

UK purchasers of certain Apple and Samsung smartphones since 1 October 2015 could benefit from a proposed claim

This amended notice has been issued at the direction of the Competition Appeal Tribunal and supplements the original notice dated 11 November 2021

- A proposed collective opt-out claim against Qualcomm Incorporated (“**Qualcomm**”) has been filed with the Competition Appeal Tribunal (“**Tribunal**”) by the Consumers’ Association (“**Which?**”) (the proposed class representative) on behalf of a proposed class of individuals who it is alleged have suffered losses due to Qualcomm’s conduct.
- The Consumer Rights Act 2015 allows collective proceedings to be brought on behalf of a group or groups of persons who are alleged to have suffered loss as a result of unlawful anticompetitive conduct. For collective proceedings to be brought, the Tribunal must first make a collective proceedings order (a “**CPO**”) authorising a person to act as a representative of the class and certifying the claims as eligible for inclusion in collective proceedings.
- The proposed claim alleges that Qualcomm breached UK/EU competition law by abusing its dominance in the markets for the supply of certain chipsets used in smartphones and the markets for the licensing of its associated standard essential patents. Which? says that Qualcomm adopted an anticompetitive strategy which allowed it to charge smartphone manufacturers inflated royalties, and that these costs were passed on to consumers when they paid for their smartphones.
- At a hearing scheduled to commence on **30 March 2022 at 10:30am**, the Tribunal will hear arguments as to whether Which? can be authorised to act as the class representative and whether the claims Which? is bringing can proceed on behalf of the proposed class.
- The proposed class includes all **Consumers** who **purchased** one or more **Affected Products** in the United Kingdom during the **Relevant Period**.
- On 5 January 2022, the Tribunal gave permission for the proposed class to be amended to include certain Consumers that have died since the date of their purchase. The changes made to the definition of a “Consumer” are set out in the Notes section below (the amendments to the class definition which were permitted by the Tribunal are underlined).
- These changes, which take effect from 24 December 2021, mean that the proposed class will now include the representatives of deceased Consumers:
 - (i) who purchased an Affected Product *on or after* 24 December 2015 and died on or before the date when the claim was issued on 18 February 2021; and
 - (ii) who purchased an Affected Product *on or after* 1 October 2015 but have died *since* the claim was issued on 18 February 2021.
- Consumers who purchased an Affected Product before 24 December 2015 and died on or before 18 February 2021 are not included in the proposed class.

Notes

“Consumers” means natural persons who purchased Affected Products other than wholly for business use. Where a consumer has died since the date of Purchase, the representative of his or her estate is considered to be a Consumer for the purposes of this definition.

For the avoidance of doubt, any consumer who died on or before 18 February 2021 and whose purchases of Affected Products all pre-date 24 December 2015 shall not form part of the Class.

“Affected Products” are LTE-enabled smartphone models included on the list in Annex B to this notice, or any subsequent LTE-enabled smartphone models (excluding 5G/5G NR-enabled models) manufactured by, for, or on behalf of Apple Inc. or Samsung Electronics Co. Limited or any member of their respective corporate groups.”

“Relevant Period” means the period between 1 October 2015 and the date of final judgment or earlier settlement of this claim.

“Purchase” means paying, or incurring a liability to pay, or providing reimbursement for, or incurring a liability to provide reimbursement for, all or part of the purchase price of an Affected Product. For the avoidance of doubt, this:

- (i) includes both payments for an Affected Product made or liable to be made in one single amount or by instalments, and payments made or liable to be made in respect of a bundled mobile communications contract including the supply of voice and/or data telecommunications services with an Affected Product; but*
 - (ii) excludes purchases of second-hand and refurbished Affected Products; and*
 - (iii) excludes purchases where the Affected Products were delivered outside the United Kingdom.*
- The hearing scheduled to commence on **30 March 2022 at 10:30am** where the Tribunal will hear arguments as to whether the proposed collective proceedings can go ahead will last for two days (with one day in reserve) and will take place at the Competition Appeal Tribunal, Salisbury Square House, 8 Salisbury Square, London EC4Y 8AP. However, if circumstances require, it will be held virtually. In either case, the hearing may be followed via the Tribunal’s website (a “Watch now” link to view the hearing will appear on the hearing date under the Diary list on the following pages: <https://www.catribunal.org.uk/> and <https://www.catribunal.org.uk/diary>).

