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4 record.

5 **IN THE COMPETITION**

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

6 **APPEAL**

7 **TRIBUNAL**

8
9 Salisbury Square House
10 8 Salisbury Square
11 London EC4Y 8AP

12 Friday 23rd February 2024

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14 Before:

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16 Justin Turner KC

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18 (Sitting as a Tribunal in England and Wales)

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21 BETWEEN:

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23 **Claimants**

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25 **JJH Enterprises Limited (trading as ValueLicensing)**

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27 V

28 **Defendants**

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30 **Microsoft Corporation and Others**

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34 **A P P E A R A N C E S**

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37 Jon Lawrence and Andris Rudzitis (Instructed by Charles Fussell & Co LLP) on
38 behalf of JJH Enterprises Limited.

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40 Nikolaus Grubeck & Sarah O’Keeffe (Instructed by CMS Cameron McKenna Nabarro
41 Olswang LLP) on behalf of Microsoft Corporation and Others.

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(10.30 am)

THE CHAIR: Good morning. Can you hear me?

MR RUDZITIS: Yes.

THE CHAIR: I just need to read the live-stream announcement.

I must start with the customary warning: an official recording is being made and an authorised transcript will be produced, but it is strictly prohibited for anyone else to make an unauthorised recording with an audio-visual of the proceedings, and breach of that provision is punishable as contempt of court.

I understand we have agreed an order and I have been handed a copy of it which has been signed. So thank you very much for that.

MR RUDZITIS: Yes, sir.

THE CHAIR: I don't know whether there's anything else we needed to raise today. It would be just helpful if you could orientate me as to what's going on. As I understand, there's been an application for summary judgment made, is that right?

MR RUDZITIS: There has been an application for summary judgment and the claimant's awaiting the listing office's determination as to when that's going to be listed.

THE CHAIR: Okay. That's an application by?

MR RUDZITIS: The claimant.

THE CHAIR: The claimant. What's the nature of the application, just very briefly?

MR RUDZITIS: It's in respect of a certain part of the defence.

THE CHAIR: Right.

MR RUDZITIS: It's on the basis of an issue in the defence, or two issues in the defence, rather than the entire case.

THE CHAIR: It's not going to dispose of the proceedings. Very good, thank you. This hasn't been set down for trial yet, has it? We haven't got a date.

1 **MR RUDZITIS:** No, we don't, no. At the last CMC, it was provisionally determined
2 that it would take place in Michaelmas 2025. On the basis of the timetable that the
3 parties have now agreed, it's been pushed back to facilitate the interposition of this
4 order and the delay which that has to the disclosure process over the next six months.

5 **MR GRUBECK:** So paragraph 9 of the consent order provides that the trial shall be
6 listed for the first available date in Easter term 2026.

7 **THE CHAIR:** Yes. In terms of the structure of that trial, as I recall, there was an
8 application at the last hearing to stay the dominance market definition part of the case,
9 which was refused at that stage. Then a pleading was going to go in from Microsoft.
10 Is that in the bundle, or am I misremembering?

11 **MR GRUBECK:** Sir, there is an updated Amended Defence, that is tab 3 of the
12 bundle, page 35.

13 **THE CHAIR:** Page 35 of the bundle?

14 **MR GRUBECK:** It should be, yes.

15 **THE CHAIR:** And the relevant paragraphs?

16 **MR GRUBECK:** The relevant paragraphs are on page 54, paragraph 42A, and then
17 as you scroll down, the next amended bit is page 57.

18 **THE CHAIR:** Yes, okay. Let me just have a look at that. **(Pause)** Right. Okay, thank
19 you.

20 Then there hasn't been any discussion as to whether or not quantum should be heard
21 at first trial, is that right?

22 **MR GRUBECK:** No, sir. Following your ruling at the last CMC, we have basically
23 parked any possibility of a split trial. With the benefit of disclosure and further
24 evidence, we can potentially revisit the position in a more informed manner. But you
25 made very clear of course, sir, at the last hearing that now was not the moment to split.

26 **THE CHAIR:** Yes. So what point would be an appropriate point to revisit those issues,

1 when things have narrowed or broadened?

2 **MR GRUBECK:** Sir, we say the benefit of the current exercise is that there will be
3 very significant substantive disclosure given. That will then be available to the tribunal
4 and to the parties at the next CMC in autumn. In the light of that, if not necessarily
5 making a decision on the nature of the trial then, we would certainly be better placed
6 to make suggestions how that might be dealt with.

7 **THE CHAIR:** Very good. Okay, thank you very much.

8 Fine. Was there anything else we needed to deal with today?

9 **MR GRUBECK:** Not from our side, sir.

10 **MR RUDZITIS:** Nor from ours.

11 **THE CHAIR:** So there will be a CMC -- I notice a provision if you are not in agreement
12 on aspects of disclosure, but there'll be a further CMC in October, first available date
13 in October 2024. Is that right?

14 **MR RUDZITIS:** Sir, yes.

15 **MR GRUBECK:** Yes, and that can probably be comfortably listed. I suspect there will
16 be some disagreement as to disclosure without obviously wanting to exclude the
17 possibility of agreement, but it may make sense to list that CMC to focus the mind.

18 **THE CHAIR:** Yes, yes. And I promise not to be at all upset if you manage to agree
19 everything.

20 **MR RUDZITIS:** Yes, sir, we are grateful. We will be able to agree things.
21 Disappointing that Microsoft is slightly more pessimistic about this, but we are very
22 hopeful this exercise will put the parties in a position which means that the fourth
23 CMC -- (inaudible) CMC will be not a CMC where the tribunal is being asked to rule
24 issue-by-issue, which the purpose of the current exercise is to avoid that outcome.

25 **THE CHAIR:** Even if you have agreed disclosure, I think it would be useful to have,
26 even if it's only a short CMC, I think it would be useful to have a CMC at that stage

1 anyway. So please don't take it out of the list because you've reached agreement. I
2 would be grateful for an update of where we are.

3 **MR GRUBECK:** I certainly endorse my learned friend's sentiment that hopefully we
4 can come before you with an update, but broad agreement.

5 **THE CHAIR:** Very good. Okay. Thank you very much indeed.

6 **MR RUDZITIS:** Thank you, sir.

7 **(10.40 am)**

8 **(The hearing concluded)**

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