



IN THE COMPETITION APPEAL TRIBUNAL

Case No: 1570/5/7/22 (T)

BETWEEN:

**JJH ENTERPRISES LIMITED
(TRADING AS VALUELICENSING)**

Claimant

- v -

(1) MICROSOFT CORPORATION

(2) MICROSOFT LIMITED

(3) MICROSOFT IRELAND OPERATIONS LIMITED

Defendants

ORDER

UPON the hearing of the second Case Management Conference on 9 October 2023

AND UPON reading the parties' submissions

AND UPON hearing Counsel for the Claimant and Leading Counsel for the Defendants

IT IS ORDERED THAT:

Disclosure

1. The parties are to conduct disclosure searches in accordance with the agreed or ordered searches pursuant to paragraph 6 below for documents within the categories set out in

the Joint Disclosure Schedules annexed hereto and as updated in accordance with paragraph 12 below.

2. The Defendants will by 4pm on 3 November 2023 provide the following information to the Claimant:
 - (a) A list of the databases in use by the Defendants (or any of them) during the period from 1 January 2011 to 31 December 2022 (the “**Relevant Period**”) which contain or are likely to contain documents or data falling within the categories identified in the Joint Disclosure Schedules.
 - (b) Full answers to the questions set out at paragraph 18 of Charles Fussell & Co LLP’s letter on disclosure dated 7 July 2023.
 - (c) Organisational charts spanning the Relevant Period detailing the names and roles of the Defendants’ employees (and the dates during which those employees held the role so identified) who were involved in any of the issues identified in the Joint Disclosure Schedules, including but not limited to all organisational charts referred to at paragraph 3 of the Defendants’ 30 June 2023 Disclosure Report (which should be identified as such).
3. By 4pm on 6 November 2023, the Claimant shall provide a witness statement explaining its approach to the Claimant’s custodians’ devices, including details regarding any data that is missing or deleted in the Relevant Period, including Mr Horley’s WhatsApp messages.
4. The parties shall seek to agree the orders that they will invite the Tribunal to make relating to disclosure in respect of each category of documents/data in the Joint Disclosure Schedules annexed hereto and as updated in accordance with paragraph 12

below (including, where appropriate, the scope of any searches) by 4pm on 8 December 2023.

5. The solicitors for each of the Claimant and the Defendants will meet on or before 10 November 2023 in order to comply with paragraph 4 of this Order.
6. Insofar as agreement is reached, the parties will promptly invite the Tribunal to make orders in the agreed form. Insofar as agreement is not reached any dispute will be determined by the Tribunal at a further hearing (the “3rd CMC”), with a time estimate of half a day, to be listed for that purpose for a date on or before 10 January 2023.
7. Disclosure so ordered will be given by 25 March 2024.
8. Inspection shall be given electronically, using a method to be agreed between the parties.

Witness Statements

9. By 4pm on 15 July 2024, the parties shall serve signed statements of witnesses of fact.
10. By 4pm on 13 September 2024, the parties shall serve signed reply statements of witnesses of fact.

Expert Witnesses

11. The parties have permission to adduce evidence from (i) one expert in the field of competition economics and (ii) one expert in the field of forensic accountancy.
12. The experts shall liaise to seek to agree the categories within the Joint Disclosure Schedule relating to market definition and dominance along with categories 11 and 30-32 of the All Other Issues JDS and any further categories of documents/data in respect of which they require

disclosure in order to produce their expert reports, by 6 November 2023. The parties will amend the Joint Disclosure Schedules to include such categories as agreed by the experts.

13. The parties shall liaise to seek to agree the scope of issues for expert evidence.
14. By 4pm on 25 November 2024:
 - (a) The parties are to serve simultaneously their signed expert reports on issues of liability.
 - (b) The Claimant is to serve its signed expert report on quantum.
 - (c) The Defendants are to serve their signed expert report on the issues of market definition and dominance.
15. By 4pm on 13 February 2025:
 - (a) The parties are to exchange simultaneously any signed expert reports in reply on issues of liability.
 - (b) The Claimant is to serve its signed expert report on issues of market definition and dominance.
 - (c) The Defendants are to serve their signed expert report on quantum.
16. By 4pm on 14 March 2025:
 - (a) The Claimant is to serve any signed expert report in reply on quantum.
 - (b) The Defendants are to serve any signed expert report in reply on issues of market definition and dominance.
17. The experts are to meet on or before 24 March 2025.

18. By 4pm on 7 April 2025, the parties' experts shall produce a joint statement of matters agreed and not agreed.
19. A copy of this order must be served by each of the Claimant and the Defendants on their respective experts along with each expert's instructions. The parties must draw to their experts' attention the guidance on expert evidence contained in paragraphs 7.65–7.70 of the CAT Guide 2015 (the "**Guide**"), the guidance under CPR Part 35 therein referred to, and the procedure for seeking guidance from the Tribunal under paragraph 7.69 of the Guide.

Trial

20. A pre-trial review shall be listed on a convenient date at least four weeks before the date listed for trial to be conducted by the Tribunal for the trial unless there is a good reason why this is not possible.
21. The parties are to liaise with the Tribunal as to the form of the prepared Hearing Bundles, including the provision of suitable information technology solutions, to ensure the material is accessible and clearly presented. The Hearing Bundles are to be finalised by no later than 28 days before the date listed for the hearing.
22. Each party is to provide a completed pre-trial checklist not later than 3 weeks before the date fixed for trial.
23. The trial shall be listed from the first available date on or after the commencement of Michaelmas Term 2025 with a time estimate (to be kept under review) of 6 weeks, with 3 days to be allocated as reading time for the Tribunal.

Miscellaneous

24. Save as varied by this order any further order or the relevant provisions of PD57, the practice and procedures set out in the CAT Rules are to be followed.
25. By agreement the parties may vary without further order any deadline in this Order provided that they inform the Tribunal of such agreement in advance of the expiry of the relevant deadline and the extension does not affect the date of the Pre-Trial Review or the First Trial.
26. Costs in the case.
27. Liberty to apply.

Justin Turner KC
Chair of the Competition Appeal Tribunal

Made: 5 December 2023
Drawn: 5 December 2023