



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1424/5/7/21 (T)

BETWEEN:

- (1) KELKOO.COM (UK) LIMITED**
- (2) KELKOO SAS**
- (3) JAMPLANT LIMITED**
- (4) KELKOO INTERNET S.L.**
- (5) KELKOO AS**
- (6) KELKOO SRL**
- (7) KELKOO NETHERLANDS BV**
- (8) KELKOO AB**
- (9) KELKOO DEUTSCHLAND GmbH**
- (10) KELKOO DANMARK A/S**
- (11) JOLT LIMITED**

Claimants

- v -

- (1) GOOGLE UK LIMITED**
- (2) GOOGLE IRELAND LIMITED**
- (3) GOOGLE LLC**

Defendants

ORDER

UPON the confidentiality order dated 8 July 2021 (the “**Confidentiality Order**”) providing, *inter alia*, for confidential information to be designated as Confidential Information or External Adviser Only Confidential (“**EAO**”) Information (as those terms are defined in the Confidentiality Order)

AND UPON the Tribunal’s Order made on 23 March 2023 directing, *inter alia*, that the Defendants disclose the documents constituting the Pre-Decision Commission File to the Claimants

AND UPON the Defendants’ agreement that they will disclose to the Claimants all the documents and data listed in rows 1 to 29, 31 to 36 and 38 to 40 of Schedule 1 to this Order (including certain documents and data that have or will be disclosed in Case 1589/5/7/23(T) *Infederation Ltd v Google Inc. and Others* (the “**Foundem Proceedings**”)) (the “**Defendants’ Agreed Disclosure**”)

AND UPON the Claimants’ agreement that they will disclose to the Defendants all the documents and data listed in Section 1 of Schedule 2 to this Order

AND UPON considering the Claimants’ application for disclosure dated 14 July 2023 supported by the First Witness Statement of Mr James Hennah (the “**Claimants’ Disclosure Application**”), and the Defendants’ response as contained in the Fourth Witness Statement of Mr Stephen Wisking

AND UPON considering the Claimants’ application dated 14 July 2023 to amend their Amended Particulars of Claim supported by the First Witness Statement of Mr Hennah (the “**Amendment Application**”) and the Defendants’ response as contained in the Fourth Witness Statement of Mr Wisking

AND UPON considering the Defendants’ application for disclosure dated 14 July 2023, supported by the Third Witness Statement of Mr Wisking and the Claimants’ response as contained in the Second Witness Statement of Mr Hennah

AND UPON hearing Counsel for the Claimants and Counsel for the Defendants at the case management conference held on 26 July 2023

IT IS ORDERED THAT:

Disclosure by the Defendants

1. Within five working days of the date of this Order, the Defendants shall disclose and give inspection to the Claimants of the Post-Decision Commission File Documents as defined at in row 30 of Section (c) of Schedule 1 to this Order.
2. On a *pro tem* basis, the documents disclosed pursuant to paragraph 1 of this Order which are marked as "EXTERNAL LEGAL EYES ONLY" will be disclosed on the basis that they will be accessible only to External Adviser Only Confidentiality Club Members (as defined in the Confidentiality Order) who are not employed by the

Claimants, such documents otherwise to be held on the terms concerning External Adviser Only Confidential Information set out in the Confidentiality Order. For the avoidance of doubt, the Claimant will have leave to apply for any document marked as "EXTERNAL LEGAL EYES ONLY" to be redesignated to a lower level of confidentiality under the Confidentiality Order.

