



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

Case No: 1408/7/7/21

BETWEEN:

**ELIZABETH HELEN COLL**

Class Representative

- v -

**(1) ALPHABET INC.**

**(2) GOOGLE LLC**

**(3) GOOGLE IRELAND LIMITED**

**(4) GOOGLE COMMERCE LIMITED**

**(5) GOOGLE PAYMENT LIMITED**

**(together, “Google”)**

Defendants

---

**ORDER**

---

**UPON** the applications of the parties by letter to the Tribunal dated 5 June 2023

**AND UPON** hearing counsel for the parties at the case management conference on 21 June 2023

**AND UPON** the ruling of the Tribunal on expert evidence and disclosure in these proceedings dated 12 July 2023

**AND UPON** the order of the Tribunal dated 14 July 2023 amending the order of the Tribunal dated 13 April 2023 (“**Amended Confidentiality Ring Order**”)

**IT IS ORDERED THAT:**

**EXPERTS**

**Expert evidence**

1. The Class Representative and Google are each permitted to rely at trial on evidence from:
  - 1.1 **two** expert witnesses with expertise in economics, to address market definition, dominance, abuse, the nature and scope of the class, causation and quantum;
  - 1.2 **one** expert witness with expertise in IT and / or mobile security, to address performance, security, and privacy in connection with the distribution and / or use of software applications, mobile devices, platforms, and / or billing systems;
  - 1.3 **one** expert witness with expertise in the use and / or integration of payment systems in digital marketplaces, including payment processing services, payment-related services, and / or billing systems, including in connection with applications and / or digital content for and on devices and / or platforms;
  - 1.4 **one** expert witness with expertise in accounting, to address the profitability of the Play Store and, if required, quantum; and
  - 1.5 **one** expert witness with expertise in the development, distribution, monetisation and use of apps and / or digital content for and on devices and / or platforms.
2. The Class Representative's application to rely on evidence from an expert in behavioural science is refused, although the Class Representative is not precluded from renewing that application at a later date.
3. As regards the expert evidence referred to in paragraph 1.5 above:

- 3.1 the Class Representative's expert evidence shall be served at the same time as the Class Representative's other expert reports are required to be served;
- 3.2 Google is permitted to serve factual witness statements in reply together with any expert evidence on which it seeks to rely;
- 3.3 the Class Representative shall be entitled to serve expert evidence in reply (including, if so advised, the impact on her previous report of any factual witness statements filed by Google in accordance with paragraph 3.2 above); and
- 3.4 the issue of how such evidence is to be dealt with at trial (including any disputes as to whether it is factual or expert) will be addressed at the pre-trial review.

#### **Expert nominations and issues**

4. By **4pm on 15 September 2023**, the Parties shall exchange:
  - 4.1 a list of the issues which they propose each of their experts shall address; and
  - 4.2 if the parties intend to call a second expert with expertise in economics (for which permission has been granted), they shall also set out the proposed division of issues between the experts in that field of expertise,together, the "**Expert Issues Proposals**".
5. By **4pm on 29 September 2023**, the Parties shall respond to the Expert Issues Proposals made by the other Party for those expert(s).
6. If, by **4pm on 13 October 2023**, the Parties are not able to agree the Expert Issues Proposals, the Parties are to submit any points in dispute to the Tribunal for determination at the Third CMC.
7. Once the Expert Issues Proposals have become final, either by agreement between the Parties or by order of the Tribunal, they shall become the "**Expert Issues**".

## DISCLOSURE

8. The initial process of disclosure (“**Stage 1 Disclosure**”), shall be as follows (the relevant repositories being identified in Google’s Disclosure Report dated 20 February 2023 (“**DR**”), herein “**Repositories**” when referred to):
  - 8.1 Google shall disclose custodial documents for the 44 Custodians set out in Annex 2 to Google’s letter dated 3 May 2023 from Repository 1 without the application of search terms or a prior relevance review:
    - (a) to the extent that such documents are available to be disclosed by such date, by **4pm on 25 August 2023**; and
    - (b) to the extent there is a remaining balance of such documents, that balance to be disclosed by **4pm on 13 September 2023**;
  - 8.2 As regards Repository 2 (extended to encompass documents up to 31 May 2023):
    - (a) Google shall apply the 13 custodians set out in the schedule to Google’s EDQ dated 20 February 2023 (“**EDQ**”) and the search terms set out in the annex to RPC’s letter dated 8 June 2023 (“**8 June Search Terms**”) to Repository 2, and disclose responsive documents subject to a prior relevance and privilege review, by **4pm on 27 October 2023**;
    - (b) the Class Representative and Google shall seek to agree any supplemental custodial collections and supplemental search terms to be applied to those collections and Repository 2 by **4pm on 15 September 2023**. Insofar as any areas of disagreement persist thereafter, the parties will put these to the Tribunal for determination at a one-day case management conference to take place from the first available date following 23 October 2023 to deal with any further issues relating to disclosure, expert issues and any other issues to be determined by the Tribunal (“**Third CMC**”). The custodial collections and search terms that are agreed or determined shall be referred

