



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: **1403/7/7/21**

BETWEEN:

DR RACHAEL KENT

Class Representative

- v -

APPLE INC.
APPLE DISTRIBUTION INTERNATIONAL LTD

Defendants

- and -

THE COMPETITION AND MARKETS AUTHORITY

Intervener

ORDER

UPON the Defendants' application for a trial of a preliminary issue pursuant to Rule 53(2)(o) of the Competition Appeal Tribunal Rules 2015 (the "**Tribunal Rules**") filed 7 July 2022 ("the **Split Trial Application**")

AND UPON the Competition and Markets Authority ("**CMA**") letter to the Tribunal of 8 August 2022 notifying the Tribunal of its intention to make written submissions in the present proceedings pursuant to Rule 50(2) of the Tribunal Rules

AND UPON hearing counsel for the Class Representative, the Defendants and the CMA at a case management conference on 12 and 13 September 2022

IT IS ORDERED THAT:

1. THE SPLIT TRIAL APPLICATION

1. The Split Trial Application be dismissed.

2. AMENDMENTS TO STATEMENTS OF CASE

2. By 4pm on **26 October 2022**, the Defendants are to file and serve their response to the Class Representative's Request for Further Information dated 31 August 2022 (the "**RFI**").
3. By 4pm on **16 November 2022**, the Class Representative shall, if so advised, file and serve a further statement of case, limited to matters consequential upon the Defendants' response to the RFI.

3. DISCLOSURE

4. By 4pm on **7 October 2022**, the Defendants shall give inspection of the data disclosed in paragraph 3 of the Defendants' letter to the Class Representative dated 12 January 2022, in accordance with a process to be agreed by the parties.
5. By 4pm on **18 November 2022**, the Defendants shall file a disclosure report (as defined in Rule 60(1)(b) of the Tribunal Rules) and an Electronic Disclosure Questionnaire (as defined in Rule 60(1)(c) of the Tribunal Rules).
6. The parties shall seek to agree the categories of documents and data to be disclosed. Any matters that are not agreed shall be determined at a further case management conference to be listed pursuant to paragraph 8 below ("**CMC 3**").
7. By **25 November 2022**, the Class Representative and the Defendants shall provide notice of:
 - (a) the number of expert witnesses they propose to call;
 - (b) those experts' respective fields of expertise; and

(c) the issues it is proposed that each of those experts will address.

8. The Tribunal shall give directions at CMC 3 as to the expert evidence that will be permitted to be adduced at Trial.
9. CMC 3 shall be listed for the first available date on or after **16 January 2023** with a time estimate of 1 day with a day in reserve.
10. Subject to any further order, by 4pm on 2 **May 2023**, the Defendants shall give disclosure in accordance with the terms agreed by the parties and/or as ordered by the Tribunal. Inspection shall be given in an electronic format and on an electronic medium to be agreed by the parties.

4. FACTUAL WITNESS EVIDENCE

11. By 4pm on **29 September 2023**, the parties shall serve signed statements of witnesses of fact, and hearsay notices where required by CPR r 33.2.
12. By 4pm on **10 November 2023**, the parties shall serve signed reply statements of witnesses of fact, and hearsay notices where required by CPR r 33.2.

5. EXPERT EVIDENCE

13. Subject to further order:

- (a) By 4pm on **26 January 2024**, the parties shall serve signed expert reports.
- (b) By 4pm on **1 March 2024**, the parties shall serve signed reply expert reports.
- (c) By **22 March 2024**, the parties' experts in each respective field shall meet on a without prejudice basis to discuss their respective reports.
- (d) By 4pm on **5 April 2024**, the parties' experts in each respective field shall produce a joint statement of matters agreed and not agreed.

6. THE CMA'S INTERVENTION UNDER RULE 50(2) OF THE TRIBUNAL RULES

14. The CMA shall not be provided with the disclosure made between the other parties in these proceedings pursuant to paragraph 10 above, but the CMA has liberty to apply for inspection of any such documents.
15. The parties shall serve any further statements of case, and their respective factual witness statements, expert reports and skeleton arguments on the CMA as soon as reasonably practicable after those documents are otherwise served (including pursuant to paragraphs 2, 3, 11, 12, 13(a) and 13(b) above, and paragraphs 22 and 23 below).
16. The CMA shall be provided with a copy of the joint statements as soon as reasonably practicable after the final versions have been produced pursuant to paragraph 13(d) above.
17. The CMA shall file and serve its written observations pursuant to Rule 50(2) of the Tribunal Rules by 4pm on **19 April 2024**.
18. If so advised, the parties shall file and serve their respective written observations on the CMA's written observations by 4pm on **17 May 2024**.
19. If so advised, the CMA shall file and serve written observations in reply by 4pm on **7 June 2024**.
20. The CMA shall have liberty to apply at the Pre-Trial Review for permission to submit oral observations at trial.

7. TRIAL

21. A pre-trial review shall be listed at the earliest available date on or after **17 June 2024**.
22. By 4pm on **11 September 2024**, the Class Representative shall file and serve her skeleton argument for trial.

23. By 4pm on **25 September 2024**, the Defendants shall file and serve their skeleton argument for trial.
24. The trial shall be listed from the first available date on or after **1 October 2024** with a time estimate of 8 weeks. The first week shall be a reading week for the Tribunal.

8. GENERAL

25. Costs shall be costs in the case.
26. There be liberty to apply.

Ben Tidswell
Chair of the Competition Appeal Tribunal

Made: 13 September 2022
Drawn: 29 September 2022