Neutral citation [2025] CAT 51

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

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

24 September 2025

Before:

BRIDGET LUCAS KC
(Chair)

Sitting as a Tribunal in England and Wales

BETWEEN

(1) EPIC GAMES, INC.
(2) EPIC GAMES ENTERTAINMENT INTERNATIONAL GMBH

Claimants

- v –

(1) ALPHABET INC.
(2) GOOGLE LLC
(3) GOOGLE IRELAND LIMITED
(4) GOOGLE COMMERCE LIMITED
(5) GOOGLE PAYMENT LIMITED

Defendants

and

THE COMPETITION AND MARKETS AUTHORITY

Intervener

(the "Epic Proceedings")

AND BETWEEN

ELIZABETH HELEN COLL

Class Representative

- v –

(1) ALPHABET INC.
(2) GOOGLE LLC
(3) GOOGLE IRELAND LIMITED
(4) GOOGLE COMMERCE LIMITED
(5) GOOGLE PAYMENT LIMITED

Defendants

(the "Coll Proceedings")

AND BETWEEN:

PROFESSOR BARRY RODGER

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

Defendants

(the "Rodger Proceedings")

Heard at Salisbury Square House on 23 June and 15 July 2025

NON-CONFIDENTIAL RULING (DISCLOSURE)

APPEARANCES

David Scannell KC and Hugh Whelan (instructed by Norton Rose Fulbright LLP) appeared on behalf of Epic Games, Inc & Others.

Kassie Smith KC and Jack Williams (instructed by RPC) appeared on behalf of the Defendants.

Note: Excisions in this Judgment (marked "[✂]") relate to commercially confidential information: Schedule 4, paragraph 1 to the Enterprise Act 2002.

A. INTRODUCTION

1. This ruling relates to various applications made by the Defendants ("Google") and by the Claimant ("Epic") for disclosure in the Epic Proceedings. The applications were heard on 23 June 2025, and the hearing was adjourned, part-heard, for further submissions on the morning of 15 July 2025. I shall refer for convenience in this Ruling to both hearing dates as "the June Hearing".

2. The background to the Epic Proceedings, and in particular Epic's Re-Re-Re-Re-Amended Claim Form ("RRRRACF") which forms the basis for a number of Google's current requests for disclosure, is summarised in the Tribunal's previous ruling on matters of disclosure following a hearing on 5 December 2024 (the "December Hearing") (see [2024] CAT 78 at [2] to [3] (the "December Ruling")). In particular, Epic's amendments include an allegation that Google's pricing is excessive and unfair (the "Unfair Pricing Claim"); and that the Google Play Store is *"an essential facility"* and *"indispensable"* for the distribution of alternative app stores (the "Essential Facility Claim").

3. In terms of relief, Epic does not seek damages but does seek injunctive relief. The RRRRACF was amended to seek:

   (1) An order requiring Google in the UK to distribute rival app stores and not charge any commission on apps or in-app purchases within apps distributed via such rival app stores unless the Google in-app billing service is used to execute payments; and

   (2) An order requiring Google not to charge commissions on in-app purchases of digital content in apps downloaded through the Google Play Store (save for commission attributable to the provision of Google in-app billing), alternatively not to charge excessive and/or unfair commissions above such rates as may be determined by the Tribunal.

4. Since the December Ruling, the Tribunal has ordered that the Epic Proceedings, the Coll Proceedings and the Rodger Proceedings should be case managed together and that the trial in the Coll Proceedings (which was listed for October

2025) should be adjourned so that all three sets of proceedings can be heard together in a trial listed to start in October 2026 (see [2025] CAT 25). That has consequences for disclosure in all three sets of proceedings. There had previously been a form of partial consolidation of the Epic and Coll Proceedings whereby Epic would be permitted to adduce evidence of fact but not expert evidence. That was intended to ensure that the factual context for both the Coll and Epic Proceedings could be determined at one hearing. Whereas the claims in the Coll Proceedings would be finally determined at the same hearing, Epic's expert evidence would be heard, and its claims finally determined, in a later trial. The position now is that Epic's claims will be determined at the same time as those made in the Coll Proceedings (and the Rodger Proceedings). That means that there needs to be a process of "harmonisation" of the disclosure being provided to (and by) all three claimants. It also means that there may be a need for further disclosure in relation to Epic's claims if and in so far as they are not duplicative of claims made in the Coll Proceedings and, for example, if it is required for the preparation of Epic's expert evidence.

5. For the purposes of the December Hearing, the parties prepared a helpful, detailed Redfern Schedule (the "December RS") which recorded their respective positions in relation to each of the disclosure requests. The parties prepared a further Redfern Schedule for the purposes of the June Hearing (the "June RS").

