



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1433/7/7/22

BETWEEN:

DR LIZA LOVDAHL GORMSEN

Applicant/Proposed Class Representative

- v -

(1) META PLATFORMS, INC.

(2) META PLATFORMS IRELAND LIMITED

(3) FACEBOOK UK LIMITED

Respondents/Proposed Defendants

REASONED ORDER (NON-PARTY ACCESS TO DOCUMENTS)

UPON the hearing which took place in these proceedings on 8 and 9 January 2024 (the “Hearing”) to determine the Class Representative’s application for a Collective Proceedings Order and to amend her Claim Form

AND UPON the Tribunal’s judgment of 15 February 2024 ([2024] CAT 11) finding that the Class Representative’s amendments should be allowed and the case be certified to proceed as a collective action (the “Judgment”)

AND UPON an application by Hausfeld & Co LLP (“Hausfeld”) dated 27 February 2024 for an Order that the Class Representative provide a non-confidential version of the Amended Claim Form (which was referred to during the Hearing) in these proceedings to Hausfeld

AND UPON the Class Representative inviting the Tribunal to decline Hausfeld’s request in written correspondence with the Tribunal on 28 February 2024

IT IS ORDERED THAT:

1. The Class Representative shall provide Hausfeld with a non-confidential version of the Amended Claim Form within seven days of the date of this order.
2. Any proposed redactions to the Amended Claim Form should be explained by the Class Representative to Hausfeld.
3. The Class Representative shall pay Hausfeld's reasonable costs occasioned by this application, such costs to be assessed on the standard basis if not agreed.

REASONS:

1. Hausfeld is a non-party to these proceedings. Its application is made pursuant to paragraph 9.66 of the Tribunal's Guide to Proceedings (the "Guide"), which provides that where a pleading (including a claim form), skeleton argument, witness statement or expert report is referred to or quoted in open court, the party who produced that document should be prepared to make a non-confidential version of that document available to a non-party upon request.
2. In accordance with paragraph 9.66 of the Guide, Hausfeld approached the Class Representative directly on 15 January 2024 and requested copies of documents referred to during the Hearing, including the Amended Claim Form. The Class Representative's solicitors have already provided certain documents, including skeleton argument and expert reports, to Hausfeld.
3. They have not provided the Amended Claim Form, initially on the basis that permission had not yet been granted to amend the Claim Form and so it was not a "pleading". Following the Tribunal's Judgment granting such permission, the Class Representative's solicitors have stated that they will provide the Amended Claim Form once it has been filed and served in accordance with the terms of the Collective Proceedings Order, which is yet to be made. The Class Representative's solicitors state that the draft Amended Claim Form

is still not a “pleading” within the ambit of paragraph 9.66, and they will provide it to Hausfeld once it has been filed and served.

4. Hausfeld submit that this is not a valid basis to continue to delay providing the Amended Claim Form, with reference in particular to Morris J’s Order of 4 February 2022 ([2022] CAT 7), which dealt with a request by a non-party for access to documents referred to in open court.
5. I grant Hausfeld’s application for the following reasons:
 - a. The Amended Claim Form was referred to in open court at the Hearing.
 - b. Following the approach taken in *Sainsbury’s Supermarkets Ltd v Mastercard Incorporated and others* [2016] CAT 6, the Tribunal has jurisdiction to make an order requiring the provision of a document to a non-party where it has been referred to in open court, in accordance with the principle of open justice. This jurisdiction is not confined to the categories of documents listed in paragraph 9.66 of the Guide.
 - c. The reason provided by the Class Representative for delaying provision of the Amended Claim Form is without merit. The document has been referred to in open court and so should be provided – awaiting the Collective Proceedings Order does not justify delaying its provision.
 - d. Hausfeld has requested a non-confidential version of the Amended Claim Form, and so issues of confidentiality should not arise.
6. This application should not have been necessary. The amended Claim Form was referred to in open court and it is clearly in the interests of open justice for third parties to have access to that document should they request it, given its centrality to the Hearing and the Judgment. For this reason, I have also ordered that the Class Representative pay Hausfeld’s reasonable costs occasioned by this application.

Sir Marcus Smith

President of the Competition Appeal Tribunal

Made: 1 March 2024

Drawn: 1 March 2024