Reports of Cases

ORDER OF THE GENERAL COURT (Second Chamber, Extended Composition)

29 February 2024*

(Procedure – Taxation of costs)

In Case T-235/18 DEP,

Qualcomm Inc., established in San Diego, California (United States), represented by M. Pinto de Lemos Fermiano Rato and M. Davilla, lawyers,

applicant,

v

European Commission, represented by N. Khan, C. Urraca Caviedes and A. Dawes, acting as Agents,

defendant,

THE GENERAL COURT (Second Chamber, Extended Composition),

composed of A. Marcoulli (Rapporteur), President, J. Schwarcz, V. Tomljenović, R. Norkus and W. Valasidis, Judges,

Registrar: V. Di Bucci,

having regard to the judgment of 15 June 2022, *Qualcomm* v *Commission (Qualcomm – exclusivity payments)* (T-235/18, EU:T:2022:358),

makes the following

Order

1 By its application based on Article 170 of the Rules of Procedure of the General Court, the applicant, Qualcomm Inc., requests the Court to fix at EUR 12 041 755.80 the amount of recoverable costs to be paid by the European Commission, in respect of the costs incurred by it in the proceedings in Case T-235/18.

* Language of the case: English.

Background to the dispute

2 By application lodged at the Registry of the General Court on 6 April 2018 and registered as Case T-235/18, the applicant brought an action seeking the annulment of Commission Decision C(2018) 240 final of 24 January 2018 relating to a proceeding under Article 102 TFEU and Article 54 of the EEA Agreement (Case AT.40220 – Qualcomm (Exclusivity payments)), by which the Commission found that it had abused its dominant position from 25 February 2011 to 16 September 2016 and imposed on it a fine of EUR 997 439 000 ('the contested decision').

3 By judgment of 15 June 2022, *Qualcomm* v *Commission (Qualcomm – exclusivity payments)* (T-235/18, EU:T:2022:358), the Court granted the application made by the applicant and ordered the Commission to pay the costs incurred by the applicant.

4 By letter dated 15 December 2022, the applicant requested the Commission to reimburse it the sum of EUR 14 436 418.29 by way of recoverable costs.

5 By letter dated 21 December 2022, the Commission requested the applicant to substantiate further its application.

6 By letter of 1 March 2023, after re-assessing its application, the applicant requested the Commission to reimburse it the sum of EUR 12 041 755.80 in respect of recoverable costs.

7 By letter dated 6 March 2023, the Commission refused to reimburse the sum reassessed by the applicant.

8 No agreement was reached between the parties on the amount of recoverable costs.

Forms of order sought

9 The applicant claims that the Court should fix the amount of recoverable costs in respect of the main proceedings, to be reimbursed by the Commission, at EUR 12 041 755.80.

10 The Commission contends that the Court should fix the amount of recoverable costs at EUR 405 315 in respect of the main proceedings and not award costs in respect of the present proceedings for taxation of costs.

Law

11 It follows from Article 170(3) of the Rules of Procedure that, where there is a dispute concerning the costs to be recovered, the Court is, at the request of the party concerned, to give its decision by way of an order from which no appeal is to lie, after giving the party concerned by the application an opportunity to submit its observations.

12 According to Article 140(b) of the Rules of Procedure 'expenses necessarily incurred by the parties for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of agents, advisers or lawyers' are regarded as recoverable costs. It follows from that provision that the recoverable costs are limited to those incurred for the purpose of the

proceedings before the General Court and to those which were necessary for that purpose (see order of 6 March 2003, *Nan Ya Plastics and Far Eastern Textiles* v *Council*, T-226/00 DEP and T-227/00 DEP, EU:T:2003:61, paragraph 33 and the case-law cited).

13 In the present case, the applicant is seeking reimbursement of the total amount of EUR 12 041 755.80, which is made up, according to the information it has provided, of EUR 12 017 848.55 in respect of fees relating to legal and economic advisory services and EUR 23 907.21 in respect of disbursements for the purpose of attending the hearing.

14 Before examining the application for reimbursement made by the applicant in relation to the fees and disbursements, preliminary observations must be made regarding the confidentiality of the application and its annexes.

Preliminary observations regarding the confidentiality of the application and its annexes

15 It must be observed that although the applicant marked the words 'confidential' on each page of the application and the words 'confidential', 'strictly confidential' or 'highly confidential' on almost every page of the schedule of annexes, it did not submit to the Court any application for certain information to be omitted vis-à-vis the public, in accordance with Articles 66 or 66a of the Rules of Procedure. First, under Article 66 of the Rules of Procedure, an application for omission vis-à-vis the public of personal data of natural persons must be made by a separate document and, second, under Article 66a of the Rules of Procedure, an application for omission vis-à-vis the public of data other than personal data of natural persons must be reasoned and made by a separate document. In the present case, in the absence of any application for omission (reasoned, as the case may be) made by means of a separate document, the mere presence of those references in the application for taxation of costs and its annexes cannot be interpreted as constituting an application for omission of information vis-à-vis the public.

16 In addition, the body of the request also does not contain any useful explanation in that regard. First, the applicant stated that it had redacted from Annexes T.8 to T.13 the information which, in its view, was covered by 'attorney-client privilege protection'. Second, it stated that adducing the invoices, summaries and receipts contained in Annexes T.8 to T.13 did not entail 'a waiver of any attorney-client privilege or other legal protection over the confidentiality of such documents, underlying communications or of any other document appended thereto'.