B. GOOGLE'S APPLICATIONS FOR DISCLOSURE

6. At the December Hearing the Tribunal considered various requests made by Google for further disclosure relating to three issues: (a) the profitability of the Epic Games Store ("EGS"); (b) Epic's strategy and commercial arrangements in relation to the distribution of its apps and app store(s); and (c) the fees and commissions paid by Epic for the distribution of its apps and app store(s), and pass-on rates to consumers.

7. In summary, and in so far as is relevant for present purposes, Google made the following disclosure requests at the December Hearing:

(1) Request 3 related to the profitability of EGS (issue (a)), and sought: *"Details of the financial forecasts, and supporting assumptions and financial data that evidence that the EGS will achieve positive operating income between 2026 and 2028"*. This disclosure request arises in relation to the Unfair Pricing Claim.

(2) Requests 5 to 7 and 9 (amongst others) sought various categories of documents relating to Epic's app distribution strategy (issue (b)). These disclosure requests arise in relation to the Essential Facility Claim.

8. The Tribunal considered these Requests, and made various orders which are set out in an Order dated 10 January 2025 (the "January 2025 Order"), and which I shall refer to as relevant below. In short, Epic was required to disclose some, but not all of the documents and data that Google had requested. Google was then to review the disclosure provided, and, if it wished to renew its requests (which it had permission to do), explain in what way the disclosure was deficient or insufficient to enable the relevant pleaded issues to be determined. As the Tribunal stated in the December Ruling, *"[w]hilst documents may be relevant, it does not mean that it will necessarily be proportionate to order that they be disclosed. That will turn to at least some degree on disclosure that has already been made.*"

9. Having considered the disclosure that Epic has now made, Google maintains that it is inadequate and that further disclosure is required. The disclosure sought falls into three categories:

(1) Request G5 in the June RS seeks further disclosure relating to the profitability of EGS (i.e. the Unfair Pricing Claim);

(2) Requests G1; G3; and G4 seek further disclosure relating to the distribution of apps and app stores (i.e. the Essential Facility Claim);

(3) Request G2 sought further disclosure of specific missing documents and this was resolved prior to the June Hearing.

(1) Request G5: Disclosure relating to the profitability of EGS

10. Request G5 seeks *"Financial forecasts for EGS and related material"* and requests:

> "a. Copies of any "[✂] materials" referenced at row 23 of the first tab of the [✂] Document.
>
> b. Copies of any [✂] or other forecasts prepared by Epic in relation to EGS covering any of the period 2021 to 2029.
>
> c. Copies of any other comparisons as between the [✂] or other forecasts in relation to EGS, including covering any of the period 2021 to 2029.
>
> d. Copies of the financial information or documents that underpin any [✂] or other forecasts in relation to EGS, including those disclosed in response to (a) to (c) above.
>
> e. Copies of any other documents prepared by Epic in relation to its analysis of the digital gaming market and available distribution channels, including across PC, consoles, streaming services, and mobile.
>
> f. Copies of any other documents prepared by Epic in relation to comparisons of EGS against competitors/other distribution channels in the digital gaming market, including across PC, consoles, streaming services, and mobile."

11. By way of background to Request G5, at the December Hearing Google sought the documents set out in Request 3 (see paragraph 7(1) above). This was on the basis that Epic's Unfair Pricing Claim relies on a comparison with EGS's own commission rates in support of the proposition that a 0% commission is fair where a developer uses an alternative payment service, and that 12% is appropriate (given that is what Epic charges) where Google's payment services are used. Google say that the Epic pricing structure is also relied on as a comparator in the Coll and Rodger Proceedings. Google submits that it is entitled to test whether or not Epic's rates are plausible comparators, in particular in light of the fact that in Epic's US claim against Apple, the 12% rate was found to be *"below cost price"*.

12. The Tribunal ordered Epic to provide a witness statement addressing what financial data it maintained at the general ledger level relating to allocated and unallocated costs of EGS, and a copy of that financial data. Epic was also required to provide details of the costs of development and maintenance of EGS

save in so far as it was already covered by Epic's existing disclosure. By paragraph 4 of the January 2025 Order, Epic was also required to disclose:

> "4. … all documentation and financial data including forecasts and assumptions relied on for the purposes of Epic's allegation in paragraph 13d of its Re-Amended Reply that "Epic expects the Epic Games Store to achieve positive operating income between 2026 and 2028 (subject to certain assumptions) using the current fee structure and commission rates."

