Neutral citation [2025] CAT 45

Case No: 1673/7/7/24

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

6 August 2025

Before:

THE HONOURABLE MR JUSTICE MORRIS
(Chair)
TIM FRAZER
ANDREW TAYLOR

Sitting as a Tribunal in England and Wales

BETWEEN:

PROFESSOR BARRY RODGER

Proposed Class Representative

- v -

(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

Proposed Defendants

Heard at Salisbury Square House on 6 March 2025

JUDGMENT (CPO APPLICATION)

APPEARANCES

Robert O'Donoghue KC, Daniel Carall-Green and Bethanie Chambers (instructed by Geradin Partners Limited) appeared on behalf of the Proposed Class Representative.

The Proposed Defendants did not appear and were not represented at the hearing.

A. INTRODUCTION

1. In a Collective Proceedings Claim Form ("CPCF") filed on 23 August 2024, Professor Barry Rodger applied as the Proposed Class Representative for a collective proceedings order ("CPO") against the Proposed Defendants ("Google") to combine claims pursuant to section 47B of the Competition Act 1998 ("the Act") ("the CPO Application"). In summary, the Proposed Class Representative ("PCR") seeks to combine claims for loss and damage caused by Google's alleged infringements of Article 102 of the Treaty on the Functioning of the European Union (up to 31 December 2020) and Section 18 of the Act.

2. The CPO Application was supported by the first witness statement of Professor Barry Rodger and the first expert report of Professor Amelia Fletcher CBE.

3. At the close of the hearing on 6 March 2025 we indicated that we would certify the proceedings subject to a number of outstanding points and that our written reasons would follow. Those points have been resolved. On 23 May 2025 we made the order for certification. These are the reasons for our decision.

B. THE CLAIM

4. Google is the owner of the mobile device operating system ("OS") known as Android. Google is also the creator of the Google Play Store ("the Play Store"), which is a store through which Android device users may download other apps for use on any smartphone, tablet or other device that uses Android as its OS ("Android Devices"). The PCR alleges that Google is dominant on the Android app distribution market and on the licensable smart mobile OS market, and has abused its dominant position by:

    (1) Engaging in exclusionary conduct which prevents others from competing in the provision of distribution services to Android app developers; and

(2) Charging prices, in the form of the commission charged on purchases of apps and of additional content or subscriptions within those apps, that are: (i) excessive and unfair in their own right, with the commission being up to 30%; and (ii) unfair and abusive as a system of pricing.

5. The PCR defines the relevant class as:

> "All UK-domiciled Third-Party App Developers who, during the Relevant Period made one or more Relevant Sales." ("the Proposed Class")

6. A "Relevant Sale" refers to a sale on which commission is charged including: (i) the sale of an app via the Play Store where a fee is paid for the app and/or to download the app; (ii) any one-time sale within a third-party app for which the user pays a fee (i.e. a purchase made within an app); and (iii) any recurring sale to a user within a third-party app for which the user pays a fee (i.e. a subscription).

7. The "Relevant Period" is defined as the period starting six years before the date of the CPCF and ending on the date that the CPCF was filed.

8. The PCR provisionally estimates the size of the Proposed Class that paid unfair commission prices to be approximately 2,200 developers.

9. These proceedings raise substantially similar issues as those to be considered in Case 1408/7/7/21 *Elizabeth Helen Coll v Alphabet Inc. and Others* ("the *Coll Proceedings*"). In summary, the *Coll Proceedings* relate to loss and damage suffered by Android device users as a result of Google's alleged excessive and unfair commission.

10. A first case management conference ("CMC") was held in these proceedings on 20 December 2024. By Order dated 20 December 2024, the Tribunal gave directions to the CPO Application hearing.

11. On 31 January 2025, the solicitors for Google ("RPC") notified the Tribunal that Google did not intend to oppose the CPO Application and would not be filing a response. However, certain matters were identified by Google that it

considered should be brought to the Tribunal's attention when considering whether a CPO should be granted in these proceedings. In particular, Google identified a number of issues concerning the PCR's litigation funding arrangements that it considered unsatisfactory and not adequately addressed by the PCR.

12. On 19 February 2025, the solicitors for the PCR ("Geradin Partners") wrote to the Tribunal responding to the matters raised by Google. The PCR's response was supported by a witness statement of Mr Adrian Chopin, managing director of Bench Walk Advisors Limited, to address matters in relation to the PCR's funding arrangements for these proceedings ("Chopin 1"). In advance of the CPO Application hearing, by letter dated 28 February 2025, RPC stated that Google would not be filing a skeleton argument, but responded to points made in Geradin Partners' letter of 19 February 2025; and on the same day, the PCR filed and served his skeleton argument for that hearing. The PCR was represented by Counsel at the hearing, but Google was not. The Tribunal has taken Google's written observations into account.

C. LEGAL FRAMEWORK

13. The requirements that must be fulfilled in order for the Tribunal to make a CPO are set out in Section 47B of the Act and Rule 77 of the Competition Appeal Tribunal Rules 2015 ("the Tribunal Rules").

14. The Tribunal must be satisfied that:

    (1) the person bringing the proceedings can be authorised to act as the class representative in the proceedings (Rule 77(1)(a)) ("the Authorisation Condition"); and

    (2) the claims are eligible for inclusion in collective proceedings (Rule 77(1)(b)) ("the Eligibility Condition").

15. Pursuant to Rule 78(1)(b) of the Tribunal Rules, the Authorisation Condition will be met if the Tribunal considers it is "just and reasonable" for the applicant

to act as class representative in the collective proceedings. Rule 78(2) sets out the factors relevant for determining whether it is just and reasonable for a PCR to act, which include whether the PCR (a) would act fairly and adequately in the interests of the class; (b) does not have a material interest that is in conflict with the interests of the class; and (d) the PCR would be able to pay the defendant's recoverable costs if ordered to do so.

16. In determining whether the PCR would act fairly and adequately in the interests of the class, Rule 78(3) requires the Tribunal to take into account all the circumstances including:

> "(a) whether the proposed class representative is a member of the class, and if so, its suitability to manage the proceedings;
>
> (b) if the proposed class representative is not a member of the class, whether it is a preexisting body and the nature and functions of that body;
>
> (c) whether the proposed class representative has prepared a plan for the collective proceedings that satisfactorily includes—
>
> (i) a method for bringing the proceedings on behalf of represented persons and for notifying represented persons of the progress of the proceedings; and
>
> (ii) a procedure for governance and consultation which takes into account the size and nature of the class; and
>
> (iii) any estimate of and details of arrangements as to costs, fees or disbursements which the Tribunal orders that the proposed class representative shall provide."

