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**IN THE COMPETITION**

Case No. : 1382/7/7/21

**APPEAL**  
**TRIBUNAL**

Salisbury Square House  
8 Salisbury Square  
London EC4Y 8AP

Monday 6<sup>th</sup> October 2025 – Tuesday 4<sup>th</sup> November 2025

Before:

Mrs Justice Bacon

Derek Ridyard

Justin Turner KC

(Sitting as a Tribunal in England and Wales)

**BETWEEN:**

Consumers' Association

**Class Representative**

v

Qualcomm Incorporated

**Defendant**

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

PHILIP MOSER KC, ROB WILLIAMS KC, MICHAEL ARMITAGE, CIAR MCANDREW,  
DAVID ALEXANDER, DAVID IVISON and CHARLOTTE MCLEAN (Instructed by  
Hausfeld & Co LLP) on behalf of Consumers' Association

DANIEL JOWELL KC, NICHOLAS SAUNDERS KC, DAVID BAILEY, SOPHIE BIRD,  
CHARLES WALL, ALEXANDRA BRECKENRIDGE (Instructed by Norton Rose Fulbright  
LLP and Quinn Emanuel Urquhart & Sullivan LLP) on behalf of Qualcomm Incorporated

1 Friday, 10 October 2025  
 2 (10.30 am)  
 3 Housekeeping  
 4 THE CHAIR: Yes, Mr Moser. We have received a letter from  
 5 the parties concerning Mr Melin and Mr Schneider, so  
 6 that means that we have got a bit of re-juggling of the  
 7 timetable to do.  
 8 MR MOSER: Yes.  
 9 THE CHAIR: We have had a look at that this morning. Our  
 10 provisional view is as follows: we should start the  
 11 hot tub on the morning of Wednesday, 15 October.  
 12 On Thursday, when we need to rise early, we would  
 13 suggest that we continue the hot tub from 10.00 until  
 14 3.00, with an hour break from 12.30 until 1.30. So we  
 15 would have the lunch break half an hour early, so we  
 16 would have the usual mid-morning break, and then in the  
 17 afternoon we will just go straight through from 1.30  
 18 until 3.00. We will then rise, so that the room can be  
 19 made available for the Bellamy Lecture.  
 20 On Friday the Tribunal is not sitting, and that will  
 21 remain a non-sitting day.  
 22 On Monday, 20 October the hot tub will continue to  
 23 around, probably, lunchtime, or early afternoon, but if  
 24 we can finish by lunchtime we will. The afternoon will  
 25 then be free, and our proposal is then that we use

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1 Tuesday, 21 October for the cross-examination of both of  
 2 the economic experts. So the morning will be Mr Noble  
 3 and the afternoon will be Dr Padilla.  
 4 You will have had the weekend, and hopefully at  
 5 least some of the afternoon of Monday, to reduce your  
 6 questions. We do not, at this moment, think that it is  
 7 likely to be necessary to have more than a day with the  
 8 cross-examination, given that we will be preparing very  
 9 thoroughly for the hot tub and will be traversing the  
 10 issues, as you have seen from annex A to the hot tub  
 11 protocol, we will be traversing the issues in some  
 12 detail.  
 13 That will then leave us, I think, about a day and  
 14 a half ahead, and our proposal is therefore that written  
 15 closing submissions should be then sent in by noon on  
 16 27 October and that we should then start the oral  
 17 closing submissions on Friday, 31 October.  
 18 MR MOSER: Thank you.  
 19 THE CHAIR: That is our proposal. I suggest that rather  
 20 than inviting comments on that immediately, I leave you  
 21 to take that away, and you can maybe come back after  
 22 lunch and let us know if you think that proposal is  
 23 going to work for everyone and whether there are any  
 24 particular concerns with it. But from our perspective,  
 25 I think that is likely to work.

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1 MR JOWELL: Would that then be on the basis that we would  
 2 then conclude on the 4th?  
 3 THE CHAIR: We would then conclude on the 4th, yes. That is  
 4 the idea.  
 5 MR MOSER: We will take that away. I do not perceive any  
 6 immediate problems with that, but we will update you in  
 7 the course of the day.  
 8 THE CHAIR: Yes, all right, and we will have then finalised  
 9 that by the end of the day.  
 10 I think we are due to get, by the end of the day,  
 11 the market share tables on both sides --- all right ---  
 12 and we will hope for a revised version of the note on  
 13 abuse by next week.  
 14 MR MOSER: Yes, Madam. I have got Mr Williams here today,  
 15 who will be in charge of the revised version of the  
 16 note ---  
 17 THE CHAIR: All right.  
 18 MR MOSER: --- and will no doubt improve it enormously. I do  
 19 not know --- if he could address you briefly.  
 20 MR WILLIAMS: So, Madam, we received your letter in relation  
 21 to the note yesterday. We will provide a revised note  
 22 for Monday. Can I just raise two issues in relation to  
 23 what it is that we want to produce, Madam.  
 24 THE CHAIR: Yes.  
 25 MR MOSER: You have asked us to respond to a number of

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1 paragraphs in Qualcomm's skeleton argument and those  
 2 paragraphs span, I think, 11 or 12 pages of the skeleton  
 3 argument. You will appreciate, Madam, that we do not  
 4 analyse the case in the same way that Qualcomm does, and  
 5 so the task involves briefly setting out the framework  
 6 for our case and then dealing with the various points  
 7 that you have asked us to address.  
 8 THE CHAIR: Yes, and I am not --- just to be clear, I am not  
 9 expecting in any way a line-by-line rebuttal ---  
 10 MR WILLIAMS: No.  
 11 THE CHAIR: --- because your detailed response and your case  
 12 will be following in your written submissions. But our  
 13 point is it is not just a sort of setting out your case  
 14 that we need, but we need to understand in very broad  
 15 outline what your case is, having regard to what  
 16 Qualcomm says, and also the way in which Mr Moser very  
 17 helpfully framed the counterfactual in his opening  
 18 submissions.  
 19 I would suggest that actually it would be more  
 20 helpful to us if you simply did not use the acronym  
 21 "NLNC" in this note, because at the moment "NLNC" in  
 22 itself is not helpful as a way of explaining the abuse.  
 23 What we need to understand is the actual conduct which  
 24 is said to be abusive; not the label that you give it,  
 25 but the actual conduct that creates the abuse, and in

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1 light of the way that the counterfactual has been  
 2 explained.  
 3 That does not just mean that there was this  
 4 NLNC Policy in the background, it means: what was it  
 5 that prevented Apple and Samsung from seeking to  
 6 negotiate the terms of the royalties , and in particular  
 7 from seeking a FRAND negotiation or FRAND litigation?  
 8 MR WILLIAMS: Yes. So I think, Madam, there were two points  
 9 in that.  
 10 The first is: what is the nature of the conduct that  
 11 we say constitutes the abuse, and how was that conduct  
 12 operative in relation to the specific negotiations  
 13 identified by Qualcomm? To some extent, Madam, it is  
 14 a matter of identifying the overall nature of the  
 15 abusive policy and the effect of that on competitive  
 16 negotiations, which turns on the nature of the conduct  
 17 as a whole.  
 18 So one strand of it is: what do we say constitutes  
 19 the abuse?  
 20 THE CHAIR: Well, I do not think you need that first piece.  
 21 I think we understand your general submission on the  
 22 nature of the abuses. What I need to understand is how  
 23 that translates to the individual negotiations, having  
 24 regard to the fact that Qualcomm says it was impossible  
 25 for what you describe to have affected the individual

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1 negotiations.  
 2 So forget the piece about the sort of general  
 3 background, general policy. Do not use the word 'NLNC',  
 4 it is not helpful in this context. Just focus down on  
 5 each of the negotiations and say: what do you say  
 6 happened that meant that at each of those points in  
 7 time, Apple and Samsung were outside the counterfactual  
 8 as Mr Moser has described it, were not able to avail  
 9 themselves of a normal negotiation on price, were not  
 10 able to seek FRAND litigation and so on?  
 11 MR WILLIAMS: Yes, and I understand the point you put to me,  
 12 Madam. But part of the response is that Qualcomm  
 13 operated — and I am going to use the word now, but  
 14 I hear what you say — an overall approach, a policy,  
 15 in relation to these sorts of dealings, which we say  
 16 affected the way in which parties approached those  
 17 dealings and caused them to take into account  
 18 considerations, risks , concerns, in the course of those  
 19 negotiations. So part of what we want to do is frame  
 20 the issue in that way.  
 21 But we entirely see your point, Madam, which is that  
 22 Qualcomm sets out specific reasons why, in relation to  
 23 each of those negotiations, the constraints could not  
 24 have been operative, and we understand we need to meet  
 25 that case and that is what we want to do.

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1 The reason I stood up, Madam, is simply to say —  
 2 THE CHAIR: Yes. Do you want more pages?  
 3 MR WILLIAMS: — is simply to say that doing all of that in  
 4 four pages is a challenge.  
 5 THE CHAIR: All right, I understand. You want more. How  
 6 many do you propose?  
 7 MR WILLIAMS: Well, we have done a lot of work overnight.  
 8 THE CHAIR: Yes.  
 9 MR WILLIAMS: At the moment we are going to be at least  
 10 five , and we think we will probably spill on to a sixth .  
 11 THE CHAIR: That is entirely acceptable, thank you. Yes.  
 12 MR WILLIAMS: So we wanted to be clear about that.  
 13 Then the second point we wanted to make is that the  
 14 document you have now asked for is in some ways more of  
 15 a responsive document, because you have asked us to say:  
 16 well, Qualcomm says there could not have been  
 17 a constraint in this situation ; what is your response to  
 18 that?  
 19 What we sought to do in the note that was produced  
 20 on Monday was set out a more sort of positive case,  
 21 which is to say: these are each of the negotiations, and  
 22 we say that each of these negotiations was affected by  
 23 the conduct at this point in time because of, for  
 24 example, LTE chipset dominance and so on.  
 25 THE CHAIR: Yes.

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1 MR WILLIAMS: So it seems to us the two notes are doing  
 2 slightly different things; they are complements, rather  
 3 than substitutes.  
 4 So what we would like to do is produce this note.  
 5 The Tribunal will then have the note from Wednesday,  
 6 it will have this note which will engage with the  
 7 specific points that Qualcomm has raised. We understand  
 8 the Tribunal sees this note as the key priority , but in  
 9 a sense, one is not going to substitute for the other.  
 10 THE CHAIR: All right. You do not want us to just replace  
 11 what you have done with this, but you want us to have  
 12 both.  
 13 MR WILLIAMS: I think once you have got the two notes,  
 14 you will see how, in my submission, they fit together.  
 15 THE CHAIR: All right. All right. All right. Yes, all  
 16 right. I do not want to create needless work for you by  
 17 asking you to merge them.  
 18 MR WILLIAMS: I think there is some overlap, Madam, but  
 19 the two things are looking at the issue from slightly  
 20 different ends of the telescope.  
 21 THE CHAIR: Yes.  
 22 I detected some burningness to stand up.  
 23 MR JOWELL: Well, I just need to put down a marker, I think,  
 24 which is —  
 25 THE CHAIR: I really do not like the term "put down

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1 a marker". You want to just tell me something.  
 2 MR JOWELL: No, well, nor do I, but I used it.  
 3 My apologies.  
 4 THE CHAIR: You just want to tell me something.  
 5 MR JOWELL: Yes.  
 6 THE CHAIR: All right. Tell me something.  
 7 MR JOWELL: It is this: that obviously we do not know what  
 8 is going to come in this new note, but I am about to  
 9 call our witness. We are in the middle of the trial .  
 10 THE CHAIR: Yes.  
 11 MR JOWELL: If there are new allegations about conduct by  
 12 Qualcomm that are supposed to amount to the abusive  
 13 conduct, and they are novel, about specific negotiations  
 14 have not been properly articulated to date, then clearly  
 15 procedurally we have not had an opportunity on our side  
 16 necessarily fully to address them in evidence.  
 17 THE CHAIR: I do not think we will be entertaining  
 18 completely new allegations. I think the idea is to just  
 19 bring forward a slightly more crystallised version of  
 20 the case so that, in particular, we know what the  
 21 framework is for the cross-examination of the experts  
 22 and the hot tub in relation to the experts, and also so  
 23 that your closing submissions can be appropriately  
 24 targeted and that we can start thinking about the issues  
 25 already for the purpose of the questions that we may

1 raise in closing submissions.  
 2 So I do not anticipate that there should be any new  
 3 allegation, but simply drilling down a little bit into  
 4 what the response is going to be. Because at the  
 5 moment, on the issue of the individual negotiations,  
 6 your skeleton argument and the Class Representative's  
 7 skeleton argument were a little bit like ships passing  
 8 in the night: they addressed different issues, they  
 9 framed it in a different way, and I know, as Mr Williams  
 10 has explained, that is because they see the case in  
 11 a different way. But I think we need to know how that  
 12 different framing really translates into an answer to  
 13 the points that you have raised.  
 14 So I do not think that there should be any  
 15 completely new allegations raised, and Mr Williams is  
 16 shaking his head.  
 17 MR WILLIAMS: There are not going to be new allegations.  
 18 Obviously responding to arguments that Qualcomm has  
 19 made, that is part of litigation, Madam, but that is not  
 20 us making new allegations.  
 21 THE CHAIR: Yes. I obviously would have preferred this ---  
 22 Mr Jowell, I would have preferred this to come before  
 23 the cross-examination, which is why I asked it to be  
 24 done for a few days ago. We are where we are.  
 25 MR JOWELL: No, we are, and I appreciate that, but I thought

1 I had to mention that.  
 2 THE CHAIR: Yes, all right.  
 3 MR JOWELL: I appreciate entirely where the Tribunal is  
 4 coming from in seeking clarity.  
 5 THE CHAIR: We are trying to help everybody.  
 6 MR JOWELL: Yes. Yes, yes, I appreciate that.  
 7 THE CHAIR: All right. Thank you.  
 8 All right, so we are going to hear from Mr Rogers.  
 9 MR JOWELL: Yes. May I call Mr Alexander Hilton Rogers,  
 10 please, to the stand.  
 11 MR ALEXANDER HILTON ROGERS (affirmed)  
 12 Examination-in-chief by MR JOWELL  
 13 MR JOWELL: Mr Rogers, please sit down.  
 14 Mr Rogers, you should have in front of you a file  
 15 which you will see in the bottom right-hand corner,  
 16 it will be labelled, I think, {IRC/4/1}.  
 17 A. I do not have anything in front of me. Oh, there we go.  
 18 Are you referring to the screen?  
 19 Q. Yes, do we have a hard-copy file for the witness?  
 20 (Pause)  
 21 You have it. Is that a copy of your witness  
 22 statement?  
 23 A. Yes, it is.  
 24 Q. Mr Rogers, if you could go to {IRC/4/26}, please.  
 25 A. I am sorry, tab 4?