13. Epic's position as to future profitability has also subsequently been referred to in a witness statement of Mr Steven Allison dated 1 March 2023. His evidence is to the effect that EGS is expected to become profitable by [✂].

14. Epic disclosed two documents dating from March and July 2023 pursuant to paragraph 4 of the January 2025 Order. In support of its argument that further disclosure is required, Google relies on the fact that Epic subsequently inadvertently provided disclosure of a further financial forecast for EGS (the "Third Forecast") which Google maintains is relevant, material and adverse to Epic's pleaded case as to future profitability. Having initially invited Google to delete the Third Forecast as having been inadvertently disclosed, Epic agreed to disclose it formally into these proceedings. The reference to *"*[✂]*"* in Request G5, and potential existence of other *"*[✂] *material"* is derived from the Third Forecast in which that term appears.

15. Google submits that the Third Forecast contains information that is adverse to Epic's case and raises the possibility that there is likely to be further relevant documentation that Epic has not disclosed. In short, Epic has cherry-picked forecasts that are favourable to its case. Further disclosure is necessary to enable both Google and the Tribunal to test Epic's Unfair Pricing Claim and the factual witness evidence. Google maintains that the disclosure sought is reasonable and proportionate, being a clear and targeted request aimed at identifying specific and well-defined categories of documents that ought to be readily available to Epic.

16. Epic argues that the two documents originally disclosed were those on which it relied when pleading the Reply, and the Third Forecast was not therefore disclosable under paragraph 4 of the January 2025 Order. Epic also says that the

Third Forecast is not obviously relevant or material, and nor is it adverse to Epic's case because it is based on fundamentally different assumptions and relates to a different point in time to the documents on which Epic relied when pleading its Reply. The Third Forecast incorporates additional costs whilst omitting certain categories of revenue. For these reasons Epic says it has not cherry-picked at all, and that Google's application should be dismissed.

17. Epic resists further disclosure on the basis that there has already been *"considerable disclosure of EGS materials"*. That disclosure includes the [✂]: disclosure which Epic maintains is provided at a more granular level than that provided by Google to Epic. Epic suggests that the [✂] data is sufficient to enable Google's experts to make their own forecasts as to Epic's future performance, and to consider how realistic Epic's evidence is as regards its anticipated profitability. Epic also suggests that it would be improper for Google's experts to rely on Epic's own views when formulating their opinion.

(a) Analysis

18. Mr Scannell KC for Epic submitted that it is an open question as to whether or not it is relevant for an expert to consider the profitability of EGS when deciding whether it is a suitable comparator to the Google Play Store, not currently addressed (at least not in detail) by any expert. He also submitted that, if any expert did consider an analysis of future profitability to be relevant, the only information that would be relevant would be the underlying [✂] material. It may be that no expert ultimately concludes that an analysis of profitability is relevant to the exercise. The point is, however, that it is Epic that has put its own future profitability in issue, specifically in relation to its Unfair Pricing Claim and the appropriateness of EGS as a comparator. Epic's case is that its commission rates are a suitable benchmark, and that by adopting the EGS fees structure and commission rates, it will be able to achieve positive operating income between 2026 and 2028.

19. Given that Epic has pleaded its own expectations for those future periods, based on the existing fee structure and commission rates *"subject to certain assumptions",* I consider that it is appropriate for Epic to provide disclosure in

order that Epic's case can be tested. Epic's existing disclosure relates to the current position in terms of profitability and costs: not Epic's views of its future profitability for 2026, 2027 or 2028. Epic's forecasts will have been prepared on the basis of certain assumptions that Epic considers appropriate to make regarding its own business, given its own knowledge of its affairs. Self-evidently these are not matters of which Google can be said to be aware. Those forecasts will not be based solely on information derived from the [✂].

20. Paragraph 4 of the January 2025 Order has elicited only two documents that were relied on by Epic when pleading its Reply. I make no criticism of Epic in this regard, and I accept that it has complied with the strict wording of the paragraph. However, since then Mr Allison has provided evidence to the same effect. In any event, I agree with Google that something more is required from Epic if the plea is to be properly tested.

21. That said, Google's request is too broad. Any number of forecasts may be prepared by a commercial entity for a variety of different business reasons: some reflecting disaster scenarios, and others extremely optimistic assumptions many of which are rejected as being of no utility. There may be numerous drafts. These sorts of document are unlikely to be particularly informative to the determination that the Tribunal will need to make which is whether or not, on the current fee structure and commission rates, EGS is likely to become profitable and if so, by when, and whether the fees and rates charged by Epic are a meaningful comparator to those adopted by Google - in particular in light of the injunctive relief sought by Epic.