17. In relation to the Eligibility Condition, the Tribunal must be satisfied, having regard to all the circumstances, that the claims sought to be included (a) are brought on behalf of an identifiable class of persons; (b) raise common issues; and (c) are suitable to be bought in collective proceedings (Rule 79(1) of the Tribunal Rules).

18. When considering whether to make a CPO, the Tribunal must be satisfied that both the Authorisation and Eligibility Conditions are met, whether or not these are raised by the parties.[1]

[1] *Gormsen v Meta* [2024] CAT 11, at [2].

19. If the Tribunal makes a CPO, the order must specify whether the collective proceedings will be opt-in or opt-out. In making that decision, the Tribunal may take into account all matters it thinks fit including: (a) the strength of the claims; and (b) whether it is practicable for the proceedings to be brought as opt-in collective proceeding. There is no presumption in favour of opt-in or opt-out: *Le Patourel v BT Group plc* [2022] EWCA Civ 593 at [60] to [68].

D. THE AUTHORISATION CONDITION

20. The vast majority of the issues identified by Google in the RPC letter dated 31 January 2025 related to the PCR's Litigation Funding Agreement ("LFA") dated 6 December 2023 made with Bench Walk Guernsey PCC Limited, contracting on behalf of the GPS UK Funding Cell, ("the Funder") and the Funder's adverse costs indemnity insurance policy ("the ATE Policy").

21. Drawing on the statutory framework, relevant authorities and guidelines, the Tribunal in *Christine Riefa Class Representative Limited v Apple*[2] provided the following propositions regarding the Tribunal's consideration of the Authorisation Condition and its scrutiny of a PCR's funding arrangements:

> "(1) The Tribunal may certify a claim only where it considers that it is just and reasonable for the PCR to act as the class representative.
>
> (2) In making that determination, the Tribunal must consider whether the PCR would fairly and adequately act in the interests of the class members.
>
> (3) That includes consideration of the PCR's ability to pay the defendant's recoverable costs, as well as its ability to fund its own costs, such that the proceedings are conducted effectively.
>
> (4) Class actions almost inevitably require third party funding. The interests of the funders are not the same as the interests of potential class members. This gives rise to inherent risks for the fulfilment of the policy objectives of the collective actions regime.
>
> (5) An important protection for potential class members is that the PCR will properly act in the best interests of the class including when agreeing any funding arrangements, and in managing the proceedings going forward including ongoing interactions with funders. That requires the PCR to be sufficiently independent and robust.

[2] [2025] CAT 5 at [31].

(6) In forming its view as to the ability of the PCR to act fairly and adequately in the interests of potential class members the Tribunal will consider all relevant circumstances, including the question of how the PCR has satisfied itself that the funding arrangements reasonably serve and protect those interests.

(7) A further protection is that the terms of any funding agreement should be open to scrutiny, not only by the court but also by the members of the class on whose behalf the claims are brought.

(8) The Tribunal should nevertheless exercise caution in intervening in relation to the funder's return under the funding arrangements, at the certification stage, bearing in mind the Tribunal's ability to control the return to the funder at the subsequent stage of judgment or settlement. In extreme cases, however, the Tribunal's concerns regarding the funding arrangements may lead to a refusal to certify."

22. Google raised the following concerns in relation to the Authorisation Condition:

(1) Whether the provisions in the LFA unduly favoured the Funder by requiring the PCR to always procure that the Funder is paid first ("the Order of Payment Provisions").

(2) The uplift in the level of return the Funder receives at the commencement of the trial of the liability issues in these proceedings gives rise to perverse incentives ("the Uplift Provisions").

(3) The termination provisions in the LFA give undue control to the solicitor and/or Funder ("the Termination Provisions").

(4) Whether the Funder has the ability to meet adverse costs including (i) the protection provided by the ATE Policy; and (ii) the sufficiency of indemnity ("the Adverse Costs Provisions").

(5) The confidentiality provisions in the LFA should be removed and the LFA should be published to enable scrutiny by the public and potential class members ("Confidentiality").

(6) The identification of the members of the PCR's consultative panel is too late ("the Consultative Panel").

23. In addition to the matters raised by Google, the Tribunal also raised certain issues which needed to be addressed and these are considered in paragraph 82 below.

24. In relation to Google's concerns under the Authorisation Condition, the key terms of the LFA, as filed with the CPCF were as follows:

> "**3. Proceeds**
>
> …
>
> 3.2 Subject to the terms of any order or direction of the Tribunal, on each occasion, if any, on which Proceeds are received by the Solicitor, the Class Representative or any connected party, the Class Representative will procure that a portion of those Proceeds equal to the Total Fee be applied in accordance with the Waterfall to pay fees to the Solicitor, to Counsel and to the adverse costs insurer and to pay to the Funder the Capital Outlay and Profit Share.
>
> …
>
> **5. Adverse Costs**
>
> 5.1 The Funder agrees:
>
> (a) to pay any adverse costs liability of the Class representative in the Claim on demand and without limit as to the amount but only to the extent not otherwise covered by adverse costs insurance policies taken out by the Class Representative; and
>
> (b) if an application or order for security for costs is made against either Party (excluding any application or order made after first instance trial), the Funder shall (to the extent paragraph (a) above is applicable), in consultation with the Solicitor, take reasonable steps to post security in compliance with that order and the Class Representative will provide, and will procure that the Solicitor provide, such assistance as the Funder may reasonably require.
>
> …
>
> **7. Covenants**
>
> 7.1 The Class Representative covenants that he will:
>
> …
>
> (j) act fairly and adequately in the best interests of the members of the Class Members at all times;

…

(l) use all reasonable endeavours, in accordance with the terms of this Agreement, to achieve the recovery of claim proceeds as soon as reasonably possible and in the best interest of the members of the Class Members;

…

(n) in the event of an award of damages by the CAT, irrevocably instruct the Solicitor to procure, and to use his best endeavours to assist the Solicitor in procuring, an order from the CAT directing that a portion of damages be paid to the Class Representative pursuant to Rule 93(4) of the CAT Rules such that the Total Fee can be paid in full;…

…

7.2 The funder covenants that it will

(a) not take any steps that could reasonably be expected to cause the Solicitor, or any other representative of the Class Representative in the Claim, to act in breach of its professional duties;

(b) not seek to influence the Solicitor, or any other representative of the Class Representative in the Claim, to cede control or conduct of the Claim to the Funder; and

(c) maintain at all times access to financial resources adequate to meet its obligations under this Agreement.

…

7.5 Settlement

…

(c) Where the Class Representative receives advice from the Solicitor or Counsel that it is reasonable to make or accept an offer of partial or full settlement of the Claim, but fails to follow that advice, such failure shall be treated as a material and irremediable breach of this Agreement by the Class Representative.