17 All these indications lack clarity and precision and are therefore not such as to enable the Court to understand whether, apart from the information already redacted by the applicant itself from the annexes on the basis of alleged 'attorney-client' privilege and which has not been submitted before the Court, certain information or data, which, moreover, has not been identified, contained in the application or its annexes is, in the applicant's view, confidential and ought be protected vis-à-vis the public in the present taxation of costs proceedings.

18 Since the Court cannot proceed by assumptions or remedy any shortcomings in the application, there is no reason to assume that the applicant is seeking to protect the confidentiality vis-à-vis the public of certain information or information contained in the application for taxation of costs and the annexes thereto under Articles 66 or 66a of the Rules of Procedure.

19 Moreover, there is nothing in the documents before the Court to suggest that the information and data used in the present order – concerning, inter alia, the amounts claimed, the names of law firms and of economic consultancies, the number and type of lawyers and consultants, the

number, pages and amounts of the invoices, the number of hours and hourly rates, the cost categories, the cities involved in travel, the types of receipts, the subject matter of the receipts and their amounts – ought to be regarded as confidential vis-à-vis the public in the context of the present proceedings and that the Court ought to apply Articles 66 or 66a of the Rules of Procedure of its own motion.

Fees

20 The applicant is seeking reimbursement of the total sum of EUR 12 017 848.55 in respect of the fees for legal and economic advisory services, made up, according to the information provided, of EUR 11 234 578.85 for legal advisory services provided by the law firm Quinn Emanuel Urquhart & Sullivan ('Quinn Emanuel'), EUR 302 658.10 for legal advisory services provided by Cravath Swaine & Moore ('Cravath') and EUR 480 611.64 for the economic consultancy services provided by Compass Lexecon and FTI Consulting ('Compass Lexecon/FTI').

The fees of the law firm Cravath

21 The applicant seeks reimbursement of the sum of EUR 302 658.10 in respect of the fees for the services provided by the law firm Cravath.

22 At the outset, as regards those fees, it must be observed that, as the applicant states, the services in question do not concern the proceedings before the Court, but rather proceedings in the United States which led to certain documents being obtained which the applicant subsequently produced as evidence in the proceedings before the Court by document dated 26 July 2019.

23 It should be recalled that, according to settled case-law, by 'proceedings', Article 140(b) of the Rules of Procedure refers only to proceedings before the Court (orders of 24 January 2002, *Groupe Origny* v *Commission*, T-38/95 DEP, EU:T:2002:13, paragraph 29; of 7 December 2004, *Lagardère and Canal+* v *Commission*, T-251/00 DEP, EU:T:2004:353, paragraph 22; and of 21 December 2010, *Le Levant 015 and Others* v *Commission*, T-34/02 DEP, EU:T:2010:559, paragraph 31). Accordingly, the concept of 'recoverable costs' for the purposes of proceedings before the Court within the meaning of Article 140(b) of the Rules of Procedure, unless otherwise provided for, such as in Article 190(2) of the Rules of Procedure, cannot cover costs relating to other judicial or administrative proceedings before other national or international courts or authorities (see, to that effect, order of 21 December 2010, *Le Levant 015 and Others* v *Commission*, T-34/02 DEP, EU:T:2010:559, paragraphs 35 and 50), even where such proceedings seek, as in the present case, to obtain information or documents by means of which the interested party intends to substantiate the pleas in law of an action before the Court.

24 Any question inherent to the reimbursement of costs incurred in proceedings before other national or international courts or authorities is governed, as the case may be, by the rules concerning those proceedings, and reimbursement thereof cannot be sought before the Court in respect of costs incurred 'for the purpose of the proceedings' before it.

25 Consequently, the application for reimbursement of the sum of EUR 302 658.10 in respect of the legal advisory services provided by the law firm Cravath must be rejected.

The fees of the law firm Quinn Emanuel

26 It is settled case-law that the EU Courts are empowered not to tax the fees payable by the parties to their own lawyers, but may determine the amount of those fees to be recovered from the party ordered to pay the costs. In ruling on the application for taxation of costs, the Court is not required to take account of any national tariff fixing lawyers' fees or any agreement to that effect between the party concerned and its agents or advisers (see order of 26 January 2017, *Nurburgring* v *EUIPO – Biedermann (Nordschleife)*, T-181/14 DEP, EU:T:2017:41, paragraph 10 and the case-law cited).

27 It should also be recalled that, in the absence of provisions of EU law relating to tariffs or relating to the necessary working time, the Court must freely assess the subject matter and nature of the dispute, its importance from the point of view of EU law and also the difficulties presented by the case, the amount of work which the contentious proceedings generated for the agents or advisers involved and the economic interests which the dispute presented for the parties (see order of 26 January 2017, *Nordschleife*, T-181/14 DEP, EU:T:2017:41, paragraph 11, and the case-law cited).

28 The amount of recoverable costs claimed, in the present case, by the applicant in respect of the fees of the law firm Quinn Emanuel must be assessed in the light of those considerations.

29 It is apparent from the application that the sum of EUR 11 234 578.85 calculated by the applicant, corresponds to reimbursement of the fees of 19 persons, namely 4 partners, 2 'of counsel' lawyers, 10 associate lawyers, 2 trainees and 1 senior paralegal from the law firm Quinn Emanuel, for the period from 24 January 2018 to 15 June 2022.

