

# SUPERIOR COURT

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

N° : 500-06-000896-171

DATE : APRIL 30, 2019

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**THE HONOURABLE CHANTAL CORRIVEAU, J.S.C., PRESIDING**

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**RICKY TENZER**  
Plaintiff

v.

**QUALCOMM INCORPORATED**  
Defendant

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## JUDGMENT

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[1] Mr. Ricky Tenzer seeks leave to commence a class action for compensatory damages against Qualcomm Incorporated.

### CONTEXT

[2] Mr. Tenzer brings a class action seeking compensation for purchasers of cellular telephones who have suffered damages as a result of the defendant's breach of its dominant market position.

[3] The defendant is a telecommunications technology company with a dominant position in the market for baseband processors, an essential component of all cellular phones.

[4] The defendant holds patents for technologies covered by universal standards. The plaintiff alleges that it is abusing its dominant market position.

## OVERVIEW

### **A. The Parties**

[5] The plaintiff purchased a Nexus 6P cell phone in January 2016 and a Pixel 2 XL cell phone in December 2017.

[6] Defendant Qualcomm is the parent company of a group of companies primarily engaged in telecommunications technology.

[7] Qualcomm patents and licenses its patents. It was among the first to develop cellular communication technology and remains a very important player in the telecommunications industry.

### **B. Cellular communication**

[8] Communication between cellular devices is made possible by a chip, the baseband processor, which connects devices from different manufacturers to cellular service providers' networks.

[9] The baseband processor allows information to be transmitted over the air to a cellular network station. This station receives and retransmits the information from one device to another. In order for the devices to communicate with each other, the baseband processor must be compatible with the cellular network and the baseband processor of each device.

### **C. Standardization bodies**

[10] There are international, non-governmental standards bodies in various countries. They determine the applicable standards to ensure compatibility and communication between different devices. The designers and manufacturers of baseband processors and the manufacturers of devices using these processors are members of these organizations.

[11] Standards bodies determine the norms and technology standards for the operation of these norms. When a patented technology is incorporated for inclusion in a standard, the patent holder may declare its patent essential to that standard.

[12] Standards bodies in the area of cellular communications include

- a) European Telecommunications Standards Institute (ETSI);
- b) International Telecommunications Union (ITU); et
- c) Institute of Electrical and Electronic Engineers (IEEE).

[13] A device designed to comply with a standard must generally incorporate all of the patented technology on which the standard is based. Therefore, manufacturers who produce devices containing the patented technology must generally obtain a license to operate from the essential patent holder to comply with the applicable standard and have the right to use the essential patent.

[14] Essential patents increase the risk of abuse by their holders when the holder of an essential patent demands excessive royalties or unreasonable terms while actors are captive to the standard.

[15] To prevent abusive situations, standards bodies require essential patent holders to agree to license their essential patents on "FRAND" (Fair reasonable and non-discriminatory) terms.

[16] These policies are generally contained in the intellectual property policies of standards organizations. Members of these organizations must agree to abide by these policies. In addition, patent holders expressly agree to comply with intellectual property policies when they state that their patent is essential.

[17] During the class period, Qualcomm was a member of ETSI, ITU and IEEE and made FRAND commitments. Qualcomm pioneered the development of CDMA (*Code division Multiple Access*) technology in the 1980s used by the first generations of cellular communication (1G, 2G). Qualcomm controlled the market for this technology, initially selling 90% of the baseband processors in CDMA-capable devices and continuing to control 80% of the market.

[18] As a result, virtually any manufacturer that produces devices using the CDMA standard must obtain a license from Qualcomm. The current LTE (*Long Term Evolution of UMTS*) standard is also controlled by Qualcomm. Almost all cellular devices sold today support the LTE standard. In addition, today Qualcomm is the exclusive provider of CDMA-enabled backbone processors.

[20] During the course of the application, counsel for the applicant changed their position. For example, they abandoned any conspiracy arguments under sections 45, 78 and 79 of the *Competition Act*.