10 Material Adverse Change, Class Representative Default

10.1 If the Funder determines that a Material Adverse Change or a Class Representative Default has occurred the Funder may give written notice to the Class Representative exercising the rights under this clause. Following notice under this clause any outstanding Payment Request will be deemed immediately withdrawn and, unless any dispute as to the occurrence of a Material Adverse Change or a Class Representative Default is

resolved in the Class Representative's favour in accordance with the Dispute Resolution Procedure, no further Payment Requests may be delivered.

10.2 If a Material Adverse Change has been properly notified and the Dispute Resolution Procedure has not been invoked or has been settled in favour of the Funder:

(a) the Class Representative will (and will procure that the Solicitor will) immediately return to the Funder any money disbursed by the Funder under this Agreement that has not already applied to pay Claim Costs;

(b) the Funder will be released from all further obligations to make payments under clause 2 (Funding) above;

(c) the Funder's liability to pay adverse costs (or to post security) under clause 5.1 will terminate in respect of any portion of adverse costs that relate to the period after the Termination Date;

(d) if the Funder has posted security for costs the Class Representative will take reasonable steps to secure orders to reimburse the Funder in respect of any portion of posted security that relates to potential adverse costs liability in respect of the period after the Termination Date as determined by the Funder;

(e) the Funder's rights to recover the Total Fee under the Waterfall will remain unchanged; and

(f) the Funder shall cooperate reasonably with the Class Representative and the Solicitor to secure any additional or replacement funding provided that the Funder shall not be required to consent to any subordination or material worsening of its rights (including the worsening (in any respect) of any security granted to the Funder) under the Transaction Documents.

…

10.4 If a Class Representative Default has been properly notified and the Dispute Resolution Procedure has not been invoked or has been settled in favour of the Funder:

(a) the Class Representative will (and will procure that the Solicitor will) immediately return to the Funder any money disbursed by the Funder under this Agreement and not already applied to pay Claim Costs;

(b) the Funder will be released from all further obligations to make payments under clause 2 (Funding) above;

(c) the Funder's liability to pay adverse costs (or to post security) under clause 5.1 will terminate in respect of any portion of adverse costs that relate to the period after the Termination Date;

(d) if the Funder has posted security for costs the Class Representative shall take reasonable steps to secure orders to reimburse the Funder for the value of security so posted as determined by the Funder; and

(e) if any Proceeds are subsequently received by the Solicitor, the Class Representative or a connected party the Funder shall remain entitled to receive payment of the Total Fee under the Waterfall."

25. The defined terms are set out in Annex 1 of the LFA and include the following:

"**Capital Outlay** means the aggregate of all amounts paid by the Funder under this Agreement plus the Transaction Costs. The Capital Outlay will not reduce, regardless of amounts received by the Funder under the Waterfall.

Class Representative Default means any of the following in respect of the Class Representative:

(a) an event of "Bankruptcy" of the type defined in the 2002 ISDA Master Agreement, provided that this provision shall not cover any such event that had occurred prior to signing of this Agreement where the Funder signed this Agreement with full knowledge of such event;

(b) the Class Representative or the Solicitor has made a material misrepresentation or is otherwise in material breach of any term of this Agreement or any related agreement and that misrepresentation or other breach is not reasonably capable of remedy or has not been remedied to the reasonable satisfaction of the Funder within 10 Business Days of that party's becoming aware of the breach; or

(c) the Class Representative is the subject of a formal finding by a relevant tribunal of material dishonesty, criminal conduct or corrupt practices.

Dispute Resolution Procedure means the following procedure which will apply if a Material Adverse Change, a Class Representative Default or a Funder Default is notified by one party (the **Terminating Party**) to the other (the **Non-terminating Party**). Within 5 Business Days of receipt of notice of the relevant event, the Non-terminating Party may give written notice to the Terminating Party that it disputes that the relevant event occurred. If so, the Terminating Party must promptly instruct an independent, appropriately-qualified third party (and unless agreed otherwise by the Non-terminating Party such third party must be a KC that specialises in the relevant area related to such dispute) to determine as soon as reasonably practicable whether the Material Adverse Change, Class Representative Default or Funder Default, as appliable, has occurred. The Parties and the Solicitor will be entitled to make

representations to the reviewing third party and the Parties will (and the Class Representative will procure that the Solicitor will) cooperate with that reviewing third party. The decision of that third party will be binding on both Parties and its costs will be paid as that third party determines.

Key Terms means the terms set out in the Schedule.

Material Adverse Change means either:

(a) the prospects of success or recovery in the Claim are materially worse than the Funder's assessment of those prospects on or about the signing date; or

(b) amounts reasonably expected to be recovered in the Claim are such that even if the Claim is successful either the Funder, the Solicitor or Class Representative will no longer earn a commercially viable return under this Agreement,

provided that any determination by the Funder that a Material Adverse Change has occurred must be based on independent legal and/or expert advice provided to the Funder.

Proceeds means the total amount of damages and costs paid by the defendants in aggregate in the Claim pursuant to an order of the Tribunal or otherwise.

Total Fee means an amount equal to the Capital Outlay plus the Profit Share**.** Notwithstanding any other provision of this Agreement, the Total Fee shall not exceed the portion of the Proceeds that have been approved by the Tribunal for distribution to the Funder."

26. "Profit Share" is defined in the Key Terms in the Schedule to Annex 1. It is summarised in paragraph 46 below. "The Waterfall" referred to in clause 3.2 of the LFA is set out in the Priorities Agreement and requires application of Proceeds in the following order: (1) payment of the Funder's Capital Outlay and to reimburse the Insurers for any insured losses paid out minus any premiums received; then (2) payment to the Insurers in respect of amounts otherwise payable but deducted under (1); then (3) payment to the Funder in respect of the Profit Share, the Insurers in respect of any deferred and contingent premium, and the Solicitor and Counsel in respect of fees. At each level of the Waterfall, payments are made pari passu.

27. Endorsement 1 of the ATE Policy as filed with the CPCF provided:

"4. The Insured shall notify the Defendant within 7 days of any material changes to the Policy which reduce the cover available under paragraph 1 of this Endorsement (including without limitation a reduction to the Limit of Indemnity).

