



COMPETITION APPEAL TRIBUNAL

NOTICE OF A CLAIM UNDER SECTION 47A OF THE COMPETITION ACT 1998

CASE NO. 1378/5/7/20

Pursuant to rule 33(8) of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (“the Tribunal Rules”), the Registrar gives notice of the receipt of a claim (“the Claim”) on 29 December 2020, under section 47A of the Competition Act 1998 (the “Act”), by Epic Games, Inc.; and Epic Games International S.à r.l.; (“Epic”) against Alphabet Inc.; Google LLC; Google Ireland Limited; Google Commerce Limited; and Google Payment Limited (“Google”). Epic is represented by Clifford Chance LLP of 10 Upper Bank Street, London, E14 5JJ (reference Elizabeth Morony and Ben Jasper).

Epic Games, Inc. is a company incorporated in Maryland in the United States of America (“USA”). Epic Games International S.à r.l. is a company registered in Luxembourg, acting through its Swiss branch office. Epic is in the business of developing video games and software for games consoles, personal computers and mobile devices. Epic is the developer of the computer game, “Fortnite”.

Alphabet Inc. is a company incorporated in California. Google LLC is a multinational technology company. Google Ireland Limited and Google Commerce Limited are companies incorporated in Ireland. Google Commerce Limited has a UK establishment registered under the Overseas Companies Regulations 2009. Google Payment Limited is a company incorporated in England and Wales.

Google owns and controls not only numerous internet-based products, such as Google Search, Google Maps and Gmail, but also the Android OS for mobile devices.

According to the Claim, Google is party to agreements with companies that design, manufacture and sell smartphones and tablets known as Original Equipment Manufacturers (“OEMs”). Apart from the Google search app and the Google chrome app (which are licensed separately), OEMs must enter into a Mobile Application Distribution Agreement (“MADA”) with Google to obtain a licence for Google’s apps including Google’s app store (the “Google Play Store”).

Google is also party to Google Play Store Developer Distribution Agreements (“DDA”) with app developers, including Epic. The DDA sets out the terms under which Epic can distribute its apps to consumers through the Google Play Store.

On 13 August 2020, Epic introduced a direct payment option into the Fortnite app on the Google Play Store. This enabled consumers to pay Epic directly for in-app content instead of using Google’s payment processor (the “Google IAB”). In response, Google removed the Fortnite app from the Google Play Store.

Epic alleges that Google holds a dominant position in the Android app distribution market, and the Android in-app payment processing market. Epic alleges that by:

- (a) unfairly restricting competition from alternative app stores and other channels for the distribution of apps to consumers with Android mobile devices; and / or
- (b) reserving to itself the sole payment processing mechanism for purchases of in-app content by consumers who have obtained their apps from the Google Play Store; and / or
- (c) using its market position to charge unfair prices for the distribution of apps via the Google Play Store and / or in relation to the purchase of digital in-app content within those apps; and / or

(d) its response to the introduction by Epic of price competition for purchases of in-app content in Fortnite;

Google has abused its dominant position contrary to section 18 of the Act and / or Article 102 of the Treaty on the Functioning of the European Union (“TFEU”) and engaged in anti-competitive agreements/concerted practices in the UK and EU contrary to section 2 of the Act and / or Article 101 TFEU.

Epic seeks the following relief from the Tribunal:

1. a declaration that Google’s requirement of the pre-installation of the Google Play Store, its restriction of direct downloads on Android mobile devices, and certain terms of the DDA and MADA are unlawful;
2. a declaration that the removal of the Fortnite app from the Google Play Store in the UK was unlawful;
3. an order requiring Google to restore the Fortnite app to the Google Play Store in the UK;
4. an order requiring Google to remove the restriction on the use of alternative in-app payment processing solutions for apps distributed through the Google Play Store in the UK;
5. an order requiring Google to cease imposing the pre-installation of the Google Play Store or any condition requiring OEMs to give preferential treatment to the Google Play Store as compared to competing app stores, on Android mobile devices in the UK;
6. an order requiring Google to cease interfering with OEMs’ ability freely to enter into agreements with Epic in respect of the pre-installation of the Epic Games Store and/or Epic’s apps for Android mobile devices sold in the UK;
7. an order requiring Google to remove or amend the technical restrictions to ensure that consumers can directly download apps / app stores without obstruction, including ensuring that those apps/app stores are able to operate in the same way as the Google Play Store with respect to app installation, app updates, and access to operating system features;
8. an order requiring Google to remove the restriction on the use of alternative in-app payment processing solutions for apps distributed through the Play Store in the UK; and
9. such further or other relief as the Tribunal may think fit.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively, the Tribunal Registry can be contacted by post at Salisbury Square House, 8 Salisbury Square, London EC4Y 8AP, or by telephone (020 7979 7979) or email (registry@catribunal.org.uk). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, QC (Hon)
Registrar

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