[21] With the anti-competitive allegations removed, some of the proposed issues are moot.

[22] For example, a new class definition has been formulated that states that the class action is intended to compensate consumer purchasers of cell phones who paid too much for the device because of Qualcomm's abuse of dominance based on the price charged for essential patent components.

[23] The Applicant seeks leave to commence a class action on behalf of the following class<sup>1</sup>

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"All persons who have purchased [in Quebec] not for commercial resale, since January 1, 2006, a device that enables cellular communication and for which the baseband processor was manufactured by Qualcomm Incorporated or for which royalties were paid to Qualcomm Incorporated."

[24] Thus, the plaintiff limits the class to consumers rather than trade intermediaries. In addition, it adds a time limit of January 1, 2006, the date it believes Qualcomm began abusing its dominant position.

[25] The plaintiff formulates the faults that she accuses the defendant of towards the members of the group as follows

- a) Qualcomm has implemented a "no license, no chips" policy under which Qualcomm refuses to sell its LTE and CDMA baseband processors unless the manufacturer also purchases licenses to its entire patent portfolio, including its essential patents and patents that are not essential to the use of a standard<sup>2</sup>.
- b) The "no license, no chips" policy requires manufacturers to purchase licenses to Qualcomm's entire portfolio, including non-essential patents, forcing them to pay Qualcomm royalties on patented technologies they do not need or want.

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<sup>1</sup> Le groupe proposé a été amendé par lettre transmise à la suite de l'audition. Suivant les représentations il est clair que le demandeur souhaitait limiter le groupe au Québec même si cela a été omis de la nouvelle formulation proposée.

<sup>2</sup> Demande, par. 2.45 et 2.51.

when they could have used equivalent or different technologies from competitors<sup>3</sup>.

- c) In its licensing agreements, Qualcomm demands royalties based on the sales price of the manufacturer's cellular devices, even though competitors' technologies have also been used<sup>4</sup>.
- d) Qualcomm charges royalty rates for its licenses that are significantly higher than those in the industry<sup>5</sup>.
- e) Qualcomm abused its dominant position in the baseband processor market to force manufacturers to enter into agreements in violation of its FRAND commitments<sup>6</sup>.
- f) Qualcomm entered into confidentiality agreements with Apple and Samsung in exchange for reduced royalties, which violates its FRAND commitments<sup>7</sup>.

[26] The plaintiff seeks material compensation for all persons who purchased a cell phone for non-commercial purposes and whose price was unreasonable because of the price charged by Qualcomm for components or royalties.

[27] The defendant challenges the claim, arguing first that the plaintiff has not met its burden of demonstrating a legal syllogism.

### **Defendant's position**

[28] In the defendant's view, the plaintiff does not present sufficient evidence to support the claims.

[29] In other words, the plaintiff's allegations are based on pure speculation. Indeed, for the defendant, it is not enough for the plaintiff to argue without support that the defendant holds a dominant position, as this is not illegal. It would have been necessary for him to support his claim of abuse of a dominant position.

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<sup>3</sup> Application para. 2.41 b) and d), 2.43, 2.45, 2.47, 2.51 et 2.55. See also exhibit P-6, p. 7 : « Without distinguishing between mobile communications SEPs practiced by the chipsets and other patents, or distinguishing by mobile communications standards such as 2G/3G/4G, Qualcomm only provided portfolio licenses of all oQualcomm's patents at once. (Comprehensive portfolio license) ».

<sup>4</sup> Application, pars. 2.48, 2.49 and 2.51.

<sup>5</sup> Application, pars. 2.49.

<sup>6</sup> Application, pars. 2.41 a), 2.42, 2.43, 2.44, 2.46, 2.47, 2.50, 2.53 and 2.62 and exhibit P-7. See also exhibit P- 6, p. 7 : « Without giving handset makers opportunities to properly evaluate the value of Qualcomm's patents, Qualcomm coerced unilaterally-decided licensing terms to them. (Unilateral

<sup>7</sup> licensing terms) ». Application para. 2.41 c), 2.55 and 2.56 and exhibit P-7, para. 128-130. <sup>21</sup> Demande, par. 2.41 d) and 2.52 and exhibit P-7, par. 107-115.

