



**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No: 1382/7/7/21

BETWEEN:

**CONSUMERS' ASSOCIATION**

Applicant/Proposed Class Representative

- v -

**QUALCOMM INCORPORATED**

Respondent/Proposed Defendant

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**ORDER**

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**UPON** the Proposed Class Representative and the Proposed Defendant (the **Parties**) to the above-named proceedings (and to any related subsequent proceedings between the Parties following any granting of the application for the collective proceedings order) (the **Proceedings**), having agreed that documents containing confidential information be subject to the confidentiality terms contained in this Order (the **Confidentiality Terms**)

**AND HAVING REGARD TO** the Tribunal's powers under the Competition Appeal Tribunal (the **Tribunal**) Rules 2015 (the **Tribunal Rules**) (Rules 53(h), 101 and 102)

**AND UPON** the Parties having agreed to the terms of this Order

**IT IS ORDERED BY CONSENT THAT:**

## 1. DEFINITIONS

1.1. For the purpose of these Confidentiality Terms:

1.1.1. **Confidential Information** means:

(a) documents provided by a Party, including any part of those documents and any information contained within those documents, cumulatively which:

(i) the Disclosing Party has disclosed; and

(ii) the Disclosing Party or the Tribunal has designated as confidential in accordance with paragraph 2 below; and

(iii) has not subsequently been re-designated not confidential, either by consent or by order of the Tribunal; and

(b) documents such as:

(i) working documents created by the receiving Party or its advisers or experts;

(ii) *inter-partes* correspondence;

(iii) documents filed at the Tribunal, such as pleadings, witness evidence, expert reports, skeleton arguments, applications and draft orders; and

(iv) transcripts prepared by a third party service provider,

which contain, reproduce, or reflect the content of the documents/information provided under paragraph 1.1.1(a); but

(c) the following documents/information will not be Confidential Information:

- (i) redacted versions of the documents described at paragraph 1.1.1(b) if they have been redacted so that they no longer contain or refer to the content of the documents/information provided under paragraph 1.1.1(a); and
- (ii) documents that use Confidential Information (for example, to provide an aggregation of Confidential Information) but which do not reveal the content of Confidential Information.

1.1.2. **Disclosing Party** means the Party that disclosed that document.

1.1.3. **Guide** means the Tribunal's 2015 Guide to Proceedings.

1.1.4. **Party** means the Proposed Class Representative or the Proposed Defendant.

1.1.5. **Permitted Persons** means:

- (a) those persons listed in Annex A (as amended from time to time pursuant to paragraph 6 below or by an order of the Tribunal) that have provided a copy of their signed undertakings to all Party(ies) and the Tribunal in the form set out in Annex B;
- (b) necessary secretarial, business services or other support personnel, including for the avoidance of doubt internal providers of eDisclosure or litigation support services (not including trainee solicitors or paralegals), IT, reprographics staff and clerks, acting under the supervision and/or instructions of the persons identified at paragraph 1.1.5(a) for the purpose of the Proceedings, provided that such personnel have been informed of the confidential nature of the Confidential Information and the terms of Annex B; and
- (c) any external eDisclosure or litigation support provider (including transcription service providers) engaged by any Party in connection with these Proceedings to provide eDisclosure or

similar services in support of those persons identified at paragraph 1.1.5(a) above, who may have access to the Confidential Information as a necessary consequence of the provision of the said services and whose identity is notified to the other Parties in writing at least two (2) working days in advance of the Confidential Information being provided to them, provided that such providers have been informed of the confidential nature of the Confidential Information and the terms of Annex B.

1.1.6. **Proposed Class Representative** means Consumers' Association (known as Which?).

1.1.7. **Proposed Defendant** means Qualcomm Incorporated.

1.1.8. **Tribunal** means the Competition Appeal Tribunal.

## 2. **CONFIDENTIAL INFORMATION**

2.1. Confidential Information provided in the context of the Proceedings is to be provided or made available solely to the Permitted Persons, to be held by them on the terms set out in Annex B of these Confidentiality Terms, subject to the following paragraphs of these Confidentiality Terms.

2.2. Confidential Information is as defined in paragraph 7.35 of the Guide, and is limited to: (i) information the disclosure of which would be contrary to the public interest; (ii) commercially sensitive information, the disclosure of which by one Party to another and/or to third parties could significantly harm the legitimate business interests of the person(s) or undertaking(s) to which it relates; and/or (iii) information relating to the private affairs of an individual, the disclosure of which could significantly harm that individual's interests.