1 Q. It is the same document.  
 2 A. Yes.  
 3 Q. If you could go to page --- it is 26 on the bottom right;  
 4 internally it is page 25.  
 5 A. Yes.  
 6 Q. Is that your signature?  
 7 A. Yes, it is.  
 8 Q. Is that statement true to the best of your knowledge and  
 9 belief?  
 10 A. Yes.  
 11 MR JOWELL: Thank you. Please wait there. Mr Moser will  
 12 have some questions for you.  
 13 Cross-examination by MR MOSER  
 14 MR MOSER: Good morning.  
 15 A. Good morning, Sir.  
 16 MR MOSER: You will have the documents that I refer to both  
 17 in hard copy and on screen in front of you. It is  
 18 partly a matter for you: I suggest you might find it  
 19 convenient, when we start referring to different things  
 20 in these documents, to use the electronic, but there is  
 21 the hard copy if you want to turn to it.  
 22 I do not know, Madam, whether anyone else is working  
 23 to the hard-copy bundle. Perhaps ...  
 24 THE CHAIR: For the core bundle, Mr Turner and I both have  
 25 hard copies. Mr Ridyard is using the electronic

1 versions.  
 2 MR MOSER: Yes, but this is not the core bundle.  
 3 THE CHAIR: Oh, are you talking about the cross—examination  
 4 bundle?  
 5 MR MOSER: Yes.  
 6 THE CHAIR: Yes, all right. I have got a hard copy.  
 7 Mr Turner and I both have hard copies. Mr Ridyard,  
 8 I think ...  
 9 We have all got hard copies. Two volumes.  
 10 MR MOSER: Yes. Thank you.  
 11 I am going to start in open, Madam, and I am going  
 12 to try and stay in open as long as I can. I think there  
 13 are going to be one or two documents, but I will try not  
 14 to read them out. Then I will go into closed when it  
 15 becomes necessary.  
 16 THE CHAIR: How much of today do you anticipate should be in  
 17 closed session?  
 18 MR MOSER: About a third of the day, or ...  
 19 THE CHAIR: All right. So starting, what, sometime this  
 20 afternoon in closed session?  
 21 MR MOSER: I think so, yes.  
 22 THE CHAIR: All right.  
 23 MR MOSER: A bit hard to estimate, but we will see how  
 24 we go.  
 25 THE CHAIR: Of course, yes.

1 Are we going to need both of the hard—copy  
 2 cross—examination bundles now?  
 3 MR MOSER: If you want to follow in hard copy, yes. (Pause)  
 4 Mr Rogers, you are aware that it is part of my  
 5 client 's case that Qualcomm threatened OEMs with  
 6 disruption to their chipset supplies if they did not  
 7 agree to take a licence on Qualcomm's preferred terms?  
 8 A. I am aware that that is the allegation .  
 9 Q. You are aware that — well, I would like to start off  
 10 with some questions, if I may, before I come to that,  
 11 about your role at Qualcomm.  
 12 A. Okay.  
 13 Q. You first joined Qualcomm, I think, in January 2001 as  
 14 senior legal counsel; is that correct?  
 15 A. Yes.  
 16 Q. So you were not at the company when Qualcomm first  
 17 decided to adopt what we call "NLNC", what you call  
 18 the "chipset supply practice", were you?  
 19 A. No.  
 20 Q. Or when Qualcomm adopted its practice of refusing to  
 21 grant exhaustive patent licences to other chipset  
 22 manufacturers?  
 23 A. No, when they — when they adopted the contracting —  
 24 the contractual relationship with the other chipset  
 25 manufacturers that was not exhaustive in nature, I was

1 not there.  
 2 Q. In your role as senior legal counsel, you were involved  
 3 in certain litigation matters on behalf of Qualcomm, of  
 4 course, were you not?  
 5 A. Yes.  
 6 Q. In 2007 you were promoted to senior vice president,  
 7 legal counsel and head of litigation ?  
 8 A. Yes.  
 9 Q. You joined QTL in March 2016 as the interim general  
 10 manager?  
 11 A. Yes.  
 12 Q. The October of that year, 2016, you became the executive  
 13 vice president of QTL; correct?  
 14 A. Correct.  
 15 Q. Since 2021, you have been president of QTL and global  
 16 affairs ?  
 17 A. Mm—hm, yes.  
 18 Q. In your role as president, you have general supervisory  
 19 responsibility for the management of all aspects of  
 20 QTL's licensing business; is that right?  
 21 A. Yes.  
 22 Q. Now, you report directly to the CEO of Qualcomm, do you  
 23 not?  
 24 A. Correct.  
 25 Q. That is Mr Cristiano Amon; correct?

1 A. Yes.  
 2 Q. Mr Amon features a lot in the documents. Do you know  
 3 whether he has other plans or do you know why it is that  
 4 he cannot be here to give evidence?  
 5 A. I do not know if he features a lot in the documents and  
 6 I do not know why he is not here. I suppose that is  
 7 a discussion between counsel.  
 8 Q. I want to take you first to a series of questions about  
 9 Qualcomm's licence negotiations with Sony. I take it  
 10 you are aware that Sony entered into licence  
 11 negotiations with Qualcomm in 2012?  
 12 A. Yes.  
 13 Q. What had happened was there was an Ericsson—Sony joint  
 14 venture. Sony had become unlicensed when that came to  
 15 an end and they took over the business, meaning that  
 16 Sony was no longer covered under Ericsson's licence,  
 17 broadly speaking?  
 18 A. Actually, you know, I was not involved. So when you say  
 19 Sony was no longer covered, I am not 100% sure of that.  
 20 Q. All right. Let us have a look at a document, at  
 21 {POF/290/2}. That is also in the hard—copy bundle at  
 22 tab 26, page 2.  
 23 A. Okay.  
 24 Q. It is a series of emails. There is an email which was  
 25 sent by Mr Reifschneider; do you see that, halfway down

1 the page? What was his role, Mr Reifschneider?  
 2 A. At the time he was the general manager of QTL.  
 3 Q. Actually he may not yet have been. I see that is still  
 4 from the Dewey & LeBoeuf email. Was he already general  
 5 manager?  
 6 A. So yes, hold on, let me see.  
 7 Q. He was external, was he not, and then ---  
 8 A. Oh, you know what? He actually was not. He was  
 9 actually an outside lawyer in this email chain. So  
 10 he was not at Qualcomm at all, apparently.  
 11 Q. Then he came and ---  
 12 A. Apologies.  
 13 Q. --- fulfilled the role that you mentioned?  
 14 A. Eventually. Yes, eventually he came in and became  
 15 the general manager of QTL. Apologies.  
 16 Q. So he is writing to Jonathan Pearl, the corporate vice  
 17 president and general counsel of Sony Mobile  
 18 Communications. If you look at the last line on  
 19 page 290 [sic]:  
 20 "As we have discussed, you knew that the Ericsson  
 21 agreement contained favorable terms that could not be  
 22 extended to Sony Mobile once Sony Mobile ceased to be  
 23 an Ericsson affiliate."  
 24 So I take it from that that Sony was no longer  
 25 covered under Ericsson's licence. Do you see?

1 A. So I apologise, there are a lot of 290s here. So which  
 2 one are you referring to, which page? 290/1, 290/2,  
 3 290 ---  
 4 Q. {POF/290/2}.  
 5 A. Okay, thank you. Sorry.  
 6 Q. The last line on that page, the sentence starting, "As  
 7 we have discussed".  
 8 A. I see.  
 9 Okay, what is the question?  
 10 Q. The question is: Sony ceased to be covered by the  
 11 Ericsson licence, did it not, so they had to negotiate  
 12 their own licence with Qualcomm?  
 13 A. So, you know, again, I was not involved, but the way  
 14 I read this is what he is saying --- and I apologise to  
 15 the bench: I am just trying to figure it out from what  
 16 I am reading --- what he is saying is that Sony Mobile  
 17 ceased to be an Ericsson affiliate so they did not have  
 18 the benefit of the Ericsson licence. But then it goes  
 19 on to say:  
 20 "... the royalty rate in the Sony license agreement  
 21 (which Sony ... has been operating under ... in Japan)  
 22 contains a [certain] rate."  
 23 So just based on those two sentences, or that  
 24 sequence, it appears to me that they are licensed. But  
 25 I would have to really dig into it to figure it out.

1 Q. Well, I do not think so. If you read the email from the  
 2 beginning:  
 3 "Dear Jonathan ..."  
 4 This is on {POF/290/2};  
 5 "This will confirm that the content of the draft  
 6 agreement is the same as the option agreement that was  
 7 negotiated with Ericsson. We note that the transaction  
 8 between Sony and Ericsson has now closed and [so] Sony  
 9 Mobile Communications ... is no longer sublicensed under  
 10 the Ericsson subscriber unit license agreement. As we  
 11 discussed in New York, we need to get a new licence  
 12 agreement in place quickly so that we can avoid any  
 13 disruption in supply."  
 14 A. Mm---hm.  
 15 Q. Does that help, I think, with the framing of my  
 16 question? It seems they have to get a licence in place,  
 17 being no longer covered.  
 18 A. I mean, he is saying, "We need to get a new licence in  
 19 place", but he is also saying that there is an existing  
 20 licence that has perhaps certain terms, certain  
 21 limitations.  
 22 So the situation seems to be a little bit  
 23 complicated and I would have to --- again, I was not  
 24 involved, so I would have to go into the record and try  
 25 to sort it all out.

1 Q. It may help if we look at a later email chain from  
 2 October 2012. Can I ask you --- the reference is  
 3 {POF/344/1} and that is at tab 34 of this hard-copy  
 4 bundle.  
 5 A. Okay.  
 6 Q. You will see on the first page there are a lot of  
 7 redactions, but this is an email chain that was  
 8 forwarded to you. If you look at the first page, "To",  
 9 and there is Alex Rogers in the top address, Alex Rogers  
 10 again, and again, in the three first emails on that  
 11 page. Do you see that?  
 12 A. Yes.  
 13 Q. Again over the page {POF/344/2}, a similar thing.  
 14 On page 3 {POF/344/3} then is the series of  
 15 unredacted messages in the chain. They begin there.  
 16 That is an email from Jonathan Pearl to  
 17 Eric Reifschneider. We see now Mr Reifschneider appears  
 18 to have arrived at Qualcomm, from his email in that  
 19 chain, and was now, as you say, senior vice  
 20 president/general manager of QTL, right?  
 21 A. Okay.  
 22 Q. Then this email is forwarded on to you. Let us go to  
 23 the beginning of the chain at page 5, and there we  
 24 see --- {POF/344/5} --- an email from Mr Reifschneider to  
 25 Mr Pearl of 27 October 2012. Do you see that?

1 A. Mm—hm. Yes.  
 2 Q. In the first paragraph he explains a little more about  
 3 what we are talking about. They had entered into  
 4 an interim licence while negotiations as to a final  
 5 licence were ongoing, and the interim licence had  
 6 recently been extended until 12 October. We see that in  
 7 the first sentence.  
 8 So at this stage, 27 October 2012, Sony was no  
 9 longer covered by the interim licence, was it?  
 10 A. Okay.  
 11 Q. In the second paragraph he says Sony had not signed  
 12 the draft license agreement provided by Qualcomm, and  
 13 he finishes, in the last paragraph:  
 14 "It is regrettable that ..."  
 15 That is Sony Mobile Corporation:  
 16 "... has chosen this course of action but at this  
 17 point I must report to QCT that SMC appears unwilling to  
 18 enter into a license agreement with Qualcomm."  
 19 No licence in this case meant no chips. So it is  
 20 a not so veiled threat, is it not, to disrupt Sony's  
 21 chipset supply if they do not sign?  
 22 A. So I think again what — let me back up a second.  
 23 So the reason why I am receiving this, for the  
 24 bench, is because I am in litigation. Maybe this goes  
 25 to a litigation matter, and this comes to me and I have

1 to start paying more attention to it.  
 2 At the time I knew that there was an issue between  
 3 Qualcomm and Sony. I do not know if the reference in  
 4 the prior email to the notion of having a licence in  
 5 Japan is a really material fact; I am not sure how that  
 6 plays.  
 7 Here what he is saying is that if you are unlicensed  
 8 and we are selling you chips, we are going to have  
 9 an issue with that because the licensing programme  
 10 cannot sustain exhaustive chip sales, and he is making  
 11 that known.  
 12 Q. Never mind the surrounding evidence that you describe.  
 13 If you look at the email as it stands before you, it was  
 14 wrong, was it not, for Mr Reifschneider to characterise  
 15 Sony as an unwilling licensee? Because Sony was  
 16 perfectly willing, you can see, wanted a licence, just  
 17 not on the terms that Qualcomm was demanding. Is that  
 18 not right?  
 19 A. Well, there was a disagreement.  
 20 Q. Let us just look at Sony's response, and that is on  
 21 page 4 {POF/344/4}, and that is from Mr Pearl to  
 22 Mr Reifschneider:  
 23 "I believe ... we are very close to finalising the  
 24 schedules to the SULA. But we are firm that we will NOT  
 25 be bullied by Qualcomm into accepting unfair and onerous

1 obligations that: add unnecessary costs to our  
 2 operations, give Qualcomm significant advantage over us,  
 3 increase Qualcomm's already considerable market power,  
 4 and mean that SOMC takes on incremental contractual risk  
 5 without any upside whatsoever. These proposed  
 6 obligations were only presented to us a week or so ago."  
 7 Then he says that:  
 8 "Lee will make himself available to speak to  
 9 Fabian ..."  
 10 That is Mr Gonell:  
 11 "... today on the outstanding issues ..."  
 12 You see in the second paragraph the list of unfair  
 13 and onerous obligations includes Sony's belief that 5%  
 14 is too high, that QC has not provided sufficient other  
 15 value in the form of MDF.  
 16 There is a reference in the final paragraph to  
 17 jeopardising chip supply again, if you look at the top  
 18 of page 5 {POF/344/5}:  
 19 "Anything done to jeopardise ongoing chipset  
 20 supplies in the meantime runs the risk of damaging our  
 21 business and irrevocably damaging Qualcomm's  
 22 relationship with Sony Mobile ..."  
 23 Mr Pearl clearly interpreted Mr Reifschneider's  
 24 email as a threat to jeopardise ongoing chipset  
 25 supplies, did he not?

1 A. Yes, Mr Pearl was objecting that what Eric had said  
 2 would jeopardise chipset supply.  
 3 Q. Then if we look at Mr Reifschneider's response. That  
 4 begins on page 3 {POF/344/3}. It is 30 October 2012 and  
 5 you can read it if you need to.  
 6 I want to focus on the penultimate paragraph, which  
 7 is back on page 4 {POF/344/4}, over the page, and I want  
 8 to pick it up from the sentence that says "Further".  
 9 It is in the middle of that paragraph. Do you see it  
 10 says, "Further, as SMC" — Sony — "has long been  
 11 aware"?  
 12 "Further, as SMC has long been aware of QCT's  
 13 inability to sell chips to unlicensed customers, if  
 14 anything 'jeopardizes' SMC's chipset supplies, it will  
 15 be SMC's failure to enter into the SULA, not any action  
 16 of Qualcomm. As you know, in the spirit of our  
 17 partnership and based on your representations that  
 18 the SULA would be signed once all issues involving the  
 19 license agreement were resolved (as they now have been),  
 20 QCT has been shipping chips to SMC for almost  
 21 three weeks now without a license in place. It will not  
 22 be possible for that to continue."  
 23 Just to finish off, we have — first of all, let me  
 24 ask you a question. "It would not be possible for that  
 25 to continue", that is an explicit threat, is it not, by

1 Mr Reifschneider, to stop shipping chips if Sony does  
 2 not sign a licence, is it not?  
 3 A. Well, he is saying the situation cannot continue, but he  
 4 had absolutely no authority or ability to cause Qualcomm  
 5 to stop shipping chips.  
 6 Q. I am sorry, I did not catch the last phrase. He did not  
 7 have ...?  
 8 A. He is saying the situation cannot continue, but Eric had  
 9 no authority whatsoever to cause Qualcomm to stop  
 10 shipping chips.  
 11 Q. I see. But the endpoint is in no doubt though, is it?  
 12 They need the licence or their supply will stop. Only  
 13 Qualcomm had the CDMA chipsets. They are going to have  
 14 to take the chipsets at the end of the day, are they  
 15 not?  
 16 A. I am sorry, say that again.  
 17 Q. They will have to take these chipsets at the end of the  
 18 day? There was not going to be some other outcome,  
 19 other than that Sony would have to accept at the end,  
 20 was there?  
 21 A. So on the chipset side, I actually do not know if there  
 22 was another supplier that was available to Sony at that  
 23 point in time. I just do not know.  
 24 On the agreement side, there are other ways to  
 25 resolve this impasse. You could enter into another

