



IN THE COMPETITION APPEAL TRIBUNAL

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

BETWEEN:

**JHH ENTERPRISES LIMITED
(Trading as VALUE LICENSING)**

Claimant

- and -

**(1) MICROSOFT CORPORATION
(2) MICROSOFT LIMITED
(3) MICROSOFT IRELAND OPERATIONS LIMITED**

Defendants

ORDER

UPON the Claimant's application made on 14 December 2023 for summary judgment pursuant to Rule 43 of the CAT Rules in relation to paragraphs 58, 62, 64.2(d) and 65.4 of the Amended Defence (the "Summary Judgment Application")

AND UPON the Defendants having confirmed in correspondence that they will amend their Defence so as to remove reliance on foreign law

AND UPON the Claimant's application made on 25 September 2024 with respect to the Defendants' designation of documents disclosed to date as Restricted (the "Restricted Documents Application")

AND UPON the Claimant having agreed in correspondence to respond by 6 December 2024 to the Defendants’ request for further information dated 18 September 2024 (the “Defendants’ RFI”)

AND UPON reading the parties’ submissions

AND UPON hearing Counsel for the Claimant and Counsel for the Defendants at the fourth Case Management Conference on 20-22 November 2024 (“CMC 4”)

IT IS ORDERED that:

Split trial

1. There shall be an initial trial to determine the issue of liability, on the assumption that the Defendants hold a dominant position as alleged, to include questions of appreciability, causation, and defences (the “Liability Trial”). The determination of the issues of market definition, dominance and quantum shall, insofar as necessary, be the subject of directions following the handing down of judgment in the Liability Trial.

Directions to CMC 5

2. By 4.30pm on 4 December 2024, the Claimant shall file and serve on the Defendants a proposed list of issues for the Liability Trial.
3. By 4.30pm on 11 December 2024, the Defendants shall respond to the Claimant’s proposed list of issues for the Liability Trial.
4. By 4.30pm on 20 December 2024, the parties shall file and serve, if advised, applications for further disclosure for the Liability Trial.
5. By 4.30pm on 15 January 2025, the parties shall file and serve, if advised, evidence in reply to each other’s applications for further disclosure for the Liability Trial.
6. The matter shall thereafter be listed for a further CMC (“CMC 5”), with further directions to be given by letter after 23 December 2024.
7. After 4 December 2024 and at least 14 days prior to CMC 5, the legal representatives of the parties shall meet to discuss the disclosure by reference to the parties’ proposed list of issues for the Liability Trial and make proposals aimed at narrowing any issues in dispute.

Defendant's RFI dated 18 September 2024

8. By 6 December 2024, the Claimant shall respond to the Defendants' RFI.

The Restricted Documents Application

9. As to documents currently designated by the Defendants as Restricted which are more than five years old as at the date of this Order, such documents shall be re-designated as Confidential at 4.30pm on the day 21 days after the date of this Order, save that this Order shall be suspended, pending resolution of any dispute, in respect of any documents as to which:

- a. The Defendants indicate, by 4.30pm on the day 21 days after the date of this Order, that they intend to make an application under paragraph 9(b) below; and
- b. The Defendants make an application, supported by evidence, within 14 days thereafter (i.e. within 35 days from the date of this Order).

10. As to documents currently designated by the Defendants as Restricted which are no more than five years old as at the date of this Order:

- a. Insofar as the Defendants have not provided highlighted copies of the Restricted Documents to date, they shall do so by 4.30pm on the day 21 days from the date of this Order.
- b. Any Restricted Documents of which the Defendants have not provided a highlighted copy by the above deadline shall be re-designated, upon the expiry of the deadline, as Confidential, subject to paragraphs 10(c) and 11 below.
- c. The parties have liberty to apply.

11. To the extent that any of the Restricted Documents are or become the subject of any applications by the parties, they shall remain designated as Restricted pending the final resolution of the applications or further Order of the Tribunal.

12. The Defendants shall pay the Claimant's costs of the Restricted Documents Application, to be assessed on the standard basis, if not agreed.

Summary Judgment Application

13. The Summary Judgment Application is dismissed.

14. The Claimant shall pay 90% of the Defendants' costs of the Summary Judgment Application, to be assessed on the standard basis, if not agreed.

Costs

15. Save as set out in paragraph 12 and 14 above, all costs of CMC 4 and of the applications listed for CMC 4 are reserved to CMC 5.

Justin Turner K.C.
Chair of the Competition Appeal Tribunal

Made: 16 December 2024
Drawn: 16 December 2024