…

6. Notwithstanding paragraph 1, the Insurer remains entitled to terminate the Policy (including this Endorsement) in accordance with the terms of the Policy. If the Insurer does terminate the Policy, then:

   a. The Insurer will give notice to the Defendant(s) (or their legal representatives in the Claim(s)) that the Policy has been terminated within seven (7) days of the date of termination. Notice will be deemed to have been given under this paragraph when the letter or email giving notice is sent by the Insurer to any address of the Defendant(s) or their legal representatives that would constitute valid service of a document other than a claim form under the Civil Procedure Rules or as otherwise notified by the Defendant or their legal representatives;

   b. The Insurer remains liable to pay the Insured Liability incurred by the Defendant(s) before (but not after) notice is given in accordance with paragraph 2(a). For the avoidance of doubt, this timing condition relates to when the cost in question was incurred by the Defendant, not when the judgment, order, award or agreement causes such costs to become Defendant's Costs."

28. The terms of Endorsement 1 were updated on 27 February 2025 and are now reflected in Endorsement 9 of the amended ATE Policy as follows:

"4. The Insured shall notify the Defendant of any material changes to the Policy which reduce the scope of the cover available. For the avoidance of doubt, any such change to the scope of the cover: (i) may only be made prospectively; and (ii) will only take effect 30 days after notice of such change has been given to the Defendant in accordance with paragraph 7 below. No change may be made to the Policy which reduces the stated Limit of Indemnity.

…

6. Notwithstanding paragraph 1, the Insurer remains entitled to terminate the Policy (including this Endorsement) in accordance with the terms of the Policy. If the Insurer does terminate the Policy, then:

   a. the Insurer will give notice to the Defendant(s) (or their legal representatives in the Claim(s)) that the Policy has been terminated within seven (7) days of the date of termination;

   b. subject always to the Limit of Indemnity, the Insurer remains liable to pay the Adverse Costs (payable pursuant to the Adverse Costs Indemnity) incurred by the Defendant(s): (1) before notice of termination is given; and (2) for a period of 30-days after such notice is deemed to have been given. For the avoidance of doubt, this timing condition relates to when the cost in question was incurred by the Defendant, not when the judgment, order, award or agreement causes such costs to become Defendant's Costs."

29. We now turn to consider each of the matters identified by Google and the further matters raised by the Tribunal in relation to the Authorisation Condition during the CPO Application hearing. We concluded that, subject to certain agreed changes, none of the matters raised by Google gave reason for us not to certify the proceedings. In the following paragraphs, we set out Google's submissions and our analysis in response to those submissions.

(1) The Order of Payments Provisions

Google's Submissions

30. Google contended that clause 3.2 of the LFA subjects the PCR to an obligation to procure payment to the Funder out of gross receipts in accordance with the Waterfall, not out of undistributed damages. The PCR is obliged to seek an order that the Funder is paid before the Proposed Class on each occasion that proceeds are received. In those circumstances, it is wholly unclear who would be acting so as to protect the interests of the Proposed Class members.

31. Although Google acknowledged that clause 7.1(n) expressly obliges the PCR to use his best endeavours to procure a portion of the undistributed damages is paid to the PCR pursuant to rule 93(4) of the Tribunal Rules, it does not affect the PCR's obligations under clause 3.2, which requires any application by the PCR to seek that the Funder is paid before the Proposed Class. Accordingly, Google considered that this would be (i) impermissible under the relevant legislation; and (ii) inappropriate and prevents the PCR from acting fairly and adequately in the interests of the Proposed Class.

32. Even if the terms of the LFA are flexible and the PCR were to choose not to seek an order to pay the Funder before the Proposed Class, that will amount to a material breach of the LFA which would enable the Funder to engage the Dispute Resolution Procedure. In addition, the PCR is under a duty to always act in the best interests of the Proposed Class and such a duty would require the PCR always to seek an order to pay the Proposed Class before the Funder, as it will always be in their best interests to do so. This highlights the tension between the interests of the Proposed Class and the Funder. Google submitted that this

is even more acute in this case due to the relatively small number of members in the Proposed Class and the relatively large alleged claim value per member, which in turn means that a high level of distribution might be expected.

The Tribunal's Analysis

33. We do not accept Google's concerns. In summary:

(1) We do not consider that, as a matter of construction of the LFA and in particular clause 3.2 and 7.1(n), the PCR is obliged to pay the Funder first and before making a distribution to the Proposed Class members; rather, he is permitted to do so;

(2) In any event, even if the LFA did so require, it would be lawful for there to be such a requirement in the funding arrangements, for the reasons set out in *Justin Gutmann v Apple Inc. and Others* [2024] CAT 18 ("*Gutmann v Apple*"), as now upheld by the Court of Appeal [2025] EWCA Civ 459.

(1) No obligation to pay Funder first

34. Whilst clause 3.2 refers to payment of the "Total Fee", the definition of "Total Fee" provides for the amount of the "Total Fee" to be determined by the Tribunal. Whilst provisionally the term is defined as the Funder's Capital Outlay plus its Profit Share, the second part of the definition gives ultimate control to the Tribunal to determine what portion of the proceeds are to be distributed to the Funder. There is no requirement for the PCR to reserve the entire amount of the Capital Outlay and Profit Share that the Funder is looking for. It follows that in so far as clause 3.2 imposes an obligation upon the PCR to procure payment of the Total Fee, the Total Fee is the amount which has been approved by the Tribunal, in accordance with the definition of that term (even if the drafting of clause 3.2 itself is somewhat confused and opaque). It cannot be correct to contend that, if distribution to the Proposed Class members is made first, then that will erode the available amount and will or may mean that the

obligation to pay the Total Fee cannot be paid; the Total Fee is not a fixed amount.

35. Secondly, any payment obligation arising under clause 3.2 is itself, by the terms of the clause, made "subject to the terms of any order or direction of the Tribunal". So whether any payment is made under clause 3.2 (prior to distribution to the Proposed Class members) is itself within the control of the Tribunal.

36. Thirdly, on its express terms, clause 3.2 does not impose an express obligation to pay the Funder first i.e. before distribution to Proposed Class members. The Waterfall provisions referred to in clause 3.2 can be applied before or after distribution to the Proposed Class members. Therefore it is a matter of construction as to whether such an obligation can be implied, and that requires considering not only the terms of the clause, but also other terms of the LFA as a whole.

37. Fourthly, clause 3.2 is to be construed in the light of clause 7.1(n), particularly since clause 3.2 itself does not expressly impose an obligation to pay the Funder *first.* Clause 7.1(n) does impose a mandatory obligation to apply for an order for payment to the Funder from undistributed damages (under rule 93(4)) i.e. payment after distribution to the Proposed Class. This plainly envisages that not all of the Total Fee will have been paid first and that the PCR has no obligation to procure payment of the Total Fee first. If that were the case, there would be no need for clause 7.1(n). In so far as clause 3.2 deals with a *damages award* by the Tribunal, it cannot contradict 7.1(n); and it is not possible to construe clause 3.2 differently, where payment is made under *a settlement*, rather than pursuant to a damages award.