2.3. Confidential Information shall exclude information which is already published or generally available to the public or becomes published or generally available to the public, other than through the act or omission of a receiving Party or a Permitted Person.

### **3. DESIGNATION OF CONFIDENTIAL INFORMATION**

- 3.1. Any document containing Confidential Information shall be designated as such by the Party that introduces the document into the Proceedings. The following procedures shall apply:
  - 3.1.1. the Disclosing Party must notify the receiving Party in writing (in compliance with paragraph 7.46 of the Guide) that it is disclosing a document containing Confidential Information, supported by reasons;
  - 3.1.2. a designation of 'not confidential' means that the document does not contain Confidential Information. For the avoidance of doubt, in the event of a designation of not confidential, Rule 102 continues to apply (to the extent it would otherwise have applied);
  - 3.1.3. failure to provide a designation for a document at the time the document is disclosed means the document shall be deemed not to contain Confidential Information;
  - 3.1.4. a Party may alter the designation of a document/information to correct an incorrect designation by notice in writing to the receiving Party; and
  - 3.1.5. the designation of any document as containing Confidential Information by a Party may be challenged in accordance with paragraph 4 of these Confidentiality Terms.
- 3.2. Each Party shall be responsible for labelling and highlighting any Confidential Information in documents disclosed by them in the following ways:
  - 3.2.1. Any bundle index will state which documents contain Confidential Information and identify the Party to which the Confidential Information relates.
  - 3.2.2. The specific text that is Confidential Information in a document will be denoted by square brackets and highlighted in colour and the top of each page that contains Confidential Information will be clearly labelled with

‘CONTAINS AND /OR REFERS TO CONFIDENTIAL INFORMATION’, unless the entire document is designated as Confidential Information, in which case, the Disclosing Party will make clear on its face or by using coloured paper/tabs that the entire document is to be treated as Confidential Information.

#### **4. CHALLENGE TO CONFIDENTIAL DESIGNATION**

4.1. The designation of Confidential Information by a Party may be challenged in accordance with the terms below:

4.1.1. If a Party wishes to challenge the designation of Confidential Information, that Party shall write to the Disclosing Party specifying:

- (a) the relevant document/information concerned;
- (b) the designation the requesting Party considers to be appropriate;  
and
- (c) why it is reasonable and necessary for the designation of the document/information to be altered.

4.1.2. In the event that a challenge is made, the Disclosing Party may consent in writing to alter the designation of any documents(s)/information, such consent not to be unreasonably withheld. Any response shall be given as soon as reasonably possible and in any event within seven (7) working days of receipt of the written request referred to in paragraph 4.1.1.

4.1.3. If the Party challenging confidentiality wishes to maintain its challenge following receipt of the Disclosing Party's response pursuant to paragraph 4.1.2, it may apply to the Tribunal for determination of whether or not the document (or parts of it) qualifies as Confidential Information. Prior written notice of that application must be given to the other Party. Save for where there are exceptional reasons that justify a hearing, applications under this paragraph 4.1.3 are to be dealt with on paper. For the avoidance of doubt, the initial confidentiality designation

of the document(s) in question shall remain at their initial designation until the Tribunal makes its determination.

- 4.2. The deadlines in this paragraph 4 may be extended by agreement between the Parties. Consent to a request for an extension shall not be unreasonably withheld.

## **5. DISCLOSURE AND INSPECTION OF CONFIDENTIAL INFORMATION**

- 5.1. Disclosure and inspection of any document containing Confidential Information shall be restricted to the Permitted Persons on the basis that:

5.1.1. the recipient Permitted Person holds the Confidential Information on the terms set out in Annex B;

5.1.2. any such Confidential Information will be treated by the Permitted Person as confidential and will be used solely for the purpose of the proper conduct of the Proceedings; and

5.1.3. no such Permitted Person will, save as expressly provided for by the Confidentiality Terms, discuss, disclose, copy, reproduce or distribute any Confidential Information.