30 In order to justify that sum, the applicant provided certain elements for calculation. First of all, in Annex T.5 to the application, the applicant produced a summary table (prepared by it) setting out the hourly rates (in United States dollars (USD)), the number of hours invoiced annually by each of those persons between 2018 and 2021 and the total amounts (in EUR) invoiced by the law firm Quinn Emanuel for each year ('the QE summary table'). Next, in the body of the application, the applicant provided a table breaking down the sum claimed (in EUR) in respect of the combined fees of (i) the law firm Quinn Emanuel, (ii) the law firm Cravath and (iii) Compass Lexecon/FTI, into eight periods corresponding, according to the applicant, to the different stages of the proceedings before the Court ('the cost category table'). Lastly, in Annex T.8 to the application, the applicant adduced 34 successive invoices – covering services provided between 2 January 2018 and 30 June 2021 – which were addressed to it by the law firm Quinn Emanuel (totalling 613 pages in the schedule of annexes), indicating, inter alia, the hours recorded by each of those 19 persons and their hourly rates (in USD) ('the QE invoices').

31 In addition, in the body of the application, the applicant stated the reasons why, in its view, the sum requested was justified and reasonable. In particular, in addition to the information concerning the nature, importance and complexity of the case, the applicant relied on the quantity of work carried out by its representatives, referring to the analysis and research carried out and to the number of annexes produced in the proceedings before the General Court, namely 73 annexes (totalling 7 900 pages), 23 of which were prepared by its representatives for the purposes of the proceedings before the General Court.

32 In the first place, as regards the subject matter and nature of the dispute, their importance from the point of view of EU law and the difficulties presented by the case, it should be noted that Case T-235/18 raised complex questions of EU competition law, which, moreover, led the General Court to decide to give judgment in its extended composition, pursuant to Article 28(1) of the Rules of Procedure. In particular, that case concerned a Commission decision relating to a proceeding under Article 102 TFEU, adopted after the judgment of 6 September 2017, *Intel* v *Commission* (C-413/14 P, EU:C:2017:632), in which the Court clarified the pre-existing case-law. Furthermore, that case concerned a highly technical area, namely the supply of baseband chipsets compliant with the LTE standard together with the UMTS and GSM standards to Apple Inc. for iPhones and iPads, and raised numerous complex substantive and procedural questions.

33 In the second place, as regards the economic interests at stake, the case in the main proceedings concerned a Commission decision imposing a fine on the applicant for an alleged infringement of Article 102 TFEU. It was a substantial fine in absolute terms, close to EUR 1 billion. However, the application made by the applicant contains, in the present case, no information enabling the size of that fine to be assessed in relation to the applicant's economic situation. In addition, the premiss to which the applicant refers in the application, namely that the contested decision could have served as a legal basis for subsequent legal proceedings against it, in the absence of any other details, also does not make it possible to assess the economic interest which the case in the main proceedings represented for the applicant in that respect. The same applies to the allegation, which is also unsubstantiated, that the overall financial consequences borne by the applicant were significantly higher than the costs claimed. Consequently, while it is possible to take the view that, in the light of the fine in question, that case was of significant economic importance for the applicant, none of the evidence adduced before the Court permits the inference that that interest would have been 'enormous', as it claims.

34 In the third place, as regards the volume of work generated by the proceedings for the applicants' lawyers, it must be recalled that the primary consideration of the EU Courts is the total number of hours of work which may appear to be objectively necessary for the purpose of the proceedings before the General Court, irrespective of the number of lawyers who may have provided the services in question (see order of 28 June 2004, *Airtours* v *Commission*, T-342/99 DEP, EU:T:2004:192, paragraph 30 and the case-law cited).

35 It must be recalled that although in principle only payment of the fees of a single lawyer is recoverable, it may be that, depending on the specific circumstances of each case, most notably its complexity, payment of the fees of more than one lawyer may be found to be necessarily incurred, as provided for in Article 140(b) of the Rules of Procedure (see order of 15 September 2004, *Fresh Marine* v *Commission*, T-178/98 DEP, EU:T:2004:265, paragraph 35 and the case-law cited).

36 In taxing costs in those circumstances, the Court must examine the extent to which the services supplied by all the lawyers concerned were necessary for the conduct of the legal proceedings and satisfy itself that the fact of instructing a number of lawyers did not entail any unnecessary duplication of costs (see, by analogy, orders of 28 June 2004, *Airtours* v *Commission*, T-342/99 DEP, EU:T:2004:192, paragraph 44, and of 27 November 2020, *Flabeg Deutschland* v *Commission*, T-103/15 DEP, not published, EU:T:2020:585, paragraph 47).

37 However, it must be pointed out that the costs of coordination between lawyers for the same party cannot be regarded as necessarily incurred, to be taken into account in calculating the amount of recoverable costs (see order of 13 January 2017, *Idromacchine and Others* v *Commission*, T-88/09 DEP, EU:T:2017:5, paragraph 32 and the case-law cited).

38 In addition, where a party's lawyers have already assisted that party during proceedings or procedures prior to the relevant action, one must also consider the point that they are aware of matters relevant to the action, which is likely to have facilitated their work and reduced the preparation time required for the judicial proceedings (see order of 13 January 2006, *IPK-München* v *Commission*, T-331/94 DEP, EU:T:2006:11, paragraph 59 and the case-law cited).

39 In that regard, it must be stated that, while, in the present case, the dispute in the main proceedings could indeed have demanded significant work from the applicant's lawyers having regard to the factors set out in paragraphs 32 and 33 above, its application and the annexes thereto, in particular the QE invoices, the cost category table and the QE summary table, do not enable an assessment to be made of the volume of work corresponding to the sums claimed in respect of the fees of the law firm Quinn Emanuel.

