



## COMPETITION APPEAL TRIBUNAL

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

**Case No: 1596/5/7/23**

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 for damages (the “Claim”) on 22 June 2023, under section 47A of the Competition Act 1998 (the “Act”), by Whitewater Capital Limited (the “Claimant”) against Google LLC Limited and Alphabet Inc. (the “Defendants”). The Claimant is represented by Linklaters LLP, One Silk Street, London EC2Y 8HQ (Reference: Tom Cassels / James Hennah).

The Claim is a follow on claim (in respect of the period 1 March 2012 to 27 June 2017) and a standalone claim (in respect of the period from 28 June 2017 onwards) for abuse of dominance in breach of statutory duty pursuant to Article 102 of the Treaty on the Functioning of the European Union (“TFEU”) and the prohibition contained in section 18 of the Act, arising from and relying on the infringement decision of the European Commission (the “Commission”) dated 27 June 2017 (Case AT.39740 – *Google Search (Shopping)*) (the “Google Shopping Decision”).

The Claimant is a private limited company incorporated in England and Wales and is a subsidiary of Kelkoo Group Limited. In September 2016, the Claimant acquired the assets of Ciao GmbH (“Ciao”), which operated comparison shopping services (“CSSs”) websites in Europe, including the UK. The assets of Ciao acquired by the Claimant included any claim that Ciao might bring against the Defendants, and the Claimant seeks redress in its capacity as assignee of the rights of action of the companies in the Ciao group.

The First Defendant is a wholly-owned subsidiary of the Second Defendant. The Second Defendant is incorporated in Delaware, USA, and is the ultimate parent company of the Google group. The First and Second Defendants are both addressees of the Google Shopping Decision.

According to the Claim, the Google Shopping Decision found that the Defendants occupy a dominant position in 13 national markets (including the UK) for the provision of general search services (the “General Search Market”). The Defendants abused their dominance in the General Search Market by employing practices which produced anti-competitive effects on a neighbouring market for CSSs in 13 national markets (including the UK) (the “Comparison Shopping Market”).

The Claim states that CSSs are specialised search services which allow users to search for products and compare their prices and characteristics across the offers of different online retailers and merchant platforms and by providing links to the websites of those online retailers or merchant platforms in order to purchase the desired product. The abusive practices found by the Google Shopping Decision included: (a) a difference in treatment between the ways in which the results of the Defendants’ own CSS (“Google Shopping”) and competitor CSSs’ results were displayed and positioned; and (b) a difference in treatment in the Defendants’ application of algorithmic adjustments and manual penalties between Google Shopping and CSS competitors. The Google Shopping Decision found that: (i) traffic is a revenue generator on the market; (ii) the Defendants’ abusive practices artificially decreased traffic streams to competitors while increasing traffic volumes for Google Shopping; (iii) the lost traffic constituted a significant proportion of competitors’ traffic volumes, which lost traffic could not be replaced through alternative sources of traffic; and (iv) the Defendants’ practices had anti-competitive effects on the Comparison Shopping Market. In addition, the Google Shopping Decision concluded that the Defendants’ conduct was not objectively necessary or that the exclusionary effect produced may not be counterbalanced/outweighed by efficiency gains that also benefit the consumer.

The Claim also states that the Commission concluded that the infringement began in January 2008 and was continuing as at the date of the Google Shopping Decision. The Commission also concluded that, between January 2008 and 1 October 2015, the First Defendant was liable for the infringement and, after 2 October 2015, the First and Second Defendants were jointly and severally liable for the infringement. The Commission imposed a fine jointly and severally on the Defendants.

According to the Claim, the Defendants unsuccessfully appealed the Commission's relevant findings in the Google Shopping Decision, which were upheld by the judgment of the General Court save in one respect that is not relevant to the Claim. Although the Google Shopping Decision is not a final infringement decision, the Tribunal must have regard to the Google Shopping Decision, pursuant to section 60A(3) of the Act, as being a relevant decision of the Commission made before IP Completion Day and not withdrawn. In the event that the Court of Justice of the European Union dismisses the Defendants' appeal, the Google Shopping Decision will become a final infringement decision, pursuant to Schedule 4 to The Competition (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019 No. 93), as amended by The Competition (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020 No. 1343).

The Claim states that, through the provision of CSSs, Google Shopping and Ciao operated on and competed in the Comparison Shopping Market although Ciao was not active in all the 13 national markets.

The Claimant adopts the product and geographical markets found in the Google Shopping Decision and alleges that the Defendants have at all material times and continue to be in a dominant position in the General Search Market, which they have abused so as to prevent, restrict or distort competition on the Comparison Shopping Market, in particular by: (a) leveraging their position on the General Search Market in order to achieve results in the Comparison Shopping Market which are outside competition on the merits; and (b) favouring their own Google Shopping offering over their competitors (including Ciao) by (i) promoting and displaying Google Shopping results in a more visible and eye-catching fashion than results by other CSSs (such as Ciao); (ii) devising and implementing adjustment algorithms to demote results from competitor CSSs (including Ciao), which the Defendants did not apply to their own Google Shopping results; and (iii) selectively applying manual penalties to their competitors (including Ciao) but not to Google Shopping. The Claimant also alleges that the Defendants favoured and/or self-preferenced Google Shopping results over those of their competitor CSSs (including Ciao) and abusively foreclosed the Comparison Shopping Market and/or excluded competitors (including Ciao) from this market and/or stifled/prevented the ability of competitors in this market (such as Ciao) to compete on the merits.

The Claimant alleges that the Defendants' abusive practices on the General Search Market have had an appreciable effect on trade between Member States and within the UK in the Comparison Shopping Market. In particular, (i) the Defendants gained and diverted significant traffic volumes to its Google Shopping Results; (ii) Ciao's websites suffered dramatic declines in traffic volumes; (iii) the visibility of Ciao's results were demoted; and (iv) Ciao's CSSs were subject to manual penalties. The impact on traffic volumes could not be rectified through alternative traffic sources and this loss of traffic caused a significant reduction in Ciao's revenue.

As a result of the Defendants' alleged conduct and as established by the Google Shopping Decision, the Defendants have breached Article 102 TFEU and section 18 of the Act and have caused, and continue to cause, significant losses to Ciao in the form of loss of profits (comprising loss of profits up to the date of the Claim and future loss of profits) and loss of opportunity or chance to generate past and/or future profits and to achieve or optimise the growth of Ciao's CSS.

The Claimant states that it is entitled to claim in respect of such part of Ciao's loss as has been suffered since March 2012 and seeks:

- (1) Damages, including an award of compound interest.
- (2) Simple interest.
- (3) Further or other relief.
- (4) Costs.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at [www.catribunal.org.uk](http://www.catribunal.org.uk). Alternatively, the Tribunal Registry can be contacted by telephone (020 7979 7979) or email ([registry@catribunal.org.uk](mailto:registry@catribunal.org.uk)). Please quote the case number mentioned above in all communications.

*Charles Dhanowa OBE, KC (Hon)*  
Registrar

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