satisfactory to the Purchasers' Representative at its sole discretion*."

24. Clause 17 of the APA provided for the transfer of specified employees and contractors of the Defendants to the Claimants.

25. Clause 18 of the APA contained warranties made by the Defendants which were set out in Schedule 5 to the APA, including warranties that "*The Sellers, the JV Entities and the Franchisees are, collectively, the legal and beneficial owner of each of the Assets with good and full title and all rights attaching to them*", that "*Each of the Assets has been and is being used exclusively or predominantly for the purpose of the Business*", and that "*The Assets comprise all the assets that are necessary for the full and effective continuation of the Business both as it is currently conducted and as it has been conducted in the twelve (12) months prior to the date of this Agreement*".

26. Clause 23 of the APA, being a series of (time-limited) non-competition provisions, prohibited the Defendants from competing with the EASI Business and from soliciting the custom of its customers and soliciting former employees. The central provision is clause 23.1:

> "*Each of the Sellers severally undertakes that it shall not and shall procure that each other member of the Sellers' Group (and in the case of (d) below, JV Entity or Franchisee) shall not, directly or indirectly, either alone or jointly with or as agent for any other person or in any capacity whatsoever …*
>
> *(a) neither pending nor within two (2) years following the Second Closing Date, carry on or be engaged or otherwise interested in, in each case directly or indirectly, any business which competes with the Business or any part of the Business … in the Target Countries, the Republic of South Korea, Singapore, France or Italy*."
>
> *(b) neither pending nor within three (3) years following the Second Closing Date, solicit the custom of any person who is or at any time during the two (2) years immediately preceding the Second Closing Date has been a*

customer or client of any member of the Sellers' Group, JV Entity or Franchisee in relation to the Business;

(c) neither pending nor within three (3) years following the Second Closing Date solicit or entice away any Assumed Employee or any person who was employed by any member of the Sellers' Group in the Business at any time during the twelve (12) months immediately preceding the Second Closing Date or employ any such person …"

(d) at any time after the First Closing Date (other than as permitted by Clause 23.4):

(i) use:

(A) the EASI Name Rights;

(B) any other trade, business or domain name or trade mark, logo or design that has previously been used in the Business; or

(C) any trade, business or domain name or trade mark, logo or design which is, in the opinion of the Purchasers, capable of being confused with any of the foregoing described in (A) or (B); or

(ii) challenge the validity or enforceability of any of the EASI Name Rights; or

*(e) assist or incite any other person to do any of the abo*ve."

27. The "*Target Countries*" referred to in clause 23.1(a) were defined in the APA to mean "*Australia, New Zealand, Japan, the United Kingdom, the United States of America and Canada*".

28. In the event, the First Closing Date was 25th October 2021 and the Second Closing Date was 14th December 2021.

29. Pursuant to clause 5 of the APA, by 15th December 2021 (the day after the Second Closing Date), the Claimants had paid to the Defendants approximately A$45.2 million in consideration for the purchase of the Defendants' Business and Assets under the APA. Under clause 5 of the APA, 90% of the Purchase Price was to be paid by the Second Closing Date. A further 10% - the Retention Amount - was to be paid by 14th June 2022, subject to any sums owing by the Defendants to the Claimants having been deducted in accordance with clause 6.

30. By clause 1.13 of the APA, the Defendants' obligations under the APA were joint and several. Clause 1.13 provided that "*Unless expressly provided otherwise, the provisions of this Agreement which relate to the Sellers (including the Warranties) are given and entered into by them jointly and severally*". However, clause 23 - which imposes the non-competition obligations - begins with the words "*Each of the Sellers severally undertakes …*". I interpret this to mean that any breach of the duties in clause 23 by the

any of the Defendants are not to be automatically attributed to another Defendant, at least where that other Defendant is not liable for a breach of duty under clause 23. I understand that the Claimants accepted that interpretation.

The Factual Chronology

31. On 15th October 2021, the APA was concluded.

32. The First Closing Date was 25th October 2021, which required the transfer of the First Closing Assets to the Claimants.

33. On the First Closing Date, the Claimants paid a portion of the purchase price less certain deductions in satisfaction of the First Closing Amount (A$27,042,000), and therefore acquired certain assets (excluding assets relating to the Franchisees and JV Entities), and assumed the employment of a number of transferring EASI employees and engaged a number of transferring contractors.