40 First, the 34 QE invoices adduced by the applicant before the General Court contain no description of the tasks performed. The applicant chose to redact all that information, and blacked it out from the documents lodged before the General Court, by reason of alleged 'attorney-client' privilege protection (see paragraph 16 above), in relation to which it is not for the Court to give a ruling in the present proceedings. The fact remains that such a choice on the part of the applicant means that those invoices do not enable an assessment to be made, for example, of the number of hours devoted to preparing the application, the reply, or each of the other documents lodged by the applicant before the Court or at the hearing. The applicant has also failed to provide any indication or estimate in that regard in the body of the application.

41 Furthermore, most of the QE invoices produced by the applicant do not concern solely lawyers' fees, but also cover disbursements, although the applicant made no distinction in that regard in its application. In addition, the first QE invoice adduced by the applicant appears also to concern services provided before the contested decision was adopted. Lastly, the final QE invoice adduced by the applicant stops on 30 June 2021, whereas the applicant lodged observations before the Court on 20 July 2021.

42 Second, the cost category table presented in the body of the application does not concern solely the fees of the law firm Quinn Emanuel, but also covers the fees of the law firm Cravath and of Compass Lexecon/FTI (see paragraph 30 above), and additionally does not enable an assessment to be made of the work actually carried out in respect of each period and in particular the volume of hours devoted to preparing the documents lodged before the Court or for the hearing.

43 In the absence of such information, the breakdown of the sums proposed by the applicant in that table is not only unjustified, but also appears to lead to a manifestly excessive outcome from the perspective of the present proceedings, such as, in particular, the sum of approximately EUR 3 400 000 for the preparation of the application alone. Such a sum, at a hypothetical average hourly rate of EUR 500, would correspond to 6 800 hours of work, that is to say, 850 days' work of 8 hours per day in respect of the application alone. The same is true, in particular, for the sum of approximately EUR 2 900 000 claimed for the preparation of the reply and the sum of approximately EUR 2 350 000 claimed for the preparation for the hearing.

44 Third, such information regarding the work actually carried out and the related volume of hours is also not apparent from the QE summary table annexed to the application. That table merely enables the Court to observe – while it is not the task of the Court to search for and identify, in the adduced documents, the elements which could make up for the lack of precise information and detailed explanations in the application itself (see, to that effect, order of 13 February 2008,

Verizon Business Global v *Commission*, T-310/00 DEP, not published, EU:T:2008:32, paragraph 50) – that the law firm Quinn Emanuel invoiced the applicant for a total of 16 422.6 hours between 2018 and 2021, at hourly rates ranging from USD 315 to USD 1 515.

45 Accordingly, despite the significant volume of documents and data adduced by the applicant, none of that makes it possible to determine the tasks which correspond to that total hourly volume, in particular the number of hours which corresponds, as the case may be, to duplicated tasks or tasks involving coordination between the 19 persons mentioned in the invoices, whether those hours were worked for the purposes of the proceedings before the Court or whether they were necessarily incurred for that purpose. In addition, those documents do not enable a precise assessment to be made of the hourly rate corresponding to the various tasks carried out by the lawyers, bearing in mind that, in any event, from the perspective of the present proceedings, hourly rates ranging in particular between USD 1 005 and USD 1 515, such as some of those referred to in the QE invoices and in the QE summary table, are manifestly excessive for the purposes of determining the costs recoverable in respect of the fees at issue. While it is true that a party is free to use lawyers charging such high hourly rates, the fact of using their services cannot be regarded as necessary within the meaning of the case-law referred to in paragraph 12 above (see, to that effect, orders of 20 January 2014, *Charron Inox and Almet* v *Council*, T-88/12 DEP, not published, EU:T:2014:43, paragraph 24, and of 8 July 2020, *Fastweb* v *Commission*, T-19/17 DEP, not published, EU:T:2020:331, paragraph 51), particularly where, as in the present case, those rates are not presented, in the application, in relation to specific, clearly identified tasks.

46 Fourth, the applicant's affirmation that its representatives carried out a substantial amount of research and analysis and adduced numerous documents before the Court is not sufficient to substantiate the sums claimed or that the work relating to them was necessarily incurred. It should be recalled that, in order to assess whether the costs are necessarily incurred, precise information must be provided by the applicant (order of 8 July 2020, *Fastweb* v *Commission*, T-19/17 DEP, not published, EU:T:2020:331, paragraph 44). Furthermore, while the applicant relies on the length of the documents lodged and on the number and length of the annexes relating thereto, it must be observed that the mere fact that documents with numerous pages and numerous annexes were lodged by the applicant's representatives before the Court in no way demonstrates that the hours of work, and therefore the sums claimed relating thereto, were necessary for the purposes of the proceedings before the Court.

47 It follows that the application made by the applicant does not enable an assessment to be made of the number of hours corresponding to the various tasks performed by the Quinn Emanuel lawyers in respect of the proceedings before the Court or of the hourly rate corresponding to those tasks.

48 While the absence of any information on the costs actually incurred for the purpose of the proceedings, including in particular the hourly rates and the time spent carrying out various tasks, does not prevent the Court from fixing, on the basis of an equitable assessment, the amount of recoverable costs, it places it in a situation where its assessment of the applicant's claims must necessarily be strict (order of 8 July 2020, *Fastweb* v *Commission*, T-19/17 DEP, not published, EU:T:2020:331, paragraphs 44, 46 and 47).

49 In addition, as regards the hourly rate, it should be recalled that, as EU law currently stands, in the absence of a scale in that regard, it is only where the average hourly rate invoiced appears manifestly excessive that the Court may depart from it and fix *ex aequo et bono* the amount of recoverable fees for lawyers and expert economists (see order of 19 January 2021, *Romańska* v *Frontex*, T-212/18 DEP, not published, EU:T:2021:30, paragraph 39 and the case-law cited).

