



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1570/5/7/22 (T)

BETWEEN:

JJH ENTERPRISES LIMITED
(trading as VALUE LICENSING

Claimant

- v -

(1) MICROSOFT CORPORATION
(2) MICROSOFT LIMITED
(3) MICROSOFT IRELAND OPERATIONS LIMITED

Defendants

ORDER

UPON the Tribunal’s dismissal of the Claimant’s application for summary judgment dated 14 December 2023 (the “**SJ Application**”)

AND UPON the Confidentiality Order of the Tribunal dated 25 January 2024 (the “**Confidentiality Ring Order**”)

AND UPON the Tribunal’s Order dated 2 April 2025 (the “**CMC-5 Order**”)

AND UPON the Claimant’s application for a trial of preliminary issues dated 27 January 2025 (the “**PI Application**”)

AND UPON the Claimant’s application for disclosure arising from an alleged collateral waiver of privilege dated 20 December 2024 (the “**Collateral Waiver Application**”)

AND UPON the Defendants’ application dated 23 April 2025 for an interim payment on account of costs in respect of the SJ Application (the “**SJ Costs Application**”)

AND UPON the Defendants’ application dated 25 April 2025 regarding their request for further information (the “**Third RFI Application**”)

AND UPON hearing Counsel for the Claimant and Counsel for the Defendants at the sixth case management conference heard on 13 and 14 May 2025 (“**CMC-6**”)

IT IS ORDERED THAT:

Preliminary Issues Trial

1. There shall be a hearing to determine the following preliminary issues (the “**PI Trial**”) in the circumstances of this case:
 - (a) Does the distribution right or the reproduction right enjoyed by the owner of the copyright in a computer program permit or prevent sub-division and resale without the consent of the rightholder of the user right obtained by the lawful acquirer on first sale of a copy of that program within Article 4(2) of the Software Directive, where the user right acquired by the lawful acquirer was obtained for:
 - (i) a licence covering a particular combination of multiple computer programs; and/or
 - (ii) a licence covering a numerically specified plurality of users,

by reference to a sample of five transactions entered into by or with the Claimant and their associated specific contractual terms, on the basis of which the above points of law are to be determined, comprising (the “**Sample Transactions**”):
 - (iii) transactions under or involving licences originally granted to Cooperative Rabobank UA under Microsoft agreement number 7621419;
 - (iv) transactions under or involving two additional Microsoft agreement numbers nominated by the Claimant; and

- (v) transactions under or involving two additional Microsoft agreement numbers nominated by the Defendants.
- (b) Does the first sale or transfer of ownership of a digital copy of Microsoft Office or Microsoft Windows in electronic form, by or with the consent of the owner of the copyright in the non-computer program works made accessible or perceptible by means or use of that product, exhaust the distribution right or the reproduction right of the copyright owner in relation to the non-computer program works under either, neither or both of: (i) Article 4(2) of the Software Directive; (ii) Article 4(2) of the Information Society Directive?

Production of the Statement of Facts

- 2. There shall be an agreed statement of facts (the “**Statement of Facts**”), setting out:
 - (a) the relevant licensing terms and details of the Sample Transactions; and
 - (b) the non-computer program works relied on by the Defendants in relation to the issue at paragraph 1(b) above; and
 - (c) technical facts relevant to the issues to be decided.
- 3. The Statement of Facts shall be produced as follows:
 - (a) By **5:00pm on 30 May 2025**, the Claimant shall:
 - (i) nominate two Sample Transactions involving dealings in licences of the Defendants’ products in quantities and/or configurations other than those originally licensed by the Defendants to the original licensee; and
 - (ii) serve a draft statement of facts relevant to the issue at paragraph 1(a) above, to include full particulars of those two Sample Transactions nominated by the Claimant, and those technical facts which the Claimant considers relevant to the issues to be decided.

- (b) By **5:00pm** on **20 June 2025**, the Defendants shall:
- (i) nominate an additional two Sample Transactions involving dealings in licences of the Defendants' products in quantities and/or configurations other than those originally licensed by the Defendants to the original licensee;
 - (ii) propose any amendments to the Claimant's draft statement of facts served pursuant to paragraph 4(a) above, together with full particulars of the two Sample Transactions nominated by the Defendants, and those technical facts which the Defendants consider relevant to the issues to be decided;
 - (iii) add to the draft statement of facts the facts relevant to the issues at paragraph 1(b); and
 - (iv) file any evidence in support of its position on the preliminary issue at paragraph 1(b) above.
- (c) By **5:00pm** on **11 July 2025** the Claimant shall serve a final draft of the statement of facts in which any further changes or additions to the document are marked-up to show each party's position and any disagreement is accompanied by a clear explanation of the Claimant's position; and
- (d) Thereafter the parties shall cooperate to seek to reach agreement on any outstanding points of disagreement, failing which the parties have liberty to apply under paragraph 18 below.
4. The Statement of Facts shall be filed in agreed form, or with any outstanding points of disagreement set out, by **4:00pm** on **18 July 2025**.
5. The parties are to file any further evidence in support of their respective positions on each of the Preliminary Issues on or before **5:00pm** on **25 July 2025**.
6. The parties are to file any evidence in reply on or before **5:00pm** on **8 August 2025**.