1 interim agreement; you could enter into, you know, some  
 2 sort of agreement to arbitrate with a backward-looking  
 3 start date for whatever licence emerges from that  
 4 arbitration. So there had to be other ways to  
 5 resolve it.  
 6 At this point in time, the chip group absolutely,  
 7 without any question, would not cut off Sony.  
 8 Q. I will absolutely come back to arbitration with you in  
 9 due course.  
 10 A. Sure.  
 11 Q. Can we just finish off this line of emails. Because to  
 12 finish off, we have got Mr Pearl's response on page 3,  
 13 on 31 October. {POF/344/3}, okay?  
 14 "To be very clear: the [Sony] team feels misled.  
 15 We reluctantly accepted agreeing to the highest IPR  
 16 royalty rate in the industry in return for explicit  
 17 assurances that significant value would be delivered  
 18 back to SOMC via either MDF, IPR acquisition, or  
 19 something like a 'Snapdragon' logo license. You even  
 20 agreed that Fabian would be the 'bridge' ... in the end  
 21 we were offered a paltry [something] for the ... patents  
 22 we offered Qualcomm ..."  
 23 That was not ...  
 24 "Despite our offer to put 'Snapdragon' on our boxes  
 25 in return for a running royalty Qualcomm appears not to

1 be interested ...  
 2 "It is of ... no concern [to us] that Qualcomm  
 3 chooses to split its IPR business from its chipset  
 4 business. As I said to you on a number of occasions:  
 5 we see Qualcomm as one company and ... QTL will no doubt  
 6 be delighted that it has secured that [Sony] pays the  
 7 highest IPR rate in the industry but, in the absence of  
 8 significant benefits to [Sony] ... the overall  
 9 relationship ... will be damaged. As you have said on  
 10 a number of occasions: QTL will get its money no matter  
 11 who [Sony] buys its chipsets from. But I am surprised  
 12 that Qualcomm cares so little about preserving the  
 13 overall relationship."  
 14 So it is clear, is it not, that Sony was going to  
 15 have to pay in any event, and it is clear that it was  
 16 very unhappy both with the methods and the licensing  
 17 terms it had ended up with? That is what we get from  
 18 this email, is it not?  
 19 A. Well, so he is expressing his view, you know, that we  
 20 have to have the licence in place or some resolution in  
 21 place, otherwise we enter into an exhaustive sale  
 22 situation, which is very detrimental.  
 23 I completely disagree with his statement that he is  
 24 "surprised that Qualcomm cares so little about  
 25 preserving the overall relationship". I certainly would

1 not attribute that to Qualcomm. I think Qualcomm cared  
 2 a great deal about it. But it was not his experience,  
 3 obviously.  
 4 Q. If one considers what Sony ended up with, that was  
 5 Qualcomm's standard royalty rate, was not it?  
 6 A. Portfolio-wide 5%?  
 7 Q. Mm-hm.  
 8 A. Yes.  
 9 Q. So they did not achieve a reduction from Qualcomm's  
 10 standard rate at all, did they?  
 11 A. If that was the resolution, that is correct.  
 12 Q. If we go back to the earlier exchange of emails at  
 13 {POF/290}, that is cross-examination bundle tab 26, and  
 14 if we look at page 2 {POF/290/2} and Mr Reifschneider's  
 15 email.  
 16 Excuse me for a second. I want to see if I can take  
 17 this more quickly. (Pause)  
 18 We have already looked at this email, the email of  
 19 20 February 2012. This is the one where  
 20 Mr Reifschneider says, and it is actually usefully on  
 21 page 3 {POF/290/3}:  
 22 "... the royalty rate in the Sony license  
 23 agreement ... contains a 5% royalty rate ... Qualcomm  
 24 has stated publicly ... its standard royalty rate is 5%.  
 25 Although we understand that royalties payable to

1 Qualcomm by Sony Mobile will be higher under the terms  
2 of the option agreement ... we assume that this was  
3 discussed ... It does not seem plausible that such  
4 an important item was not addressed."

5 So he alleges that Sony ought not to be surprised.

6 In the third paragraph, the last sentence:

7 "I understand ... there are several chipset orders  
8 scheduled to ship this week, so we need to move quickly  
9 on this. Thanks."

10 That is a not-so-veiled threat of stopping chipset  
11 supply, is it not?

12 A. He is certainly referring to the chipset supply. He is  
13 certainly expressing a concern about exhaustive sales.  
14 But again, he had absolutely no authority to exercise  
15 control over chipset supply.

16 Q. Well, so you say, but that is not how Mr Pearl  
17 interpreted it. If you look at Mr Pearl's response on  
18 page 2 {POF/290/2}, which is the end of an email that  
19 starts on the previous page, but it is the response  
20 email. The last paragraph, the one starting "Finally",  
21 of the first email on page 2:

22 "Finally --- I am sure that in raising the imminent  
23 delivery of [Qualcomm] chipsets that you are not  
24 threatening to withdraw or delay chipset supplies.  
25 Sony Mobile is Qualcomm's 3rd largest customer ... such

1 an action would bring this company to a virtual  
2 standstill. In the present circumstances this would  
3 seem to be a highly questionable tactic and would  
4 unlikely be considered as fair, or reasonable. But  
5 I would be grateful if you would kindly confirm."

6 So whatever you say was Mr Reifschneider's power,  
7 Mr Pearl is of the view that he did have the power,  
8 is he not?

9 A. No. I mean, I think Mr Pearl is doing a good job  
10 writing letters. But to just put this in context, this  
11 is an outside lawyer that just came into Qualcomm.  
12 He is a lawyer. Qualcomm is run by executives who have  
13 a relationship with this company. This new entrant into  
14 Qualcomm has inconceivably zero power to do this.

15 So Mr Pearl is writing these letters, he is doing  
16 a terrific job, but I cannot imagine in any  
17 circumstances that he would think that this new entrant  
18 into the company would have the ability to stop chips to  
19 the third largest customer.

20 Q. Mr Aberle was the QTL executive vice president at the  
21 time. He would have had that authority, would he not?

22 A. No.

23 Q. Mr Aberle is copied in on these emails, is he not?

24 A. Yes.

25 Q. Even if they did not have actual authority, they are

1 purporting --- they have ostensible authority, they are  
2 purporting to have that ability. Otherwise what are  
3 they doing writing to Sony saying, "You had better sort  
4 this quickly or we are going to cease supply?" That is  
5 what it clearly says, is it not? That is how it has  
6 been understood, correctly, by Mr Pearl.

7 A. So again, I cannot get into the mind of Mr Pearl and how  
8 he perceived their authority. We have a chipset  
9 business; the folks that run the chipset business are  
10 not going to cut off their third largest customer.

11 As these emails describe, there was a situation  
12 where --- apparently it came up rather quickly --- there  
13 was an option agreement, according to these emails, for  
14 Sony to simply elect an option agreement that had been  
15 pre-written into the Sony Ericsson agreement. I have no  
16 idea what that was, but that was an option and  
17 apparently Eric expected it.

18 There was another Sony licence that existed  
19 somewhere; I do not actually know the scope of that  
20 licence. But then there was a need to, if not selecting  
21 the other licence, if not selecting the option that was  
22 pre-existing in the Sony Ericsson agreement, if they  
23 were looking for a new licence, then there was a need to  
24 get that done in order to protect both parties'  
25 interests. Our interest was not continuous supply of

1 chips causing exhaustion and undermining the licence  
2 business; their interest was continuing supply of chips  
3 and trying resolve this licence issue.

4 Again, it is not conceivable that --- frankly, not  
5 even Derek Aberle could cut off the chips. It is going  
6 to have to go all the way to the CEO in order for that  
7 to be done.

8 Q. Could you turn, please, to {POF/343/4}. That is at  
9 bundle tab 33. This is an email from the later part of  
10 these negotiations, the October part, this time  
11 internal, from Mr Reifschneider to somebody called  
12 Jonathan Weiser, and he is saying:

13 "Jonathan, can you please find out and let us know  
14 when the next scheduled shipments to SMC are scheduled  
15 to be made, going out over the next couple of weeks? If  
16 possible please get back to us today."

17 He is asking because he is intending to put pressure  
18 on Sony by stopping those shipments, is he not?

19 A. He is asking because he wants to know because --- excuse  
20 me --- because this is affecting exhaustion and it is  
21 undermining the licensing business.

22 Q. Oh, come on, that is simply ---

23 A. I mean, what else he intends --- I am sorry, counsel,  
24 I just --- I do not know what else he intends.

25 Q. This simply is not plausible. We can all see the words

1 on the page, Mr Rogers. The threat is made. He is  
2 interested in the schedule of shipping. The executives  
3 are copied in. By the end of this, he is one of  
4 the executives.

5 The whole purpose of this is to put pressure on Sony  
6 by threatening to stop their chipset supplies, is it  
7 not?

8 A. Look, he is in a dilemma. It has to be resolved. There  
9 are competing interests here in terms of QTL and  
10 exhaustion and Sony and ongoing chip supplies. So it  
11 has to be resolved. There needs to be a way to  
12 resolve it.

13 As I understand it, nobody delayed or cut off any  
14 chips. So there was a resolution.

15 Q. If you turn back to {POF/343/1} --- you are still in  
16 tab 33 --- that is the next email:

17 "If I am reading this spreadsheet correctly, it  
18 looks like there are shipments ... to go out on [24 and  
19 25 October] ...

20 "If so, and ... they still have not signed the  
21 license agreement, I think we need to seriously consider  
22 holding those shipments until they do."

23 There is no doubt about it, is there?

24 A. There is no doubt about that one, no.

25 Q. Can I ask you to take a look at paragraph 51(2) of your

1 client 's --- of your employer's defence. That is at  
2 IRA/2 ---

3 MR TURNER: Are you moving on from this document?

4 MR MOSER: Yes, I am.

5 MR TURNER: I just wanted to ask a question.

6 You mentioned a couple of times that this is  
7 affecting exhaustion. Can you just explain how having  
8 a licence in place or not having a licence in place with  
9 Sony would impact exhaustion?

10 A. Yes. So do you mind if I back up a little bit ---

11 MR TURNER: Of course.

12 A. --- to kind of give the framework for this, but I will  
13 try to be quick.

14 The way Qualcomm emerged as a technology company is  
15 essentially to develop technology for 3G, 4G, CDMA and  
16 then ongoing cellular systems. So we actually initially  
17 were a technology development company, and we licensed  
18 patents to essentially develop revenue. We eventually  
19 became a chipset company. So we had these two  
20 businesses.

21 The core business developing technology for cellular  
22 systems was entirely dependent on patent licensing and  
23 the law around patent licensing, and one of the issues  
24 that that core business had to deal with, because it sat  
25 alongside a chipset business, was: if the chipset

1 business were to sell its chips for mobile devices to  
2 a non-licensee, then under the law, those sales would  
3 affect exhaustion of the patents being developed by the  
4 licensing business, okay, which was the initial core  
5 business of Qualcomm.

6 So Qualcomm had to find a solution to that problem,  
7 and the solution to that problem was essentially to say  
8 to the industry: we will develop technology that makes  
9 3G possible, that makes 4G possible, and we will put it  
10 into the standards and we will essentially get a revenue  
11 return on that through our patent licensing business.

12 But we cannot sell chips to non-licensees because we  
13 have to keep that R&D and revenue and patent licensing  
14 going, but we will sell chips to licensees because that  
15 solves the exhaustion problem.

16 If a licensee takes a contract to the patents in the  
17 first instance, then that essentially is a contract  
18 that --- it is probably the wrong way to put it --- sits  
19 outside of the effects of exhaustion under the law,  
20 okay?

21 So we always had to be concerned as a company: if  
22 we start selling chips in the mobile space to  
23 a non-licensee, we would essentially create a pattern of  
24 conduct where the entire industry can say: well, you are  
25 exhausting your patents by these chip sales, and I do

1 not have to take a licence from you because your patents  
2 are all exhausted through these sales, so I do not have  
3 to take a licence from you. In which case the entire  
4 licensing business would have failed, in which case  
5 Qualcomm would no longer have the revenue necessary to  
6 do the R&D, to continue to develop technology for new  
7 cellular systems.

8 So we had to have a way to have these coexist, and  
9 that was the way Qualcomm figured out how to do it: have  
10 a licence agreement in place first and then sell chips.

11 So with the third largest chipset customer here,  
12 this is a serious problem that he has stepped into,  
13 because suddenly you have the third largest chipset  
14 customer saying, "Hey, keep selling me chips, and I am  
15 not taking a licence because there is a disagreement".  
16 That has to be solved.

17 But as you know, or certainly as I know, it was not  
18 solved by cutting them off. There are other ways to try  
19 to solve this problem, and throughout the history of  
20 Qualcomm, for four decades, we have found other ways to  
21 solve this problem.

22 MR TURNER: When you say "the law", are you talking about US  
23 law in this particular instance?

24 A. So primarily US law. You know, I am a lawyer; I used to  
25 be a lawyer that functioned as a lawyer. I no longer

1 function as a lawyer.  
 2 But under US law, there were certain ways to avoid  
 3 exhaustion. You could contract around exhaustion, okay,  
 4 and you still can, and there are other ways to avoid  
 5 exhaustion in terms of how you convey the bundle of  
 6 rights in your agreement. There are a variety of  
 7 different things. But the exhaustion law in the US  
 8 started to change over time actually, and so as the law  
 9 changed over time, we had to conform our licensing  
 10 practices to make sure that we could still sustain the  
 11 licensing business.

12 So when Eric stepped into the Sony problem, when  
 13 he came in from an outside law firm and stepped into the  
 14 firm, to the company, in a situation where Sony Ericsson  
 15 Mobile was licensed and then they split out --- they did  
 16 not exercise this option, apparently; that would have  
 17 solved the problem. They were not going to operate  
 18 under their prior agreement, apparently; maybe that was  
 19 a Japan-only agreement, I actually do not know. So they  
 20 had to solve this problem very quickly, and Eric was  
 21 trying to figure out how to solve the problem.

22 There was no chance that Steve Mollenkopf, who was  
 23 not quite yet the CEO but he was the head of QCT, no  
 24 chance he would have cut off Sony, and Eric as a lawyer  
 25 down in QTL could not reach over into the executive

1 suite and tell the head of the chip business, "You are  
 2 going to cut those guys off". There is just no chance  
 3 that was ever happening.

4 MR TURNER: Thank you.

5 MR MOSER: Can I ask you, please, to turn to paragraph 51.2  
 6 of your defence, Qualcomm's defence. It is at  
 7 {IRA/2/23}.

8 A. I am sorry, paragraph ...?

9 Q. 51.2, tab 3 of the hard copy.

10 A. Of?

11 Q. Of the defence. {IRA/2/23}.

12 A. I am not sure what you are referring to. Can you help  
 13 me with what I --- where is it in here?

14 Q. It is in tab 3 of the hard copy. This is page 10; we  
 15 need page 23 {IRA/2/23}. It will also shortly appear in  
 16 front of you.

17 A. Okay.

18 I apologise to the Court that I am fumbling around  
 19 with these, but I am just much more comfortable with  
 20 this ...

21 THE CHAIR: Please go ahead.

22 A. Okay. Paragraph what?

23 MR MOSER: 51.2.

24 A. Okay, I have it.

25 Q. It is now a while since I have asked you the questions

1 about the Sony emails, but this is in fact my last  
 2 question on the point, which is: whatever you say about  
 3 Mr Reifschneider's internal power, based on the emails  
 4 we have seen, it is entirely implausible to say, is it  
 5 not, that Qualcomm has never threatened to cut off the  
 6 supply of its baseband chipsets to any OEMs? That is  
 7 what we saw in the emails to Sony just a little earlier,  
 8 is it not?

