



Case No: 1382/7/7/21

IN THE COMPETITION APPEAL TRIBUNAL

BETWEEN:

CONSUMERS' ASSOCIATION

Class Representative

- v -

QUALCOMM INCORPORATED

Defendant

ORDER (DEFENDANT'S DISCLOSURE)

UPON the Tribunal's Order made by consent on 21 June 2023 (the "Revised Confidentiality Ring Order") re-establishing a revised confidentiality ring in these proceedings, which for the avoidance of doubt supersedes the revised confidentiality ring Order made by consent on 7 March 2023

AND UPON consideration of the parties' written submissions and hearing leading counsel for both parties at a case management conference held on 5 July 2023

AND UPON the parties agreeing that: (i) reasonable and proportionate searches shall be conducted by way of targeted search terms and technology assisted review; and (ii) the process for application of the Revised Confidentiality Ring Order in the proceedings to the disclosure to be provided pursuant to this Order;

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

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

- **“Bilateral Confidential Information”** means information which is confidential to the Defendant (“Qualcomm”) and one or more third parties and which is not Third-Party Produced Confidential Information;
- **“Cellular SEPs”** means SEPs in relation to 2G, UMTS/W-CDMA, 3G CDMA (CDMA2000/EV-DO), LTE or 5G, for mobile communications standards;
- **“Chipset Suppliers”** means MediaTek, HiSilicon, Samsung LSI / Exynos, Intel, Unisoc / Spreadtrum, Freescale, Marvell, Texas Instruments, ST-Ericsson, Broadcom and Nvidia;
- **“Component Supply Agreements”** means the long-term framework contracts that Qualcomm enters into with its customers for the supply of chipsets, under which specific orders for chipsets are made and fulfilled
- **“Commission Decision”** means the European Commission’s Decision in Case AT.40220 - *Qualcomm (Exclusivity Payments)* dated 24 January 2018;
- **“FTC”** means the United States Federal Trade Commission;
- **“FTC Investigation”** means the FTC’s investigation entitled *In the Matter of Qualcomm Incorporated*, FTC File No. 141-0199;
- **“FTC Proceedings”** means Case No. 17- CV-00220-LHK, *Federal Trade Commission v Qualcomm Incorporated*;
- **“FTC Production Set”** means the documents produced by Qualcomm to the FTC during the FTC Investigation and FTC Proceedings;
- **“KFTC”** means the Korea Fair Trade Commission;
- **“KFTC Decision”** means the KFTC’s Decision No. 2017-0-25, *In re Alleged Abuse of Market Dominance of Qualcomm Incorporated*, dated 20 January 2017;
- **“LTE-enabled smartphones”** means multimode smartphone models that are compatible with the LTE Standard but not with the 5G/5G NR standard

- **“Qualcomm Confidential Information”** means information which is confidential to Qualcomm only;
- **“Relevant OEMs”** means Apple (and its contract manufacturers in relation to the manufacturing of phones for Apple) and Samsung;
- **“SCK”** means the Supreme Court of Korea;
- **“SCK Judgment”** means Decision No. 2022Du31897 of the Supreme Court of Korea dated 13 April 2023;
- **“SHC”** means the Seoul High Court;
- **“SHC Decision”** means Decision No. 2017Nu48 of the Seoul High Court dated 4 December 2019;
- **“Third-Party Produced Confidential Information”** means information which is confidential to one or more third parties and which was produced by those third parties in judicial or regulatory proceedings in any jurisdiction other than England and Wales; and
- **“US Class Action Proceedings”** means Case Nos. 17-MD-02773-LHK and 3:17-MD-02773-JSC, *In re: Qualcomm Antitrust Litigation*.

IT IS ORDERED THAT:

1. Qualcomm shall conduct reasonable and proportionate searches for documents in the following categories:
 - (a) Copies of non-publicly available exhibits in the FTC Proceedings;
 - (b) Qualcomm’s submissions, responses and white papers provided to the FTC in the FTC Investigation;
 - (c) Copies of non-publicly available depositions and expert reports from the US Class Action Proceedings save insofar as already disclosed in these proceedings;

- (d) All exhibits and documents provided to the KFTC in relation to the KFTC Decision but not referred to in the KFTC Decision;
- (e) All exhibits and documents provided to the SHC in relation to the SHC Decision but not referred to in the SHC Decision;
- (f) All exhibits and documents provided to the SCK in relation to the SCK Judgment;
- (g) All agreements, relevant amendments and relevant side letters as respects the licensing of Cellular SEPs between Qualcomm and its customers (including OEMs and their contract manufacturers) that detail, inform, establish or amend the royalties paid to Qualcomm, and the terms of any cross-licences from the counterparty to Qualcomm, save that Qualcomm shall not be required to disclose any documents falling within this category which relate exclusively to the licensing of: (a) 5G SEPs; and/or (b) technology for use in products other than mobile phones.
- (h) All Component Supply Agreements, relevant amendments and side letters as respects the supply of baseband chipsets by Qualcomm to its customers (including OEMs and their contract manufacturers), save that Qualcomm shall not be required to disclose any documents falling within this category which relate exclusively to the supply of: (a) 5G chipsets; and/or (b) components for use in products other than mobile phones.
- (i) Documents relating to the negotiations between Qualcomm and:
 - (i) Relevant OEMs in relation to the grant of Cellular SEP licences and/or the making of Component Supply Agreements; and/or
 - (ii) Chipset Suppliers in relation to requests for LTE SEP licences from 1 January 2008 onwards, including Qualcomm's responses to the same;

including but not limited to:

