



**IN THE COMPETITION  
APPEAL TRIBUNAL**

Case No: 1589/5/7/23 (T)

BETWEEN:

**INFEDERATION LIMITED  
("Foundem")**

Claimant

- v -

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

Defendants

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

AND BETWEEN:

**(1) KELKOO.COM (UK) LIMITED  
(2) KELKOO SAS  
(3) JAMPLANT LIMITED  
(4) KELKOO INTERNET SL  
(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  
(together "Kelkoo")**

Claimants

- v -

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

Defendants

AND BETWEEN:

**WHITEWATER CAPITAL LIMITED**  
**(“Ciao”)**

Claimant

- v -

**(1) GOOGLE LLC**  
**(2) ALPHABET INC**

Defendants

AND BETWEEN:

**(1) CONNEXITY UK LIMITED**  
**(2) CONNEXITY EUROPE GMBH**  
**(3) CONNEXITY, INC.**  
**(4) PRICEGRABBER.COM LIMITED**  
(together “Connexity”)

Claimants

- v -

**(1) GOOGLE UK LIMITED**  
**(2) GOOGLE IRELAND LIMITED**  
**(3) GOOGLE LLC**  
**(4) ALPHABET INC**

Defendants

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**ORDER FOR DIRECTIONS**

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**UPON** the Order of His Honour Judge Johns KC dated 10 November 2021 transferring the proceedings *Kelkoo.com (UK) Limited & Ors. v. Google LLC & Ors.* (the “**Kelkoo Proceedings**”) to the Competition Appeal Tribunal (“**CAT**”)

**AND UPON** the Order of Mr Justice Roth dated 16 May 2023 transferring the proceedings *Infederation Limited v. Google LLC & Ors.* (the “**Foundem Proceedings**”) to the CAT

**AND UPON** Ciao filing its Claim Form dated 21 June 2023 and supporting documents in *Whitewater Capital Limited v. Google LLC & Anor.* (the “**Ciao Proceedings**”) at the CAT

**AND UPON** the Order of Master Kaye dated 11 March 2024 transferring the proceedings *Connexity, Inc. & Ors. v. Google UK Limited & Ors.* (the “**Connexity Proceedings**”) to the CAT

**AND UPON** the Foundem Proceedings, the Kelkoo Proceedings, the Ciao Proceedings and the Connexity Proceedings being referred to herein as the “**UK Shopping Proceedings**”

**AND HAVING REGARD TO** Google LLC being a Defendant in all of the UK Shopping Proceedings (the Defendants being referred to in this order separately and jointly as “**Google**”)

**AND HAVING REGARD TO** the elements of the Foundem Proceedings, the Kelkoo Proceedings, the Ciao Proceedings and the Connexity Proceedings which relate to and arise from the European Commission Decision in Case AT.39740, *Google Search (Shopping)*, of 27 June 2017 (the “**Google Shopping Decision**”) and the judgment of the General Court of the European Union of 10 November 2021 in Case T-612/17, *Google and Alphabet v. Commission (Google Shopping)* (the “**General Court Judgment**”)

**AND HAVING REGARD** to Google LLC and Alphabet Inc.’s appeal of the General Court Judgment in respect of their application to annul the Google Shopping Decision (the “**Shopping Appeal**”) which was heard by the Court of Justice of the European Union (the “**CJEU**”) in September 2023, whose judgment (the “**CJEU Judgment**”) has not yet been handed down

**AND HAVING REGARD** to the elements of the Kelkoo Proceedings and the Connexity Proceedings which relate to and arise from the Commission Decision in Case AT.40411, *Google Search (AdSense)*, of 20 March 2019 (the “**Google AdSense Decision**”)

**AND UPON** the Order of the High Court in the Foundem Proceedings dated 26 September 2013 (as amended) (the “**Foundem Confidentiality Order**”) providing for confidential information to be designated as Confidential Information or Legal Eyes Confidential Information, and providing for the creation of a Confidentiality Club and a Legal Eyes Confidentiality Club

**AND UPON** the confidentiality order in the Kelkoo Proceedings dated 8 July 2021 (as amended) (the “**Kelkoo Confidentiality Order**”) providing for confidential information to be designated as Confidential or External Adviser Only (“**EAO**”) Confidential Information, and providing for the creation of a Confidentiality Club and an EAO Confidentiality Club

**AND UPON** the application by Foundem dated 5 March 2024 for disclosure and/or provision of information by Google in the Foundem Proceedings (the “**Foundem Specific Disclosure Application**”)

**AND UPON** Google having agreed to provide certain disclosure and Foundem withdrawing aspects of its application prior to the Case Management Conference

**AND UPON** hearing Counsel for each of Foundem, Kelkoo, Ciao, and Connexity and Google at a Case Management Conference held on 26 March 2024

**AND HAVING REGARD TO** the CAT's powers under the Competition Appeal Tribunal Rules 2015 (S.I. No. 1648 of 2015) (the "**CAT Rules**")

**IT IS ORDERED THAT:**

**FORUM**

1. Pursuant to rules 52 and 18 of the CAT Rules, the forum of the Ciao Proceedings is England and Wales.

**JOINT CASE MANAGEMENT**

2. The UK Shopping Proceedings shall be jointly case managed.
3. Evidence in one set of the UK Shopping Proceedings shall stand as evidence in the others so far as relevant.
4. Documents disclosed in one set of the UK Shopping Proceedings shall be disclosed in the other sets of proceedings, in accordance with the terms of the order establishing a common confidentiality ring across the UK Shopping Proceedings dated 15 May 2024.