9 A. I am sorry, was that a question?

10 Q. That is a question.

11 A. Okay ---

12 Q. Given what we have seen in the emails, and even what you  
 13 have told us about it, how Mr Pearl perceived it, it is  
 14 entirely implausible to say that Qualcomm has never  
 15 threatened to cut off chipsets to get the terms  
 16 it wanted, is it not?

17 A. All right, so I want to break this down because this is  
 18 a really important distinction. There is one issue, and  
 19 that is selling chips exhaustively, that will  
 20 essentially undermine and eventually crater the  
 21 licensing business, and there is another issue on this  
 22 notion of preferred terms.

23 We could not sell chips exhaustively; that would  
 24 undermine the licence businesses. But this sentence  
 25 says:

1 "... in order to achieve SEP licences on Qualcomm's  
 2 preferred terms."

3 Okay. I do not know what the ultimate terms ---  
 4 I know there was a 5% rate; I am not sure what other  
 5 agreements there were. Maybe Mr Gonell knows that.

6 But what Eric was doing was saying: we cannot  
 7 continue to have a situation in place where there is  
 8 exhaustion. It does not mean he was not willing to  
 9 negotiate over terms, and I think the emails say that  
 10 Fabian was sent to actually conduct --- Mr Gonell, that  
 11 is --- was sent to actually conduct discussions and  
 12 negotiations over that. But exactly how that turned  
 13 out, I do not know.

14 Q. What Mr Reifschneider was saying was he wanted the 5%  
 15 and he got the 5%, did he not?

16 A. But I do not know what else happened in those  
 17 agreements. I am not sure what other agreements, you  
 18 know, came into play and what else may have satisfied  
 19 Sony. I just do not know.

20 Q. You saw the email from Mr Pearl about the unhappiness  
 21 with all of the terms that Qualcomm ended up getting.  
 22 It is, again, not plausible to say, "Oh, I do not know  
 23 what happened". They got the licence on the preferred  
 24 terms, and they did it by saying, "Unless you sign, we  
 25 are going to stop supplying". That is what happened,

1 is it not?  
 2 A. So I saw the 5%, I saw Eric's comments. I do not know  
 3 what other agreements went into that relationship at  
 4 that time. I just do not know.  
 5 Q. Please can we go now to paragraph 43 of your witness  
 6 statement, which is at {IRC/4/12}, and that is at tab 1  
 7 of the bundle.  
 8 THE CHAIR: Are we moving on from the Sony topic now?  
 9 MR MOSER: We are moving on partly from this topic, yes.  
 10 We are certainly moving on from Sony, yes.  
 11 Do you see the first sentence, where you say:  
 12 "At least since the period of my tenure with QTL and  
 13 to the best of my knowledge, Qualcomm has not threatened  
 14 to suspend or delay ongoing cellular baseband chipset  
 15 supply, software, or technical support to an OEM ... to  
 16 gain leverage in a licensing negotiation or force that  
 17 OEM to agree to certain licensing terms."  
 18 Yes?  
 19 Now, when you say "At least since the period of my  
 20 tenure with QTL", you mean since March 2016, do you not?  
 21 A. Yes.  
 22 Q. So this evidence is more limited than the sentence we  
 23 have just been looking at in Qualcomm's defence, is it  
 24 not, because it is limited in time?  
 25 A. Yes.

1 Q. That is because you know the claim made in the defence  
 2 is not true, is it?  
 3 A. I am sorry, say again?  
 4 Q. That is because you know that the claim made in the  
 5 defence — that at no time was there a threat — is not  
 6 true, is it not?  
 7 A. No. That is because if I am going to sign a statement  
 8 under oath, I am not going to say something that is  
 9 beyond my scope of knowledge.  
 10 So I know what I did when I came in. If somebody  
 11 else did something different in the, you know, 20 or  
 12 30 years before I came into QTL, I am not going to put  
 13 that in a witness statement if I do not know the answer.  
 14 Q. Can we go to {POF/833/4}. That is in the second  
 15 cross-examination bundle at tab 73.  
 16 We see there a Skype email, {POF/833/2}, sent to all  
 17 sorts of people at Qualcomm, including you. If we go to  
 18 the fourth page {POF/833/4}, we see that this is a draft  
 19 script for a Qualcomm earnings call in 2018. Do you see  
 20 that there?  
 21 A. Okay.  
 22 Q. This is what Qualcomm is telling the market at the time,  
 23 right? That is the point of the earnings call.  
 24 If we look at page 8 {POF/833/8}, it might help you.  
 25 It gives some Q&As.

1 A. Yes, so these are Q&As that somebody wrote that we would  
 2 look at before the earnings call.  
 3 Q. Yes.  
 4 A. Okay.  
 5 Q. At the bottom of the page, we see an anticipated  
 6 question about NLNC, the one:  
 7 "Q: Why does Qualcomm practice 'no license, no  
 8 chip'? Is this just a way to pressure companies into  
 9 signing license agreements?"  
 10 Then we have the Qualcomm lines in response, and  
 11 the third bullet of the suggested response states:  
 12 "We have never threatened to cut off or cut off chip  
 13 supply to get a licensee/customer to accept our license  
 14 terms."  
 15 You see?  
 16 A. Mm—hm.  
 17 Q. And other suggested lines. Have you ever given evidence  
 18 about this document before?  
 19 A. Yes.  
 20 Q. In fact, you did so in your third deposition in the FTC  
 21 proceedings in January 2019, did you not?  
 22 I could show it to you. It is at tab 87 of this  
 23 bundle, {POG/84/1}.  
 24 A. Okay.  
 25 Q. There, in the FTC proceedings of January 25, 2019 on

1 page 3, {POG/84/3}, there is, at line 16, your direct  
 2 exam. That is when you gave evidence about this  
 3 document before, right?  
 4 A. Yes.  
 5 Q. This is a deposition under oath, is it not?  
 6 A. Yes.  
 7 Q. I want to ask you some questions about the evidence,  
 8 because it looks to me different to the evidence you  
 9 have given just now.  
 10 Before we get into it, this deposition has been  
 11 designated prima facie confidential, but it is  
 12 reproduced in the publicly available FTC judgment, so  
 13 I shall mainly base my questions on that. So if I can  
 14 turn up the FTC judgment, please: that is at  
 15 {POF/912/16}.  
 16 Oh, all right. I am told from my left that it is no  
 17 longer confidential.  
 18 So let us have a look first then, forgive me, at  
 19 page 166 of this same tab, which is —  
 20 THE CHAIR: Is this back in 838?  
 21 MR MOSER: This is now back in {POG/84}, where we have just  
 22 been, in tab 87 of the hard bundle.  
 23 THE CHAIR: Sorry, but the POF — I am sorry, it is 83 ...?  
 24 MR MOSER: {POG/84}.  
 25 THE CHAIR: {POG/84}.

1 MR MOSER: Yes. That is right, yes. No, the POF, we have  
 2 moved on from that.  
 3 THE CHAIR: So POG ...?  
 4 MR MOSER: {POG/84}.  
 5 THE CHAIR: Right. What are we looking at then?  
 6 MR MOSER: We are looking at {POG/84/166}, that part of  
 7 Mr Rogers' examination.  
 8 THE CHAIR: All right.  
 9 MR MOSER: Question, at the top of the page:  
 10 "Turning your attention to the third bullet  
 11 it reads, 'We have never threatened,' ..."  
 12 So we are looking at that which we saw a moment ago.  
 13 "Do you see [that]?"  
 14 "Answer: I see that."  
 15 "Question: Are you aware that in December of  
 16 2015 ... the president of Motorola, told Qualcomm that  
 17 Eric Reifschneider was constantly threatening to cut off  
 18 chip supply?"  
 19 "Answer: No."  
 20 "Question: So as far as you are concerned, it was  
 21 a true statement, to the best of your knowledge in  
 22 January of 2018, that Qualcomm had never threatened to  
 23 cut off chip supply to get a licensee to accept license  
 24 terms; right?"  
 25 "Answer: That's correct."

1 Now if we can turn up the FTC judgment, please, at  
 2 {POF/912/16}, and that is tab 80 of this bundle,  
 3 eight—zero.  
 4 A. Tab ... which tab?  
 5 Q. Tab 80.  
 6 A. 80, got you. Thank you.  
 7 Q. This is the FTC judgment. At page 16 {POF/912/16}, if  
 8 we look at lines 19 to 21:  
 9 "Similarly, Alex Rogers (QTL President), who has  
 10 worked at Qualcomm since 2001, testified that Qualcomm  
 11 has 'never threatened to cut off chip supply ...'"  
 12 There is a reference to the transcript we have just  
 13 seen.  
 14 If we look at the judge's findings at page 12  
 15 {POF/912/12} ...  
 16 I am so sorry, I should read on from 21 to 24  
 17 {POF/912/16}:  
 18 "However, Rogers received the October 27 ... email  
 19 that Eric Reifschneider ... sent to Sony threatening  
 20 Sony's chip supply because Sony was not licensed ...  
 21 Rogers' testimony was not consistent with his own  
 22 emails."  
 23 Do you see that?  
 24 A. Mm—hm.  
 25 Q. The US court did not accept your evidence on this point,

1 did it, Mr Rogers?  
 2 A. No, but she was wrong.  
 3 Q. Nothing in the appeal judgment casts doubt on the  
 4 adverse credibility findings in the first instance  
 5 judgment, does it?  
 6 A. They overturned it on other reasons. But she was wrong  
 7 because this question is very specific about terms, and  
 8 there is a big difference between: are you going to take  
 9 a licence, or enter into some sort of agreement that  
 10 avoids exhaustion, will you take a licence, versus: if  
 11 you do not accept this specific term, we are going to  
 12 threaten to cut off chips.  
 13 The lawyers that were asking me this question knew  
 14 that there is a big difference between: I am going to  
 15 threaten to cut off chips to get specific terms for you  
 16 in agreement, as opposed to: you are aware that we  
 17 cannot continue to sell exhaustively; we have to have  
 18 a licence in place, whatever the terms are. These are  
 19 very different things.  
 20 So when I testified to this under oath, I was  
 21 telling the truth. I am still telling the truth. These  
 22 are very different things and her characterisation is  
 23 wrong.  
 24 MR MOSER: She was wrong?  
 25 THE CHAIR: No, no, can I just pause there. I am just a bit

1 concerned about the line of questioning.  
 2 Is it necessary to question Mr Rogers by reference  
 3 to the findings of the US court? Is it not possible for  
 4 you simply to pursue your question, in the way that you  
 5 have done, by reference to what is said in the defence  
 6 and what is said in the emails — the contemporaneous  
 7 document that you are taking Mr Rogers to?  
 8 MR MOSER: This line of questioning is about credibility,  
 9 not about the facts. I have actually reached my last  
 10 question on it, if that assists, if I can just ask it.  
 11 THE CHAIR: Yes, but it is whether you need to pursue it by  
 12 reference to the findings of another court, given what  
 13 this tribunal has already said about the use it has made  
 14 of other court findings.  
 15 MR MOSER: I think you will see when I ask my last question  
 16 why I had to do it this way.  
 17 THE CHAIR: Right.  
 18 MR MOSER: Here is that last question, which is: if she was  
 19 wrong, if the judge was wrong, why did you find it  
 20 necessary to change your evidence in these proceedings?  
 21 A. I am sorry, in this — in my witness statement?  
 22 Q. Yes, because you now limit it to post—March 2016 to  
 23 avoid this issue.  
 24 A. So the judge was wrong about this point. I was asked  
 25 about this point; I gave an answer about this point.

1 It was true at the time; it is always true.  
 2 Now I am being asked to sit down and write  
 3 a statement that has to be the truth and everything  
 4 I say in there has to be true.  
 5 I joined QTL in 2016. It has licensing history  
 6 going back to the early 1990s. I cannot attest in my  
 7 witness statement here — at least my frame of mind was:  
 8 I am not going to attest to multiple decades of  
 9 licensing history that I do not — that I am not  
 10 familiar with. I do not understand why I would do that.  
 11 THE CHAIR: Thank you.  
 12 MR MOSER: Mr Rogers, you can attest to what you did and did  
 13 not know, even at the time of the FTC proceedings, and  
 14 the reason you have changed your evidence is because  
 15 you know that what you said in the FTC proceedings was  
 16 not true. That is the position, is it not?  
 17 A. No. Again, she was wrong. I testified truthfully.  
 18 MR MOSER: Madam, it may be that the transcriber's break is  
 19 convenient at this point —  
 20 THE CHAIR: Yes.  
 21 MR MOSER: — because I am now going to move on to  
 22 a different line of questioning.  
 23 THE CHAIR: All right. Thank you very much. We will break  
 24 for five minutes.  
 25 (11.44 am)

1 (A short break)  
 2 (11.57 am)  
 3 MR MOSER: Can we please turn up your statement at  
 4 paragraph 30, which is at {IRC/4/8}, tab 1. To remind  
 5 you, here you say:  
 6 " ... if Qualcomm sold ... chipsets to  
 7 [an unlicensed] OEM ... that OEM ... could argue it does  
 8 not need a license to all of Qualcomm[s] SEPs because  
 9 the sale itself [could be said to] permit[] the OEM to  
 10 practice Qualcomm's patents ..."  
 11 That is the exhaustion argument. You say you have  
 12 got to avoid exhaustion because Qualcomm needs to be  
 13 compensated for the value of its patents and exhaustion  
 14 would prevent it from receiving licence revenue. For  
 15 that reason, you say that:  
 16 " ... Qualcomm ensures ... it ... has a license  
 17 agreement in place before it starts to sell ... chipsets  
 18 to ... OEMs."  
 19 That is what you say in the final sentence of  
 20 paragraph 30; yes?  
 21 A. I am sorry?  
 22 Q. That is what you say. I am just putting to you — I am  
 23 just reminding you what you say in paragraph 30. In  
 24 the last sentence, you say:  
 25 "This is the reason why Qualcomm ensures ...

1 it first has a license agreement in place ... "  
 2 Yes?  
 3 A. Correct.  
 4 Q. Now, in theory, it might be possible to do things  
 5 differently, and you already addressed one of those in  
 6 response to what the judge asked you.  
 7 It might also be possible to charge the royalty fee  
 8 as part of the chipset price, might it not, and then  
 9 simply sell the chipset as a package that covers the  
 10 physical product and the SEP, would it not?  
 11 A. So it would be possible to have a different business  
 12 model.  
 13 Q. Yes.  
 14 Now, did you listen to Qualcomm's opening  
 15 submissions in this case on Tuesday?  
 16 A. No.  
 17 Q. No. Well, I will tell you that Qualcomm's leading  
 18 counsel submitted on Tuesday: okay, you could do this,  
 19 but it would create another problem, and the problem  
 20 that he said it would create is that OEMs which  
 21 purchased chipsets from Qualcomm would acquire a licence  
 22 to Qualcomm's SEPs under this model, but there is  
 23 another group of OEMs, another group, those who buy  
 24 chipsets from a rival manufacturer, and it would not  
 25 work for them: those OEMs would still need a separate

1 licence from Qualcomm for the SEPs related to  
 2 the chipsets.  
 3 So the point being, as we understand it, that  
 4 Qualcomm would still have to operate its licensing  
 5 business in respect to those different OEMs, otherwise  
 6 it would basically be giving away its technology for  
 7 free. Do you follow that line of argument?  
 8 A. I follow what you are saying.  
 9 Q. Do you agree with it? I presume you agree with it.  
 10 A. So I agree that if you change the business model to have  
 11 some form of standard essential patent agreement to go  
 12 with the chip sale and you still wanted to maintain  
 13 a licensing business that enabled you to drive revenue  
 14 to continue to develop cellular systems, then you would  
 15 wind up with a bifurcated model where one is you are  
 16 somehow attaching the royalty to the chipset sale, and  
 17 the other is you are going out and you are trying to  
 18 have a licensing business based on handsets that use  
 19 other chips, other chipsets to sell those chips.  
 20 So you would wind up with a bifurcated business  
 21 model. That — it is possible to do that. It is not  
 22 a good idea, but it is possible to do it.  
 23 Q. Okay. Well, let us look at an example close to home,  
 24 because in addition to baseband processor chips,  
 25 Qualcomm also produces wi-fi chipsets, does it not?

