



**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No: 1382/7/7/21

BETWEEN:

**CONSUMERS' ASSOCIATION**

Class Representative

- v -

**QUALCOMM INCORPORATED**

Defendant

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**ORDER**

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**UPON** the Tribunal's Order (Qualcomm's Disclosure) made following the third case management conference in these proceedings on 5 July 2023 (the "**CMC3 Disclosure Order**").

**AND 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 Tribunal's Order made following the fifth case management conference in these proceedings on 29 and 30 July 2024 (the "**Fifth CMC Order**") pursuant to paragraph 6 of which the Class Representative was required to re-file and re-serve the schedules of matters of fact and evaluative assessments from decisions and opinions in foreign proceedings on which it intends to rely at trial (the "**Revised MOF Schedules**")

**AND UPON** the Class Representative having served Revised MOF Schedules on 8 November 2024

**AND UPON** the Class Representative’s application, dated **20 November 2024**, for an order requiring Qualcomm to review the documents in the FTC Production Set that were withheld (in full or in part) from inspection on the basis of legal professional privilege (the “**Class Representative’s Application**”)

**AND UPON** Qualcomm’s applications to the Tribunal of 20 November 2024 in relation to (i) security for costs and (ii) the compliance of the Revised MOF Schedules with the Fifth CMC Order

**AND UPON** consideration of the parties’ written submissions and hearing Counsel for both parties at a case management conference held on 19 December 2024 (the “**Sixth CMC**”)

**AND UPON** the Class Representative agreeing to remove and/or amend a number of entries from the Revised MOF Schedules in correspondence prior to the Sixth CMC

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

**IT IS ORDERED THAT:**

**Privilege re-review**

1. The Class Representative’s Application is dismissed.
2. Qualcomm shall review all document ‘families’ of 30 or more documents (including parent emails with attachments or groupings of scanned documents) disclosed in these Proceedings from the FTC Production Set pursuant to paragraph 4(a) of the CMC3 Disclosure Order, but which were withheld in full from inspection in accordance with paragraph 6 of the CMC3 Disclosure Order on the basis that they were protected by legal professional privilege under US law, in order to:
  - (a) determine whether the material in each document is relevant to the categories of disclosure ordered in paragraph 1 of the CMC3 Disclosure Order and/or paragraph 15(a) and (b) of the Fourth CMC Order; and
  - (b) in respect of the documents that contain material relevant to the Proceedings pursuant to paragraph 2(a) above, confirm whether the material withheld from inspection is subject to legal privilege under English law.

3. To the extent that, following the review, any relevant document or part of a relevant document that was previously withheld from inspection by Qualcomm on the basis of privilege under US law is not said to be subject to privilege under English law, Qualcomm shall provide the Class Representative with copies of the documents which reflect the scope of the claim to privilege under English law (whether by way of disclosure of the whole document or those parts of the document that are not said to be subject to privilege under English law, as applicable) by no later than 4pm on Friday 14 February 2025.

### **Security for costs**

4. In the event that the Class Representative fails to obtain suitable ATE insurance cover in a sum of no less than £16.75 million by 28 February 2025 (the “**ATE Insurance Period**”), the Class Representative shall give security for Qualcomm’s costs of these proceedings for the period up to and including Trial 1 (which is listed to start on 7 October 2025 for a maximum period of five weeks), in an amount equal to the difference between the ATE insurance cover that is in place as at that date and the required level of ATE insurance cover of no less than £16.75 million (the “**Security Amount**”).
5. The Class Representative shall pay the Security Amount, if any, within 14 days of the end of the ATE Insurance Period.

### **MOF Schedules**

6. By 14 March 2025, Qualcomm shall file and serve a response to the Revised MOF Schedules (as amended in correspondence prior to the CMC), stating in relation to each entry contained in the Revised MOF Schedules (as amended) whether Qualcomm admits or does not admit the entry.

### **Technical experts**

7. The date in Appendix B of the Fifth CMC Order by which the parties’ technical experts, Dr Tim Williams and Dr Joakim Ingers, are due to file their Joint Statements of Matters Agreed and Not Agreed shall be amended from 20 December 2024 to 10 January 2025.

## **Costs**

8. Costs in the case.
9. There be liberty to apply.

**Justin Turner KC**  
Chair of the Competition Appeal Tribunal

Made: 19 December 2024  
Drawn: 8 January 2025