34. The Second Closing Date was originally 30th November 2021, but this was deferred to 14th December 2021. The Second Closing Assets included certain Critical Assets (identified by Mr Kelu Liu in his first witness statement, at para. 26):

    (1) "*Administrator accounts, passwords and authentication*", including login details to the network of administrative accounts with third-party service providers that, together, form the back-end management system of the EASI platform, which together provide control over the EASI platform. The transfer of authentication email addresses and phone numbers was necessary to ensure that the Defendants did not retain any power to change these usernames / passwords.

    (2) "*Software documentation*", comprising source-codes, technical documents and records relating to the software underlying the EASI platform, which were necessary for the Claimants to manage it on a day-to-day basis, once they have control of it via the first category above.

    (3) "*Software security protections*", which were the account details for any security-systems relating to the software used in the EASI platform (*e.g.* firewalls), which are again necessary for the Claimants to manage and use that software.

    (4) "*Social media accounts*", being the various accounts of the EASI Business on various social media networks, used to communicate with customers, merchants and drivers.

35. On 13th December 2021, the day before the Second Closing Date, the Claimants' Legal Counsel in Australia had circulated a revised list of items that the Defendants had to provide on or before the Second Closing Date.

36. At this point, Mr Peter Liu on behalf of the Defendants began to express apparent concerns about transferring these critical assets before the Claimants had made payment of the Second Closing Amount. During a conversation on 13th December 2021 between Mr Peter Liu and Ms Tina Sun, the Claimants' HR Manager in Australia, Mr Peter Liu proposed to deliver the assets, including "*the signed IP Assignment Deed and transfer IT Systems upon receipt of second closing payment*".

37. On the Second Closing Date, the Claimants paid a further A$18,164,216.91 in satisfaction of the Second Closing Amount, and acquired legal and beneficial title to the remaining assets of the EASI Business, including the critical back-end IT Systems which controlled the EASI platform, and the businesses and assets of the Franchisees and JV Entities acquired by the Defendants' Group between First and Second Closing Dates on terms satisfactory to the Claimants.

38. A number of the Defendants' Assets were not transferred and delivered to the Claimants by the Second Closing Date ("**the Withheld Assets**") (indeed, some of the Withheld Assets should have been delivered at the First Closing Date).

39. After receipt of payment of the Second Closing Amount, the Claimants chased for the transfer and delivery of the Withheld Assets and were assured by the Defendants that they would be transferred imminently. On 17th and 21st December 2021, Mr Peter Liu assured Mr Kelu Liu of the Claimants on a telephone call that the IT Systems would be transferred imminently.

40. As explained in Mr Kelu Liu's evidence (his first witness statement at para. 87-92), the Defendants still failed to deliver the Withheld Assets over the Christmas and New Year Period. During a telephone call on 10th or 11th January 2022, Mr Peter Liu informed Mr Kelu Liu of the Claimants that he wanted the Claimants to agree to make a number of additional concessions. The Claimants submit that Mr Peter Liu was using the Withheld Assets, that had not been transferred, as leverage. Mr Kelu Liu indicated that he would be willing to consider these concessions, provided that the IT Systems were transferred as they should have been pursuant to the APA without further delay. In response, Mr Peter Liu assured Mr Kelu Liu again that the IT Systems would be transferred immediately.

41. However, the Defendants continued in their failure to transfer the Withheld Assets.

42. On 10th January 2022, the Claimants made a public announcement of the acquisition of the EASI Business.

43. On 11th January 2022, EASI Australia issued the following press release:

> "*In view of the numerous expressions of doubt and concern that we have recently received from EASI franchisees, merchants, delivery personnel, and users regarding the strategic merger between EASI and HungryPanda, EASI hereby gives the following special statement:*
>
> *So far, the strategic merger between EASI and HungryPanda has not been completed. As a result, EASI is still operating independently in an orderly manner according to the principle of providing quality services to users, merchants, and delivery personnel.*
>
> *We would like to thank all EASI franchisees, merchants, delivery personnel, and users for your longstanding support. As always, EASI will do its best to serve you. Let us join hands to overcome the current crisis against the pandemic!*"

44. On the same day, 11th January 2022, the Defendants' legal representatives, Neo Legal, wrote to White & Case LLP, the Claimants' solicitors, alleging that the Claimants may

be in breach of the APA by reason of the premature announcement of the partnership between EASI and HungryPanda. Neo Legal concluded their letter by stating that:

> "*In light of this, and while our clients have not yet come to a decision, they are presently considering exercising their option to terminate the APA, or alternatively opening further negotiations to find mutually agreeable terms for a revised arrangement which benefits both parties*."

