



## COMPETITION APPEAL TRIBUNAL

### **NOTICE OF AN APPLICATION TO COMMENCE COLLECTIVE PROCEEDINGS UNDER SECTION 47B OF THE COMPETITION ACT 1998**

#### **CASE NO. 1382/7/7/21**

Pursuant to rule 76(8) of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (“the Rules”), the Registrar gives notice of the receipt on 18 February 2021 of an application to commence collective proceedings, under section 47B of the Competition Act 1998 (“the Act”), by Consumers’ Association (the “Applicant/Proposed Class Representative”) against Qualcomm Incorporated (“the Respondent/Proposed Defendant”). The Applicant/Proposed Class Representative is represented by Hausfeld & Co LLP, 12 Gough Square, London, EC4A 3DW (Reference: Nicola Boyle / Wessen Jazrawi / Lucy Rigby).

The Applicant/Proposed Class Representative makes an application for a collective proceedings order permitting it to act as the class representative bringing opt-out collective proceedings on behalf of final consumers who made UK purchases of LTE (Long-Term Evolution)-enabled Apple and Samsung smartphones (“the Application”). The proposed class is more fully described below.

The proposed collective proceedings would combine standalone claims for damages under section 47A of the Act caused by the Respondent’s/Proposed Defendant’s alleged breaches of statutory duty in infringing the Chapter II prohibition on abuse of dominance in section 18 of the Act and, until 31 December 2020, Article 102 of the Treaty on the Functioning of the European Union prohibiting the abuse of dominance (“the Claims”).

The Application states that the Respondent/Proposed Defendant is one of the largest owners of cellular standard essential patents worldwide and is also a leading supplier of chipsets, including LTE chipsets. These are components that allow mobile devices to communicate with each other via mobile networks. The Applicant/Proposed Class Representative alleges that the Respondent/Proposed Defendant has abused positions of dominance on related markets by applying exploitative and exclusionary commercial practices that cause widespread harm to UK consumers. The Applicant/Proposed Class Representative claims that the Respondent/Proposed Defendant has leveraged its dominant position in the supply of LTE chipsets to force smartphone manufacturers across the industry to pay supra-competitive royalties for the Respondent’s/Proposed Defendant’s patents and has refused to licence any rival chipset manufacturers under its patents. According to the Application, royalties paid by smartphone manufacturers to the Respondent/Proposed Defendant are a fee based on a percentage of the selling price of smartphone handsets and must be paid irrespective of whether the chipsets incorporated in the handsets were supplied by the Respondent/Proposed Defendant. The Applicant/Proposed Class Representative submits that this operates as an industry-wide tax that is passed on to final consumers, including final consumers in the UK, of smartphones in the form of more expensive and/or lower quality products.

The proposed class comprises all consumers who purchased LTE-enabled Apple and Samsung smartphones (excluding 5G/5G NR-enabled models) since 1 October 2015. The class definition covers purchases made in a single amount or by instalments and payments made in respect of a bundle including the supply of voice and/or data telecommunications services and the associated supply of a relevant smartphone. The class definition excludes second-hand purchases and purchases of refurbished products as well as purchases where the relevant smartphones were delivered outside the UK.

According to the Application, the Claims raise the same, similar or related issues of law and fact which comprise: (i) the definition of the relevant economic markets; (ii) whether the Respondent/Proposed Defendant has held and/or continues to hold a dominant position on those relevant markets; (iii) whether the Respondent/Proposed Defendant has abused and/or continues to abuse its dominant positions; (iv) whether any abuse of dominance by the Respondent/Proposed Defendant has caused and/or continues to cause Apple and/or Samsung to pay higher all-in prices for LTE chipsets and, if yes, the magnitude of those higher all-in

prices; (v) the extent to which any increased all-in prices for LTE chipsets have been passed through and/or continue to be passed through to and/or otherwise caused harm to the proposed class members; and (vi) the rate and duration of the proposed class members' entitlement to pre-judgment interest.