[30] Thus, in order to argue that the defendant is abusing its dominant position, these allegations must be based on a minimum of fault arising from factual allegations.

[31] Moreover, the plaintiff has not demonstrated that he is a representative. Indeed, nowhere does it allege that it owns a cell phone with a Qualcomm component or for which royalties were paid to the defendant.

## PRINCIPES JURIDIQUES APPLICABLES À LA DEMANDE D'AUTORISATION

[32] It is now well established that the analysis of an application for leave to bring a class action is not a process of ascertaining the merits of the action, but is simply a matter of determining whether there is an arguable case<sup>8</sup>. At this stage, the Court only performs a filtering function to screen out unsustainable or frivolous claims<sup>9</sup>. It is important to keep in mind that the conditions for certification must be interpreted and applied broadly and generously in order to achieve the dual goals of deterrence and compensation to victims.<sup>10</sup> The cumulative criteria for this filtering mechanism are set out in Article 575 of the *Code of Civil Procedures*<sup>11</sup>. The burden of proof on the applicant at the screening stage is to establish a *prima facie* case on the basis that the facts set out in the application are taken as true.

[33] The Court of Appeal, in cases involving judgments denying leave to bring a class action, has enunciated a number of principles applicable to all of the criteria in article 575 C.C.P.

### 1. An arguable, even sustainable or justifiable case

[34] The Tribunal must first assess whether the criterion contained in the second paragraph of article 575 C.C.P. is met, namely whether : "the facts alleged appear to justify the conclusions sought". Indeed, it is appropriate to begin the analysis with the question.

<sup>8</sup> Maruyasu Industries Co Ltd. v. Asselin, 2018 QCCA 526, par. 16.

<sup>9</sup> Infineon Technologies AG v. Option consommateurs, 2013 SCC 59, par. 59; Vivendi Canada inc. v. Dell'Aniel/o, 2014 SCC 1, par. 37; Charles v. Boiron Canada inc. 2016 QCCA 1716, application for leave to appeal to the Supreme Court dismissed on dissent, May 4, 2017, No. 37366; Sibiga v. Fido Solutions, 2016 QCCA 1299; Masella v. TD Bank Financial Group, 2016 QCCA 24; Lambert v. Whirlpool Canada, I.p., 2015 QCCA 433, application for leave to appeal to the Supreme Court refused, October 29, 2015, No. 36425.

<sup>10</sup> Marcotte v. Longueuil (City of), 2009 SCC 43, par. 22; Vivendi Canada inc; supra, note 9; Charles v. Boiron Canada inc; supra, note 9.

<sup>11</sup> RLRQ, c, C-25.01.

the appearance of law. The Tribunal must adopt a flexible and non-rigorous analytical approach<sup>12</sup>.

[35] The assessment of the evidence must be made on the basis of a prima facie case and not on the balance of probabilities<sup>13</sup>.

[36] Plaintiff relies on *Infineon*<sup>14</sup> to illustrate the legal syllogism encountered in this case. In *Infineon*, the plaintiffs based their action on a press release which stated that the defendants had been convicted before the European Commission and in the United States of participating in an international price-fixing conspiracy.

[37] In light of these convictions, the Supreme Court justices stated that it was reasonable to conclude that Quebec consumers who were members of the proposed classes could also have been victims of the conspiracy to fix prices for the affected products.

[38] An extra-contractual breach and bad faith were recognized in the *Infineon*<sup>15</sup> decision as the basis for the proposed legal syllogism.