22. In my view, what should be disclosed are the forecasts which are presented at executive level, and which are intended to reflect EGS's reasonably anticipated performance. There may be a range of scenarios presented at executive level, based on various assumptions. There may or may not be formal adoption of one or more of these by either the Board or an executive committee as a means of benchmarking annual or future performance. A review of such forecasts (if one takes place) may be done quarterly or annually, or at some other time interval. But what I consider should be disclosed are forecasts meaningfully presented at a senior executive level, and which inform executive decision-making. To be

clear, I do not expect Epic to have to disclose every draft or speculative forecast prepared in the course of day to day management or at a junior level. I have in mind documents (whether or not supportive of, or adverse to Epic's case) that reflect the understanding at the senior executive level of the likely parameters of Epic's future performance, and whether or not it is reasonably likely to be profitable by 2026 to 2028.

(2) Requests G1; G3 and G4: Disclosure relating to Epic's commercial arrangements and strategy for app and app store distribution

23. By way of background, Google sought at the December 2025 Hearing disclosure of various categories of documents relating to Epic's distribution strategy under Requests 5 to 7 and 9 of the December RS. Google submits that this disclosure is relevant to Epic's Essential Facility Claim, and to market definition. Epic alleges that the Google Play Store is indispensable as a means of distributing rival app stores. However, Epic also pleads that it launched EGS on Android in August 2024 *without* using Google Play Store. Epic has also amended its market definition to limit its main, relevant market to *"the distribution of native software applications"*, thereby seeking to exclude web applications.

24. In addition, after the December Hearing, it was announced that Epic had entered into an arrangement with Telefonica relating to the pre-installation of EGS on Telefonica phones. Google submits that Epic's Fortnite has also since been released and distributed on Nvidia GeForce Now, a game streaming service available on a number of platforms including through web browsers on Android. The Tribunal will need to determine whether or not Google Play Store is indispensable as a means of distributing rival app stores, or whether there are other app and app store distribution channels available as alternatives. Google submits that disclosure of Epic's own appraisals of its ability to distribute its apps and app-stores other than through Google Play Store, and its discussions with third parties regarding alternative distribution channels, is required on the basis that it is relevant to this issue.

25. By the January 2025 Order I ordered that Epic provide proposed search terms along with the custodians which it considered would capture various categories of *internal* documents relating to its strategy for its release of EGS on mobile (Requests 5 and 7). In the December Ruling, I declined to require any disclosure under Request 6 which sought similar categories of documents relating to Epic's *engagement with* OEMs, developers, and partners in connection with EGS. I did so on the basis that I was not satisfied as to the necessity and proportionality of Request 6 in circumstances where internal documents produced in relation to Requests 5 and 7 were likely to refer to, and provide information relating to Epic's engagement with third parties as to its distribution strategy and viability of alternative channels to the Google Play Store. Google had permission to renew their application for Request 6 disclosure after they had reviewed the documents disclosed in response to Requests 5 and 7 and, if they did so, they were to explain in what way(s) Epic's existing disclosure was deficient or insufficient to enable the relevant pleaded issues to be determined.

26. As regards Request 9, Google sought disclosure of documents relating to Epic's app distribution strategy *other* than EGS on mobile, in particular in relation to the release of Fortnite on Nvidia GeForce Now; and the removal of Fortnite from the Samsung Galaxy Store. In response, Epic submitted that it had already made substantial disclosure of relevant documents going to these issues. I therefore ordered that Epic should identify to Google in writing the documents which had already been disclosed and which related to these issues, and provided for the parties to seek to agree further search terms and custodians, failing which Google was permitted to renew its application under Request 9.

27. Google's position at the June Hearing was that Epic's Request 5 and 7 disclosure has proved to be inadequate because:

    (1) it excludes certain key custodians;

    (2) it contains clear and obvious gaps (for example, omitting final signed agreements with third parties, or a complete record of Epic's arrangements with Telefonica);

(3) since the December Hearing, Mr Allison's second witness statement, dated 5 March 2025, has been filed pursuant to paragraph 8(a) of the order made following the hearing on 7 October 2024. Paragraph 8(a) of that order required Epic to serve a witness statement addressing the outcome of the Claimant's strategy to launch EGS on Android, and data showing the number of users of EGS on Android. Mr Allison's evidence:

(i) addresses the distribution of EGS on mobile and via other distribution channels,

(ii) refers to Epic's negotiations with third party service providers, app developers, OEMs and mobile network operators.

(iii) explains significant developments in connection with Epic's app distribution strategy generally.

