



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1382/7/7/21

BETWEEN:

CONSUMERS' ASSOCIATION

Class Representative

- v -

QUALCOMM INCORPORATED

Defendant

ORDER (FOURTH CASE MANAGEMENT CONFERENCE)

UPON the Class Representative having served a statement of expert methodology on 22 September 2023 as subsequently updated on 8 December 2023

AND UPON Qualcomm having served a statement of expert methodology on 20 October 2023 which, at paragraphs 4.6–4.8, described an analysis of the likely or actual effects of the so-called “NLNC Policy” which Qualcomm’s proposed expert economist intends to carry out (the “Leveraging Analysis”)

AND UPON the Class Representative having on 10 November 2023 filed and served Rule 63 Applications against Apple Retail UK Limited, Apple (UK) Limited and Apple Europe Limited (together, “Apple UK”) and Samsung Electronics (UK) Ltd (“SEUK”) (the “Rule 63 Applications”)

AND UPON the Class Representative’s applications dated 7 December 2023 for disclosure of documents by Apple Inc., Samsung Semiconductor Inc. and Samsung Electronics America Inc. via §1782 of Title 28 of the United States Code (“Section 1782”) (the “Extra-Territorial Disclosure Applications”)

AND UPON the Defendant having served the First Witness Statement of Michael Brenton Byars on 28 June 2023, which is intended to explain how relevant U.S. protective orders govern confidential material produced by third parties in the FTC Litigation (the “U.S. Protective Orders”)

AND UPON the Class Representative’s applications to the Tribunal dated 7 December 2023 and the Defendant’s applications of the same date

AND UPON consideration of the parties’ written submissions and hearing Leading Counsel for both parties and Junior Counsel for the Class Representative at a case management conference held on 9 and 10 January 2024

AND UPON the Tribunal having directed the parties to agree a proposed timetable to a first trial, to commence on the first available date after 1 October 2025, and the parties having done so

AND UPON the Tribunal having listed a further case management conference (“CMC5”) on 29 and 30 July 2024

AND UPON the following definitions applying for the purposes of this Order:

- “Case AT.40220 Decision” means the European Commission’s Decision in Case AT.40220 - *Qualcomm (Exclusivity Payments)* dated 24 January 2018;
- “KFTC” means the Korea Fair Trade Commission;
- “KFTC Decision” means the KFTC’s Decision No. 2017-0-25, In re Alleged Abuse of Market Dominance of Qualcomm Incorporated, dated 20 January 2017;
- “KFTC Proceedings” means the regulatory proceedings which culminated in the KFTC Decision;
- “Case AT.39711 Decision” means the decision of the European Commission Decision in Case AT.39711 – *Qualcomm (Predation)* dated 18 July 2019;
- “Revised Confidentiality Ring Order” means the Tribunal Order made by consent on 21 June 2023;
- “SCK” means the Supreme Court of Korea;
- “SCK Proceedings” means the proceedings before the SCK which culminated in Decision No. 2022Du31897 of the Supreme Court of Korea dated 13 April 2023;
- “SHC” means the Seoul High Court;
- “SHC Decision” means Decision No. 2017Nu48 of the Seoul High Court dated 4 December 2019;
- “SHC Proceedings” means the proceedings before the SHC which culminated in the SHC Decision

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

IT IS ORDERED THAT:

Split Trial

1. There shall be a split trial of these proceedings.
2. At the first trial (“Trial 1”), the Tribunal shall determine Issues 1 to 13 of the List of Issues appended to this Order.
3. As the second trial (“Trial 2”), the Tribunal shall determine Issues 14 to 19 of the same List of Issues.

Expert Evidence

4. The Class Representative is permitted to appoint and instruct the following individuals to give expert evidence at Trial 1 in the following fields of expertise:
 - (a) Expert evidence in the field of competition economics from Mr Robin Noble;
 - (b) Industry expert evidence from Dr Matthias Schneider; and
 - (c) Technical expert evidence from Dr Joakim Ingers.
5. The Defendant is permitted to appoint and instruct the following individuals to give expert evidence at Trial 1 in the following fields of expertise:
 - (a) Expert evidence in the field of competition economics from Dr Jorge Padilla;
 - (b) Industry expert evidence from Mr Paul Melin; and
 - (c) Technical expert evidence from Professor Jeffrey Andrews and Dr Tim Williams.