YOUR LEGAL RIGHTS AND OPTIONS NOW	
OBJECT TO THE APPLICATION OR THE CLASS REPRESENTATIVE	<p>Any representatives of deceased Consumers who have now been included as class members as a result of the amendments made to the proposed class definition on 5 January 2022 may object to the application for a CPO, or the authorisation of the proposed class representative, by stating their reasons for objecting in writing to be received by the Tribunal by 8 February 2022 at 4pm. For further details, see Question 8 below.</p> <p>The deadline for any other person with an interest (including any other proposed class member) to object to the application for a CPO, or the authorisation of the proposed class representative, expired on 7 January 2022 at 4pm.</p>

APPLY TO MAKE ORAL / WRITTEN SUBMISSIONS TO THE TRIBUNAL	<p>Any representatives of deceased Consumers who have now been included as class members as a result of the amendment made to the proposed class definition on 5 January 2022, may apply to the Tribunal for permission to make oral submissions at the hearing commencing on 30 March 2022. Any such application must be made in writing, supported by reasons, and received by the Tribunal by 8 February 2022 at 4pm.</p> <p>The deadline for any other person with an interest (including any proposed class member) to apply to the Tribunal for permission to make oral submissions at the hearing commencing on 30 March 2022 expired on 7 January 2022 at 4pm.</p>
FURTHER INFORMATION	<p>To learn more about the application to bring the proposed claim, visit www.smartphoneclaim.co.uk and/or www.catribunal.org.uk/cases/13827721-consumers-association.</p>

GENERAL INFORMATION

1. Why has this amended notice been issued?

The Tribunal has issued directions for a hearing to be held (see the Order at Annex A(1)), to determine whether a CPO should be made, which is scheduled to commence on **30 March 2022**. It also directed that this notice be issued ahead of the hearing to seek the views of any interested persons.

The CPO application asks the Tribunal to: (i) approve the claim as suitable to proceed as a collective claim on behalf of eligible UK class members; and (ii) approve Which? as the class representative. This amended notice has been issued to inform any representatives of deceased Consumers, who have now been included as class members as a result of the amendment made to the proposed class definition on 5 January 2022, of their right to object to the CPO application or the authorisation of the proposed class representative. Please read this amended notice carefully.

2. What is the Competition Appeal Tribunal?

The Competition Appeal Tribunal is a specialist court based in London that hears cases concerning the application of UK/EU competition law, including by way of collective proceedings. The Tribunal publishes its Rules and Guidance, together with information about what it does and details of its on-going cases, on its website www.catribunal.org.uk.

3. Who is the claim against?

The proposed claim is against Qualcomm. Qualcomm is a US-based technology company which manufactures LTE baseband chipsets that are found in smartphones and licences certain intellectual property to smartphone manufacturers.

The chipsets enable a smartphone to connect to the 4G cellular network. Qualcomm also owns a number of patents relevant to 4G (and other) technology – some of those patents have been deemed ‘essential’ to the 4G standard (so-called ‘standard essential patents’) and for the operation of Qualcomm’s chipsets.

4. What did Qualcomm do wrong? What are the claims?

Which? is alleging that Qualcomm breached EU and UK competition law by abusing its dominant position. Which? says that Qualcomm adopted an anti-competitive strategy comprised of a number of mutually reinforcing harmful and unlawful practices, which resulted in Qualcomm being able to charge smartphone manufacturers higher royalty prices than would have been the case had Qualcomm behaved lawfully. Which? says that those extra costs were ultimately borne by consumers, who paid more for their smartphones than they should have done absent Qualcomm’s anti-competitive conduct.

5. Who is the proposed class representative?

The CPO application requests that Which? be authorised to act as the class representative for the proposed claim.

Which? is the UK’s largest independent, non-profit consumer advocacy organisation. Which? have been championing consumers’ rights for more than 60 years by testing products, publishing product reviews and pushing companies to improve their standards and practices.