**AMENDMENT OF THE PLEADINGS**

5. Following the CJEU Judgment, all parties in the UK Shopping Proceedings, if so advised, shall have liberty to amend their pleadings. On the premise that the Claimants serve amended pleadings, the following timetable shall apply:
  - (a) Within one month of the CJEU Judgment being handed down, excluding the month of August, the Claimants shall file and serve any amended Particulars of Claim on Google;
  - (b) Within two months following service of such amended Particulars of Claim, excluding the month of August, Google shall file and serve any amended Defence(s); and

- (c) Within three weeks following the service of such amended Defence(s), excluding the month of August, the Claimants shall file and serve any amended Replies.
6. Paragraph 5 above is without prejudice to the parties' rights subsequently to contend that aspects of such amendments are illegitimate and should not be permitted to stand.

### **PRELIMINARY ISSUE TRIAL**

7. A preliminary issue trial shall be listed for the Hilary Term of 2025, not before the week commencing 3 March 2025, with a time estimate of 3 to 4 days.
8. The purposes of the preliminary issue trial will be to determine (insofar as there is a dispute between the parties):
- (a) which recitals of the Google Shopping Decision bind the CAT; and
  - (b) what those binding recitals mean.
9. The following timetable shall apply:
- (a) By the same deadline as set by paragraph 5(b) above, all Claimants shall file and serve joint submissions setting out their position about which of the recitals (and/or parts of recitals) in the Google Shopping Decision bind the CAT and, insofar as necessary, what those recitals mean;
  - (b) By the same deadline as set by paragraph 5(c) above, Google shall file and serve submissions setting out its position about which of the recitals in the Google Shopping Decision bind the CAT and, insofar as necessary, what those recitals mean; and
  - (c) The parties shall simultaneously exchange skeleton arguments by 4pm on the date 2 weeks prior to the first day of the preliminary issue trial.

## **EXPERTS**

10. By 4pm on 30 September 2024, the parties shall exchange the names of appointed experts in the following areas:
  - (a) competition economics;
  - (b) comparison shopping services / vertical internet search markets; and
  - (c) search engine optimisation.
11. In relation to each such area, the Claimants will endeavour to agree joint experts. If they are unable to agree joint experts, the Claimants will provide the Tribunal and Google with an explanation of their position in advance of the CMC referred to in paragraph 14 below.

## **SPLIT TRIAL**

12. The issues arising in these proceedings shall be split, with the following common issues in the UK Shopping Proceedings to be determined first (the “**First Trial**”):
  - (a) whether, on the assumption as to what the relevant markets were and that Google was and remains dominant on the relevant markets as alleged, it abused that dominant position, and if so, in what respects and over what periods; and
  - (b) the appropriate counterfactual, had Google complied with applicable competition laws over the entire period of the infringement or infringements as found in the Google Shopping Decision or by the Tribunal.
13. The window for hearing the First Trial will be fixed at the Michaelmas CMC (defined at paragraph 14 of this Order), with the expectation that this will take place prior to the end of the Trinity Court term 2026.

## **FURTHER CASE MANAGEMENT CONFERENCE**

14. A CMC shall be listed on the first mutually convenient date between 11 and 29 November 2024, with a time estimate of 1 day (the “**Michaelmas CMC**”), to consider directions until the First Trial.

## **DISCLOSURE**

15. By 4pm on 16 April 2024, Google shall search for, disclose in the Foundem Proceedings and produce for inspection to Foundem accessible revenue data for product listing ads as shown in the Shopping Unit on the Google Search results page and for ads on the Google Shopping property, for the period 1 January 2017 to 30 September 2017 in respect of each of Germany, Spain, France, Italy, the Netherlands and the United Kingdom, on a monthly basis.
16. Save as set out at paragraph 15 above and in the Consent Order made on 15 March 2024, the remaining parts of the Foundem Specific Disclosure Application which have not been withdrawn are refused.

## **STAY OF ADSENSE CLAIMS**

17. The aspects of Kelkoo’s and Connexity’s claims based on the Google AdSense Decision shall be stayed and will not form part of the First Trial.

## **FURTHER MATTERS**

18. Costs in the cases.
19. There be liberty to apply.

**The Honourable Mr Justice Roth**  
Chair of the Competition Appeal Tribunal

Made: 26 March 2024  
Drawn: 15 May 2024