1 A. Yes.  
 2 Q. And Qualcomm also used to sell something called  
 3 near-field communication or NFC chips, did it not?  
 4 A. You know, I have actually heard that that was an issue  
 5 here, but I frankly do not remember.  
 6 Q. Okay. Let us stick with the wi-fi that you seem to know  
 7 about.  
 8 A. Sure.  
 9 Q. Qualcomm also holds SEPs which relate to the standards  
 10 governing wi-fi chipsets; yes?  
 11 A. Correct.  
 12 Q. And presumably Qualcomm will say it made a substantial  
 13 contribution to those standards?  
 14 A. I am sorry, for some reason the audio has changed and  
 15 I am having a hard time; there is like an echo. Could  
 16 you repeat that question? I apologise.  
 17 Q. Yes, I am sorry if that is the case.  
 18 A. Say it again.  
 19 Q. What I am saying is: it is presumably Qualcomm's case  
 20 that it made a substantial contribution to the wi-fi  
 21 SEPs?  
 22 A. Yes.  
 23 Q. Yes. Yet Qualcomm does not require customers to take  
 24 a licence under Qualcomm's wi-fi SEPs before purchasing  
 25 wi-fi components, does it?

1 A. That is correct.  
 2 Q. Now, in your witness statement you do not address  
 3 Qualcomm's approach to wi-fi, but OEMs who purchase  
 4 wi-fi chipsets from Qualcomm acquire both the chips and  
 5 the right to use them, do they not?  
 6 A. So that is correct, and I did not address it, but if the  
 7 court is interested, I would be happy to address it.  
 8 Q. Well, I was not going to invite you -- I am going to  
 9 take you straight to -- the reason I ask that is because  
 10 those other OEMs, the problem group, those who buy wi-fi  
 11 chipsets from another manufacturer, Qualcomm does not  
 12 require those OEMs to take a licence to Qualcomm's wi-fi  
 13 SEPs in order to use their rival 's wi-fi chipsets,  
 14 does it?  
 15 A. No, we have not had a separate wi-fi licensing  
 16 programme.  
 17 Q. So for those OEMs, Qualcomm does not seem to have the  
 18 same concern about giving away its technology for free,  
 19 does it?  
 20 A. Well, we sell chips, but Qualcomm is a company that has  
 21 multiple different technologies and multiple different  
 22 methods of doing business through sales. Our licensing  
 23 business is only one of the ways in which Qualcomm  
 24 operates, and there is a historical reason why we have  
 25 not had a licensing business in wi-fi but we have had

1 a licensing business in cellular .  
 2 Q. In fact, it is only modem chips where you structure the  
 3 business in a way that ensures a separate royalty for  
 4 use of Qualcomm's SEPs, is it not?  
 5 A. I am sorry, say it again?  
 6 Q. It is only for the modem chips, the chips we are talking  
 7 about in this case, that Qualcomm insists on having  
 8 separate licence for the SEPs, is it not?  
 9 A. It is only cellular . Modem chips are in wi-fi and modem  
 10 chips are in cellular ; modem is just a kind of more  
 11 generic term. But it is only in cellular where we  
 12 insist on having a licence before we sell our cellular  
 13 chipsets.  
 14 MR MOSER: Yes, thank you.  
 15 THE CHAIR: Just pausing there, have you given the  
 16 explanation that you wanted to give, or was there  
 17 something more that you wanted to say about why that  
 18 occurred as a historical matter?  
 19 A. So I would love to be able to explain it, if you ...  
 20 THE CHAIR: If you could do so briefly, please.  
 21 A. Yes.  
 22 So again, really quickly, Qualcomm did not start out  
 23 as a product company. Qualcomm started out as  
 24 a technology development company, developing technology  
 25 for cellular systems, very broadly, and then we

1 eventually became a chipset company. But the purpose of  
 2 the business was to develop technologies for cellular  
 3 systems and drive those technologies into standards, and  
 4 so the licensing business enabled us to do that.  
 5 Eventually we decided to start selling wi-fi chips,  
 6 but we started that business completely differently .  
 7 We did not start as a developer of wi-fi technologies.  
 8 We started essentially by figuring out: how do we  
 9 develop chipsets, and we actually went and bought  
 10 a company that was a wi-fi company that already had  
 11 an established business practice of simply selling  
 12 chipsets. So on a completely different track, we  
 13 started in the wi-fi business with a company that had  
 14 already established their business model, which was  
 15 different from ours.  
 16 So we actually have a lot of different products  
 17 where we just sell them exhaustively. The purpose of  
 18 the company, the essence of the company is developing  
 19 cellular technology, and that is where we focus our  
 20 licensing business.  
 21 MR RIDYARD: May I just ask --  
 22 A. Sure.  
 23 MR RIDYARD: -- a factual thing. If I am an OEM who uses  
 24 the wi-fi chips, and it so happens I do not buy  
 25 Qualcomm's chips, do I then get a free ride on your

1 SEPs? I do not have to pay a royalty to you for the  
 2 SEPs, and I have just bought someone else's chips. So  
 3 do I get a free ride?  
 4 A. So if you assume that they are not full patent portfolio  
 5 licensees of ours, where the wi-fi would be included, if  
 6 they are not — if they are just selling wi-fi, up till  
 7 now, yes, they are getting a free ride. That is not to  
 8 say we do not have a significant portfolio; we actually  
 9 do. But up till now, they are getting a free ride.  
 10 But it is simply a business decision of Qualcomm:  
 11 do we want it licensed in that space or not, and up  
 12 until this point in time we have decided not to try to  
 13 go do that. The origins of the businesses are so  
 14 different that you just made that decision.  
 15 MR MOSER: Let me pick up the business decision aspect with  
 16 you. If we look at {POF/629/3}; that is tab 45.  
 17 A. Okay.  
 18 Q. Okay. That is a presentation and it is something called  
 19 Project Phoenix. It is from November 2015.  
 20 Project Phoenix was an internal evaluation of  
 21 whether Qualcomm's chipset and licensing businesses  
 22 should continue operating within the same entity; that  
 23 is right, is it not?  
 24 A. Correct.  
 25 Q. If we go to page 1, we see the presentation was

1 circulated by Mr David Wise. Mr Wise was the senior  
 2 vice president and treasurer of Qualcomm at the time;  
 3 correct?  
 4 A. I believe that is correct, yes.  
 5 Q. We see that you received this document. So please can  
 6 we go to page 4 of this document {POF/629/4}, because  
 7 this sets out the business logic behind a potential  
 8 change in strategy in light of certain challenges to  
 9 QTL.  
 10 If we look at the bottom of that page, where it says  
 11 "business model risk". Do you see that?  
 12 "The QTL business model risk is our BIGGEST issue  
 13 "— Negative outcomes could be highly binary ...  
 14 "— QTL represents the vast majority of our value  
 15 ..."  
 16 And he explains how much:  
 17 "— 1 point of royalty is \$16–20B ...  
 18 "— Slow erosion of the model through 2040 would  
 19 reduce valuation by \$30B+  
 20 "QCT risks are important, but less binary and less  
 21 impactful ..."  
 22 Pausing there, can I just remind you of your witness  
 23 statement at paragraph 19. It might be easiest just to  
 24 have it on the screen. It is {IRC/4/5}, which is at  
 25 tab 1. In paragraph 19, the final sentence, you say:

1 "QCT now generates a significant amount of  
 2 Qualcomm's revenue — approximately six times more than  
 3 QTL ..."  
 4 That deals with the respective revenues of QTL and  
 5 QCT; correct? Not value; it is revenue?  
 6 A. Revenues. My statement refers to revenues, yes.  
 7 Q. And it is talking about the then present day, not the  
 8 position when Project Phoenix was under consideration in  
 9 2015; correct?  
 10 A. Correct. Yes.  
 11 Q. What the Project Phoenix presentation said — and we can  
 12 go back to {POF/629/4} if you like — is that in  
 13 November 2015, the licensing division generated much  
 14 more value — value — than the chipset division, okay?  
 15 If we look at {POF/629/5}, the next slide in  
 16 Project Phoenix, "Overall Logic For a Change in  
 17 Strategy", if you look at the first bullet point:  
 18 "Dissecting the QTL business model challenge —  
 19 "— QTL, on its own, lacks an ongoing 'give/get'  
 20 relationship with licensees that creates ongoing  
 21 dependence on QTL  
 22 "— IP goes into standards bodies well in  
 23 advance ...  
 24 "In a dispute with OEMs over royalty rates (pricing)  
 25 we cannot pull access to the technology back (as you

1 would in a typical supplier/customer relationship)  
 2 "— Leaving us completely dependent on weakening  
 3 regulatory and legal channels to defend pricing  
 4 "— To date, QCT has helped maintain the 'give/get'  
 5 necessary to defend the royalty rate ..."  
 6 Pausing there, the "give/get" afforded by QCT is  
 7 the ability to disrupt or threaten to disrupt an OEM's  
 8 chipset supply in licensing negotiations, is it not?  
 9 A. No, that is actually not what he says. What he says is:  
 10 "To date, QCT has helped maintain the 'give/get'  
 11 necessary to defend the royalty rate ..."  
 12 Then he says parenthetically:  
 13 " ... (we've been positioned as a strong enabler to  
 14 the ecosystem)"  
 15 So that was an important element of QCT.  
 16 By the way, I disagree: he is wrong about some of  
 17 the things that he says in this statement that you read  
 18 earlier, but that is a whole different issue. But he is  
 19 right about some of the things about QTL: the nature of  
 20 the business, analysing business dependency on law,  
 21 dependency on regulation.  
 22 But one of the things that is important about  
 23 Qualcomm — I am sorry, I do not mean to go too long.  
 24 I can — I do not want to just answer his question too  
 25 long. If you would prefer me to just say ...

1 THE CHAIR: I think you should give your answer but try to  
 2 make it concise.  
 3 A. I apologise. Anytime you tell me, "Please be shorter",  
 4 I will be shorter.  
 5 THE CHAIR: Just give your answer, please.  
 6 A. As a licensing business adjoined to an actual technology  
 7 provider, Qualcomm has a very significant role in the  
 8 industry because we not only create the underlying  
 9 technology that has helped create the things that we are  
 10 familiar with, 3G/4G/5G capability, we go out into the  
 11 world and we enable handset makers and operators to  
 12 actually adopt that technology and make it work.  
 13 So as a chipset provider, we make the technology  
 14 work in real life. We do not just invent it and then  
 15 put it into the standards; we actually help  
 16 implement it.  
 17 So with 5G, for example — and I am going to stop  
 18 soon — we went around the world and worked with  
 19 150 different operators around the world to help them  
 20 bring 5G to market because we have not just the  
 21 underlying technology that we develop, but we also have  
 22 the silicon and software that brings it to the operators  
 23 and the consumers, and that is a very important part of  
 24 the overall business.  
 25 THE CHAIR: Can you translate that to this sentence, "QCT

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1 has helped maintain the 'give/get' necessary", and just  
 2 summarise then what you think that that sentence meant?  
 3 A. So what he says here is, "we've been positioned as  
 4 a strong enabler to the ecosystem", and that is what  
 5 I am talking about. We actually enabled the ecosystem  
 6 to work. That is the difference between Qualcomm and  
 7 a university professor who creates something that goes  
 8 into a standard. It may be a nice piece of research  
 9 that goes into the standard. We can create technology  
 10 and then pull it through into reality.  
 11 THE CHAIR: Thank you.  
 12 MR MOSER: That is not what it says at all, is it? Because  
 13 "give/get" here says it "creates ongoing dependence",  
 14 otherwise Qualcomm cannot "pull access to the technology  
 15 back".  
 16 In royalty disputes, in other words, it cannot  
 17 withhold the technology which is already in the  
 18 standards. That is what that says, is it not?  
 19 A. Well, as a separate statement, that is true, because  
 20 there is an attenuation. If you are a pure patent  
 21 licensing business, you create the technology, put into  
 22 the standards and then you have to come around later and  
 23 seek to licence. So there is an attenuation.  
 24 Q. It goes on. It says, if you look:  
 25 "— But as/if QCT's competitive position weakens our

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1 licensing business is at risk of losing the 'give/get'  
 2 it has had with QCT and seeing erosion in royalty rates"  
 3 So "competitive position" is QCT's position in the  
 4 market as supplier of baseband chipsets, and the slide  
 5 is saying: if QCT's market power in chipsets declines,  
 6 it reduces the give/get and could lead to lower  
 7 royalties. That is obviously what that says, is it not?  
 8 A. Well, you translated "competitive position" to market  
 9 power: I do not know if that is fair or not. But if QCT  
 10 were to disappear from the mobile market, it would be  
 11 detrimental to Qualcomm's position as both a creator of  
 12 technology and an enabler of technology.  
 13 I think your spin — your pejorative spin is  
 14 a little bit too much.  
 15 Q. It is not pejorative spin, is it? If we look at the  
 16 antepenultimate bullet point, "It is therefore":  
 17 "It is therefore imperative that we maintain high  
 18 modem share to sustain our licensing model (through  
 19 a continued strong QCT or through alternative means)"  
 20 There is only one possible reading of this whole  
 21 slide, and it is that QCT's ability to pull access to  
 22 the chipsets back improves Qualcomm's position in  
 23 licensing negotiations and helps to sustain royalty  
 24 rates. That much is surely clear, is it not?  
 25 A. You know, there are a lot of chipset suppliers that

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1 disappear from the industry. A lot came and went. If  
 2 QCT comes and goes and disappears from the industry,  
 3 then it is detrimental for Qualcomm and detrimental for  
 4 the licensing business.  
 5 Q. If we look at the next page, page 6 {POF/629/6}, that  
 6 sets out an issue, on the left—hand side, relating to  
 7 compliance in China.  
 8 A. Mm—hm.  
 9 Q. You see that at the top: "QTL", top line, "China  
 10 Compliance"  
 11 But on the right—hand side, or and on the right—hand  
 12 side, it says Qualcomm's "Current Thinking" on how to  
 13 solve that issue involves the "QCT 'compliance stick'".  
 14 What is the "QCT 'compliance stick'?"  
 15 (Redacted — confidential information)  
 16 A. I am probably wandering at that point. Go ahead.  
 17 Q. Let us look at an email that is way before the  
 18 China/NDRC situation, and that is at {POF/134/1}. In  
 19 this bundle it is at tab 18. That is an email from  
 20 Steve Altman, who was president of Qualcomm at the time,  
 21 and let us see what he says.  
 22 A. Which tab?  
 23 Q. Tab 18.  
 24 I would like us to concentrate on the last half of  
 25 that large paragraph, the one that starts "If you

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1 consider":  
 2 "If you consider the fact that the only companies  
 3 that have attacked us today are companies that  
 4 essentially purchase little or no [chips, as it were]  
 5 from us, you can understand how the combination of QCT  
 6 with QTL greatly enhances QTL's success. As CDMA2000  
 7 grows and OEMs desire to participate in it to grow their  
 8 market share, OEMs will remain reliant on us for  
 9 continued supply and will need to maintain positive  
 10 relationships with us. I believe ... this will help us  
 11 grow our business as one company. If we were two  
 12 companies, they would rely entirely on QCT, but would  
 13 have no incentive NOT to attack QTL."

14 So this is again a much earlier internal Qualcomm  
 15 document which expressly recognises the link between  
 16 OEMs' dependence on Qualcomm for chipsets and their  
 17 unwillingness to challenge Qualcomm's royalty rates;  
 18 that is right, is it not?