As the proposed class representative, Which? would conduct the claim against Qualcomm on behalf of all eligible class members (except for those who decide to opt-out of the class). Which? would instruct the lawyers and experts, make decisions on the conduct of the claim and, in particular, decide whether to present any offer of settlement that Qualcomm may make to the Tribunal for its approval. The Tribunal will judge Which?'s suitability to act as the proposed class representative.

Which? is responsible for communicating with and updating the class members on the conduct of the case and for issuing formal notices, such as this amended notice. Updates about the claim will be available on the website www.smartphoneclaim.co.uk, through the media and on social media.

For more information on Which?, please see Which?'s website www.which.co.uk.

WHAT DOES THE COLLECTIVE PROCEEDINGS ORDER APPLICATION ASK FOR?

6. Who would be in the proposed class?

The Consumer Rights Act 2015 allows for a collective claim to be brought on behalf of a group of individuals. The group is the “class” and all individuals within the group are “class members.”

The CPO application asks the Tribunal to allow the proposed claim to proceed on an “opt-out” basis on behalf of all eligible consumers who, since 1 October 2015, purchased in the United Kingdom one or more LTE-enabled smartphone models included on the list in Annex B to this amended notice, or any subsequent LTE-enabled smartphone models (excluding 5G/5G NR-enabled models) manufactured by, for, or on behalf of Apple Inc. or Samsung Electronics Co. Limited or any member of their respective corporate groups.

The proposed class was amended by Order of the Tribunal on 5 January 2022, to include the representatives of certain deceased Consumers (see the Order at Annex A(2)). The amendment, which takes effect from 24 December 2021:

- (i) includes, as members of the proposed class, the representatives of deceased Consumers who purchased an Affected Product on or after 24 December 2015 but died on or before the date of issue of the proposed claim on 18 February 2021; and
- (ii) substitutes, as members of the proposed class, the representatives of deceased Consumers who qualified as class members due to their purchase of an Affected Product during the Relevant Period, but who have died since the proposed claim was issued on 18 February 2021.

For the avoidance of doubt, Consumers who purchased an Affected Product before 24 December 2015 but died on or before 18 February 2021 are not included in the proposed claim and their representatives have not been added as members of the Class.

Further details regarding the requirements for eligibility as class members (and any applicable exclusions) can be found on the website set up by Which? at www.smartphoneclaim.co.uk

Purchases of smartphones that were wholly for business use, second-hand purchases and purchases of refurbished smartphones are excluded from the proposed class, as are purchases that were delivered outside the United Kingdom.

“Opt-out” means that anyone who meets the class definition will be included in the claim automatically and be bound by the result, unless they expressly ask to ‘opt-out’.

7. How much money does the claim ask for?

The proposed claim seeks compensation for all those within the proposed class who have been affected by Qualcomm's allegedly anti-competitive behaviour. The total sought is around £482.5 million, including interest. If the claim is successful, all persons who have an eligible claim will be able to seek a payment of the damages awarded.

As it stands and on the basis of the information currently available, we estimate that eligible consumers may be due between approximately £5 and £30. This amount may increase or decrease depending on the model(s) and number of smartphone(s) purchased since 1 October 2015. You can visit www.smartphoneclaim.co.uk for further information.

HOW TO OBJECT TO THE COLLECTIVE PROCEEDINGS ORDER APPLICATION OR TO THE CLASS REPRESENTATIVE

8. Who can object and what can I object to?

Any representatives of deceased Consumers who have now been added or substituted as class members as a result of the amendment made to the proposed class definition on 5 January 2022 may object to the Collective Proceedings Order application or the authorisation of the proposed class representative. You should review the information above and visit both www.smartphoneclaim.co.uk and <https://www.catribunal.org.uk/cases/13827721-consumers-association> for information.

If you wish to file an objection, you must write to the Tribunal stating your reasons for objecting and send it by post **so it is received no later than 8 February 2022 at 4pm**, to the following address:

The Registrar
Competition Appeal Tribunal
Salisbury Square House
8 Salisbury Square
London EC4Y 8AP
www.catribunal.org.uk

When writing to the Tribunal you must include the reference *Consumers' Association v Qualcomm Incorporated* and Case No. 1382/7/7/21.

