



Neutral citation [2025] CAT 39

Case Nos: 1424/5/7/21 (T)
1589/5/7/23 (T)
1596/5/7/23
1636/5/7/24 (T)

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

BETWEEN:

**INFEDERATION LIMITED
("Foundem")**

Claimant

- v -

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

Defendants

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) SKIMBIT LTD
(2) CONNEXITY EUROPE GMBH
(3) CONNEXITY, INC.(together "Connexity")**

Claimants

- v -

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

Defendants

Heard at Salisbury Square House on 17, 18 and 19 March 2025

JUDGMENT (PRELIMINARY ISSUE)

APPEARANCES

Philip Moser KC, Sarah Love, Matthew O'Regan and Hugh Whelan (Instructed by Linklaters LLP, Hausfeld & Co LLP and Preiskel & Co LLP) on behalf of the Claimants

Meredith Pickford KC & Luke Kelly (Instructed by Herbert Smith Freehills Kramer LLP and Bristows LLP) on behalf of the Defendants

A. INTRODUCTION

1. On 27 June 2017, the EU Commission (“the Commission”) adopted its decision in Case AT.39740 *Google Shopping* (“the Decision”) finding that Google Inc. and its parent company Alphabet Inc. (together, “Google”) had abused a dominant position in 13 national markets (including the UK) for general search services in the EU. Article 1 of the Decision states:

“By positioning and displaying more favourably, in Google Inc.'s general search results pages, Google Inc.'s own comparison shopping service compared to competing comparison shopping services, the undertaking consisting of Google Inc. and also, since 2 October 2015, of Alphabet Inc. has infringed Article 102 of the Treaty and Article 54 of the Agreement on the European Economic Area....”

2. The Decision proceeded to state the dates on which the abuse was found to have commenced in the different national markets, that it was continuing as at the date of the Decision, and held that since 2 October 2015 Alphabet Inc. was equally committing an infringement. The Commission imposed a total fine of over €2.424 billion.
3. The Decision followed a lengthy investigation by the Commission. The investigation in turn followed the receipt by the Commission of a large number of complaints, including complaints from operators of competing comparison shopping services (“CSSs”), and the transfer of cases pending before national competition authorities. Several of the Claimants in the present proceedings had been complainants before the Commission or had been otherwise involved (as parties who were held to be entitled to be heard) in the Commission proceedings.
4. On 10 November 2021, Google’s application to annul the Decision was essentially dismissed by the General Court: Case T-612/17 *Google and Alphabet v Commission*, EU:T:2021:763; [2022] 4 CMLR 6 (“the GC Judgment”).¹

¹ The General Court annulled only the finding in the Decision of infringement based on the existence of anti-competitive effects in the market for *general* search services (as distinct from the market for CSSs). The Commission did not appeal.

5. On 10 September 2024, Google’s appeal was dismissed by the Court of Justice of the European Union, in a decision of the Grand Chamber: Case C-48/22 P, EU: C:2024:726; [2024] 5 CMLR 20 (“the CJEU Judgment”).
6. The Claimants in the present proceedings are or were operators of CSSs in one or more of the national markets covered by the Decision and they all seek damages from companies within the Google group for infringement of Article 102 and, in some of the cases, the parallel domestic provision, the Chapter II prohibition under the Competition Act 1998. For present purposes it is unnecessary to distinguish between the defendants and we shall refer to them collectively as “Google”. Infederation Ltd (“Foundem”), which had been one of the first complainants to the Commission, commenced its proceedings in the High Court as long ago as 22 June 2012. A group of companies in the Kelkoo group started proceeding on 23 December 2015, and three companies involved in the “Connexity” CSS followed on 4 October 2017. Only limited progress could be made in those proceedings for several years because of the ongoing Commission investigation and pending decision: see *Infederation Ltd v Google Inc* [2013] EWHC 2295 (Ch); [2014] 1 All ER 325. In the Kelkoo and Connexity claims, further and distinct allegations are made of abuse which are the subject of a separate decision of the Commission of 20 March 2019 in Case AT.40411 *Google Search (AdSense)*.
7. The Foundem, Kelkoo and Connexity proceedings were all transferred from the High Court to this Tribunal. Following the GC Judgment, Whitewater Capital Ltd, which operated the “Ciao” CSS, commenced proceedings against Google in the Tribunal.
8. By order of 26 March 2024, it was directed that: (a) all four sets of proceedings, referred to as the “UK Shopping Proceedings”, should be case managed together; and (b) there should be a trial of a preliminary issue in the UK Shopping Proceedings to determine, insofar as this was disputed, which recitals in the Decision are binding on the Tribunal and what those recitals mean. In addition, the Tribunal stayed those aspects of the Kelkoo and Connexity claims which relied on the *Google Search (AdSense)* proceedings because that decision is subject to ongoing appeal in the EU Courts.

9. The Decision is lengthy, comprising 755 recital paragraphs over 243 pages, plus a confidential annex. The preliminary issue hearing was heard over three days. The Claimants in the four proceedings were jointly represented, and the parties had helpfully prepared a schedule setting out, for each recital or group of recitals, whether (or to what extent) they agreed it was binding, agreed it was not binding, or where one side, although not accepting the other's position that the recital was binding, or non-binding, was content not to contest that position. This schedule greatly assisted the efficient hearing of the preliminary issues. Further, Google helpfully acknowledged in the hearing that although the question whether some recitals were binding was shown on the schedule as disputed, where they were not material to any issue in these cases Google was willing to treat those recitals as not contested. We are grateful to the parties and their advisors for the constructive way in which they have approached this exercise.

B. LEGAL FRAMEWORK

10. Article 16(1) of Council Regulation (EC) 1/2003 ("Article 16") states:

"When national courts rule on agreements, decisions or practices under Article [101] or Article [102] of the Treaty which are already the subject of a Commission decision, they cannot take decisions running counter to the decision adopted by the Commission..."

11. There is as yet no EU case law that addresses the interpretation of Article 16. However, in its decision in *Royal Mail Group Ltd v DAF Trucks Ltd & Others* [2020] CAT 7; [2021] 3 All ER 621 ("*Trucks*"), this Tribunal considered a number of EU authorities dealing with applications for the annulment of Commission decisions, and extracted from them a framework for the approach to be taken in order to determine whether particular findings in the recitals of a Commission decision are binding on the national court.

12. The Tribunal concluded:²

“If a finding in a decision cannot be challenged in proceedings before the EU Courts, it would ordinarily be a denial of justice for that finding to be binding in national proceedings. By contrast, to the extent that it can be challenged on an application in Luxembourg, it falls within the jurisdiction of the EU regime and thus outside the realm of the national court”

...

“Accordingly, we consider that the principles which determine whether a finding in a recital to a decision is susceptible to challenge before the EU courts are appropriately applicable to determine whether a finding is binding for the purpose of Article 16: the criterion is that the finding in the recital is an essential basis or necessary support for a determination in the operative part, or necessary to understand the scope of the operative part.”

13. The legal framework set out in *Trucks* may be summarised as follows:

- a) The “operative part” of a Commission decision is the part that has legal effect, and which constitutes the orders contained in the decision. This is of course binding on national courts (subject to the exhaustion of any appeals). In this case, the operative part is contained in Articles 1 – 4 of the Commission Decision.
- b) Findings contained in the recitals to a Commission decision will be binding if:
 - i. They are necessary to interpret the determinations in the operative part; or
 - ii. They provide an essential basis or necessary support for those determinations, such that a contradictory finding by the Tribunal would be inconsistent with those determinations.³
- c) These questions may need to be addressed by reading several recitals together. Recitals do not always have to be read literally.⁴

² *Trucks* [67]-[68].

