



Neutral citation [2023] CAT 64

IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1382/7/7/21

BETWEEN:

CONSUMERS' ASSOCIATION

Class Representative

- v -

QUALCOMM INCORPORATED

Defendant

REASONED ORDER (PERMISSION TO APPEAL)

UPON the Ruling of the Tribunal made on 31 July 2023 (*[2023] CAT 51*) in relation to an application for the Class Representative dated 26 July 2023 requesting permission to amend its Re-Re-Amended Claim Form ('amended pleading'), following having heard the counsel for the parties in relation to that application at the third case management conference on 5 July 2023 in these proceedings

AND UPON considering an application for the Class Representative dated 21 August 2023 requesting permission to appeal ('Application'), the Defendant's Response thereto dated 4 September 2023 and the further Reply from the Class Representative dated 18 September 2023

AND HAVING REGARD TO the Tribunal's powers under the Competition Appeal Tribunal Rules 2015, including Rule 32(2) and Rule 107

IT IS ORDERED THAT:

1. The Class Representative's Application for permission to appeal is refused.

REASONS

1. The Application for permission to appeal raises one ground of appeal on a point of law as regards the decision of the Tribunal in relation to the allegation of abuse at section 68(i) of the Re-Re-Amended Claim Form, concerning a 2009 amendment to Qualcomm's licence with Samsung, and the related pleas (at sections 6(ba), 53(iii), 57A and 63A) concerning market definition and dominance. The Class Representative does not seek permission to appeal the decision of the Tribunal in relation to the new allegation of abuse at section 68(da).
2. The appeal is advanced on the bases that (i) the dominance and conduct originally pleaded "may" have occurred prior to October 2015; (ii) the new allegation of abuse in section 68(i) arose out of the same facts or substantially the same facts as the existing claim; and (iii) the Tribunal's comments regarding the ten-year period pleaded in section 68(da) do not apply to the specific negotiation referred to in section 68(i) which is the subject of the appeal.
3. We do not consider that an appeal on any of these grounds would have any real prospect of success.
4. As to the first point, Which? suggests that the investigation of its claim pleaded as running from October 2015 might require consideration of conduct and dominance that "may" have occurred prior to that date. But that does not come close to showing that the original claim concerns facts that would support the new specifically-pleaded case of dominance and abuse in relation to a negotiation in 2009 (i.e. six years before the claim period), in a different and previously unpleaded 3G CDMA chipset market.
5. Regarding the second point, Which? relies on nothing more than inferences from the original pleading, which was limited to allegations of dominance and abuse on LTE chipset markets. But the phrase "including LTE chipsets" (in section 33 of the claim form) and a reference to licence negotiations in 2008 (in section 68(e)(iii)) cannot conceivably be read as alleging the facts necessary to establish dominance and abuse in a newly-pleaded 3G CDMA chipset market.

6. As regards the third point, it is correct to say that the new section 68(i) would not require investigation of a ten-year period. But it would require investigation of the factual basis of an entirely new allegation of dominance and abuse on an entirely new and previously unpleaded market. For the reasons set out in the Tribunal's ruling and above, those facts are a very long way from the facts originally pleaded by Which?.
7. For the reasons set out above, we refuse the Class Representative's Application for permission to appeal. This decision is unanimous.

The Hon. Mrs Justice Bacon
Chair

Professor Robin Mason

Justin Turner K.C.

Charles Dhanowa O.B.E., K.C. (*Hon*)
Registrar

Date: 20 October 2023