



IN THE COMPETITION
APPEAL TRIBUNAL

Case Nos 1378/5/7/20
1408/7/7/21
1673/7/7/24

B E T W E E N:

- (1) **Epic Games, Inc**
(2) **Epic Games Entertainment International GmbH**
(“Epic”)

Claimants

- and -

- (1) **Alphabet Inc**
(2) **Google LLC**
(3) **Google Ireland Limited**
(4) **Google Commerce Limited**
(5) **Google Payment Limited**

Defendants

(the “Epic Proceedings”)

A N D B E T W E E N:

Elizabeth Helen Coll

Class Representative

- and -

- (1) **Alphabet Inc**
(2) **Google LLC**
(3) **Google Ireland Limited**
(4) **Google Commerce Limited**
(5) **Google Payment Limited**

Defendants

(the “Coll Proceedings”)

A N D B E T W E E N:

Professor Barry Rodger

Class Representative

- and -

- (1) **Alphabet Inc**
(2) **Google LLC**
(3) **Google Ireland Limited**
(4) **Google Asia Pacific Pte Limited**
(5) **Google Commerce Limited**
(6) **Google Payment Limited**
(7) **Google UK Limited**

Defendants

(the “Rodger Proceedings”)

ORDER

UPON the first joint case management conference of the Epic, Coll and Rodger Proceedings on 14 March 2025 (“**JCMC1**”)

AND UPON the second joint case management conference of the Epic, Coll and Rodger Proceedings on 1 May 2025 (“**JCMC2**”)

AND UPON the Tribunal’s part consolidation order dated 15 May 2024 (the “**Epic Consolidation Order**”), which provided for Epic to provide an indemnity for certain additional costs as described in that Order (the “**Epic Indemnity**”)

AND UPON the Tribunal’s joint case management order of 24 March 2024 (the “**JCM Order**”), in particular paragraph 11 ordering the parties to seek to agree the terms of a further proposed indemnity (the “**JCM Indemnity**”), which is as provided below

AND UPON the evidence contained in witness statements filed on behalf of Epic and the Rodger Class Representative (“**Rodger CR**”) in advance of JCMC2, demonstrating proof and security of funds in relation to the JCM Indemnity

AND UPON the Coll Class Representative (“**Coll CR**”) and the Rodger CR agreeing a form of amendment to the Rodger CR’s litigation funding arrangements by way of a side letter approved by the Rodger CR’s litigation funder to be entered into on or around the date of this Order

IT IS ORDERED THAT:

1. Epic and the Rodger CR shall, subject to paragraphs 2 to 4 below, each pay the additional costs of and occasioned by the work done by the Coll CR pursuant to paragraphs 2 to 4 of the JCM Order (the “**Additional Costs**”), subject to an overall cap of £1.5 million each.
2. The Coll CR shall maintain a detailed schedule, including a specific description of the work performed and costs incurred arising from paragraphs 2 to 4 of the JCM Order. The Coll CR shall request payment from Epic and the Rodger CR on a monthly basis and shall provide a copy of such detailed schedule alongside the request:
 - 2.1 Subject to the sub-paragraphs below, each of Epic and the Rodger CR shall pay 50% of the Additional Costs to the Coll CR within 30 days of the agreement by Epic and the Rodger CR to the payment of the Additional Costs.

Where such agreement is not reached and Epic and/or the Rodger CR object and subsequently make an application to the Tribunal pursuant to paragraphs 2.2-2.5 of the Order, Epic and the Rodger CR shall pay any Additional Costs not subject to the application within 30 days of the application being made.

- 2.2 In the event that Epic and/or the Rodger CR objects to the payment request, the relevant party (or parties) must raise an objection in writing within 5 working days of the request. Failure to object within that timeframe shall constitute a waiver of any right to object, and acknowledgment that the requested sums are payable. The parties may extend that timeframe by agreement in writing (including email) without reference to the Tribunal.
- 2.3 If the objection is not resolved by agreement within 10 working days of the request, then each of Epic and/or the Rodger CR has permission to apply to the Tribunal, within 5 working days: (1) for more information to be provided in connection with the request; and/or (2) for the amount payable to be reduced. Failure to apply within that timeframe shall constitute a waiver of the objection and acknowledgment that the requested sums are payable. The parties may extend that timeframe by agreement in writing (including email) without reference to the Tribunal.
- 2.4 The sole bases on which an objection or application may be raised and/or determined in favour of Epic and/or the Rodger CR will be: (1) the information provided in respect of specific cost/s incurred is inadequate; and/or (2) specific cost/s were unreasonably incurred; and/or (3) specific costs do not constitute Additional Costs under paragraph 1 of this Order.
- 2.5 Any application to the Tribunal shall be determined on the papers, unless otherwise ordered by the Tribunal. The Coll CR's costs of that application will be paid in full by the applicant(s) to the Coll CR where that application is unsuccessful. Any application will be deemed unsuccessful if the applicant(s): (1) obtains none of the information for which they have applied; or (2) is ordered by the Tribunal to pay at least 90% of the costs to which the application related. Save as aforesaid, the Tribunal shall have full discretion in respect of orders as to the costs of any application.