³ *Trucks* [75].

⁴ *Trucks* [75].

- d) It is a fact-specific exercise in each case to identify what has actually been decided either in the operative part (which is to be interpreted with the aid of the recitals) or in a recital (or recitals) which is an essential basis or provides the necessary support for the operative part, such that the national court would be acting inconsistently with the decision if it made a different finding.⁵
 - e) The phrases “essential basis” and “necessary support”, as used in the EU jurisprudence, amount to the same thing.⁶
 - f) A finding in a recital will not constitute an “essential basis” or “necessary support” for the operative part if without that recital the conclusions as to the nature, scope and extent of the infringement are substantiated by other recitals. It is not sufficient for a finding to be binding that it is “directly related” to the finding of infringement in the operative part.⁷
 - g) A finding in a recital will not be binding where, once the general infringement has been established, it is merely an example, or illustrative evidence in support of the finding of infringement.⁸
14. To these principles we would add the following, which did not arise in *Trucks*, but which was common ground between the parties: a finding will not be binding where it has been annulled by the General Court or, on further appeal, by the CJEU.
15. It was common ground before us that these principles should be applied in this case. However, the parties disagreed on three points of principle concerning their interpretation and application.
16. First, Mr Moser KC on behalf of the Claimants submitted that a finding in a recital that is “directly relevant” to a decision, and “not peripheral or incidental”, will be binding, because to challenge such a finding would be “tantamount to challenging the finding of infringement”. This submission was based on the decision of the Court of Appeal in

⁵ *Trucks* [68].

⁶ *Trucks* [58].

⁷ *Trucks* [60].

⁸ *Trucks* [85].

Enron Coal Services Ltd (in liquidation) v English Welsh & Scottish Railway Ltd [2011] EWCA Civ 2 (“*Enron*”) at [50], per Lloyd LJ. However, as this Tribunal noted in *Trucks* at [66], *Enron* was a decision addressing UK competition law, not EU law, and the language of Lloyd LJ should not be read as if it were a statute. In commenting in that paragraph that the “force” of Lloyd LJ’s observations applies to EU decisions as much as domestic decisions, we consider that the Tribunal was referring to his central point that a finding should be regarded as binding where challenging it would be tantamount to challenging the finding of infringement. In determining what category of finding meets that test in the context of EU law, it is appropriate to adhere to the language derived from the EU cases, summarised at paragraph 13(e) above.

17. Secondly, in accordance with *Trucks* [67], it is common ground that if a finding in a recital cannot be challenged in proceedings before the EU Courts, it would ordinarily be a denial of justice for that finding to be binding in national proceedings; and, conversely, that if a finding in a recital could have been challenged on appeal in Luxembourg, but was not, or the appeal failed, then it falls within the jurisdiction of the EU regime, and is binding on the national courts. However, the parties took fundamentally different approaches in their interpretation of this passage and the passage at *Trucks* [60], that a finding in a recital will not constitute an “essential basis” or “necessary support” for the operative part if without that recital the conclusions as to the nature, scope and extent of the infringement are substantiated by other recitals.
18. Mr Pickford KC on behalf of Google submitted in reliance on these passages that a finding contained in a recital would not be binding on the national courts unless an appeal could be maintained before the EU Courts against that individual finding considered in isolation. Accordingly, he submitted that where the Commission had made two or more findings in recitals, each of which supported an element of its determination that there had been an infringement, none of those findings would be binding on the national court. Although the Commission’s decision could not stand if all such findings were successfully appealed, an appeal against any single finding would be inadmissible, because a successful challenge to that finding would not affect the Commission’s determination that there had been an infringement, or the nature, scope and extent of the infringement.

19. Mr Pickford recognised that this argument had unattractive implications: if an element of the determination in the operative part was supported by a single finding of fact in a recital, that finding would bind the national courts. But if an element of the determination was supported by two findings of fact, each of which could sustain the finding of infringement on its own, then neither finding would bind the national courts. In theory, therefore, the national court could overturn both findings, with the result that the support for the finding of the relevant element of the infringement would fall away, and the national court's decision would be inconsistent with the determination of the Commission. However, he said that this result was contemplated and accepted by this Tribunal in an exchange with Mr Ward KC recorded in *Trucks* [85]:

“Once the general position as set out above is established [i.e., the findings as to collusion and/or concerted practices on the timing and passing on of costs for the introduction of emission technologies summarised at [83]], these details [of individual meetings] are essentially evidence, and indeed merely illustrative evidence, in support. Other than in an evidential sense, no individual instance is an essential basis of elements (1) and (2) above. Mr Ward submitted for the claimants that if a cartel was based on a single meeting, then a finding concerning that meeting would be the essential basis of an infringement, and that it would be unjust if this much more extensive cartel, involving many meetings over many years, meant that no individual meeting constituted an essential basis of the Decision because there were always other meetings. We see some force in that complaint, but the reality is that here the Tribunal is bound by the findings set out above which apply to the entire period of the infringement. Illustrative examples are not necessary. By contrast, for a single meeting cartel, the finding as to that meeting is not an illustration: it comprises the foundation of the infringement and for a national court to find that that meeting had a different character or did not involve all addressees of the decision would entirely run counter to the decision. We therefore regard this result as an inevitable consequence of the test we have to apply.”

20. Mr Moser submitted that this was a misreading of the relevant passage in *Trucks*, which was seeking to draw a distinction between findings which were merely illustrative examples, unnecessary to the establishment of an infringement (not binding), and findings which were necessary to support the establishment of the relevant element of the infringement (binding). It should not be read to suggest that where an infringement

was established by a number of findings, or pillars, each pillar should be considered in isolation from the others, and should not be regarded as binding, because of the existence of the other pillars.

21. We agree with Mr Moser’s submission. The passage quoted above must be read in its context. Indeed, it is prefaced with the statement:

“... we do not consider that all the other details and examples of occasions of when and how collusion took place that are set out in recitals (49)-(60), which go beyond what is set out above, are covered by the obligation in Article 16.”

The Tribunal held earlier in the *Trucks* judgment that recitals which described the nature, content and substance of the meetings between the cartelists were binding. The further recitals addressed at [85] in *Trucks* were therefore mere examples of some of those meetings. And since the Commission decision in *Trucks* was a settlement decision, in which each addressee admitted its participation in a cartel, the nature, scope and duration of which was set out in the decision, the only findings necessary to support the determinations in the operative part were the descriptions of the elements of the cartel, as set out in the earlier (binding) recitals and as admitted by the parties. Individual meetings referred to in the further recitals were therefore merely illustrations of that conduct, they were not necessary to support the decision. As the Tribunal pointed out at [85] in *Trucks*, in response to Mr Ward’s submission, the position would have been different if the determination in the operative part had been that the cartel consisted of a single meeting on a particular date.