- 5.2. Provided it is for the purpose of the proper conduct of the Proceedings, nothing in these Confidentiality Terms shall prohibit any Permitted Person from:

5.2.1. making notes or copies of, or preparing reports, submissions or other documents concerning, containing or reflecting any Confidential Information (which notes, copies, reports, submissions or other documents would themselves be Confidential Information); and

5.2.2. disclosing any Confidential Information to any other person who is a Permitted Person provided that no Confidential Information shall be directly or indirectly disclosed beyond Permitted Persons.

- 5.3. During any hearing, each Party wishing to refer to Confidential Information shall be responsible for indicating to the Tribunal that the document contains Confidential Information.
- 5.4. In the event of any disclosure of Confidential Information other than as authorised by these Confidentiality Terms (including any unintentional or inadvertent disclosure):
  - 5.4.1. solicitors representing the improperly disclosing Party shall immediately notify the improper recipient(s) and the solicitors for the Party which provided the Confidential Information;
  - 5.4.2. the improperly disclosing Party shall use all reasonable endeavours to further prevent unauthorised disclosure including retrieving all copies of the Confidential Information from the improper recipient(s); and
  - 5.4.3. the improperly disclosing Party shall use all reasonable endeavours to secure the agreement (in writing) of the improper recipient(s) not to further disseminate the Confidential Information in any form.
- 5.5. Nothing in these Confidentiality Terms shall prevent or prohibit a receiving Party from disclosing Confidential Information to a person who is not a Permitted Person and/or referring to such documents or information in open Tribunal insofar as any such disclosure has been authorised in writing by the Disclosing Party, and/or taking any action which is required by applicable law or by a court of competent jurisdiction. In these circumstances, a receiving Party may produce such Confidential Information but shall take all reasonable measures to ensure the Confidential Information is treated in accordance with these Confidentiality Terms.

## **6. ADDITION OR REMOVAL OF PERMITTED PERSONS**

- 6.1. A Party (the **Proposing Party**) seeking to designate an additional person as a Permitted Person must:



- 6.1.1. seek permission in writing from the other Party (the **Receiving Party**) for the additional person to be designated as a Permitted Person;
  - 6.1.2. when requesting such written permission generally, provide details of that person's name, role, and an explanation of why their designation as a Permitted Person is reasonable and necessary;
  - 6.1.3. when requesting such written permission for external economists, also provide that person's company details and *curriculum vitae*;
- 6.2. The Receiving Party shall confirm within five (5) clear working days of receipt of the written request referred to in paragraph 6.1 whether they consent to the additional person being designated as a Permitted Person. Such consent shall not be unreasonably withheld.
- 6.3. If the Receiving Party does not consent under paragraph 6.2 to the person being designated a Permitted Person, then the Receiving Party must provide written reasons for why permission is refused within five (5) clear working days of receipt of the written request referred to in paragraph 6.1.
- 6.4. If express consent under paragraph 6.2 is given by the Receiving Party, or the Receiving Party raises no objection in accordance with paragraph 6.3 above within five (5) clear working days of receipt of the written request, the additional person shall be required to sign the undertakings at Annex B and provide a copy of the signed undertakings to the Receiving Party and the Tribunal. They will then be designated as a Permitted Person.
- 6.5. If an objection referred to in paragraph 6.3 above is received, the Proposing Party may apply to the Tribunal, provided written notice of such application is given to the other Party. The additional person will become a Permitted Person if the Tribunal so orders. Such additional person shall sign the undertakings at Annex B and provide a copy of the signed undertakings to the Receiving Party and the Tribunal.
- 6.6. If a Party wishes to remove a person as a Permitted Person, that Party shall notify the other Party. The Party must also comply with paragraph 7 (subject to

paragraphs 7.2 and 7.3) by requiring the person to be removed to immediately destroy (insofar as technologically feasible) all Confidential Information in their possession. For the avoidance of doubt, a Party may only remove a Permitted Person from their own Party.

- 6.7. Annex A reflects the current list of individuals who are Permitted Persons, who have provided the information set out in paragraphs 6.1.2 or 6.1.3 (as applicable) and who have signed the Annex B Undertakings and provided a copy to all Party(ies) and the Tribunal in accordance with this paragraph.
- 6.8. The Party(ies) shall keep Annex A updated, and shall provide an updated Annex A to the Tribunal when additional persons being designated as a Permitted Person provide the Tribunal with a copy of signed undertakings in accordance with paragraphs 6.4 or 6.5 and/or when a person is removed as a Permitted Person in accordance with paragraph 6.6. For the avoidance of doubt, there is no requirement to amend this Order when updating the Permitted Persons listed in Annex A.