- 2.6 If such an application is made, then the time for payment is to be deferred pending resolution of the application (by agreement or order) which will specify if, and if so, when payment is to be made. Any deferral of the time for payment is limited to those specific items of costs which are the subject of the application. Those items of costs which are not the subject of the application will remain payable in accordance with paragraph 2.1 above. Subject to any order to the contrary, if and insofar as the Coll CR is charged reasonable interest by her supplier(s) pursuant to the terms of the supply contract(s), interest will run on all Additional Costs which are agreed or ordered to be paid, and be payable by Epic and/or the Rodger CR, at the rate and for the period properly charged by the supplier(s).
- 2.7 For the avoidance of doubt, nothing in this paragraph 2 shall prevent Epic and the Rodger CR from seeking repayment of Additional Costs in accordance with paragraph 4.
3. The present Order shall be without prejudice to the Tribunal's discretion pursuant to Rule 104 to determine how the Additional Costs should ultimately be borne in the Coll Proceedings. For the avoidance of doubt:
- 3.1 By way of example, and without prejudice to the generality of the foregoing, an order relating to the Additional Costs may result in a proportion of those Additional Costs paid to the Coll CR by Epic and the Rodger CR being repaid to Epic and the Rodger CR (and/or being met by the Defendants), including, but not limited to circumstances in which, the Additional Costs are unreasonably incurred.
- 3.2 Unlike the position under the Epic Indemnity, the Tribunal will not exercise its discretion to order repayment of the Additional Costs to Epic and/or the Rodger CR on the basis that the costs (or any of them individually) relate to disclosure or factual evidence of material benefit to the Coll CR in support of her case.
- 3.3 Any repayment of the Additional Costs by the Coll CR will be paid 50% to each of Epic and the Rodger CR. Any issue between Epic and the Rodger CR as to whether either of them should receive more or less than 50% of any

repayment is to be resolved between those parties (with leave to make an application to the Tribunal if agreement cannot be reached), without any involvement or cost to the Coll CR.

- 3.4 The Coll CR shall not be required to: (1) repay any Additional Costs unless and until those costs have been recovered from the Defendants, following a final unappealable determination or agreement of the relevant sums (including as a result of a final settlement of the Coll Proceedings); (2) make any repayment out of the damages received by her class from the Defendants or out of her own personal funds (i.e. her personal liability for repayment is limited to such sums as are advanced to her by her litigation funder and/or the costs recoverable from the Defendants); and/or (3) pay any interest on repayments. For the avoidance of doubt, if the Coll Proceedings are resolved by way of a single lump sum settlement which does not distinguish between damages and costs, then the Tribunal shall determine the appropriate sums to be repaid (if any) by the Coll CR. Any repayment shall be subject to (1)-(3) above.
4. In the event that the Coll CR were to recover costs (including the Additional Costs) from the Defendants, pursuant to an order as to costs made by the Tribunal or by way of final settlement of the Coll Proceedings, that had in fact been paid by Epic and the Rodger CR in accordance with paragraph 1 above, the Coll CR shall repay those costs to Epic and the Rodger CR. For the avoidance of doubt:
- 4.1 Paragraphs 3.3 and 3.4 above are repeated.
- 4.2 Subject to paragraph 4.3 below, if the total costs recovered from the Defendants to the Coll CR are reduced from the sums incurred by the Coll CR (by way of agreement or assessment), then the Additional Costs repayable to Epic and the Rodger CR will be reduced by the same proportion.
- 4.3 If the parties to any settlement or the Court on assessment makes a reduction to the recoverable costs which specifically and identifiably relates to the Additional Costs (or part of them), then the Additional Costs repayable to Epic and the Rodger CR will be reduced by the same proportion. For the avoidance of doubt, the Coll CR shall not agree with the Defendants to less favourable

terms for the recoverable proportion of the Additional Costs than apply to the remainder of the costs incurred by the Coll CR.