3. To the extent that any of the Post-Decision Commission File Documents are disclosed pursuant to paragraph 2 above, the Defendants shall, insofar as provided in the Foundem Proceedings, provide a colour highlighted version so as to identify the commercially sensitive third party, Confidential and EAO Information in different colours and, at the same time, provide a redacted Confidential or non-confidential version of each such document.
4. By 4pm on 22 September 2023 or, if later, within 5 working days of the relevant document or documents being disclosed and/or provided in the Foundem Proceedings, the Defendants shall disclose and give inspection to the Claimants of (i) the Defendants' Agreed Disclosure; and (ii) insofar as they would not fall to be disclosed pursuant to paragraph 1 above, the documents provided by the European Commission to Google on or after 27 June 2017 (including any attachments, documents, and enclosed supplementary information) concerning: (a) how Google proposed to bring the infringements to an end; and (b) the implementation of the Remedy / Compliance Mechanism.
5. By 4pm on 19 October 2023, the Defendants shall disclose and give inspection to the Claimants of the Penalty Server data as defined at row 37 of Section (c) of Schedule 1 to this Order.
6. Subject to paragraph 2 of this Order, documents and/or data containing Confidential Information which are disclosed by the Defendants shall be disclosed pursuant to the terms of the Confidentiality Order.
7. In giving disclosure and inspection, the Defendants shall be permitted to withhold from inspection any documents (or parts of documents) over which they are entitled to assert privilege.

8. The Claimants' Disclosure Application is otherwise dismissed, without prejudice to the right of the Claimants to bring further disclosure applications in due course.

Disclosure by the Claimants

9. By 4pm on 27 November 2023, the Claimants shall, following a reasonable search, identify documents and/or data responsive to the categories in Section 1 of Schedule 2 to this Order for the period from 1 January 2006 to the date of this Order, and disclose and give inspection to the Defendants of those documents and/or data. The Claimants shall provide a disclosure statement in respect of this disclosure by the same date.
10. By 4pm on 19 October 2023, the Claimants shall, following a reasonable search, identify documents and/or data responsive to the categories in Section 2 of Schedule 2 to this Order for the period 1 January 2006 to the date of this Order, and disclose and give inspection to the Defendants of those documents and/or data. The Claimants shall provide a disclosure statement in respect of this disclosure by the same date.
11. Documents and/or data containing Confidential Information which are disclosed by the Claimants pursuant to paragraphs 9 and 10 of this Order shall be disclosed pursuant to the terms of the Confidentiality Order.
12. In giving disclosure and inspection, the Claimants shall be permitted to withhold from inspection any documents (or parts of documents) over which they are entitled to assert privilege.

Pleading amendments

13. The Amendment Application is adjourned.
14. By 4pm on 2 August 2023, the Claimants shall write to the Defendants requesting information in respect of the Defendants' alleged use of certain algorithms, manual penalties, and other techniques which it appears to the Claimants that the Defendants used to reduce the prevalence of comparison shopping sites ("CSSs") on Google search engine results pages ("CSS Techniques"). The Claimants shall identify the basis for

that request including, where appropriate, references to the documents disclosed by the Defendants to the Claimants to date.

15. By 4pm on 27 October 2023, the Defendants shall file and serve a statement or statements, each verified by a statement of truth, addressing the requests for further information in relation to the CSS Techniques made by the Claimants pursuant to paragraph 14 above.

General matters

16. Costs in the case.
17. The parties have liberty to apply.

Justin Turner KC
Chair of the Competition Appeal Tribunal

Made: 19 September 2023
Drawn: 20 September 2023

SCHEDULE 1 – SPECIFIC DISCLOSURE BY THE DEFENDANTS

The Defendants shall disclose the following documents:

(a) Relevant documents

No.	Reference Document	Page No. / Footnote No. in Reference Document	Document description and date (where known)
1.	FTC Staff Memo	20 / 102	GOOG-Texas-1486915-70
2.	FTC Staff Memo	24 / 119	GOOG-Texas-0227159-66 (2008)
3.	FTC Staff Memo	24 / 119	GOOG-Texas-0236963-65 (2008)
4.	FTC Staff Memo	24 / 121	GOOG-Texas-0214339 (2008)
5.	FTC Staff Memo	26 / 138	GOOGLR-00162615-17 (2009)
6.	FTC Staff Memo	26 / 138	GOOGMANB-000055473-76 (2008)
7.	FTC Staff Memo	26 / 138	GOOGMANB-000056049-54 (2008)
8.	FTC Staff Memo	26 / 138	GOOGTexas-0214409-11 (2008)
9.	FTC Staff Memo	26 / 138	GOOG-Texas-0178597-607 (2008)
10.	FTC Staff Memo	29 / 154	GOOGSING-000014116-17 (2006)
11.	FTC Staff Memo	29 / 156	GOOGSING-000092530-42 (2011)
12.	FTC Staff Memo	29 / 156	GOOGSING 000091277-88 (2011)
13.	FTC Staff Memo	29 / 161	GOOG-Texas-0214361-62 (2009)
14.	FTC Staff Memo	39 / 224	GOOGBRAD-000049034-35 (2010)

