



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1382/7/7/21

BETWEEN:

CONSUMERS' ASSOCIATION

Class Representative

- v -

QUALCOMM INCORPORATED

Defendant

ORDER

UPON the Tribunal's Order made following the fourth case management conference on 9 and 10 January 2024, setting directions for a timetable to the first trial in these proceedings (the "**Fourth CMC Order**")

AND UPON the Class Representative having served schedules of matters of fact and evaluative assessments from decisions and opinions in foreign proceedings on which it intends to rely at trial (the "**MOF Schedules**") on 14 March 2024, as amended on 10 May 2024

AND UPON Qualcomm's response to the Class Representative's RFI contained in the Class Representative's application to the Tribunal dated 16 May 2024 ("**Qualcomm's RFI Response**")

AND UPON the Class Representative's response to Qualcomm's fifth RFI dated 1 July 2024 (the "**Class Representative's RFI5 Response**")

AND UPON the Class Representative's applications to the Tribunal of 10 July 2024 for (inter alia) (i) disclosure by Qualcomm of documents relating to negotiations between Qualcomm and Huawei, LGE, Lenovo, Motorola, ZTE and Blackberry in relation to the grant of Cellular

SEP licences and/or the making of Component Supply Agreements, subsequently refined to documents relating only to negotiations between (1) Qualcomm and Huawei and (2) Qualcomm and Lenovo (the “**OEM Negotiation Disclosure**”); (ii) a review of Qualcomm’s approach to privilege redactions; and (iii) to re-amend paragraph 4 of its Re-Re-Amended Reply, and the materials filed in support of those applications

AND UPON Qualcomm’s applications to the Tribunal of 10 July 2024 for (i) the Class Representative to serve revised MOF Schedules, (ii) the Class Representative to file and serve an updated version of the Class Representative’s RFI5 Response; and (iii) to strike-out paragraphs 3(b) and 26(b) of the RRRACF and page 15 of the Class Representative’s Response to Qualcomm’s Third RFI dated 21 June 2023 (“**Qualcomm’s Strike-Out Application**”), and the materials filed in support of those applications

AND UPON the Class Representative’s application to the Tribunal of 23 July 2024 in relation to Qualcomm’s RFI Response (the “**Class Representative’s Further RFI Application**”)

AND UPON reading: (i) Norton Rose Fulbright LLP’s letter to Hausfeld & Co. LLP dated 26 July 2024 in relation to the Class Representative’s application for a review of Qualcomm’s approach to privilege (“**NRF’s 26 July Letter**”); and (ii) Norton Rose Fulbright LLP’s letter to Hausfeld & Co. LLP dated 30 July 2024 regarding disclosure of documents relating to Mr Ira Blumberg and the terms of Mr Blumberg’s qualified admission to the Outer Confidentiality Ring (“**NRF’s 30 July Letter**”)

AND UPON Qualcomm providing an assurance through counsel that it has not approached Lenovo (directly or indirectly, and whether orally or in writing) with a view to impeding the ability of Mr Ira Blumberg to give full and frank evidence to the Tribunal in these proceedings, including to encourage Lenovo to prevent his access to documentary material, and that Qualcomm will not do so

AND UPON consideration of the parties’ written submissions and hearing Leading Counsel for both parties and Junior Counsel for Qualcomm at a case management conference held on 29 and 30 July 2024

AND UPON the definitions set out in the Tribunal’s Order (Qualcomm’s Disclosure) dated 24 July 2023 (the “**CMC3 Disclosure Order**”) applying for the purposes of this Order unless otherwise stated

AND UPON the following further definitions applying for the purposes of this Order:

- “**Blumberg Documents**” means the 445 documents identified in the final column of the first row of the table beneath paragraph 3 of NRF’s 30 July Letter, namely emails, including their attachments, identified from the documents of the previously agreed custodians in the FTC Production Set and disclosed within the Outer Confidentiality Ring, that Mr Blumberg sent or received (either directly or whilst in copy) during his time at Lenovo, regardless of whether he was shown these emails as part of his FTC deposition.