22. However, in a contested decision, such as the Decision here, the Commission must prove each element of the infringement set out in the operative part. Individual findings in the recitals which are relied on by the Commission for that purpose are, on any sensible view, the necessary foundation for the operative part of the Decision. Such findings are to be contrasted with merely illustrative examples, which are not necessary for that purpose, and accordingly are not binding on the national courts.
23. The passage at *Trucks* [85] on which Mr Pickford relied was thus not addressing his primary argument that each finding in the recitals is to be considered in isolation, so

that, if an individual finding could not be the subject of an appeal on its own, because the element of the infringement which it supports is also supported by other findings, that finding is not binding, and neither are all the other findings relied on to support the relevant element of the infringement.

24. The flaw in Mr Pickford’s submission is exposed by the outcome to which it could lead, as outlined above, where a binding finding of infringement has no binding factual foundation. We do not consider that such a potentially absurd result follows from this Tribunal’s decision in *Trucks*, nor is it required by the case law to which the Tribunal there referred.
25. Moreover, we would observe that where a number of findings are relied on by the Commission to support a determination in the operative part, it will frequently be impossible to tell whether that determination would have been different in the absence of any individual finding. The Commission generally does not say whether any individual finding has tipped the balance, but simply sets out all the findings on which it relies to establish each element of its case. In any event, as the Tribunal stated in *Trucks* [75], the critical questions whether findings are necessary to interpret the determinations in the operative part or provide an essential basis or necessary support for those determinations may need to be addressed by reading several recitals together. If an appeal could have been mounted by challenging one finding or by challenging several findings together, on the basis that they, and consequently the determination which they support, are unsustainable, then the findings in question may properly be regarded as necessary support for that determination.
26. Thirdly, Google submitted that the findings in the Decision should be divided into “first order”, “second order” and “third order” findings, and that this categorisation may provide a guide to whether or not they bind the national courts.
27. Google submitted that “first order” findings are the core elements of the determinations in the operative part, such as findings that Google was dominant in specified markets, and abused that dominance by certain conduct in relevant EEA countries over specified periods of time. These findings are binding, because they underpin the Decision.

28. “Second order” findings are those findings which are directly necessary to sustain each first order finding and provide the evidential basis for the operative part of the Decision. For example, the first order finding that Google was dominant in particular markets was sustained by a second order finding that Google had high market shares in the relevant period, that there were high entry barriers, and that there was limited countervailing buyer power. Again, Google accepts that these second order findings are binding on the national courts.
29. However, Google also identified “third order” findings. This category is made up of the evidence and reasoning relied on by the Commission for its second order findings. Google submits that as a general rule these third order findings are not binding, because they do not provide the essential basis or necessary support for the operative part of the Decision. Google argues that this point can be tested by considering whether the Decision could stand if the recital in question was removed.
30. In our judgment, there is no principled basis for this artificial taxonomy, which finds no support in any EU case law. In particular, we see no justification for the proposed division between second order and third order findings. The “third order” findings relied on by the Commission to sustain what Google describes as second order findings are no less necessary to support the determinations in the operative part than the second order findings. The second order findings themselves could not be sustained without the findings of fact that are necessary to support them, and, accordingly, neither could the elements of the determinations, which Google identifies as the first order findings. Third order findings may indeed be the subject of an appeal, whether individually or together with other findings, where a successful challenge to them would undermine the finding of an element of the infringement.
31. Accordingly, we conclude that the correct approach is simply to apply the tests set out in *Trucks* on an individual case by case basis to each finding where there is a dispute as to whether or not it binds the national court. Is the finding necessary to clarify ambiguity? Is it necessary to support the decision? Would the finding be appealable alone or in conjunction with other findings? Or is it merely an illustrative example which could not be the subject of an admissible appeal, alone or in conjunction with other findings?

32. We recognise that this approach is likely to mean that a significant number of recitals in the Decision are binding on the national courts. We consider this result to be consistent with the purpose of Article 16: that national courts should not reach decisions that run counter to Commission decisions. In general, a decision-making body would be expected to focus mainly on findings that provide necessary support for its decision, or that are necessary to interpret its determination.

**C. FINDINGS ABOUT THE MARKET FOR THE PROVISION OF
COMPARISON SHOPPING SERVICES**

33. It is common ground that the Commission made a binding finding at recital 154 of the Decision that the relevant product market for the purposes of this case (including the assessment of potential or likely anti-competitive effects) is the market for CSSs.
34. Google argued in the Commission proceedings that the product scope of the CSS market included merchant platforms: i.e., online platforms such as Amazon, which allow users to buy online items from different sellers without leaving the platform: Decision, footnote 115.
35. This argument was rejected by the Commission for the reasons set out at section 5.2.2.4 of the Decision. However, Google submitted to the Tribunal that the Commission's findings at recitals 192, 246 and 608 to the effect that CSSs constitute a distinct relevant product market, which does not include merchant platforms, are not binding. This is because the Commission went on to find at recitals 590 and 609 that even if the alternative product market definition proposed by Google, comprising both CSSs and merchant platforms, were to be followed, Google's conduct would still be capable of having, or likely to have, anti-competitive effects in at least the CSS segments of possible national markets comprising both CSSs and merchant platforms. Accordingly, Google argued that the Commission's finding that the CSS market did not include merchant platforms was not necessary to support the determinations in the operative part. The findings of effects on competition would have been the same, whether or not merchant platforms are included in the CSS market. Google characterised the Commission as having made "alternative conclusions" about the scope of the market, which made no difference to the outcome. Mr Pickford identified this as a

“quintessential example” of Google’s primary case, that where there are two routes to the Commission’s determination, the national court is not bound to follow either of them: it would be open to this Tribunal to conclude that the relevant product market included merchant platforms. On this basis, Google disputed the bindingness of a number of recitals, including 192, 216-219, 221, 222, 224-229, 235, 237-239, 242 and 246, because their focus is on demand-side and supply-side substitutability between CSSs and merchant platforms. Google argued that since the Commission’s finding that the CSS market excluded merchant platforms is not binding, then neither are any findings made by the Commission as to substitutability that underpin that finding.

36. The Claimants disagreed. They submitted that the Commission rejected Google’s argument that the CSS market included merchant platforms, and that this finding as to the scope of the relevant market was a necessary support for the determinations in the operative part. The identification of the relevant market was an essential element in the Decision. The Commission’s finding that, had it accepted Google’s submission as to the scope of the market (which it did not), there would still have been potential effects on competition, was a hypothetical, “belt-and-braces” analysis, carried out for the sake of completeness. It was not the basis of the Decision.
37. In our judgment, the Claimants’ submission on this issue is correct. This was not a case in which the Commission identified two alternative potential markets and concluded that there was no need to resolve the dispute as to which was applicable, because the result would be the same in either case. On the contrary, the Commission considered and rejected Google’s submission as to the scope of the relevant market. It concluded on the facts that the market did not include merchant platforms, and that was the primary basis of its conclusion that Google’s conduct had potential effects on competition. Its further conclusion reached on a hypothetical factual basis which it had already rejected, that even on Google’s case there would still have been potential effects on competition, did not render its primary factual findings unnecessary to the Commission’s determination.
38. The correctness of this approach is supported by the fact that in its action for annulment, Google contended that the Commission had failed to take account of the constraint arising from merchant platforms, a contention which the General Court understood as

involving a challenge to the Commission’s market definition.⁹ The General Court noted at [469] that although Google did not call into question the existence of a market for specialised comparison shopping search services; *“it does, however, take issue with the fact that that market encompasses only comparison shopping services, and does not include merchant platforms which also provide comparison shopping services.”*

39. The General Court found that this ground of Google’s appeal was admissible.¹⁰ After detailed consideration, it held that the definition of the relevant market in the Decision was correct.¹¹
40. The holding by the General Court that an appeal against the Commission’s finding that merchant platforms should be excluded from the CSS market was admissible, and then the dismissal of that ground of appeal on the merits, strongly support the conclusion that this is a finding which is binding on the national courts.