- 4.4 Other than in accordance with section 71 of the Solicitors Act 1974, paragraph 4.3 above shall not give Epic and/or the Rodger CR the right to be heard on the assessment of any part of the Coll CR's costs (expressly including the assessment of the Additional Costs).
5. A non-exhaustive list of the categories of costs which are to be allocated to each of the Epic Indemnity and the JCM Indemnity, is set out in the Schedule to this Order. Nothing in this Order shall displace the provisions of the Epic Indemnity, which shall remain in place and effective pursuant to the terms of the Epic Consolidation Order, in addition to the JCM Indemnity provided above. In particular and without prejudice to the generality of the foregoing, Epic may seek repayment of costs paid under the Epic Indemnity in accordance with paragraph 8 of the Epic Indemnity.
6. The terms of this Order and of the Epic Indemnity shall remain in force and effective even if the claims of either of Epic or the Rodger CR are settled, resolved or disposed of. Those parties will each remain liable to the Coll CR pursuant to the terms of this Order until the claim of the Coll CR and all costs issues in connection with it have finally been resolved. For the avoidance of doubt, in the event of the settlement, resolution or other disposal of the collective proceedings brought by the Rodger CR, Epic shall not be liable for any costs in excess of £1.5m; and in the event of the settlement, resolution or other disposal of Epic's claim, the Rodger CR shall not be liable for any costs in excess of £1.5m.
7. The parties shall have liberty to apply to enforce the terms of this Order.

The Honourable Mr Justice Morris

Chair of the Competition Appeal Tribunal

Made: 16 May 2025

Drawn: 16 May 2025

SCHEDULE

Non exhaustive list of categories of costs which are to be allocated to the Epic Indemnity:

1. Review and consideration of Epic's factual witness evidence.
2. Review and consideration of Epic's written observations on the CMA's written observations.
3. Preparation of Epic's factual witnesses for the joint trial in the Epic, Coll and Rodger Proceedings (the "**Joint Trial**").
4. Costs and disbursements arising from the one-week extension to trial in the Coll Proceedings, made to accommodate the oral hearing of Epic's factual evidence. This includes 1 week of the Coll CR's counsel refresher fees/additional hours for the Joint Trial and a commensurate allocation of the proportion of the Coll CR's counsel's brief fees for the Joint Trial.
5. Review and consideration of new pleadings or pleading amendments in the Epic Proceedings, including any disclosure or additional factual witness evidence arising from the same.
6. Expert advice required from having to consider Epic's amended case.
7. Ad hoc case and/or project management time in relation to any costs to be allocated to the Epic Indemnity (including paragraphs 1 to 7 above).

Non exhaustive list of categories of costs which are to be allocated to the JCM Indemnity:

1. Review and consideration of the Rodger CR's factual witness evidence and disclosure (if any).
2. Review and consideration of the expert reports of Epic and the Rodger CR.
3. Review and consideration of Epic's documents in disclosure referred to in the expert reports of Epic and/or the Rodger CR in the Rodger and Epic Proceedings.

4. Review and consideration of Google's expert reports in the Epic Proceedings and Rodger Proceedings.
5. Review and consideration of the Rodger CR's written submissions on the CMA's written observations.
6. Costs and disbursements arising from any extension to the eight-week trial proposed in the Epic and Coll Proceedings (the "**Original Proposed Trial**"). This includes the Coll CR's counsel refresher fees/additional hours from and including the ninth week of the Joint Trial through to its conclusion.
7. The Coll CR's counsel brief fees for the Joint Trial in excess of those agreed for the Original Proposed Trial (but excluding any sums payable under paragraph 5 of the Epic Indemnity above).
8. Any brief fees incurred in respect of the Original Proposed Trial in the Epic and Coll Proceedings prior to the JCM Order which cannot be "rolled-over" to the Joint Trial.
9. The portion of the Coll CR's costs of any joint case management conferences which relate to issues which arise as a result of the joint case management of the Epic, Coll and Rodger Proceedings.
10. The Coll CR's eDisclosure data hosting costs arising from data disclosed in the Coll Proceedings from 8 December 2025 through to the end of the Joint Trial, in excess of those data hosting costs that would have been incurred following the Original Proposed Trial.
11. The Coll CR's costs of making payment requests for Additional Costs and/or dealing with objections to those payment requests.
12. Ad hoc case and/or project management time in relation to any costs to be allocated to the JCM Indemnity (including paragraphs 1 to 11 above).