7. There shall be a preliminary hearing to give further directions in relation to the hearing of the PI Trial, such hearing is to be listed on a date following service of the Statement of Facts pursuant to paragraph 4 of this Order, with a time estimate of half a day.
8. The hearing of the Preliminary Issues shall be listed to commence on **9 September 2025** with a time estimate of 3 days. Skeleton arguments and bundles, including authorities, are to be provided by **4:00pm** on **2 September 2025**. In addition to the filing of electronic bundles, five hard copy bundles are to be filed at the Tribunal.

Further directions to the Liability Trial

9. Notwithstanding the directions for the PI Trial given at paragraphs 1 to 8 above, the parties are to give disclosure and comply with the other directions set out in the Order of the Tribunal dated 2 April 2025 and generally.
10. The parties shall serve statements of witnesses of fact in relation to the remaining issues to be determined at the Liability Trial by **5:00pm** on **24 April 2026**.
11. The parties shall serve reply statements of witnesses of fact (if any) by **5:00pm** on **26 June 2026**.
12. The parties shall serve expert reports in relation to issues to be determined at the Liability Trial by **5:00pm** on **2 November 2026**.
13. The parties shall serve reply expert reports by **5:00pm** on **17 January 2027**.
14. The experts are to meet on or before **7 February 2027**.
15. The parties' experts shall produce a joint statement of matters agreed and not agreed by **5:00pm** on **28 February 2027**.
16. Directions as to the listing of the Liability Trial and Pre-Trial Review shall be considered following the determination of the PI Trial, or as may be directed by the Tribunal at the directions hearing listed pursuant to paragraph 7 above.

Collateral Waiver Application

17. The Collateral Waiver Application is dismissed.
18. By **4:00pm** on **28 May 2025**, the Claimant shall pay the Defendants' costs of and occasioned by the Collateral Waiver Application, such costs being summarily assessed in the sum of £21,000.

SJ Costs Application

19. By **4:00pm** on **11 June 2025**, the Claimant shall pay to the Defendants an interim payment on account of their costs of and occasioned by the SJ Application in the sum of £258,789.

Third RFI Application

20. By **4:00pm** on **13 June 2025** the Claimant shall respond to each request made in the Defendants' request for further information dated 24 April 2025.

Confidentiality

21. Notwithstanding that it has been read or referred to at CMC-6 or included in any hearing bundles, any Confidential or Restricted Document within the meaning of the Confidentiality Ring Order shall remain confidential.

Disclosure

22. On or before **28 May 2025**, the Claimant and Defendants' representatives shall meet to identify and discuss what trackers and other information and/or material is needed to navigate the CRM system, and the means by which access shall be given to a working version of the system.
23. By **4:00pm** on **16 May 2025**, the Defendants shall write to the Claimant with an explanation of what is hoped to be achieved at the meeting directed pursuant to paragraph 22 above.

24. In respect of disclosure from the Defendants' databases pursuant to paragraphs 4-5 and Schedule 2 of the CMC-5 Order, the Defendants shall indicate whether they are able to provide such disclosure by **28 July 2025** and, if not, shall make any application for an extension of time (supported by evidence, including technical evidence) by **7 July 2025**.
25. Any application by the Defendants to renew Requests 2.6-2.11 for disclosure from the Claimants shall be adjourned until the consequential hearing following the handing down of judgment on the PI Trial, or as may be further directed by the Tribunal.

Other provisions

26. This Order shall be served by the Claimant upon the Defendants unless served by the Tribunal.
27. Save as directed above, the costs of CMC-6 shall be costs in the case.
28. The parties shall have liberty to apply for further directions and generally with regard to the implementation and operation of this Order, including to apply for further disclosure in advance of the determination of the PI Trial.

Mr Justin Turner KC
Chair of the Competition Appeal Tribunal

Made: 29 May 2025
Drawn: 29 May 2025