[39] In the present case, the plaintiff has dropped the allegation of conspiracy or violation of the Competition Act. Nevertheless, the core of the defendant's alleged misconduct lies in the violation of obligations under international standards to which it has adhered. These violations of non-discrimination in the sale of patented products [no licence-no chips) and the sale of useless patents as well as the sale of licences at prices that are too high constitute wrongful conduct within the meaning of Article 1457 C.C.Q. Moreover, this is bad faith conduct that is contrary to articles 6 and 7 C.C.Q.

[40] In support of its argument, the plaintiff provides a decision of a Korean court [Exhibit R-6), an article concerning a Chinese decision [Exhibit R-5), a proceeding instituted in the United States [Exhibit R-7) and a judgment of the court remanding this case for summary judgment in view of the sufficiency of the evidence offered implicating the defendant Qualcomm Incorporated.

### **Korean Court Judgment**

[41] In a December 2016 decision, a Korean court [Exhibit R-6) imposed a fine equivalent to US\$865 million against Qualcomm and certain subsidiaries. The investigation had begun in 2014. The charges in this case are stated as follows :

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<sup>12</sup> *Asselin v. Desjardins Cabinet de services financiers inc.*, 2017 QCCA 1673, Application for leave to appeal to the Supreme Court, December 28, 2017, No. 37898.

<sup>13</sup> *Sibiga v. Fido Solutions*, *op. cit.*, note 9, para. 71.

<sup>14</sup> *Infineon Technologies AG v. Option consommateurs*, *op. cit.* 8.

<sup>15</sup> *Infineon Technologies AG v. Option consommateurs*, *op. cit.* 8, para. 83, 87, 98 et 99.

- 1) Refusal to sell its products qualified as essential patents to the competition;
- 2) Abusing its dominant position by selling essential patents only to purchasers of its licenses (no license, no chips);
- 3) Selling its patented products on unreasonable terms.

[42] [42] According to this decision, these elements are recognized as contrary to the obligations undertaken by Qualcomm in view of its adherence to international standards. Qualcomm's practices have the effect of forcing purchasers to acquire a portfolio of licenses, some of which are useless and therefore worthless (comprehensive portfolio license).

[43] In addition, purchasers are forced to acquire licenses on terms unilaterally set by Qualcomm, which is also contrary to the obligations undertaken by the defendant with the regulatory bodies (unilateral leasing terms).

[44] As shown in the table on page 12 of the Korean decision, Qualcomm has held a dominant position of over 50% since approximately 2012.

### **China**

[45] According to an article from a trade journal (Exhibit R-5), China forced Qualcomm to pay a fine of US\$975 million in February 2015 for illegal competition. The 14-month investigation began in November 2013.

[46] The main accusation was that Qualcomm's practice of selling its license at a price set in relation to the overall cost of the cellular device (thus including a range of technologies from other suppliers), rather than solely in relation to the value of the technology sold by Qualcomm. So the more expensive the cell phone, the higher the price of Qualcomm's license.

### **United States**

[47] In the United States, the Federal Trade Commission commenced proceedings against Qualcomm Incorporated in January 2017 in the United States District Court of the Northern District of California, San Jose Division. The proceeding is a request for a permanent injunction to stop its anti-competitive practices.

[48] Qualcomm is alleged to have engaged in monopolistic conduct in violation of its FRAND commitment. The main charge is that it excluded competition by refusing to sell its essential patents to competitors.



[49] Here again the complaints are stated as follows<sup>16</sup> :

- 1) Refusal to sell its licenses unless the buyer acquires a large portfolio of products at a very high price. The latter being based on value of the final product which includes other technologies;
- 2) Benefits provided to some, but not all, purchasers in violation of its 2) Providing benefits to some, but not all, purchasers in violation of its commitment not to act in a discriminatory manner;
- 3) Refusing to sell its licenses to its competitors.

[50] [According to paragraph 33 of the proceedings, since 2006, Qualcomm has had over 80% of the market for CDMA processors licenses. Since 2012, Qualcomm has had 80% of the market for LTE technology (Exhibit R-7, para. 44).

