



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1408/7/7/21

BETWEEN:

ELIZABETH HELEN COLL

Class Representative

and

- (1) ALPHABET INC.**
(2) GOOGLE LLC
(3) GOOGLE IRELAND LIMITED
(4) GOOGLE COMMERCE LIMITED
(5) GOOGLE PAYMENT LIMITED

Defendants

CONFIDENTIALITY RING ORDER

UPON considering correspondence from the Class Representative and the Defendants (the **Parties**) to the above-named collective proceedings (the **Proceedings**) regarding the appropriate form of order such that documents in these Proceedings containing confidential information be subject to confidentiality protections

AND HAVING REGARD TO the Tribunal's powers under the Competition Appeal Tribunal (the **Tribunal**) Rules 2015 (the **CAT Rules**) (Rules 53(2)(h), 101 and 102)

AND UPON the Reasoned Order of the Chair made and drawn on 4 April 2023 which specified in paragraph 1 that a confidentiality ring shall be established designating that documents containing confidential information would be subject to the terms contained in this Confidentiality Ring Order (the **Confidentiality Terms**)

IT IS ORDERED THAT:

1. DEFINITIONS

1.1 For the purpose of these Confidentiality Terms:

1.1.1 **Confidential Information** means:

- (a) documents provided by a Party, including any part of those documents and any information contained within those documents, cumulatively which:
 - (i) the Disclosing Party or the Tribunal has designated as confidential in accordance with paragraph 2 below; and
 - (ii) has not subsequently been re-designated not confidential, either by consent or by order of the Tribunal; and
- (b) documents such as:
 - (i) working documents created by the receiving Party or its advisers or experts;
 - (ii) *inter-partes* correspondence;
 - (iii) documents filed at the Tribunal, such as pleadings, witness evidence, expert reports, skeleton arguments, applications and draft orders; and
 - (iv) transcripts prepared by a third party service provider, which contain, reproduce, or reflect the content of the documents/information provided under paragraph 1.1.1(a); but
- (c) the following documents/information will not be Confidential Information:
 - (i) redacted versions of the documents described at paragraph 1.1.1(b) if they have been redacted so that they no longer contain or refer to the content of the documents/information provided under paragraph 1.1.1(a); and
 - (ii) documents that use Confidential Information (for example, to provide an aggregation of Confidential Information) but which (a) do not reveal the content of Confidential

Information and (b) do not enable the content of Confidential Information to be revealed

1.1.2 **Disclosing Party** means the Party that disclosed a document or information in the Proceedings.

1.1.3 **Guide** means the Tribunal's 2015 Guide to Proceedings.

1.1.4 **Party** means the Class Representative or the Defendants.

1.1.5 **Permitted Persons** means:

- (a) those persons listed in Annex A (as amended from time to time pursuant to these Confidentiality Terms and/or by the Tribunal) that have provided a copy of their signed undertakings to all Party(ies) and the Tribunal in the form set out in Annex B;
- (b) necessary secretarial, business services or other support personnel, including for the avoidance of doubt internal providers of eDisclosure or litigation support services (not including trainee solicitors or paralegals), IT, reprographics staff and clerks, acting under the supervision and/or instructions of the persons identified at paragraph 1.1.5(a) for the purpose of the Proceedings, provided that such personnel have been informed of the confidential nature of the Confidential Information and the terms of Annex B;
- (c) the Tribunal and its personnel (and any appeal Court of competent jurisdiction and its personnel); and
- (d) any external eDisclosure or litigation support provider engaged by any Party for the purpose of the Proceedings to provide eDisclosure or similar services in support of those persons identified at paragraph 1.1.5(a) above, who may have access to the Confidential Information as a necessary consequence of the provision of the said services and whose identity is notified to the other Parties in writing at least two (2) working days in advance of the Confidential Information being provided to them, provided that such providers have been informed of the confidential nature of the Confidential Information and the terms of Annex B.

1.1.6 **Class Representative** means Elizabeth Helen Coll.

1.1.7 **Defendants** means Alphabet Inc., Google LLC, Google Ireland Limited, Google Commerce Limited and Google Payment Limited.

1.1.8 **Tribunal** means the Competition Appeal Tribunal.

2. **CONFIDENTIAL INFORMATION**

2.1 Confidential Information provided in the context of the Proceedings is to be provided or made available solely to the Permitted Persons, to be held by them on

the terms set out in Annex B of these Confidentiality Terms, subject to the following paragraphs of these Confidentiality Terms.