D. DISPUTES ABOUT THE MEANING OF RECITALS

41. There were three main areas of dispute between the Parties about meaning which recurred through various parts of the Decision. These related to the meaning of: (i) Google’s own CSS; (ii) the “combination” nature of the abuse; and (iii) the relevant counterfactual. One subsidiary dispute on meaning was whether it was unlawful for Google to require CSSs to change business model in order to participate in Google Shopping.
42. These disputes on meaning were important to the parties in anticipation of arguments to be made at trial, in particular as regards the adequacy of the remedy that Google has put in place in light of the Decision (the “Shopping Remedy”). The Parties acknowledged, however, that the scope of the preliminary issues was purely to determine the meaning of recitals. For the avoidance of doubt, the Tribunal makes no findings here on the adequacy of the Shopping Remedy or indeed on other substantive matters to be determined at trial.

⁹ *GC Judgment* [461], [468] – [470].

¹⁰ *GC Judgment* [470].

¹¹ *GC Judgment* [495].

E. THE MEANING OF GOOGLE’S OWN COMPARISON SHOPPING SERVICE

43. The operative part of the Decision found that Google had abused its dominant position “*by positioning and displaying more favourably, in Google Inc.’s general search results pages, Google Inc.’s own comparison shopping service compared to competing comparison shopping services*” (Article 1). As there is no definition of Google’s CSS in the operative part of the Decision, it is common ground that is necessary to rely on certain recitals of the Decision as an aid to interpretation of this term. It is also common ground that no individual recital provides the answer on the meaning here.
44. The Claimants’ position is that in the Decision, Google’s CSS means not only the standalone Google Shopping website (previously called “Product Search”) but also includes the Product Universal and Shopping Unit (collectively referred to as the shopping boxes). As Mr Moser put it at the hearing: “*essentially the whole ecosystem of searches and clicks that constitute shopping traffic via Google*”.
45. Mr Moser took footnote 3 as his starting point and submitted that this made clear that by “*the more favourable positioning and display*” of Google’s own CSS, the Decision meant both the more favourable positioning and display of “*links to*” Google’s own CSS and of “*parts or all of*” Google’s own CSS.
46. Mr Moser also directed the Tribunal to recitals 408-411 and 412-423, which were cross-referenced in footnote 3. These recitals were contained in the part of the Decision addressing Google’s abusive conduct (Section 7.2), specifically in the part of the Decision where the Commission rebutted Google’s arguments contesting its analysis of abusive conduct.
47. In recitals 408 and 412 the Commission made clear that neither the Product Universal nor the Shopping Unit was “*in itself a comparison shopping service*”. Rather, they were means by which Google favoured its own CSS. Footnote 463 added: “*In the same way, generic search results leading to competing comparison shopping services are not comparison shopping services in themselves.*”

48. Recitals 409-411 and recitals 413-423 set out several supporting arguments in relation to the Product Universal and Shopping Unit, respectively. The Decision set out particularly detailed arguments in recitals 413-423, relating to the Shopping Unit, including:
- i. there is a close relationship between the component parts of Google's CSS, including an underlying database of products and merchant data and common technological features and mechanisms;
 - ii. Google, not merchants, decides whether to display products in the Shopping Unit or the standalone Google Shopping website; and
 - iii. links within the Shopping Unit fulfil the same economic function as links within the standalone Google Shopping website.
49. Mr Moser submitted that these recitals underlined the integrated nature of the different parts of Google's CSS. He also referred to recitals 630-631 and footnote 604, which he submitted made it plain that the Commission treated traffic from clicks on links within the Shopping Unit as coming within the scope of the abusive conduct and being part of the traffic going through Google's own CSS.
50. Google submitted that the abuse identified in the Decision arose from the favourable positioning and display on the search engine results page (the "SERP") of links to, or results from, Google's CSS compared to results from competing CSSs – not the favourable positioning of Google's CSS itself on the SERP. In the Decision, "*Google Inc. 's own comparison shopping service*" meant Google's standalone Google Shopping website only. Google acknowledged that the Decision was not as clear as it might be on whether Google's CSS itself appeared on the SERP, but submitted that construed fairly and as a whole the Decision was sufficiently clear that the Product Universal and Shopping Unit were not themselves a CSS, but instead a means of favouring Google's CSS.
51. Mr Pickford cited recitals 29 and 32 which referred to the Product Universal and the Shopping Unit comprising "*specialised search results*" from, respectively, the Google

Product Search and Google Shopping websites. Mr Pickford noted that recitals 379, 385, 397, 510, 537, 662 and 699 also referred to the positioning of results from CSSs on the SERP and that the EU Courts made similar references to results from Google's CSS versus those of competitors (citing for example the CJEU Judgment at [140], [141], [180], [183], [191], [244] and [245]).

52. Mr Pickford submitted that Google's interpretation was supported by recitals 408 (including footnote 463) and 412, as these specified that the Product Universal and Shopping Unit were not in themselves a CSS but a means by which Google favoured its CSS. Part (ii) of footnote 3 which indicated that parts or all of Google's CSS were more favourably positioned and displayed on the SERP than competing CSSs, was incorrect and inconsistent with recitals 408 and 412.
53. The Tribunal agrees with the Claimants that "*Google Inc. 's own comparison shopping service*" in the operative part of the Decision does not just mean Google's standalone Google Shopping website but also includes the Product Universal and the Shopping Unit.
54. We accept that footnote 3 is unclear¹² and we also consider that, read in isolation, recitals 408 (including footnote 463) and 412 could be interpreted to be saying that the Product Universal and Shopping Unit are not part of Google's CSS. However, we agree with Mr Moser that read together, and in context, the recitals he cited make plain that the Commission considered that Google's CSS was not limited to the standalone Google Shopping website but included the Product Universal and Shopping Unit. The latter were not CSSs in themselves, but they were part of the "*ecosystem*", as Mr Moser put it, of Google's CSS and the prominent positioning and display of the Product Universal and Shopping Unit were at the heart of the abuse of the more favourable positioning and display of Google's CSS.
55. We recognise that the Decision refers repeatedly to links to, or results from, Google's CSS. However, in our view this merely reflects the context, i.e., that users input a search query onto Google's SERP, generating results from and links to CSSs, including

¹² Indeed, we note that footnote 3 appears not to have been fully edited, as it refers to "section 0", which does not exist in the Decision.

Google's own such service. This does not preclude the Commission from finding that those results and links are part of Google's CSS.

56. We have also found persuasive the GC Judgment on the meaning of Google's CSS, as the General Court specifically addressed this when it considered Google's plea that the Commission erred in finding that product ads in Shopping Units benefited Google's CSS.
57. The General Court noted that Google based its argument on the premiss that by Google's CSS, the Decision meant the standalone Google Shopping website. The General Court considered this premiss to be incorrect.¹³
58. The General Court referred to recital 191 of the Decision,¹⁴ noting that CSS is defined as:

“specialised search services that (i) allow internet users to search for products and compare their prices and their characteristics across the offers of several different online sellers and merchant platforms, and (ii) provide links that lead (directly or via one or more successive intermediary pages) to the websites of such online sellers or merchant platforms.”