6. By 26 January 2024:
 - (a) The Class Representative shall provide, in respect of each of Dr Schneider and Dr Ingers, an explanation of their academic and professional background and their connection (if any) to either party.
 - (b) The Defendant shall provide, in respect of each of Mr Melin, Professor Andrews and Dr Williams, an explanation of their academic and professional background and their connection (if any) to either party.
7. If the Class Representative wishes to make any objection to the instruction of Mr Melin, Professor Andrews or Dr Williams on grounds related to their independence or expertise, or if the Defendant wishes to make any objection to the instruction of Dr Schneider or Dr Ingers on such grounds, such objection must be raised by 9 February 2024.
8. In relation to paragraphs 4(a) and 5(a) above:
 - (a) if the Class Representative wishes to appoint and instruct an alternative expert in competition economics rather than Mr Noble, the Class Representative must, by 4pm on 29 February 2024, provide the Defendant and the Tribunal with:
 - (i) Notice of its intention to appoint and instruct an alternative expert and of the identity of that alternative expert, and
 - (ii) A short statement of the expert methodology which that alternative expert intends to adopt.
 - (b) if the Defendant wishes to appoint and instruct an alternative expert in competition economics rather than Dr Padilla, the Defendant must, by 4pm on 29 February 2024, provide the Class Representative and the Tribunal with:
 - (i) Notice of its intention to appoint and instruct an alternative expert and of the identity of that alternative expert, and

- (ii) A short statement of the expert methodology which that alternative expert intends to adopt.
 - (c) As regards paragraph 8(a) and (b) above, if the Class Representative or the Defendant wishes to make any objection to the instruction of any alternative expert, on grounds related to their independence or expertise, such objection must be raised by 14 March 2024.
9. It is provisionally directed that expert evidence for Trial 1 is to be exchanged as follows, on the dates set out in the Trial Timetable appended to this Order:
- (a) As to the evidence of Mr Noble and Dr Padilla (or any alternative expert competition economists appointed pursuant to paragraph 8 above):
 - (i) In relation to the Leveraging Analysis, sequential exchange with the report of Dr Padilla (or any alternative competition economist appointed by Qualcomm) being served first;
 - (ii) In relation to all other matters, sequential exchange with the report of Mr Noble (or any alternative competition economist appointed by the Class Representative) being served first;
 - (b) The evidence of Professor Andrews, Dr Williams and Dr Ingers is to be exchanged sequentially with the evidence of Professor Andrews and Dr Williams served first; and
 - (c) The evidence of Mr Melin and Dr Schneider is to be exchanged simultaneously.

The Class Representative’s Applications for Third Party Disclosure

- 10. The Rule 63 Applications shall be heard on a date to be fixed after judgment is handed down in Trial 1.
- 11. The Class Representative shall disclose to the Defendant all relevant documents, including adverse documents, obtained by it from third parties in relation to

these proceedings (“Third Party Documents”), whether obtained pursuant to the Rule 63 Applications or the Extra-Territorial Disclosure Applications, or provided voluntarily by third parties, in accordance with the following provisions:

- (a) Insofar as the Class Representative has obtained Third Party Documents prior to the date of this Order which have not yet been provided to the Defendant, the Class Representative shall disclose those Third Party Documents to the Defendant within 21 days of the date of this Order.
 - (b) Insofar as the Class Representative obtains Third Party Documents on a date which falls after the date of this Order but more than 3 months before the start of Trial 1, the Class Representative shall disclose those Third Party Documents to the Defendant within 21 days of the date on which the Class Representative obtains them.
 - (c) Insofar as the Class Representative obtains Third Party Documents on a date which falls less than 3 months before the start of Trial 1, the Class Representative shall disclose those Third Party Documents to the Defendant within 7 days of the date on which the Class Representative obtains them.
12. When the Class Representative discloses documents to Qualcomm pursuant to paragraph 11 above, it shall also, at the same time as providing the disclosure, provide a description of the nature and contents of the documents being disclosed.