19 A. I think he is right that they would be incentivised to  
 20 attack the pure licensing groups.

21 Q. Are you aware that it is Qualcomm's case in these  
 22 proceedings that there is no link between OEMs'  
 23 dependence on Qualcomm for chipsets and the royalties  
 24 that Qualcomm can charge?

25 A. I am sorry, say it again?

1 Q. Are you aware that it is being argued that there is not  
 2 a link between OEMs' dependence on Qualcomm for chipsets  
 3 and the royalties that Qualcomm can charge?

4 A. Say it again? The position in this case is what?

5 Q. Are you aware that it is Qualcomm's case in these  
 6 proceedings that there is no link between OEMs'  
 7 dependence on Qualcomm for chipsets and the royalties  
 8 which Qualcomm can charge?

9 A. ... I am not sure how exactly that is phrased. So if  
 10 you could show it to me, that would be helpful.

11 Q. Well, I can show you the expert report of Dr Padilla.  
 12 Part of it is outer-ring confidential, but that is not  
 13 relevant to this question.

14 You will see that at tab 6 of this bundle,  
 15 {EAOE/22/19}.

16 A. Mm-hm.

17 Q. Sorry, it is at tab 7 of this bundle.

18 At paragraph 43 you will see the second sentence --

19 THE CHAIR: Which expert report is it?

20 MR MOSER: Dr Padilla.

21 THE CHAIR: But which of his various reports?

22 MR MOSER: Number 4.

23 THE CHAIR: Padilla 4. Okay.

24 MR MOSER: Padilla 4.

25 It says:

1 "In fact, the empirical analysis presented in  
 2 Padilla 3 illustrates ... there is no evidence of a link  
 3 between the Effective LTE royalties resulting from  
 4 Qualcomm's licence agreements and the extent to which  
 5 each licensee purchases chipsets from Qualcomm."

6 Do you see that?

7 A. Okay.

8 Q. "Mr Altman, the president of Qualcomm, clearly thought  
 9 there was a link, and he presumably understood  
 10 Qualcomm's business.""

11 Do you accept there was a link?

12 A. So I think his statement is true. I take his statement  
 13 at face value.

14 But let me talk about --- again, I hesitate to do  
 15 this. I keep doing this, talking for too long.

16 You have got to tell me to stop.

17 THE CHAIR: I will ask you to hurry up if you are going on  
 18 for too long. But please provide your answer.

19 A. Okay.

20 It touches on what I said before. If you are  
 21 an equipment participant in the ecosystem and you are  
 22 enabling the ecosystem to succeed, that is a very good  
 23 position to be in. If you are a pure patent licensing  
 24 business, that is a more difficult position to be in.  
 25 Your royalties could be well justified by the value of

1 your IP, but you are going to spend decades in  
 2 litigation fights.

3 So participating in the ecosystem and helping drive  
 4 success is a good position to be in. That is Qualcomm.

5 MR MOSER: I will try and short-circuit this by reminding  
 6 you of our discussion about wi-fi chipsets at the  
 7 beginning of this section. The reason why wi-fi  
 8 chipsets are sold differently is because in that area,  
 9 Qualcomm does not have enough market power to require  
 10 OEMs to pay high rates for separate licences or, to  
 11 borrow some of Qualcomm's own words from Project Berlin,  
 12 Qualcomm lacks the high market share to sustain royalty  
 13 demands "without risky litigation". Those OEMs could  
 14 simply get their chips elsewhere.

15 But the truth is that in the wi-fi situation, you do  
 16 not ask for separate licences because you do not have  
 17 the market share. That is right, is it not?

18 A. We are the largest wi-fi supplier on the planet, and  
 19 have been for some time. We lead the wi-fi evolution  
 20 for every single generation of wi-fi. We are recognised  
 21 by folks who make mobile devices that contain wi-fi  
 22 chips and folks who make access points that have wi-fi  
 23 chips as the best wi-fi supplier on the planet.

24 Q. Can I ask you to turn to {POF/980.1}, and that is in the  
 25 second document bundle at tab 86. This is a witness

1 statement from Ms Caroline Thomas, who is a Partner at  
 2 NRF, one of the two law firms representing Qualcomm in  
 3 these proceedings, and it is a statement she gave for  
 4 a case management hearing in these proceedings.  
 5 Can we go to paragraph 27 on page 10 {POF/980.1/10}.

6 A. Okay.

7 Q. Ms Thomas there says, on behalf of Qualcomm, that  
 8 Qualcomm is not dominant in any market for the supply of  
 9 wi-fi. 27(a):  
 10 "Qualcomm is not dominant in any market (to the  
 11 extent that one exists) for Wi-Fi ... components ..."  
 12 Do you see that?

13 A. Mm-hm.

14 Q. So if I have understood that correctly Qualcomm faces  
 15 strong competition when selling wi-fi; correct?

16 A. Well, there is always competition, but we are the number  
 17 one wi-fi supplier on the planet. The word "dominant"  
 18 is touching when you get in front of anti-trust lawyers,  
 19 so I am not sure if there is some sort of legal  
 20 discussion here. But just in terms of the market, we  
 21 are the number one wi-fi supplier on the planet.

22 Q. Come on. It is crystal-clear, is it not, to everyone at  
 23 Qualcomm that Qualcomm chooses to licence its baseband  
 24 technology in this way because it has market strength in  
 25 relation to CDMA and cellular and because it is

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1 lucrative, and it cannot do it in wi-fi. That is the  
 2 reality of the situation, is it not?

3 A. Of course we could do it in wi-fi. I think we also have  
 4 the most significant wi-fi patent portfolio, CP patent  
 5 portfolio on the planet.

6 Q. Let us move on to something else.  
 7 Can I take you to a news article, which is at  
 8 {POF/895.2/1}, and it is in this bundle at 76. It is  
 9 a news article from Reuters from 2019. It relates to  
 10 an announcement by Intel that its 5G chips would not be  
 11 used in mobile phones until 2020.  
 12 Now, of course we know that ultimately Intel never  
 13 produced a 5G chip, did it?

14 A. I am sorry, could you repeat your statement?

15 Q. We know ultimately Intel never produced a 5G chip, but  
 16 it is discussing its aspiration to do so; is that right?

17 A. Yes, that is correct. I think their business was bought  
 18 by Apple, but I cannot remember the timing.

19 Q. At the time it was hoping to sell a physical product,  
 20 namely a 5G chip, and so it will have held a number of  
 21 5G SEPs, will it not?

22 A. Intel?

23 Q. Intel, yes, at the time.

24 A. Yes, they had SEPs.

25 Q. If we look at the final three paragraphs in the Reuters

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1 article on page 2 {POF/895.2/2}, a spokesman for Intel  
 2 says:  
 3 "... [they] did not plan to generate patent  
 4 licensing revenue from its 5G technology like its  
 5 Southern California competitor does.  
 6 "'Our model relative to other California-based  
 7 players is just completely different,' Swan said. 'Ours  
 8 is not a licensing based model.  
 9 "'Royalty streams that are charged across the cost  
 10 of the entire device, that's a model that as you know  
 11 has caused quite a bit of friction ...' ... alluding to  
 12 Qualcomm's legal battles with Apple and other[s] ..."  
 13 So Intel was not proposing to condition the sale of  
 14 its 5G chipsets on OEMs first taking a licence to its  
 15 SEPs. It made a different business choice to Qualcomm,  
 16 did it not?

17 A. Yes.

18 Q. Now, can we please go back to your witness statement at  
 19 paragraph 41(d).  
 20 I think I can do this without going into closed,  
 21 Madam, but I will be stopped if someone objects.  
 22 Without reading anything out, at {IRC/4/12} --- that  
 23 is at tab 1 of the first bundle --- you will find  
 24 paragraph 41(d).  
 25 A. 41(c) or (d)?

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1 Q. 41(d) ---  
 2 A. (d).  
 3 Q. --- for "dog".  
 4 A. Okay.  
 5 Q. If we pick it up at the second sentence, "In those  
 6 circumstances":  
 7 "In those circumstances, a large OEM can use its  
 8 purchasing power to exert leverage in licensing  
 9 negotiations ..."  
 10 If you can please read the rest of the section to  
 11 yourself. (Pause)  
 12 A. Okay.  
 13 Q. Again, I have to put it to you that these are simply not  
 14 correct. The documents we have just been looking at  
 15 show that Qualcomm's senior management deliberately  
 16 chose to combine its licensing and chipset business  
 17 because it felt that that would give QTL a material  
 18 advantage in licensing negotiations. That was  
 19 Qualcomm's business choice, was it not?

20 A. To keep the company together, that was Qualcomm's  
 21 business choice.  
 22 Q. As of now, the QCT and QTL, they have not been split up?  
 23 Even now.  
 24 A. But this --- this statement is completely correct.  
 25 Q. Well, let us leave that there and look at something

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1 else.  
 2 I want to ask you now about some licensing  
 3 negotiations that took place between Qualcomm and LG —  
 4 A. Okay.  
 5 Q. — in 2003/2004. I believe you were involved in those  
 6 negotiations; is that right?  
 7 A. I do not think so.  
 8 Q. I beg your pardon?  
 9 A. I do not — I do not recall being involved in 2003/2004.  
 10 I was in the litigation group there, so maybe there is  
 11 some connection to litigation, but I do not remember  
 12 that.  
 13 Q. Again, I think I can probably do this without going into  
 14 confidential, but can I ask you, please, to look at  
 15 {POF/53/9}. That is at tab 13 — one—three — of this  
 16 bundle.  
 17 A. 53?  
 18 Q. So tab 13 of this bundle.  
 19 A. Thank you. Okay.  
 20 Q. Okay. It is a third—party confidential document, but  
 21 I am not going to ask you about that.  
 22 A. Mm—hm.  
 23 Q. If you look at page 9, you will see the date, and then  
 24 you look at the list of attendees and that includes you?  
 25 A. Yes, it does. You are right.

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1 Q. So I will ask you some questions about these  
 2 negotiations and we will see how we go.  
 3 There is first an email from Mr Altman to an LG  
 4 representative: that is at {POF/62/1}. That is at  
 5 cross—examination bundle 1, tab 14, the very next tab.  
 6 A. Okay.  
 7 Q. That is sent in December 2003, about two weeks after the  
 8 document we were just looking at. It explains that  
 9 there is a dispute between Qualcomm and LG in relation  
 10 to whether LG's licence covers certain SEPs and  
 11 indicates Qualcomm had initiated arbitration to resolve  
 12 the issue, and it attaches the arbitral complaint filed  
 13 by Qualcomm.  
 14 I believe you were one of the authors of this  
 15 complaint, were you not?  
 16 A. My name is on it. I had completely forgotten about  
 17 this. I do not remember this. But my name is on it —  
 18 Q. Yes.  
 19 A. — as counsel, along with outside counsel.  
 20 Q. Yes. Well, let us see where we go with it.  
 21 The essence of the dispute is set out at page 7  
 22 {POF/62/7}, paragraphs 17 and 18.  
 23 A. Which tab?  
 24 Q. The same tab. Just keep going in the document,  
 25 {POF/62/7}.

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1 A. Oh, I see.  
 2 Q. Paragraphs 17 and 18 of the complaint.  
 3 A. I have it.  
 4 Q. "Since 2000 LGE has been reporting and paying royalties  
 5 to QUALCOMM under the '93 Agreement for its sales of 3G  
 6 CDMA2000 products and acknowledges that CDMA2000 is  
 7 a licensed Wireless Application for which it is  
 8 obligated to pay royalties .  
 9 "However, LGE has recently claimed that WCDMA and  
 10 TD—SCDMA, the other two CDMA—based modes of operation of  
 11 the 3G IMT—2000 standard, are not licensed under the '93  
 12 Agreement and, therefore, LGE claims that it does not  
 13 owe royalties to QUALCOMM ..."  
 14 And Qualcomm objects.  
 15 So at this time, LG was plainly purchasing CDMA  
 16 chipsets from Qualcomm, was it not?  
 17 A. I would assume so.  
 18 Q. Yes. And it held a licence which at least everyone  
 19 agreed covered Qualcomm's CDMA SEPs, right?  
 20 A. That appears to be the agreement, yes.  
 21 Q. LG was also purchasing WCDMA chips from Qualcomm, but  
 22 there was a dispute as to whether the licence covered  
 23 WCDMA SEPs; that is what we see here, right?  
 24 A. I actually do not know and would have to read through  
 25 this to find out if they were purchasing WCDMA from

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1 Qualcomm.  
 2 Q. Well, that is why Qualcomm wanted the Tribunal to  
 3 arbitrate on the scope of the licence, presumably. If  
 4 we look at page 11 in this document {POF/62/11},  
 5 paragraph 32(a):  
 6 "For an award of damages under the First Claim for  
 7 Relief ... in an amount to be established ...  
 8 "(b) For a declaration under the Second Claim ...  
 9 that the LGE Patents are cross licensed royalty—free to  
 10 QUALCOMM ..."  
 11 And the patents that are being talked about, as we  
 12 saw in paragraph 18, are patents that include WCDMA.  
 13 We must be talking about royalties on WCDMA products,  
 14 right?  
 15 A. Yes, that is what it appears to be. But I can only tell  
 16 you based on what I am reading here. I just do not  
 17 remember.  
 18 Q. Now, LG also wanted to include various other complaints  
 19 which it had in relation to Qualcomm's royalty demands;  
 20 do you remember that?  
 21 A. No.  
 22 Q. If we look at — just a sec. (Pause)  
 23 I am going to show you a document. We will see  
 24 whether I can ask my question without going into outer  
 25 confidentiality ring.

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1 If we look at {POF/68/1}, which is cross-examination  
 2 bundle 1, tab 15.  
 3 A. I have tab 15. Yes, okay.  
 4 Q. It is from Marv Blecker to an LG representative. At the  
 5 time, the late Mr Blecker was the senior vice president  
 6 and general manager of QTL.  
 7 The body of the email is marked "Confidential". If  
 8 you read the first few paragraphs, you can see the  
 9 nature of the issue that LG wanted to arbitrate.  
 10 (Pause)  
 11 In particular, the bit about "LG raising a variety";  
 12 do you see that in the middle of the pink bit?  
 13 A. Mm—hm.  
 14 Q. So those are the sort of issues that LG wanted to add,  
 15 right?  
 16 A. Apparently.  
 17 Q. Let us go to {POF/177/16}. That is at tab 23. This is  
 18 a letter from Qualcomm to LG's vice president of  
 19 intellectual property. It is from May 2004, a few  
 20 months after the arbitration was issued.  
 21 If we go to the final page, we can see it was  
 22 written by Mr Louis Lupin, or "Lupin", who was  
 23 Qualcomm's general counsel. We can see that at page 23  
 24 {POF/177/23}.  
 25 A. I do.