- 2.2 In accordance with paragraph 7.35 of the Guide Confidential Information is: (i) information the disclosure of which would be contrary to the public interest; (ii) commercial information, the disclosure of which could significantly harm the legitimate business interests of the person(s) or undertaking(s) to which it relates; and/or (iii) information relating to the private affairs of an individual, the disclosure of which could significantly harm that individual's interests.
- 2.3 Confidential Information shall exclude information which is already published or generally available to the public or becomes published or generally available to the public, other than through the act or omission of a receiving Party or a Permitted Person in breach of this Order, Rule 102 of the CAT Rules, or any other obligation owed to the other Party.

3. **DESIGNATION OF CONFIDENTIAL INFORMATION**

- 3.1 Any document containing Confidential Information shall be designated as such by the Party that introduces the document into the Proceedings. The following procedures shall apply:
 - 3.1.1 the Disclosing Party must notify the Receiving Party in writing (in compliance with paragraph 7.46 of the Guide) that it is disclosing a document containing Confidential Information;
 - 3.1.2 a designation of 'not confidential' means that the document does not contain Confidential Information. For the avoidance of doubt, in the event of a designation of not confidential, Rule 102 continues to apply (to the extent it would otherwise have applied);
 - 3.1.3 failure to provide a designation for a document at the time the document is disclosed means the document shall be deemed not to contain Confidential Information;
 - 3.1.4 a Party may alter the designation of a document/information to correct an incorrect designation by notice in writing to the receiving Party; and
 - 3.1.5 the designation of any document as containing Confidential Information by a Party may be challenged in accordance with paragraph 4 of these Confidentiality Terms.
- 3.2 Each Party shall be responsible for labelling and highlighting any Confidential Information in documents disclosed by them in the following ways:
 - 3.2.1 Any bundle index will state which documents contain Confidential Information and identify the Party to which the Confidential Information relates.
 - 3.2.2 The specific text in a document that is Confidential Information will be highlighted.

4. CHALLENGE TO CONFIDENTIAL DESIGNATION

4.1 The designation of Confidential Information by a Party may be challenged in accordance with the terms below:

4.1.1 If a Party wishes to challenge the designation of Confidential Information, that Party shall write to the Disclosing Party specifying:

- (a) the relevant document/information concerned;
- (b) the designation the requesting Party considers to be appropriate; and
- (c) why it is reasonable and necessary for the designation of the document/information to be altered.

4.1.2 In the event that a challenge is made, the Disclosing Party may consent in writing to alter the designation of any documents(s)/information, such consent not to be unreasonably withheld. Any response shall be given as soon as reasonably possible and in any event within seven (7) working days of receipt of the written request referred to in paragraph 4.1.1.

4.1.3 If the Party challenging confidentiality wishes to maintain its challenge following receipt of the Disclosing Party's response pursuant to paragraph 4.1.2, it may apply to the Tribunal for determination of whether or not the document (or parts of it) qualifies as Confidential Information. Prior written notice of that application must be given to the other Party. Save for where there are exceptional reasons that justify a hearing, applications under this paragraph 4.1.3 are to be dealt with on paper. For the avoidance of doubt, the initial confidentiality designation of the document(s) in question shall remain at their initial designation until the Tribunal makes its determination.

4.2 The deadlines in this paragraph 4 may be extended by agreement between the Parties. Consent to a request for an extension shall not be unreasonably withheld.

5. DISCLOSURE AND INSPECTION OF CONFIDENTIAL INFORMATION

5.1 Disclosure and inspection of any document containing Confidential Information shall be restricted to the Permitted Persons on the basis that:

5.1.1 the recipient Permitted Person holds the Confidential Information on the terms set out in Annex B;

5.1.2 any such Confidential Information will be treated by the Permitted Person as confidential and will be used solely for the purpose of the proper conduct of the Proceedings; and

5.1.3 no such Permitted Person will, save as expressly provided for by the Confidentiality Terms, discuss, disclose, copy, reproduce or distribute any Confidential Information.

