



REGISTERED AT THE COMPETITION
APPEAL TRIBUNAL
UNDER NUMBER: 19877
DATE: 06/04/23

IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1403/7/7/21

BETWEEN:

DR RACHAEL KENT

Class Representative

- v -

(1) APPLE INC.
(2) APPLE DISTRIBUTION INTERNATIONAL LTD

Defendants

(together “**Apple**”)

DISCLOSURE ORDER

UPON the Class Representative’s application of 15 March 2023 for disclosure of certain documents provided by the Defendants to the Competition and Markets Authority (the ‘**CMA Documents Application**’)

AND UPON hearing Leading Counsel for the Class Representative and Leading Counsel for the Defendants at the case management conference on 20 and 21 March 2023

IT IS ORDERED THAT:

Disclosure

1. By 4pm on **6 April 2023**, the Defendants shall disclose to the Class Representative the Supplemental Australian Discovery (as defined in paragraph 18 of the Amended Disclosure Report). Inspection shall be provided in an electronic format and by an electronic means to be agreed between the parties.

2. By 4pm on **6 April 2023**, the Class Representative shall serve on the Defendants:
 - 2.1. A list of issues in respect of which the Class Representative seeks disclosure;
 - 2.2. A list of requests for categories of data from the U.S. Productions (as defined below) by reference to the requests for document production that were used in the U.S. Proceedings in respect of which the Class Representative seeks disclosure; and
 - 2.3. Insofar as the Defendants have any objection to those issues or the data requests, they are to notify the Class Representative of those objections by 4pm on **27 April 2023**. Insofar as any areas of disagreement with regards to the list of issues cannot be resolved within 14 calendar days thereafter, the parties are to submit any points of disagreement to the Tribunal for determination. The list of issues agreed or determined pursuant to this paragraph shall be called the “List of Disclosure Issues”.
3. By 4pm on **5 May 2023**, the Class Representative and the Defendants shall exchange proposed sets of search strings.
 - 3.1. At the same time as they provide their proposed search strings, the Defendants are also to provide an indication of:
 - (i) The number of documents responsive to each of their proposed search strings for each of: (a) the productions in the U.S. Proceedings (as defined in paragraph 7 of the Amended Disclosure Report) (the “**U.S. Productions**”); (b) the documents provided to the Competition and Markets Authority in the course of the CMA Market Study (as defined in paragraph 30 of the Amended Disclosure Report) (the ‘**CMA Documents**’); and (c) the documents provided to the European Commission in the course of the EC Investigations (as defined in paragraph 33 of the Amended Disclosure Report) (the ‘**Commission Documents**’) (collectively, the ‘**Repositories**’);
 - (ii) The total number of search-string responsive documents for each file-type in the Repositories; and

- (iii) The total number of search-string responsive documents for each custodian in the Repositories.
- 3.2. Within seven days of receiving the Class Representative's proposed search strings, the Defendants will provide the information set out in paragraph 3.1 above for the Class Representative's proposed search strings.
- 4. On the first mutually convenient date before **19 May 2023**, the Class Representative and the Defendants by their respective legal advisers, together with their expert advisers (if so advised), shall meet on a without prejudice basis to seek to agree:
 - 4.1. The search strings referred to in paragraph 3 above; and,
 - 4.2. Further directions in respect of the requests for categories of data referred to at paragraph 2.2 above.
 - 4.3. In the event that agreement cannot be reached within 14 calendar days of that meeting, the parties are to submit any points in dispute to the Tribunal for determination. The search strings that are either agreed or determined pursuant to this paragraph are referred to as the "Search Strings".
- 5. By 4pm on the date falling 6 weeks after the Search Strings are agreed or determined pursuant to paragraph 4 above, the Defendants shall provide inspection of any document within the U.S. Productions that is responsive to the Search Strings save insofar as any such document cannot be disclosed in view of non-disclosure obligations to third parties or any protective orders. Inspection shall be provided in an electronic format to be agreed between the parties.
- 6. Subject to further order of the Tribunal, where a document is provided for inspection without having been reviewed for privilege under English law prior to being provided for inspection and the parties agree or the Tribunal determines that the document would (aside from the fact that it has been disclosed) be privileged under English law, that document is to remain within the Outer Confidentiality Ring until further order, and the disclosure and inspection of the document shall not be regarded as a general waiver of privilege.
- 7. By 4pm on the date falling 12 weeks after the Search Strings are agreed or determined

pursuant to paragraph 4 above, the Defendants shall provide inspection of any document among the CMA Documents and the Commission Documents that is responsive to the Search Strings and that is relevant to the List of Issues, save insofar as any such document cannot be disclosed in view of non-disclosure obligations to third parties or any protective orders, or is subject to privilege under English law. Inspection shall be provided in an electronic format and by an electronic means to be agreed between the parties.

8. Insofar as the Defendants withhold from inspection any documents disclosed pursuant to paragraphs 1, 5 and/or 7 on the basis that those documents are privileged as a matter of English law or otherwise protected from disclosure, the Defendants shall set out, in sufficient detail to allow the Class Representative to challenge those claims, the basis on which those claims are made. The aforesaid explanation shall be verified by a statement of truth.
9. By no later than 4pm on the date three months after inspection is provided pursuant to paragraph 7, the Class Representative shall have made any further requests for disclosure of and/or propose further searches for documents falling outside the scope of the disclosure provided pursuant to paragraphs 1, 5 and 7 above.

Costs and liberty to apply

10. The Class Representative shall pay the Defendants' costs of and arising from the CMA Documents Application to be summarily assessed if not agreed, to be paid within 28 days of the date on which the amount of costs is agreed or assessed. Otherwise, costs in the case.
11. There be liberty to apply.



Ben Tidswell
Chair of the Competition Appeal Tribunal

Made: 5 April 2023
Drawn: 6 April 2023