IN THE COMPETITION APPEAL TRIBUNAL

Case No: 1382/7/7/21

BETWEEN:

CONSUMERS' ASSOCIATION

Applicant/Proposed Class Representative

- v -

QUALCOMM INCORPORATED

Respondent/Proposed Defendant

REASONED ORDER

UPON reading the Proposed Class Representative's collective proceedings claim form filed on 18 February 2021 and the Proposed Class Representative's application made on 18 February 2021 pursuant to Rule 31(2) of the Competition Appeal Tribunal Rules 2015 ("the Tribunal Rules") for permission to serve the collective proceedings claim form out of the jurisdiction ("the Rule 31(2) Application")

AND UPON reading the first witness statement of Nicola Boyle made on 18 February 2021 in support of the Rule 31(2) Application

IT IS ORDERED THAT:

1. The Proposed Class Representative be permitted to serve the Proposed Defendant outside the jurisdiction.

2. This Order is without prejudice to the rights of the Proposed Defendant to apply pursuant to Rule 34 of the Tribunal Rules to dispute the jurisdiction.

REASONS

1. I think it is likely, as the Proposed Class Representative submits, that the proceedings are to be treated as taking place in England and Wales for the purpose of Rule 18 of the Tribunal Rules. The Tribunal therefore approaches service out of the jurisdiction on the same basis as the High Court under the CPR: *DSG Retail Ltd and another v Mastercard Inc and others* [2015] CAT 7 at [17]-[18].

2. I am satisfied that there is between the Proposed Class Representative and the Proposed Defendant ("Qualcomm") a real issue to be tried in respect of the standalone claims for damages in respect of alleged breaches of s.18 of the Competition Act 1998 and, until 31 December 2020, Article 102 of the Treaty on the Functioning of the European Union ("Art 102 TFEU"), which prohibit the abuse of dominance. The relevant markets which are put forward in the collective proceedings claim form are well arguable and there is a seriously arguable case that Qualcomm is dominant in those markets.

3. As regards dominance, the European Commission's infringement decision of 24 January 2018 in Case AT.40220 *Qualcomm (Exclusivity payments)* ("the Commission Decision") found that there was a worldwide economic market for LTE chipsets on which Qualcomm was dominant within the meaning of Art 102 TFEU for a period that overlaps with the claim period in the proposed collective proceedings. I note that Qualcomm's application to annul the Commission Decision is pending before the EU General Court but the finding in the Commission Decision nonetheless remains, at the very least, seriously arguable.

4. As regards the alleged abuse, the preliminary analyses of Mr. Robin Noble and Dr. Avantika Chowdhury filed with the collective proceedings claim form indicate that it is seriously arguable that the alleged conduct constitutes an abuse and I note that practices similar to those impugned in the present claim are the subject of proceedings under national competition laws in several jurisdictions around the world. In that regard, I note that on 30 April 2019 the Quebec Superior Court has

certified a similar class action against Qualcomm: *Tenzer v Qualcomm Inc*, which case is proceeding to trial.

5. On the basis that indirect damage is sufficient for the tort gateway under PD6B paragraph 3.1(9), I am also satisfied that there is an arguable case that the alleged losses suffered by the proposed class members were sustained or will be sustained within the UK. The claimants comprising the class on whose behalf the Proposed Class Representative seeks to bring these proceedings are final consumers who have made purchases (other than second-hand purchases) of LTE-enabled Apple and Samsung smartphones in the UK.

6. I am further satisfied that the UK (and this Tribunal) is the proper place in which to bring the proposed collective proceedings. The class comprises an estimated 29 million consumers in the UK. The Proposed Class Representative is a very well-established UK consumers' association. The claim is based on UK and EU competition law. Although Qualcomm is a US corporation, the US does not appear to be a suitable forum for vindicating the collective rights of the proposed class members: in *Hoffmann-La Roche Ltd v Empagran S.A.* 542 US 155 (2004) the US Supreme Court held that the Sherman Act did not apply extra-territorially to cover claims brought by foreign purchasers of vitamins outside the US.

The Hon Mr Justice Roth Made: 15 March 2021

President of the Competition Appeal Tribunal Drawn: 15 March 2021