COMPETITION APPEAL TRIBUNAL

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

CASE NO. 1606/7/7/23

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 7 September 2023 of an application to commence collective proceedings, under section 47B of the Competition Act 1998 ("the Act"), by Ms Nikki Stopford ("Ms Stopford/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 Collective Proceedings Claim Form ("CPCF") states that these proceedings concern alleged abusive conduct by Google in the online search market and certain adjacent markets concerning mobile device functionality. In particular, they concern practices on Google's part which have secured for it the status of default search provider on practically all mobile devices sold in the UK (and many comparable geographies). According to the CPCF, those practices prevented competitors to Google from securing distribution of their search engines, particularly on mobile devices, enabling Google to secure, strengthen and exploit its dominance in search and reduce competition from its rivals (whether actual or potential). The reduced competition faced by Google in search has enabled Google to increase the costs faced by users of Google's search advertising services. Those higher advertising costs were then passed on to consumers in the form of higher prices for the goods and services supplied by businesses in the UK. The proceedings are brought on an opt-out basis.

The mobile device sector is divided broadly in two, in terms of the operating systems on which the devices run. On the one hand is Google's own "Android" operating system, which Google licenses to third-party device manufacturers (referred to as "OEMs"). On the other hand is Apple's proprietary iOS system, which runs on all Apple devices, but which Apple does not license out to other OEMs. Practically all devices sold by OEMs other than Apple run on Android.

The most effective, or one of the most effective, means for a search engine to secure volumes of online searches on mobile devices is by ensuring that it is the default search engine on the search application or mobile browser pre-installed on the device at the time of sale. Consumers tend in practice not to switch away from the pre-installed defaults, especially on mobile devices.

Google has taken extensive steps in both the Android and iOS sectors of the mobile industry to ensure that its search engine is pre-installed as the default on the vast majority of devices sold in the UK and many comparable geographies. The result is that Google has, by means other than competition on the merits, strengthened its position of dominance (in reality, super-dominance) in online search, with a market share of over 90%, and suppressed competition from its rivals.

A key element of the functionality of a smart mobile device is the "app store", an electronic 'storefront' through which applications ("apps") can be downloaded. Apps account for much device usage and include social media, games, interfaces which enable users to view content, place orders, operate connected technology, and so on. In practice, apps can be downloaded conveniently onto such devices

only via an app store, such that a device operating without an app store would be of little interest to consumers. Google's Play Store was and is the dominant app store for Android devices.

Under arrangements dating from at least 2009, Google only permitted the Play Store to be installed on Android devices if Google's own search app was also installed, together with Google's own browser (Google Chrome), on which Google Search is the default search engine.

Google also required companies manufacturing or selling devices with the Play Store pre-installed to agree to various obligations aimed at preventing the emergence of amendments (known as "forks") of the Android operating system. These latter agreements, known as "Anti-Fragmentation Agreements", prevented OEMs from amending the code underlying the Android system to seek to circumvent its reliance on Google. By these means, Google succeeded in maintaining close control over what had originally been presented as an open-source operating system (which OEMs would otherwise have been free to adapt and develop in accordance with their own requirements).

So far as iOS phones are concerned, Google has entered into agreements with Apple under which Google is awarded the exclusive default search engine status on the browser that is pre-installed on Apple's devices (both mobile devices and desktops/laptops) in return for a share of Google's corresponding mobile search advertising revenues. The payments which Google has made to Apple over the years in return for this exclusive status are very large: in 2021 Google was estimated to have paid Apple $15 billion for default status, or around 20% of its net income.

The PCR submits that the result is that Google has restricted competition by effectively foreclosing access to mobile devices for competing general search providers. Google has done so: (i) (in the case of Android) by leveraging its position as the supplier of the Android operating system (and thus the Play Store) to enter into a network of compulsory pre-installation agreements; and (ii) (in the case of Apple) by buying the default position outright, under arrangements which no competing search supplier could hope to replicate. These arrangements, taken together, tie up the search function on practically all mobile devices in Google's favour and thereby cement Google's broader dominance of search.

In 2015 the European Commission began an investigation into whether the arrangements described above in relation to Android devices amounted to an abuse of Google's dominant position in various product and geographical markets, under Article 102 TFEU. In 2018 the Commission adopted the *Android* Decision against Google (Commission Decision in case AT.40099 *Google Android* of 18 July 2018), imposing the largest fine (in excess of €4 billion) the Commission has ever imposed for an antitrust infringement. The Commission found that the infringement began in 2011, when Google first became dominant in the relevant operating system, app store and search engine markets, and was ongoing at the date of the Decision.

Google appealed the *Android* Decision to the General Court of the European Union, but its appeal in relation to these matters was dismissed by a judgment dated 18 September 2022. Google has now pursued a further appeal to the Court of Justice of the EU. Such further appeals are however limited to points of law only, and it will not therefore be open to Google on that appeal to seek to challenge the factual or economic analysis underlying the judgment of the General Court.