45. During this time, the Fantuan group ("**Fantuan**") was establishing a presence in Australia. Fantuan is the Claimants' largest global competitor in the Asian food-delivery market.

46. On 14th January 2022, Fantuan Australia Pty Ltd ("**Fantuan Australia**") was incorporated and, on 22nd January 2022, Fantuan Australia was registered for GST (the Australian equivalent of VAT). This much was known to the Claimants, but in January 2022, it was not known to the Claimants that the Defendants (other than the Second Defendant) and others had worked with Fantuan since November 2021 (after the APA was concluded) to establish Fantuan's Australian business using key assets sold under the APA, including in particular the Defendants' intellectual property.

47. The Claimants have since obtained from the Defendants, by reason of the Consent Order dated 22nd February 2022 (referred to below), a number of documents on which they rely in support of their case that the Defendants intended to transfer the EASI Business to Fantuan despite the fact that they had agreed to sell the EASI Business to the Claimants, in particular three documents dated 10th January 2022 ("**the JV Documents**"), which are pleaded in their Particulars of Claim. The JV Documents are as follows:

    (1) A Canadian company in the Fantuan group, Fan Tuan Holding Ltd ("**Fantuan Canada**"), and the Third Defendant concluded a Letter of Intent setting out what were described as "*non-binding understandings*" for the acquisition by Fantuan Canada of the EASI Business ("*all business activities carried out by the Seller and its related entities in Australia and other countries*") for the purchase price of A$55,000,000 plus 14% of outstanding common shares of Fantuan Canada. Those terms included and a provision that "*Key Employees*" will have entered into employment contracts with Fantuan and that the "*termination*" of the APA (para. 6(a) of the Letter of Intent). Mr Edwards KC on behalf of the Claimants showed me draft Letters of Intent dated 12th, 20th and 22nd December 2021 which identified the termination of the APA, albeit with an "*undisclosed purchaser*", as a condition of closing the proposed transaction. There was an earlier draft of the Letter of Intent dated 24th November 2021.

    (2) Fantuan Canada and the Third Defendant entered into a Side Letter Agreement under which Fantuan Canada agreed to "*reimburse*" 50% of the Third Defendant's expenses in the event that termination by the Third Defendant of the APA was challenged by the Claimants and 50% of the termination fees which the Defendants have to pay to the Claimants (being described as the undisclosed purchasers under the APA), although Fantuan Canada retained a discretion to accept or reject the amount of such fees.

(3) Fantuan Canada and P&L Group Holdings Pty Ltd entered into a Joint Venture Term Sheet in respect of the establishment of Fantuan Australia. That Term Sheet provided "*for the creation of a joint venture to operate and manage the online take-away food ordering services business in Australia, through a newly created corporation*" and for the contribution to the share capital of A$15,000,000 by each of Fantuan Canada and P&L Group Holdings Pty Ltd. The Claimants allege that P&L Group Holdings Pty Ltd is owned or controlled by the Defendants, through the registered shareholder Mr Bowen Wu (whose remuneration as a director and secretary was reported to be approximately A$21 per hour).

48. On 15th January 2022, there were further exchanges between Mr Peter Liu and Mr Kelu Liu, during which, according to Mr Kelu Liu's evidence, Mr Peter Liu proposed to "*keep*" certain assets, namely, the accounts, passwords and authentications in relation to the back-end IT Systems which, together, enabled him to continue to control the EASI platform "*in order to better implement*" the matters discussed on 11th January 2022. Mr Kelu Liu's evidence is that he understood this to mean that by retaining control of the IT Systems, Mr Peter Liu could unilaterally enforce the terms of the concessions he wanted from the Claimants. Mr Kelu Liu immediately demanded a meeting which took place an hour later, and at which Mr Kelu Liu reiterated that, provided that the IT Systems were delivered immediately, the Claimants remained prepared to discuss and agree the additional concessions Mr Peter Liu had demanded. At this point, Mr Peter Liu expressly refused to hand over the back-end IT systems controlling the EASI platform unless the Claimants first met his demands to renegotiate the APA. Mr Kelu Liu stated that "*Of course, in circumstances where Peter had refused to deliver the IT Systems having already received payments in excess of AU$ 45 million, there would have been no certainty that he would transfer these irrespective of whether we met any of his further demands*" (Mr Kelu Liu's first witness statement, para. 108).