38. Fifthly, both clauses 3.2 and 7.1(n) are also to be construed in the context of the PCR's duty to act in the best interests of the Proposed Class – see clauses 7.1(j) and (l).

(2) Payment to the Funder first is not objectionable

39. In any event, payment to the Funder prior to distribution is not impermissible. In *Gutmann v Apple*, supra, the Tribunal stated at [35]:

> "We conclude there is a power for this Tribunal, at the conclusion of proceedings, to make an order that a funder's fee be paid out of damages awarded to the class and that it is not impermissible for a class representative to enter into a litigation funding agreement which contemplates this. There is no express prohibition under the Act or the Tribunal Rules which prevents this. Self-evidently a funder must be paid for the risk it takes. If a reasonable return is dependent upon the happenstance of whether there are sufficient unclaimed damages that has the potential to increases the risk for funders and consequently the cost of litigation funding. Insofar as an express power to make such a payment to a funder is required, that power is provided by section 47C(3)(b) of the Act."

40. Since the CPO hearing in this case, the Court of Appeal has upheld the Tribunal's decision in this regard [2025] EWCA Civ 459 at [78] to [98]. In particular, Sir Julian Flaux C stated at [97]:

> "In all the circumstances, I have concluded that the CAT does have jurisdiction to order that the funder's fee or return can be paid out of the damages awarded to the class in priority to the class. Whether or not such an order should be made would be a matter for the CAT in the exercise of its supervisory jurisdiction, in the event that it made an award of damages in favour of the class."

41. Thus payment of the Funder first is not unlawful, whether in this case the LFA permits it (as the PCR submitted) or even if it requires it (as Google contended). We make the following additional observations.

42. In any event, the lawfulness of an application for payment to the Funder first is to be assessed at the time that such an application is made and not now where the circumstances of the application are not known. In so far as it is said that on the particular facts of this case payment to the Funder first is unlawful or objectionable, that is something upon which the Tribunal is not able to adjudicate at this stage. As stated by the Tribunal in *Mark McLaren Class Representative Ltd v MOL (Europe Africa) Ltd* [2024] CAT 47, at [56], "the best time to assess what funds should be paid to the funders is once the outcome of the proceedings is known".

43. We agree with the PCR's submission that it is not the case that paying the Funder first is always and necessarily to the disadvantage of the Proposed Class members. In certain circumstances it might be in the best interests of the Proposed Class members to agree to at least some payment to the Funder first in order to secure the Funder's agreement to a particular settlement or distribution method.

44. In this connection, and as regards the possibility of this case leading to a high level of distribution to the Proposed Class members, because of the small number of Proposed Class members and a large alleged claim value per member, this indicates why the PCR might sensibly take the view that the Funder should be paid first. If the Funder could only be paid from undistributed damages, that might mean that there would be little left over for the Funder and that might reduce or even extinguish any incentive for the Funder, or other funders, to fund collective proceedings.

45. Finally there are procedural protections surrounding any decision to make an application for payment to the Funder first. These are: independent advice from leading counsel in costs; independent advice from the consultative panel, contractual protection to make an independent decision and in particular clause 7.2 (b) and clause 10.1 with the Dispute Resolution Procedure; and finally the protection of the Tribunal's supervision.

(2) The Uplift Provisions

Google's Submissions

46. The potential return to the Funder comprises the Capital Outlay plus Profit Share. The Profit Share, as defined in the Key Terms, is a percentage of the Capital Outlay. It is 100% (1x) of the Capital Outlay for the first 18 months of the agreement (i.e. until 6 June 2025), then 200% (2x) until the "Initial Date", when it doubles to 400% (4x). The "Initial Date" is the first day of a trial of liability issues in the proceedings.

47. Google considered that the sudden and large increase in the Funder's return at the point of trial is a matter for concern and could give rise to perverse incentives in the proceedings, as the Funder would have a clear incentive to avoid settlement and take the case to trial. Google referred to the Tribunal's certification judgment in *Alex Neill Class Representative Limited v Sony Interactive Entertainment Europe Limited and Others* [2023] CAT 73 ("*Neill*") at [168] where the Tribunal expressed concern in relation to an "arbitrary and steep" increase in the multiple after a period of four years, which "might create unhelpful incentives as that point in time approaches". Google suggested that the Tribunal should intervene to ensure the stepped increase was more gradual.

The Tribunal's Analysis

48. First, in *Riefa, supra* at [110], the Tribunal stated that it "should be reluctant to venture into an assessment of the commercial terms of the LFA unless they are sufficiently extreme to warrant calling out".

49. Secondly, in *Dr Sean Ennis v Apple Inc. and Others* [2024] CAT 58 ("*Ennis*") the Tribunal addressed a similar situation of an uplift at the start of trial and stated as follows at [61]:

> "The Tribunal does not consider that there is a valid basis of objection to the uplift in the Funder's return at the start of the trial in the present case. A similar funding arrangement was approved in *Le Patourel*. Whilst a gradual increase in return during the trial would have been a possible alternative arrangement, the Tribunal considers that Apple overstates the risk of the increase in return at the start of a trial being an obstacle to a pre-trial settlement. The decision to settle is the PCR's alone and is subject to the approval of the Tribunal. The Funder's incentives are of secondary importance. Moreover, the funding arrangements also create an incentive to settle before trial. Apple will know that settlement is likely to be cheaper if the funder's return is lower, meaning that Apple will have an incentive to settle earlier. When considered in the round, therefore, the increase in the Funder's return does not warrant adjustment by the Tribunal."

50. We accept the PCR's submission that investment returns ought to reflect risk. The increase in the return in this case reflects the generally accepted view that the start of trial is a moment of heightened risk for all parties.

51. In our view, the funding structure does not create an incentive for the PCR to prefer that his proceedings reach trial or otherwise. It might, in theory, create an incentive for the Funder to prefer settlement after the start of trial. However, the beginning of trial is a critical juncture in many cases and carries a high degree of risk of uncertainty. This gives the Funder a countervailing incentive to settle before trial. Moreover, as pointed out in *Ennis* above, it is the PCR (and not the Funder) who controls the decision to settle. In that decision process, incentives for the Funder are not of primary importance. Moreover, there is a countervailing incentive – on Google – to settle before trial, as it knows that the Funder's return is lower at that point. The balance of incentives on those involved does not point in one direction or another.