The CPCF states that it follows from the above that, subject to the aforementioned further appeal on a point of law, the claim for damages pursued in these proceedings in relation to Android amount to a follow-on claim arising out of the Commission's *Android* Decision. In relation to that aspect of the present claim, therefore, liability has already been determined against Google, subject only to issues concerning causation and loss (and the outstanding appeal referred to above).

There is no equivalent European Commission Decision concerning Google's arrangements in relation to iOS, as described above. However, those arrangements have come under regulatory attack in both the UK and US.

The proceedings are therefore a 'hybrid' claim, part follow-on (in relation to the *Android* infringement Decision) and part standalone (in relation to the arrangements between Google and Apple).

The PCR's proposed class definition is as follows:

> *All UK-domiciled consumers aged 16 years or over who, since 1 January 2011, purchased goods and/or services from businesses selling in the UK which used search advertising services provided by Google; together with the personal/authorised representative of the estate of any individual who meets that description and was alive on 7 September 2023, but subsequently died.*

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

(1) Ms Stopford has worked for over 25 years in the field of consumer protection. This has included nearly 20 years working for Which?, the UK's leading consumer organisation, rising to the position of Group Director of Research and Publishing. Ms Stopford's background also includes extensive experience in the technology sector. Between 2020 and 2021 Ms Stopford worked in the Digital Futures at Work Research Centre at the University of Sussex Business School before moving to the Resolver Group, a technology business operating in the consumer complaints and dispute resolution sector. She is now the co-founder and CEO of Consumer Voice - a digital content website and consumer community in the UK dedicated to promoting awareness of and engagement with group legal actions. She is a member of the British Standards Institute Standards Policy and Strategy Committee and Chair of its Consumer Forum.

(2) Ms Stopford seeks authorisation to be remunerated for her time at reasonable rates. Her remuneration is not dependent upon the outcome of the proceedings.

(3) Ms Stopford will be assisted in the proceedings by her retained independent experts in the case, Dr Latham and Mr Rosamilia. Ms Stopford has in addition constituted a Consultative Panel to assist her with the conduct of these proceedings. She intends to consult the Panel from time to time as the proceedings progress, in particular on more complex issues or issues of strategy which may arise.

(4) The PCR has prepared a Litigation Plan for the proceedings, which includes: (i) a method for bringing the proceedings on behalf of the Proposed Class Members and for notifying Proposed Class Members of the progress of the proceedings; (ii) a procedure for governance and consultation which takes into account the size and nature of the Proposed Class; and (iii) estimates of and details of arrangements as to costs, fees or disbursements which the Tribunal orders that the PCR shall provide.

(5) The PCR has instructed: (i) an experienced legal team with substantial experience in competition and collective proceedings litigation; (ii) a claims administration company to assist with administering the proceedings and notifying and communicating with the Class Members; and (iii) a public relations team to assist with public relations.

(6) The PCR has adequate funding for the claim. The PCR has entered into a Litigation Funding Agreement with third-party funder to enable her to be able to pay her own costs of the proceedings.

(7) The PCR has also obtained an after- the-event insurance policy.

Further, the CPCF states that:

(a) The claims are suitable for inclusion in collective proceedings and are brought on behalf of an identifiable class of persons, being persons who purchased goods or services from businesses selling in the UK which used search advertising services provided by Google.

(b) The infringement issues in this case are limited to the iOS part of the claim, as the infringement in relation to Android has already been established (subject to the outstanding appeal on a point of law and the question whether the class suffered damage as a result of the infringement such that the cause of action will have accrued). The issue as to whether it was a breach of EU and UK competition law for Google to purchase default status for its search engine on all iOS devices in the way that it did (and continues to do) is common to the claims by all class members.

(c) The claims are by their very nature suitable to be brought in collective proceedings. There are no other means by which such claims could realistically be pursued, in view of the size of the class and the likely cost of pursuing such claims compared with the likely size of the eventual recovery for any one Claimant (as opposed to the aggregate recoveries for the class as a whole).

(d) Dr Latham's current preliminary estimate of the likely aggregate value of the claims sought, which will of course need to be refined post disclosure, stands at £7.3billion in relation to both Android and iOS, inclusive of simple interest.

(e) The PCR seeks an award of aggregate damages, to be determined on a "top-down" basis by reference to a combination of the overcharge amount and the level of upstream pass-on as determined by the Tribunal, without the Tribunal having to consider or quantify the loss to each individual member of the class.

The relief sought in these proceedings is:

1. A collective proceedings order allowing this claim to proceed as a collective proceeding;

2. Damages.

3. Simple interest;

4. Costs; and

5. Further or other relief.

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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