49. On 4th February 2022, White & Case LLP on behalf of the Claimants issued a letter before action to EASI Australia.

50. On 16th February 2022, the Claimants commenced the present proceedings and applied for urgent interim injunctive relief, including an order requiring the Defendants to transfer the "*Critical Withheld Assets*", being the more important of the Withheld Assets. The Defendants served no evidence in response to that application.

51. The Claimants' injunction application was resolved by a Consent Order dated 22nd February 2022 made by Butcher, J, by which the Defendants undertook to transfer to the Claimants the Critical Withheld Assets (listed in the table scheduled to the Order) by 4.00 pm GMT on 23rd February 2022, and gave undertakings as to their conduct.

52. Following that Consent Order, the Critical Withheld Assets (but not all of the Withheld Assets) were transferred to the Claimants. That enabled the Claimants to take control of the EASI platform, two months after they were contractually entitled to have received all the Second Closing Assets.

53. Once the Claimants obtained control, it became apparent that very large volumes of material had been deleted, including about 81% of the data in EASI's Microsoft Exchange system (Mr McGlade's first witness statement, para. 13). Data recovery work then brought to light the fact that the Defendants had been working to establish the

competing Fantuan business in Australia since November 2021 (Mr McGlade's first witness statement, para. 14).

54. According to the Claimants' skeleton argument for trial,

> "*… The obvious conclusion is that this deletion of data represented an attempt to conceal what had been done in relation to Fantuan and/or further hinder the Claimants' ability to control and operate the EASI Business.*
>
> *In short, what the Claimants obtained was very different from what they were entitled to have received under the APA. Instead of the Claimants buying out the main competitor of HungryPanda in the Australian market, so leaving them able to combine the two businesses and obtain the benefit of the economies of scale without a major competitor, they found themselves first not in possession of the business they had bought and then, once they were in possession (albeit, even now, not in possession of all they were entitled to under the APA) found themselves facing a major new competitor in the Australian market which had "springboarded" its position using the EASI Business' intellectual property sold under the APA.*"

55. On 1st March 2022, following a test launch on 26th February 2022, Fantuan Australia launched. The Claimants have inferred that Fantuan Australia was then using EASI Business intellectual property and databases, which were not in the public domain, and individuals formerly employed in the EASI Business, because the databases included delivery driver and customer information and Fantuan Australia's network of delivery drivers included those who were in the EASI Delivery Driver database and many customers on the EASI platform reported receiving targeted personal advertisements directly from Fantuan Australia on Chinese-language social media platforms (Mr McGlade's first witness statement, para. 18-25).

56. Under the APA, the Retention Amount fell due for payment in June 2022 under clause 5.5(c) of the APA, unless the Claimants were entitled to make deductions in accordance with clause 6. As explained below, I understand that the Retention Amount was not paid and that the Defendants have not alleged that such payment was otherwise due.

The Defendants' Breaches of the APA

57. There are two broad categories of breach of the APA on which the Claimants rely in these proceedings, namely:

    (1) The Defendants' failure to deliver the Withheld Assets ("**the Withheld Assets**") required to be transferred at the Second Closing Date.

    (2) The First, Third and Fourth Defendants' active involvement in the establishment and development of a competing operation by the Fantuan in Australia and the Defendants' responsibility for the same. In addition, each of the Defendants, including the Second Defendant, indirectly carried on and been engaged with businesses that compete with the EASI Business and failed to procure that no other member of the "*Sellers' Group*" shall carry on or be engaged with or otherwise interested in businesses competing with the EASI Business.

58. In their skeleton argument for trial, the Claimants submitted that the Defendants have not sought to dispute the Claimants' central factual allegations. This is notwithstanding the Defendants' active participation in a number of interlocutory hearings in these proceedings.