59. Based on this definition, the General Court considered that recitals 26-35 (Section 2.2.5 “Google's comparison shopping service”) provided sufficient grounds for concluding that Google's CSS had taken several forms and that:¹⁵

“the specialised pages Froogle, Google Product Search and Google Shopping as well as grouped product results, notably Product Universals, and product ads, notably Shopping Units, must be considered to form part of the comparison shopping service which Google offered to internet users.”

60. The General Court also referred to several of the recitals at 412-421 of the Decision in support of this analysis, concluding that whilst certain formulations in the decision (such as recitals 408 and 423) could, “*viewed in isolation and at first sight, appear*

¹³ GC Judgment [327].

¹⁴ GC Judgment [328].

¹⁵ GC Judgment [330].

ambiguous” this did not “*affect the Commission’s general analysis, according to which Google’s comparison shopping service was available in different forms*”.¹⁶

61. Google submitted that the Decision was the relevant legal instrument for the purposes of an examination of bindingness and meaning. Insofar as there was an inconsistency between the Decision and how it was interpreted by the General Court, it was the Decision which was binding, subject only to the General Court setting aside certain parts of the Decision.
62. We are very doubtful about that submission, given the exclusive jurisdiction of the EU Courts to review a Commission decision. Where a judgment of the General Court or the CJEU had interpreted an aspect of a Commission decision for the purpose of deciding an appeal, it would be curious, to say the least, if national courts could give the same passage different interpretations for the purpose of private damages actions. However, it is unnecessary to reach a concluded view since here we consider that there is no inconsistency between the General Court and the Decision on this matter. For the reasons set out above, the meaning of Google’s CSS includes the various elements set out in recitals 26-35 (although we note that Froogle was replaced by Product Search before the start of the infringement period).

F. THE MEANING OF THE “COMBINATION” ABUSE

63. It is common ground that the Commission found that Google abused its dominant position by prominently positioning and displaying its own CSS, which was never demoted by algorithms (the “promotion” limb), whereas competing CSSs could only appear as generic search results (i.e., as blue links) and were subject to algorithms (notably Algorithm A and Panda) which tended to demote their position on the SERP (the “demotion” limb).
64. The dispute between the parties was whether each limb taken individually, in particular the use of the relevant algorithms by Google, was lawful.

¹⁶ *GC Judgment* [338].

65. The Claimants submitted that the Commission had made no finding as to the lawfulness or otherwise of Google’s algorithms. It did not need to do so, because its case on abuse was based only on the combination of the promotion and demotion limbs. The Claimants argued that as the Shopping Remedy did not involve any changes to the relevant algorithms, which Google was continuing to apply in a discriminatory manner and preferencing its own services, Google was continuing to abuse its dominant position.
66. Google submitted that the Decision made clear that each limb (promotion and demotion) was not unlawful in its own right – it was only the combination of the two limbs that gave rise to the abusive conduct. This was reflected in various recitals in the Decision which described the abuse arising from the combination of the two limbs (recitals 341, 344, 379, 512-514 and 699-700) and was in line with the GC and CJEU Judgments as well as the Opinion of Advocate-General Kokott.¹⁷ As summarised by the CJEU, citing the GC Judgment at [370]-[373], “*the General Court noted that none of the practices at issue, taken separately, had given rise to any competition objections*”.
67. As regards the algorithms specifically, Google contended that the Commission’s objection was to the discriminatory application of the algorithms. Google emphasised recital 661:
- “the Commission is not preventing Google from applying adjustment mechanisms. The abuse established by this Decision concerns simply the fact that Google does not apply these mechanisms in the same way to Google's comparison shopping service and competing comparison shopping services”.
68. Google also pointed out that Algorithm A was in effect in all of the countries where the infringement took place, and Panda in some of them,¹⁸ before the infringement was found to have started in each of those countries. The infringement only started in each country on the introduction of the Product Universal or Shopping Unit.¹⁹ The

¹⁷ *GC Judgment* [187], [261] and [368]-[372]; the Opinion of Advocate-General Kokott [182] (as well as [17], [21], [72], [92], [168], [179]-[181]); *CJEU Judgment* [97], [107], [108], [140], [206], [241], [244] and [246].

¹⁸ Decision, recitals 350 and 356 state the start dates of Algorithm A and Panda.

¹⁹ Decision, recital 686.

Commission also made no infringement finding in countries where the algorithms were in operation but where the Product Universal or Shopping Unit were never introduced, despite the finding that Google was dominant from 2008 in all EU national search markets other than the Czech Republic where it was found to be dominant from 2011.²⁰

69. We agree that the recitals in the Decision cited by Google, supported by the statements of the EU Courts, show that the abuse is premised on the combination of the promotion and the demotion limbs. We also agree that the dates when the infringement was found to commence in each country, starting only when the Product Universal or Shopping Unit was introduced in the relevant country, and the lack of infringement finding in countries where shopping boxes were not introduced, indicates that the Commission did not consider the operation of the algorithms by themselves to give rise to an abuse.
70. As no part of the Commission's case was based on the notion that either limb operating alone was unlawful, we can infer from this that the Commission considered each limb lawful on a standalone basis. However, we agree with the Claimants that there is no explicit and binding finding to that effect in the Decision, which only focuses on the unlawfulness of the combination of the promotion and demotion limbs. It is therefore open to any of the Claimants to advance an argument that either limb on its own constituted an abuse, but that contention does not follow from the Decision and Google is able to contest it.
71. A further point arose in the parties' dispute about the meaning of the abuse and the impact of the Shopping Remedy. The Claimants argued that participants in the Shopping Remedy must change their business model, since they could not participate in it as CSSs placing ads that linked to their own CSS websites. Referring to recital 439, they argued that it was unlawful for Google to require any change to the business model of a CSS in order to participate in the Shopping Unit. The Shopping Remedy therefore did not address and remove the abusive conduct found in the Decision.
72. Google dismissed this interpretation of recital 439. Recital 439 was a response by the Commission to Google's argument (at recital 405) that it did not display results from its own CSS more favourably than rival CSSs because competing CSSs could "*benefit*

²⁰ Decision, recital 271.

from the same positioning and display as the Shopping Unit since they are eligible to participate in Google Shopping". In recital 439, the Commission refuted that argument on the basis that competing CSSs were not eligible to participate in Google Shopping unless they changed their business model by adding a direct purchase functionality or acting as intermediaries for placing merchants' paid product results in the Shopping Unit. Google argued that as the context here was the question of discrimination, implicit in recital 439 was a qualification at the end of the first sentence "*whereas Google's CSS did not have to do so*". Recital 439 could not properly be interpreted as including a binding finding that any change to the business model which a CSS might need to make to participate in the Shopping Unit, even if it were not discriminatory, meant that Google's conduct was unlawful.

73. In the Tribunal's view, the meaning of recital 439 (read together with recital 220(2) to which it cross-refers) requires no words to be read into it to understand it. The Commission's position was that Google could not claim that competing CSSs were eligible to participate in Google Shopping, because in order to be eligible those CSSs would have to change their business model in ways which emulated the characteristics of online retailers or merchant platforms. The Commission did not, however, take a position on whether or not it was an abuse by Google only because CSSs had to change their business model in order to be able to participate in Google Shopping.