- 5.2 Provided it is for the purpose of the proper conduct of the Proceedings, nothing in these Confidentiality Terms shall prohibit any Permitted Person from:
- 5.2.1 making notes or copies of, or preparing reports, submissions or other documents concerning, containing or reflecting any Confidential Information (which notes, copies, reports, submissions or other documents would themselves be Confidential Information); and
 - 5.2.2 disclosing any Confidential Information to any other person who is a Permitted Person provided that no Confidential Information shall be directly or indirectly disclosed beyond Permitted Persons.
- 5.3 During any hearing in the Proceedings, each Party wishing to refer to Confidential Information shall be responsible for indicating to the Tribunal that the document contains Confidential Information.
- 5.4 In the event of any disclosure of Confidential Information other than as authorised by these Confidentiality Terms (including any unintentional or inadvertent disclosure):
- 5.4.1 solicitors representing the improperly disclosing Party shall immediately notify the improper recipient(s) and the solicitors for the Party which provided the Confidential Information;
 - 5.4.2 the improperly disclosing Party shall use all reasonable endeavours to further prevent unauthorised disclosure including retrieving all copies of the Confidential Information from the improper recipient(s); and
 - 5.4.3 the improperly disclosing Party shall use all reasonable endeavours to secure the agreement of the improper recipient(s) not to further disseminate the Confidential Information in any form.
- 5.5 Nothing in these Confidentiality Terms shall prevent or prohibit a receiving Party from disclosing Confidential Information to a person who is not a Permitted Person and/or referring to such documents or information in open Tribunal insofar as any such disclosure has been authorised in writing by the Disclosing Party, and/or taking any action which is required by applicable law or by a court of competent jurisdiction. In these circumstances, a receiving Party may produce such Confidential Information but shall take all reasonable measures to ensure the Confidential Information is treated in accordance with these Confidentiality Terms.

6. **ADDITION OR REMOVAL OF PERMITTED PERSONS**

- 6.1 A Party seeking to designate an additional person as a Permitted Person must:
- 6.1.1 seek permission in writing from the other Party(ies) for the additional person to be designated as a Permitted Person; and
 - 6.1.2 provide details of that person's name, role, and an explanation of why their designation as a Permitted Person is reasonable and necessary.

- 6.2 Each Party, other than the requesting Party, shall confirm within three (3) clear working days of receipt of the written request referred to in paragraph 6.1 whether they consent to the additional person being designated as a Permitted Person. Such consent shall not be unreasonably withheld.
- 6.3 If a Party does not consent under paragraph 6.2 to the person being designated a Permitted Person, then that Party must provide written reasons for why permission is refused within three (3) clear working days of receipt of the written request referred to in paragraph 6.1.
- 6.4 If express consent under paragraph 6.2 is given by the Party receiving the request, or no Party raises an objection in accordance with paragraph 6.3 above within three (3) clear working days of receipt of the written request, the additional person shall be required to sign the undertakings at Annex B and provide a copy of the signed undertakings to the Party(ies) and the Tribunal. They will then be designated as a Permitted Person.
- 6.5 If there are any disputes which cannot be resolved by the Parties, the Party seeking to include the additional person may apply to the Tribunal, provided written notice of such application is given to the other Party. The additional person will become a Permitted Person if the Tribunal so orders.
- 6.6 If a Party wishes to remove a person as a Permitted Person, that Party shall notify the other Party. The Party must also comply with paragraph 7 (subject to paragraphs 7.2 and 7.3) by requiring the person to be removed to immediately destroy (insofar as technologically feasible) or make inaccessible all Confidential Information in their possession. For the avoidance of doubt, a Party may only remove a Permitted Person from their own Party.
- 6.7 Annex A reflects the current list of individuals who are Permitted Persons and who have signed the Annex B Undertakings and provided a copy to all Party(ies) and the Tribunal in accordance with this paragraph.
- 6.8 The Party(ies) shall keep Annex A updated, and shall provide it to the Tribunal on its request. For the avoidance of doubt, there is no requirement to amend this Order when updating the Permitted Persons listed in Annex A.

7. COPIES OF CONFIDENTIAL INFORMATION

- 7.1 The production of further copies of the Confidential Information shall be strictly limited to those required by the Permitted Persons to whom they are disclosed.
- 7.2 Subject to the exceptions in paragraph 7.3 below, each Party and Permitted Person must destroy copies of all documents containing Confidential Information provided pursuant to these Confidentiality Terms (in both hard and soft copy) (insofar as technologically feasible) or make them inaccessible at the conclusion of the Proceedings, or when that Party or Permitted Person ceases to be involved in the Proceedings. At such time, that Party shall notify its Permitted Persons that they must destroy (insofar as technologically feasible) or make inaccessible all Confidential Information in their possession. Each Party shall notify the other Party within a reasonable time that the Confidential Information has been

destroyed (insofar as technologically feasible) or made inaccessible (as appropriate).