59. However, as mentioned above, immediately prior to the commencement of the trial, the First and Third Defendants served a witness statement of Mr Peter Liu dated 12th May 2025 (in support of an application for relief from sanctions). In that witness statement, Mr Peter Liu said that "*The Defendants maintain that they have a meritorious defence to the claim, which involves complex issues of fact and quantum*". I will return to the Defendants' position below.

The Defendants' failure to deliver the Withheld Assets

60. The Claimants contend that the Defendants breached the APA by failing to deliver the Withheld Assets at the Second Closing Date, although the Defendants eventually delivered the Critical Withheld Assets in February 2022 once the Claimants issued the current proceedings and applied for an injunction, in accordance with the undertakings which the Defendants gave to resolve the Claimants' injunction application.

61. At the Second Closing Date (14th December 2021), in breach of the APA for which no justification has ever been advanced, the Defendants failed to deliver the Withheld Assets (including, in particular, the critical back-end IT Systems which control the EASI platform) they were contractually obliged to deliver (Mr McGlade's first witness statement, para. 12). The Defendants had provided the Claimants with "*user accounts*" which enabled the Claimants to access the back-end management and finance systems of the EASI platform, together with joint access to the main operating bank accounts, which allowed some visibility over business data, and the ability to make limited operational changes. However, the Defendants did not transfer to the Claimants the IT Systems; the retention of those assets gave the Defendants complete control over the EASI platform. Until February 2022, the Defendants used that control in various ways which prejudiced the Claimants, including removing the Claimants' access to the EASI platform entirely by disabling the user accounts previously provided (Mr Kelu Liu's first witness statement, para. 28-30). The result of this was that the Claimants were unable to operate the EASI Business they had acquired (Mr Kelu Liu's first witness statement, para. 30; Mr McGlade's first witness statement, para. 12).

62. After the Defendants complied with the undertakings given by them as recorded in the order of Butcher, J dated 22nd February 2022, the Claimants were able to obtain control of the EASI Business from 26th February 2022, although they still had not received all of the Withheld Assets. The Claimants therefore did not have control of the EASI Business for over two months after the Second Closing Date. During that period, order volumes fell by more than 30% in respect of the EASI Business and 60% of employees left and contractors resigned (Mr Kelu Liu's first witness statement, para. 8(b), 36).

63. At para. 37 of his first witness statement, Mr Kelu Liu said:

> "*I believe that both the fall in order volumes, and the departure of employees are at least partly the result of HungryPanda being unable to exercise any control over the IT Systems, as I have described. However, whether or not that is so – as a result of the Sellers' continued withholding of the IT Systems necessary to control the Business, HungryPanda is unable to do anything to remedy the*

> *situation, or to preserve the Goodwill of the Business it has acquired, let alone transition it into the HungryPanda brand as intended*."

64. With the benefit of this evidence, I am satisfied that the Defendants failed to deliver the Withheld Assets to the Claimants by the Second Closing Date on 14th December 2021 in breach of their obligations under the APA.

The Defendants' participation in the development of Fantuan's Australian operations

65. The Claimants contend that the Defendants breached their non-competition obligations under the APA in that:

    (1) The Fourth Defendant failed to deliver the IT key assets to the Claimants and used the software, intellectual property, etc, in question to develop Fantuan's systems for launch in Australia.

    (2) The First and Third Defendants were involved in the establishment of the Fantuan's Australian operation.

    (3) Each of the Defendants, including the Second Defendant, indirectly carried on and been engaged with businesses that compete with the EASI Business and failed to procure that no other member of the "*Sellers' Group*" shall carry on or be engaged with or otherwise interested in businesses competing with the EASI Business.

66. Fantuan is the Claimants' largest global competitor in the Asian food-delivery market (Mr Kelu Liu's first witness statement, para. 39). One of the companies in the Fantuan group is Fantuan Canada.

67. By the time the Claimants issued the current proceedings, they discovered that Fantuan appeared to be moving into the Australian market. Fantuan Australia was incorporated on 14th January 2022 and registered for GST on 22nd January 2022.

68. Following the Court's order dated 22nd February 2022 and the data recovery which this enabled, it became clear to the Claimants that Fantuan's entry into the Australian market was not mere chance. Instead, the Defendants and others had worked with Fantuan since November 2021 (after the APA was concluded) to establish Fantuan's Australian business using key assets sold to the Claimants under the APA, including in particular valuable intellectual property. This, argue the Claimants, was done by the Defendants deliberately and cynically failing to deliver the Withheld Assets to the Claimants at the Second Closing Date under the APA, thereby giving the newly-established Fantuan Australian business a substantial competitive advantage.