50 In the present case, while the applicant has provided no indication, or even an estimate, of the working time corresponding to the various stages of the proceedings or of the average hourly rate relating thereto, the Commission, in its observations on the application, made the following estimates of the time required for those steps by the law firm Quinn Emanuel:

– 500 hours for the application (88 pages with 4 000 pages of annexes);

– 200 hours for the reply (66 pages with 600 pages of annexes);

– 8 hours for the observations of 20 June 2019 (3 pages);

– 260 hours for the document of 26 July 2019 (46 pages with 3 300 pages of annexes);

– 12 hours for the document of 25 August 2020 (4 and a half pages);

– 4 hours for the document of 9 November 2020 (2 pages);

– 50 hours for the response of 20 November 2020 (18 pages);

– 2 hours for the observations of 15 December 2020 (forwarding the signed confidentiality undertaking);

– 4 hours for the observations of 18 December 2020 (2 pages);

– 15 hours for the observations of 26 January 2021 (6 pages);

– 6 hours for attendance at the informal meeting of 15 April 2021 (45 minutes);

– 250 hours for attendance at the hearing from 4 to 6 May 2021 (for 3 days);

– 8 hours for the observations of 19 May 2021 (4 pages);

– and 20 hours for the observations of 20 July 2021 (32 pages).

51 In its observations, the Commission accordingly found that the various stages of the proceedings required a maximum of 1 339 hours of work. In proposing the use of an average hourly rate of EUR 300, the Commission concluded, in essence, that the sum of EUR 401 700 could be recovered in respect of the fees of the law firm Quinn Emanuel.

52 However, while the applicant's request is insufficiently substantiated and manifestly excessive as regards both the amounts claimed and the numbers of hours and related hourly rates, taking into account also the fact that the lawyers who represented the applicant before the Court had also

advised it before the Commission in the administrative procedure which led to the adoption of the contested decision, the Commission's proposal, while constituting a useful estimate, nevertheless appears to be below what would constitute an appropriate assessment.

53 In particular, the Commission's estimate would lead, inter alia, to envisaging 960 hours of work for the preparation of the application (500 hours), the reply (200 hours) and the document of 26 July 2019 (260 hours). In view of the number of pleas raised, the difficulty of the legal and factual issues raised, the number and linked nature of those documents, the evidence produced in annex thereto and submitted to the Court and the progressively more targeted and detailed nature of the argument developed, such an estimate does not appear to represent an appropriate assessment of the working time objectively necessary for the preparation of those three documents, such appropriate assessment nevertheless not exceeding 1 400 hours of work in respect of those documents.

54 In addition to that number of hours, first, it is also necessary to take account of 150 hours of work for the preparation of the other written documents lodged by the applicant before the Court, namely those already referred to in paragraph 50 above and certain other documents not referred to in that paragraph (the request of 16 January 2019, the request of 10 December 2020 and its addendum of 18 December 2020, the request of 21 January 2021, the observations of 29 March 2021 and the observations of 3 May 2021). Second, it is necessary to take account of 250 hours of work for the preparation for and attendance at the informal meeting of 15 April 2021 and at the hearing from 4 to 6 May 2021.

55 In those circumstances, taking into consideration all the circumstances of the present case, since a total of 1 800 hours of work is regarded as equitable for the entire procedure before the Court in the main proceedings, regardless of the number of lawyers concerned, an equitable assessment *ex aequo et bono* of the maximum sum which may be recovered from the Commission in respect of the fees of the law firm Quinn Emanuel results in such sum being fixed at EUR 750 000.

56 In view of the foregoing, the amount of recoverable costs in respect of the fees of the law firm Quinn Emanuel must be fixed at EUR 750 000.

The costs relating to the involvement of the economic consultants of Compass Lexecon/FTI

57 The applicant seeks reimbursement of the sum of EUR 480 611.64 in respect of the economic consultancy services provided by Compass Lexecon/FTI.

58 It should be recalled that, given the essentially economic nature of certain cases, the involvement of economic experts in addition to the work of legal counsel may on occasion prove necessary in disputes concerning decisions in those areas and thus give rise costs which may be recovered under Article 140(b) of the Rules of Procedure (see, as regards State aid proceedings, order of 19 December 2006, *WestLB* v *Commission*, T-228/99 DEP, not published, EU:T:2006:405, paragraph 78 and the case-law cited, and, as regards a concentration, order of 17 August 2020, *United Parcel Service* v *Commission*, T-194/13 DEP II, not published, EU:T:2020:372, paragraph 66 and the case-law cited).

59 In order for that to be the case, such involvement of economic advisers must be objectively necessary for the purposes of the proceedings (see order of 17 August 2020, *United Parcel Service* v *Commission*, T-194/13 DEP II, not published, EU:T:2020:372, paragraph 67 and the case-law cited).

60 It is apparent from the application that the sum of EUR 480 611.64, calculated by the applicant, corresponds to the reimbursement of the fees of nine Compass Lexecon/FTI economic consultants for the period from 24 January 2018 to 15 June 2022.

61 In order to justify that sum, the applicant adduced some elements for calculation similar to those referred to in paragraph 30 above, namely, first of all, in Annex T.6 to the application, a summary table (prepared by it) setting out the hourly rates (in USD) and the number of hours invoiced by each of those consultants on an annual basis between 2018 and 2021 and the total amounts (in EUR) invoiced by Compass Lexecon/FTI in respect of each year ('the CL summary table'). Next, in the body of the application, the applicant relied on the cost category table referred to in paragraphs 30, 42 and 43 above. Lastly, in Annex T.9 to the application, the applicant adduced 10 invoices – covering the period from 16 January 2018 to 6 May 2021 – which were addressed to it by Compass Lexecon/FTI showing the hours recorded by each of the consultants concerned and their hourly rates (in USD) ('the CL invoices').