The Class Representative’s Applications for Disclosure from Qualcomm

13. The Defendant shall give disclosure of:
- (a) Unredacted copies of all exhibits filed by the KFTC and third parties during the KFTC and SHC Proceedings. This shall include any such documents or parts of documents which (i) fall within the scope of paragraphs 1(d)–(e) of the Tribunal’s Order dated 24 July 2023; but (ii) have been withheld or redacted pursuant to paragraph 5 of that Order, or

otherwise on the basis that they contained information confidential to a third party.

- (b) Copies of any documents or parts of documents which: (i) fall within the scope of paragraphs 7(g)–(h) of the Tribunal’s Order dated 13 January 2023; but (ii) have been withheld or redacted on the basis that such documents are not within the Defendant’s control.
- (c) In carrying out the searches and in providing the disclosure referred to at paragraph 13(a)–(b) above, the Defendant shall not be obliged to take any action that would require it to breach the terms of any U.S. Protective Order.
- (d) In relation to the Case AT.39711 Decision, complete versions of:
 - (i) Documents referred to in sections 10 and 11 of that Decision;
 - (ii) Insofar as not covered by paragraph 13(d)(i) above, the Defendant’s submissions to the European Commission in relation to market definition and dominance; and
 - (iii) Insofar as not covered by paragraph 13(d)(i) above, any documents provided (by the Defendant or third parties) alongside the documents or submissions referred to in paragraphs 13(d)(i) and (ii) above.
- (e) The documents referred to above at paragraphs 13(a)–(d) shall be designated as “Outer-Ring Confidential Information” in accordance with the terms of the Revised Confidentiality Ring Order, subject to any applications by third parties in accordance with the procedure set out below at paragraph 18(c).
- (f) The data on which the market share and handset sales figures quoted in paragraphs 102A.1(c) and 102B of Qualcomm’s Re-Amended Defence are based.

- (g) The data on which the plea in paragraph 102B.3(b)(i) of Qualcomm's Re-Amended Defence is based.
14. The Defendant shall be permitted to redact information contained in the documents to be disclosed pursuant to paragraph 13(d) above on grounds of privilege only.
15. Qualcomm shall conduct reasonable and proportionate searches for documents relating to the Defendant's alleged market power in the supply of 5G baseband chipsets including but not limited to:
- (a) internal documents referring to the importance of the supply of 5G baseband chipsets when negotiating LTE SEP licensing terms with Apple (or their contract manufacturers) or Samsung;
 - (b) internal documents referring to the Defendant's alleged market power in the supply of 5G baseband chipsets; and
 - (c) all documents relating to the Defendant's alleged market power in the supply of 5G chipsets which are referred to in the confidential version of the Case AT.40220 Decision.
16. In respect of the Defendant's searches for the documents referred to in paragraphs 15(a) and (b) above:
- (a) Such searches shall relate to the period from 1 April 2018 onwards.
 - (b) The parties shall liaise in relation to the appropriate search terms, as follows:
 - (i) By 4pm on 26 January 2024, the Defendant will provide a list of proposed search terms.
 - (ii) To the extent necessary, the parties shall meet to discuss the proposed search terms by 2 February 2024.