15.	FTC Staff Memo	39 / 225	GOOG-Texas-1039100-101 (2010)
16.	FTC Staff Memo	39 / 226	GOOG-Texas-1012889-92 (2010)
17.	FTC Staff Memo	79 / 457	GOOG-Texas-0213904-08 (2009)
18.	FTC Staff Memo	83 / 473	Google Narrative Interrogatory Response
19.	FTC Economist Memo	15 / 33	Salinger, Michael A., Robert J. Levinson, and Elizabeth X. Wang, "Google's Products Universal Search Result: Rater Reviews and Relative Triggering," Charles River Associates, July 2012
20.	Antitrust Subcommittee Documents	187 / 1127	GOOG-HJC-01230599 8 December 2004

(b) Transcripts of depositions or oral testimony

No.	Reference Document	Page No. / Footnote No. in Reference Document	Document description and date (where known)
21.	FTC Staff Memo	14 / 58 29 / 157 67 / 378 83 / 475	Sergey Brin testimony <i>Unknown</i>
22.	FTC Staff Memo	14 / 58 15 / 67 16 / 76	Eric Schmidt testimony <i>Unknown</i>
23.	FTC Staff Memo	21 / 112 24 / 125 26 / 135 26 / 136	Marissa Mayer testimony <i>Unknown</i>
24.	FTC Staff Memo	37 / 217 38 / 220	Goodrow testimony <i>Unknown</i>

		40 / 233 40 / 234	
25.	FTC Staff Memo	83 / 475	Nicholas Fox Transcript

(c) Documents disclosed in the Foundem Proceedings

No.	Reference Document	Document description and date (where known)
26.	Order of Mr Justice Roth from the Second CMC dated 15 October 2014	Documents assessing the impact of introducing Google Product Search in Universal Search
27.	Order of Mr Justice Roth from the Second CMC dated 15 October 2014	Universal Search Launch Reports
28.	Order of Mr Justice Roth from the Second CMC dated 15 October 2014	Documents relating to the Panda allegations (disclosed in line with search terms set out in a letter from Bristows dated 8 August 2014)
29.	Order of Mr Justice Roth from the Second CMC dated 15 October 2014	Confirmation of whether the recommendations put forward in the Product Search Universal Search Launch Reports were actioned or rejected by Google's Search Quality Launch Committee
30.	Order of Mr Justice Roth dated 16 May 2023	The documents provided by Google to the European Commission on or after 27 June 2017 concerning: (a) how Google proposed to bring the infringements to an end; and (b) the implementation of the Remedy / Compliance Mechanism. Such documents shall comprise all responses to Commission queries and requests for information, as well as the quarterly monitoring (but not the weekly data) reports Google has provided to the European Commission pursuant to Recital 704 of the Shopping Decision (together, the " Post-Decision Commission File Documents ")
31.	Order of Mr Justice Roth dated 16 May 2023	GOOGLR-00297666