(4) Mr Alllison subsequently provided a supplementary statement dated 10 June 2025, which corrected various parts of his second statement. He records that his second statement was made following discussions with members of his team who are involved in discussions with OEMs and carriers, but that having had subsequent discussions, some parts of what he had previously said required correction, including in relation to the reaction of carriers and OEMs when Epic sought to discuss the distribution of EGS on their Android devices, and in relation to Epic's arrangement with Telefonica.

28. Google submits that Mr Allison's evidence is relevant to whether or not EGS can be distributed on Android, and whether EGS represents a viable distribution channel for App developers (including Epic). That is relevant to whether or not the Google Play Store is an essential facility. Google says that disclosure in relation to Epic's dealings with third parties has become even more significant since Mr Allison's witness statement (which required correction) makes clear that there have been communications with third party app developers, OEMs and carriers. Google maintains that in order to be in a position to test Mr

Allison's evidence at trial, further disclosure is required. Google suggests that it is reasonable to conclude from Mr Allison's evidence that some documentary evidence must exist, including in relation to discussions, negotiations and agreements with third parties in relation to EGS on mobile.

29. Epic submits that it has already provided ample disclosure pursuant to the January 2025 Order, applying 27 search terms over data collected from 4 custodians. It has explained the reasons why those custodians were selected, and the basis on which it is suggested that those custodians are both of a sufficiently senior level and likely to have relevant documents, and why further disclosure would be disproportionate (for example, because it is likely to be duplicative). That exercise produced 31,000 documents for review, of which 14,703 were disclosed. Those documents include overview-type documents which are produced within Epic and provide an overview of all of the OEMs, developers, Mobile Network Operators ("MNOs") and others with whom Epic is speaking. To now seek to apply: (1) a revised date range for this disclosure; (2) 11 additional search terms; and (3) 10 additional custodians is wholly disproportionate.

30. Epic submits that the January 2025 Order envisaged that Google would review the explanations provided by Epic, and the disclosure produced by the searches as applied to the custodians selected by Epic, and then identify whether further targeted disclosure was required. Google has not done this, and its approach of seeking a wholesale rerun and expansion of the entire exercise is unreasonable and disproportionate. Epic has conducted a preliminary analysis and says that the application of Google's search terms would add significantly to the document pool for review. Applied to the Requests 5 and 7 documents already disclosed, they produced 7,678 de-duplicated Gmail documents, and 1,694 de-duplicated Slack documents suggesting a significant degree of duplication with the exercise that has already been conducted.

31. As Google has not sought to identify, by reference to the pleaded case, the respects in which it is said that the existing disclosure is inadequate, Epic says that Google is not strictly entitled to anything further, although Epic has sought to be cooperative and has agreed some further custodians and search terms.

What Google now seeks, over and above what Epic proposes, is disproportionate.

32. The parties agreed certain aspects relating to Google's requests prior to the June Hearing. The outstanding disputes were as follows:

(1) Request G1 seeks disclosure of "*Agendas, minutes, slide decks, presentations and other records of meetings, relevant to Epic's strategy for release of EGS on mobile devices, and documents evidencing Epic's strategy for the release of EGS on mobile, and communications related to the preparation of the same, including any slide decks, presentations or similar documents concerning "EGS expansion"*". Google seeks further custodial disclosure by reference to additional custodians and search terms, and an extended date range.

(2) Request G3 seeks disclosure of *"Documents which evidence communications and negotiations with third parties in connection with EGS on mobile"*, by reference to the additional custodians and by applying certain additional search terms, and an extended date range. It also seeks *"Agendas, minutes, records of communications, heads of terms, agreements and strategy documents related to Epic's engagement and potential engagement with OEMs, developers, partners and potential partners in connection with EGS on mobile"*.

(3) Request G4 seeks disclosure of Epic's app distribution strategy *other than* EGS on mobile, by reference to a more up to date timeframe. As Epic's disclosure (like Google's) was originally provided by reference to disclosure already given in proceedings in the US there is no targeted disclosure relating to its app distribution strategy generally which post-dates 12 August 2020.

33. Consistent with the approach of the parties at the hearing, I will consider Requests G1 and G3, which relate to Epic's strategy and release of EGS on mobile, together. Whereas the focus of Request G1 is on internal, strategy documents, the focus of Request G3 is on Epic's communications and

negotiations with third parties relating to EGS on mobile. Request G4 focuses on the distribution of apps and EGS other than on mobile, and I will deal with that separately.

(3) Requests G1 and G3

34. The outstanding disputes which are common to Requests G1 and G3 (if Request G3 disclosure is ordered) relate to: (1) the custodians; (2) the date range; and (3) the search terms to be applied. Save for the provision of certain specified documents relating to its concluded arrangements with Telefonica and [✂], Epic opposes Request G3 – the disclosure of its communications with third parties - in its entirety.