1 Q. If we look at the first page {POF/177/16}, and I am  
 2 going to pick it up from the middle of the first  
 3 paragraph, between the hole punches:  
 4 "QUALCOMM does not, nor has it ever, claimed that  
 5 the 96 Agreement standing alone covers the 'sale of  
 6 equipment incorporating WCDMA ...' ... QUALCOMM does  
 7 believe that the Infrastructure and Subscriber Unit  
 8 License and Technical Assistance Agreement ... [of '93],  
 9 under which LGE has been operating ... clearly covers  
 10 the sale of certain equipment incorporating WCDMA ...  
 11 "LGE's assertion that LGE cannot be in breach of the  
 12 Supply Agreement based on its purchase and use of WCDMA  
 13 [chips] under the Supply Agreement until after the  
 14 arbitrators determine the scope of sales subject to  
 15 the parties' license agreement misses the point."  
 16 And here it comes:  
 17 "Simply put, LGE currently is in breach ... of the  
 18 Supply Agreement regardless of the outcome of [this]  
 19 arbitration. If QUALCOMM prevails and the arbitrators  
 20 find that the parties' license agreement covers WCDMA,  
 21 then LGE is in breach of the Supply Agreement because  
 22 it has used WCDMA."  
 23 Last sentence:  
 24 "On the other hand, if LGE prevails and the  
 25 arbitrators find that the license agreement does not

1 cover WCDMA, then LGE is in breach of the Supply  
 2 Agreement because it has used WCDMA ... to develop,  
 3 manufacture and sell Subscriber Units not licensed ...  
 4 Accordingly, QUALCOMM's claim of breach is neither  
 5 premature nor does it 'derive from circular  
 6 reasoning' ..."  
 7 Then if we look at the supply agreement — sorry.  
 8 Sorry, yes, before we go there, let us look at the end  
 9 of this on page 18 {POF/177/18}:  
 10 "Although LGE remains in material breach of the  
 11 Supply Agreement as set forth above and in my May 6th  
 12 letter, please be advised that QUALCOMM, at this time,  
 13 has terminated only the MOU but reserves the right to  
 14 terminate the Supply Agreement as well."  
 15 So this was a threat, was it not, to terminate all  
 16 supplies of chipsets to LG?  
 17 A. He is reserving the right to terminate a particular  
 18 supply agreement.  
 19 Q. Yes, but the — we can go to it — the definition of  
 20 "chipset" in the supply agreements includes all of WCDMA  
 21 and CDMA chipsets. I can show it to you if you like.  
 22 A. I will take your word for it. I do not know.  
 23 Q. So that was a threat, to terminate all supplies, to  
 24 place pressure on LG, was it not?  
 25 A. So, I mean, the words speak for itself. I have no

1 memory whatsoever of anything relating to the LG  
 2 dispute. Obviously it seemed to have been a complicated  
 3 dispute. But he is certainly reserving the right to  
 4 terminate a supply agreement.  
 5 Q. LG responded to Mr Lupin in a letter dated 3 June, which  
 6 begins on the next page, at 19 {POF/177/19}.  
 7 A. Okay.  
 8 Q. That is Mr Ham. And if we look at the second half of  
 9 the first paragraph, he is arguing that Qualcomm should  
 10 continue supplying chips until the dispute has been  
 11 determined through arbitration:  
 12 "The Supply Agreement and MOU ... are controlled  
 13 by ... Licence Agreements ... A key question of  
 14 contractual interpretation ... has been referred to  
 15 arbitration at Qualcomm's request ... It is improper,  
 16 from a legal and general argumentative standpoint, to  
 17 attempt to shoehorn a second alleged breach out of the  
 18 same allegations of breach that have been submitted to  
 19 pending arbitration by Qualcomm itself."  
 20 If we look at the final paragraph on page 20  
 21 {POF/177/20}:  
 22 "Qualcomm has interposed these most recent  
 23 allegations of breach in an attempt to draw focus away  
 24 from the baselessness of Qualcomm's position in the  
 25 pending ICC arbitration. LGE believes that the

1 relationship between our companies can be salvaged  
 2 [etc] ... if the arbitration is allowed to run its  
 3 course in a timely manner prior to Qualcomm's alleging  
 4 that LGE has breached the Supply Agreement. If Qualcomm  
 5 persists in depriving LGE of benefits to which it is  
 6 entitled under any of the contracts executed with  
 7 Qualcomm, however, LGE will be compelled, as I mentioned  
 8 in my previous letter, to take the necessary steps to  
 9 secure relief in a court of law."

10 So LG was also saying, in desperation, one imagines,  
 11 that it may seek the assistance of the court; correct?

12 A. Well, they are taking a reasonable position: Qualcomm,  
 13 you have taken a position, and we are going to take the  
 14 position, and the back-and-forth continues.

15 Q. Well, this prompts a strong response from Qualcomm, if  
 16 we look at the letter over the page at 21 {POF/177/21},  
 17 to the vice chairman and CEO of LG.

18 A. Mm—hm.

19 Q. This is from Mr Irwin Jacobs, the chairman and CEO of  
 20 Qualcomm. You can see that on the last page, page 23  
 21 {POF/177/23}.

22 A. Mm—hm.

23 Q. But looking at the first page {POF/177/21}, the second  
 24 sentence of the second paragraph:

25 "Following LGE's steadfast refusal to report and pay

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1 royalties for WCDMA products in accordance with our  
 2 agreement, QUALCOMM felt it had no choice but to  
 3 initiate arbitration. In doing so, QUALCOMM sought  
 4 resolution of the specific dispute as to whether WCDMA  
 5 was licensed ... So as to limit the disruption ... and  
 6 the impact on our relationship, we told LGE that we  
 7 intended to keep the arbitration focused on that single  
 8 disagreement. Despite our intentions, LGE has added  
 9 a number of contentious claims to the proceeding that go  
 10 well beyond the original disagreement over the language  
 11 of the contract with respect to WCDMA."

12 He is talking about anti—trust, is he not?

13 A. He is talking about ...?

14 Q. Anti—trust arguments.

15 A. I do not know. I mean, just based on what you read to  
 16 me before, the letter to Mr Lupin, he is actually, in  
 17 the second paragraph of the letter of June 3, making the  
 18 exhaustion argument. It is the exact argument that —  
 19 I think he is making the exhaustion argument — the  
 20 exact arguments that I talked about.

21 They are saying, "You sold those chips. It is not  
 22 covered under the licence, even though you think it is,  
 23 Qualcomm, but it is not. Therefore it is exhausted,  
 24 we have an implied licence and you have no rights".

25 So that is an additional claim.

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1 Q. Well, we have to agree to disagree on how you  
 2 characterise this, because if you then look at the  
 3 demands on the second page {POF/177/22}, demands are  
 4 made in the first paragraph, and the threat is that  
 5 Qualcomm will take the following steps:

6 "1) Qualcomm will stop accepting LGE purchase orders  
 7 for WCDMA ...

8 "2) Qualcomm will cease all shipments of WCDMA ...  
 9 to LGE, beginning with the next—scheduled shipment ...

10 "3) QUALCOMM will withdraw all of its substantial  
 11 WCDMA engineering resources ...

12 "4) ... will require that LGE return to QUALCOMM all  
 13 versions and derivations of our WCDMA ..."

14 And for good measure:

15 "... QUALCOMM may be required to inform LGE's WCDMA  
 16 customers that LGE is selling them products that LGE  
 17 considers to be unlicensed ... "

18 This is all in response to the letter of 3 June  
 19 where they said they might have to go to court.

20 So what we have here is Qualcomm's president  
 21 reiterating the threat to cut off LGE's chipset supply  
 22 with specifics, have we not?

23 A. So he is saying that, and again I thought it was very  
 24 significant. I do not remember this at all. But  
 25 I thought it was very significant that they were making

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1 the exhaustion argument, which is a very serious issue.

2 THE CHAIR: Is that a good moment, Mr Moser?

3 MR MOSER: Yes. I have not completely finished with this  
 4 line of questioning but I have at least finished with  
 5 this document.

6 THE CHAIR: Thank you very much. Let us take an hour and  
 7 we will come back at 2.00.

8 Mr Rogers, as you may know, you are still in purdah  
 9 and that means that you may not speak to anybody about  
 10 this case while you are still under oath. You can of  
 11 course use the facilities, but please do not talk to  
 12 your legal team or anybody else, or exchange emails or  
 13 text messages or anything else like that, about this  
 14 matter.

15 THE WITNESS: I completely understand and I will completely  
 16 comply.

17 THE CHAIR: All right. Thank you very much.

18 (1.03 pm)

19 (The short adjournment)

20 (2.00 pm)

21 Hearing in private

22 (3.41 pm)

23 Hearing in open court

24 MR MOSER: So, Mr Rogers, at paragraph 44 of your statement  
 25 at page 13 {IRC/4/13}, we see that you were not involved

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1 with Qualcomm's negotiations with Samsung prior to 2016;  
 2 correct?  
 3 A. That is correct.  
 4 Q. But you do also say --- and it is at paragraph 49 if you  
 5 want to check {IRC/4/14} --- that you are "not aware of  
 6 a period where Samsung did not hold a license to  
 7 Qualcomm's ... SEPs"; correct?  
 8 A. That is correct.  
 9 Q. Now, we know that Samsung had a SULA since 1993;  
 10 correct?  
 11 A. Correct.  
 12 Q. That was long before 3G or 4G existed, was it not?  
 13 A. Certainly long before 4G existed, and 3G  
 14 commercialisation ...  
 15 Q. About 2001?  
 16 A. No, before 2001. Sometime in the '90s. I just cannot  
 17 give you an exact year.  
 18 Q. It may be ... well, anyway. We think that preliminary  
 19 work was going on in the early '90s and stretched  
 20 through, and first commercialisation was 2001, but ---  
 21 A. Of CDMA?  
 22 Q. Of 3G.  
 23 A. Oh, of 3G. You know ... So if you do not consider --- so  
 24 possibly. I cannot remember the exact dates, so I do  
 25 not want to belabour it and the panel get annoyed with

1 me.  
 2 Q. Certainly not 5G. 5G was not a twinkle in anyone's eye?  
 3 A. Certainly not 5G, correct.  
 4 Q. Or 4G, in 1993?  
 5 A. Correct. Sorry.  
 6 Q. So a royalty set at that time cannot have been set to  
 7 ensure that Qualcomm got fair payment for technical work  
 8 on 4G/5G, can it? You did not know what value Qualcomm  
 9 would be contributing even to 3G, but certainly not 4G  
 10 standards, in 1993, could you?  
 11 A. You could not know what Qualcomm would be doing for 4G  
 12 at that point in time, that is correct.  
 13 Q. In reality, when you are deciding to charge a royalty  
 14 for a fair rate, you should be negotiating a new rate  
 15 for new standards when they arrive, should you not?  
 16 A. That is possibly one way to do it. But the other way to  
 17 do it, which has been industry practice, is to negotiate  
 18 a licence agreement that has different terms --- it can  
 19 be five years, it can be ten years, it can be  
 20 fifteen years, it can be perpetual --- and then within  
 21 the context of that licence, you can sit down and kind  
 22 of revisit things and renegotiate, which is exactly what  
 23 we did with Samsung.  
 24 Q. So in these long-term licences, you are bound to need to  
 25 renegotiate to ensure that the rate remains appropriate;

1 correct?  
 2 A. Bound to? You know, I do not know. There are so many  
 3 different circumstances that could arise. Somebody may  
 4 shut down their mobile business, somebody may shut down  
 5 their licensing business, somebody may continue to  
 6 innovate, somebody may go innovate someplace else.  
 7 There just are a thousand different circumstances.  
 8 Q. There could be those exceptional circumstances. But  
 9 generally speaking, provided all things are equal, you  
 10 will have to renegotiate when the new innovation occurs,  
 11 will not you?  
 12 A. So it is --- let me put it this way: it is --- it has been  
 13 my observation that renegotiation has occurred given new  
 14 generations and, you know, new innovations that lead to  
 15 new generations in cellular. Yes, we have done that.  
 16 Q. Now, there were some negotiations in 2022. I understand  
 17 from your statement you were not closely involved in  
 18 the negotiations in 2022.  
 19 A. That is correct.  
 20 Q. Let us look at paragraph 33 of your statement {IRC/4/8}.  
 21 Qualcomm licenses --- "End-Device Licensing".  
 22 Qualcomm licenses its SEPs at the end-device level;  
 23 correct?  
 24 A. Correct.  
 25 Q. So it does not provide exhaustive licences to chipset

1 manufacturers?  
 2 A. Correct.  
 3 Q. Despite, over time, several chipset manufacturers having  
 4 asked for licences; correct?  
 5 A. They have asked, and they have changed their positions.  
 6 It has been a little bit up and down.  
 7 Q. So let us turn up paragraph 35. It is the next page  
 8 {IRC/4/9}.  
 9 A. Mm-hm.  
 10 Q. There you say:  
 11 "It would not be efficient or practical to attempt  
 12 to license at the component level."  
 13 Do you see that?  
 14 A. Yes.  
 15 Q. You say it would require multi-level licensing; correct?  
 16 A. Correct.  
 17 Q. That is because, in your view, some of Qualcomm's SEPs  
 18 are implemented in the handset; correct?  
 19 A. Well, it is much broader than that. They are  
 20 implemented in the handset, but they are implemented in  
 21 the system. Again, this is system-level innovation, and  
 22 the industry, when we stepped into the industry, had as  
 23 an industry practice for the purposes of licensing,  
 24 licensing at the handset level, which is what we did.  
 25 If you licensed at chipset level and handset level

1 and multiple component suppliers, you would essentially  
 2 have to, incredibly inefficiently, disaggregate your  
 3 entire licensing programme and try to do it among  
 4 a group of people that would essentially be pointing at  
 5 the other person saying, "No, they have to take  
 6 a licence to that patent, or that claim on that patent;  
 7 I only have to take a licence to this". It would have  
 8 resulted in massive inefficiency.

9 Q. Yes. You say it could result in claims and disputes  
 10 between component suppliers and handset suppliers?

11 A. Sure.

12 Q. But that is because of your view that some of the  
 13 Qualcomm SEPs are implemented in the handset; otherwise  
 14 that could not be the case, could it?

15 A. Well, it is the nature of the patents and the claims  
 16 themselves. It is not just my view.

17 Q. You are probably aware that there is a debate about  
 18 whether or not Qualcomm SEPs actually are implemented in  
 19 the handset, but this tribunal is not going to be asked  
 20 to decide that. So for present purposes I am going to  
 21 assume in your favour that at least some of the SEPs are  
 22 implemented in the handset.

23 A. Thank you.

24 Q. But even in that scenario, it would be possible for  
 25 Qualcomm to licence the chipset manufacturer on the

1 express basis that it is entitled to pass through all  
 2 rights to the OEM. That would be possible, would it  
 3 not?

4 A. So in a hypothetical scenario where a chipset  
 5 supplier — I apologise for the last comment. That was  
 6 snarky. I withdraw it. I apologise.

7 Q. No, I —

8 A. I apologise.

9 Q. No offence.

10 A. It is hypothetically possible that a chipset supplier  
 11 could say to a patent licensor, "I will accept the  
 12 obligations of my customers and I will pay you what my  
 13 customers pay you". That is a hypothetical that is  
 14 possible. I have never actually seen anybody step  
 15 forward and volunteer to do that.

16 Q. The contract of sale between the manufacturer and the  
 17 OEM could simply specify the chips are being sold with  
 18 full rights of use, could it not?

19 A. I am sorry, I do not understand that question.

20 Q. Well, you could make provision for other arrangements  
 21 where the manufacturer and the OEM wish to agree between  
 22 themselves, in a situation where you have licensed the  
 23 chipset manufacturer, then you can, if you wish, drop  
 24 out of the picture, can you not?

25 A. So the chipset manufacturer — so let me back up

1 a second. When you look at Qualcomm's innovation in  
 2 cellular systems, it is much broader than chips,  
 3 handsets, base stations. It is the system. And so  
 4 a semiconductor in a mobile device practises certain  
 5 claims, but not all the claims, because these are  
 6 system-level claims in large part. You have  
 7 system-level claims, handset-level claims, chipset-level  
 8 claims.

9 I have never come across a chipset manufacturer who  
 10 is just providing a piece of silicon and some software  
 11 that says, "I will accept the burden of paying for the  
 12 value of your entire standard essential patent portfolio  
 13 covering all these systems". They just would not —  
 14 it has never happened. Nobody has ever said that they  
 15 would do that. But they would gladly pay a much, much,  
 16 much reduced royalty and exhaust every other element of  
 17 our patents in a way that we would perceive to be  
 18 unfair.