62 In addition, in the body of the application, the applicant indicated that its economic consultants had prepared reports or economic memoranda which had been incorporated in or annexed to the application and the reply, and that one of its consultants had attended the hearing in order to provide clarifications. The applicant also referred to the economic analysis which it had submitted to the Commission.

63 It must be stated that, while, in the present case, it is appropriate to find that the economic advisers' participation was objectively necessary for the purposes of the proceedings before the Court, the application made by the applicant and the annexes thereto, in particular the CL invoices, the cost category table and the CL summary table, do not enable an assessment to be made of the volume of work corresponding to the sums claimed in respect of Compass Lexecon/FTI's fees for those proceedings before the Court.

64 First of all, the CL invoices adduced by the applicant as an annex to the application contain no description of the tasks carried out, since the applicant chose to redact all that information by blacking it out from the documents lodged before the Court (see paragraph 16 and, by analogy, paragraph 40 above). Next, the cost category table, presented in the body of the application, does not enable any concrete assessment to be made (see, by analogy, paragraph 42 above). Lastly, the CL summary table CL annexed to the application merely enables the Court to observe – while it is not the task of the Court to search for and identify in the annexes the elements making up for the lack of information and explanations in the application (see, to that effect, paragraph 44 above) – that Compass Lexecon/FTI invoiced the applicant for a total of 853.7 hours between 2018 and 2021, at hourly rates ranging from USD 242 to USD 1 055.

65 Accordingly, despite the significant volume of documents and data adduced by the applicant, none of that makes it possible to determine the tasks which correspond to that total hourly volume, in particular the number of hours which corresponds, as the case may be, to duplicated tasks or tasks involving coordination between the nine persons mentioned in the invoices, whether those hours worked were for the purposes of the proceedings before the Court or whether they were necessarily incurred for that purpose. Furthermore, contrary to what the applicant appears to suggest, the work relating to the economic analysis submitted to the Commission is irrelevant in the context of the present case, which, in accordance with the case-law referred to in paragraph 23 above, relates only to the costs incurred for the purposes of the proceedings before the Court.

66 It follows that the application made by the applicant does not enable an assessment to be made of the number of hours corresponding to the various tasks actually carried out for the proceedings before the Court by Compass Lexecon/FTI's economic consultants, or the hourly rate corresponding to those various tasks.

67 In those circumstances, while, contrary to the Commission's assertions, the costs relating to the involvement of Compass Lexecon/FTI's economic consultants cannot be rejected in their entirety, the Court's assessment must necessarily be strict, in accordance with the case-law referred to in paragraph 48 above.

68 First, since the applicant has provided no specific information on the volume of work carried out by its economic consultants for the purpose of preparing the reports and memoranda incorporated or annexed to the application and the reply, an equitable *ex aequo et bono* assessment of that volume of work results in it being fixed at 50 hours. Second, as is apparent from the minutes of the hearing, an economic consultant of the applicant was permitted to intervene, in the presence and under the supervision of the applicant's representatives, during the three days of the hearing, in order to provide clarifications. The volume of work corresponding to those tasks ought therefore to be fixed at 24 hours. As a result, a volume of 74 hours of work is considered to be equitable for the entire procedure before the Court in the main proceedings.

69 As regards the hourly rate, since the application does not enable a precise determination to be made of the hourly rate corresponding to the various tasks performed by the economic consultants and since, in any event, an hourly rate of USD 1 055, which is one of the rates mentioned in the CL invoices and in the CL summary table, is manifestly excessive for the purposes of determining the recoverable costs in respect of the fees at issue, an equitable assessment *ex aequo et bono* of the maximum sum which may be recovered from the Commission in respect of the fees of Compass Lexecon/FTI results in such sum being fixed at EUR 30 000.

70 In view of the foregoing, the amount of recoverable costs in respect of the fees of Compass Lexecon/FTI must be fixed at EUR 30 000.

Conclusions on the fees

71 It is therefore appropriate to fix the recoverable costs in respect of fees relating to legal and economic advisory services in respect of the main proceedings at a total of EUR 780 000.

Disbursements

72 In respect of disbursements, the applicant claims reimbursement of the sum of EUR 23 907.21 relating to the travel and accommodation expenses of lawyers from the law firm Quinn Emanuel, the economic consultant from Compass Lexecon/FTI and one of the applicant's employees to attend the hearing.

73 It is, however, for the person applying for costs to adduce evidence establishing the authenticity and the amount of the travel and subsistence expenses in respect of which he or she claims reimbursement (see order of 26 January 2017, *Nordschleife*, T-181/14 DEP, EU:T:2017:41, paragraph 34).

74 It should be recalled that travel and subsistence expenses incurred by persons other than lawyers are recoverable only if the presence of those persons was necessary for the purpose of the proceedings (see orders of 17 September 1998, *Branco* v *Commission*, T-271/94 (92) EU:T:1998:222, paragraph 20 and the case-law cited, and of 27 October 2017, *Heli-flight* v *AESA*, T-102/13 DEP, not published, EU:T:2017:769, paragraph 49 and the case-law cited).

75 Except in specific circumstances, the costs of a single adviser may be declared recoverable (see, to that effect, order of 8 October 2014, *Coop Nord* v *Commission*, T-244/08 DEP, not published, EU:T:2014:899, paragraph 33).