[51] The U.S. proceeding states that it is unclear how long Qualcomm has adhered to FRAND standards and how long it has engaged in "no license-no chips" selective sales practices. However, it is argued that Qualcomm is abusing its position by charging unreasonable prices for its licenses

[52] Finally, the plaintiff relies on a decision of the U.S. court in the proceedings previously discussed. That decision, dated November 6, 2018, remands the case to a summary judgment process. The use of a process of this nature takes place in light of the evidence available and presented when a question of law is submitted in cases where there is no material dispute as to the facts (material facts).

[53] According to counsel for the plaintiff, the summary judgment process is ongoing but not concluded.

#### **ANALYSIS**

[54] Has the applicant in this proceeding met its burden of showing a prima facie case that the facts alleged appear to justify the conclusions sought? The Court finds that it has.

[55] The allegations against Qualcomm are based on allegations of abuse of dominance. The defendant acknowledges its dominant position, but disputes that it is abusing it. Do the elements reported by the plaintiff constitute facts for the purposes of the proceedings under consideration?

[56] Here again, the answer is yes.

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<sup>16</sup> Exhibit R-7, p. 5.

[57] The plaintiff claims that Qualcomm is abusing its dominant position by applying its "no license-no chips" policy. This is clearly contrary to the standards to which it has adhered.

[58] In particular, the FRAND standard prevents Qualcomm from acting in anything other than a fair, reasonable and non-discriminatory manner.

[59] Qualcomm is active and present on a global scale. Other courts and government agencies have conducted investigations and found non-compliance with the above standards. These entities have recognized similar conduct in three separate jurisdictions leading to charges of abuse of dominance.

[60] These abuses have resulted in prices for essential components of cell phones being passed on to the ultimate consumer. Certainly, unlike the Infineon case, there is no recognition of an international conspiracy to fix a price in the case under consideration. The accusation is specific to Qualcomm, which has not admitted its guilt except in China. The allegations against Qualcomm in these jurisdictions are sufficiently serious and supported to meet the threshold for commencing a class action in Quebec.

[61] Even without proceedings in Canada before the Competition Tribunal, it is possible to understand the argument that Qualcomm's breach of its obligations under the Civil Code of Québec is a breach of an extra-contractual undertaking and contrary to the requirements of good faith.

[62] Thus, the Tribunal now turns to the issue of the class period. In the first class proposed by the plaintiff's case, there was no time limit. During argument, one of the plaintiff's counsel argued that the class should be limited to January 1, 2006, based on the U.S. proceeding.

[63] Counsel for the defendant contested this element, stating that if the Court were to authorize the institution of a class action, the class must be limited to 2014, three years after the institution of this proceeding.

[64] The Court agrees. The class should be limited to December 11, 2014.

[65] There is no allegation in the application as to why it should be retroactive to 2006. A reference in the U.S. proceeding to the effect that Qualcomm has adhered to international standards since 2006 seems vague and insufficient to justify this starting point for the class.

[68] It is not known how long Qualcomm has been linked to FRAND, apart from the fact that it has been a major player in the market since 2008 or 2012, according to some charts, this does not, according to the allegations of the proceedings, allow a finding of abuse of its dominant position since 2006? 2008 ? 2012 ? There is nothing in the proceeding or in the documentation that allows the group at this stage to go back to 2006.

[69] For the time being, in the absence of an allegation of impossibility, and given the nature of the misconduct complained of, the class should be limited to December 11, 2014. A subsequent amendment of the class period remains possible, with leave of the Court.

[70] To make a finding on this element, the Tribunal must assess whether the applicant has established that he or she is a member of the class. In the proceedings before it, it is not alleged that the two phones owned by Mr. Tenzer, use Qualcomm technology or that royalties are paid to Qualcomm in connection with those two devices. At the hearing, counsel for the applicant confirmed that checks had been made and that this was the case. Counsel did not ask the Tribunal to amend their application to add this element. This would have been desirable since the onus was on the Applicant to satisfy the Tribunal that the Applicant met the basic test that his or her situation is covered by the action being taken. Nevertheless, given the oral allegation and the fact that the action was modulated during argument, the Tribunal does not hold the applicant to this.