## **7. COPIES OF CONFIDENTIAL INFORMATION**

- 7.1. The production of further copies of the Confidential Information shall be strictly limited to those required by the Permitted Persons to whom they are disclosed.
- 7.2. Subject to the exceptions in paragraph 7.3 below, each Party and Permitted Person must destroy copies of all documents containing Confidential Information provided pursuant to these Confidentiality Terms (in both hard and soft copy) (insofar as technologically feasible) at the conclusion of Proceedings, or when that Party or Permitted Person ceases to be involved in the Proceedings. At such time, that Party shall notify its Permitted Persons that they must destroy (insofar as technologically feasible) all Confidential Information in their possession. Each Party shall notify the other Party within two months that the Confidential Information has been destroyed (insofar as technologically feasible) or, if longer than two months is required, the date by which such Confidential Information will be destroyed and confirmation of the same provided to the other Party.
- 7.3. The obligation in paragraph 7.2 above is subject to the following exceptions:

- 7.3.1. paragraph 7.2 does not apply to solicitors' or counsel's notes subject to continued compliance with all other Confidentiality Terms;
- 7.3.2. paragraph 7.2 does not create an obligation to search for transitory or deeply stored soft copies of Confidential Information which may exist but which cannot be recovered without special measures, provided that such documents and/or information will be promptly deleted in the event of the restoration of such copies;
- 7.3.3. paragraph 7.2 does not apply to Party's copies of pleadings, evidence, skeleton arguments, transcripts, applications, draft orders, correspondence referred to at trial or in a hearing or submitted in the Proceedings as well as lawyer work product referring to Confidential Information, subject to continued compliance with the terms of this Order in respect of the Confidential Information contained within such documents; and
- 7.3.4. paragraph 7.2 does not apply to a Party in respect of the Confidential Information it provided.

## 8. NOTICES

- 8.1. Any notice, consent or objection to be given under or in connection with these Confidentiality Terms (each **Notice** for the purposes of this paragraph) shall be in writing.
- 8.2. Service of a Notice must be effected by email.
- 8.3. Notices shall be addressed as follows:
  - 8.3.1. Notices for the Proposed Class Representative shall be marked for the attention of Hausfeld & Co. LLP and sent to:

Email addresses:           nboyle@hausfeld.com,

lrigby@hausfeld.com,

wjazrawi@hausfeld.com,

hausfeldqualcomm@hausfeld.com

Reference: NAB/WJ/LR/SE/LG L0261.0001

8.3.2. Notices for the Proposed Defendant shall be marked for the attention of Quinn Emanuel Urquhart & Sullivan UK LLP, and sent to:

Email addresses: katevernon@quinnemanuel.com,

mariacampbell@quinnemanuel.com,

qequalcomm-which@quinnemanuel.com

Reference: 03536-00074/ KV/ MC / MT/ DM

## **9. GENERAL PROVISIONS**

- 9.1. The Confidentiality Terms are intended to apply until superseded by subsequent order of the Tribunal.
- 9.2. In the event of any anticipated or actual breach of these Confidentiality Terms, any Party may seek to enforce the Confidentiality Terms.
- 9.3. These Confidentiality Terms and any Undertakings given in relation to them are governed by and shall be construed in accordance with English law and each Party hereby irrevocably submits to the exclusive jurisdiction of the Courts of England and Wales.
- 9.4. Nothing in these Terms or the Annexes to these Terms shall prevent or prohibit any Permitted Persons (as may be extended from time to time) from acting in other proceedings.
- 9.5. There shall be liberty to apply to vary the terms of this Order, if appropriate.
- 9.6. The costs of compliance with and of drafting this Order shall be costs in the case.

