



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1378/5/7/20
1408/7/7/21

BETWEEN:

(1) EPIC GAMES, INC.

(2) EPIC GAMES ENTERTAINMENT INTERNATIONAL GMBH

Claimants (together, “Epic”)

- v -

(1) ALPHABET INC.

(2) GOOGLE LLC

(3) GOOGLE IRELAND LIMITED

(4) GOOGLE COMMERCE LTD

(5) GOOGLE PAYMENT LIMITED

Defendants

(the “Epic Proceedings”)

AND BETWEEN:

(1) ELIZABETH HELEN COLL

Class Representative

- v -

(1) ALPHABET INC.

(2) GOOGLE LLC

(3) GOOGLE IRELAND LIMITED

(4) GOOGLE COMMERCE LTD

(5) GOOGLE PAYMENT LIMITED

Defendants

(the “Coll Proceedings”)

ORDER

UPON the Tribunal's Order dated 15 May 2024 made in the Epic Proceedings and the Coll Proceedings providing for partial consolidation of the proceedings (the **Consolidation Order**)

AND UPON the Tribunal's Confidentiality Ring Order dated 15 May 2024 made in the Epic Proceedings and the Coll Proceedings (the **Composite CRO**), to Schedule 1 of the Composite CRO (the **Epic Proceedings CRO**)

AND UPON reading Epic's application of 2 August 2024 and supporting evidence seeking permission to amend the Re-re-Amended Claim Form in the Epic Proceedings (**Epic's Application**) and the draft Re-re-re-Amended Claim Form annexed thereto

AND UPON reading the Defendants' application of 6 September 2024 (**Google's Application**) and the Fifth Witness Statement of David Michael Cran dated 6 September 2024 (**Cran 5**) in support of Google's Application

AND UPON hearing Counsel for each of Epic and the Defendants at the case management conference directed by the Tribunal on 7 October 2024

IT IS ORDERED THAT:

1. Epic has permission to amend its Re-re-Amended Claim Form in the Epic Proceedings in the form annexed to Epic's Application, which must be filed and served by 5pm on 11 October 2024.
2. The Defendants have permission to amend their Defence in the Epic Proceedings in response to the amendments introduced by the Re-re-re-Amended Claim Form, which must be filed and served by 5pm on 8 November 2024 (the **Re-Amended Defence**).
3. Epic has permission to amend its Reply in the Epic Proceedings in response to the amendments introduced by the Re-re-re-Amended Claim Form and Re-Amended Defence, which must be filed and served by 5pm on 22 November 2024.

4. Epic shall pay the Defendants' costs of and occasioned by the amendments, to be assessed if not agreed.

Directions arising from Epic's Application

5. Epic shall provide the following further disclosure by 14 October 2024, save that, insofar as any material contains any Non-Party Highly Confidential Material, these documents will be produced as soon as possible after any issues relating to the Non-Party Highly Confidential Material have been resolved and in any event by 25 October 2024, accompanied by an appropriate disclosure statement and a list of documents:
 - (a) all documents produced by Epic in response to the Notice to Produce dated 21 March 2024 in *Epic Games, Inc & Anor & Google LLC & Ors* (NSD 190 of 2021) (the **Australian Proceedings**); and
 - (b) all documents produced by Epic in response to the Order of the Court dated 26 March 2024 in the Australian Proceedings.
6. Epic shall provide the following further disclosure by 13 November 2024 accompanied by an appropriate disclosure statement and a list of documents:
 - (a) for the period after 20 March 2024 until 31 August 2024, all reports, presentations or memorandums prepared for or provided to Epic's Board of Directors which contain information about the actual or forecasted financial performance of the Epic Games Store;
 - (b) company-wide profit and loss statements, updated as of 31 August 2024;
 - (c) Epic Games Store management reporting documents, updated as of 31 August 2024; and
 - (d) a refreshed version of the dataset previously disclosed by Epic in the Epic Proceedings by way of UK Supplemental Disclosure under bates ID EPIC_GOOGLE_UK_00000015, providing corresponding data through to the end of September 2024, updated to reflect all distribution channels used by Epic and actual commission rates paid by Epic.