The travel and subsistence expenses of lawyers from the law firm Quinn Emanuel

76 The applicant seeks reimbursement of the sum of EUR 12 632.95 in respect of disbursements for travel and subsistence expenses of lawyers from the law firm Quinn Emanuel to attend the hearing.

77 It must be stated, however, that the application does not, in itself, contain any indication as to the nature of the costs claimed or any break-down by category of costs. Nevertheless, in order to justify that amount, the applicant refers, in the application, to an invoice addressed to it by the law firm Quinn Emanuel (adduced in Annex T.8) and to the invoices in payment of those disbursements by its lawyers (adduced in Annex T.11).

78 It is apparent from the 33rd invoice from the law firm Quinn Emanuel, adduced by the applicant in Annex T.8, that the sum in question concerns, in essence, hotel, travel and room hire expenses. Those expenses then appear to be itemised in the other two invoices (in EUR), adduced in Annex T.11 by the applicant, namely an invoice from a hotel in Luxembourg and an invoice from a transport services provider in Brussels, bearing in mind that the same annex appears to contain accounting tables setting out those expenses in a different format and four pages whose content has been entirely redacted. The Court can therefore assess those travel and subsistence expenses only by reference to those two hotel and transport invoices. By contrast, certain other disbursements referred to in the 33rd invoice of the law firm Quinn Emanuel concerning document reproduction costs and court fees cannot be taken into consideration, in the absence of any details or any supporting evidence provided by the applicant.

79 In the first place, it is apparent from the list of services referred to in the hotel invoice, in the amount of EUR 8 513, that that invoice covers expenses for overnight accommodation, meals, the hire of a meeting room and equipment and for 'transfers'.

80 First, as regards overnight accommodation, the hotel invoice refers to a total of EUR 5 630 for four nights' accommodation (from 3 to 7 May 2021) for five lawyers. On the one hand, it should be recalled that the hearing in the main proceedings was held from 4 to 6 May 2021. As is apparent from the minutes of the hearing, on 6 May 2021, the hearing closed at approximately 16:00. Consequently, the overnight accommodation from 6 to 7 May 2021 cannot be regarded as being necessarily incurred for the purposes of the proceedings before the Court. Moreover, it is apparent from the invoice of the transport services provider that two journeys by car from Luxembourg to Brussels for six persons took place on 6 May 2021. Second, while in the specific circumstances of the present case, with the hearing having taken place over three days, the expenses relating to the overnight accommodation of the three lawyers who represented the applicant before the Court, all three of whom made oral submissions before the Court at that hearing, may be regarded as recoverable in accordance with the case-law referred to in paragraph 75 above, the same cannot be said

for the other two lawyers who did not represent the applicant before the Court. It follows that the sum recoverable in respect of the three nights of hotel accommodation for three lawyers (EUR 289 per night) is EUR 2 601.

81 Second, as regards meals, the hotel invoice refers to a total sum of EUR 79, which must be regarded as recoverable, since that sum is duly justified and reasonable.

82 Third, as regards the hire of a meeting room and equipment, the hotel invoice indicates a total sum of EUR 2 250. It is true that the application and the documents adduced do not set out either the precise nature of those hire costs or the extent to which such hire was necessarily incurred for the purposes of the proceedings before the Court. Nevertheless, while the expenses relating to the leasing of equipment (EUR 750 for a 'printer') must be rejected in the absence of any details provided by the applicant, in relation to the expenses for renting a meeting room (EUR 1 500 for three days), it must be held that, in the specific circumstances of the present case, the hearing having been held over three days during which the applicant was represented by three lawyers (see paragraph 80 above), the use of a meeting room at the hotel of those lawyers may be regarded as necessary in practice. That said, the applicant did not specify the manner in which such a meeting room was used, and hiring it for three full days appears to be excessive in the absence of details provided by the applicant. While the absence of such information does not prevent the Court from fixing, on the basis of an equitable assessment, the amount of recoverable costs, it nonetheless places it in a situation where its assessment of the applicant's claims must necessarily be strict (see, to that effect, order of 21 March 2018, *K&K Group* v *EUIPO – Pret A Manger (Europe) (Pret A Diner)*, T-2/16 DEP, not published, EU:T:2018:175, paragraph 37). Consequently, the sum recoverable in that respect is fixed *ex aequo et bono* at EUR 750.

83 Fourth, as regards 'transfers', the invoice indicates a total sum of EUR 554 in relation to another hotel. In so far as the information submitted by the applicant does not make it possible to determine either the actual subject matter of those expenses or, a fortiori, whether they were necessarily incurred for the purposes of the proceedings before the Court, those expenses must be rejected.

84 In the second place, it is apparent from the invoice from the provider of transport services to Brussels, in an amount of EUR 2 106.22, that that invoice covers three car journeys from Brussels to Luxembourg on 3 May 2021 (one trip for four persons, one trip for two persons and one trip for one object) and two car journeys from Luxembourg to Brussels on 6 May 2021 (one trip for four persons and one trip for two persons).

85 In that regard, it is sufficient to state that, as is apparent from paragraph 80 above, only the presence of the three lawyers who represented the applicant before the Court and who made oral submissions before the Court at the hearing may be regarded as necessary for the purposes of the proceedings as regards the expenses incurred in attending that hearing. Therefore, only the sum corresponding to the journey of those three lawyers can be regarded as recoverable. In the present case, having regard to the invoice produced by the applicant, it must be found that such a sum corresponds, in essence, to the cost of the outward journey (EUR 380) and the return journey (EUR 380) for four persons, without the additional amounts invoiced for waiting periods, for a total amount of EUR 760.