(a) Custodians

35. Google originally sought to add 13 custodians but does not pursue three of those. As regards the remainder, Google seeks to add the following:

(1) Timothy Sweeney (CEO and a witness in these proceedings).

(2) Andrew Grant (Senior Director, Engineering and witness in these proceedings).

(3) Daniel Vogel (COO and Executive Team Member).

(4) Adam Sussman (President and Executive Team Member).

(5) Alain Tascan (EVP Games Development and Executive Team Member).

(6) Marcus Wassmer (EVP Development and Executive Team Member).

(7) Devin Winterbottom (EVP of Game development).

(8) Michael Modon (Senior Director of Growth Partnerships).

(9) Ryan Dixon (Senior Director of Ecosystems Partnerships).

(10) Eric Gass (Senior Mobile Partnerships Lead).

36. Google's submissions in relation to the disputed custodians are as follows:

(1) Mr Grant is a witness in these proceedings who has participated in discussions about the technical implementation of EGS on mobile. Google says that the technical implementation of app stores is a pleaded issue, and Mr Grant ought to be included as an additional custodian.

(2) No member of Epic's executive team is currently included as a custodian, despite the clear and significant involvement of at least four of them (Daniel Vogel; Adam Sussman; Alain Tascan and Marcus Wassmer) in the strategy relating to the distribution of EGS on mobile. I am told that each has been identified by Google as leading a particular team, such that their documents are unlikely to be entirely duplicative of those produced by others.

(3) Further *"key"* individuals have been identified by Google as being involved in the strategy relating to EGS on mobile, namely Devin Winterbottom and Michael Modon.

37. Epic's Requests 5 and 7 disclosure does not adequately disclose Epic's strategy concerning the involvement of, and terms of discussions, negotiations and agreements with third parties. For example, and as canvassed above, Epic's disclosure relating to Telefonica does not include the signed final agreement, or a signed copy of the amendment to Epic's agreement with another entity, [✂]. Further, and despite a document dated 2 September 2024 recording interest from [✂] in a collaboration from Epic, no documents evidencing that "*interest"* have been identified in disclosure, and it is unclear whether there have been subsequent developments. Whilst a spreadsheet has been disclosed that tracks developers being targeted by Epic, Google has been unable to locate evidence of the outcome in relation to two of them.

38. Google submits that it has identified a number of relevant individual and recurring meetings which are not captured by the existing search terms. Google

relies on a reference to *"liberty"* meetings (said to be a reference to Project Liberty), being meetings run by Mr Sweeney at which Epic's strategy for EGS on mobile was discussed. Although Epic has agreed to apply a search term (number 7) that ought to identify such documents, Google relies on this as an indication that the disclosure exercise has been inadequate.

39. As explained in paragraph 27(4) above, Google relies on the evidence of Mr Allison which refers to relevant negotiations with third parties, and his summary of the outcome of those discussions and the points made by OEMs, carriers and developers in response, and the need to test this at trial.

40. Google also points to the fact that there are certain obviously missing documents (being documents that Google has specifically asked for in G2). Whilst Epic has agreed to provide those documents, Google relies on the fact that they were not disclosed as evidencing the inadequacy of the disclosure exercise conducted by Epic under Requests 5 and 7.

41. Epic submits that its disclosure is sufficient to enable the questions relating to whether or not the Google Play Store is an essential facility and market definition to be determined. It relies on the explanation for its selection of its proposed custodians which is set out in the fourth witness statement of Ms Rogers of Norton Rose Fulbright LLP dated 15 January 2025. Ms Rogers confirms, at paragraph 7, her understanding that Epic's proposed custodians for the purposes of Requests 5 and 7 (Steve Allison, Kyle Billings, Walter Somol and Hans Stolfus) were selected as being those persons who attended meetings at which matters relating to EGS on mobile were discussed, and most likely to hold material relevant to Requests 5 and 7 more generally based on their role and responsibilities.

42. Epic has offered to add Mr Sweeney (for the purposes of Requests G1 and G4); Mr Gass (for Requests G1, G3 and G4(b)), and Mr Dixon (for G4(c)) to that list. I will deal separately with the Request G4 custodians in paragraph 89 below. As regards the additional custodians proposed by Google for the purposes of Requests G1 and G3, Ms Rogers explains that:

(1) Mr Grant is VP of the creator platform in Epic. He has participated in discussions relating to the technical implementation of EGS on mobile, but has not participated in strategic or product decision-making processes and is not involved in strategy, which is what Requests 5 and 7 are concerned with. Although he is a witness, that does not mean he is a relevant custodian for the purposes of Requests 5 and 7.

