



Case No: 1382/7/7/21

IN THE COMPETITION APPEAL TRIBUNAL

BETWEEN:

CONSUMERS' ASSOCIATION

Class Representative

- v -

QUALCOMM INCORPORATED

Defendant

REASONED ORDER

UPON the Order of the Tribunal made on 13 January 2023, as subsequently amended by further Orders of the Tribunal made by consent on 17 February, 24 February, 7 and 8 March and 6 April 2023 (the “Second CMC Order”)

AND UPON the Tribunal’s Order made by consent dated 7 March 2023 (the “Revised Confidentiality Ring Order”)

AND UPON reading a letter from Hausfeld & Co. LLP dated 15 May 2023 making an application on behalf of the Class Representative that the Tribunal makes an order requiring the Defendant to comply with paragraph 7(a) of the Second CMC Order (the “Application”)

AND UPON considering the parties’ written submissions following that Application

AND UPON the terms: (a) “Relevant Third Party” having the same meaning as is set out in paragraph 11 of the Second CMC Order; and (b) “Confidential Information” having the same meaning as is set out in paragraph 2.1.1 as the Revised Confidentiality Ring Order

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

IT IS ORDERED THAT:

1. By one week from the determination by the Tribunal of any application by a Relevant Third Party pursuant to paragraph 3(c) below, or by 25 July 2023 for any document for

which no such application is made, the Defendant shall give specific disclosure of complete versions of all documents quoted from or cited in Sections 9 (Market Definition) and 10 (Dominance) of the confidential version of the Decision of the European Commission dated 24 January 2018 in Case AT.40220 – *Qualcomm (Exclusivity Payments)*.

2. The Defendant shall be permitted to redact information contained in the documents to be disclosed pursuant to paragraph 1 above on grounds of privilege only.
3. Insofar as giving the disclosure referred to at paragraph 1 above will require the Defendant to give disclosure of Confidential Information belonging to a Relevant Third Party which does not fall within the scope of any notification given by the Defendant to that Relevant Third Party pursuant to paragraph 11 of the Second CMC Order and/or any subsequent assurances provided by the Defendant to that Relevant Third Party in respect of the scope of disclosure (or non-disclosure) of that Relevant Third Party's Confidential information:
 - (a) By 4pm on 4 July 2023, the Defendant shall write to those Relevant Third Parties:
 - (i) providing each of them with a copy of this Order, the Revised Confidentiality Ring Order and any notification of intention to disclose previously provided by the Defendant to that Relevant Third Party pursuant to paragraph 11 of the Second CMC Order and/or any subsequent assurances provided by the Defendant to that Relevant Third Party in respect of the scope of disclosure (or non-disclosure) of that Relevant Third Party's confidential information; and
 - (ii) giving notice that:
 - (1) The Defendant has been ordered to give the disclosure referred to in paragraph 1 above, by the deadlines set out in that paragraph, with redactions only for privilege as provided for in paragraph 2 above;

- (2) If any of the Relevant Third Parties have concerns that the Revised Confidentiality Ring Order does not provide adequate protection for their Confidential Information, they may object to the disclosure of the documents containing that Confidential Information by filing an application with the Tribunal by 18 July 2023, provided that they have given the Class Representative and the Defendant notice of their concerns within one week of receiving notification of the intended disclosure.

- (b) The Class Representative shall be copied into the notifications referred to in paragraph 3(a) above, and any subsequent correspondence sent by the Defendant to a Relevant Third Party in relation to the disclosure referred to at paragraph 1 above (which subsequent correspondence may be redacted only to the extent necessary to protect the confidentiality of the information of the Relevant Third Party in question). The Defendant will also invite the Relevant Third Parties to copy the Class Representative into those Relevant Third Parties' responses to such notification and/or correspondence (which responses may also be redacted to the extent necessary to protect the confidentiality of the information of the Relevant Third Party in question).

- (c) Any of those Relevant Third Parties may apply to the Tribunal to vary (to the extent necessary) this Order and/or the Revised Confidentiality Ring Order with a view to protecting their Confidential Information. Such application(s) will be:
 - (i) Filed with the Tribunal Registry by 4pm on 18 July 2023;
 - (ii) Served at the same time on the Class Representative and the Defendant;
 - (iii) Accompanied by a reasoned explanation of the application to vary (to the extent necessary) this Order or the Revised Confidentiality Ring Order together with any evidence relied on; and
 - (iv) At the applicant's risk as to costs if the application is unsuccessful.

4. The Defendant shall pay the Class Representative's costs of and occasioned by the Application, to be assessed if not agreed.
5. There be liberty to apply.

REASONS

1. Paragraph 7(a) of the Second CMC Order made on 13 January 2023 and drawn on 19 January 2023 provided for the disclosure of all documents quoted from or cited in sections 9 and 10 of the European Commission Decision dated 24 January 2018 in Case AT.40220 – *Qualcomm (Exclusivity Payments)* by no later than 24 February 2023. It did not provide for the disclosure of only the parts of those documents cited in those sections of that Decision. If Qualcomm considered that the Order as drafted did not properly reflect the Tribunal's intention at the hearing, it should have raised that with the Tribunal at the time the Order was made and/or following the making of the Order, the terms of which specified that the parties had liberty to apply in the usual way.
2. Having considered the submissions of the parties, the Tribunal considers that the most efficient course is for the relevant documents to be disclosed in their entirety, subject to redactions on grounds of privilege, with a view also to avoiding the risk of further satellite disputes as to the relevance of the material.

The Hon Mrs Justice Bacon
Chair of the Competition Appeal Tribunal

Made: 20 June 2023
Drawn: 20 June 2023