



COMPETITION APPEAL TRIBUNAL

NOTICE OF AN APPLICATION TO COMMENCE COLLECTIVE PROCEEDINGS UNDER SECTION 47B OF THE COMPETITION ACT 1998

CASE NO. 1582/7/7/23

Pursuant to rule 76(8) of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (“the Rules”), the Registrar gives notice of the receipt on 29 March 2023 of an application to commence collective proceedings, under section 47B of the Competition Act 1998 (“the Act”), by Mr Charles Arthur (“Mr Arthur/the Applicant/Proposed Class Representative/PCR”) against (1) Alphabet Inc; (2) Google LLC; (3) Google Ireland Limited; and (4) Google UK Limited (together, “Google/the Respondents/Proposed Defendants/PDs”). The PCR is represented by Hausfeld & Co. LLP, 12 Gough Square, London EC4A 3DW (Reference: Luke Streatfeild).

The claims that Mr Arthur seeks to combine (the “Claims”) are for loss and damage caused by the Proposed Defendants’ breaches of statutory duty by their infringements of section 18 of the Act (the Chapter II prohibition) and Article 102 of the Treaty on the Functioning of the European Union (“TFEU”). In particular, the PCR seeks to recover damages to compensate UK-domiciled persons who sold open display ad impressions using intermediation services provided by any intermediary for harm in the form of lower revenues caused by Google’s exclusionary conduct in the “Open Display Advertising Marketplace” in the period since 1 January 2014. The proceedings are brought on an opt-out basis.

The Claims concern Google’s conduct within the “Open Display Advertising Marketplace”; the market for services used to sell digital display advertising, which allow advertisers to place advertisements on publisher websites and apps. When a consumer visits a website or opens an app, they generate an “impression” for the advertising space available on the page. Online publishers (who operate websites or apps) sell impressions to advertisers either by direct sales, or via “real-time” auctions. These auctions use algorithms to determine how best to monetise advertising inventory.

According to the Collective Proceedings Claim Form (“the Claim Form”), the programmatic sale of “ad inventory” (the space available on websites and apps for display advertising) involves several intermediaries between publishers and advertisers. Publisher ad servers, which manage publishers’ ad inventory, decide which adverts to serve based on bids received, and insert these onto publishers’ websites and apps. Supply-Side Platforms (“SSPs”) act as an “exchange” on which auctions for advertising inventory are run. Demand-Side Platforms act as an intermediary through which advertisers can access ad inventory and determine whether impressions match advertisers’ ad campaign objectives. Finally, advertiser ad servers store advertisers’ ads, deliver them to publishers’ websites and apps and track ad campaign metrics.

The PCR contends that Google occupies a dominant position at every level of the intermediation chain within the Open Display Advertising Marketplace. The Claims concern alleged conduct by Google in three vertically related markets within the Open Display Advertising Marketplace: the Publisher Ad Server Market, the Supply-Side Intermediary Market, and the Demand-Side Platform (“DSP”) Market (collectively the “Affected Markets”).

The PCR contends that Google has abused its dominant position by engaging in various forms of mutually reinforcing exclusionary conduct in the Affected Markets. This has foreclosed rivals by:

- a. In the Publisher Ad Server Market - imposing technical restrictions to make it difficult for third-party publisher ad servers to service demand from Google AdX (Google's supply-side platform) and by locking publishers within Google DoubleClick for Publishers ("DFP") (Google's publisher ad server);
- b. In the Supply-Side Intermediary Market - leveraging Google's dominance in the Publisher Ad Server Market (through Google DFP) to favour its own SSP, Google AdX, in auctions run by Google DFP, and channelling most of the demand from its DSPs (Google DV360 and Google Ads) to Google AdX and therefore self-preferencing its own SSP over rivals; and
- c. In the DSP Market - preventing rival DSPs from accessing YouTube ad inventory and audience targeting and locking advertisers into Google DSPs.

The PCR states that Google's exclusionary conduct has entrenched and extended its dominance by raising switching costs, preventing multi-homing and locking publishers and advertisers within its vertically integrated ecosystem. Cumulatively, this conduct is said to amount to a single and continuous infringement of section 18 of the Act and Article 102 TFEU.