69. The Claimants' case that the Defendants intended to transfer the EASI Business to Fantuan despite the fact that they had agreed to sell the EASI Business to the Claimants is supported by the JV Documents dated 10th January 2022 and data recovered once the Claimants received the Critical Withheld Assets in February 2022 and other sources of information.

70. In late December 2021 to early January 2022, the EASI Key Employees resigned their employment from HungryPanda. The Claimants' case is that it is to be inferred that each of the said individuals has been or is currently employed by or contracted to

provide services to an entity in the Defendants' Group and providing services to the Defendants or Fantuan Australia. In total, 69 of the 93 employees and contractors who had commenced employment or engagement with the Claimants on the First Closing Date (including the EASI Key Employees) have resigned between 22nd November 2021 and 16th February 2022. The list of the EASI Key Employees is set out in Annex II to the Claimants' Particulars of Claim.

71. In my judgment, based on the evidence referred to above and the non-delivery of the Withheld Assets in December 2021, the Defendants' conduct was in breach of clause 23 of the APA.

The Claimants' Claim

72. In my judgment, the evidence plainly establishes that the Defendants breached the APA, in particular clauses 2.1, 2.2, 9.2 and 10.2, by failing to deliver the Withheld Assets on the Second Closing Date (albeit the Critical Withheld Assets were subsequently transferred in February 2022) and that the Defendants breached the non-competition provisions of the APA, in particular clause 23, by their active involvement in the establishment and development of a competing operation by Fantuan in Australia, and their engagement with businesses that competed with the EASI Business and failure to procure that no other member of the "*Sellers' Group*" would carry on or be engaged with or otherwise interested in businesses competing with the EASI Business.

73. In their Particulars of Claim, the Claimants sought a number of remedies, including specific performance of the Defendants' obligation to deliver certain assets under the APA, injunctive relief, damages for breach of the APA, and damages for unlawful means conspiracy.

74. However, in accordance with the confirmation made by the Claimants recorded in the Court's order dated 22nd October 2024 that they would limit their claim to the claim for damages for breach of contract set out in paragraph 160 of the Particulars of Claim, the Claimants have now confined their claim for damages based on the loss of profits for the period from the date of the breach of the APA until 31st December 2022.

75. The claim for loss of profits is based on the difference between (a) the profit the Claimants in fact made over that period and (b) the profit which would have been made by the Claimants over that year had the Defendants not committed the breaches of the APA which they did commit. The latter element is necessarily hypothetical (Kramer, *The Law of Contract Damages* (2nd ed., 2017), at para 1-43).

76. The Claimants submit that in approaching the hypothetical question, the "*fair wind*" principle applies and rely on Kramer, *The Law of Contract Damages* (2nd ed., 2017), at para 13-03:

> "*… it falls on the defendant to prove that the loss would not have occurred but for the breach. This is something described by the maxim 'omnia praesumuntus contra spoliatorem' - everything is presumed against the wrongdoer – but that probably goes too far. In practice, the principle gives a fair wind not a free ride, and only has real traction where the question is as to what third parties would have done or what profits would have been made, not what the claimant or the defendant would have done*."

77. Further, the Court is to be assumed that the defaulting party would have performed its contractual obligations in good faith. As explained by the Court of Appeal in *Durham Tees Valley Airport Ltd v Bmibaby Ltd* [2010] EWCA Civ 485, [2011] 1 Lloyd's Rep 68, para. 79:

> "*The court … has to conduct a factual inquiry as to how the contract would have been performed had it not been repudiated. Its performance is the only counter-factual assumption in the exercise. On the basis of that premise, the court has to look at the relevant economic and other surrounding circumstances to decide on the level of performance which the defendant would have adopted. The judge conducting the assessment must assume that the defendant would not have acted outside the terms of the contract and would have performed it in his own interests having regard to the relevant factors prevailing at the time. But the court is not required to make assumptions that the defaulting party would have acted uncommercially merely in order to spite the claimant. To that extent, the parties are to be assumed to have acted in good faith although with their own commercial interests very much in mind*."