Any representatives of deceased Consumers who have now been added or substituted as class members as a result of the amendment made to the proposed class definition on 5 January 2022 can apply to the Tribunal for permission to make written and/or oral submissions at the hearing commencing on **30 March 2022**. Any such application must be made in writing, supported by reasons, and sent by post **so it is received no later than 8 February 2022 at 4pm**, to the address above.

GETTING MORE INFORMATION

9. How can I stay updated on the progress of the claim?

You can visit www.smartphoneclaim.co.uk for periodic updates on the claim.

ANNEX A(1)



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1382/7/7/21

BETWEEN:

CONSUMERS' ASSOCIATION

Applicant/Proposed Class Representative

- v -

QUALCOMM INCORPORATED

Respondent/Proposed Defendant

ORDER

UPON reading the application by the Proposed Class Representative for a Collective Proceedings Order pursuant to section 47B of the Competition Act 1998 and Rule 75 of the Competition Appeal Tribunal Rules 2015 (the “Tribunal Rules”) filed on 18 February 2021 (the “CPO Application”)

AND UPON reading the application by the Proposed Defendant pursuant to Rule 34 of the Tribunal Rules to dispute the Tribunal’s jurisdiction filed on 25 May 2021 (the “Jurisdiction Challenge Application”)

AND UPON the Proposed Defendant withdrawing the Jurisdiction Challenge Application

AND UPON reading the written submissions of the parties filed in advance of a case management conference (“CMC”)

AND UPON hearing Leading Counsel for the parties at a CMC held remotely on 9 November 2021

IT IS ORDERED THAT:

Forum

1. Pursuant to Rules 18, 52 and 74 of the Tribunal Rules, the CPO Application is to be treated as proceedings in England and Wales.

Confidentiality

2. The Parties shall liaise and agree the terms of a confidentiality ring and shall file an agreed draft order to the Tribunal by 4 pm on 3 December 2021. In the event that the parties cannot reach agreement, they shall file a composite draft showing the areas of agreement and disagreement for the Tribunal to determine on the papers.

Publicity

3. The Proposed Class Representative shall publicise the CPO Application by 15 November 2021 according to the proposal set out in paragraphs 5.28-5.31 and Annexure D (as amended by the Tribunal) of the Notice and Administration Plan (contained in the Litigation Plan) that is exhibited to the First Witness Statement of Charmian Averty at [CA-1/77-170 at 116-117 and 158-164].
4. The Proposed Class Representative shall publicise by 15 November 2021, in accordance with paragraphs 3 and 9 of this Order, the right under Rule 76(10)(c) of persons with an interest to object to the CPO Application or the authorisation of the Proposed Class Representative.
5. The Proposed Class Representative shall publicise by 15 November 2021, in accordance with paragraphs 3 and 10 of this Order, the right under Rule 79(5) of members of the proposed class to make an application to the Tribunal for permission to make oral submissions at the hearing of the CPO Application.

Response and replies to the CPO Application

6. The Proposed Defendant shall file and serve its response to the CPO Application, and any application for summary judgment and/or strike out of all

or part of the proposed collective proceedings, together with any accompanying factual and expert evidence, by 4pm on 22 December 2021.

7. The Proposed Class Representative shall file and serve any reply to the Proposed Defendant's response to the CPO Application, and any reply to any application for summary judgment and/or strike out, together with any accompanying factual and expert evidence, by 4pm on 11 February 2022.
8. Any strike-out/summary judgment application shall be case managed alongside, listed and heard at the same hearing as the CPO Application.

Objections to the CPO Application and applications for permission to make observations

9. Any person with an interest (including any member of the proposed class) may object to the CPO Application or the authorisation of the Proposed Class Representative by writing to the Tribunal stating their reasons for objecting by 4pm on 7 January 2022.
10. Any person with an interest (including any member of the proposed class) who seeks permission to make written and/or oral observations at the CPO Application hearing is to make such application, supported by reasons, to the Tribunal by 4pm on 7 January 2022.