- (iii) To the extent necessary, the parties shall seek to agree the final search terms by 4pm on 9 February 2024.
 - (iv) In the event that agreement on the final search terms cannot be reached, the parties shall submit any points in dispute by 4pm on 16 February 2024 to the Tribunal for determination.
- 17. The Defendant shall provide disclosure pursuant to paragraphs 13 and 15 above in the following tranches:
 - (a) Subject to paragraph 18 below, the Defendant shall provide disclosure pursuant to paragraphs 13 and 15(c) above by 11 March 2024.
 - (b) The Defendant shall provide disclosure pursuant to paragraphs 15(a)–(b) by 19 April 2024.
- 18. In respect of the disclosure referred to in paragraphs 13(a)–(d) and 15(c) above:
 - (a) By 4pm on 31 January 2024, the Defendant shall write to all third parties whose documents fall to be disclosed pursuant to paragraphs 13(a)–(d) and 15(c) above providing each of them with a copy of this Order and the Revised Confidentiality Ring Order and giving notice that:
 - (i) The Defendant has been ordered to give the disclosure referred to in paragraphs 13(a)–(d) and 15(c) above; and
 - (ii) If any of the third parties have concerns that the Revised Confidentiality Ring Order does not provide adequate protection for their confidential information (as defined in paragraph 2.1.1 of that Order), they may object to the disclosure of documents containing that information by making an application to the Tribunal as provided for in paragraph 18(c) of this Order.
 - (b) The Class Representative shall be copied into the notifications referred to in paragraph 18(a) above, and any subsequent correspondence sent by the Defendant to a third party in relation to the disclosure referred to at

paragraphs 13(a)–(d) and 15(c) above (which subsequent correspondence may be redacted only to the extent necessary to protect the confidentiality of the information of the third party in question). The Defendant will also invite the third parties to copy the Class Representative into their responses to such notification and/or correspondence (which responses may also be redacted to the extent necessary to protect the confidentiality of the information of the third party in question).

- (c) Any of the third parties may apply to the Tribunal to vary (to the extent necessary) this Order and/or the Revised Confidentiality Ring Order with a view to protecting their confidential information. Such application(s) will be:
 - (i) Made on at least 5 working days' notice to the Class Representative and the Defendant, which notice shall explain the nature of the third party's confidentiality concerns;
 - (ii) Filed with the Tribunal Registry by 4pm on 19 February 2024;
 - (iii) Served at the same time on the Class Representative and the Defendant;
 - (iv) Accompanied by a reasoned explanation of the application to vary (to the extent necessary) this Order or the Revised Confidentiality Ring Order together with any evidence relied on; and
 - (v) At the applicant's risk as to costs if the application is unsuccessful.

Directions to Trial 1

- 19. Trial 1 is to be listed to commence on the first available date after 1 October 2025, with a provisional time estimate of 5 weeks (plus 1 week pre-reading).

20. The parties are to comply with the Trial Timetable appended to this order, subject to any amendments made to that timetable at CMC5.
21. Oral evidence in relation to the Leveraging Analysis is to occupy no more than one day of trial time at Trial 1.

Pre-trial review

22. There shall be a pre-trial review hearing listed, with a time estimate of 1 day, on the first available date on or after 25 July 2025.

Further hearings

23. Any applications (and supporting evidence) for determination at CMC5 shall be filed and served by 5pm on 10 July 2024.
24. Any responsive evidence in respect of applications for determination at CMC5 shall be filed and served by 5pm on 17 July 2024.
25. The Tribunal's permission is required before any party files evidence for CMC5 otherwise in accordance with paragraphs 16 and 17 above. Any such request for permission should be made to the Tribunal by 10am on 22 July 2024.
26. An agreed core bundle and CMC bundle for CMC5 shall be filed by 10am on 23 July 2024.
27. Skeleton arguments for CMC5 containing cross-references to the CMC5 bundle shall be filed and served by 4pm on 24 July 2024.
28. An agreed authorities bundle for CMC5 shall be filed by 6pm on 25 July 2024.

Costs

29. Costs in the case.

Other

30. There shall be liberty to apply.

The Hon Mrs Justice Bacon
Chair of the Competition Appeal Tribunal

Made: 29 January 2024
Drawn: 29 January 2024

APPENDIX A
LIST OF ISSUES FOR DETERMINATION

This List of Issues is a working tool for the Tribunal and the parties, for the purpose of delineating the Issues to be determined at each stage of the proceedings. In the case of conflict with the pleadings, the pleadings prevail. This List of Issues adopts the defined terms and abbreviations used in the pleadings.