(2) Mr Vogel is the current Chief Operating Officer at Epic, and someone to whom Mr Allison reports on strategic matters. Mr Allison is a custodian already. It is likely that documents would be largely duplicative as between the two.

(3) Mr Sussman is the President of Epic and [✂]. To the extent that that is not the case, his documents would be likely to duplicate Mr Allison's material.

(4) Mr Wassmer is Executive Vice President of Development. [✂], his material would largely duplicate Mr Allison's emails and Slack documents.

(5) Mr Winterbottom is the current Executive Vice President of Games Development, having taken over from Mr Tascan. [✂].

(6) Mr Modon was quoted in a press release relating to the deal EGS has entered into with Telefonica. However, Mr Stolfus has been added as a custodian, and [✂]. He reports to Mr Modon, and so adding Mr Modon would create duplication.

43. In so far as Google relies on Mr Allison's evidence, Epic points out that he is already a custodian.

(b) Search Terms

44. The search terms for Requests G1 have been the subject of some discussion between the parties. I was provided with the latest iteration, reflecting Google's

proposed amendments as Annex A to a summary Redfern Schedule prepared by Google. Although Epic did not accept the accuracy of this summary, I do not understand there to be any dispute that it accurately reflects the parties' respective positions on search terms. There are 11 proposed search strings. Epic accepts the Additional Search Terms 2, 5, 6, 7, 8 and 9.

45. As regards the Additional Search Terms 1, 3, 4, 10 and 11 ("Google's Additional Search Terms"), Google submits that they are targeted search terms which have been carefully formulated to minimise the potential risk of terms such as *"3"* (relevant to the carrier that uses that name) returning too many false hits. Google maintains that the Requests 5 and 7 disclosure is deficient and further search terms ought to be added to the list because documents are missing (see paragraph 40 above).

46. Epic submits that the answer to whose search terms are to be preferred requires an understanding of the context in which Request G1 is made. The fact that there may be *"gaps in the record"* is insufficient if there is other disclosure going to the same point which is sufficient to enable the issue arising on the pleading to be answered. Epic points out that Google already knows that Epic has concluded an agreement with one carrier – Telefonica – [✂]. That is sufficient in circumstances where it is Google's, rather than Epic's, conduct which is under scrutiny.

47. Epic maintains that if Google's Additional Search Terms are applied to the disclosure already provided under original Requests 5 and 7, over half of the disclosed documents respond to the search. The additional search terms that Google now wants to apply are likely to lead to a *"huge swathe"* of irrelevant material.

    (1) As regards Google's Additional Search Terms 1, 3, and 4, Google seeks disclosure of documents that respond to searches for communications between EGS and a long list of OEMs and carriers. However, Google is well aware that EGS has [✂] concluded an agreement with Telefonica, and there is a real question mark over whether this additional disclosure actually advances matters.

(2) As regards Google's Additional Search Terms 10 and 11, these amount to the resurrection (in Request G3) of Google's original Request 6 which sought disclosure of communications as between Epic and third parties. The existing disclosure provided under Requests 5 and 7 includes email chains with third parties in relation to EGS on mobile, Epic internal exchanges in relation to status, progression and next steps with regards to interactions between Epic and third parties, and internal overview documents setting out summary updates of Epic's engagements and negotiations with third parties. To require the application of Additional Search Terms 10 and 11 in order to identify the underlying communications themselves will obviously lead to significant duplication with what has already been provided. Epic has run the Google Additional Search Terms and the results suggest that this is the case. To require Epic to conduct the exercise by reference to Google's Additional Search Terms is unnecessary and disproportionate.

(3) What ought to happen is what was originally envisaged: Google should review the disclosure in relation to Requests 5 and 7 and identify any further targeted searches arising out of those documents. Google has not engaged with the issue of how the documents already disclosed are insufficient to enable it to test, and the Tribunal to determine the issues in the case. In any event, the proposed search terms are disproportionate and there has been no attempt to link them back to the pleadings.

(c) Date Range

48. The relevant date range for the original Requests 5 and 7 was previously 13 August 2020 to 31 October 2024. In Requests G1, Google now seeks disclosure in the date range from 1 December 2023 to 31 May 2025.

49. Google submits this is a fast developing market and that it is therefore appropriate that it has up to date disclosure.

50. Mr Scannell accepted that there may be a need for categories of disclosure to be updated nearer the trial. However, to do that exercise incrementally and

piecemeal would be onerous and expensive. Epic maintains that a line has to be drawn somewhere, and that one was already drawn in the January Order as 31 October 2024.