- (i) emails, documents exchanged between parties, internal strategy documents or minutes/notes of meetings, and internal communications including documents showing the aims and objectives of, and the bargaining points advanced by, the parties in the negotiations;
 - (ii) documents relating to the licensing of SEPs and/or the supply of chipsets for use in products other than mobile phones, insofar as the relevant documents also relate to mobile phones; and/or
 - (iii) documents relating to communications and/or negotiations in which licences were requested and/or no agreement was reached.
- (j) Documents showing internal communications within Qualcomm or between Qualcomm and any Relevant OEMs in which Qualcomm made a threat to a Relevant OEM to suspend, cut-off or delay chipset supply (including any response to such threats by the Relevant OEMs);
- (k) Internal board papers, board minutes, reports, plans and strategy documents that:
- (i) relate to any policy of not granting exhaustive licences to Qualcomm's SEPs to Chipset Suppliers generally; and/or
 - (ii) discuss any policy of requiring any OEM (or contract manufacturer) wishing to purchase chipsets (including LTE chipsets) from Qualcomm also to take a separate licence permitting it to use Qualcomm's SEPs on particular terms;
- (l) With respect to the Commission Decision, and Qualcomm's subsequent appeal thereof:
- (i) documents to include: (i) documents setting out Qualcomm's arguments referred to in sections 11.4.1 and 11.4.2 of the confidential version of the Commission Decision; and (ii) the submissions made by Qualcomm (and the underlying evidence) which are addressed at paragraphs 371-

428 of the General Court's judgment in Case T-235/18 *Qualcomm Inc v European Commission*;

- (ii) Qualcomm's 62-page-long submission filed with the General Court on 26 July 2019;
- (m) Documents containing information used by Qualcomm in negotiating the royalty terms in its LTE SEP licensing agreements with customers (including OEMs and their contract manufacturers) for the manufacture and/or sale of LTE-enabled smartphones, including any internal documents, correspondence, estimates and analysis (including supporting information such as patent claim charts and studies procured and/or commissioned by Qualcomm), such disclosure to include, to the extent that such information is within the scope of this category, information which relates to the: (a) patent quality (or patent portfolio quality or strength), patent essentiality, patent value of Qualcomm's SEPs (including UMTS, CDMA and LTE); and/or (b) number and expiry date of Qualcomm's declared UMTS, CDMA and LTE SEPs.
- (n) Declarations to ETSI regarding Qualcomm's LTE patents declared as potentially essential to the releases of the 3GPP LTE Standard;
- (o) Lists of Qualcomm's LTE patents declared as potentially essential to the releases of the 3GPP LTE Standard, including the expiry dates;
- (p) Documents containing information showing the value and volume of chipsets sold by Qualcomm that support LTE standards for LTE-enabled smartphones, broken down by OEM customer or contract manufacturer.
- (q) Documents containing information in relation to the value and volume of Qualcomm's OEM customers' smartphone sales from 1 January 2006 (regardless of whether such information was provided by OEMs or Chipset Suppliers).

- (r) Documents relating to any settlement or other agreement and/or negotiation relating to disputes between the Relevant OEMs and Qualcomm regarding Qualcomm's LTE SEPs and/or chipsets, and which:
 - (i) refer to any terms or potential terms of the kind pleaded at paragraph 39A of the confidential version of the Re-Amended Claim Form; and/or
 - (ii) concern or refer to Qualcomm's objectives or strategy for any such settlement or potential settlement; and/or
 - (iii) concern or refer to the anticipated effect of any such settlements or negotiations on market conduct;

such disclosure to include documents relating to or evidencing informal understandings as well as formal agreements and any internal documents considering any such settlements or settlement negotiations.

- (s) Documents relating to the analyses conducted in 2007 and 2015 (known as Project Berlin and Project Phoenix respectively) in which Qualcomm considered whether to split QCT and QTL, including any internal emails discussing such analyses;
 - (t) All communications to Qualcomm from the Relevant OEMs that express concerns (whether formally or informally and whether in the context of licensing negotiations or otherwise) on the royalty rate for Qualcomm's LTE SEPs for sales of LTE-enabled smartphones;
 - (u) Documents evidencing the extent to which the Relevant OEMs pass on changes in their costs to consumers;
2. Searches described in paragraph 1 shall be conducted over the FTC Production Set save where they relate to the period post-dating 30 March 2018 or in the following cases: paragraph 1(b), (c), (e), (f), (l), (n), (o), (p) and (q).

