



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1382/7/7/21

BETWEEN:

CONSUMERS' ASSOCIATION

Class Representative

- v -

QUALCOMM INCORPORATED

Defendant

REASONED ORDER (HEARSAY EXTENSION)

UPON Appendix B of the Order of the Chair made on 29 January 2024, as later amended by the Annex to the Order of the Chair made on 9 August 2024, and as later amended by the Annex to the Order of the Chair made on 8 November 2024, directing that the Class Representative and the Defendant were to notify each other by 14 March 2025 of any hearsay evidence they intend to rely upon at trial arising from third party disclosure provided after 18 September 2024 (the **Hearsay Deadline**)

AND UPON the Class Representative having received disclosure of materials arising out of the High Court and Court of Appeal proceedings in *Optis v Apple* (the ***Optis v Apple Proceedings***)

AND UPON the Tribunal having received an application from the Class Representative dated 17 June 2025 requesting permission for the Hearsay Deadline to be extended (the **Application**)

AND UPON the Tribunal having received the Defendant's response to the Application dated 24 June 2025

AND UPON the Tribunal having received the Class Representative's reply to the Defendant's response dated 27 June 2025

AND HAVING REGARD TO the Tribunal's powers under Rules 53 and 55 of the Competition Appeal Tribunal Rules 2015

IT IS ORDERED THAT:

1. The Class Representative is permitted to rely on the following evidence from the *Optis v Apple* Proceedings:
 - (a) Paragraphs 263–265 of the High Court's judgment of 10 May 2023 in *Optis v Apple* [2023] EWHC 1095 (Ch).
 - (b) Pages 1 and 4 of the Third Witness Statement of Ms Heather Mewes, dated 13 January 2022, and as filed in the High Court in the *Optis v Apple* Proceedings.
 - (c) Pages 1 and 37 of the Fourth Witness Statement of Ms Heather Mewes, dated 16 May 2022, and as filed in the High Court in the *Optis v Apple* Proceedings.
 - (d) Pages 1, 16 and 17 of the Sixth Witness Statement of Ms Heather Mewes, dated 9 July 2023, and as filed in the High Court in the *Optis v Apple* Proceedings.
 - (e) Pages 863–864, 957–972 and 1085–1092 of the transcript of Day 6 of the *Optis v Apple* Proceedings before the High Court, dated 21 June 2022.
2. For these purposes only, the Hearsay Deadline is extended to **4:00pm** on **30 June 2025**.
3. There shall be liberty to apply.

REASONS

1. I have considered the parties' helpful submissions in relation to the Application, and my reasons for making the Order above are as follows.
2. First, it is unreasonable for the Tribunal to expect omniscience from the parties regarding the existence of relevant materials. With the benefit of hindsight, there may have been some indications in the redacted version of the High Court's judgment in *Optis v Apple* [2024] EWHC 197 (Ch) (the **HC Consequential Judgment**) that there was material in those proceedings which might be of relevance to these proceedings, which could have been sought from Apple. It is clear, however that the specific nature and relevance of the material was not fully apparent until the Court of Appeal's judgment in *Optis v Apple* [2025] EWCA Civ 552 (the **CA Judgment**) was handed down on 1 May 2025.
3. Secondly, it would be unreasonable in the present circumstances to expect that the overlapping counsel acting for both Which? in these proceedings and for Apple in the *Optis v Apple* Proceedings should have raised with the Class Representative the relevance or potential relevance of the material prior to the CA Judgment being handed down. Those counsel clearly could not breach their professional obligations by sharing confidential information from the *Optis v Apple* Proceedings; nor would it have been proper for them to hint at information which was at the time redacted, by suggesting to the Class Representative that it should make further enquiries in that regard.
4. Thirdly, the material in question from the *Optis v Apple* Proceedings is clearly relevant to Which?'s claim regarding dominance and abuse. The appropriate weight to ascribe to such material, in circumstances where Ms Mewes is not being called as a witness, will be a matter for determination at trial.
5. Fourthly, there will be no material prejudice to Qualcomm as a result of granting the Application. The scope of the material is limited, and its subject matter is familiar to Qualcomm. There is no reason to expect that Qualcomm and their expert will not be able to address the materials within the current timetable. Conversely, refusing the Application and thereby declining to permit Which? to rely on the material would likely prejudice Which?, as they would not be able to refer to material which is now available to them, and which is of obvious relevance to central issues in these proceedings.

Mrs Justice Bacon
Chair

Charles Dhanowa CBE, KC (Hon)
Registrar

Date: 4 July 2025