78. The calculation of damages is based on comparing what profits were in fact earned by the Claimants from 14th December 2021 (the Second Closing Date) to 31st December 2022 and what profits would have been earned by the Claimants for the same period:

(1) Had the Defendants transferred to the Claimants the Withheld Assets on the Second Closing Date.

(2) Had the Claimants not faced the competition from Fantuan by means of a breach of the APA.

79. The Claimants submit that the best evidence for the counter-factual is derived from the budget prepared by the Claimants for the combined HungryPanda/EASI Business for the 2022 year on the assumption that the APA would be complied with. According to Mr McGlade, the Claimants' budget for 2022 was prepared in December 2021 and prior to the Defendants' failures to deliver the various assets and was prepared on the basis that the Defendants would comply with the obligations set out within the APA and that the Claimants would subsequently generate growth on the combined EASI and HungryPanda performance in 2021 (Mr McGlade's first witness statement, para. 38).

80. The Claimants have relied on the expert evidence of Ms Katherine Hart. In her report dated 8th April 2024, Ms Hart considered the Claimants' 2022 budget but observed that there were differences between the nature of costs reported within the Claimants' financial results and those reported within budgets prepared by management, in particular the following categories of costs were not factored into the budget (a) interest paid or received, (b) depreciation, (c) gain/loss on sale of assets, and (d) foreign currency exchange.

81. Having made the requisite adjustments, Ms Hart collated and summarised the Claimants' 2021 Profit and Loss statement and 2021 EASI Profit and Loss statement and a summary of 2021 sales (before discounts) in comparison to the 2022 Budget and information reported in the 2022 Trial Balances, showing that the Claimants' actual performance was significantly below budgeted levels in 2022. Ms Hart also carried out a comparison of the 2022 budget and the 2023 budget. Ms Hart concluded that:

> "*In light of (1) my understanding as to the reasons behind the budgeted growth and subsequent departure from budget along with (2) my review of the 2023 HP Budget compared with actual results, and in the absence of any other information, I have relied on the 2022 HP Budget as being a reasonable indicator of HP's performance had EASI complied with the terms of the APA*."

82. Ms Hart then set out her calculation of the Claimants' loss of profit during the year ended 31st December 2022 in the sum of A$24.6 million, or more precisely A$24,554,204, being the budgeted pre-tax profit of A$25.9 million (more precisely, A$25,878,534), less adjusted actual pre-tax profits of A$1.3 million (more precisely, A$1,324,330). Although the breaches of contract occurred during late 2021, the calculation of damages for the purposes of these proceedings is taken from 1st January 2022.

83. I am satisfied therefore that the damages sustained by the Claimants by reason of the Defendants' breaches of the APA are to be assessed in the amount of A$24,554,204.

84. I would observe however that in awarding these damages, there has been no quantification, separately, of each of the two broad categories of breach of contract relied on by the Claimants. However, as each of the Defendants' liability has been established in respect of both categories of breach, there are no difficult questions which would require having to apportion loss between the two categories of breach. Instead, damages have been calculated on an aggregate basis for both breaches of contract.

Points which might be made in the Defendants' favour

85. The Defendants have not served a Defence. Accordingly, it is not clear what parts of the Claimants' case they might dispute.

86. As mentioned above, immediately prior to the commencement of the trial, the First and Third Defendants served a witness statement of Mr Peter Liu dated 12th May 2025 (in support of an application for relief from sanctions), stating that they had a "*meritorious defence*" to the claim. In that witness statement, Mr Peter Liu referred to the Defendants' case that:

    (1) The Claimants did not fulfil their contractual obligations fully under the APA and have not paid A$10 million to the Defendants, which remains outstanding.

    (2) The Defendants have fulfilled all their contractual obligations under the APA, and therefore, dispute their liability for any losses alleged by the Claimants. In the event that any liability is established, there should be a set-off of A$10 million.

    (3) On or around 20th September 2022, when the parties were attempting settlement negotiations, the CEO of HungryPanda, Mr Kelu Liu, expressly communicated to Mr Peter Liu that a settlement had been reached and there should not be any further proceedings against the Defendants.

87. In accordance with their duty, in circumstances where the Defendants do not appear at trial, the Claimants have identified the following points which the Defendants have made or might make.