7. Epic shall provide a witness statement addressing Epic's general accounting policies and practices and the availability of material responsive to the categories in paragraph 35(a) of Cran 5 relevant to the profitability of the Epic Games Store by 1 November 2024.
8. Epic shall provide the following by 26 February 2025, at the same time as the Defendants file their expert reports and any further factual evidence (if so advised) in the Coll Proceedings, pursuant to paragraph 2.2 of the Tribunal's Order dated 22 May 2024 in the Epic Proceedings and the Coll Proceedings (as amended):
 - (a) a witness statement addressing the outcome of the Claimants' strategy to launch the Epic Games Store on Android at that time; and
 - (b) data showing the number of users of the Epic Games Store on Android in the period between launch on 16 August 2024 and 31 December 2024.
9. The parties will seek to agree the parameters of any further disclosure on the part of Epic (and / or the possibility of mutual disclosure by Google) in relation to the categories of disclosure identified at paragraphs 35(a), (b) and (c) of Cran 5. To the extent the parties cannot reach agreement, the parties will write to the Tribunal on 18 November 2024, setting out any areas of disagreement. Any outstanding differences will be determined if necessary at a half-day hearing to be provisionally listed in the week commencing 2 December 2024, or by the Tribunal on the papers.
10. The Defendants shall have permission to adduce further witness evidence, if so advised, in respect of the amendments introduced by the Re-re-re-Amended Claim Form by 26 February 2025 at the same time as the Defendants file their expert reports and any further factual evidence (if so advised) in the Coll Proceedings, pursuant to paragraph 2.2 of the Tribunal's Order dated 22 May 2024 in the Epic Proceedings and the Coll Proceedings (as amended).
11. The Defendants shall provide to Epic by way of further disclosure those documents disclosed by the Defendants to the Class Representative in the Coll Proceedings:

- (a) that are relevant to Epic's excessive and unfair pricing claim as set out in the Re-re-Amended Claim Form; and
 - (b) that evidence rates of pass-on of service fees / charges / commission rates (and other costs, including alleged overcharges) to consumers.
12. In respect of paragraphs 11(a) and 11(b) above, the Defendants shall provide any datasets by 25 October 2024 and shall provide the remaining disclosure by 13 November 2024.

Partial waiver of collateral use restrictions

13. The Defendants are permitted to:
- (a) review the Claimants' disclosure in the Epic Proceedings (the **Epic Disclosure**) for the purposes of the Coll Proceedings;
 - (b) identify by list material from the Epic Disclosure to be disclosed in the Coll Proceedings, to be limited to (i) material that the Defendants intend to rely on in an expert report by an expert of the Defendants in the Coll Proceedings, or (ii) material that the Defendants intend to or may intend to rely on at the trial in the Coll Proceedings; and
 - (c) use the Epic Disclosure for the purposes of the Coll Proceedings, and rely upon the Epic Disclosure in evidence or at trial in the Coll Proceedings.
14. The Defendants shall use their best endeavours to provide to the Claimants in the Epic Proceedings the list pursuant to paragraph 13(b)(i) above at least 4 weeks prior to the earlier of (i) the date on which the materials in question are to be provided to the Class Representative or (ii) the date on which a document referring to the materials in question is to be provided to the Class Representative.
15. In respect of material referred to at paragraph 13(b)(i) above:
- (a) Epic shall identify any Non-Party Highly Confidential Information and shall notify any third parties accordingly pursuant to paragraphs 18-21 of Schedule 1 of the Composite CRO. To the extent that there are any unresolved issues regarding the

disclosure to the Class Representative of Non-Party Highly Confidential Information contained in the Defendants' expert reports as part of this notification procedure, Epic shall identify the affected material on a line-by-line basis and notify Google of the same by no later than 19 February 2025. Google shall apply any necessary redactions to the affected material and shall provide the reports to the Class Representative with such information redacted.

(b) Epic shall use best endeavours to resolve any outstanding third party objections after 19 February 2025, and shall inform the Defendants as soon as reasonably practicable after any third party confidential information issues are resolved, so that Google may provide lesser redacted copies of the affected materials.

16. In respect of material referred to at paragraph 13(b)(ii) above, the Defendants shall use best endeavours to notify the Claimants no less than 10 weeks before the commencement of trial, of any further documents that the Defendants intend or may intend to rely on at the trial of the Coll Proceedings in October 2025.

17. For the avoidance of doubt, the costs incurred by the Class Representative in reviewing the materials from the Epic Disclosure disclosed to it in the Coll Proceedings pursuant to paragraph 13 above shall not constitute "additional costs" for the purposes of paragraph 5 of the Consolidation Order.