to as the “**Supplemental Repository 2 Collections**” and the “**Repository 2 Search Terms**” respectively; and

- (c) Google shall apply the Repository 2 Search Terms over Repository 2 and the Supplemental Repository 2 Collections, and disclose responsive documents subject to a prior relevance and privilege review on a rolling basis, and by **4pm on 30 November 2023** unless otherwise agreed or ordered by the Tribunal;

8.3 Google shall disclose responsive documents from Repository 4 to the 8 June Search Terms, subject to a prior privilege and relevance review (insofar as such review has not already been conducted), by **4pm on 25 August 2023**;

8.4 Google shall conduct a relevance review of documents from Repositories 3 and 5-7 and disclose relevant documents by **4pm on 25 August 2023**; and

8.5 as to Repositories 8-11:

- (a) Google shall by **4pm on 18 August 2023** indicate in writing the broad categories of documents that they intend to disclose; and
- (b) Google shall provide disclosure of relevant documents from Repositories 8-11 by **4pm on 25 August 2023** and, to the extent there is a remaining balance of such documents to be disclosed, that balance to be disclosed on a rolling basis as soon as available thereafter and in any event before 2 October 2023.

8.6 Google shall provide “**Stage 2 Disclosure**” in accordance with the following steps:

- (a) the Class Representative shall submit to Google any supplementary disclosure requests following the provision of Stage 1 Disclosure by reference to the issues in the Play Store Proceedings by 4pm on 5 January 2024;

- (b) the parties shall liaise to list a one-day case management conference to take place on the first available date from **12 February 2024**, to adjudicate any outstanding issues relating to disclosure and any other issues to be determined by the Tribunal (“**Fourth CMC**”); and
- (c) Google shall provide the disclosure requested pursuant to the above and / or as ordered at the Fourth CMC by **15 March 2024**.

9. The Stage 1 and Stage 2 Disclosure shall:

9.1 be accompanied by:

- (a) a disclosure statement;
- (b) a table listing the Bates number, date of disclosure, and confidentiality designation pursuant to the Confidentiality Ring Order dated 13 April 2023 (as amended on 14 July 2023) for each document;
- (c) metadata for each document (including standard metadata fields such as the date and time of creation or modification of a document and the author, date and time of sending an e-mail / instant message, in respect of Stage 1 Disclosure from Repository 1 and Repository 4 only the US Production Bates numbers will be applied alongside new Bates numbering, and family relationships between documents, for example identifying whether a document is an attachment to another document);
- (d) identification of the repository from which disclosure is provided; and
- (e) where a redaction to the text is applied, an indication of the reason for the redaction;

9.2 be provided in labelled tranches, marked by reference to the repositories listed in Google’s DR and EDQ; and

9.3 in respect of documents from Google’s financial database and Google Play transactions data: be provided in native format to the extent possible.

### **MARKET STUDY DISCLOSURE**

10. By **3 July 2023**, Google shall disclose its submissions to the CMA Mobile Ecosystem Market Study pursuant to a review for relevance and confidentiality.

### **TRIAL TIMETABLE**

11. Paragraph 21 of the Tribunal’s Order made and drawn on 16 December 2022 is varied as follows:

*“The trial shall be listed to commence on **6 October 2025** with a time estimate of 8 weeks, with 1 week in reserve. The first week shall be a reading week for the Tribunal.”*

### **LIBERTY TO APPLY**

12. There shall be liberty to apply.

**Bridget Lucas KC**  
Chair of the Competition Appeal Tribunal

Made: 15 September 2023  
Drawn: 15 September 2023