- “**List of 11 Custodians**” means the list of 11 custodians provided in the table beneath paragraph 6 of Qualcomm’s RFI Response

AND HAVING REGARD TO the Tribunal’s powers under the Competition Appeal Tribunal Rules 2015

IT IS ORDERED THAT:

Information and further particulars

1. By 5pm on 2 August 2024, the Class Representative shall file and serve a one-page document which sets out what the Class Representative says that the alleged “*NLNC Policy*” comprises, and the basis on which the Class Representative alleges that this constitutes an abuse of dominance, as outlined in oral submissions made by Leading Counsel at the hearing, with references to relevant paragraphs of the pleaded case including responses to information requests.
2. By 5pm on 2 August 2024, the Class Representative shall re-file and re-serve its RFI5 Response with the following phrase in paragraph 17(b) deleted: “*so that it would be discriminatory to apply a different rate*”.
3. By 5pm on 9 September 2024, the Class Representative shall file and serve further information on its case by (i) specifying the respects in which the Class Representative alleges that Qualcomm’s conduct in cellular LTE SEP licensing negotiations with Apple and Samsung departed from what the Class Representative alleges to be “*typical industry practice*”. Such further information shall refer to the general aspects of the individual negotiations which are alleged to have departed from alleged “*typical industry practice*” and shall refer to the dates or dates ranges of the negotiations alleged to have to have been impacted by such departure.
4. By 5pm on 30 August 2024, Qualcomm shall:
 - (a) ask the two individuals in the List of 11 Custodians who remain in its employment to answer the following questions, both in relation to themselves

and, insofar as they are able to do so, in relation to the remaining nine individuals in the List of 11 Custodians:

- (i) Which of the identified custodians was involved in giving advice to those who made decisions concerning royalties as negotiated and agreed with licensees?;
 - (ii) What was the nature of the advice given by each such custodian (for instance, was it commercial advice in relation to royalties, legal advice or some other form of advice (if the latter please specify)?; and
- (b) answer these questions on the basis of the enquiries described at paragraph 4(a) above.
5. The response described at paragraph 4 above shall be accompanied by a statement of truth.

The Class Representative's MOF Schedules

6. By 5pm on 8 November 2024, the Class Representative shall re-file and re-serve the MOF Schedules. The MOF Schedules as amended shall:
- (a) be confined to matters that are supplemental to any hearsay and documentary evidence the Class Representative intends to rely on at trial;
 - (b) exclude evaluative assessments of evidence; and
 - (c) not include compendious references to findings.

Privilege re-review

7. Norton Rose Fulbright LLP shall review a sample of documents that Qualcomm has disclosed in these Proceedings from the FTC Production Set pursuant to paragraph 4(a) of the CMC3 Disclosure Order, but which were withheld (in full or in part) from inspection in accordance with paragraph 6 of the CMC3 Disclosure Order, on the basis

that they are protected by legal professional privilege under U.S. law, and determine whether the material in the sample of documents that has been withheld from inspection is subject to privilege under English law.

8. The sample of documents to be reviewed under paragraph 7 above shall comprise:
 - (a) 300 documents selected by the Class Representative from documents which have been disclosed to the Class Representative from the FTC Production Set pursuant to paragraph 4(a) of the CMC3 Disclosure Order and which contain partial redactions for privilege under U.S. law; and
 - (b) 200 documents which have been disclosed by list from the FTC Production Set pursuant to paragraph 4(a) of the CMC3 Disclosure Order but withheld from inspection from the Class Representative on the basis of privilege under U.S. law, such documents to be identified on the basis the process described at paragraphs 9 and 10 below.
9. By 5pm on 7 August 2024, Qualcomm shall provide the Class Representative with a list of the “Document Types” applicable to the documents that have been withheld from the Class Representative on the basis of privilege under U.S. law, insofar as this information is available.
10. By 5pm on 23 August 2024, the Class Representative shall:
 - (a) provide Qualcomm with a list of documents to be reviewed pursuant to paragraph 8(a) above (by reference to Bates Number); and
 - (b) in so far as the Class Representative wishes to do so, provide Qualcomm with directions regarding the number or proportion of Document Type(s) from which the 200 documents referred to in paragraph 8(b) above shall be chosen. Insofar as practicable, Qualcomm’s e-Disclosure provider shall then select the documents to be reviewed under paragraph 8(b) above on a random basis in accordance with these directions.