**The Hon Mrs Justice Bacon**

Chairwoman of the Competition Appeal Tribunal

Made: 9 December 2021

Drawn: 9 December 2021

## ANNEX A

### **The Proposed Class Representative's Permitted Persons**

#### *The Proposed Class Representative*

Charmian Averty

Mehraah Morgan

Lisa Webb

Thomas Clark

#### *Counsel*

Jon Turner QC

Anneli Howard QC

Michael Armitage

Ciar McAndrew

(all of Monckton Chambers)

#### *Solicitors (Hausfeld & Co. LLP)*

Nicola Boyle

Wessen Jazrawi

Lucy Rigby

Sofie Edwards

Luke Grimes

Abigail Thrasher

#### *External economists*

Robin Noble

Avantika Chowdhury

Joseph Bell

Nicole Rosenboom

Peter Gerrish

Debby Moore

Simona Castellini

Antonio Forcina

(all of Oxera Consulting LLP)

## **The Proposed Defendant's Permitted Persons**

### *The Proposed Defendant*

Kevin Kelly

David Greenfield

Kurt Kjelland

Mark Snyder

Amy Olsen

Maricela Alberto

Sarah Bennington

Kim Alegado

Janet Sperling

Ann Chaplin

Alex Rogers

Fabian Gonell

Jodie Williams

Pam Schieffelin

Frank Qi

Alvaro Ramos

### *Counsel*

Mark Howard QC

Tony Singla QC

David Bailey

(all of Brick Court Chambers)

Alexandra Littlewood

(of Monckton Chambers)

### *Solicitors (Quinn Emanuel Urquhart & Sullivan UK LLP)*

Katherine Vernon

Daniel Masterton

Maria Campbell

Cameron Laing

Matthew Tse

Miguel Rato

Tash Yankovska

Marixenia Davilla

Mark English

*External economists*

Jorge Padilla

Justin Coombs

Lau Nilausen

Thomas Bowman

(all of Compass Lexecon)



## ANNEX B

In respect of any Confidential Information disclosed pursuant to this Order, each Permitted Person undertakes that they will comply with the following requirements to the extent applicable. The defined terms in this Order are used in this Annex.

I, [insert name], of [firm, company, or establishment] being [legal or other qualification] and regulated so far as my professional conduct is concerned [by regulatory body, if any] undertake to the Tribunal as follows:

1. I have read a copy of this Order and understand the implications of this Order, the provisions of the Confidentiality Terms, and the giving of these undertakings.
2. I will treat all Confidential Information made available to me for the purpose of the Proceedings as confidential and will use any such Confidential Information only for the purpose of the proper conduct of the Proceedings. My obligations in these undertakings shall apply equally to any documents or information which incorporate Confidential Information (or part thereof) or any information contained therein, as defined in paragraph 1.1.1 of the Confidentiality Terms.
3. Except as expressly contemplated by the Confidentiality Terms, I will not use, disclose, discuss, copy, reproduce or distribute any such Confidential Information to persons who are not Permitted Persons or authorise, enable or assist any person to do so.
4. Upon ceasing to be a Permitted Person, I will promptly destroy (insofar as technologically feasible) all Confidential Information in my possession, in accordance with paragraphs 6.6 and 7.2-7.3 of the Confidentiality Terms.
5. I have read Rule 31.22 of the Civil Procedure Rules and Rules 101 and 102 of the Competition Appeal Tribunal Rules 2015 and am aware of and will comply with the obligations imposed by those Rules.
6. I will take all such steps as may be necessary or expedient on my part to comply with any request made under or pursuant to the Confidentiality Terms.
7. I will otherwise comply with the Confidentiality Terms and/or, as the case may be, take all steps within my power to ensure that the Confidentiality Terms are complied with, including by not disclosing Confidential Information to persons other than relevant Permitted Persons, or assisting or enabling any person to do so.

8. The documents containing any Confidential Information will remain in my custody or the custody of another Permitted Person at all times and will be held in a manner appropriate to the circumstances so as to prevent unauthorised access.
9. The production of further copies by me of the documents containing Confidential Information shall be limited to that reasonably required for the use of the Permitted Persons for the purposes of these proceedings only and shall be held in accordance with these undertakings.
10. I will continue to comply with these undertakings after the conclusion of the proceedings, in respect of any Confidential Information that I do not destroy and continue to hold.
11. Nothing in these undertakings shall prevent or prohibit the owner of the Confidential Information from taking any action in relation to that information, which they would otherwise be entitled to take.
12. Nothing in these undertakings shall prevent or prohibit me from taking any action that is permitted in this Order, or has been authorised in writing by the relevant Disclosing Party, or that I am required to take by applicable law or by a court of competent jurisdiction.

Signed:

Date: