Neutral citation [2026] CAT 50

Case No: 1382/7/7/21

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

10 June 2026

Before:

HODGE MALEK KC
(Chair)
CAROLE BEGENT
HUGH KELLY

Sitting as a Tribunal in England and Wales

BETWEEN:

CONSUMERS' ASSOCIATION

Joint Applicant / Class Representative

- and -

QUALCOMM INCORPORATED

Joint Applicant / Defendant

Heard at Salisbury Square House on 18 May 2026

JUDGMENT (CSAO APPLICATION)

APPEARANCES

Rob Williams KC and Jamie Carpenter KC (instructed by Hausfeld & Co. LLP) appeared on behalf of the Class Representative / Joint Applicant.

David Bailey KC and Alexandra Breckenridge (instructed by Norton Rose Fulbright LLP) appeared on behalf of the Defendant / Joint Applicant.

Note: Excisions in this Judgment (marked "[✂]") relate to commercially confidential information: Schedule 4, paragraph 1 to the Enterprise Act 2002.

CONTENTS

A. INTRODUCTION

1. The Tribunal has before it a joint application for a collective settlement approval order (**CSAO**) made pursuant to Rule 94 of the Competition Appeal Tribunal Rules 2015 No. 1648 (the **Rules**) (the **CSAO Application**) by the Consumers' Association (commonly referred to as **Which?)** acting as Class Representative (**CR**) and the Defendant, Qualcomm Incorporated (**Qualcomm**) (together, the **Settling Parties**). The Settling Parties submit that the terms of their proposed settlement, as set out in the settlement agreement dated 13 February 2026, and as subsequently amended on 20 May 2026 (the **Settlement Agreement**, or the **Proposed Settlement**), are just and reasonable, and therefore invite the Tribunal to make a CSAO in the terms set out in the draft CSAO.

2. These Proceedings concern standalone claims against Qualcomm under section 47B of the Competition Act 1998 (the **Competition Act**) for damages arising from alleged infringements of competition law relating to Qualcomm's sale of smartphone chipsets, and the licensing of intellectual property related to its technology.

3. The Proceedings are brought on behalf of consumers who have made UK purchases of LTE-enabled Apple and Samsung mobile phones (the **Affected Products**) between 1 October 2015 and 9 January 2024 (the **Relevant Period**). The total class is estimated to be around 29 million consumers. At the time of bringing proceedings, the CR's estimate was that those consumers had suffered aggregate losses of around £482.5 million including interest, equating to an average of £7.56 per handset. On that basis, at the time of bringing proceedings, the average damages per class member were estimated as being £16.64.

4. The essence of the CR's claim is the allegation that Qualcomm's policy of supplying chipsets only to licensed OEMs (which the CR referred to as the 'No Licence No Chips' (**NLNC**) policy, but which we refer to more neutrally as the **chipset supply policy**), as buttressed by Qualcomm's associated policy of only licensing its cellular standard essential patents (**SEPs**) at the end-device level (which the CR referred to as the 'Refusal to License' (**RTL)** policy, but which we again refer to more neutrally as the **end-device licensing policy**), enabled

Qualcomm to leverage dominant positions in the supply of multimode 3G, 4G and 5G baseband chipsets to extract inflated LTE royalties in connection to the licensing of Qualcomm's SEPs for use in the alleged Affected Products sold by Apple and Samsung in the UK in the Relevant Period. The CR alleges that Qualcomm leveraged various OEMs' dependence upon Qualcomm for 3G CDMA, 4G CDMA/LTE, 4G UMTS/LTE and 5G chipsets in order to pressurise them into accepting royalty rates that were otherwise unacceptable, distorting the negotiation process and depriving them of the protections of the fair, reasonable, and non-discriminatory (**FRAND**) regime.

5. The CR claims that this alleged abuse caused Apple and Samsung to pay higher LTE SEP royalties than they otherwise would have, and that those inflated royalties were passed on to the final consumers of Apple and Samsung mobile phones in the UK. Qualcomm's conduct is said to have infringed the Chapter II prohibition in section 18 of the Competition Act, and until 31 December 2020, Article 102 of the Treaty on the Functioning of the European Union (**TFEU**).

6. The Proposed Settlement does not provide for any payment of damages by Qualcomm. Therefore unlike previous settlements approved by the Tribunal, the class will receive no distribution of damages and derive no benefit from these Proceedings or the Proposed Settlement. The Proposed Settlement can be described as a 'drop hands' settlement, in which the Proceedings are brought to an end with no admission of liability or fault, no payment from either side in respect of damages or costs, and each party bearing its own costs. It is the CR's evidence that it considered it appropriate to accept the terms of the Proposed Settlement due to its assessment of the reduced prospects of success following Trial 1; and the CR's position under its after-the-event (**ATE**) insurance policies.

7. The CSAO Application was made on 13 February 2026, following the conclusion of the first trial in these Proceedings (**Trial 1**) which commenced on 6 October 2025 and concluded on 4 November 2025 – sitting for 12 days in total. A very substantial amount of costs, in excess of £60 million in total were incurred by the Settling Parties prior to reaching the Proposed Settlement.

8. A Tribunal distinct from the Tribunal which heard Trial 1 has been constituted to hear the CSAO Application (the **Settlement Tribunal**).

B. BACKGROUND

9. Qualcomm is a global telecommunications company, which is both a major supplier of mobile phone chipsets, and a licensor of intellectual property relating to its cellular technology. The CR, Which?, is a well-known not-for-profit consumer organisation in the United Kingdom and acted as a funded class representative in the Proceedings.

10. The essence of the claim is summarised above at paragraph [4]. While the CR alleges that Qualcomm's conduct operated across all OEMs, its claim in these Proceedings is limited to losses allegedly suffered by consumers who purchased LTE-enabled Apple and Samsung smartphones in the Relevant Period.

11. Qualcomm denies that it held a dominant position in any relevant market for the supply of baseband chipsets or for the licensing of SEPs *vis-à-vis* Apple and/or Samsung. As to the alleged abuse, Qualcomm's position is that it never threatened, let alone actually refused to supply baseband processor chipsets or withheld support to Apple or Samsung, nor did Qualcomm ever make any such threats so as to extract higher royalties.

12. Following a judgment delivered on 17 May 2022 ([2022] CAT 20), on 4 July 2022, the Tribunal made a collective proceeding order (**CPO**) authorising the CR to continue the Proceedings on an opt-out basis. The class is defined as "All Consumers who purchased one or more Affected Products in the United Kingdom during the Relevant Period." The CPO Order defines the relevant terms as follows:

> "(a) "**Consumers**" means natural persons who purchased Affected Products other than wholly for business use. Where a consumer has died since the date of Purchase, the representative of his or her estate is considered to be a Consumer for the purposes of this definition.
>
> For the avoidance of doubt, any consumer who died on or before 18 February 2021 and whose purchases of Affected Products all pre-date 24 December 2015 shall not form part of the Class.

(b) "**Relevant Period**" means the period between 1 October 2015 and the date of final judgment or earlier settlement of this claim.[1]

(c) "**Purchase**" means paying, or incurring a liability to pay, or providing reimbursement for, or incurring a liability to provide reimbursement for, all or part of the purchase price of an Affected Product. For the avoidance of doubt, this:

i. includes both payments for an Affected Product made or liable to be made in a single amount or by instalments, and payments made or liable to be made in respect of a bundle including the supply of voice and/or data telecommunications services and the associated supply of an Affected Product; but

ii. excludes second-hand purchases and purchases of refurbished Affected Products; and

iii. excludes purchases where the Affected Products were delivered outside the United Kingdom.

(d) "**Affected Products**" are LTE-enabled smartphone models included on the list at Appendix A, or any subsequent LTE-enabled smart phone models (excluding 5G/5G NR-enabled models) manufactured by, for, or on behalf of Apple Inc. or Samsung Electronics Co. Limited or any member of their respective corporate groups."

13. For the purposes of this CSAO Application, "Represented Persons" means members of the Class who, in accordance with Rule 82: (i) have not opted out of the Proceedings; or (ii) if not domiciled in the United Kingdom at the domicile date in the Proceedings (i.e. 17 May 2022), have opted into the Proceedings. The Tribunal understands that by the CPO's opt-out deadline of 11 November 2022, six Class members had opted out of the Class.

14. The Proceedings progressed through to Trial 1 and the Tribunal heard argument on liability only. The key aspects of the dispute between the CR and Qualcomm at Trial 1 were: (i) the definition of the relevant markets; (ii) whether Qualcomm held a dominant position in any relevant market and, if so, in what period; and (iii) whether Qualcomm's conduct constituted an abuse of dominance and whether the alleged conduct was objectively justified.

15. Both parties agree that the trial itself did not go well for the CR at least in relation to the question of abuse. As the CR states in the CSAO Application:

[1] Paragraph 5(b) of the CPO was amended by Order dated 30 January 2024 so that "Relevant Period" means the period between 1 October 2015 and 9 January 2024.

> "having reviewed all the evidence and the arguments advanced at [Trial 1], [the CR] considers that the trial judgment will likely find that (a) Qualcomm did not coerce Apple, Apple's CMs, or Samsung to sign any patent licences or chipset agreements; (b) Qualcomm did not leverage its position as a chipset supplier to coerce Apple, Apple's CMs, or Samsung to agree to any licensing terms; and (c) Qualcomm's chipset supply and licensing practices did not infringe competition laws, did not result in inflated royalties, and did not lead to an increase in prices consumers paid for their mobile phones."

16. On 23 January 2026, the parties wrote jointly to the Tribunal to inform it that the parties had reached an agreement in principle to settle the Proceedings on a full and final basis, subject to documentation. On the same day, the Tribunal wrote to the parties stating that the Trial 1 judgment was "at an advanced stage" and that "it had been the Tribunal's intention to circulate a draft under embargo in February". Further, the Tribunal requested the parties "confirm whether the Tribunal ought to suspend work on the draft judgment pending determination of that application". Later that day, the parties confirmed they "support[ed] a pause in the drafting process at this stage".

C. THE CSAO APPLICATION

17. As noted above, the CSAO Application was filed on 13 February 2026, over three months after the final day of Trial 1.

18. The parties requested that the CSAO Application be determined on the papers without an oral hearing. The parties averred that this would:

> "be a proportionate course given that the issues which arise are simpler than those addressed in previous CSAO applications, in particular given that: (i) there is no settlement sum or other monetary relief to distribute; and (ii) the Primary Terms (as defined in the Settlement Agreement) are straightforward."

19. The Tribunal disagreed with the parties' proposed course, as the CSAO Application is novel and affects millions of class members in relation to a high-value claim. Parties should not assume that any settlement which they may agree amongst themselves will be approved without question as if any approval by the Tribunal is a mere formality. The approval process is designed to provide scrutiny in an area where conflicts of interest exist, and where the interests of the class need independent consideration by the Tribunal. Following consultation with the parties regarding counsel availability, the Tribunal listed

a one-day hearing to determine the CSAO Application on 18 May 2026 (the **Hearing**).

(1) Key evidence and materials

20. In addition to a draft CSAO and the relevant draft notices, the CSAO Application is supported by the following witness statements, privileged opinions and agreements:

    (1) The second witness statement of Ms Charmian Averty (**Averty 2**), solicitor and General Counsel at Which?. Ms Averty has overseen the work performed by the litigation team at Which? in its conduct of the Proceedings, including taking key decisions and approving documents filed by Which? in the Proceedings. Averty 2 summarises the CR's insurance and funding position as relevant to the Proposed Settlement, its without-prejudice settlement discussions with Qualcomm, the legal advice it received on prospects as well as the reasonableness of the Proposed Settlement, its consultations with insurers, and its resulting decision that accepting Qualcomm's drop hands settlement is just and reasonable under Rule 94. Averty 2 also annexes copies of the CR's ATE insurance policies and litigation funding agreement.

    (2) The fourteenth witness statement of Ms Nicola Boyle (**Boyle 14**), partner at Hausfeld & Co. LLP (**Hausfeld**), with conduct of these Proceedings for the CR alongside Ms Joanna Christoforou. Boyle 14 outlines the CR's understanding of Qualcomm's incurred costs in the Proceedings, its estimate of the time and expense required to continue the Proceedings, and its reasons for concluding that an independent expert opinion is unnecessary for assessing the Proposed Settlement under Rule 94(9)(e).

    (3) The ninth witness statement of Ms Caroline Ann Thomas (**Thomas 9**), partner at Norton Rose Fulbright LLP (**NRF**) with conduct of these Proceedings for Qualcomm alongside Ms Nuala Canavan and Quinn Emanuel Urquhart & Sullivan LLP (Brussels) (**QEB**). Thomas 9

outlines the background to the Proposed Settlement, provides further context on the Proceedings as well as Qualcomm's confidence in its case, and addresses the mandatory factors the Tribunal must consider under Rule 94(9) in determining whether the terms of the CSAO Application are just and reasonable.

(4) The privileged and confidential opinion of Mr Rob Williams KC (**Williams Opinion**), one of the leading counsel for the CR at Trial 1. The Williams Opinion was provided to the Settlement Tribunal, and not to Qualcomm, its representatives or any other person, by way of limited waiver of privilege only for the purposes of this CSAO Application. The Williams Opinion addresses the merits of the Proposed Settlement and why the Proposed Settlement is just and reasonable in the circumstances.

(5) The privileged and confidential opinion of Mr Daniel Jowell KC, Mr Nicholas Saunders KC, Mr David Bailey KC and Mr Charles Wall (**Qualcomm Opinion**), counsel for Qualcomm. The Qualcomm Opinion was provided to the Settlement Tribunal, and not to the CR, its representatives or any other person, by way of limited waiver of privilege only for the purposes of this CSAO Application. The Qualcomm Opinion addresses the merits of the Proposed Settlement and why the Proposed Settlement is just and reasonable in the circumstances.

(6) A non-confidential, executed copy of the proposed Settlement Agreement between the CR and Qualcomm dated 13 February 2026.

21. The Settlement Tribunal has also reviewed the extracts of expert evidence placed before it by the Settling Parties, pleadings, the parties' Trial 1 closing submissions and the transcripts from Trial 1. All of this material has been taken into account in its assessment of the CSAO Application.

22. Upon considering the CSAO Application and the supporting documents filed with it, the Tribunal wrote to the Settling Parties on 27 February 2026 and directed that they make further submissions, and if necessary, file additional evidence, *inter alia*, on the following matters:

> "1. The extent to which the settlement of "Claims" (as defined in the Settlement Agreement annexed to the CSAO Application) goes further than the claims certified in these Proceedings, together with any resulting issues arising from the foregoing.
>
> 2. A summary schedule of costs for both the Class Representative and the Defendant. The Class Representative should specify which of their costs have been paid and which have been deferred.
>
> 3. An estimate of any third-party costs which may be sought in these Proceedings.
>
> 4. The appropriateness of the terms and timing of the Class Representative's public "Statement" (as defined and provided for in the Settlement Agreement annexed to the CSAO Application), which has the effect of abandoning the Class Representative's case prior to the Tribunal making a CSAO in the Proceedings."

23. In response to the Tribunal's direction, on 24 April 2026, the parties filed the following additional evidence in support of the CSAO Application:

(1) The third witness statement of Ms Averty (**Averty 3**). Averty 3 explains the CR's understanding and its position in relation to the scope of the Proposed Settlement, the CR's costs incurred, an estimate of third-party costs and discussion regarding the terms and timing of the Public Statement (as defined in paragraph 51 below). It also provides information relating to discussions between the CR and its legal advisors, funder and insurers regarding settlement.

(2) The tenth witness statement of Ms Thomas (**Thomas 10**). Thomas 10 discusses Qualcomm's rationale and understanding of the scope of the Proposed Settlement, the timing and content of the Public Statement, Qualcomm's incurred costs to date, potential third-party costs in the Proceedings and provides a short response to submissions from three class members.

(3) The fifteenth witness statement of Ms Boyle (**Boyle 15**). Boyle 15 provides a summary schedule of the CR's costs, an overview of the litigation funding arrangements and budget changes (including conditional fee arrangements), and a high-level summary of the main workstreams across the phases of the Proceedings.

24. The CR and Qualcomm each filed a skeleton argument for the Hearing on 8 May 2026 addressing all of the matters the Tribunal must take into account in considering whether the terms of the Proposed Settlement are just and reasonable.

25. The Hearing was held in public, save for one limited part where the Tribunal questioned leading counsel on each party's assessment of the merits, as well as their client's actual bottom line. The Tribunal wanted to be satisfied as to whether a drop hands offer was in fact the best offer Qualcomm was prepared to offer post-Trial 1, and indeed one that the CR should accept in light of the legal advice it was being given. After the Hearing, on 20 May 2026, the Tribunal was provided with a revised draft Settlement Agreement which had made the necessary changes to reflect what the Tribunal was prepared to approve.

(2) Negotiations regarding the Proposed Settlement

26. This Tribunal has reviewed privileged and confidential evidence from both the CR and Qualcomm regarding the negotiations leading to the final wording and timing of the Public Statement. Therefore, the public version of this judgment will include redactions of legally privileged material that the parties are not prepared to waive privilege in general.

(a) LFA and ATE insurance policies

27. Prior to filing the collective proceedings claim form in February 2021, the CR entered into a series of funding and insurance agreements in order to satisfy the Tribunal that it would be able to pay Qualcomm's recoverable costs if ordered to do so, and that the CR had made arrangements to cover its costs, fees and disbursements for the Proceedings. The claim was certified on the basis of these agreements, which have been amended or supplemented throughout the Proceedings as necessary. These agreements include:

(1) Pre-CPO Litigation Insurance Policy in the sum of £1.75 million for adverse costs incurred prior to the making of a CPO in favour of the CR, entered into in contemplation of the Proceedings being filed, with the

policy commencement date of 6 March 2020, provided by Litica Limited (**Litica**);

(2) Post-CPO Litigation Insurance Policy in the sum of £9 million, entered into in contemplation of the Proceedings being filed, with the policy commencement date of 6 March 2020, provided on a joint basis by Litica, PartnerRe Ireland Insurance DAC (**PartnerRe**) and Lakehouse Risk Services Limited (**Lakehouse**) (the **Primary Policy**);

(3) Post-CPO Excess Policy in the sum of £4.25 million, also entered into in contemplation of the Proceedings being filed, with the policy commencement date of 27 July 2020 (the **First Excess Policy**). The underwriters for the subscribing insurers are Thomas Miller, Litica and Lakehouse;

(4) Post-CPO Second Excess Policy dated 21 February 2025, provided by VALE Insurance Intermediary Europe GmbH, UK branch (**VALE**) on behalf of HDI Global Specialty SE (the **Second Excess Policy**). The Second Excess Policy was put in place following an application by Qualcomm for additional security for costs, which was heard at the CMC on 19 December 2024 in which Qualcomm estimated its costs, post-certification to the end of Trial 1, to be at least £42.1 million. Qualcomm argued the CR should put in place additional ATE of £14.25 million. The Tribunal ruled that the CR should obtain an additional £3.5 million in ATE insurance. Which? subsequently entered into the Second Excess Policy in February 2025 in the sum of £4.5 million.

(5) Amended and Restated Litigation Funding Agreement which the CR originally entered into with Augusta Pool 1 Limited (**Augusta**, or the **Funder**) on 6 March 2020, for funding to bring the Proceedings, as amended and restated from time to time (the **LFA**). The current version of the LFA (dated 16 September 2025) includes a new clause 20.6 in which Augusta agrees to provide the CR with a £5 million indemnity for adverse costs ordered in excess of the Primary Policy and the First and Second Excess Policy (together, the **Insurance Policies**).

28. Therefore, excluding the pre-CPO policy, the CR has in place £22.75 million in adverse costs cover, from a range of ATE insurance providers and the funder.

29. It is apparent that the Insurance Policies contain provisions that are material to settlement negotiations. In this judgment, the Tribunal focuses on the terms of the Primary Policy, however materially similar terms exist in each of the Insurance Policies. Ms Averty describes the CR's obligations in relation to the insurers as follows:

> "15. Clauses 2.1.7 and 2.1.8 require Which? to obtain the insurers' prior approval before (i) making any settlement offer to Qualcomm, (ii) refusing or rejecting any settlement offer made by Qualcomm (including making any counter-offer), if cover under the Insurance Policies is not to be prejudiced. The procedure for seeking and obtaining insurers' prior approval is set out in Clause 3.10 ("Insurers' Approval"). Clause 4.1.1 provides that cover may be excluded where Which? fails, without good reason, to comply with one or more of its obligations under Clause 3. Those obligations include, among other things, an obligation to follow counsel's advice (Clause 3.3.5), to keep the insurers informed of settlement discussions (Clause 3.3.6), and to act as a reasonably prudent uninsured litigant throughout the Proceedings, taking into account the advice that Which?'s [sic] receives from counsel (Clause 3.14). Clause 4.1.3 further provides that, where counsel advises Which? to "make a settlement" with Qualcomm, any refusal by Which? to act on that advice without Insurers' Approval is a ground on which cover may be excluded. Similar obligations arise under the LFA, as I explain at paragraph 18 below.
>
> 16. In practice, due to the decision-making mechanisms contained within the Insurance Policies, Insurers' Approval is governed by a dual-layered mechanism: (i) VALE's approval is required under the Second Excess Policy in all cases; and (ii) a majority of the other Insurers must also approve the proposed course of action under the Primary Post CPO Policy and First Excess Policy. Under the Insurance Policies, the Insurers have five business days to respond to the approval request from Which? and may: (i) approve the course of action; (ii) refuse approval; or (iii) approve it subject to conditions.
>
> 17. […] From Which?'s perspective, the effect of these terms is that, if Which? rejects or fails to accept an offer from Qualcomm without obtaining explicit Insurers' Approval, and any resulting costs order in Qualcomm's favour is directly caused by or attributable to that failure, the Insurance Policies would not respond. In other words, Which? would forfeit the benefit of insurance cover in respect of those costs. […]"

30. Further, clause 4.6 of the LFA contains an undertaking that the CR will: (i) make full and frank disclosure of all material information in connection with the Proceedings to the Insurers; (ii) comply in all respects with the terms of the Insurance Policies; (iii) perform all of the CR's obligations arising under or in connection with the Insurance Policies; and (iv) at all times maintain adequate

insurance against adverse costs under the Insurance Policies. Clause 10.3 of the LFA also requires the CR to obtain counsel's advice prior to making or responding to a settlement offer.

(b) The negotiations

31. There were a series of letters exchanged between Qualcomm and the CR between September 2025 (pre-Trial 1) and January 2026 (post-Trial 1) leading to the current drop hands Proposed Settlement which is the subject of the present CSAO Application.

32. [✂].

33. [✂].

34. [✂].

35. In considering the Post-Trial Offer, the CR took into account: (i) counsel's opinion of the prospects of succeeding on liability at Trial 1 (and thereafter on quantum at a second trial); (ii) the fact that Qualcomm's offer would lapse upon the issue of the Tribunal's Trial 1 judgment; (iii) the likely timing of the Trial 1 judgment; and (iv) the views of the Insurers on Qualcomm's offer.

36. In accordance with the CR's obligations, Hausfeld provided NRF's letter containing the Post-Trial Offer to its Insurers. It is Ms Averty's evidence that "the Insurers expressed concern at the length of time it had taken Qualcomm to provide any substantive response to Which?'s settlement proposals." On 15 January 2026, [✂] emailed Hausfeld stating that, [✂]. The email also addressed Hausfeld's proposal to call NRF to discuss on a without prejudice basis and stated [✂] view that the offer should be accepted without delay: [✂]. [✂] replied to that email stating it endorsed and adopted the views expressed by [✂], after which [✂] emailed adopting the same position.

37. It is Ms Averty's evidence that:

> "34. Under Clause 2.1.8 of the [Primary Policy] and the First Excess Policy, Which? would be in breach of its obligations if it rejected or failed to accept an offer of settlement without Insurers' Approval (such approval not to be unreasonably withheld). Similar provisions apply under Clause 2.8 of the Second Excess Policy. Pursuant to the Insurance Policies, if Insurers' Approval is not granted, Which? may seek a review by a mutually agreed KC, whose view overrides the Insurers' view only if the KC advises that approval (or approval on modified terms) should be granted. The test applied under Clause 3.10.3 is whether a reasonably prudent and commercial uninsured litigant would pursue the proposed course of action."

38. Specifically, clause 3.10.3 and 3.10.9 of the Primary Policy states as follows:

> "3.10.3. The basis on which the Insurer will decide the Insured's application (and whether or not to grant Insurer's Approval) will be <u>whether a reasonably prudent and commercial uninsured litigant would pursue the course of action for which the Insured seeks Insurer's Approval</u>.
>
> 3.10.9. The Insured may apply for a review of the Insurer's decision if the Insured disagrees with the Insurer's refusal to grant Insurer's Approval or the terms and conditions on which Insurer's Approval has been granted. The review shall be will be conducted by a Queen's Counsel to be mutually agreed upon by both the Insurer and the Insured or, failing agreement, to be appointed by the Chairman of the Bar Council. The Insurer and the Insured agree to use best endeavours to ensure that the review process is carried out so as not to breach any relevant deadlines. The Queen's Counsel's decision shall be final. In making his decision the Queen's Counsel shall apply the test set out in clause 3.10.3. The Queen's Counsel's fee for conducting the review shall be payable in equal proportions by the Insurer and the Insured."
>
> (emphasis added)

39. The CR sought the views of its lead counsel in Trial 1, Mr Williams KC, and Mr Moser KC. Mr Williams advised that, in light of the Tribunal's response to the CR's case during Trial 1, the Tribunal was more likely to find in favour of Qualcomm than in favour of the CR. Mr Moser agreed with that assessment. In those circumstances, both counsel considered it unlikely that an independent KC, instructed under clause 3.10 of the Primary Policy, would conclude that a "reasonably prudent and commercial uninsured litigant" would make a substantial counteroffer to Qualcomm's drop hands offer.

40. The CR also obtained advice from Mr Carpenter KC (who has previously acted for Which? at the hearing of Qualcomm's application for additional security for costs in December 2024), on the relevant provisions in the Insurance Policies. He advised that, if Which? failed to accept Qualcomm's offer in these circumstances, and did so without Insurers' Approval, it would be at risk of being in breach of its obligations under the Insurance Policies.

41. Ms Averty succinctly summarised the position the CR found itself in Averty 2:

> "41. In light of the advice received from Rob Williams KC, Jamie Carpenter KC and the position taken by the Insurers that they would not approve an attempt by Which? to put any form of counter-offer to Qualcomm, Which? was in a position where any attempt to further negotiate the offer with Qualcomm would have left Which? exposed to losing the benefit of the cover under the Insurance Policies.
>
> 43. […] Qualcomm informed Which? and the Tribunal that its estimated total costs from certification to the end of Trial 1 were at least £42.1 million. In those circumstances, Which? (as a not-for-profit organisation acting as class representative) was not in a financial position reasonably to risk declining to comply with the Insurers' position under the Insurance Policies. […]"

42. The CR therefore concluded that, in all the circumstances, it was appropriate to accept Qualcomm's drop hands offer. [✂]. Ultimately the CR concluded that "in light of the advice it received and the ATE insurance position, [it] felt that it had no option but to accept the statement put forward by Qualcomm". The CR accordingly accepted Qualcomm's offer on 22 January 2026, and the parties informed the Tribunal of their agreement in principle on 23 January 2026.

(3) The Proposed Settlement

43. Turning to the substance of the CSAO Application, the Settling Parties seek the Tribunal's approval to settle the CR's claim against Qualcomm in these Proceedings on a "drop hands" basis with no damages payable to the class.

44. The Settlement Agreement provides for the proposed withdrawal of the Proceedings without any payment by Qualcomm and for a CSAO which has the effect of discontinuing the Proceedings. It further provides, to the "maximum extent permitted by law", for the full release and permanent discharge of Qualcomm and its "related parties" from any "Claims" which the CR or class members have, or "could have" against Qualcomm, together with an irrevocable waiver of all such "Claims".

45. Specifically, the "Primary Terms" of the Settlement Agreement, clause 6.3, provide as follows:

> "**6. SETTLEMENT APPROVAL APPLICATION**

[…]

6.3. The Parties agree that the Settlement Approval Application or Applications will seek approval of:

(a) the proposed withdrawal of the Proceedings without any payment by Qualcomm, as just and reasonable in all of the relevant circumstances;

(b) a CSAO that has the effect of:

(i) discontinuing the Proceedings; and

(ii) to the maximum extent permitted by law:

(A) fully releasing and forever discharging Qualcomm and the Qualcomm Related Parties from all or any Claims that the Class Representative for itself and on behalf of any Represented Persons, or any other member of the Class may or could have against Qualcomm and the Qualcomm Related Parties; and

(B) irrevocably waiving any Claims that the Class Representative for itself and on behalf of any Represented Persons, or any other member of the Class may or could have against Qualcomm and the Qualcomm Related Parties."

46. The key provisions giving effect to the above are clauses 1.1 (definitions), 2.1 (conditions precedent), and 4.1 (release and waiver) of the Settlement Agreement:

"**1 DEFINITIONS AND INTERPRETATION**

1.1. In this Agreement, unless the context otherwise requires, the following words and expressions have the following meanings:

"**Claims**" means causes of action, claims, counterclaims, liabilities, rights, demands, debts and set-offs, whether in this jurisdiction or any other, whether or not presently known to any Party or to the law, in respect of the period between 1 October 2015 and 9 January 2024 including but not limited to claims arising from rights acquired from third parties, and whether in law or equity, that the Class Representative or any Represented Person (i) asserted in the Proceedings or (ii) could have asserted at any time in the Proceedings or in any other forum in relation to any or all of the 2G (GSM), 3G (UMTS and CDMA), 4G (LTE) and/or 5G Standards, and/or arising out of or relating to the following (as pleaded in Qualcomm's Re-Re-Amended Defence dated 15 May 2025 and the Re-Re-Re-Amended Claim Form dated 10 January 2024):

(A) Qualcomm's practice of licensing its cellular patents to Original Equipment Manufacturers ("OEMs") at the end-device level;

(B) Qualcomm's practice of not seeking to license rival cellular baseband chipset ("chipset(s)") suppliers that have manufactured and/or supplied their chipsets using Qualcomm's standardised innovations;

(C) Qualcomm's practice of requiring OEMs to obtain a licence to practise Qualcomm's cellular Standard Essential Patents before purchasing chipsets from Qualcomm;

(D) Qualcomm's alleged practice of requiring any OEM wishing to purchase chipsets from Qualcomm to take a separate licence permitting it to use Qualcomm's associated SEPs on the terms demanded; using threats to cut off or actually cutting off OEM's supply of chipsets; and withholding sample chipsets, revoking technical support and/or delaying software implementation as a means of securing OEMs' agreement to take licences under its SEPs on Qualcomm's preferred terms; and

(E) Qualcomm's alleged practice of refusing to license its SEPs to competing chipset manufacturers on an exhaustive basis,

including any claim for interest or costs, as between the Parties. For the avoidance of doubt, Claims does not include the costs claims of third parties arising from the Proceedings.

2. CONDITIONS PRECEDENT

2.1. The Parties have agreed terms for the full and final settlement of the Proceedings and wish to set out those terms of settlement in this Agreement on a binding basis, subject to:

(a) the Tribunal approving the settlement and making a CSAO; and

(b) the Tribunal not issuing its draft judgment in respect of liability for the Claims following the Trial.

4. RELEASE AND WAIVER

4.1. In consideration of Qualcomm agreeing to bear its own costs in accordance with Clause 9.1 of this Agreement, upon satisfaction of the conditions precedent of Clause 2.1 of this Agreement, and as far as it is legally able to, the Class Representative shall for itself and on behalf of any Represented Persons, or any other member of the Class fully release, forever discharge and irrevocably waive all of its/their rights and all or any Claims that the Class Representative, for itself and on behalf of any Represented Persons, or any other member of the Class may or could have against Qualcomm and Qualcomm Related Parties, including any claim for costs by the Class Representative any Represented Persons, or any other member of the Class."

(emphasis added)

47. The Tribunal wrote to the Settling Parties on 12 May 2026 raising concerns about the breadth of certain material terms in the Proposed Settlement. In particular, the Tribunal's provisional view was that the proposed Settlement Agreement dated 13 February 2026 appeared to settle claims extending beyond the parameters of the claims pleaded in the Re-Re-Re-Amended Collective Proceedings Claim Form dated 10 January 2026 and as pursued by the CR at Trial 1.

48. Accordingly, the Tribunal indicated that it would not approve a settlement which sought to compromise or extinguish claims beyond those pleaded and/or pursued at Trial 1. The Settling Parties were therefore required either to be prepared to address the Tribunal on this issue at the Hearing, or to revise the Settlement Agreement to confine expressly the scope of the Proposed Settlement to the claims pleaded.

49. Following the Tribunal's indication that the extent of the waiver was not acceptable, the Settling Parties filed a further revised draft Settlement Agreement on 15 May 2026, which the Settling Parties invited the Tribunal to approve. Significantly, the definitions of "Claims" under clause 1.1 and the release and waiver under clause 4.1 were amended as follows:

> "**1 DEFINITIONS AND INTERPRETATION**
>
> 1.1 In this Agreement, unless the context otherwise requires, the following words and expressions have the following meanings:
>
> "**Claims**" means causes of action, claims, counterclaims, liabilities, rights, demands, debts and set-offs in relation to any breach of competition or antitrust law, whether in this jurisdiction or any other, whether or not presently known to any Party or to the law, in respect of the period between 1 October 2015 and 9 January 2024 including but not limited to claims arising from rights acquired from third parties, and whether in law or equity, that the Class Representative or any Represented Person (i) asserted in the Proceedings or (ii) could have asserted at any time in the Proceedings in accordance with the Collective Proceedings Order or in any other forum ~~in relation to any or all of the 2G (GSM), 3G (UMTS and CDMA), 4G (LTE) and/or 5G Standards, and/or~~ arising out of or relating to the following (as pleaded in Qualcomm's Re-Re-Amended Defence dated 15 May 2025 and the Re-Re-Re-Amended Claim Form dated 10 January 2024):
>
> (A) Qualcomm's practice of licensing its cellular patents to Original Equipment Manufacturers ("**OEMs**") at the end-device level;
>
> (B) Qualcomm's practice of not seeking to license rival cellular baseband chipset ("**chipset(s)**") suppliers that have manufactured and/or supplied their chipsets using Qualcomm's standardised innovations;
>
> (C) Qualcomm's practice of requiring OEMs to obtain a licence to practise Qualcomm's cellular Standard Essential Patents before purchasing chipsets from Qualcomm;
>
> (D) Qualcomm's alleged practice of requiring any OEM wishing to purchase chipsets from Qualcomm to take a separate licence permitting it to use Qualcomm's associated SEPs on the terms demanded; using threats to cut off or actually cutting off OEM's supply of chipsets; and withholding sample chipsets, revoking technical support and/or delaying software implementation as a means of securing OEMs' agreement to take licences under its SEPs on Qualcomm's preferred terms; and

(E) Qualcomm's alleged practice of refusing to license its SEPs to competing chipset manufacturers on an exhaustive basis,

including any claim for interest or costs, as between the Parties. For the avoidance of doubt, Claims does not include the costs claims of third parties arising from the Proceedings.

4. RELEASE AND WAIVER

4.1. In consideration of Qualcomm agreeing to bear its own costs in accordance with Clause 9.1 of this Agreement, upon satisfaction of the conditions precedent of Clause 2.1 of this Agreement, and as far as it is legally able to, the Class Representative shall for itself and on behalf of any Represented Persons, ~~or any other member of the Class~~ fully release, forever discharge and irrevocably waive ~~all of its/their rights~~ and all or any Claims that the Class Representative, for itself and on behalf of any Represented Persons, ~~or any other member of the Class~~ may or could have against Qualcomm and Qualcomm Related Parties, including any claim for costs by the Class Representative or any Represented Persons, ~~or any other member of the Class.~~

(emphasis added)

51. The effect of those amendments is materially to narrow the scope of the Proposed Settlement in response to the Tribunal's concerns as to the breadth of the claims being compromised and the extent of the proposed waiver and release. The revised drafting confines the settlement more closely to the claims pursued in these Proceedings and removes language which might otherwise have suggested a broader extinguishment of claims. We note that, at the time of the Hearing, there remained some inconsistencies in this revised Proposed Settlement Agreement, which the parties corrected in the version sent on 20 May 2026. In particular, the removal of the reference to 'or any other member of the Class' was carried through the amended agreement, so that the operative provisions are now framed consistently on that basis. A key aspect of the Proposed Settlement had been the requirement at clause 5.3 for the CR to publish a public statement on its claim website (https://www.smartphoneclaim.co.uk) by 11am on 17 February 2026, and to keep that statement available for at least one month or until the approval of the CSAO Application by the Tribunal, whichever is the latest. Although the parties had removed this clause 5.3 from the further revised draft Settlement Agreement dated 20 May 2026 the reference to the statement had been retained. The final form of the statement, as provided for in the Settlement Agreement, is extracted below (the **Public Statement**):

"The parties have reached agreement pursuant to which the Class Representative will now apply to the Tribunal for permission to withdraw the Proceedings in their entirety. Qualcomm will not make any payment to the

> Class Representative or the Class as a result of this agreement (which remains subject to the Tribunal's approval). The approval of the Class Representative's application by the Competition Appeal Tribunal will conclude the claim against Qualcomm. This agreement has been reached between the parties because the Class Representative has concluded, based on the evidence, and the arguments at trial, that the Tribunal will find that:
>
> a. Qualcomm did not coerce Apple, Apple's Contract Manufacturers (CMs), or Samsung to sign any patent licences or chipset agreements;
>
> b. Qualcomm did not leverage its position as a chipset supplier to coerce Apple, Apple's CMs, or Samsung to agree to any licensing terms; and
>
> c. Qualcomm's licensing and chipset practices did not infringe competition laws, did not result in inflated royalties, and did not lead to an increase in prices consumers paid for their mobile phones."

52. Clause 9.1 of the Settlement Agreement provides that, subject to the Tribunal granting the CSAO in the proposed form, each party will bear its own costs incurred in connection with the Proceedings, including the present CSAO Application.

53. Clause 9.2 further provides that, without prejudice to the question of whether either party bears any liability for third-party costs arising from the Proceedings or otherwise, the liability in respect of any third-party costs if awarded against either party (or otherwise agreed by either party) in connection with the Proceedings shall be borne by the CR.

D. APPLICABLE PRINCIPLES

(1) Legal principles

54. A proposed collective settlement may only be approved if the Tribunal is satisfied that its terms are "just and reasonable": section 49A(5) Competition Act and Rule 94(8). Rule 94(9) further sets out the factors to which the Tribunal must have regard in determining whether the terms of a CSAO are just and reasonable: see also paragraph [6.125] of the Tribunal Guide to Proceedings 2015 (the **Guide**), which elaborates on those factors. These provisions establish a broad evaluative jurisdiction, requiring the Tribunal to assess the overall fairness and reasonableness of the settlement in light of all the circumstances. Rule 94 provides as follows:

"Collective settlement where a collective proceedings order has been made: opt-out collective proceedings

94. – (1) Where a collective proceedings order has been made and the Tribunal has specified that the proceedings are opt-out collective proceedings, the claims which are the subject of the collective proceedings, may not be settled other than by a collective settlement approval order issued in accordance with this rule.

(2) Any offer to settle by a defendant in the collective proceedings shall be made to the class representative.

(3) An application for a collective settlement approval order shall be made to the Tribunal by—

(a) the class representative; and
(b) the defendant in the collective proceedings, or if there is more than one defendant, such of them as wish to be bound by the proposed collective settlement.

(4) The application referred to in paragraph (3) shall –

(a) provide details of the claims to be settled by the proposed collective settlement;
(b) set out the terms of the proposed collective settlement, including any related provisions as to the payment of costs, fees and disbursements;
(c) contain a statement that the applicants believe that the terms of the proposed settlement are just and reasonable, supported by evidence which may include any report by an independent expert or any opinion of the applicants' legal representatives as to the merits of the collective settlement;
(d) specify how any sums received under the collective settlement are to be paid and distributed;
(e) have annexed to it a draft collective settlement approval order; and
(f) set out the form and manner by which the class representative proposes to give notice of the application to—

(i) represented persons, in a case where it is expected that paragraph (11) will apply; or
(ii) Class Members, in a case where it is expected that paragraph (12) will apply.

(5) Unless the Tribunal otherwise directs, the signed original of the application for a collective settlement approval order shall be accompanied by five copies of the application and its annexes certified by the class representative or its legal representative as conforming to the original.

(6) On receiving an application for a collective settlement approval order, the Tribunal may give any directions it thinks fit, including—

(a) for the confidential treatment of any part of an application for a collective settlement approval order;
(b) for the giving of or dispensing with the notice referred to in paragraph (4)(f);

(c) for further evidence to be filed on the merits of the proposed collective settlement;
(d) for the hearing of the application.

(7) Any represented person or, in a case where paragraph (12) applies, any class member may apply to make submissions either in writing or orally at the hearing of the application for a collective settlement approval order.

(8) At the hearing of the application, the Tribunal may make a collective settlement approval order where it is satisfied that the terms of the collective settlement are just and reasonable.

(9) In determining whether the terms are just and reasonable, the Tribunal shall take account of all relevant circumstances, including—

(a) the amount and terms of the settlement, including any related provisions as to the payment of costs, fees and disbursements;
(b) the number or estimated number of persons likely to be entitled to a share of the settlement;
(c) the likelihood of judgment being obtained in the collective proceedings for an amount significantly in excess of the amount of the settlement;
(d) the likely duration and cost of the collective proceedings if they proceeded to trial;
(e) any opinion by an independent expert and any legal representative of the applicants;
(f) the views of any represented person in a case to which paragraph (11) applies, or of any class member in a case to which paragraph (12) applies; and
(g) the provisions regarding the disposition of any unclaimed balance of the settlement, but a provision that any unclaimed balance of the settlement amount reverts to the defendants shall not of itself be considered unreasonable.

(10) A collective settlement approval order may specify the time and manner by which—

(a) a represented person or class member, as the case may be, who is domiciled in the United Kingdom on the domicile date may opt out of the collective settlement; and
(b) a represented person or class member, as the case may be, who is not domiciled in the United Kingdom on the domicile date may opt in to the collective settlement."

55. The Guide recognises that the Tribunal will not have the benefit of adversarial argument in considering whether to approve the terms of the CSAO proposed: Guide at [6.124]. In these circumstances, the Tribunal will subject the proposed collective settlement to close scrutiny. However, it is not required that the settlement be perfect, and there may be a range of settlements which are properly to be regarded as reasonable: Guide at [6.124]. This reflects the

Tribunal's role as an independent safeguard of the interests of absent class members in opt-out proceedings.

56. The Guide further provides that the Tribunal will "consider carefully the terms of any waiver or release contained in the proposed settlement agreement": Guide at [6.125]. This is of particular importance in the context of opt-out collective proceedings, given that a CSAO will bind all UK-domiciled class members who have not opted out, thereby extinguishing their claims without individual participation: Guide at [6.125]. The breadth and effect of such releases therefore require particular scrutiny, especially where they extend to claims not actually litigated. What may be a reasonable release in a settlement between commercial parties, where it may not be unusual to release potential and unknown claims for all types of causes of action as well as those in issue in the proceedings, may not in fact be acceptable for the Tribunal to approve in opt-out collective proceedings. In such proceedings the settlement may be for disparate members of the class, with different positions, and they have no control over the settlement process or its terms.

57. Neither the Competition Act, the Rules, nor the Guide provide specific guidance on the approval of settlements in the form of the Proposed Settlement, namely a "drop hands" resolution with no monetary award of damages and a broad release of existing and potential future claims. All previous settlements approved by this Tribunal have entailed payment of substantial damages. Accordingly, the Tribunal must apply the established principles in a context which is, in material respects, novel. However, the Guide at [6.125] identifies certain features of settlements which may bear on whether they are "just and reasonable", and which are therefore relevant by analogy in the present case:

> "6.125. […] For example, a settlement that could result in substantial fees being paid to the lawyers of the class (or settlement) representative and a significant part of the settlement sums being paid back to the defendants, while future claims by class members are barred, is unlikely to be viewed as just and reasonable. […]"

58. The Tribunal's recent Judgment in *Mark McLaren Class Representative Limited v MOL (Europe Africa) Ltd and Ors.* [2026] CAT 6 (***McLaren (CSAO)***)

provides helpful guidance on the legal principles applicable to CSAO applications:

> "58. The statutory purposes underpinning this regime are twofold: encouraging settlement (*Gutmann v First MTR South Western Trains Ltd* [2024] CAT 32 at [40]) and protecting the interests of the class: Guide at [6.96]. Rule 94 reflects those purposes by requiring the Tribunal to consider "all relevant circumstances" when assessing whether a collective settlement is just and reasonable. This includes the monetary and non-monetary benefits offered by any settling defendant and any related provisions concerning costs, fees and disbursements: Guide at [6.125].
>
> 59. The degree of success is an important factor in assessing reasonableness and in determining payments to stakeholders: *WWL/EUKOR & K Line Settlement Decision* at [21], approved by the Court of Appeal in *Gutmann v Apple CA* at [93]. Success is not limited to funding arrangements but includes whether the proceedings delivered meaningful benefit for the class, considering damages available, likely and actual take-up, and treatment of unclaimed sums—whether by reversion, charity, or *cy-près* distribution. The Tribunal recognises that collective proceedings may fail at trial or settle for modest sums for various reasons: such outcomes reflect litigation risk and do not preclude approval where the settlement is, on the evidence, just and reasonable for the class as a whole.
>
> 60. Ultimately, collective proceedings are intended to benefit class members rather than just stakeholders (*WWL/EUKOR & K Line Settlement Decision* at [22]). The Tribunal will necessarily be mindful to avoid outcomes where class members receive little or nothing, and stakeholders become the main beneficiaries. A low take-up does not justify paying the remaining settlement sum to stakeholders; instead, the Tribunal expects consideration of alternative distributions, such as directing that a proportion be paid to charity or other mechanisms, rather than allowing the entire balance to revert to stakeholders or defendants."
>
> (emphasis added)

59. As that guidance makes clear, the Tribunal's assessment is not confined to the formal terms of the settlement, but extends to whether the proceedings have delivered, or are likely to deliver, any meaningful benefit to the class. This concept of 'meaningful benefit' is of particular importance in circumstances where the proposed settlement provides no monetary benefit to the class members at the end of the day.

60. In *Merricks v Mastercard* [2025] CAT 28 (***Merricks (CSAO)***), the Tribunal rejected the submission that a settlement must be "just and reasonable" for all stakeholders. Rather, it emphasised that the statutory focus is on the interests of class members:

> "81. […] [The test] prompts the question, just and reasonable for whom? Innsworth submitted that it has to be just and reasonable to all stakeholders involved, including the funder. We do not accept that submission. In our judgment, the focus of the statutory test is on the class members. It is because the [class members] are not actually involved in the proceedings, and neither the CR nor the CR's lawyers can take instructions from them, that the Tribunal has to scrutinise a proposed settlement, by which every [class member] will be bound (unless he or she expressly opts out) and the settlement will not be effective without the Tribunal's approval. The situation is not dissimilar to the case of a settlement of a case brought on behalf of a child, where the settlement requires the approval of the court: CPR 21.10. Indeed, this is why it is only settlement of opt-out collective proceedings which require such approval. There is no such control over settlement of opt-in collective proceedings, although they of course may also be subject to third-party funding."
>
> (emphasis added)

The Tribunal explained this concept at [7]:

> "7. A settlement of collective proceedings requires the approval of the Tribunal only when those proceedings are conducted on an opt-out basis: s. 49A(1) CA. That reflects the fact that for opt-in proceedings, the CR can obtain instructions from the [class members] whether or not to agree to a proposed settlement, whereas this course is self-evidently not possible for opt-out proceedings. In opt-out proceedings, therefore, the Tribunal has a particular responsibility to protect the interests of the absent [class members]: see *Merricks v Mastercard Further Judgment (Application for a CPO)* [2021] CAT 28 at [20]; *Le Patourel v BT Group PLC* [2022] EWCA Civ 593 at [48], quoting the Tribunal's Guide to Proceedings. […]"

61. That is not to say that the interests of the parties, funders, insurers and legal representatives are irrelevant. Those interests may form part of the relevant circumstances against which the proposed settlement falls to be assessed, particularly where they bear upon the practical ability of the proceedings to continue. But they are not the primary touchstone of the Tribunal's inquiry, which remains firmly focused on the interests of class members.

62. The Guide at [6.138] further provides that, where the Tribunal has concerns about a proposed collective settlement, but considers that those concerns may be addressed by modification, it may indicate such changes to the parties. If agreed, the application may be amended and relisted, with appropriate notice to class members so as to enable them to make submissions on the revised settlement. This underscores that the Tribunal's function is not merely binary, but supervisory and iterative where necessary.

63. In the present case, the Tribunal, having reviewed the proposed CSAO and the proposed Settlement Agreement, expressed concerns in correspondence with the Settling Parties. As a result of those concerns, the parties sensibly agreed to modify the Settlement Agreement in relation to the extent of the release of claims by represented persons. That is exactly how the system is meant to work: it enables a settlement which might otherwise have been rejected to be approved by the Tribunal where, following such modification, it considers the settlement agreement to be proper and in the interests of class members.

64. The Tribunal in *Merricks (CSAO)* at [112] also rejected the contention that it faced a "binary choice" between approving or refusing a proposed settlement, describing that proposition as "fundamentally misconceived". The Tribunal must instead determine the appropriate order in each case, in light of the statutory framework and the interests of the class. This may, where appropriate, include requiring modifications to the settlement in order to render it just and reasonable.

65. It is also necessary to have regard to the Supreme Court's recent judgment in *Evans v Barclays Bank Plc and others* [2025] UKSC 48 (***Evans***), which addresses the balance to be struck between facilitating collective redress and protecting defendants from unmeritorious claims. The Supreme Court observed that:

> "35. The Bill became the Consumer Rights Act 2015 ("the 2015 Act") when it received Royal Assent on 26 March 2015. The legislative history that we have outlined shows that the new collective proceedings regime was intended to strike a balance between facilitating claims for redress, particularly those brought on behalf of consumers and SMEs which it would otherwise be impracticable to bring, and protecting businesses from unmeritorious but burdensome litigation."

66. The Supreme Court further noted that the regime embodies "competing policy aims […] of protecting businesses from the burden of defending unmeritorious or inflated claims" and that the Tribunal is required to strike an appropriate balance (at [137], see also [168(iii)]). Those considerations are relevant not only at the certification stage, but also when assessing whether it is appropriate for collective proceedings to be brought to an end on particular terms.

67. The Supreme Court emphasised that the collective proceedings regime is designed to balance access to justice with safeguards against abusive or unmeritorious litigation:

> "141. The sophistication of the collective proceedings regime shows that it was not intended simply to provide a stick with which anyone who claims, however implausibly, to have suffered loss can beat infringing undertakings into paying them substantial damages. That does not enhance the proper enforcement of the competition rules. If clearly unmeritorious claims are allowed to proceed on an opt-out basis which involves an unjustified leverage advantage for claimants of the kind we have described, the result will not be due enforcement of the competition rules but over-enforcement, contrary to the public interest."

68. Against that legal framework, in determining whether to grant a CSAO, the Tribunal must undertake a holistic assessment of the Proposed Settlement. This involves evaluating whether the settlement is just and reasonable for the class as a whole, including whether it delivers any meaningful benefit to class members. As part of this assessment the Tribunal needs to consider in relation to this specific CSAO Application, whether, in light of the weak merits of the claim post-Trial 1, the Proposed Settlement appropriately reflects the risks of litigation and the drop hands offer by Qualcomm was the bottom line such that had it been rejected no better offer would have been forthcoming.

(2) Promotion of settlements

69. The law, and this Tribunal, encourages settlements. Lord Bingham of Cornhill put it as follows in the introduction to *Foskett on Compromise* (4th ed.) as quoted in *Mionis v Democratic Press SA* [2017] EWCA Civ 1194, §88:

> "88. […] The law loves a compromise. It has good reason to do so, since a settlement agreement freely made between both parties to a dispute ordinarily commands a degree of willing acceptance denied to an order imposed on one party by a court decision. A party who settles foregoes the chance of total victory, but avoids the anxiety, risk, uncertainty and expenditure of time which is inherent in almost any contested action, and escapes the danger of total defeat. The law reflects this philosophy, by making it hard for a party to withdraw from a settlement agreement, as from any other agreement, and by giving special standing to an agreement embodied by consent, in an order of the court."

70. Litigation is expensive. It takes up time, diverts attention from everyday life and running a business. It often generates bad blood and the result is inherently uncertain. Most cases are either discontinued or settled before trial, and for good

reason. It allows the parties to move on and the courts and tribunals to focus on cases which are incapable of resolution by the parties. Those cases which tend to go to trial in a competition or commercial context are those where the parties and their lawyers for each side have differing views on the prospects of success. Even where a defendant perceives that it is more likely than not to win at trial, it may well, and prudently, consider that it is worth paying some damages in order to buy certainty and bring a dispute to an end. Thus, even if a case has a 30% chance of success, a defendant may well be prepared to pay substantial damages.

71. Proceedings have their ups and downs. A case post-trial may look very different from when the case was originally brought. This is a case that was brought pursuant to a CPO made by the Tribunal. An application to strike out the claim was unlikely to succeed, hence the ultimate merits of the case in the absence of a settlement had to be determined at trial.

72. The proceedings here were brought in good faith and it was perceived, no doubt with the benefit of legal advice, that this was a good case. However, Trial 1 has now finished and the landscape looks very different now to probably how it looked prior to Trial 1, certainly in the eyes of the CR.

73. Settlements are to be encouraged and generally make good sense. That being said, this Tribunal will scrutinise any proposed settlement closely, not least because it is asked to approve a settlement on behalf of class members who, by definition, are not before it. In considering a proposed settlement, the Tribunal must bear in mind the position and interests of the class, the parties and the other stakeholders, all of whom may have their own motives and incentives to promote a particular settlement.

(3) The interests of the class, the parties and other stakeholders

(a) Class Representative

74. Which? is a public interest consumer rights body pursuing laudable objectives in the interests of the public. It considered, on the basis of legal advice, that it

had a good arguable case – if not a strong one – that the Defendant had infringed competition law, and that substantial damages might be recoverable for the benefit of class members.

75. Which? received no remuneration for the work it undertook in bringing and advancing these Proceedings. It will have devoted considerable time and resources to the administration and progression of the case and, unlike class representatives in some other approved proceedings, was not paid for doing so. It mitigated risk for itself by securing litigation funding and ATE insurance. The funding arrangements enabled the claim to be pursued, while the ATE insurance provided protection against adverse costs in the event that the case was dismissed and a costs order was made in favour of Qualcomm. In addition, Which? engaged an experienced legal team in Hausfeld, together with leading and junior counsel, to advise it throughout.

76. These cases are inherently complex and require skilled advisers to assess the merits. The Tribunal has no reason to doubt that Which?'s legal team acted diligently and kept the strengths and weaknesses of the case under careful review as it progressed.

77. The principal risk for Which? in this instance was exposure to adverse costs. Although ATE insurance was in place up to a specified level, Qualcomm's costs significantly exceeded the scope of that cover. There remained, at least in principle, a residual risk that, if the claim failed, Which? might be exposed to a shortfall between the insured amount and Qualcomm's recoverable costs. On the facts of this case, that risk may not have been acute, but it was a relevant consideration, and it was plainly in Which?'s interests to maintain the ATE cover throughout the Proceedings.

78. Throughout, Which? was under a duty to act in the best interests of the class. The Tribunal is satisfied that it did so, and finds no basis for suggesting that Which? acted in any way in dereliction of its responsibilities to class members.

79. Which?'s objective, as one would expect, was to secure damages for the benefit of the class – if that could be achieved. By the conclusion of Trial 1, however,

it had become apparent that, absent settlement, the claim was likely to fail, with the consequences already described.

80. As noted above, the CR contributed significantly to the case without any expectation of remuneration. It pursued the claim in what it considered to be the public interest and in the interests of class members, and did not seek to obtain any financial benefit for itself. While success at trial would no doubt have enhanced its standing as a leading consumer rights organisation, that would have been incidental to its central objective of advancing the interests of the class.

(b) Defendant

81. Qualcomm's objective, of course, was to defeat the claim, whether by way of settlement or by obtaining vindication at trial. It was willing to expend very substantial sums in doing so. The recoverable costs alone – no doubt below the actual costs incurred – amount to some £44.38 million. Qualcomm plainly considered that such expenditure was justified, given the scale and significance of the claim.

82. The claim was for potentially up to £480 million, and against that backdrop, £44.38 million may appear to Qualcomm to be a worthwhile sum to spend in defence costs. However, had Qualcomm succeeded at judgment, it would not only have been vindicated but would also have been entitled to recover at least a portion of its costs. In practice, recovery via the Insurance Policies might have been the most straightforward route, though there would likely have been a shortfall between that and the full amount of its recoverable costs.

83. Qualcomm made clear that, absent settlement, it would reserve the right to pursue any such shortfall against both the Funder and the CR. Whether such claims would ultimately have succeeded is open to question, particularly in light of the recent decision in *Gutmann v First South Western Trains Ltd and Others* [2026] CAT 21, and given that Qualcomm had the opportunity to seek security for costs and that the level of ATE cover had been increased.

84. Be that as it may, a successful outcome at trial would have brought Qualcomm public vindication. By settling, Qualcomm forgoes that possibility. Instead, it achieves a degree of vindication through: (a) the absence of any payment of damages; and (b) the terms of the Public Statement required as part of the Proposed Settlement.

85. Standing back, the Tribunal must approach the Proposed Settlement and the Settling Parties' submissions inviting it to approve the Proposed Settlement with an appropriate degree of scrutiny, if not caution. The Settling Parties have, over several years, contested the case vigorously, each advancing strong criticisms of the other's position. They now come before the Tribunal jointly inviting approval of their Proposed Settlement, and in doing so share a common interest in securing that approval. In those circumstances – and given the Tribunal's role in protecting the interests of class members – the Proposed Settlement must be subjected to careful and critical scrutiny, particularly as to its merits, its reasonableness, and its implications for the class.

(c) Funder

86. The objective of funders in cases of this kind is to obtain a return on successful claims, recognising that not all cases will ultimately prove as strong as they initially may have appeared. Some claims will fail, and others may need to be discontinued as their merits diminish over time. That is an inherent feature of litigation funding, which is typically conducted on a portfolio basis. There is therefore a clear incentive on funders to support only those claims that appear, at the outset, to be meritorious.

87. The Tribunal has not, in its experience, encountered wholly unmeritorious claims being advanced by funders seeking to extract settlements from defendants. That has not been a feature of the cases that have come before it.

88. Funders do not rely solely on the advice of the class representative's legal team. In some instances, they obtain independent legal advice, and they also draw upon their own internal expertise. They are therefore well placed to form a considered and commercially informed view of the prospects of the case, both

through their own analysis and by reference to the advice provided by the relevant class representative's advisers.

89. Where the merits of a case deteriorate, funders have a natural incentive, so far as practicable, to limit further exposure and avoid additional funding. This is not a matter for criticism; it reflects the commercial realities of the business. There remains, in some cases, a residual risk that defendants may seek to recover any shortfall in costs from the funder where ATE cover is insufficient. However, as noted at paragraph [83] above, whether such claims would succeed is a separate question.

90. In the present case, the Funder has committed very substantial sums to the claim and will not derive any financial benefit from the outcome considered by the Proposed Settlement. At the point of the Proposed Settlement, the Funder accepted that it was forgoing the possibility of a successful return, while at the same time avoiding the need to fund further a case which it assessed to be weak. From the Funder's perspective, the Proposed Settlement is therefore commercially rational, and the Tribunal sees no basis for criticising its support for it.

(d) ATE insurers

91. The stakeholder which has, in practical terms, derived the most immediate financial benefit from these Proceedings are the ATE insurers. A substantial premium of £7,503,898 has been paid pursuant to the Insurance Policies, together with the associated taxes.

92. ATE insurers, like funders, operate on a commercial basis and seek to generate a return across a portfolio of cases. Their role is an important one: without ATE insurance, the availability of collective proceedings would be materially constrained. Insurers accept the risk that, if a case fails, they may be liable to meet adverse costs up to the level of cover. Conversely, if a case succeeds, arrangements often provide for an uplift or additional return beyond the basic premium. Thus, insurers have an interest both in successful outcomes and in managing downside risk. In the present case, once the assessment was reached

that the claim was unlikely to succeed, a settlement under which no payment is made out under the Insurance Policies, while the premia are retained, is commercially favourable to the ATE insurers. The ATE insurers in this case expressed the view that the drop hands settlement offer should be accepted and did not approve any further offers seeking damages being made by the CR.

93. These differing incentives give rise to the potential for tension between stakeholders. In particular, there is a risk that the interests of ATE insurers (and, in some cases, funders) may diverge from those of the class, who may prefer to pursue the claim to judgment in the hope of securing damages, notwithstanding the risk of failure. In such circumstances, class members may face the prospect of recovering nothing in the event of an adverse judgment, while insurers may favour an earlier resolution that secures their position.

94. It is therefore important to recognise how such potential conflicts are managed. Under the relevant arrangements, the ATE insurer has a degree of involvement in the settlement process, including a requirement that settlements are not concluded contrary to its position. However, there are some safeguards in place, including dispute resolution mechanisms under which counsel's opinion may be obtained.

(e) Lawyers

95. It is a distinctive feature of collective proceedings that, unlike in ordinary civil litigation where a client identifies and instructs lawyers, the initial conception of a claim often originates with the lawyers themselves. They may then seek out litigation funding and ATE insurance, and only thereafter identify a suitable class representative. In those circumstances, it is particularly important that the class representative obtains independent advice, both as to its own position and in relation to the costs and terms of the legal and funding arrangements.

96. Lawyers, for their part, must secure funding for the litigation, and it is therefore unsurprising that they engage with funders at an early stage. There are, of course, commercial incentives: success uplifts may be provided for, and fees are often deferred. Funding is typically advanced on the basis of an agreed budget.

However, as the Tribunal has observed in this and other cases, costs frequently exceed initial estimates, and the rate of expenditure can outpace what was originally anticipated.

97. There is also the risk that defendants, with substantial resources, may pursue litigation strategies that increase costs. Where funding is finite, this can place pressure on both funders and legal teams. A point may be reached at which the available budget is exhausted and funders decline to provide further capital or to approve the payment of only specific and necessary disbursements. In those circumstances, lawyers face difficult choices: to cease acting – something generally regarded as a last resort – or to continue on the basis of further fee deferrals.

98. In the present case, a significant proportion of Hausfeld's fees has been deferred. The costs, fees and disbursements paid to date are £17,731,256.75 (excluding VAT), with substantial additional deferred fees, primarily attributable to Hausfeld (£14,237,587.58), and a smaller amount to counsel (£1,019,544.62). This illustrates the extent to which the legal team has assumed risk in conducting these Proceedings. In the context of a drop hands settlement, it is the lawyers who are among those most significantly affected.

99. These dynamics – cost overruns, deferred fees and conditional fee arrangements – can give rise to tensions between lawyers, funders and the class representative. However, the Tribunal has seen no evidence of such difficulties having a negative impact in this case. On the contrary, the parties appear to have worked together constructively throughout.

100. There was, therefore, a great deal at stake for the CR's legal team. Notwithstanding this, they have supported a settlement on a drop hands basis, even though it entails substantial financial loss to them. In the Tribunal's view, that supports the conclusion that their advice was not driven by improper incentives, but reflected a considered and objective assessment that the claim was unlikely to succeed.

101. The figures are substantial. As above, the CR's costs, fees and disbursements paid amount to £17,731,256.75 (excluding VAT), with deferred fees of £15,257,132.20 (excluding VAT), of which the majority is attributable to Hausfeld and the remainder to counsel. These are very significant sums which will not be recovered as a result of the Proposed Settlement.

102. By contrast, the CR's experts have incurred substantial fees of £4,706,052.69 (excluding VAT) which, on the Tribunal's understanding, have been paid in full. They are therefore not adversely affected in the same way.

103. The position for Qualcomm's lawyers is different: they have been, or will be, paid in full by Qualcomm. Their costs, amounting to approximately £44.38 million in potentially recoverable costs, fees and disbursements are substantial, but must be viewed in the context of the scale and complexity of the claim.

104. The Tribunal must nevertheless be mindful of the broader implications. There is a risk, in principle, that if acting for class representatives becomes economically unattractive, because fees are regularly deferred and not recovered, while acting for defendants offers greater certainty of payment, this could influence the allocation of legal expertise. So far that risk has not materialised before this Tribunal. The quality of representation on both sides in this case has been high, and the written and oral advocacy reflects a consistently professional standard.

(f) Class Members

105. Collective proceedings must be conducted primarily for the benefit of class members, and not predominantly in the interests of other stakeholders. The Tribunal has emphasised this principle on a number of occasions, including in *McLaren (CSAO)*, *Merricks (CSAO)*, and *Justin Gutmann v First MTR South Western Trains Limited and Another* [2025] CAT 64 (***Gutmann Trains (CSAO)***) in the context of settlement approval.

106. Issues of distribution and take-up often arise in such cases, but they do not arise here, since no funds are available for distribution.

107. It is well recognised that levels of engagement by class members in collective proceedings are often low. Relatively few class members register or actively participate, which may in part reflect the fact that individual recoveries, when distributions are made, are frequently modest, as seen, for example, in *Gutmann Trains (CSAO)*. Nonetheless, the underlying interest of class members is, self-evidently, to obtain compensation. A settlement which provides no damages does not confer a direct financial benefit on them, including those who might otherwise have chosen to participate in any distribution. Given the very small amount that each class member was estimated to have suffered at the time of the CPO, had there been a settlement for substantial damages the level of take-up on any distribution method that would require an application by a claiming class member would probably have been low.

108. The Tribunal also bears in mind that these are opt-out proceedings. Many of the approximately 29 million class members may be unaware of these Proceedings altogether. The Tribunal must therefore be careful not to prejudice their interests by approving a settlement that yields no damages where there remains a realistic prospect of recovery, whether at first instance or on appeal. In addition, any release of claims must not extend beyond the scope of the certified claim, particularly in circumstances where no damages are being paid.

109. Where there is a realistic prospect of success, it may well be in the interests of the class to reject a drop hands offer. That issue does not ultimately arise here, because the Tribunal's assessment is that, by the conclusion of Trial 1, the CR no longer had a realistic prospect of success.

(g) Collective proceedings regime

110. The interests of class members in any given case cannot be considered in isolation from the interests of the collective proceedings regime as a whole. Class members have an interest in a regime that is viable and effective; one which not only enables redress for breaches of competition law but also, to some extent, contributes to deterrence of anti-competitive conduct. It may be said that punishment is primarily the function of competition authorities and, in follow-on actions, that element will already have been addressed. In a standalone case

such as the present, the primary objective is to obtain compensation for class members, even though a successful outcome may also have a deterrent effect.

111. The relevant considerations may be summarised as follows:

(1) it is important that collective proceedings – both present and future – are adequately funded, which requires the involvement of lawyers, funders and ATE insurers;

(2) compensation should be available where there has been a breach of competition law;

(3) the regime must operate primarily for the benefit of class members, rather than for the benefit of other stakeholders;

(4) unmeritorious claims – namely, those with no realistic prospect of success – should not be pursued, as they undermine the regime and impose unjustified costs on defendants. In the present case, the Tribunal does not consider that the claim was unmeritorious when it was brought. The CR's legal team reasonably considered, at least up to trial, that there was a realistic prospect of success; the position changed in light of how the evidence emerged at Trial 1;

(5) it is essential that the class representative receives high-quality, independent and realistic advice, with the merits of the claim kept under review at each stage, particularly before and after trial. Practitioners of the calibre appearing before the Tribunal can be expected to provide objective advice as to the viability of the claim; and

(6) the Tribunal must guard against any attempt by parties to manipulate or leverage the differing interests of stakeholders so as to produce a settlement that is not in the best interests of the class or the regime as a whole. Had the Tribunal considered that to be the case here, it would not approve the settlement.

112. Against that framework, the position in this case may be summarised as follows. The CR properly brought these Proceedings. Absent this drop hands settlement, it faced some risk – albeit not, in the Tribunal's view, a significant one – of exposure to an adverse costs shortfall beyond the scope of the ATE cover.

113. Qualcomm's interest was to bring the Proceedings to an end and thereby eliminate the residual risk of an adverse outcome at trial or on appeal. At the same time, Qualcomm sought a degree of vindication, in particular in relation to the absence of a viable case on abuse, which it achieves through the terms of the Proposed Settlement.

114. As regards the ATE insurers, they do derive a benefit from the Proposed Settlement. However, the Tribunal is satisfied that their conduct has not led to a settlement which ought to be rejected as contrary to the interests of class members.

115. The Funder's interests are also served, in that further expenditure is avoided in circumstances where the claim was assessed post-Trial 1 as being weak and one that was unlikely to improve or succeed if pursued further.

116. As for the legal teams, the position differs on each side. Qualcomm's lawyers will be paid in full, whereas the CR's lawyers will incur substantial losses, particularly for the solicitors, given the extent of deferred fees.

117. Finally, as to the class members, the question is whether they have lost out by the Proposed Settlement. Under its terms, they relinquish the possibility of recovery at trial or on appeal. However, if the Tribunal had considered that there was a realistic prospect of obtaining substantial damages, that would have weighed heavily against approval. In the circumstances of this case, the Tribunal's assessment is that class members are not forgoing any real prospect of recovery.

E. ARE THE TERMS OF THE SETTLEMENT AGREEMENT "JUST AND REASONABLE"?

118. Under section 49A(5) of the Competition Act and Rule 94(8), the Tribunal may only make a CSAO if it is satisfied that the terms of the Proposed Settlement are just and reasonable.

119. This CSAO Application arises following the conclusion of Trial 1. If the Proposed Settlement is approved, no judgment on the merits will be handed down. The Tribunal has, however, had the benefit of reviewing the extracts from the expert evidence adduced at Trial 1, together with the parties' post-Trial 1 written submissions and the evidence filed in support of the CSAO Application. It has also had the benefit of going through the pleadings in this case in some detail. Having considered that material, the Tribunal's assessment is that, however strong the case may have appeared on paper prior to Trial 1, certainly by its conclusion, the CR no longer had a realistic prospect of success. The Tribunal places those prospects, including on appeal, at between 10–15%.

120. As discussed above, the present CSAO Application is unusual in that the Proposed Settlement provides for no monetary recovery for the class, coupled with a release of claims. This gives rise to a central tension in the Tribunal's assessment: on the one hand, the apparent weakness of the claim and the risks of continued litigation; on the other, the fact that class members' claims would be extinguished without any recovery.

121. In conducting its assessment, the Tribunal is required to consider all the circumstances of the case, including both the merits of the claim and the practical consequences of the Proposed Settlement for the class. In particular, the Tribunal must evaluate the extent to which the Proposed Settlement delivers any meaningful benefit to class members, balanced against the litigation risks and costs avoided, while also having regard to the need to avoid imposing undue burdens on Qualcomm and, to a certain extent, stakeholders through the continuation of unmeritorious proceedings, or at least ones that are significantly more likely than not to fail.

122. As against that background, the Tribunal has identified two issues which are central to its determination of the CSAO Application.

(1) First, whether the scope of the terms of the Proposed Settlement extends beyond the claims advanced by the CR in these proceedings, and, if so, whether that is appropriate in the circumstances.

(2) Second, the prospects of success of the claim, and the extent to which that assessment bears on whether the Proposed Settlement is just and reasonable for the class, including whether, in light of those prospects, the Proposed Settlement can properly be said to deliver any meaningful benefit to class members, while also taking into account the need to protect the Defendant, Qualcomm, from unmeritorious litigation.

123. Some cases succeed; others fail. It is not a requirement of the Tribunal that, at the end of the day, collective proceedings must in fact deliver a benefit to class members in terms of a final successful outcome. Similarly, a settlement may be reached under which no damages are paid to class members who might otherwise have taken up a distribution, if one were available. There is no obligation that every set of proceedings before this Tribunal – just as in the High Court – must succeed in those terms.

124. Given their significance, the Tribunal addresses these two issues in detail before turning to the specific factors set out in Rule 94(9).

(1) Issue 1: the scope of the "Claims" settled

125. The scope of the claims compromised by the Settlement Agreement, in its original form, was, in the Tribunal's assessment, far too wide. It extended potentially beyond the claims as certified and could operate to the prejudice of class members. The effect would have been that not only did class members receive no damages, but they might in fact lose something – namely, a potential right to bring other claims falling outside the scope of the present Proceedings.

126. In another case, a Canadian court had no difficulty rejecting a proposed settlement which purported to release claims arising in the future: *2038724 Ontario Limited v Quizno's Canada Restaurant Corporation* 2014 ONSC 5812. At the end of the judgment, the court said:

> "61. It is one thing for Class Members to not have gained anything by a class action, it is another thing to give up rights as the price for settling the Class Action, and such a settlement would not be in the Class Members' best interests. See *Waldman v. Thomson Reuters Canada Limited*, 2014 ONSC 1288."

127. In the present case, the Tribunal indicated to the parties that, in its original form, the claims release was not acceptable and that it was minded to refuse approval of the Settlement Agreement on that basis. As canvassed at paragraph [25] above, the Settling Parties have since revisited the Settlement Agreement, and the revised Settlement Agreement addresses that concern. The claims now proposed to be settled are no longer unreasonably wide or beyond what is properly within the scope of these Proceedings.

(2) Issue 2: the CR's prospect of success

128. At the heart of this CSAO Application is whether the case had a reasonable prospect of success at trial. The Tribunal has had the benefit of a considerable amount of material, including opinions from counsel on both sides – most notably from Mr Williams KC, who represented the CR at Trial 1. On one view, the CR was likely to succeed on dominance. There was a reasonably strong case that Apple and Samsung were, to a degree, dependent on Qualcomm for certain baseband chipsets at certain periods of time. However, where the case encountered real difficulty was in the theory of harm and the underlying facts on abuse.

129. There were substantial evidential problems. While the CR might have hoped to rely on disclosure to prove its case, there was, at the end of the day, an evidential void in the absence of witnesses from Apple and Samsung. In particular, there was no evidence of any threat of a refusal of supply; rather, Apple and Samsung had, in effect, secured supplies under the relevant arrangements. The case was therefore likely to fail on the facts. There may well have been a significant gulf

between the CR and the Tribunal as to what level and type of evidence would be sufficient to establish abuse. Taking all matters into account, as stated above, this Tribunal considers that, at the end of Trial 1, the prospects of success were in the region of 10–15%.

130. That is not, in itself, conclusive. A case that is likely to fail may nonetheless retain some value. However, there comes a point at which the prospects are so low that any such value is materially reduced, if not extinguished altogether.

131. In the present case, the CR made offers, both during and after Trial 1, [✂]. Qualcomm was willing to engage in settlement discussions, but the position ultimately reached was a drop hands offer. One issue which concerned the Tribunal was whether the CR ought to have made a further offer in an attempt to secure some payment. However, having reviewed the material and heard from counsel for both the CR and Qualcomm in private – where each gave a frank account of their assessment and the course of negotiations – the Tribunal concludes that any counterproposal would have been rejected. Qualcomm's drop hands offer represented its final position. It was not prepared to pay any sum [✂].

132. In an ideal world, it might have been preferable to test Qualcomm's drop hands offer by way of a counter-offer from the CR seeking a monetary payment. That was not ultimately the case, but there were sound reasons for that. First, the CR's team considered that such an approach was unlikely to yield any meaningful damages. Secondly, judgment from the Tribunal was expected to be delivered shortly, and the outcome was likely to be adverse to the CR. The risk of refusing the offer was that a judgment would follow with negative costs consequences, which acceptance of the drop hands offer would avoid. Time was therefore a material consideration.

133. Standing back, and having considered the matter both in detail and in the round, and having heard from the Settling Parties, the Tribunal is satisfied that Qualcomm's offer was a fair one, and that it was reasonable for the CR to accept it in the interests of the class members and other stakeholders, including the ATE insurers, who appear to benefit from the Proposed Settlement.

134. It is recognised that class members will receive no monetary recovery by this Proposed Settlement. However, the Tribunal's assessment is that, had the case proceeded to judgment, the outcome would have been no better. If there had been a realistic prospect of success, the Tribunal might have reached a different conclusion. The limited prospects of success are therefore a central factor in the Tribunal's determination that the Proposed Settlement is just and reasonable in all the circumstances.

135. The Tribunal now turns to the specific requirements prescribed by Rule 94(4), before considering the substantive factors listed in Rule 94(9).

(3) Details and terms of the Proposed Settlement

136. Rule 94(4)(a) requires CSAO applications to "provide details of the claims to be settled by the proposed collective settlement". The Proposed Settlement is before the Tribunal, and this requirement has therefore been complied with.

137. Rule 94(4)(b) requires the CSAO application to "set out the terms of the proposed collective settlement, including any related provisions as to the payment of costs, fees and disbursements". The Proposed Settlement is exhibited to the CSAO application. Its terms are summarised in the CSAO Application and addressed in detail in the witness statements of the Settling Parties. Those terms are extracted and summarised above at paragraphs [43]–[53]. The Tribunal is therefore satisfied that Rule 94(4)(b) has been complied with.

138. Rule 94(4)(c) requires the settling parties to state in their CSAO application that they believe the terms of the proposed settlement are just and reasonable, supported by evidence. The CSAO Application contains the requisite statement, and the Settling Parties have filed supporting evidence as described above at [20]. Therefore, the Tribunal is satisfied that the Settling Parties have complied with Rule 94(4)(c).

139. Rule 94(4)(d) requires the CSAO application to "specify how any sums received under the collective settlement are to be paid and distributed". As the Proposed

Settlement does not provide for the payment of any damages, this requirement does not arise.

140. Rule 94(4)(e) requires the CSAO application to annex a draft CSAO, and Rule 94(4)(f) requires it to "set out the form and manner by which the class representative proposes to give notice of the application" to represented persons and class members. Notice will be given via the CR's website and by direct communication (including by email or other appropriate means) to those class members who have indicated that they wish to be kept informed of the progress of these Proceedings.

141. The one aspect of this Proposed Settlement which has given the Tribunal cause for concern is clause 5. Its terms (and amended terms) are set out above at paragraph [51]. This is the clause which led to the Public Statement on the CR's website as to the terms which had been agreed between the Settling Parties, one day after the CSAO Application had been filed with the Tribunal.

142. The Tribunal invited the Settling Parties to give specific consideration as to whether this was an appropriate thing to have done, given that this step had been taken prior to the approval by the Tribunal of the Proposed Settlement.

143. The rationale for clause 5 is summarised in Thomas 10, on behalf of Qualcomm in the following way:

> "20. I believe that, from Qualcomm's perspective, the Statement provided for in the Settlement Agreement was and remains necessary and appropriate. Without waiver of privilege, Qualcomm considered it both essential and proportionate that the CR make a public announcement when it did and in the form of the Statement, particularly considering the reputational damage caused to Qualcomm by the Proceedings, and the significant additional costs incurred by Qualcomm in defending these Proceedings (including as a result of the CR's approach to the Proceedings to date which has resulted in Qualcomm incurring significant costs, as I explained in paragraph 22(b) of Thomas 9). Based on my experience of litigating competition damages claims in England, and my knowledge of the Proceedings in particular, Represented Persons should be told what has happened and why, and in good time for them to be able to make any representations on the proposed settlement (as indeed three have done in this case). The Statement properly made clear that the CR intended to apply to the Tribunal to withdraw the claim (i.e. it could not unilaterally withdraw the claim) and set out why it intended to do that. It also made clear that Qualcomm had not agreed to make any financial payment to the Class as part of the Proposed Settlement.

> 21. In this way the Statement avoided the risk of any misunderstanding or confusion regarding the potential outcome of the case, or the risk of giving the incorrect impression that the Proposed Settlement would involve a payment to the Class. That risk was particularly acute given (a) the publicity that the CR sought surrounding these Proceedings, including on the eve of Trial, and (b) the public nature of the CSAO Hearing which is listed on the Tribunal website. Additionally, as noted above, Qualcomm is a global company which has faced (and is facing) similar proceedings in several jurisdictions, and as such any ambiguity or potential for misinterpretation as regards the nature of the Proposed Settlement could encourage claimants in other jurisdictions.
>
> 22. As to the timing of the Statement, and without waiver of privilege, Qualcomm considered it essential that the CR make the public announcement in advance of the CSAO for broadly the same reasons as stated above. Qualcomm appreciated that there would be some delay between the Settlement Agreement being concluded and the CSAO being drawn (given the need for the Tribunal to take essential steps, such as constituting a settlement Tribunal (the Settlement Tribunal)). In light of this time-lag, Qualcomm considered it essential for the CR to issue the Statement in advance of the CSAO Hearing to mitigate the risks of misleading members of the Class or Represented Persons about the nature of the Proposed Settlement, and encouraging claimants in other jurisdictions in the meantime. I confirm that the Statement was not intended to pre-empt the outcome of the CSAO Hearing. On the contrary, the parties agreed that it would expressly refer to the need for the CR to apply to the Tribunal for permission to withdraw the Proceedings and to the Tribunal's power to approve the terms of the Proposed Settlement, thereby making it clear that the Proposed Settlement remained contingent on the approval of the Tribunal."

144. The Tribunal understands the reasons why Qualcomm wanted the Public Statement to be placed on the CR's website. It sought an element of vindication for its position and the Public Statement would provide class members with an explanation as to why this case was not proceeding with any payment of damages. That said, the Tribunal does not approve clause 5 in the form it has been drafted, and in particular its timing.

145. If settling parties want to include a provision in a settlement agreement which in effect comes into existence and is implemented prior to the formal approval of the settlement agreement, they must contact the Tribunal and indeed the Chair of the relevant proceedings, who will consider any such application and consider the relevant issues. That was not possible here because clause 5 took effect one day after the CSAO Application had been filed.

146. What should have happened – and this is with the benefit of experience and hindsight – is that clause 5 should have been highlighted to the Tribunal and

nothing done to implement the clause until the Tribunal had approved the appropriate way forward.

147. The other disconcerting fact is that clause 5 led to a statement of the inherent weakness of the case – particularly on abuse – in the public domain, at a time when the Tribunal was finalising its Trial 1 judgment. We do not suggest that the Tribunal members preparing the judgment in the Proceedings would have been influenced by this, but it does create an unfortunate appearance. Had the Proposed Settlement not been approved and an adverse judgment then followed, the presence of such a statement in the public domain would not necessarily have assisted the CR on any appeal. It is therefore a point to bear in mind for the future. That said, this is not intended as criticism of the Settling Parties, who were plainly acting in good faith and on the basis of legal advice. As already noted, Ms Thomas's witness statement provides a perfectly rational explanation.

148. Even though the Tribunal does not accept that the Settlement Agreement should have included clause 5, it does not consider that it should reject the Proposed Settlement as a whole as it does consider that the Proposed Settlement is just and reasonable. Given that clause 5 was given effect to prior to the Hearing, there is no point in insisting upon its deletion now. That said, the Tribunal notes that the parties removed the original wording at clause 5.3 from the further revised Settlement Agreement filed on 20 May 2026, which referred to the timing of the Public Statement itself.

149. The Tribunal is therefore satisfied that the requirements of Rule 94(4) have been met.

(4) Rule 94(9) factors regarding whether the Proposed Settlement is "just and reasonable"

150. The Tribunal now proceeds to consider the broader evaluative factors set out in Rule 94(9), which provides:

> "(9) In determining whether the terms are just and reasonable, the Tribunal shall take account of all relevant circumstances, including—

(a) the amount and terms of the settlement, including any related provisions as to the payment of costs, fees and disbursements;

(b) the number or estimated number of persons likely to be entitled to a share of the settlement;

(c) the likelihood of judgment being obtained in the collective proceedings for an amount significantly in excess of the amount of the settlement;

(d) the likely duration and cost of the collective proceedings if they proceeded to trial;

(e) any opinion by an independent expert and any legal representative of the applicants;

(f) the views of any represented person in a case to which paragraph (11) applies, or of any class member in a case to which paragraph (12) applies; and

(g) the provisions regarding the disposition of any unclaimed balance of the settlement, but a provision that any unclaimed balance of the settlement amount reverts to the defendants shall not of itself be considered unreasonable."

(a) Rule 94(9)(a) The amount and terms of the settlement, including any related provisions as to the payment of costs, fees and disbursements

151. The Tribunal has already explained that it considers the amount and terms of the Proposed Settlement, subject to the points noted above, to be reasonable. There will be no payment of costs, fees or disbursements, and no payment to class members. However, Qualcomm is giving up something of real substance – namely, its right to recover costs in circumstances where, had the matter proceeded to judgment, it is likely that judgment would have been in its favour.

(b) Rule 94(9)(b) The number or estimated number of persons likely to be entitled to a share of the settlement

152. This factor is not relevant as the settlement amount pursuant to the Proposed Settlement is nil.

(c) Rule 94(9)(c) The likelihood of judgment being obtained in the collective proceedings from amounts significantly in excess of the amount of the settlement

153. The Proposed Settlement does not provide for any payment to the CR. However, it involves Qualcomm giving up its right to recover costs in the event – considered likely – that judgment would have been in its favour. The Tribunal's assessment is that the CR had only a 10–15% chance of obtaining judgment in its favour, whether at first instance or on appeal. It was, in short, a very significant uphill task to succeed.

(d) Rule 94(9)(d) The likely duration and cost of the collective proceedings if they proceeded to trial

154. The Proceedings had already proceeded to a trial. The next steps would have been the delivery of judgment – likely to be adverse to the CR – followed by a consequentials hearing, and, potentially an application for permission to appeal.

155. The judgment would have raised a number of important issues, including dominance, abuse, theory of harm, and the admissibility and sufficiency of evidence in a case of this kind. In particular, it would have raised the question of how the Tribunal should address evidential gaps of the kind present here, where key counterparties such as Apple and Samsung were not available to give evidence at trial, and the extent to which documentary evidence alone could fill that gap.

156. There would therefore have been a range of issues on which permission to appeal might have been sought, and it is possible that permission would have been granted. However, the real difficulty would have been succeeding on appeal in the Court of Appeal, where the prospects would have remained low.

157. Taking all of that into account, including the possibility of an appeal, the Tribunal considers, as above, that the overall prospects of success were not realistic and lay in the region of 10–15%.

(e) Rule 94(9)(e) Any opinion by an independent expert and any legal representative of the applicants

158. The Tribunal has of course had the benefit of legal opinions from experienced counsel on both sides. It found the opinion of Mr Williams KC, on behalf of the CR, to be particularly helpful. He had the advantage of having appeared at Trial 1 and of assessing the merits as the case unfolded, and he also explained his reasoning further in private.

159. The Tribunal has likewise considered the opinion provided on behalf of Qualcomm, which presented the case from its perspective. However, in substance, both sides arrived at the same conclusion: that the case had no realistic prospect of success on the issue of abuse and the evidence said to support the theory of harm. There may remain areas of disagreement between them, but on the central issue – where the Tribunal considers the case was likely to fail – they are broadly aligned.

160. In some cases, the Tribunal has the benefit of an opinion from an independent expert. No such opinion has been provided here. However, had the Tribunal considered that such assistance would be necessary – whether by way of an independent expert or an amicus – it would have notified the parties upon reviewing the CSAO Application. The case has therefore been presented in a manner consistent with the Tribunal's expectations.

(f) Rule 94(9)(f) The views of any represented person

161. The Guide at paragraph [6.125] states as follows:

> "As the principal parties to the collective settlement approval application are agreed on the settlement, class objectors provide the closest thing to an adversarial testing of the settlement terms. Therefore, the Tribunal will consider carefully what any objectors have to say about the settlement to ensure that the class members' interests are served by the settlement. The Tribunal will not, however, infer from a lack of objectors that the settlement is likely to be just and reasonable."

162. Pursuant to paragraph 3 of the Tribunal's directions order dated 20 March 2026, the Tribunal invited any represented person or class member wishing to make

written or oral submissions in relation to the Proposed Settlement to do so. In response, the Tribunal received written submissions from four individual class members – Mr Duque, Mr Hammett, Mr Wainwright and Ms Harris – each objecting to the Proposed Settlement. None sought permission to make oral submissions at the Hearing.

163. All the submissions were considered and found to be moderately helpful.

164. Mr Duque's submission was brief. He expressed, in direct terms, his expectation of financial compensation for what he described as stress, inconvenience and financial loss arising from his purchase of an allegedly affected device. He contended that a settlement providing no compensation would be unjust and should therefore be rejected.

165. Ms Harris advanced a more developed objection. She emphasised that the purpose of the collective proceedings regime is to secure redress for consumers when they are overcharged. While recognising the existence of litigation risk and practical constraints, she questioned whether a settlement yielding no direct compensation could properly be regarded as "just and reasonable". Ms Harris invited the Tribunal to consider whether the outcome conferred any tangible benefit on the class, and expressed concern as to the implications of such an outcome for confidence in the collective proceedings regime as a whole.

166. Mr Wainwright similarly focussed on the absence of any monetary or practical redress, submitting that it was difficult to reconcile the scale and progression of the Proceedings with a nil recovery. He further emphasised that approval of the Proposed Settlement would extinguish class members' claims without any adjudication on the merits, and questioned whether reliance on an assessment of litigation risk was sufficient to justify that result, suggesting that consideration might be given to alternative, non-financial forms of relief.

167. Mr Hammett's submission, while less formally expressed, raised concerns as to the change in position adopted by the CR following Trial 1. He questioned why the claim had been pursued to that advanced stage and whether the circumstances of the Proposed Settlement warranted closer scrutiny.

168. The Tribunal has considered these objections with care. They articulate, in differing ways and at varying levels of detail, a coherent set of concerns going to the core of the Tribunal's statutory inquiry, namely the absence of any monetary or tangible benefit to the class, the extinguishment of claims without a determination on the merits and the potential implications of such an outcome for confidence in the collective proceedings regime. These are, in our judgment, matters of real substance to which the Tribunal must have close regard when assessing whether the Proposed Settlement is "just and reasonable".

169. Consistent with paragraph [6.125] of the Guide, the Tribunal considers that these submissions provide an important element of adversarial scrutiny in circumstances where settling parties are aligned. The engagement of class members, even in relatively small numbers, performs a valuable function in assisting the Tribunal to test the fairness of the proposed settlement and to ensure the interests of the class are properly protected. The Tribunal therefore welcomes and encourages such participation, while recognising that the absence or limited number of objections cannot, of itself, be taken as indicative that a proposed settlement satisfies the statutory test.

170. Against that background, the Tribunal turns to the substance of the concerns raised in those submissions. While they differ in emphasis, they raise, in essence, issues as to: (i) the absence of any monetary or other tangible benefit to class members; (ii) the fact that approval of the Proposed Settlement would extinguish claims without a determination on the merits; and (iii) the broader implications of such an outcome for fairness and confidence in the collective proceedings regime.

171. One objection suggested that the circumstances of the Proposed Settlement warranted scrutiny for potential irregularities. The Tribunal has taken that objection into account in reviewing both the appropriateness of the Proposed Settlement and its terms. It has been provided with full and candid accounts of the background to, and reasons for, the Proposed Settlement, including detailed evidence as to the negotiations, the assessment of the merits, and the respective positions of the CR, the ATE insurers and their advisers.

172. On the material before it, there is no basis to conclude that the process leading to the Proposed Settlement was affected by any procedural or other irregularity. However, in reviewing the Settlement Agreement, the Tribunal did identify two specific areas of concern. The first was the breadth of the waiver of claims, which has since been addressed sensibly by the Settling Parties. The second concerned the Public Statement made prior to approval of the Proposed Settlement, as provided for in clause 5.

173. A further concern relates to the consequence that approval of the Proposed Settlement will preclude class members from pursuing further claims in respect of the alleged losses. That is correct. However, this is an inherent feature of opt-out collective proceedings, in which a class representative is authorised to act on behalf of the class as a whole and, following trial, may conclude – on the basis of the evidence – that the claim is unlikely to succeed. In circumstances where the claim is assessed to be weak, the practical outcome for class members is not materially different from that which would arise if the claim were to proceed to judgment and fail. The CR has provided a clear and reasoned explanation as to how it reached the conclusion that the claim was likely to fail and why it was appropriate to enter into the Proposed Settlement, taking into account the best interests of the class members.

174. Closely related to that point is the submission that class members' rights are being determined on the basis of a predicted outcome, rather than an actual determination by the Tribunal. The Tribunal accepts that this is a feature of the present case. However, settlements – particularly those reached after a trial on liability but before judgment – necessarily involve an assessment of litigation risk. The Tribunal is satisfied that the CR has provided a rational and properly evidenced basis for its assessment of those risks, and was entitled to take that assessment into account in concluding that acceptance of the Proposed Settlement was appropriate.

175. In practical terms, the CR was facing a situation in which it had come to appreciate that it was likely to lose at Trial 1. Qualcomm, for its part, considered that it was likely to succeed. The CR's Counsel's assessment was that it was not realistic that the CR would sustain the case on abuse after the trial. The Tribunal

has not only considered those opinions and the Settling Parties' submissions, but has also had regard to the material from the trial itself, and has reached the same conclusion. However strong the case may have appeared before Trial 1, once the evidence had been tested, it became apparent that the claim was unlikely to succeed.

176. That is not unusual. In courts and tribunals across the country, cases fail and claimants recover no damages because they do not succeed. It is not a requirement of the collective proceedings regime that only cases with near-certainty of success proceed to a CPO, still less to trial. On the contrary, litigation inherently involves risk, including the risk of failure.

177. It was also suggested that the Proposed Settlement might incorporate non-financial remedies, transparency measures, or other consumer-focused outcomes. The Tribunal recognises the concern underlying those suggestions. However, in circumstances where on the Tribunal's assessment, the claim is weak and unlikely to succeed, the fact that the Proposed Settlement does not include such additional forms of relief does not render it unjust or unreasonable. Rather, a drop hands resolution of the Proceedings reflects the Settling Parties' assessment of the merits and the risks of further litigation.

178. The Tribunal also notes in this context that the Proposed Settlement represents a compromise on both sides. In particular, Qualcomm has agreed to forgo any recovery of its substantial costs, thereby relinquishing the opportunity to seek an order for a reasonable proportion of those costs had it succeeded at judgment. Viewed in that light, the absence of any monetary or other relief for the class is consistent with the overall evaluation of the claim and the balance struck by the Proposed Settlement.

179. Although the Proposed Settlement does not provide damages to class members, it nonetheless imposes real costs on a number of those involved in the Proceedings. It is a cost to Qualcomm, which is forgoing approximately £44 million in potentially recoverable costs. The CR's legal representatives will also bear losses, given the extent of deferred fees; this case is likely to represent a substantial loss for Hausfeld, rather than a profit, and they will not recover their

full costs. Counsel for the CR is likewise accepting a reduction in fees, and the litigation Funder will incur a loss on its investment, having funded a significant sum in the Proceedings. The only party that appears to benefit in financial terms are the ATE insurers, but that is a feature of the market rather than a matter of criticism.

180. Finally, concerns were raised as to whether the Proposed Settlement appropriately reflects the strength of the underlying claim, and whether its approval would undermine confidence in the collective proceedings regime. The Tribunal accepts that these are legitimate matters for class members to raise.

181. However, as the Supreme Court observed in *Evans*, the collective proceedings regime is designed not only to facilitate access to justice, but also to protect defendants from the burden of unmeritorious claims. In circumstances where, on the evidence before it, the Tribunal considers this claim to have no realistic prospect of success, a resolution which avoids further cost and risk is, in principle, consistent with those statutory objectives.

182. The absence of any monetary recovery in such circumstances does not, of itself, render the Proposed Settlement unjust or unreasonable. Nor does it undermine the credibility of the collective proceedings regime, which necessarily recognises that not every case will result in a successful outcome.

183. Drawing these matters together, the Tribunal considers that the views expressed by the objecting class members have been fully taken into account, but they do not alter its overall assessment of the Proposed Settlement under Rule 94(9).

(g) Rule 94(9)(g) The provision of any unclaimed balance of the settlement amount reverts to the defendants shall not of itself be considered unreasonable

184. This factor is not relevant as the settlement amount pursuant to the Proposed Settlement is nil.

F. DISPOSITION

185. The Settlement Agreement, in its draft proposed form, as amended on 20 May 2026, is approved.

Hodge Malek KC
Chair

Carole Begent

Hugh Kelly

Charles Dhanowa CBE, KC (*Hon*)
Registrar

Date: 10 June 2026