G. THE COUNTERFACTUAL

74. The Tribunal's Order of 26 March 2024 specified that that one of the issues to be determined at the first substantive trial (the "First Trial") was the appropriate counterfactual. However, the Parties made submissions on this matter at the hearing of the preliminary issues, in case the Tribunal were to make findings about the meaning of binding recitals which were relevant to the question of the counterfactual.
75. The Claimants submitted that whilst the Commission did not make any express findings as to the appropriate counterfactual in the Decision, the GC and CJEU Judgments established a lawful and binding counterfactual in which no element of the abusive conduct was implemented (i.e., both the promotion limb and the demotion limb were

removed).²¹ This was therefore the lawful, binding counterfactual for the purposes of the domestic proceedings, as there could only be one counterfactual. The Claimants denied that the case-law cited by Google (see para 76 below) supported Google's case on the relevant counterfactual.

76. Google submitted that findings in the EU proceedings about the counterfactual, which in those proceedings were for the purpose of considering potential anticompetitive effects of the abuse, were not binding on the Tribunal for the domestic law question of the likely 'but-for' counterfactual for the purposes of determining causation of damage. The domestic law question was a matter exclusively for the national court (*Deutsche Bahn AG v Morgan Crucible Co PLC* [2014] UKSC 24; [2014] 2 All E.R. 785 at [10]-[11], citing *Europese Gemeenschap v Otis NV* (Case C-199/11) EU:C:2012:684; [2013] 4 CMLR 14 at [65]).
77. In particular, Google submitted that the Commission had not found that the use of its algorithms was an abuse and that if the likely world without abuse would still have involved the continued, lawful use of the algorithms, those algorithms must be taken to apply in the counterfactual world in any assessment of loss for the purposes of the domestic proceedings.
78. In summary, there was no dispute between the parties as to the meaning of the counterfactual established by the GC and CJEU Judgments for the purposes of the EU proceedings. Their dispute was as to whether this meaning carried over to the domestic proceedings. Since that is not a matter to be determined as part of the preliminary issues, we do not address it in this judgment.

H. OTHER RECITALS

79. In addition to more general questions, there were a number of discrete disputes concerning particular recitals or parts of a recital, which we proceed to address.

²¹ *GC Judgment* [370]-[376]; *CJEU Judgment* [241]-[245].

Recital 29

80. The parties agreed that recital 411 is binding. That states that in the majority of cases clicks on links within Product Universal (including header links) in the UK, Germany, France and the Netherlands led users to the standalone Google Product Search website. The parties agreed that the first sentence of recital 29 is binding but Google disputed the binding nature of the second sentence of the recital on the basis that it was inconsistent with this statement in recital 411 and therefore not correct.
81. The difference between the parties was narrow, and we think that the important point is that there was a distinction between Product Universal and the Shopping Unit which replaced it (on different dates in different countries) and had a different business model, as explained in recital 31. When a user clicks on a result within the Shopping Unit (as illustrated in recital 32), this leads directly to the pages of the relevant merchant partner. By contrast, when a user clicked on the results in Product Universal, in some cases that led to the page of the merchant partner and in some cases to Google's own Product Search website; thus, it was only by including clicks on the header link that it was correct to say that the majority led to the Google Product Search websites.
82. Once this distinction is appreciated, we do not think it is relevant to determine whether the second sentence of recital 29 is binding. We consider that the better approach is to hold that it is not binding and that the matter is determined on the basis of binding recital 411.

Recital 190

83. The parties agreed that recital 325 is binding. This states:
- The Commission's conclusion on dominance would hold even if general search services on static devices were to constitute a distinct market from general search services on mobile devices.
84. In the light of that, it was somewhat surprising that Mr Moser indicated that he would submit that recital 190 was not binding since it is in almost exactly the same terms. In the end, Mr Moser did not develop that submission, and we should therefore record that

we find, as Google contended, that recital 190 is binding, although we doubt that this will be of significance for this litigation.

Recital 343

85. There was a somewhat sterile dispute in the hearing as to whether or not the first two sentences of this recital were binding. However, the first is expressed as a summary of what the Commission finds elsewhere in the Decision. The second sentence simply states: “Google did not invent comparison shopping.” Although we suspect that the truth of the second sentence is unlikely to be challenged, and it provides helpful context, we agree that neither sentence sets out an essential basis for the Decision and accordingly determine that they are not binding.

Recitals 346-348

86. These recitals come in a section headed: “The way competing comparison shopping services are positioned in Google’s general search results pages”. We think there can be no doubt that this was an integral part of the abuse found by the Decision, as expressed in the overall heading to section 7.2:

“The abusive conduct: the more favourable positioning and display, in Google’s general search results pages, of Google’s own comparison shopping service compared to competing comparison shopping services”

87. Recital 345, which is agreed to be binding, states:

“In response to a user query in Google’s general search engine, Google uses generic search algorithms to rank web pages, including those of competing comparison shopping services. These algorithms include the PageRank algorithm (see recital (16)). Google also applies a variety of adjustment mechanisms to the results of the PageRank algorithm “to improve the user experience”.”

88. In that context, the material recital is 348, which states:

“Google uses dedicated algorithms to identify and demote automatically websites that do not comply with its Webmaster Guidelines. In a minority of cases, Google

employees that are part of its “Webspam Team” and “Bad Urls Team” also identify and apply manually demotions to websites that do not comply with the Webmaster Guidelines.”

89. As we understood it, the thrust of Google’s objection was to the second sentence of recital 348 which refers to manual demotions. Hence Mr Pickford submitted that manual demotions are not something that the Commission complains about as part of the abusive conduct. He argued that all the focus of the analysis in the Decision was on the two algorithms used for ranking and demotion, and that there was no finding that CSSs “were particularly prone to manual adjustments any more than any other type of website”.
90. It is true that the use of manual demotions is not further explained or developed in the Decision. But we reject the argument that it therefore was not found to be an aspect of the abuse. The statement of the abuse in the operative part of the Decision is not restricted to algorithmic conduct but is expressed in general terms. Section 7.2 is the part of the Decision which describes and makes good the finding of abuse, and the positioning of competing CSSs is clearly a key part of that conduct in whatever way it is carried out, whether automatically or manually. The fact that in the majority of cases this was done algorithmically and in only a minority of cases manually does not mean that the manual adjustments are not also an essential basis for the finding of abuse. Accordingly, we consider that recital 348 clearly satisfies the test for ‘bindingness’.
91. If recital 348 is binding, then we think that recitals 346-347 are necessary to understand the criteria according to which the demotions (which are key to the abuse) are conducted. That in turn is critical to the finding that ranking of Google’s own CSS was not subject to the same criteria. In our view, therefore, recitals 346-348 are all binding.

Recital 384

92. This appears to be a minor point of divergence. It follows from our reasoning in paras 25-31 above that the finding in the first sentence of recital 383 is binding. The Claimants have not submitted that the remainder of recital 383, which explains the use of ComScore data to arrive at that finding, is binding. In our view, recital 384 is relevant

only to that part of recital 383 which is non-binding, and therefore is similarly non-binding.