32.	Order of Mr Justice Roth dated 16 May 2023	GOOG-Texas-0196298
33.	Order of Mr Justice Roth dated 16 May 2023	US Federal Trade Commission document CX0031, GOOG-Texas-0221798
34.	Order of Mr Justice Roth dated 16 May 2023	Google, Competitors SxS, 17 December 2008, GOOG-ITA-22-0040231
35.	Order of Mr Justice Roth dated 16 May 2023	Google, Product Search Quality, 27 July 2017 (Annex 45 to Google's application to the General Court)
36.	Order of Mr Justice Roth dated 16 May 2023	The 30 September 2008 strategy review from Google's Product Search team to Google's Executive Management Group
37.	Order of Mr Justice Roth dated 16 May 2023	In respect of the proprietary tool referred to by the Defendants as the "Penaltyserver", Penaltyserver files (of the type that will be disclosed in the Foundem Proceedings) that mention: (1) Kelkoo.com and/or Kelkoo.co.uk for the period from 1 July 2005 to 30 April 2011; and (2) (i) kelkoo.fr; (ii) kelkoo.de; (iii) kelkoo.es; (iv) kelkoo.it; (v) kelkoo.be; (vi) kelkoo.nl; (vii) kelkoo.se; (viii) kelkoo.dk; and (ix) kelkoo.no; for the period from 1 July 2005 to 31 August 2011 This is " the Penalty Server Data ".
38.	Order of Mr Justice Roth dated 16 May 2023	The Panda design document referred to at the top of page 2 of document GOOG-SHOP-00172195
39.	Order of Mr Justice Roth dated 16 May 2023	The statements Google has been ordered to produce pursuant to paragraphs 14-16 of the 16 th May Order, and which Google agreed to disclosing in its letter dated 7 July 2023.
40.	Order of Mr Justice Roth dated 16 May 2023	All quarterly board letters from 1 January 2002 to 1 January 2008 not included in the Pre-Decision Commission File, insofar as relevant and available.

SCHEDULE 2 – DISCLOSURE BY THE CLAIMANTS

(Paragraph references are to Kelkoo's Amended Particulars of Claim dated 28 June 2022)

Section 1 – Categories of documents and/or data

All relevant documents should be disclosed, including board meeting minutes, investor meeting minutes, senior management documents, business plans, emails, financial accounts or forecasts.

No.	Category
1.	Kelkoo's forecasts for traffic to its CSS and growth of such traffic and analysis of traffic growth, as referred to at paragraph 109B(c).
2.	Kelkoo's forecasts for growth of CSSs generally (by reference to traffic, revenue or any other allegedly relevant metric including any metric by which it is alleged 'popularity' referred to at paragraph 109B(d) would be measured) and analysis of such growth, as referred to at paragraph 109B(e).
3.	Kelkoo's forecasts for revenue and profit growth in respect of its CSS and analysis of revenue and profit growth, as referred to at paragraphs 109B(c) and 109B(d).
4.	Kelkoo's forecasts for growth in its base of merchant (including for the avoidance of doubt 'online retailers' and 'direct retailers') ¹ relationships, as referred to at paragraph 109A(d), and analysis of such growth.
5.	Kelkoo's plans to expand its CSS into new products, sectors and formats and territories, as referred to at paragraph 109D(b). whether or not such plans were implemented, and the reasons why.

¹ See e.g. APoC, paragraphs 33ff.

6.	Kelkoo's plans to enter and expand its CSS in new national markets (including but not limited to the United States and the " <i>new markets in South East Asia</i> " referred to at paragraph 49.a of Kelkoo's Response to Google's RFI dated 25 October 2022), and paragraphs 109B(d) and 109D(b)). whether or not such plans were implemented, and the reasons why.
7.	Kelkoo's actual or planned investment into its CSS for the purposes of entering and expanding its CSS into new national markets (including but not limited to translation and developing country-specific code), including but not limited to the United States and the " <i>new markets in South East Asia</i> " (referred to above).
8.	Kelkoo's plans to enter and expand on neighbouring markets to the alleged Comparison Shopping Market (included but not limited to Kelkoo's travel business as referred to at paragraph 51 of Kelkoo's Response to Google's RFI dated 25 October 2022), as referred to at paragraphs 109B(d) and 109D(b), whether or not such plans were implemented, and the reasons why.
9.	Kelkoo's plans to implement or assessment of new pricing structures in respect of its CSS, as referred to at paragraph 109B(d), whether or not such plans were implemented, and the reasons why.
10.	Kelkoo's actual investments in its CSS offering (including but not limited to its user facing proposition) and, as referred to at paragraph 109B(c), plans for investments in the same, whether or not such plans were implemented, and the reasons why.
11.	Insofar as not covered above, documents relating to the CSS offering that identify (i) operational issues, (ii) user feedback and (iii) changes in the underlying technology supporting the CSS.
12.	[NOT USED]
13.	Kelkoo's plans for the expansion of its partner business, as referred to at paragraph 109A(d), whether or not such plans were implemented, and the reasons why.
14.	Kelkoo's forecasts for revenue growth in respect of its partner business and analysis of such growth, as referred to at paragraph 109B(c).