ISSUES FOR FIRST TRIAL

A. MARKET DEFINITION

1. What is the relevant product market, or what are the relevant product markets, for the supply of baseband chipsets supporting relevant cellular standards (“Chipset Markets”)? In particular, which if any of the following are relevant Chipset Markets:
 - (a) The LTE Chipsets Markets, 3G CDMA Chipsets Market and 5G Chipset Market pleaded by the CR; or
 - (b) The Baseband Chipsets Market pleaded by Qualcomm; or
 - (c) The Apple Chipsets Market and Samsung Chipsets Market pleaded in the alternative by Qualcomm.

2. What is the relevant technology market, or what are the relevant technology markets, for the licensing of LTE SEPs (“SEP Markets”)? In particular, which if any of the following are relevant SEP Markets:
 - (a) The LTE SEP Markets pleaded by the CR; or the SEP Portfolio Markets pleaded by Qualcomm; or
 - (b) Qualcomm’s SEP Portfolio Market pleaded in the alternative by Qualcomm.

3. What is the geographic and temporal scope of the relevant Chipset Market(s) and SEP Market(s)?

B. DOMINANCE AND MARKET POWER

4. Did Qualcomm hold a dominant position on any relevant Chipset Market(s) at any material time?
5. Did Qualcomm hold a dominant position on any relevant SEP Market(s) at any material time?
6. If the answer to Questions 4 or 5 is Yes, were Apple and Samsung able to exert countervailing buyer power on the relevant Chipset Market(s) and/or the relevant SEP Market(s)?

C. ALLEGED ABUSE

7. Is the alleged NLNC Policy, alone or in combination with the alleged RTL Policy, capable of constituting an abuse of a dominant position in law?
8. In the light of the factual and economic evidence:
 - (a) Does the alleged “NLNC Policy” depart from competition on the merits?
 - (b) Was the alleged “NLNC Policy” capable of having, or likely to have had, an anti-competitive effect by increasing the LTE SEP royalties agreed between Qualcomm and Apple (or its CMs) and between Qualcomm and Samsung in relation to the sale of certain multi-mode UMTS/LTE-enabled mobile phones (the alleged “Affected Products”)?
 - (c) Is the alleged RTL Policy capable of having (and/or is it likely to have had) any (independently non-abusive) exclusionary or foreclosure effects on competing chipset suppliers?

- (d) In the light of the answer to (c) above, does the alleged “RTL Policy” buttress any abusive effects of the alleged “NLNC Policy”?
- (e) has Qualcomm taken additional steps to sustain and reinforce the effects of the alleged NLNC and RTL Policies by exerting pressure on other industry parties including Apple and/or Samsung, who allegedly depend on Qualcomm for chipset supply, not to seek third-party determinations of whether its royalties are FRAND, not to challenge Qualcomm’s patent licensing practices under any competition or similar laws, and not to take part in any proceedings by third parties against Qualcomm in respect of its patent licensing practices save only to the extent required by law?
9. Is the alleged “NLNC Policy” (alone or buttressed by the “RTL Policy” and/or any steps as described in Question 8(e) above) objectively justified and/or justified by efficiencies?
10. Is Qualcomm’s argument correct that, if it is able to show that the royalties paid by Apple (and its CMs) and Samsung have been FRAND, this constitutes a valid defence to the allegations of abuse of dominance, even if they are higher than they would have been in the absence of the conduct referred to in Questions 8 - 9 above?
11. In the light of the answers to Questions 8 – 10 above, is the Tribunal in a position to determine whether Qualcomm’s contested practices are abusive, and if so what is the answer?

D. EFFECT ON TRADE AND TERRITORIALITY

12. Did any allegedly abusive conduct by Qualcomm, or any part of any such conduct, fall outside the territorial scope of United Kingdom competition law?
13. Did any allegedly abusive conduct by Qualcomm affect trade within the United Kingdom and/or between EU member states?