86 In view of the foregoing, the amount of costs recoverable in respect of the disbursements of the law firm Quinn Emanuel must be fixed at EUR 4 190.

Travel and subsistence expenses of the economic consultant of Compass Lexecon/FTI

87 The applicant seeks reimbursement of EUR 2 749.08 in respect of disbursements for travel and subsistence expenses of the economic consultant of Compass Lexecon/FTI to attend the hearing.

88 It must be stated, however, that the application does not, in itself, contain any indication as to the nature of the expenses claimed or any break down by category of expenses. Nevertheless, in order to justify that amount, the applicant refers to Annex T.12 to the application, which contains invoices and receipts.

89 Annex T.12 adduced by the applicant sets out, in a table, various categories of expenses, namely the expenses:

– in respect of three trips by taxi, for the amounts of EUR 30, EUR 42.09 and EUR 30, making a total of EUR 102.09;

– in respect of two COVID-19 tests priced at EUR 180 and EUR 169, corresponding to a total of EUR 349;

– in respect of flights, for an amount of EUR 948.45;

– in respect of a hotel, for an amount of EUR 1 220.

90 Furthermore, Annex T.12 adduced by the applicant also contains three pages, the content of which has been entirely redacted, an invoice from a travel agency and a page containing a copy of a number of receipts and till receipts. The Court therefore can assess those expenses only in the light of that invoice and those receipts.

91 First, as regards taxi trips, the applicant adduced a copy of three receipts relating to a taxi trip in Madrid on 3 May 2021 (EUR 30), a taxi trip in Luxembourg on 3 May 2021 (EUR 42.09) and a taxi trip in Madrid on 7 May 2021 (EUR 30). Such expenses, which appear to be connected with the journey from Madrid to Luxembourg by the applicant's economic consultant for the hearing from 4 to 6 May 2021, may be regarded as necessary for the purposes of the proceedings before the Court. Accordingly, the sum recoverable in respect of taxi trips is fixed at EUR 102.09.

92 Second, as regards the costs of two COVID-19 tests, it should be stated that the applicant adduced only a copy of a bank card receipt which appears to have been issued in Madrid on 2 May 2021 (EUR 180). However, that receipt does not indicate either the service provided or the person concerned, since the mere fact that that receipt contains the Spanish word 'clinica' is clearly not sufficient in that regard. No evidence was adduced in relation to the other amount (EUR 169) related to the same claim. Reimbursement of those costs must therefore be rejected.

93 Third, as regards plane travel, the applicant adduced an invoice from a travel agency showing the sum of EUR 948.45 for a round-trip from Madrid to Luxembourg for the applicant's economic consultant. More specifically, it appears from that invoice that the sum claimed includes the sums of EUR 672 for a round-trip flight ticket from 3 to 5 May 2021, EUR 26.45 in taxes and EUR 250 of surcharge for changing the date of the return ticket from 5 to 7 May 2021.

94 Since there is no explanation justifying the surcharge for changing the date of the return ticket, as the dates of the hearing were notified to the parties on 29 January 2021 and were not altered, the reimbursement of those change costs must be rejected. Consequently, the sum recoverable in respect of plane travel is fixed at EUR 698.45.

95 Fourth, as regards the hotel, the applicant adduced a copy of a bank card receipt from a hotel in Luxembourg containing the word 'reservation' for a sum of EUR 1 220 dated 3 May 2021. That receipt, however, does not indicate either the service provided or the person who received it. Moreover, the information provided does not make it possible to determine whether it is a receipt for payment or a receipt for a sum of money to be held, as, in particular, a deposit. In those circumstances, since it is the same hotel as that on the invoice referred to in paragraph 80 above, it is appropriate, by analogy, to fix the amount of costs recoverable in that respect, for one person for three nights at EUR 289 per night, since no details were provided concerning the booking and then changing of the date of the return flight of the economic consultant (paragraph 94 above), at EUR 867.

96 In view of the foregoing, the amount of recoverable costs in respect of disbursements in respect of the economic consultant of Compass Lexecon/FTI are fixed at EUR 1 667.54.

The travel and subsistence expenses of an employee of the applicant

97 The applicant seeks reimbursement of EUR 8 525.18 in respect of disbursements for travel and subsistence expenses for one of its employees to attend the hearing.

98 The applicant has adduced no evidence for the purpose of justifying how the presence of its employee was necessary for the purposes of the proceedings, in accordance with the case-law referred to in paragraph 74 above, since the mere fact that that employee was following the case within the undertaking was manifestly insufficient in that regard. Moreover, it is not apparent either from the documents before the Court that his presence was required by the Court, or indeed from the minutes of the hearing, that that employee was invited by the Court to speak during the hearing. The reimbursement of those costs must therefore be rejected.

Conclusion on travel and subsistence costs

99 The costs recoverable in respect of travel and subsistence for the main proceedings are therefore fixed at EUR 5 857.54.

Conclusion on recoverable costs

100 In the light of all of the foregoing, the Court considers that the costs recoverable by the applicant in respect of the proceedings before the Court may be assessed on an equitable basis by fixing the total amount thereof at EUR 785 857.54, which takes account of all the circumstances of the case up to the date of the present order.

101 Since the applicant has not claimed costs in respect of the present taxation of costs proceedings, there is no need for the Court to fix an amount in that regard.

On those grounds,

THE GENERAL COURT (Second Chamber, Extended Composition)

hereby orders:

The total amount of costs to be reimbursed by the European Commission to Qualcomm Inc. is fixed at EUR 785 857.54.

Luxembourg, 29 February 2024.

V. Di Bucci
Registrar

A. Marcoulli
President