88. First, the Defendants have at various points during the interlocutory hearings and in Mr Peter Liu's latest witness statement suggested that the Claimants have not paid all that they ought to have been paid under the APA. By 15th December 2021, the Defendants received A$45.2 million under the APA.

89. I note that a Retention Amount was due to be paid pursuant to clause 5.5(c) of the APA, unless the Claimants were entitled to make deductions in accordance with clause 6. I have seen no evidence as to the parties' position under this provision. DLA Piper UK LLP on behalf of the Defendants stated in a letter dated 6th June 2022 that the Retention Amount was A$5,500,000. I have seen no evidence that such a sum was owing whether because it was not paid or because there was no legitimate deduction. Indeed, the Defendants allege that A$10,000,000 has not been paid, an amount which does not tally with the Retention Amount.

90. With the benefit of post-trial written submissions, which I invited the Claimants to make, I understand that the Retention Amount was not paid, and that the Claimants do not contend that a Repayment Amount fell to be deducted from the Retention Amount.

91. The Defendants have not, however, sought to provide a calculation of what they in fact received and have not advanced a set-off by way of defence. Indeed, the Defendants are debarred from advancing such a defence. In circumstances where no claim has been advanced or articulated by the Defendants, I do not see that this is a matter to which I can give credence or which I can take into account. In any case, there is no evidence of any failure on the part of the Claimants to pay the consideration due under the APA.

92. Second, the Defendants requested further information in relation to paragraph 160 of the Particulars of Claim, which forms the basis of the Claimants' claim which I am asked to consider, in particular "*full and proper particulars of all heads of loss and damage claimed in respect of the alleged breaches of the APA*". The Court's order dated 1st November 2022 required the Claimants to identify all heads of loss claimed and to confirm that no other heads of loss are currently claimed. The Claimants have confirmed that they are claiming only damages for loss of profits over a comparatively short period (one year) as set out in the calculations in Ms Hart's report. I do not see this as a reason to disturb the findings I have made.

93. Third, the Defendants might argue that the Claimants' factual account should be rejected in some way. However, the Defendants have not advanced an account of their own and have not required the Claimants' witnesses to attend to give oral evidence. Indeed, I proceed only on the basis of the evidence before me. There is, therefore, no scope for the Defendants taking issue with the Claimants' factual evidence and the documentary evidence.

94. Fourth, in relation to damages, the Defendants might suggest that the combined HungryPanda/EASI Business budget is not an appropriate starting point for the calculation of damages, but where the Defendants have advanced no alternative methodology or calculation and have made no attempt to engage with the budget, I am satisfied that the Claimants' budget is a reliable basis on which to calculate their damages, in reliance on Ms Hart's expert evidence explaining its relevance.

95. Fifth, there has been a general denial in Mr Peter Liu's witness statement dated 13th May 2025 of the Defendants' liability to the Claimants. However, Mr Peter Liu

provided no explanation for this position. I am unable to give this any weight in my assessment of the claim.

96. Sixth, Mr Peter Liu referred to the fact that the Claimants referred to a settlement of their claim. However, this allegation has not been articulated in any way, and I am unable to accept that the Defendants could establish that such a settlement had been agreed. Further, Mr Edwards KC on behalf of the Claimants referred to clause 32 of the APA, which provides that "*No variation or restatement of this Agreement shall be effective unless in writing and signed by or on behalf of the Parties*", and submitted that there had been no such variation of the APA made in writing.

97. Seventh, it might be argued by the Second Defendant that his liability for breach of clause 23 - namely, the indirect involvement in a competing business and/or the failure to procure other members of the "Sellers' Group" not to engage in competing businesses - is not an absolute obligation, but one based on a failure to exercise reasonable steps. That, however, is not supported by a plain reading of clause 23 (*Gallaher International Ltd v Tlais Enterprises Ltd* [2008] EWHC 804 (Comm), para. 593-595).

98. None of the above points which have been relied on or which might have been relied on by the Defendants affect my conclusion that there have been breaches of the APA by the Defendants and that the Claimants are accordingly entitled to damages in respect of their losses caused by such breaches.

Conclusion

99. For the reasons explained above, I am satisfied that the Claimants have proved their entitlement to an award of damages against the Defendants for the breach of the APA in the sum of A$24,554,204.

1. I will address consequential issues of interest and costs upon receiving further submissions.