15.	[NOT USED]
16.	Profit opportunities in respect of Kelkoo's 'publisher advertising services' allegedly lost, as referred to at paragraph 109D(b).
17.	Based on historical projections, what Kelkoo's base of consumers would have been and in what periods, as referred to at paragraph 109A(d).
18.	Insofar as not covered above, Kelkoo's plans to expand into and/or grow new service lines, as referred to at paragraph 109A(d).
19.	Insofar as not covered above, Kelkoo's plans to reduce its operating costs, as referred to at paragraph 109B(c), whether or not such plans were implemented, and the reasons why.
20.	Insofar as not covered above, Kelkoo's plans to grow other product offerings, as referred to at paragraph 109A(d), whether or not such plans were implemented, and the reasons why. and
21.	Insofar as not covered above, Kelkoo's plans for actual investments in its partner business and, as referred to at paragraph 109B(c), plans for investments in the same, whether or not such plans were implemented, and the reasons why.
22.	Redundancies, restructurings and other mitigating steps undertaken by Kelkoo, as referred to at paragraph 109D(d), including the reasons for such steps and their impact.
23.	Insofar as not covered above, Kelkoo's valuation of relevant shareholdings, how these valuations changed overtime, and the basis for and source of such valuations.

Section 2 – Categories of documents and/or data relating to Kelkoo's traffic and financial position

No.	Category
1.	Traffic: Kelkoo's monthly traffic, split by source or 'leads' including but not limited to spontaneous leads, SEO leads (Google and others e.g. Bing), SEM leads (Google and others e.g. Bing) and publisher leads (as referred to at paragraph 33E). This data should be provided in respect of all websites in respect of which Kelkoo is claiming losses, including those listed at paragraph 3.c. of Linklaters letter of 25 November 2022.
2.	Management accounts: The management accounts or equivalent periodic financial reports prepared by or for Kelkoo's management, board or equivalent, (e.g. on a monthly, quarterly or annual basis) and inclusive of a profit & loss report and a balance sheet, as well as the following financial data to the extent not covered by Kelkoo's management accounts:
a)	<u>Revenue:</u> Kelkoo's monthly revenue, broken down by:
i)	cost-per-click (" CPC ") or revenue per lead (" RPL ") i.e., charges to merchants when a user clicks on a link to a merchant's website, as referred to at paragraphs 33 and 33D, split by source or 'leads' including but not limited to spontaneous leads, SEO leads, SEM leads and publisher leads;
ii)	Cost-per-acquisition (" CPA ") i.e. charges to merchants for purchases completed by a user on a merchant's website, as referred to at paragraph 33, split by source or 'leads' including but not limited to spontaneous leads, SEO leads, SEM leads and publisher leads;
iii)	cost-per-mille (" CPM ") i.e. charges to advertisers for advertisements placed on Kelkoo's CSS, as referred to at paragraph 33;
iv)	income received from online advertising services, as referred to at paragraph 33; and
v)	any other revenue.

b)	<u>Costs</u> : Kelkoo's monthly costs, broken down by:
i)	per-click costs i.e. charges to Kelkoo when a user clicks on an advertisement, including but not limited to advertisements on a publisher's webpage, other websites or Kelkoo's CSS and all other per-click costs that Kelkoo incurred; and
ii)	any other costs that are not incurred per-click, broken down by source (including but not limited to marketing costs and development costs).
c)	<u>Profit</u> : Kelkoo's monthly profit, broken down by:
i)	profit-per-click earned by Kelkoo, split by source or 'leads' including but not limited to spontaneous leads, SEO leads, SEM leads and publisher leads; and
ii)	any other profit earned and not measured per-click.