The Applicant/Proposed Class Representative submits that it is just and reasonable for it to act as class representative because:

1. The Applicant/Proposed Class Representative will act fairly and reasonably in the interests of the class members:
  - (a) The Applicant/Proposed Class Representative is not a member of the proposed class and is well-equipped to manage the proposed collective proceedings as it has access to an in-house team and has instructed specialist competition litigation solicitors and counsel, specialist costs counsel, expert competition economists and experienced claims administrators in order to assist and advise it in connection with the proposed collective proceedings.
  - (b) The Applicant/Proposed Class Representative is a pre-existing body that exists for public benefit to further its charitable objects. It is a registered company and charity (commonly known as Which?) with over 60 years' experience of championing the interests of consumers. Its status as the largest independent consumer organisation in the UK and access to specialist personnel experienced in campaigning and communications means that it is ideally placed to give effective notice of the proposed collective proceedings. Further, it has previous experience of bringing collective proceedings before the Tribunal.
  - (c) The Applicant/Proposed Class Representative has developed a comprehensive litigation plan for the proposed collective proceedings as required by Rule 78(3)(c) of the Rules.
  - (d) The Applicant/Proposed Class Representative has entered into a litigation funding agreement and a comprehensive budget has been agreed in connection with the funding arrangements.
2. The Applicant/Proposed Class Representative does not have a material interest that is in conflict with the interests of the proposed class members.
3. The Applicant/Proposed Class Representative is not aware of any other person seeking approval to act as the class representative in respect of the same Claims.
4. The Applicant/Proposed Class Representative has arrangements in place to pay the Respondent's/Proposed Defendant's recoverable costs if ordered to do so.

The Application states that the Claims are suitable to be brought in collective proceedings because:

1. The proposed collective proceedings are an appropriate means for the fair and efficient resolution of the common issues:
  - (a) The determination and resolution of the issues on a common basis renders the proposed collective proceedings workable and reduces the duplication of legal submission, factual evidence, time and cost which would necessarily result if the Claims were to be litigated on an individual basis.
  - (b) The scale of likely loss suffered by the proposed class members, coupled with the costs of litigation, would render individual proceedings a practical impossibility and leave unremedied the widespread consumer loss caused by the Respondent's/Proposed Defendant's conduct.
  - (c) Class actions involving materially similar issues to the Claims have been certified in both the United States and Canada.
2. The anticipated costs of bringing the collective proceedings are considerably outweighed by the substantial benefits of doing so. These costs are proportionate when considered against the anticipated quantum of the aggregate damages which the proposed class members stand to recover

and the savings in terms of costs, time and judicial resources that will be realised by resolving the common issues collectively rather than individually. Also, collective proceedings are the only practical method available for consumers to recover their losses.

3. As far as the Applicant/Proposed Class Representative is aware no separate proceedings making claims of the same or a similar nature have already been commenced by the proposed class members.
4. The size and nature of the proposed class are such as to make the Claims suitable to be brought in collective proceedings. The proposed class currently comprises an estimated 29 million persons, who are all individual consumers for whom collective proceedings offer the only practical method of redress. At the same time, the proposed class is not so large as to render it unworkable.
5. The proposed class definition is based on objective criteria which permit the ready determination of whether any given individual falls within the proposed class.
6. The Claims are suitable for an aggregate award of damages and the Applicant/Proposed Class Representative proposes a plausible and credible methodology for estimating the loss that the proposed class members have suffered in the aggregate.
7. The Applicant/Proposed Class Representative does not presently consider any alternative dispute resolution or alternative means of resolving the Claims to be available.

According to the Application, the proposed collective proceedings should proceed on an opt-out basis because:

1. The Claims are of sufficient strength and have good prospects of success since they concern anticompetitive conduct by the Respondent/Proposed Defendant that has been the subject of regulatory enforcement action and legal proceedings under the antitrust laws in a number of overseas jurisdictions. The Applicant/Proposed Class Representative also has a plausible and credible proposed methodology for establishing and evaluating class-wide losses.
2. It is not practicable for the proceedings to be brought on an opt-in basis.

The relief sought in these proceedings is:

- (1) An aggregate award of damages on behalf of the proposed class;
- (2) Simple interest at the rate of 8% per annum or such other rate as the Tribunal may consider appropriate. The Applicant/Proposed Class Representative contends that this rate is appropriate in light of the fact that the proposed class is comprised of consumers who face higher interest rates than commercial claimants and that the proposed rate is also consistent with the approach adopted to consumer redress in materially similar contexts (such as that payable on compensation paid in respect of mis-sold payment protection insurance under the redress scheme set up by the Financial Conduct Authority);
- (3) Costs; and
- (4) Such further and other relief as the Tribunal may think fit.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at [www.catribunal.org.uk](http://www.catribunal.org.uk). Alternatively, the Tribunal Registry can be contacted by telephone (020 7979 7979) or email ([registry@catribunal.org.uk](mailto:registry@catribunal.org.uk)). Please quote the case number mentioned above in all communications.

*Charles Dhanowa OBE, QC (Hon)*  
Registrar  
Published 18 March 2021