52. As regards *Neill*, in that case there was some ambiguity in the provisions in the funding agreement dealing with increases in the multiple applied in respect of the funder's return. Initially it appeared to the Tribunal that the agreement provided that, four years after the CPO application, the funder's return would effectively increase from 3.75x to 7.5x (and would increase by the same amount [i.e. 3.75] each year thereafter). On that basis, the Tribunal (at [168]) expressed the "concern" about an arbitrary and steep increase to which Google refer (paragraph 47 above). In fact, as the Tribunal went on to explain (at [169] to [171], the PCR clarified that the increase in multiple was by "1" each year e.g. from 3.75 to 4.75 at year 4. On that basis, the Tribunal considered that this did not rise to perverse and unmanageable incentives.

53. Google relied specifically on what is said in [168] of *Neill*. However, we do not consider that the concern expressed there is a reason for us to intervene to seek modification of the increase in the Funder's return in the present case. First, in *Neill* the Tribunal did not express any concluded view on the hypothetical initial interpretation of the provision as set out in [168]. Secondly, on that initial interpretation, the increased multiple and the amount of increase in the multiple were both significantly higher than the comparative figures in the present case (2x to 4x); and the final multiple (4x) in the present case is not significantly higher than the initial multiple in *Neill* (i.e. 3.75x) and lower than the 4.75x to which the multiple in *Neill* increased at the first stage. Thirdly, in the present case, the increase (2x to 4x) applies only once and not every year. Moreover,

the increase is tied to the date of trial and not to an "arbitrary" period of years following the CPO application. Finally, in *Neill* at [171] the Tribunal reiterated the point that, in principle, the stage of certification is not the time to determine the reasonableness of the funder's return – rather the proper time will be if and when the PCR obtained any recovery from the proceedings and the Tribunal is required to make a determination under rule 93(4) of the Tribunal Rules.

54. Accordingly, we see no reason to intervene to ensure that the stepped increase in the return should be more gradual.

(3) The Termination Provisions

Google's Submissions

55. Google raised two concerns in relation to the circumstances in which the Funder can terminate the LFA and which, it contended, gives undue control to the solicitor and/or Funder.

56. The first related to the Funder's ability to terminate the LFA if the PCR does not follow his lawyer's advice in respect of settlement pursuant to clause 7.5(c) of the LFA. This would amount to a material and irremediable breach and as such a "Class Representative Default", entitling the Funder to terminate the LFA under clause 10.4. Google contended there is no mechanism which would allow the PCR to challenge his lawyer's advice if he considered it to be unreasonable. A funder should not be able to force a class representative to accept terms which the class representative does not consider to be appropriate. Google suggested that the Tribunal may wish to direct that the LFA be amended to include a mechanism to enable the PCR to challenge advice from the solicitor (or counsel) to make or accept a settlement offer.

57. Google's second concern related to the Funder's ability to terminate the LFA in the event of a "Material Adverse Change" pursuant to clauses 10.1 and 10.2. The definition of "Material Adverse Change" enables the Funder to terminate if the "Funder, Solicitor or Class Representative will no longer earn a commercially viable return" under the LFA. Google submitted that it is highly

unusual in funding arrangements of this nature for a commercial return to the Solicitor or PCR to be taken into account.

The Tribunal's Analysis

58. As regards Google's first concern, in relation to clause 7.5(c) we questioned the reference to "material and irremediable breach" (emphasis added); and it did not seem to us clear that the Dispute Resolution Procedure (involving independent KC determination) applies in the event the PCR does not follow the advice of lawyers. In addition, we considered it appropriate for clause 7.5(c) to include a requirement that a breach would relate to the PCR "unreasonably" failing to follow advice.

59. In response, the PCR proposed amending the wording of clause 7.5(c) as follows:

> "Where the Class Representative receives advice from the Solicitor or Counsel that it is reasonable to make or accept an offer of partial or full settlement of the Claim, but unreasonably fails to follow that advice, such failure shall be treated as a material ~~and irremediable~~ breach of this Agreement by the Class Representative. For the avoidance of doubt, any disagreement as to whether a material breach has occurred shall be referrable to the Dispute Resolution Procedure."

60. Subject to the terms of the LFA being updated as indicated above, the Tribunal accepts the amendments and considers it addresses our concerns.

61. As to Google's second concern, the "return" is the deferred success fees under the conditional fee arrangement and consideration of whether the return is "commercially viable" will depend in part on the level of non-deferred fees. In any event the PCR confirmed prior to, and at, the CPO Application hearing that the provision can be amended to remove any reference to "commercially viable return" in relation to the solicitor and the PCR. The Tribunal considers it appropriate that the reference to a "commercially viable return" *on behalf of the solicitor or Class Representative* be removed from the LFA from the definition of a Material Adverse Change (as set out in Annex 1 to the LFA).

(4) The Adverse Costs Provisions

62. Following concerns raised by Google in RPC's letter dated 31 January 2025, the PCR amended the terms of the Anti-Avoidance Endorsement ("AAE") in the ATE Policy on 27 February 2025, as set out at paragraph 28 above. Google raised no objections to those amendments.

Google's Submissions

63. Despite the amendments, Google considered that the PCR had not made any amendment to the AAE to ensure that the ATE Policy will indemnify costs which Google incurs in relation to the assessment of costs which are indemnified by the ATE Policy. Such costs will be a discrete category of costs which Google would incur if the ATE Policy is terminated and proceedings come to an end, and which the PCR will be unable to pay. Google suggested that paragraph 6 of the AAE be amended accordingly in light of the concerns expressed above.

64. In addition, Google maintained concerns in relation to the amended AAE as to the strength of the Funder's indemnity to the PCR in respect of adverse costs. Google stated that the Funder is an offshore special purpose vehicle and has no (and never will have) any assets, and no recourse is being offered to Google against Bench Walk 23t LP (a Delaware entity which is the beneficial owner of the Funder). Bench Walk 23t LP itself relies on capital commitments from limited partners and co-investment by its general partner as the source of its funds. In any event, it would not be straightforward for Google to enforce an adverse costs award against a Delaware entity.

The Tribunal's Analysis

65. Google's costs protection comes from two sources: (i) the Funder has agreed to pay any adverse costs liability pursuant to clause 5.1; and (ii) the ATE Policy purchased by the Funder has a limit of £15 million, which Google can enforce directly under the AAE.

66. As regards Google's concerns about the funding structure and in particular that the Funder has no assets and that the Delaware Fund is an overseas entity, first, as made clear at the hearing before us, "the Funder" which is party to the LFA is the company Bench Walk Guernsey PCC Limited contracting on behalf of the GPS UK Funding Cell. Secondly, the additional witness statement from Mr Chopin (see paragraph 12 above) explained in detail the funding structure. He explained that Bench Walk Advisors Limited is a wholly owned subsidiary of Bench Walk Advisors LLC ("Bench Walk"). Bench Walk is a leading litigation funder in the UK and other jurisdictions including collective proceedings before the Tribunal. He went to clarify the position in the present proceedings as follows.