While the Claims are of a standalone nature under section 47A of the Act, the PCR contends that Google's conduct has already formed the basis for a number of regulatory investigations and private claims in jurisdictions around the world.

The Class comprises all UK-domiciled natural or legal persons who sold open display ad impressions (i.e. advertisements on websites and apps sold through a real-time bidding process, but excluding those that are sold on a platform selling its own space for advertisements) using intermediation services provided by any intermediary (regardless of whether they are/were owned by Google) during the Claim Period.

The Claims state that Google's breaches of statutory duty have caused loss and damage to the Class Members who have suffered loss as a result of inflated market-wide take rates in each of the Affected Markets. As a result, the Class Members have received a lower share of programmatic open display advertising expenditure than they would have received absent Google's breaches of statutory duty. But for Google's allegedly exclusionary conduct, the proportion of programmatic open display advertising expenditure which would have gone to intermediaries in each of the Affected Markets would have been substantially lower, resulting in publishers receiving correspondingly higher revenues from the sale of their inventory in the Open Display Advertising Marketplace. On a preliminary estimate, aggregate losses suffered by the approximately 200,000 Class Members during the Claim Period (the period between 1 January 2014 and the date of final judgment or earlier settlement of the proposed collective proceedings) are between £0.9bn-£2.7bn (excluding interest).

The Claim Form states that it would be just and reasonable for the PCR to act as the class representative in the proposed collective proceedings. In summary:

- a. The PCR has 30 years' experience as a journalist and editor. He has written for national publications including The Guardian, The Daily Telegraph, and The Independent, and has covered technology and competition stories in depth. The PCR considers his previous roles have given him a good understanding of the publishing industry and the issues it faces, including in relation to 'big tech' companies. He considers his industry experience will allow him to represent publishers' best interests and stand in the shoes of the PCMs when making decisions in conduct of the matter.
- b. The PCR has engaged a group of advisers with expertise and experience in competition law, technology and data, econometrics and industry experience in digital and programmatic advertising.

- c. The PCR is not a member of the Class and does not have any material interest that is in conflict with the interests of class members.
- d. The PCR is aware that an application for a Collective Proceedings Order was filed on 30 November 2022 on behalf of Mr Claudio Pollack. The PCR contends he is the most suitable applicant to act as the class representative in respect of the Claims and will adduce evidence and make submissions on this issue in due course.
- e. The PCR will be able to pay the Proposed Defendants' recoverable costs if ordered to do so.
- f. The PCR has a litigation plan for the proceedings.
- g. The claims are suitable for inclusion in collective proceedings and are brought on behalf of an identifiable class of persons. It is possible to identify, using the class definition set out by the PCR, whether any person falls within the class based on objective and straightforward information. The PCR contends that any person should be able to identify whether they fall within the Class by answering the following questions:
 - a. Did you at any point during the Claim Period sell open display ad impressions on any website and/or app?
 - b. Did you use intermediation services provided by any intermediary to make any such sales?
 - c. Were you UK domiciled (i) at the time of making any such sales; and (ii) at the domicile date?

The PCR anticipates that Google will hold customer records relevant to the Claims which will assist in identifying Class Members.

- h. The Claims raise common issues, being the same, similar or related issues of fact or law. The following common issues arise in respect of the Proposed Class: (i) the definition of the relevant economic markets; (ii) whether the Proposed Defendants held a dominant position in the relevant markets during the Claim Period; (iii) whether the Proposed Defendants have abused their dominant positions; (iv) whether any such abuse(s) of dominance by the Proposed Defendants caused Class Members to suffer loss or damage; (v) the quantification of any aggregate award of damages; and (vi) the rate and duration of any interest to be awarded to Class Members.

The relief sought in these proceedings is:

1. Damages on behalf of the Class, to be assessed on an aggregate basis.
2. Interest. The PCR claims simple interest on the losses suffered, at a rate of 8% per annum (or such other rate as the Tribunal may consider appropriate).
3. The PCR's costs.
4. Such further or other relief as the Tribunal may see 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, KC (Hon)

Registrar

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