[71] Indeed, in the originally proposed class action, all cell phone owners were covered. Those who had Qualcomm technology or paid royalties and those who did not. As for the latter, it was argued that Qualcomm's competitors had also raised their prices as a result of pressure from Qualcomm, thereby causing damage to their customers. Mr. Tanzer is therefore part of a class (users of Qualcomm technology) or the others.

[72] With the modification of the class and the oral confirmation that the plaintiff has a Qualcomm technology phone, this is sufficient for the Court to establish his connection with the defendant.

[73] The Court therefore concludes that the second paragraph of article 572 C.C.P. is met.

## **2. Common Issues**

[76] The Tribunal must assess whether the test contained in the first paragraph of article 575 C.C.P. is met, namely whether "the members' claims raise identical, similar or related questions of law or fact".

[77] The presence of a single issue of common, related or similar law is sufficient, if it is not insignificant to the outcome of the action and resolves a significant portion of the dispute<sup>17</sup>. It must significantly advance the members' claims, even if it does not dispose of the dispute in its entirety or in the same way for all members<sup>18</sup>.

[78] Nor is it necessary that each member of the class take the same or even a similar view of the defendant or the injury suffered<sup>19</sup>.

[79] The common issues listed below reflect the plaintiff's abandonment of its original conspiracy claim. The Court has therefore severed certain issues and retained only those that arise from the class action claim, namely:

- 1) Did the defendant breach its FRAND covenants?
- 2) Did the defendant breach its duty to act in good faith under the Civil Code of Quebec?
- 3) Does the breach of the FRAND covenants give rise to civil liability on the part of the Defendant towards the Class Members?
- 4) Did the defendant abuse its dominant position?
- 5) Have the class members suffered damages?
- 6) Is this injury subject to collective recovery?
- 7) If so, what is the quantum of compensatory damages to which each class member is entitled?

[80] For the Court, these are common issues that apply to all class members.

### **3. The composition of the group**

[81] The Court must assess whether the criterion contained in the third paragraph of article 575 C.C.P. is met, namely whether the composition of the group makes it difficult or impractical to apply the rules on the mandate to sue on behalf of others or on the joining of proceedings.

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<sup>17</sup> *Vivendi Canada inc. c. Dell'Aniello*, 2014 CSC 1, par. 58.

<sup>18</sup> *Union des consommateurs c. Air Canada*, 2014 QCCA 523, par. 76; *Martel c. Kia Canada inc.*, 2015 QCCA 1033, par. 28.

<sup>19</sup> *Sibiga c. Fido Solutions inc.*, 2016 QCCA 1299, par. 123.

[82] The Tribunal must have a minimum of information about the size and essential characteristics of the class, such as the estimated number of members, the applicant's knowledge of their identity, contact information and geographic location<sup>20</sup>. The consideration of this requirement requires a broad and liberal approach.

[83] If the defendant has all the data necessary to estimate the number of persons involved in the action, the identification of other potential members or an approximation of their number becomes secondary<sup>21</sup>.

[84] The composition of the class includes all owners of cell phones not intended for commercial resale, who benefit from Qualcomm technology or for whom royalties are sought from Qualcomm.

[85] This is clearly a large group of individuals and corporations that are being targeted. We are talking about a very high percentage of the population. The criterion is therefore met

#### **4. The adequate representation**

[86] The Tribunal must assess whether the criterion contained in the fourth paragraph of article 575 C.C.P. is met, namely whether "the member to whom it intends to attribute the status of representative is able to ensure adequate representation of the members".

[87] The requirement is minimal for this condition. No proposed representative shall be excluded unless his or her interests or competence are such that it would be impossible for the case to survive fairly<sup>22</sup>.

[88] Three criteria should be considered in assessing adequate representation: the interest to act, the competence of the representative and the absence of conflict of interest with the members of the group<sup>23</sup>.