Hearing

11. The parties shall liaise with the Tribunal Registry to fix a date for a pre-hearing review, which shall be listed for half a day, to be vacated if not needed.
12. The hearing of the CPO Application shall be listed for 30-31 March 2022, with a time estimate of 2 days (with 1 April 2022 held over in reserve).
13. The hearing shall take place in person before the Tribunal but the Tribunal may, if necessary, consider holding it virtually if circumstances require.

14. The parties shall seek to agree the hearing and authorities bundles in accordance with the Tribunal's Guide to Proceedings 2015 and Practice Direction of 25 February 2021. The parties shall file the agreed hearing bundles in electronic form and six copies of a hard copy agreed core hearing bundle by 4pm on 16 March 2022. The parties shall file the agreed authorities bundle in electronic form by 4pm on 23 March 2022. The hard copy core bundle shall be limited to a single lever arch file (printed double-sided).
15. The parties are to file and exchange skeleton arguments by 4pm on 18 March 2022.
16. The parties shall inform the Tribunal in advance if they intend to engage the services of an external document management platform and/or transcription provider for the hearing.

Costs

17. The Proposed Defendant shall pay, within 28 days of the date of this Order, the Proposed Class Representative's costs of responding to the Jurisdiction Challenge Application, which have been agreed in the sum of £220,000, inclusive of VAT.
18. The parties have agreed that 25% of the Proposed Class Representative's solicitors' fees, 25% of the Proposed Class Representative's counsels' fees, and 100% of the Proposed Class Representative's expert's fees as set out in the Proposed Class Representative's Schedule of Costs dated 8 November 2021, shall be apportioned to, and treated as, costs in the CPO Application.
19. The costs of this CMC shall be costs in the CPO Application.

Miscellaneous

20. There be liberty to apply.

The Hon Mrs Justice Bacon

Chairwoman of the Competition Appeal Tribunal

Made: 9 November 2021

Drawn: 11 November 2021

ANNEX A(2)



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1382/7/7/21

BETWEEN:

CONSUMERS' ASSOCIATION

Applicant/Proposed Class Representative

- v -

QUALCOMM INCORPORATED

Respondent/Proposed Defendant

ORDER

UPON the Applicant/Proposed Class Representative filing its Collective Proceedings Claim Form on 18 February 2021 applying for a Collective Proceedings Order pursuant to section 47B of the Competition Act 1998 and Rule 75 of the Competition Appeal Tribunal Rules 2015 (the "**Tribunal Rules**") (the "**CPO Application**")

AND UPON the Tribunal's order made on 9 November 2021, as amended by the Tribunal's order made by consent on 6 December 2021 (the "**Directions Order**")

AND UPON reading the application by the Applicant/Proposed Class Representative, filed on 24 December 2021, pursuant to Rule 38 of the Tribunal Rules to amend the proposed class definition set out in the Collective Proceedings Claim Form to include the representatives of the estates of certain categories of deceased purchasers as members of the Proposed Class (the "**Amendment Application**")

AND UPON reading the observations of the Respondent/Proposed Defendant, who raises no objections to the Amendment Application, in its response to the CPO Application filed on 22 December 2021

AND UPON reading the correspondence between the parties

IT IS ORDERED THAT:

Amendment of the Proposed Class

1. The Applicant/Proposed Class Representative shall be permitted, pursuant to Rule 38(1) and 38(4) to (7) of the Tribunal Rules, to amend the proposed class definition in paragraph 81 of its Collective Proceedings Claim Form, as set out in the Amendment Application, so as to add or substitute the representatives of the estates of certain consumers, who have died since the date of their purchase of the Affected Product during the Relevant Period (as defined in the Collective Proceedings Claim Form), as parties to these Proceedings.
2. The Applicant/Proposed Class Representative shall file and serve an amended Collective Proceedings Claim Form and an amended draft collective proceedings order within 7 days of this Order.
3. This amendment, as set out in the Amendment Application, shall take effect from 24 December 2021.

Updated publicity materials

4. Within 7 days following the date of this Order, the Applicant/Proposed Class Representative shall publicise an amended version of the CPO Application Hearing Notice that was publicised on 11 November 2021, which will:
 - (a) update the proposed class definition,
 - (b) state that this Order and the Amendment Application have been made and explain their effect, and
 - (c) state the right under Rule 76(10)(c) of the Tribunal Rules of additional or substituted members of the proposed class to object to the CPO Application and/or the authorisation of the Proposed Class Representative and the right under Rule 79(5) of the Tribunal Rules of additional or substituted members of the proposed class to make an application to the Tribunal for permission to make oral submissions at the hearing of the CPO Application.