Recitals 382 (first sentence), 386 and 389 (first sentence)

93. These recitals are in the section of the Decision addressing the ways that Google's CSS is positioned and displayed in its general search results pages. While some of the other (binding) recitals deal with the way Google's CSS has some of the same characteristics as competing CSSs, but is nonetheless treated differently, these recitals make findings as to Google's rationale for its conduct and awareness of the effect that conduct would have. In our view, in establishing discriminatory treatment that favoured Google's CSS, which is a core conclusion of the Decision, findings as to Google's intention or rationale complement and support findings as to the effect of Google's actions and therefore are part of the necessary foundation for that overall conclusion. Accordingly, we hold that these provisions are binding.

Recitals 540-541 and Tables 24-25

94. Recital 540 states that generic search traffic from Google's general search results pages account for "a large proportion" of the overall traffic of competing CSSs. It is common ground that this finding is binding. However, the Decision supports that finding with a table setting out detailed information for the source of traffic each year to a large number of other CSSs (including Kelkoo). That information was derived by the Commission from responses to the questions addressed to the companies operating those CSSs. It is the information in that table which the Claimants wish to rely on as binding and to which Google objects.
95. In one sense, information as to the proportion of traffic may be regarded as the essential basis for the conclusionary statement in recital 540, since in the absence of such information the statement could not be sustained. However, provided that the proportion generated from generic search results was large, the exact proportions for each CSS do not matter. But if all the specific figures in the Table were binding in the present proceedings, that may potentially be significant in the calculation of loss.

96. In our judgment, the figures in Table 24 should not be regarded as binding. Even if they were over-stated or inaccurate to some extent, the conclusion in recital 540 would stand. And Google therefore had no effective opportunity to challenge those figures, unless it had been able to go so far as to allege that they are wildly inaccurate such that the proportion of traffic from its general search results pages was not “large”. In those circumstances, we do not think it would run counter to the Decision if at trial the proportions, while still “large”, were not the same as those set out in Table 24. We note that our approach is consistent with the use made of the Table in recitals 571 and 581. And we consider that it would be unjust for Google nonetheless to be bound by those figures in any approach to estimating damages. Kelkoo will of course be able to put in its figures, as shown in the table, in evidence, and the other Claimants will similarly be able to give evidence as to their own figures.
97. For the same reason that Table 24 is not to be regarded as binding, we consider that the further specific figures in Table 25 are not binding. However, we think that the general conclusion in recital 541 (i.e., the statement, “in general, navigational queries represent only a minority of traffic to comparison shopping services”) is binding since that explains and supports the general conclusion in recital 540. Indeed, we think it is appropriate to go further and qualify this statement in terms that “navigational queries represent only a small minority” of such traffic. That is the essence of the conclusion, which is important to sustain the approach and implication of the conclusion in recital 540, without making the specific percentages in Table 25 binding.

Recital 702

98. This recital is in the Remedies section of the Decision. The first two sentences of the recital support and clarify Art 4 of the operative part and are clearly binding. But the Claimants contended that the third sentence was also binding. This states:

“Any statements by the Commission to Google and Alphabet or silence on the part of the Commission between the 60 day deadline and 90 day deadline should not be interpreted as an indication that the intended measures communicated by Google and Alphabet will ensure that the infringement is brought to an end effectively.”

99. However, as Ms Rose pointed out in the course of argument, this is not a finding of fact or a binding obligation: it is simply a clarificatory statement by the Commission as to the implications which may be drawn from its own future conduct. As such, we doubt that it comes within the scope of Article 16, properly understood. It is clearly something that can be taken into account by the Tribunal, but we do not consider it is appropriate to place this statement into a “binding” or “non-binding” category.

I. CONCLUSION

100. Many of the disputes as to whether or not a recital is binding depend on our resolution of the more fundamental questions of approach to the application of Article 16. Having determined that approach above, for many of the recitals the consequence as regards its binding or non-binding character is clear. At the Tribunal’s request, Google helpfully provided a note after the hearing of which recitals (or parts of recitals) will be binding if it failed on its primary argument addressed in paras 25-31 above.
101. As noted at the outset, for a significant number of recitals, the parties are agreed as to their status.
102. On the basis of that agreement and of the reasons set out above for those recitals which were disputed, we therefore append a list of all the recitals in the Decision with the determination as to their binding or non-binding status.
103. For only a limited number of recitals were there disputes as regards their meaning. Those disputes are addressed and determined in sections C-F above.
104. This judgment is unanimous.

Mr Justice Roth
Chair

Paula Riedel

Dinah Rose KC

Charles Dhanowa CBE, KC (Hon)
Registrar

Date: 9 July 2025

APPENDIX
RECITALS IN THE DECISION

<u>Recital(s)</u>	<u>Status</u>	<u>Reason</u>
1	Non-binding	Agreed
2	Binding	Agreed
Fn 3	Binding	Judgment, para 53
3	Non-binding	Agreed
4	Binding	Not contested
5	Binding	Not contested
6	Binding	Agreed
7-15	Binding	Not contested
16	Binding	Agreed
17-23	Binding	Not contested
24	Non-binding	Agreed
25	Binding	Not contested
26-28	Binding	Not contested
29	1 st and 3 rd sentences binding	Judgment, paras 52 and 81
30	Binding	Agreed

31-32	Binding	Not contested
33	Non-binding	Agreed
34-35	Binding	Agreed
36-153	Non-binding	Agreed
154	Binding	Agreed
155	Non-binding	Agreed
156-157	Binding	Agreed
158-160	Binding	Not contested
161	Non-binding	Agreed
162-163	Binding	Agreed
164-165	Non-binding	Agreed
166	Binding	Agreed
167-169	Binding	Not contested
170-172	Binding: 1 st sentences only	Not contested
173-177	Binding (but 176, 1 st sentence only)	Not contested
178	Binding	Agreed
179-183	Non-binding	Agreed

184	Binding	Agreed
185	Binding: 1 st sentence only	Agreed
186-189	Binding	Not contested
190	Binding	Judgment, para 83
191	Binding	Agreed
Fn 115	Binding: 1 st sentence only	Agreed
192	Binding	Partially agreed; Judgment, paras 34-39
193	Binding	Agreed
194-195	Non-binding	Agreed
196	Binding	Agreed
197	Non-binding	Agreed
198-206	Non-binding	Agreed
207	Binding	Agreed
208-215	Non-binding	Agreed
216-219	Binding	Judgment, paras 34-39
220	Unnecessary to decide	Since the conclusion as to market definition is held to be binding, the status of this supporting evidence is immaterial

221-222	Binding	Judgment, paras 34-39
223	Non-binding	Agreed
224-229	Binding (but 228, 1 st and 2 nd sentences only)	Judgment, paras 34-39
230-234	Non-binding	Agreed
235	Binding: 1st sentence only	Judgment, paras 34-39
236	Non-binding	Agreed
237-239	Binding (but 237, 1st sentence only)	Judgment, paras 34-39
240-241	Non-binding	Agreed
242	Binding	Judgment, paras 34-39
243-245	Non-binding	Agreed
246	Binding: 1st sentence	Judgment, paras 34-39
247	Binding	Agreed
248-250	Non-binding	Agreed
251-252	Binding	Agreed
253-255	Non-binding	Agreed
256	Binding	Agreed
257-270	Non-binding	Agreed

271-272	Binding	Agreed
273	Non-binding	Not contested
274	Binding	Agreed
275	Non-binding	Agreed
276	Binding	Agreed
277-284	Non-binding	Agreed
285	Binding	Agreed
286-290	Non-binding	Agreed
291-296	Non-binding	Not contested
297-305	Non-binding	Agreed
306	Binding	Agreed
307-308	Non-binding	Agreed
309	Non-binding	Not contested
310-311	Non-binding	Agreed
312-315	Non-binding	Not contested
316-317	Binding	Agreed
318	Non-binding	Not contested

