



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1403/7/7/21

BETWEEN:

DR RACHAEL KENT

Class Representative

- v -

(1) APPLE INC.
(2) APPLE DISTRIBUTION INTERNATIONAL LTD

Defendants

(together “**Apple**”)

ORDER

UPON the Tribunal, by order of 23 December 2022 (the “**23 December Order**”), ordering disclosure of certain documents by the Defendants to the Class Representative by 20 January 2023 (the “**CMA Documents**”)

AND UPON the Defendants disclosing the CMA Documents on 23 January 2023 and withholding 935 of those documents from inspection on the grounds of privilege (the “**Withheld Documents**”)

AND UPON the Class Representative requesting disclosure of certain documents by the Defendants by letter dated 25 January 2023 (the “**Quantitative Disclosure Requests**”)

AND UPON the Class Representative requesting disclosure of certain documents (the “**Second Tranche Disclosure**”) by letter dated 10 February 2023

AND UPON the Class Representative’s application by letter to the Tribunal dated 16 February 2023

AND UPON hearing Leading Counsel for the Class Representative and Leading Counsel for the Defendants at the case management conference on 27 February 2023

IT IS ORDERED THAT:

Disclosure report / electronic documents questionnaire

1. By 6.00pm on 6 March 2023 the Defendants shall file and serve a disclosure report and electronic documents questionnaire. The Defendants shall use best endeavours to ensure that those documents comply with Rules 60(1)(b) and 60(1)(c) of the Tribunal Rules and in particular that they:
 - 1.1. describe briefly what documents exist or may exist that are or may be relevant to the matters in issue in the case, including but not limited to a brief description of:
 - 1.1.1. the documents, or categories of documents, that were produced in the U.S. Proceedings, the Australian Epic Proceedings, the CMA Market Study, the CMA Investigation and the EC Investigations (as defined in the Defendants' Disclosure Report dated 18 November 2022), and the total number of documents produced in each case;
 - 1.1.2. any supplemental disclosure (beyond that in the repositories referred to in paragraph 1.1.1 above) relating to the UK (including transactional data) that the Defendants anticipate providing;
 - 1.1.3. the reasons why the Defendants consider that further supplemental disclosure beyond that described pursuant to paragraph 1.1.1 or 1.1.2 above is not reasonably available or would be disproportionate to provide;
 - 1.2. describe where and with whom the documents referred to in paragraphs 1.1.1 and 1.1.2 above are or may be located; and
 - 1.3. in the case of electronic documents, describe how those documents are stored.
2. By 6.00pm on 13 March 2023, the Defendants shall file and serve a statement, verified by a statement of truth, describing the nature and extent of the searches conducted to locate the documents that were produced in the U.S. Proceedings, the Australian Epic Proceedings, the CMA Market Study, the CMA Investigation and the EC Investigations (as defined in the Defendants' Disclosure Report dated 18 November 2022).

Provision of information in respect of the Withheld Documents

3. By 6.00pm on 13 March 2023, the Defendants shall:
 - 3.1. permit inspection of any Withheld Documents in respect of which they no longer assert privilege; and

- 3.2. file and serve a statement, verified by a statement of truth, in respect of the documents over which they continue to assert privilege, sufficient to allow the Class Representative to understand the basis on which privilege is claimed, and:
 - 3.2.1. as far as possible without waiving privilege, explaining the review process for the purposes of assessing privilege in these proceedings (including the re-review undertaken following the disclosure of certain CMA Documents on 23 January 2023);
 - 3.2.2. setting out the types of communication (including a description of the nature of the documents said to be privileged) in respect of which privilege is claimed; and
 - 3.2.3. giving the reasons why the Defendants consider the documents to be privileged, including by reference to the categories of privilege claimed (whether legal advice privilege or litigation privilege).

Further steps in relation to disclosure

4. By 6.00pm on 10 March 2023, the Defendants shall respond to the Quantitative Disclosure Requests.
5. By a date to be determined at the case management conference listed on 20 March 2023, and in any event by 4.00pm on 2 May 2023, the Defendants shall (subject to any protective orders made in the U.S. Proceedings and/or Australian Epic Proceedings) give disclosure of:
 - 5.1. copies of all exhibits admitted in the U.S. Proceedings and the Australian Epic Proceedings insofar as those documents have not already been disclosed;
 - 5.2. copies of all transcripts from the U.S. Proceedings and all transcripts from the Australian Epic Proceedings;
 - 5.3. copies of all witness statements, affidavits, interrogatories, depositions and expert reports filed and/or served in the U.S. Proceedings and the Australian Epic Proceedings.
6. By 4.00pm on 2 May 2023 the Defendants shall conduct reasonable and proportionate searches for and give specific disclosure of any documents similar to APL-KENT-0013995 (to the extent not already disclosed) that were produced in the U.S. Proceedings, the Australian Epic Proceedings, the CMA Market Study, the CMA Investigation and/or the EC Investigations.
7. Unless otherwise agreed, the disclosure provided under paragraphs 5 and 6 above shall be accompanied by a disclosure statement that is verified by a statement of truth, and

inspection shall be given in an electronic form and on an electronic medium to be agreed by the parties.

Amendments to trial timetable

8. The deadlines in paragraphs 13, 17, 18, 19, 22 and 23 of the Tribunal's Order made on 13 September 2022 (and drawn on 29 September 2022) are varied as follows:
 - 8.1. by 4.00pm on 1 March 2024, the parties shall serve signed expert reports;
 - 8.2. by 4.00pm on 30 April 2024, the parties shall serve signed reply expert reports;
 - 8.3. by 4.00pm on 28 June 2024:
 - 8.3.1. the parties' experts in each respective field shall meet on a without prejudice basis to discuss their respective reports; and
 - 8.3.2. the parties' experts in each respective field shall produce a joint statement of matters agreed and not agreed;
 - 8.4. by 4.00pm on 12 July 2024, the CMA shall file and serve its written observations pursuant to Rule 50(2) of the Tribunal Rules;
 - 8.5. by 4.00pm on 6 September 2024, if so advised, the parties shall file and serve their respective written observations on the CMA's written observations;
 - 8.6. by 4.00pm on 27 September 2024, if so advised, the CMA shall file and serve written observations in reply;
 - 8.7. by 4.00pm on 4 December 2024, the Class Representative shall file and serve her skeleton argument for trial; and
 - 8.8. by 4.00pm on 18 December 2024, the Defendants shall file and serve their skeleton argument for trial.

Costs and liberty to apply

9. Costs in the case, save that the costs of and occasioned by the Defendants' privilege claims are reserved pending a final determination of those claims.
10. There be liberty to apply.

Ben Tidswell

Chair of the Competition Appeal Tribunal

Made: 8 March 2023

Drawn: 8 March 2023