[89] Mr. Tanzer has been interviewed and his responses demonstrate that he is an adequate representative. He is knowledgeable and interested enough to adequately represent the group.

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<sup>20</sup> *J.J. v. Oratoire Saint-Joseph du Mont-Royal*, 2017 QCCA 1460, par. 43, Application for leave to appeal to the Supreme Court granted, March 29, 2018, No 37855.

<sup>21</sup> *Martel v. Kia Canada inc.*, 2015 QCCA 1033, par. 29; *Lévesque c. Vidéotron, s.e.n.c.*, 2015 QCCA 205, par. 29.

<sup>22</sup> *Infineon Technologies AG v. Option consommateurs*, 2013 CSC 59, par. 149.

<sup>23</sup> *Id.*; *Lambert (Gestion Peggy) c. Ecolait Itée*, 2016 QCCA 659, par. 67-68.

**FOR THESE REASONS, THE COURTS:**

**On the Application for Authorization**

[90] **GRANTS** this application for authorization to institute a class action and to be granted representative status;

[91] **AUTHORIZES** the class action for civil liability and moral, pecuniary, punitive and exemplary damages against the Defendants

[92] **GRANTS** applicant Ricky Tenzer the status of representative for the group described below:

"All persons who have purchased in Quebec not for commercial resale, since December 11, 2014, a device that enables cellular communication and whose baseband processor was manufactured by Qualcomm Incorporated or for which royalties were paid to Qualcomm Incorporated."

[93] **IDENTIFIES** as follows the main questions of fact or law that will be addressed collectively :

- 1) Did the defendant breach its FRAND covenants?
- 2) Did the defendant breach its duty to act in good faith under the Civil Code of Québec?
- 3) Does the breach of the FRAND covenants give rise to civil liability on the part of the Defendant towards the Class Members?
- 4) Did the defendant abuse its dominant position?
- 5) Have the class members suffered damages?
- 6) Is this injury subject to collective recovery?
- 7) If so, what is the quantum of compensatory damages to which each class member is entitled?

[94] **IDENTIFIES** the related findings sought as follows:

**GRANT** the plaintiff's class action;

**CONDEMN** the defendant to pay to each member of the group an amount to be determined in order to compensate them for the excessive price they paid for their cellular device with interest at the legal rate and the additional indemnity provided for in article 1619 of the Civil Code of Quebec, since the service of the

Application for authorization to bring a class action and to be a representative;

**ORDER** the collective collection of Class Members' claims;

**RECONVENE** the parties within 45 days of the Final Judgment to determine the distribution of the amounts collectively recovered;

**THE WHOLE** with court costs, including expert fees, opinions and expenses of the administrator, if any.

[95] **DECLARES** that, unless excluded, class members will be bound by any judgment to be entered on the class action in the manner provided by law;

[96] **SETS** the time limit for exclusion at thirty (30) days from the date of the notice to members, at the expiration of which time the class members who have not availed themselves of the means of exclusion shall be bound by any future judgment;

[97] **ORDERS** the publication of a notice to members (pursuant to article 576 C.C.P.) in the terms to be determined by the Tribunal;

[98] **REFERS** the matter to the Chief Justice for determination of the district in which the class action should be brought and designation of the judge to hear it;

[99] **THE WHOLE** with costs, including experts' fees and publication costs of the notices.

A handwritten signature in black ink that reads "Chantal Corriveau" followed by the initials "JCS". The signature is written in a cursive style.

L'HONOURABLE CHANTAL CORRIVEAU, J.C.S.

Me André Lespérance  
Me Mathieu Charest-Beaudry  
Me Gabrielle Gagné  
TRUDEL JOHNSTON & LESPÉRANCE  
Plaintiff's Counsel

Me Simon Seida  
Me Robert J. Torralbo  
BLAKE CASSELS & GRAYDON  
Defendants' Counsel

Hearing date: April 15, 2019