319	Binding	Agreed
320-324	Non-binding	Not contested
325	Binding	Agreed
326-340	Non-binding	Agreed
341	Binding save for final 4 words	Agreed
342	Binding save for words “and of protecting Google’s dominant position in the national markets for general search services (section 7.3.3)”	Agreed
343	Binding save for the 1 st and 2 nd sentences	Not contested
344-345	Binding	Agreed; Judgment, para 84
346-348	Binding	Judgment, paras 89-90
349-350	Binding	Agreed
351	Binding	Not contested
352	Binding	Agreed
353-355	Binding (but only 1 st sentence of 353)	Judgment, paras 25-31
356	Binding	Agreed

357	Binding	Not contested
358	Binding: 1 st sentence	Agreed
359	Binding	Judgment, paras 25-31
360	Binding	Not contested
361-363	Binding (but only 1 st sentence of 361 and excluding last sentence of 362 and Graphs 9-10)	Judgment, paras 25-31
364-365	Binding	Not contested
366-367	Non-binding	Agreed
368-370	Binding	Judgment, paras 25-31
371	Binding	Agreed
372	Binding	Partially agreed, and Judgment, paras 25-31
373-374	Binding	Not contested
375	Binding	Judgment, paras 25-31
376-377	Non-binding	Agreed
378-380	Binding	Agreed
381-383	Binding: 1 st sentences only	Judgment, paras 25-31 and 92
384	Non-binding	Judgment, para 91

385	Binding	Agreed
386	Binding	Judgment, para 92
387-388	Binding (but only 1 st sentence of 388)	Not contested
389	Binding: up to the start of the quotation	Judgment, para 92
390-391	Binding (but only 1 st sentence of 390)	Judgment, paras 25-31
392-395	Binding	Not contested
396	Binding: 1 st sentence only	Judgment, paras 25-31
397	Binding	Agreed
398	Binding	Judgment, paras 25-31
399-400	Binding	Not contested
401	Binding	Judgment, paras 25-31
402-406	Non-binding	Agreed
407-412	Binding	Agreed
Fn 463	Binding (as explained)	Judgment, para 54
413	Binding	Judgment, paras 25-31
414-415	Binding	Not contested
416-417	Binding (but only 1 st sentence of 416)	Judgment, paras 25-31

418-419	Binding	Not contested
420-423	Binding (but only 1 st sentence of 420)	Judgment, paras 25-31
424-425	Binding (but only 1 st sentence of 424)	Agreed
426	Binding	Not contested
427	Binding	Judgment, paras 25-31
428-435	Binding (but only 1 st sentence of 434)	Not contested
436-438	Binding: 1 st sentences only	Judgment, paras 25-31
439-441	Binding	Agreed
442	Binding	Judgment, paras 25-31
443	Non-binding	Agreed
444	Binding: 1 st sentence only	Agreed
445-451	Binding (but only 1 st sentences of 446, 448 and 450; and only 1 st and 2 nd sentences of 445, 447 and 449)	Judgment, paras 25-31
452	Binding	Agreed
453-459	Binding (but only 1 st and 2 nd sentences of 456-457; 2 nd and 3 rd sentences of 458)	Judgment, paras 25-31

460-461	Non-binding	Agreed
462-463	Binding	Judgment, paras 25-31
464-474	Non-binding	Agreed
475-479	Binding (but only 1 st sentence of 476, all of 477 save for last 2 lines from words “(see recital (361))”, and only 2 nd sentence of 479)	Judgment, paras 25-31
480-488	Non-binding	Agreed
489-491	Binding (but only 1 st sentence of 490 and 491 only to words “Google was aware of this”)	Judgment, paras 25-31
492-493	Binding (but only 1 st sentence of 492)	Not contested
494-497	Binding (but only 1st sentence of 494 and including fn 604 but excluding sub-paras of 496)	Judgment, paras 25-31
498-510	Non-binding	Agreed
511	Binding	Agreed
512	Binding	Agreed (1 st sentence); not contested (2 nd sentence)
513-515	Binding	Agreed
516	Binding	Not contested

517	Binding	Judgment, paras 25-31
518	Non-binding	Agreed
519	Binding	Agreed
520-521	Binding (but only 1 st to 3 rd sentences of 521)	Judgment, paras 25-31
522	Binding	Agreed
523-532	Binding	Judgment, paras 25-31
533-534	Binding	Agreed
535-536	Binding	Judgment, paras 25-31
537-539	Binding	Agreed
540	Binding, but excluding reference to Table 24 and the Table itself	Judgment, paras 93-95
541	Binding only as to general statement, excluding Reference to Table 25	Judgment, paras 93-96
542	Binding	Agreed
543	Binding: 1 st sentence only	Judgment, paras 25-31
544	Binding	Agreed
545-550	Binding (but only 1 st sentence of 550)	Judgment, paras 25-31
551	Non-binding	Agreed

552-556	Binding (but only 1 st and 2 nd sentences of 554 and excluding last part of 556 in parenthesis)	Judgment, paras 25-31
557-558	Non-binding	Agreed
559-571	Binding (but excluding the examples in parenthesis in the 2 nd sentence of 561, the numbered sub-paragraphs in 563 and 564, and the reference to Table 24 in 571) and including only the 1 st sentence of 565 and the 1 st and 2 nd sentences of 566	Judgment, paras 25-31
572	Non-binding	Agreed
573-588	Binding (but only the first sentences of 574, 575, 579 582, and 585, and the 1 st and 2 nd sentences of 583; and excluding in recital 573 the reference to Table 28, and in recital 581 the references to Table 24 and recital 571)	Judgment, paras 25-31
589	Binding (but excluding the words after “(section 7.3.1)”)	Agreed
590	Non-binding	Judgment, paras 33-39
591-592	Binding	Agreed
593-600	Binding (but only the 1 st sentence of 598)	Judgment, paras 25-31
601-602	Binding	Agreed

603-604	Binding (but excluding the numbered sub-paras of 604)	Judgment, paras 25-31
605-606	Binding	Agreed
607-608	Binding	Judgment, paras 25-31
609	Non-binding	Judgment, paras 33-39
610-629	Non-binding	Agreed
630-631	Binding	Judgment, paras 25-31
632-647	Non-binding	Agreed
648-653	Binding	Agreed
654-659	Non-binding	Agreed
660-665	Binding	Agreed
666-670	Unnecessary to determine	Agreed
671	Binding: 1 st sentence only	Agreed
672-681	Non-binding	Agreed
682	Binding (but only to “the EEA Agreement”)	Agreed
683-685	Non-binding	Agreed
686-687	Binding	Agreed

688-690	Non-binding	Agreed
691-692	Binding	Agreed
693-696	Non-binding	Agreed
697-701	Binding	Agreed
702	Binding: 1 st and 2 nd sentences only	Agreed, Judgment para 98
703	Non-binding	Agreed
704	Binding	Agreed
705-706	Non-binding	Agreed
707-709	Binding	Agreed
710-721	Non-binding	Agreed
722-736	Binding	Agreed
737-743	Non-binding	Agreed
744-746	Binding	Agreed
747-753	Non-binding	Agreed
754	Binding	Agreed
755	Non-binding	Agreed