ISSUES FOR SECOND TRIAL

14. What was the actual effect of Qualcomm's contested practices on the level of royalties paid to Qualcomm by Apple and Samsung? In particular, what conclusions fall to be drawn from (i) the CR's proposed expert analysis comparing the level of royalties paid by Apple and Samsung to Qualcomm against the level of royalties paid by Apple and Samsung to licensors of allegedly comparable SEP portfolios? (ii) the CR's proposed top- down analysis?
15. If at the first trial the Tribunal has determined Question 11 above in the affirmative (i.e. Qualcomm is entitled to argue that its royalties were FRAND as a defence to the allegations of abuse), were the relevant royalties agreed between Apple (and its CMs) and Qualcomm, and Samsung and Qualcomm, FRAND?
16. Having regard to the answers to Questions 14 and 15 above, if necessary, were Qualcomm's contested practices abusive?

Quantification of loss passed-through to class members

17. What is the total value and volume of Affected Products sold in the claim period?
18. To what extent has any overcharge identified been passed on to UK consumers forming part of the represented class?
19. What interest on damages is due?

APPENDIX B
TRIAL TIMETABLE

Proposed Step in Proceedings	Date
Parties to provide, in respect of technical and industry expert, an explanation of their background and their connection (if any) to either party	26 January 2024
Any objection by Class Representative or Qualcomm to the other party's technical or industry expert(s) on grounds related to their independence or expertise	9 February 2024
If a party wishes to appoint and instruct an alternative expert in competition economics, provision of (i) notice of its intention to appoint and instruct an alternative expert and of the identity of that alternative expert, and (ii) a short statement of the expert methodology which that alternative expert intends to adopt	29 February 2024
Class Representative to set out all 'matters of fact' from any decisions or opinions in foreign proceedings that it intends to rely on at trial	29 February 2024
Any objection by Class Representative or Defendant to the instruction of any alternative expert, on grounds related to their independence or expertise	14 March 2024
Qualcomm's disclosure to be completed	3G CDMA disclosure: 11 March 2024 Korean disclosure: 11 March 2024 5G chipset disclosure: 19 April 2024
Parties should notify each another of any hearsay evidence that they intend to rely upon at trial, such as trial transcripts, deposition transcripts, or witness statements (or equivalent) given in foreign proceedings, akin to the process for hearsay notices set out in CPR	1 July 2024

Proposed Step in Proceedings	Date
Part 33. The parties have liberty to apply to update the notice no later than three months prior to the trial date	
CMC5 with a provisional time estimate of two days, to consider: (a) any further or consequential disclosure applications; and (b) any other issues arising (paragraph 19 of Directions Order and letter of the Tribunal dated 9 November)	29–30 July 2024
Without prejudice meetings between the parties' technical and industry experts	By no later than 15 March 2024
Andrews and Williams technical reports	28 June 2024
Melin and Schneider industry reports	6 September 2024
Padilla leveraging analysis	6 September 2024
Ingers technical report	18 October 2024
Melin and Schneider reply reports	1 November 2024
WP meetings of technical and industry experts	Williams/Ingers: by 8 November 2024 Andrews/Ingers and Melin/Schneider by 15 November 2024
Statements of witnesses of fact	8 November 2024
Class Representative reply expert report in relation to Padilla leveraging analysis	6 December 2024
Joint statements of matters agreed and not agreed as between technical and industry experts	20 December 2024
Class Representative competition economics report	17 January 2025
Qualcomm competition economics report (including their positive case)	4 April 2025
Class representative reply expert report	6 June 2025

Proposed Step in Proceedings	Date
Meetings of competition economics experts	By 4 July 2025
Supplemental witness statements of fact (to the extent necessary on completion of third party disclosure)	11 July 2025
Joint statement of matters agreed and not agreed as between competition economics experts	By 18 July 2025
Pre-trial review	29 or 30 July 2025
Skeleton arguments (exchange)	23 September 2025, 4pm
Tribunal pre-reading week	29 September – 3 October 2025
Trial Date	7 October 2025 (5 weeks maximum), sitting Tuesday to Friday each week; Mondays non-sitting days