



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1382/7/7/21

BETWEEN:

CONSUMERS' ASSOCIATION

Class Representative

- v -

QUALCOMM INCORPORATED

Defendant

ORDER

UPON the Tribunal's Order made following the fourth case management conference in these proceedings on 9 and 10 January 2024 (the "**Fourth CMC Order**")

AND UPON the parties' industry experts' summary document setting out (i) key topics agreed to be potentially covered in their industry expert reports for Trial 1, and (ii) topics in respect of which the parties' industry experts' did not agree whether they should be covered in their industry expert reports for Trial 1, signed by the Defendant's industry expert, Mr Paul Melin ("**Mr Melin**"), on 22 April 2024, and by the Class Representative's industry expert, Dr Matthias Schneider ("**Dr Schneider**"), on 24 April 2024 (the "**List of Topics**")

AND UPON the Class Representative's application, dated 16 May 2024 (the "**Application**"), for an order confirming that certain matters contained in the second table of the List of Topics are relevant to the issues falling to be determined in Trial 1 and may be addressed by the parties' industry experts as part of their reports for Trial 1

AND UPON the Class Representative's application, dated 16 May 2024, for an order requiring the Defendant to give answers to the requests for information set out therein

AND UPON consideration of the parties’ written submissions and skeleton arguments and hearing Leading Counsel for both parties at a hearing held on 21 June 2024 (the “**21 June Hearing**”)

AND HAVING REGARD TO the Tribunal’s powers under the Competition Appeal Tribunal Rules 2015

IT IS ORDERED THAT:

INDUSTRY EXPERT EVIDENCE FOR TRIAL 1

1. Both Dr Schneider and Mr Melin are permitted to address:
 - (a) The topics in the first table of page 1 of the List of Topics, save for the topic appearing in the third row of that table; and
 - (b) The topic in paragraph 2 of the Appendix, their evidence to be confined to evidence as to their knowledge of what is normal or typical practice within the industry, and not to extend to commenting on Qualcomm’s conduct; and
 - (c) The topic in paragraph 3 of the Appendix.

Dr Schneider is permitted to address the topic in paragraph 1 of the Appendix.

CLASS REPRESENTATIVE’S REQUEST FOR FURTHER INFORMATION

2. As to the second sentence of the request at paragraph 43(b)(iii) of the Application the Defendant shall respond by 4pm on 5 July 2024.
3. As to the second sentence of the request at paragraph 43(b)(iv) (“**Request 43(b)(iv)**”) the Defendant shall:
 - (a) By 4pm on 5 July 2024, use best endeavours to respond to Request 43(b)(iv), the request in that sentence, subject to the word “individuals” in that request meaning custodians of disclosure already provided by the Defendant to the Class Representative (“**Request (b)(iv)**”).

- (b) By 4pm on 5 July 2024, identify any portions of Request 43(b)(iv) to which the Defendant has not been able to provide a response; and
- (c) In any event, provide a complete response to Request 43(b)(iv) by 4pm on 12 July 2024.

DEFENDANT’S REQUEST FOR FURTHER INFORMATION

- 4. By 4pm on 1 July 2024, the Defendant shall file and serve a fifth RFI (“**RFI 5**”) relating to the points referred to by the Defendant’s Leading Counsel at the 21 June Hearing.
- 5. By 4pm on 10 July 2024, the Class Representative shall file and serve its response to RFI 5.
- 6. The Defendant shall make any application in relation to RFI 5 by 4pm on 12 July 2024.

Costs

- 7. Costs in the case.
- 8. There be liberty to apply.

The Hon Mrs Justice Bacon
Chair of the Competition Appeal Tribunal

Made: 26 June 2024
Drawn: 26 June 2024

Appendix

1. Did ETSI incorporate Qualcomm's patents in its standard "knowing" that Qualcomm refuses to license other chipmakers, meaning that ETSI has effectively endorsed end-device level-only licensing (see Qualcomm's positive case at Re-Amended Defence, paragraph 59.2)?
2. What factors are ordinarily or typically taken into account when negotiating the terms of a FRAND licence for a cellular SEP portfolio?
3. What has been the general industry awareness of Qualcomm's practice of licensing its cellular patents for mobile phones at the end-device level over time?