- 7.3 The obligation in paragraph 7.2 above is subject to the following exceptions:
- 7.3.1 paragraph 7.2 does not apply to solicitors' or counsel's notes subject to continued compliance with all other Confidentiality Terms;
 - 7.3.2 paragraph 7.2 does not create an obligation to search for transitory or deeply stored soft copies of Confidential Information which may exist but which cannot be recovered without special measures, provided that such documents and/or information will be promptly deleted in the event of the restoration of such copies;
 - 7.3.3 paragraph 7.2 does not apply to Party's copies of pleadings, evidence, skeleton arguments, transcripts, applications, draft orders, correspondence referred to at trial or in a hearing or submitted in the Proceedings as well as lawyer work product referring to Confidential Information, subject to continued compliance with the terms of this Order in respect of the Confidential Information contained within such documents; and
 - 7.3.4 paragraph 7.2 does not apply to a Party in respect of the Confidential Information it provided.

8. DEFENDANTS' TRANSACTIONAL DATA

- 8.1 Should the Defendants disclose transactional data, which is data retrieved from a database reflecting transactions made through the Play Store and other data linked to that transaction data ("the Data"), the following additional conditions will apply.
- 8.1.1 prior to the disclosure of the Data, the Defendants will inform the Class Representative that the Data to be disclosed is subject to the conditions of this paragraph 8 and the Class Representative will confirm her agreement that this paragraph applies;
 - 8.1.2 the Data will only be downloaded to, and stored on, secure local computers that are not remotely accessible, are protected by commercially reputable firewall software, and are kept in privately secured offices;
 - 8.1.3 the Data and the secure local computers containing the Data will be in the custody of and accessible (only with password and/or biometric authentication) to only the specific consultants who will be performing data analysis in this case and have given a signed undertaking in the terms of Annex B of the Schedule to this Order;
 - 8.1.4 the Data will never be stored in or transmitted through a medium that involves a third-party possessing the Data (e.g., any type of remote or cloud storage). The Data will not be transferred to portable data storage or data transfer devices; and
 - 8.1.5 within 30 days of the final disposition of the Proceedings, the Class Representative will ensure that any person or organisation provided with

the Data has destroyed the Data and any copies of the Data, and will notify the Defendants within a reasonable time that the Data has been destroyed.

9. NOTICES

9.1 Any notice, consent or objection to be given under or in connection with these Confidentiality Terms (each **Notice** for the purposes of this paragraph) shall be in writing.

9.2 Service of a Notice must be effected by email.

9.3 Notices shall be addressed as follows:

9.3.1 Notices for the Class Representative shall be marked for the attention of Hausfeld & Co LLP and sent to:

Email addresses: lstreatfeild@hausfeld.com,
lhannah@hausfeld.com,
sedwards@hausfeld.com,
kgwilliam@hausfeld.com,
astellardi@hausfeld.com

Reference: L0357.0003

9.3.2 Notices for the Defendants shall be marked for the attention of Reynolds Porter Chamberlain LLP and sent to:

Email addresses: david.cran@rpc.co.uk,
sarah.mountain@rpc.co.uk,
leonia.chesterfield@rpc.co.uk,
thomas.mccall@rpc.co.uk

Reference: LK01/DMC/GOO75.48

10. GENERAL PROVISIONS

10.1 The Confidentiality Terms are intended to apply unless or until superseded by a subsequent order of the Tribunal.

10.2 In respect of Confidential Information, subject to any order of the Tribunal, the obligations contained in the undertakings provided pursuant to this Order and Rule 102 of the CAT Rules shall continue to apply following termination of the Proceedings, and each of the Parties shall continue to treat Confidential Information in accordance with this Order unless the other Party consents or until they have confirmed to the other Party that all Confidential Information held by it or on its behalf has been destroyed.

10.3 In the event of any anticipated or actual breach of these Confidentiality Terms, any Party may seek to enforce the Confidentiality Terms.

10.4 These Confidentiality Terms and any Undertakings given in relation to them are governed by and shall be construed in accordance with English law and each Party

hereby irrevocably submits to the exclusive jurisdiction of the Courts of England and Wales.

- 10.5 Nothing in these Confidentiality Terms or the Annexes to these Terms shall prevent or prohibit any Permitted Persons (as may be extended from time to time) from acting in other proceedings, subject to the ongoing compliance with this Order, the undertakings given pursuant to it, Rule 102 of the CAT Rules, and any applicable professional obligations.
- 10.6 There shall be liberty to apply, if appropriate.
- 10.7 Costs in the case.

Bridget Lucas KC
Chairman of the Competition Appeal Tribunal

Made: 13 April 2023
Drawn: 13 April 2023