11. By no later than 5pm on 1 October 2024, without prejudice to the privilege under U.S. law attaching to documents from the FTC Production Set, Qualcomm shall provide the Class Representative with:
 - (a) for each document (or part of the document) in the sample that has been reviewed, and in respect of which privilege is claimed under English law, an explanation as to why the document (or part of the document) is said to be privileged under English law;
 - (b) to the extent that following the review, any document or part of a document that was previously redacted or withheld from inspection by the Class Representative on the basis of privilege under US law is not said to be subject to privilege under English law, copies of the documents which reflect the scope of the claim to privilege under English law (whether by way of disclosure of the whole document or by way of a reduction in the scope of the redactions made to the document, as applicable).

Disclosure of Blumberg Documents

12. Subject to the provisions below, by 5pm on 30 August 2024, Qualcomm shall provide disclosure and copies of the Blumberg Documents to the Class Representative from the FTC Production Set.
13. The disclosure referred to in paragraph 12 above shall be accompanied by:
 - (a) a disclosure statement by an appropriate person who shall (i) set out the extent of the search that has been made of the FTC Production Set in order to locate the documents ordered to be disclosed; (ii) specify whether any redactions have been made to the documents ordered to be disclosed and why; and (iii) certify that to the best of their knowledge and belief that the disclosure ordered has been provided.
 - (b) to the extent available, metadata for each document (to include, where available, standard metadata fields such as the date and time of creation or modification of a document, the author, date and time of sending of any email or instant message,

and the family relationships between documents). Qualcomm will produce documents in the same manner and form as produced in the FTC Proceedings.

- (c) a table listing, in respect of each disclosed document, the bates number, date of disclosure, any confidentiality designation pursuant to the Revised Confidentiality Ring Order, and an explanation for any such confidentiality designation.
14. Mr Ira Blumberg will be designated as an additional Outer Confidentiality Ring Member for the Class Representative following provision of a signed Annex D undertaking to Qualcomm and the Tribunal, in the form attached to NRF's 30 July Letter. Mr Blumberg's access to Outer Confidentiality Ring Confidential Information shall be limited only to those documents (or part(s) of documents) within the Blumberg Documents that have been designated as a document (or part(s) of a document) to which Mr Blumberg may have access pursuant to the process described in paragraphs 15 to 16 below.
 15. If Qualcomm considers that any documents (or part(s) of documents) in the Blumberg Documents should be withheld from Mr Blumberg on grounds that its confidentiality is such that, in Qualcomm's opinion, it would harm or might harm Qualcomm's legitimate business interests for Mr Blumberg to have access to it, then Qualcomm must designate that information specifically at the time of giving disclosure, and must provide a reasoned explanation as to why Qualcomm contends that the documents should be withheld from Mr Blumberg. Pending the outcome of the process described in paragraph 17 below, the document(s) or part(s) of document(s) containing that information shall not be provided to Mr Blumberg.
 16. If the Class Representative indicates that it does not accept any such reasoned explanation as is described in paragraph 15 above, Qualcomm must promptly thereafter refer the dispute to the Tribunal for determination.
 17. Qualcomm shall by 5pm on 6 August 2024 notify Lenovo in writing of the upcoming disclosure of the Blumberg Documents, copying the Class Representative's solicitors, including an explanation that the Class Representative intends to make these documents available to Mr Blumberg on the terms referred to at paragraph 14 above, as a limited

and qualified member of the Outer Confidentiality Ring as per the process in paragraphs 15 to 16 above. Lenovo shall be afforded until 5pm on 20 August 2024 to raise a reasoned objection in relation to the disclosure of any part of the Blumberg Documents and/or the provision of the same to Mr Blumberg, and in the event of such objection, the disclosure (or the provision of the relevant documents or parts of documents to Mr Blumberg) shall not take place pending resolution of the objection by agreement or by determination by the Tribunal, including any appeals.

Other applications

18. The Class Representative's application to amend paragraph 4 of its Re-Re-Amended Reply is dismissed.
19. The Class Representative's application for the OEM Negotiation Disclosure is dismissed save for the disclosure ordered by paragraph 12 above.
20. Qualcomm's Strike-Out Application is dismissed.