19 Q. Let us look again at paragraph 35 {IRC/4/9} —

20 A. Mm—hm.

21 Q. — in relation to a slightly different point, because  
 22 here you say that Qualcomm's policy of selling chipsets  
 23 only to licensed OEMs is necessary because of the  
 24 doctrine of exhaustion. You have already mentioned that  
 25 today, and we see that at other points in your witness

1 statement; at paragraph 32 {IRC/4/8}, for instance, and  
 2 also at paragraph 38 {IRC/4/10}.

3 At paragraph 38, over the page at page 10  
 4 {IRC/4/10}, you explain that:

5 "... Qualcomm has always offered to license its full  
 6 cellular patent portfolio to OEMs, including SEPs and  
 7 non-SEPs, at around 5% of the net selling price [of  
 8 a handset] (subject to [caps])."

9 A. Mm—hm.

10 Q. You do not, here in paragraph 38, give any evidence as  
 11 to how Qualcomm evaluated the value of its patent  
 12 portfolio or why it concluded that it is worth 5%,  
 13 do you?

14 A. So that is a market-based price over decades of  
 15 innovation and market interaction with hundreds of  
 16 sophisticated market players in the cellular system, and  
 17 when we first licensed, we actually did not set the  
 18 royalty rate. Our licensee set the royalty rate. AT&T  
 19 came and basically said, "I want to license your  
 20 technology and I am going to pay X, and as a first mover  
 21 on your technology I want to have the best rate. So  
 22 when you go out and license to the rest of the market,  
 23 it needs to be X-plus".

24 So before we were ever a chip company, one of the  
 25 biggest players in the market set the price, and then we

1 have basically been operating over this market-based  
 2 pricing for a long time, and as I said — and I am not  
 3 going to belabour this — the innovation of Qualcomm has  
 4 been so prolific that we have managed to support this  
 5 value. In fact, I believe our innovation is worth far,  
 6 far more, but over time we have been unable to collect,  
 7 in my experience, what the real value of this innovation  
 8 is. But that is a market-based price.  
 9 Q. It is a market-based price, and that is why nowhere in  
 10 your statement do you explain the relationship between  
 11 any of these rates and the sums that Qualcomm actually  
 12 spends on R&D, do you?  
 13 A. I did not know I was supposed to do that. That is  
 14 a whole other exercise.  
 15 Q. Well, that is not an exercise that has been undertaken,  
 16 on your evidence, because you say the rates are based on  
 17 what historically was agreed with the market. You do  
 18 not describe any steps taken by Qualcomm to ensure that  
 19 the rate charged genuinely reflects the value of the  
 20 patents and is not inflated by historic agreement or by  
 21 other factors, do you?  
 22 A. So as I sit here today, I think the rate charged  
 23 actually does not reflect the value of the patents  
 24 because it is far too low. The innovation that Qualcomm  
 25 has — I am sorry to belabour this. But the innovation

1 that Qualcomm has put into the market, going from CDMA  
 2 to WCDMA, basically enabled mobile systems to  
 3 essentially bring the internet to human beings all over  
 4 the planet, and we have been iterating on that ever  
 5 since.  
 6 So it is not just telephony. It is also the notion  
 7 of the mobile internet ecosystem that exists today.  
 8 There are trillions of dollars of value based on what  
 9 Qualcomm has done. Qualcomm's former CTO, Roberto  
 10 Padovani, won the Alexander Graham Bell Award — which  
 11 is, within communications, like the Nobel Prize — for  
 12 bringing the internet to mobile. What has been  
 13 accomplished, in large part through the contributions of  
 14 Qualcomm, is trillions of dollars of value, and the  
 15 rates that we collect in the business model that we set  
 16 up reflect, in my opinion, a small fraction of that  
 17 value.  
 18 Q. That is pure assertion, is it not?  
 19 A. It is certainly my belief. I believe it very strongly.  
 20 MR MOSER: Just wait there a moment. (Pause)  
 21 I have nothing further for this witness.  
 22 Questions from THE TRIBUNAL  
 23 MR RIDYARD: Mr Rogers, may I ask a question. It is going  
 24 back to basics in some ways.  
 25 But the licences that you offer for the SEPs, I am

1 just interested in what happens when you change from one  
 2 generation of the technology to another. I guess the  
 3 most concrete example would be the licences that Apple's  
 4 contract manufacturers had.  
 5 I am just intrigued to know what happens when the  
 6 world moves from 4G to 5G: do those licences stop  
 7 working then, or is it always the case that the licence  
 8 would carry on into the new generation of technology?  
 9 A. Yes, that is a really good question. So in some part it  
 10 depends on what the licensee wants to do, and it is  
 11 a little bit kind of — like you could think of it  
 12 almost as overlapping.  
 13 So as we went from early CDMA to 3G, where we  
 14 started to bring in high data rates and started to bring  
 15 in this process of bringing the internet, then what  
 16 happened was the world moved from GSM, which was  
 17 a different technology, to CDMA and WCDMA — which is  
 18 basically the world moved to Qualcomm technology — and  
 19 we kept our rates the same. So any licensee that had  
 20 a licence for CDMA was licensed to CDMA and WCDMA.  
 21 Then 4G comes into play, and so then the question is  
 22 we move to a different technology called OFDMA. So CDMA  
 23 is you encode the messaging. OFDMA is you basically  
 24 make your signals essentially orthogonal to one another,  
 25 so that you can essentially exchange information

1 differently without interference.  
 2 When we moved to OFDMA, to 4G, the world basically  
 3 said with respect to Qualcomm: you are a CDMA guy,  
 4 you are not an OFDMA guy. But in 2008, before OFDMA  
 5 became a standard that was commercialised, what we said  
 6 to the world was: we are an OFDMA guy, by the way.  
 7 We have contributed to 4G very significantly, and we  
 8 went out and bought a company that was pre-revenue for  
 9 \$600 million that, in our opinion, was the other best  
 10 OFDMA research company, 4G research company, on the  
 11 planet, and we brought their scientists in with ours.  
 12 We provided a statement to the entire industry: this is  
 13 how we will license.  
 14 So it goes precisely to your question — and I do  
 15 not know what exhibit it is here, but it was a public  
 16 statement that goes precisely to your question, and it  
 17 basically said, "If you are licensed to CDMA and you  
 18 include 4G with a 3G device, you remain licensed. If  
 19 you want a 4G licence but you are not going to be making  
 20 a device that is both 4G and 3G, here are our terms".  
 21 So it kind of depends licensee by licensee what they  
 22 want to do. If somebody is paying under their old  
 23 licence and they do not want to change anything, that is  
 24 fine. But if somebody comes to us and says, "Well, now  
 25 we are in the 4G era, I want to renegotiate", or,

1 "I want a 4G-only device", that is fine also.  
 2 Then when we got into the 5G era, we basically said:  
 3 we are going to take our innovations in 5G and --- a big  
 4 debate within Qualcomm --- should we charge more, should  
 5 we not charge more? We decided not to charge more. So  
 6 our licensing rate for 3G/4G devices remained the same  
 7 for 3G/4G/5G devices. So ---  
 8 THE CHAIR: Were you saying that at that point your 3G  
 9 licence would include something that was 5G?  
 10 A. So it could. So in other words, you can have, let us  
 11 say, a handset manufacturer that is selling 3G/4G  
 12 devices, and they say, "Okay, I want to sell premium  
 13 tier 3G, 4G, 5G devices, I want to sell 10 million of  
 14 those a year, so I want to be licensed to that, but  
 15 I want to just keep my existing licence, I will pay  
 16 under my existing licence". Perfectly fine. Then on  
 17 their 3G/4G phones, they just pay under their existing  
 18 licence. Perfectly fine.  
 19 When 3G --- are we on the public record?  
 20 THE CHAIR: We are in public now.  
 21 A. Can I go off the public record for a second, or is that  
 22 too --- let me put it this way ---  
 23 THE CHAIR: It is going to be too complicated, because then  
 24 we will have to change over the transcript.  
 25 A. Let me put it this way. As technology disappears off

1 the back end, then we basically adjust.  
 2 So what we try to do is we try to make it easy for  
 3 the licensee to keep a licence. If they need a new  
 4 licence because they are not covered under multimode  
 5 features of a licence, then we will have to negotiate  
 6 that. If they want to --- if they want to modify, we can  
 7 modify.  
 8 We have a licensee, for example, that was selling  
 9 only 3G/4G devices, and one of them starts selling 5G  
 10 devices. They said, "We will take a licence for 5G, but  
 11 we do not want to take a licence to 3G/4G, we want to  
 12 continue to negotiate on that", and we did.  
 13 So, you know, it is possible to split things up.  
 14 I hope I answered your question.  
 15 MR RIDYARD: That is helpful. But just a very specific  
 16 question on the 5G and the contract manufacturers.  
 17 Did the introduction of 5G, did that initiate some  
 18 new event that required those contract manufacturers to  
 19 come back to you for a new licence ---  
 20 A. No.  
 21 MR RIDYARD: --- or could they carry on?  
 22 So was the default position that they could carry on  
 23 doing what they do and just produce 5G phones instead of  
 24 4G phones, and not have to have a new agreement with you  
 25 on the royalty licensing?

1 A. So I do not have perfect memory on that, but I am almost  
 2 certain that they could have carried on under their  
 3 existing licences because they were basically in the  
 4 business of making phones that were multimode, that were  
 5 3G/4G/5G phones, and so their 3G/4G licence would have  
 6 enabled them to carry on doing that.  
 7 I finally gave you a short answer!  
 8 THE CHAIR: Mr Moser, did you have any questions arising  
 9 from those last questions and responses?  
 10 MR MOSER: No. We are going to cover some of this,  
 11 including the 5G, with Mr Gonell.  
 12 THE CHAIR: Okay. All right.  
 13 Mr Jowell, your re-examination.  
 14 Re-examination by MR JOWELL  
 15 MR JOWELL: Yes, I now have two questions, if I may.  
 16 The first is just on the recent answer you gave: you  
 17 referred to a statement that was made to the industry.  
 18 Could I ask that you be shown {POF/171}, please.  
 19 A. What tab is it, do you have any idea?  
 20 Q. It is not in the bundle, I think. You will have to look  
 21 at it on the screen.  
 22 A. Ah, okay.  
 23 Yes, so this --- I am sorry, go ahead. What is your  
 24 question?  
 25 Q. You go ahead.

1 A. So this is the statement that I was referring to. As we  
 2 were approaching 4G, which was a different technology  
 3 from CDMA, different --- let me rephrase.  
 4 We basically made our position really clear to the  
 5 industry because we did not want the industry to be  
 6 under any illusions or any misconceptions about where we  
 7 stood, and we explained to them basically what our  
 8 innovation is. We referenced the Flarion acquisition  
 9 here. Then we set out, as you go further through this  
 10 document, we set out: this is what our licensing  
 11 policies are going to be, because we wanted everybody to  
 12 know before the deployment of the technology.  
 13 Q. Thank you.  
 14 So my other question relates to a question that you  
 15 were asked in relation to your paragraph 74 of your  
 16 statement, which is on page 22 {IRC/4/22}. You may  
 17 recall that you were taken to the first sentence that:  
 18 "Qualcomm nonetheless continued to supply the CMs  
 19 with thin modems for existing Apple handsets throughout  
 20 the litigation."  
 21 The question that was put to you, I think it is on  
 22 page 133 of the draft transcript of today; perhaps I can  
 23 just show it to you if we can get that up on the screen  
 24 for you {Day4/142:2}. Here it is.  
 25 A. Okay.

1 Q. So if we could go to line --- yes, line 13, you say:  
 2 "We continued to supply the contract manufacturers."  
 3 Then it was put to you:  
 4 "Yes. But Qualcomm did not supply Apple with  
 5 chipsets for new Apple phones until after the  
 6 litigation, did it?"  
 7 And you say:  
 8 "By 'new', are you referring to 5G?"  
 9 And the question is:  
 10 "For new Apple models, the new Apple models, until  
 11 after the litigation, did it?"  
 12 You say:  
 13 "Well that is true, yes. I think that is true, but  
 14 that is my best [of my] recollection".  
 15 My question is: do you recall why Qualcomm did not  
 16 supply chipsets for the new Apple models until the 5G  
 17 models came in?  
 18 A. Well, my understanding is that we tried and failed.  
 19 Apple did not select Qualcomm as their provider. That  
 20 is my understanding at that point in time. I suppose  
 21 Alex Katouzian may know. Maybe Fabian might know.  
 22 MR JOWELL: Thank you very much. I have no further  
 23 questions.  
 24 THE CHAIR: All right. Thank you very much, Mr Rogers.  
 25 It has been a long day.

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1 THE WITNESS: Thank you. I appreciate the opportunity to be  
 2 here.  
 3 THE CHAIR: All right. Thank you for your answers.  
 4 They are very helpful. You may leave the witness box.  
 5 Is there anything else that we need to discuss  
 6 before we conclude today's hearing?  
 7 MR MOSER: Mr Williams.  
 8 THE CHAIR: Yes, Mr Williams.  
 9 Housekeeping  
 10 MR WILLIAMS: Yes, there is the Tribunal's proposals to  
 11 revise the timetable, Madam.  
 12 THE CHAIR: Yes.  
 13 MR WILLIAMS: We would ask the Tribunal to maintain  
 14 the prior timetable for the oral closings, starting on  
 15 Monday the 3rd rather than the previous Friday, which  
 16 I think is the 31st, and that is because the new  
 17 proposal is imbalanced in three respects, Madam.  
 18 The first respect is that it gives our side  
 19 materially less time to prepare our oral closings than  
 20 Qualcomm. We would have, I think, three and a half days  
 21 that week, whereas Qualcomm would have the best part of  
 22 a week. That is between the preparation of written  
 23 closings and the oral submissions.  
 24 THE CHAIR: Are you saying that that is because they get  
 25 the weekend and you do not?

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1 MR WILLIAMS: Yes, that is right.  
 2 Secondly, it gives Qualcomm the weekend to consider  
 3 its response to our oral closings. And the third  
 4 related point is that we, in contrast, have a very short  
 5 period in which to reply to them.  
 6 Now, that is obviously where the conventional  
 7 closing submissions happen within a week, but here you  
 8 would be introducing a break which would give them  
 9 a material advantage in terms of their ability to  
 10 respond directly to us.  
 11 So we see that there is an efficiency gain in saving  
 12 a day, of finishing on the Tuesday rather than the  
 13 Wednesday. But in my submission, saving that one day in  
 14 the context of this whole trial does not justify  
 15 creating that sort of imbalance, which, in my  
 16 submission, does tend to introduce a degree of  
 17 unfairness.  
 18 THE CHAIR: We will reflect on that. I mean, that is how  
 19 trials play out in terms of the timetable. Sometimes  
 20 you will get a weekend and sometimes you will not.  
 21 Trial timetables are not conventionally built around  
 22 ensuring absolute fairness in terms of number of days,  
 23 including weekends, and we did foreshadow that if the  
 24 evidence took shorter, then the rest of the timetable  
 25 would move up.

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1 We will reflect on that. But before making any  
 2 decision, does Mr Jowell have anything to say?  
 3 MR JOWELL: Well, this may sound a little catty, but given  
 4 the lack of the clarity of the case that we are facing,  
 5 it does not seem unfair to, in fact, give us a little  
 6 more time to see how it is finally put in closing  
 7 argument.  
 8 THE CHAIR: All right. Points on both sides noted. We will  
 9 let you know at the start of next week.  
 10 All right. Anything else?  
 11 MR MOSER: Sorry, Madam, I was just going to rise because  
 12 I anticipated it was the end.  
 13 THE CHAIR: No. Are we getting --- it is the end, but are  
 14 we going to get the market shares tables, or have we had  
 15 them?  
 16 MR MOSER: Yes.  
 17 THE CHAIR: We have got them. All right. Thank you very  
 18 much.  
 19 So next Monday at 10.30. Thank you very much.  
 20 (4.09 pm)  
 21 (The hearing adjourned until 10.30 am  
 22 on Monday, 13 October 2025)  
 23  
 24  
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