(1) The GPS UK Funding Cell has been established for the sole purpose of providing funds for these proceedings;

(2) The Funder's obligations have been assumed by the "Delaware Fund" (i.e. Bench Walk 23t LP); the Delaware Fund has undertaken directly to put the GPS UK Funding Cell in funds, which are committed specifically for these proceedings;

(3) The Delaware Fund has reserved, and will continue to reserve, aggregate commitments from its limited partners that exceed the funding commitments under the LFA; and

(4) The Delaware Fund's investors have never failed to meet a Bench Walk capital call.

67. In the light of this evidence, we accept the PCR's submission that it is not realistic to suppose there is a significant risk of the Funder being unable to meet its obligations to pay adverse costs, including material changes made to paragraph 4 of the AAE that no change should be made that reduces the stated limit of liability.

68. As regards the level of ATE cover, the policy is in favour of the Funder. Under the AAE (Endorsement 9 of the amended ATE policy), Google has a direct right

to enforce against the insurer and paragraphs 4 and 9 give Google notification rights both in the event of a reduction in cover and in the event of termination of the policy, which would allow it to make applications for costs or security for costs.

69. Furthermore, at this stage it is not necessary for the Tribunal to be satisfied that the PCR has the ability to cover all the costs of the proceedings. In *UK Trucks Claim Limited v DAF Trucks N.V. and Others* [2019] CAT 26, the Tribunal stated at [109]:

> "Where the Tribunal finds that there is no other reason to refuse authorisation of a class representative under rule 78, we consider that the proper approach to such a very high costs case is to determine that the class representative has at the outset the ability to pay a substantial level of adverse costs cover which should be sufficient for at least a significant part of the proceedings. Authorisation should not then be refused on the basis that this may prove insufficient to the end of trial. As the proceedings advance, and the defendants' costs become much clearer, the issue can be revisited under rule 85 and the Tribunal can vary or revoke the terms of the CPO accordingly." (emphasis added)

70. In relation to costs that Google may incur in relation to the assessment of costs which are indemnified by the ATE Policy, these costs are likely to be small in the overall context of the case and are in any event covered by the Funder's indemnity.

71. For these reasons we are satisfied that the PCR has sufficient ability to pay the defendant's recoverable costs.

(5) Confidentiality

72. The PCR stated that he intended to make a non-confidential version of the LFA and ATE Policy available for proposed class members, should the Tribunal consider it necessary.

73. During the CPO Application hearing the Tribunal sought clarification as to what information was considered confidential within the LFA and ATE Policy. The PCR confirmed that the redactions that he would wish to make would be to the insurance premiums which are covered by litigation privilege as they give an

indication of the risk allocated to the case. The Tribunal is content for these figures to be redacted and for the non-confidential version of the LFA to be published on the PCR's claims website.

(6) The Consultative Panel

74. On 19 February 2025, Geradin Partners notified Google that the following individuals had been appointed to the PCR's Consultative Panel:

(1) Sue Prevezer KC: senior barrister with over 35 years' experience in commercial litigation. From 2008 to 2020, she was the co-managing partner of the London office of Quinn Emanuel Urquhart & Sullivan LLP. She is also a CEDR accredited mediator, and is on the board of multiple organisations (both profit and non-profit). She thus brings considerable experience in litigation, alternative dispute resolution, and organisational leadership.

(2) Professor Richard Whish KC (Hon): Emeritus Professor of Law at King's College London. He was a non-executive director of the Office of Fair Trading from 2003 to 2009, and a non-executive director of the Singaporean Energy Markets Authority from 2005 to 2011. He is the co-author of Whish and Bailey, a leading competition law textbook. He thus brings considerable expertise in competition law specifically.

(3) Mark McLaren: spent nine years working for The Consumers' Association (Which?). He now sits as a lay member of the fitness to practice panel of the General Optical Council, being the regulator for the optical professions in the UK. He was formerly on the Consumer Panel of the Legal Services Board, and a non-executive director of The Property Ombudsman. Mr McLaren's company is the certified class representative in *Mark McLaren Class Representative Limited v MOL (Europe Africa) Ltd* (Case 1339/7/7/20) and was established specifically for that purpose. Through his company, Mr McLaren has acted on important stages in collective proceedings, including certification,

settlement and trial. He will thus be able to advise the PCR on specific questions to do with acting as a class representative.

75. In accordance with the panel terms of reference ("Panel Terms") the PCR intends that his panel members will provide him with advice and guidance on the conduct of the proceedings. The Panel Terms provide that the PCR will hold at least two meetings per calendar year. The Panel Terms allow flexibility to engage the panel (or individual panel members) more frequently as is needed. The frequency of any further meetings will depend on the status of the proceedings. The PCR and the Funder have agreed to remunerate the members of the Consultative Panel for their time and such fees will be paid from the "disbursements budget" within the litigation budget that the PCR has agreed with the Funder.

Google's Submissions

76. Google submitted that the appointment of the Consultative Panel was too late and the Panel was not in a position to advise the PCR as to his funding arrangements.

77. In the litigation budget "Disbursements" is in the sum of £3,336,000 (inclusive of VAT) and this is intended to cover the PCR's claims administration services, public relation services, printing services, disclosure provider services, Professor Rodger's fees, (non-economic) witnesses or expert evidence and costs counsel's fees. Google expects that the PCR's expert items will be substantial and this suggests that there is little room within the budget for additional unbudgeted expenditure. As a result, the Consultative Panel in these proceedings will have a minimal level of expected involvement, as opposed to "active assistance" which was approved by the Tribunal in the recent carriage dispute in *Professor Andreas Stephan v Amazon.com, Inc. and Others* [2025] CAT 6 ("*Stephan/BIRA*") at [48].

78. Further, unlike in *Stephan/BIRA*, the PCR in these proceedings has not separately detailed the rates and expected sums payable to his Consultative Panel. This lack of transparency supports Google's position that the PCR's

approach on this issue in such close proximity to the CPO Application hearing is not appropriate.

The Tribunal's Analysis

79. First, we do not accept Google's contention that the Panel has been appointed "too late". As regards advice in relation to his funding arrangements, the PCR was, in any event, advised by leading costs counsel. Whilst there is no requirement that a panel be put in place, the PCR has sought to enhance the advice and support he will receive as the proceedings progress.

80. Secondly, during the CPO Application hearing, the PCR confirmed that the Consultative Panel is to be reimbursed out of "Disbursements" and £316,615.38 of the £3,336,000 total has been allocated to the Consultative Panel. The PCR also stated that there is space in the budget in any event. On this basis, we do not consider that the Panel will be limited to "minimal involvement".