Expert report page limits

21. All future expert reports in these proceedings should comply with the following style requirements: (i) minimum Times 12 point or Arial 11 point font, or equivalent size font, for main text (citations and footnotes can be one point smaller); (ii) 1.5 line spacing for main text (citations and footnotes can be single line spaced); (iii) at least one line space between paragraphs, (iv) minimum margins of 2.5cm top, bottom and sides; and (v) a table of contents before the introduction cross-referenced to paragraphs or page numbers.
22. The parties shall seek to agree page limits to apply to each of the expert reports of Mr Robin Noble and Dr Jorge Padilla, which page limits must include annexes. By 5pm on 9 August 2024, the parties shall indicate to the Tribunal either (a) any agreement they have reached in this regard or (b) in the event that they cannot agree, their respective positions.

Further hearing

23. The parties shall liaise with the Registry to list a further case management conference, with a time estimate of 1 day, provisionally in the week commencing 16 December 2024.

Timetable to Trial 1

24. Appendix B of the Fourth CMC Order shall be replaced by the Annex to this Order.
25. There be liberty to apply.
26. Costs in the case.

The Hon Mrs Justice Bacon
Chair of the Competition Appeal Tribunal

Made: 9 August 2024
Drawn: 9 August 2024

ANNEX

REVISED APPENDIX B TO FOURTH CMC ORDER

AMENDED TRIAL TIMETABLE

PROPOSED STEP IN PROCEEDINGS	DATE
Melin and Schneider industry reports (35 pages each)	6 September 2024
Padilla leveraging analysis	6 September 2024
Parties to inform the Tribunal of their agreed proposed approach as to the methodology of how both technical and industry experts will prepare the joint statement of matters agreed and not agreed	20 September 2024
WP meetings of industry experts	Melin/Schneider by 7 October 2024
Ingers technical report (75 pages)	1 November 2024
WP meetings of technical and industry experts	Williams/Ingers: by 8 November 2024 Andrews/Ingers: by 15 November 2024
Parties to notify each other of any hearsay evidence they intend to rely upon at trial arising from any and all disclosure (including third party disclosure) provided prior to 18 September 2024, such as trial transcripts, deposition transcripts, or witness statements (or equivalent) given in foreign proceedings, akin to the process for hearsay notices set out in CPR Part 33	8 November 2024
Statements of witnesses of fact	8 November 2024
Class Representative to re-serve MOF Schedules	8 November 2024
Joint statements of matters agreed and not agreed as between industry experts (50–60 pages)	2 December 2024

Class Representative reply expert report in relation to Padilla leveraging analysis	6 December 2024
Joint statements of matters agreed and not agreed as between technical experts (50 pages)	20 December 2024
Class Representative competition economics report	17 January 2025
Parties to serve reply witness statements of fact	14 March 2025
Parties to also notify each other of any hearsay evidence they intend to rely on at trial in response to hearsay notices served by the other side on 8 November 2024 Parties should notify each other of any hearsay evidence they intend to rely upon at trial arising from third party disclosure provided after 18 September 2024, such as trial transcripts, deposition transcripts, or witness statements (or equivalent) given in foreign proceedings, akin to the process for hearsay notices set out in CPR Part 33	14 March 2025
Qualcomm competition economics report (including their positive case)	4 April 2025
Class Representative reply expert report	6 June 2025
Parties to notify each other of any hearsay evidence they intend to rely on at trial in response to hearsay notices served by the other side on 14 March 2025 Parties to also serve supplemental witness statements of fact (arising out of hearsay notices served by the other side on 14 March 2025)	13 June 2025
Meetings of competition economics experts	By 4 July 2025
Joint statement of matters agreed and not agreed as between competition economics experts	By 18 July 2025
Pre-trial review	29 or 30 July 2025
Skeleton arguments (exchange)	23 September 2025, 4pm
Tribunal pre-reading week	29 September–3 October 2025
Trial date	7 October 2025 (5 weeks maximum), sitting Tuesday to Friday each week; Mondays non-sitting days