3. To the extent that the searches specified in paragraph 1 above are to involve keyword search terms, the parties shall liaise in relation to the appropriate search terms and custodians, as follows:
 - (a) By 4pm on 25 July 2023, Qualcomm will provide an updated list of proposed search terms and custodians that it proposes to search.
 - (b) By 4pm on 11 August 2023, the Class Representative will provide a list of all further custodians and search terms it requests Qualcomm to search.
 - (c) By 4pm on 1 September 2023, Qualcomm will provide the Class Representative with the results of Qualcomm's search term calibration exercise, and its suggested revised list of search terms and custodians.
 - (d) By 4pm on 18 September 2023, and to the extent necessary, the parties shall meet to seek to agree a final list of search terms.
 - (e) In the event that agreement cannot be reached within two weeks of that meeting, the parties shall submit any points in dispute by 4pm on 9 October 2023 to the Tribunal for determination.

4. Qualcomm shall provide disclosure of any documents located as a result of the searches described in paragraph 1 above in the following tranches:
 - (a) By no later than 4pm on 9 November 2023, Qualcomm shall disclose any documents located as a result of the searches described in paragraphs 1 (d), (e), (f), (g), (h), (i) and (j).
 - (b) By no later than 4pm on 21 December 2023, Qualcomm shall disclose any further documents located from within the FTC Production Set as a result of the searches described in paragraph 1 above, and the documents located as a result of the search described in paragraph 1(b).

- (c) By no later than 4pm on 29 March 2024, Qualcomm shall disclose any documents located as a result of all other searches described in paragraph 1 above.
5. In carrying out the searches in paragraph 1 above, and in providing the disclosure referred to at paragraph 4 above, Qualcomm shall not be obliged to search for or provide Third-Party Produced Confidential Information and shall be entitled to redact Third-Party Produced Confidential Information, but it shall not be entitled to redact Qualcomm Confidential Information or Bilateral Confidential Information.
6. Qualcomm shall disclose any documents located as a result of the searches of the FTC Production Set without having reviewed these documents for legal professional privilege under English law. Qualcomm shall instead withhold from inspection such documents (or parts of such documents) protected by legal professional privilege under US law if such documents (or parts of documents) were withheld from the FTC in the FTC Production Set. This is without prejudice to the Class Representative's right subsequently to query or to challenge whether any such redactions and/or withholding of documents should be maintained in these proceedings.
7. Documents disclosed as a result of the searches over the FTC Production Set described in paragraphs 1 and 2 above shall be designated as Outer Confidentiality Ring Information within the meaning of the Revised Confidentiality Ring Order where they have been designated as confidential in the FTC Proceedings, save that, for the purposes of this disclosure:
- (a) Paragraphs 7.1.1 and 7.2 of the Revised Confidentiality Ring Order shall not apply.
- (b) Where a party refers to a specific document from the FTC Production Set that has been designated as Outer Confidentiality Ring Information in a document that it files or serves in the proceedings, or where the Class Representative intends to rely on a specific document from the FTC Production Set that has been designated as Outer Confidentiality Ring Information in submissions or at a hearing in the proceedings, the Class Representative may submit a written request to Qualcomm for the document in question to be subject to the process

set out in paragraph 7.1.1 and 7.2 of the Revised Confidentiality Ring Order. Such requests must be reasonable and supported by reasons.

- (c) Upon receipt of such request, Qualcomm shall have a period of 15 working days to undertake the process set out in paragraph 7.1.1 and 7.2 of the Revised Confidentiality Ring Order. The Class Representative will not unreasonably refuse reasonable requests by Qualcomm for a longer period of time, and Qualcomm will not unreasonably refuse reasonable requests from the Class Representative for a shorter period of time, taking into account (for example) the number and size of documents involved.
8. Documents disclosed by Qualcomm as a result of any other searches described in paragraphs 1 and 2 above may be designated as Outer Confidentiality Ring Information, save that, for the purposes of this disclosure paragraphs 7.1.1 and 7.2.2 of the Revised Confidentiality Ring Order shall not apply, and instead Qualcomm will provide a high-level reason why the document contains Outer Confidentiality Ring Information and whether the designation applies in respect of a part of a document or across the full document. The process described in paragraphs 7(b) and (c) above shall apply *mutatis mutandis*.
9. Any disclosure referred to in paragraph 4 above shall be accompanied by:
- (a) A disclosure statement by an appropriate person who shall (a) set out the extent of the search that has been made in order to locate the documents ordered to be disclosed; (b) specify the manner in which the search has been limited on reasonableness and proportionality grounds and why; (c) specify whether any redactions have been made to the documents ordered to be disclosed and why; and (d) certify that to the best of their knowledge and belief that the disclosure ordered has been provided.
 - (b) A table listing, in respect of each disclosed document, the Bates number, date of disclosure and confidentiality designation pursuant to the Revised Confidentiality Ring Order (including, to the extent required by paragraph 8 above, the justification for any such confidentiality designation).

- (c) 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). For documents disclosed as a result of the searches over the FTC Production Set described in paragraphs 1 and 2 above, Qualcomm will produce documents in the same manner and form as produced in the FTC Proceedings.

10. Costs in the case.

11. Liberty to apply.

The Hon Mrs Justice Bacon
Chair of the Competition Appeal Tribunal

Made: 24 July 2023
Drawn: 25 July 2023