Objections by new parties to the CPO Application and applications for permission to make observations

5. Any person that is added or substituted as a member of the proposed class, pursuant to this Order, may object to the CPO Application or the authorisation of the Proposed Class Representative by writing to the Tribunal stating their reasons for objecting by 4pm on 4 weeks following the publication of the updated publicity materials. Any additional or substituted member of the proposed class may also seek permission to make oral observations at the CPO Application hearing, by making an application for such permission, with reasons, as part of his/her written objections.

Costs

6. The Applicant/Proposed Class Representative shall bear its costs of the Amendment Application.

Other

7. There be liberty to apply.

The Hon Mrs Justice Bacon
Chairwoman of the Competition Appeal Tribunal

Made: 5 January 2022
Drawn: 5 January 2022

ANNEX B

List of Apple and Samsung smartphones included in the class

Samsung smartphones			
Galaxy A10	Galaxy J3 (2016)	Galaxy S6	Galaxy M31s
Galaxy A2 Core	Galaxy J3 (2017)	Galaxy S6 Edge	Galaxy Note 10 Lite
Galaxy A20e	Galaxy J4	Galaxy S6 Edge+	Galaxy S20+
Galaxy A3 (2015)	Galaxy J4+	Galaxy S7	Galaxy A21
Galaxy A3 (2016)	Galaxy J5 (2015)	Galaxy S7 Edge	Galaxy M11
Galaxy A3 (2017)	Galaxy J5 (2016)	Galaxy S8	Galaxy A02
Galaxy A30s	Galaxy J5 (2017)	Galaxy S8+	Galaxy Note 20
Galaxy A40	Galaxy J6	Galaxy S9	Galaxy A41
Galaxy A5 (2015)	Galaxy J6+	Galaxy S9+	Galaxy S10 Lite
Galaxy A5 (2016)	Galaxy J7 (2016)	Galaxy X Cover 3	Galaxy Note20 Ultra
Galaxy A5 (2017)	Galaxy J7 (2017)	Galaxy X Cover 4	Galaxy M21s
Galaxy A50	Galaxy J8	Galaxy X Cover 4S	Galaxy A01 Core
Galaxy A6	Galaxy M10	Galaxy A12	Galaxy M01
Galaxy A6+	Galaxy M20	Galaxy A21s	Galaxy M31 Prime
Galaxy A60	Galaxy Note 10	Galaxy M51	Galaxy S20 Ultra
Galaxy A7 (2018)	Galaxy Note 10+	Galaxy A31	Galaxy M01s
Galaxy A70	Galaxy Note 4	Galaxy M12	Galaxy M01 Core
Galaxy A8 (2018)	Galaxy Note 8	Galaxy M31	Galaxy X Cover Pro
Galaxy A8+ (2018)	Galaxy Note 9	Galaxy A02s	Galaxy Z Flip
Galaxy A80	Galaxy S10	Galaxy S20 FE	Galaxy J2 Core (2020)
Galaxy A8s	Galaxy S10+	Galaxy S20	Galaxy A01
Galaxy A9 (2018)	Galaxy S10e	Galaxy A11	Galaxy A71
Galaxy Core Prime	Galaxy S4 Mini	Galaxy M21	Galaxy A51
Galaxy Grand Prime VE	Galaxy S5 Mini	Galaxy M02	Galaxy M30s
Galaxy J2 Pro (2018)	Galaxy S5 Neo	Galaxy M02s	Galaxy A20s
			Galaxy X Cover FieldPro
Apple smartphones			
iPhone 5s	iPhone 7	iPhone X	iPhone 11
iPhone 6	iPhone 7 Plus	iPhone XR	iPhone 11 Pro
iPhone 6 Plus	iPhone 8	iPhone XS	iPhone 11 Pro Max
iPhone 6s	iPhone 8 Plus	iPhone XS Max	
iPhone 6s Plus	iPhone SE	iPhone SE 2	