81. Thirdly, during the course of the CPO Application hearing, the Tribunal expressed concern at the frequency of Consultative Panel meetings only being held twice per year. To address the Tribunal's concerns, the PCR confirmed that the Consultative Panel would be willing to meet at least on a quarterly basis.

(7) Other matters

82. Towards the close of the hearing the Tribunal raised a number of other matters.

(1) As regards hourly rates for solicitors and counsel in relation to the litigation budget, these were provided following the hearing.

(2) As regards consultation with class members, the PCR undertook to revert to the Tribunal with proposals for a more formalised basis for consultation, although this was not to be a condition of certification. Since the hearing, Geradin Partners provided an update in relation its approach to consultation with class members. The PCR has proposed a tripartite approach of (i) direct contacts with four specific developers on

a quarterly basis; (ii) communications via the claims website to invite app developers to communicate with the PCR on a quarterly basis, with more formalised meetings if the uptake for such communication is significant; and (iii) seeking assistance from the Competition and Markets Authority in relation to advice for any additional mechanisms for consulting the class that it has found to be fruitful.

(3) At our request, the PCR gave a satisfactory explanation of the genesis of the case and, in particular, of Professor Rodger's involvement.

83. All matters which we identified at the end of the hearing as requiring further input from the PCR have now been satisfactorily dealt with by the PCR.

(8) Conclusion on the Authorisation Condition

84. For these reasons, we are satisfied that the Authorisation Condition is satisfied.

E. THE ELIGIBILITY CONDITION

85. In relation to the Eligibility Condition, we consider each of the criteria in Rule 79(1) (see paragraph 17 above) in turn.

86. First, the claims are brought on behalf of an identifiable class of persons. It is objectively possible and straightforward to determine whether any person is within the Proposed Class: a UK-domiciled "Third-Party App Developer" who has made a "Relevant Sale" (i.e., has paid the commission) within the "Relevant Period" is within the class; and it will be possible to determine who has made a "Relevant Sale" using Google's own transaction data.

87. Secondly, the claims raise the following common issues: (a) the governing law and territorial scope of UK competition law; (b) the relevant market(s); (c) Google's dominance; (d) whether Google has abused its dominance by the exclusionary conduct; (e) whether Google has abused its dominance by unfair pricing; (f) whether Google is liable for any such abuse; (g) whether any such

abuse caused loss to the proposed class members; and (h) the quantum of any aggregate award of damages (including interest).

88. Thirdly, the claims are suitable to be brought in collective proceedings:

(1) Collective proceedings provide an appropriate means for the fair and efficient resolution of common issues in the claims (Rule 79(2)(a)). Collective proceedings are good for the proposed class members. It is estimated that between 1,520 and 1,672 members of the Proposed Class (70–77% of them) suffered losses of less than £10,000. Claims of that size would not be litigated individually given the cost and complexity of competition claims. Whilst it is believed that the Proposed Class contains around 2,200 members, in fact the class size could turn out to be much larger. This was the situation in the *Ennis* case, where data from Apple revealed that there was originally a substantial underestimate. It is therefore likely that if a CPO were not made, either the court system would face the risk of having to grapple with a large number of developer claims and/or many potential claims could not practically be made. Collective proceedings will ensure that the parties are on an equal footing, in view of Google's very substantial resources.

(2) The benefits of collective proceedings outweigh their costs (Rule 79(2)(b)). The costs of pursuing the proceedings are proportionate to and outweighed by the benefits: (i) the cost is proportionate to the aggregate value of the claims, which is estimated to be between £374m and £859m pre-interest, or £425m and £1,036m including compound interest; (ii) the cost is outweighed by the benefits to the proposed class members who would, again, otherwise not be able to litigate given the cost and complexity of competition claims; and (iii) Google benefits from the ability to resolve the claims in a single set of proceedings.

(3) Separate proceedings making claims of the same or similar nature (Rule 79(2)(c)). There are no claims commenced on behalf of the Proposed Class in respect of the relevant loss and damage. However, the proceedings in *Coll*, (and also in Case 1378/5/7/20 *Epic Games, Inc. and*

Others v Alphabet Inc. and Others) are strongly interlinked in terms of the factual, legal and economic issues, albeit brought on behalf of claimants different from those in the Proposed Class.

(4) The size and nature of the class is such that the claims can only, realistically, be brought within collective proceedings (Rule 79(2)(d)). As above, it appears that the Proposed Class contains approximately 2,200 members, and it may contain significantly more. Collective proceedings offer the only practical and proportionate method by which to pursue their claims.

(5) The claims are suitable for an aggregate award of damages (Rule 79(2)(f)). The remedy will enable the proposed class members to recover damages where they otherwise could not (or would be unlikely to). Professor Fletcher's evidence, albeit currently at a very early stage, is that it is possible to model the effects of Google's abuse on the class as a whole, by identifying the relevant counterfactual commissions, and then modelling the effect on the class. The PCR's (provisional) proposal for distribution is to distribute by reference to estimates of each proposed class member's Relevant Sales. Google can be expected to have the relevant transaction data through which it will be possible to determine a class member's Relevant Sales.

89. For these reasons, we conclude that the Eligibility Condition is satisfied.

F. OPT-IN/OPT-OUT

90. We are required to consider and specify whether the claims are to be brought on an opt-in or opt-out basis. The PCR seeks a CPO on an opt-out basis. Google does not suggest otherwise.

91. As to Rule 79(3)(a), we accept that the claims are strong. They are supported by findings and decisions in other proceedings. Google has not applied to strike-out or sought summary judgment in respect of any aspect of the claims. In *Coll,* which raises substantially similar allegations of abuse, albeit on behalf of a

different class, the Tribunal concluded that the claims were sufficiently strong to proceed on an opt-out basis. As to Rule 79(3)(b), it is unlikely that opt-in proceedings would be practicable. The Proposed Class is likely to contain approximately 2,200 app developers, most of whom will be seeking to recover relatively small amounts. Many of the proposed class members are likely to be small businesses who would be unlikely to have the resources to take the positive steps required to participate on an opt-in basis. In addition, their ongoing relationship with Google may make them reluctant to do so.

92. For these reasons we will certify proceedings on an opt-out basis.

G. CONCLUSION

93. For the reasons set out above, we find that the requirements for a CPO are satisfied in this case. On this basis, as indicated at the hearing on 6 March 2025, we granted the PCR's application for a CPO in the form approved by the Tribunal in the order of 23 May 2025.

94. This Judgment is unanimous.

The Hon Mr Justice Morris
Chair`

Tim Frazer

Andrew Taylor

Charles Dhanowa, CBE., KC (Hon)
Registrar

Date: 6 August 2025