



**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No: 1424/5/7/21 (T)

BETWEEN:

- (1) **KELKOO.COM (UK) LIMITED**
- (2) **KELKOO SAS**
- (3) **JAMPLANT LIMITED**
- (4) **KELKOO INTERNET S.L.**
- (5) **KELKOO AS**
- (6) **KELKOO SRL**
- (7) **KELKOO NETHERLANDS BV**
- (8) **KELKOO AB**
- (9) **KELKOO DEUTSCHLAND GMBH**
- (10) **KELKOO DANMARK A/S**
- (11) **JOLT LIMITED**

Claimants

- v -

- (1) **GOOGLE UK LIMITED**
- (2) **GOOGLE IRELAND LIMITED**
- (3) **GOOGLE LLC**

Defendants

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**ORDER**

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**UPON** the European Commission having issued a decision in Case AT.39740 Google Shopping on 27 June 2017 (the “**Decision**”).

**AND UPON** the Third Defendant and third parties having provided, prior to the date of the Decision, the European Commission with documents in connection with Case AT.39740 (the

**“Pre-Decision Commission File”, comprising the “Google Pre-Decision Commission File Documents” and the “Accessible Third Party Pre-Decision Commission File Documents”)**

**AND UPON** the European Commission having placed the most commercially sensitive information provided by third parties in Case AT.39740 in a data room or made the same subject to non-disclosure agreement(s), such that it is not within the possession or control of the Defendants (referred, together with administrative documents of third parties which have not been provided to the Defendants, as the **“Inaccessible Third Party Documents”**)

**AND UPON** the confidentiality order dated 8 July 2021 (the **“Confidentiality Order”**) providing for confidential information to be designated as Confidential or External Adviser Only (**“EAO”**) Confidential Information, and providing for the creation of a Confidentiality Club and an External Adviser Only Confidentiality Club

**AND UPON** the Defendants having notified the European Commission of the intended disclosure of the Pre- Decision Commission File and the European Commission having informed the Defendants by letter dated 27 February 2023 that it is not opposed to the intended disclosure on terms described therein

**AND UPON** hearing Counsel for the Claimants and the Defendants (each a **“Party”**, together the **“Parties”**) at a hearing on 23 March 2023

**IT IS ORDERED THAT:**

1. The Claimants shall disclose and give inspection to the Defendants of the documents (or parts of documents) set out in Part A of the Confidential Schedule to this Order by 7 April 2023 (the **“Disclosure Date”**).
2. Subject to the provisions set out at paragraphs 3 to 5 below, the Defendants shall disclose and give inspection to the Claimants of the documents held on the Pre-Decision Commission File by the Disclosure Date.
3. The Defendants may withhold from inspection, or redact in part as appropriate, documents which constitute:
  - (a) the data underlying the Ablation Experiment (as described in recitals 508 to 509 of the Decision);
  - (b) the Inaccessible Third Party Documents;
  - (c) such Google Pre-Decision Commission File Documents as are:

- (i) settlement protected from disclosure under Schedule 8A of the Competition Act 1998 and/or commitment materials; and/or
  - (ii) privileged; and/or
  - (iii) purely administrative communications.
- 4. The Defendants shall disclose documents within the Pre-Decision Commission File which contain Google confidential information within the appropriate Confidentiality Club under the terms of the Confidentiality Order by the Disclosure Date.
- 5. The Defendant shall disclose all Accessible Third-Party Pre-Decision Commission File Documents into the EAO Confidentiality Club under the terms of the Confidentiality Order by the Disclosure Date.
- 6. The Defendants shall disclose and give inspection to the Claimants of the documents (or parts of documents) set out in Part B and Part C of the Confidential Schedule to this Order by the Disclosure Date.
- 7. Paragraph 5 of the Confidentiality Order shall be disapplied in respect of the Accessible Third-Party Pre-Decision Commission File Documents to be disclosed under this Order. Instead, the Claimants shall by 21 April 2023 write to the Defendants providing them with a list of the Accessible Third-Party Pre-Decision Commission File Documents that they request are re-designated into the Confidentiality Club. In this event, or in the event that the Parties wish to deploy the contents of any Accessible Third-Party Pre-Decision Commission File Documents (whether they are re-designated or not), the Parties shall, prior to such re-designation or deployment, seek further directions from the Tribunal.
- 8. In giving disclosure and inspection (and notwithstanding paragraphs 4 and 5 above), the Parties shall be entitled to withhold from disclosure and inspection any documents (or parts of documents) over which they are entitled to assert privilege.
- 9. Costs in the case.

10. The parties have liberty to apply.

**Justin Turner KC**

Chair of the Competition Appeal Tribunal

Made: 23 March 2023

Drawn: 21 April 2023