Expert evidence in the Coll Proceedings

18. Disclosure to Epic of expert reports filed in the Coll Proceedings shall be addressed as follows:

(a) As regards the Class Representative's expert reports, the Defendants shall, within 28 days after filing of the Class Representative's expert reports, provide the Class Representative with a copy of each such expert report with any of the Defendants' confidential information highlighted and designated as per the designations in the Epic Proceedings CRO. The Class Representative shall disclose to Epic highlighted and designated copies of the Class Representative's expert reports within 2 days of the Defendants providing the Class Representative with such copies.

- (b) Should, upon the expiry of the 28-day period referred to in paragraph 18(a) above, there be unresolved issues regarding the disclosure to Epic of third party confidential information contained in the expert reports, the Class Representative's expert reports shall be provided to Epic with such information redacted.
 - (c) The Class Representative may seek further information from Google regarding the basis for the proposed confidentiality redactions and, if so advised, may challenge any such designation, pursuant to the confidentiality regime that exists in the Coll Proceedings. Any disputes in this regard shall be referred to the Tribunal.
 - (d) As regards the Defendants' expert reports, the Defendants shall, within 28 days after filing of the Defendants' expert reports, disclose to Epic a copy of each such expert report with any of the Defendants' confidential information highlighted and designated as per the designations in the Epic Proceedings CRO.
 - (e) As regards the Defendants' and Class Representative's experts' joint expert statement, the Defendants shall, within 21 days after filing of the joint statement, disclose to Epic a copy of each such expert report with any of the Defendants' confidential information highlighted and designated per the designations in the Epic Proceedings CRO. Paragraphs (b) and (c) shall apply, *mutatis mutandis*.
19. The Defendants shall have liberty to apply to the Tribunal in respect of the deadlines set out in paragraph 18 above should further time be required, including in respect of any objections from third parties to disclosure of their confidential information to Epic.

Hearsay notices

20. Paragraph 15 of the Consolidation Order is hereby deleted and replaced with the following:

“The parties to the Coll Proceedings and the Epic Proceedings shall file and serve hearsay notices where required by CPR r.33.2 by 4pm on 14 March 2025, and the deadlines for filing and serving hearsay notices where required by CPR r.33.2 as set out at paragraph 8 of the Tribunal's Order of 16 December 2021 in the Coll Proceedings (as amended), and paragraph 10 of the Tribunal's Order made on 6 December 2021 and

drawn on December 2021 in the Epic Proceedings (as amended) are hereby amended accordingly.”

21. Once Google has been served with Epic’s hearsay notices on 14 March 2025, and *vice versa*, the parties shall:
 - (a) identify any Non-Party Confidential Information referred to in the other party’s hearsay notices (insofar as the hearsay notices relate to prior testimony of that party’s own witnesses in *Epic Games Inc. v Google LLC et al.*, Case No. 3:20-cv-05671-JD (the **US Proceedings**) or the Australian Proceedings); and
 - (b) promptly initiate any necessary third party notification procedure pursuant to paragraphs 18 to 21 of Schedule 1 of the Composite CRO.

22. The parties shall share their own hearsay notices and any corresponding underlying material with the Class Representative by 4pm on 4 April 2025, to the extent that such material has not already been made available in the Coll Proceedings. If the parties have identified any third party confidentiality issues that they have not yet been able to resolve pursuant to paragraphs 18 to 21 of Schedule 1 of the Composite CRO:
 - (a) the parties shall notify the other party by no later than 2 April 2025 in respect of any specific Non-Party Highly Confidential redactions that would need to be applied in the interim; and
 - (b) the parties shall then proceed to share their own hearsay notices and any corresponding underlying material with the Class Representative by 4pm on 4 April 2025, with redactions applied to Non-Party Highly Confidential Information only where necessary. The parties will then share non-redacted versions of these materials as soon as practically possible once the relevant confidentiality issues have been resolved.

23. For the avoidance of doubt, the parties to both the Epic Proceedings and the Coll Proceedings are not required to file and serve hearsay notices in accordance with paragraphs 20-22 above, insofar as the material concerned relates to testimony from fact witnesses who both:

- (a) appeared in the US Proceedings or the Australian Proceedings; and
- (b) will also appear as witnesses at trial in the Epic Proceedings and the Coll Proceedings.

Nevertheless, in these circumstances, the parties to both the Epic Proceedings and the Coll Proceedings will agree to include the relevant material concerning the testimony of such fact witnesses from the US Proceedings and/or the Australian Proceedings in the trial bundle.

Liberty to apply

24. The parties shall have liberty to apply in respect of this order.

Costs

25. In respect of paragraphs 5-23 costs in the case.

Bridget Lucas KC
Chair of the Competition Appeal Tribunal

Made: 7 October 2024
Drawn: 23 October 2024