(d) Request G3

51. Epic opposes Request G3 - disclosure of its communications with third parties - in its entirety. Epic relies on the points made in relation to Request G1 as regards custodians, search terms and date range. In addition, Mr Scannell refers to the December Ruling in which the Tribunal indicated it was likely that sufficient information would be revealed about the position as regards third parties from the disclosure of Epic's internal documents relating to the distribution of EGS on mobile.

52. Mr Scannell submits that Google has not identified in what ways the disclosure that has already been made of Epic's internal documents is inadequate, save to point to four documents it maintains are *"missing"*. Mr Scannell submits they are not, in fact, missing. Two of the documents were not produced because they did not correspond to the relevant date range that applied (including the concluded Telefonica agreement), and the other two are instances in which Google has identified a reference to some interaction with a third party in relation to which Google considers there is likely to have been some relevant written communication. Mr Scannell points to the evidence of Mr Allison, [✂]. In any event, the appropriate thing for Google to do is to seek further information from Epic about those two instances, and not to seek wholesale disclosure relating to all third parties by reference to a wide range of custodians and broad search terms.

53. Mr Scannell raises the issue of where such disclosure of communications between Epic and third parties really takes this case. It is not at all surprising that Epic is having discussions with third parties relating to its distribution strategy. Any commercially minded organisation seeking to grow its business would do that. Further, Epic's arrangements with third parties that are already in place can be readily identified by accessing EGS on Android and identifying the apps that are available. Devices that have EGS pre-installs are publicised.

54. Mr Allison does, however, [✂]. Mr Scannell fairly accepted in his submissions that this issue might well warrant disclosure, but submitted that such a request ought to be narrowly framed so as to capture only documents relevant to that particular issue.

(e) Analysis

55. Whilst some disclosure in relation to Epic's distribution strategy is plainly both necessary and appropriate, I made clear in the December Ruling that the disclosure exercise must be proportionate, and that there is no entitlement to disclosure of every single document that might be relevant to an issue. There may well be gaps in the factual record, but that does not necessarily mean that the original exercise was inadequate such that it must be revisited by the addition of custodians or additional search terms.

56. What was envisaged in both my December Ruling and in the January Order was that the documents produced in response to Requests 5 and 7 would be a start. To ensure that it was a meaningful starting point, Epic was required to identify its proposed searches and custodians and justify their selection by reference to the likelihood of them identifying the documents that Google had requested. Google has also received a narrative account of Epic's distribution strategy and its progress in the form of Mr Allison's evidence.

57. What Google was expected to do was assess what had been produced in relation to Requests 5 and 7, consider whether or not it would be sufficient to enable it to defend the Essential Facility Claim, and make any such arguments it might wish to run on market definition. If it considered that it was not, then it needed to explain why by reference to the pleaded issues in the case.

58. Epic maintains that the existing disclosure Requests 5 and 7 includes email chains between Epic and third parties in relation to EGS on mobile, and Epic internal exchanges in relation to status, progression and next steps with regards to interactions between Epic and third parties, and internal overview documents setting out summary updates of Epic's engagements and negotiations with third

parties. Google has not disputed that description of the documentation that has been produced.

59. Google has identified further individuals which it suggests are key to discussions on Epic's distribution strategy, or members of the executive team which it suggests ought to be included as custodians. However, Epic has provided an explanation as to why they were not included as custodians, and why a disclosure exercise in relation to them is likely to produce documents duplicative of others who are custodians. The whole purpose of requiring the identification of custodians in this way was to ensure that the exercise was proportionate. It was not the intention to require disclosure to be provided by every individual involved in every meeting or on every project, but rather to ensure that individuals were identified who, taken together, would be most likely to yield all or at least a meaningful population of the documents relevant to the issue identified by Google. There is no point in conducting a disclosure exercise in relation to every participant in a meeting in order to identify a copy of the relevant board pack or slide deck, for example. A search against one is likely to be productive, and against any more than one there will be duplication. Indeed the same approach was applied in relation to Google's own disclosure in the Coll Proceedings.

60. Google submits that the fact that the application of the search terms to the existing disclosure leads to the identification of many of the same documents is no answer. What is important is whether the application of those terms identifies documents not already in disclosure. However, in the absence of any real explanation as to why it is suggested that disclosure from an additional custodian would be likely to produce non-duplicative documents, there is, in my view, no reason to add them.

61. Specifically as regards Mr Grant, I note that Google accept that he was involved with the technical implementation of EGS on mobile. Whilst that may be an issue in these proceedings, Google does not suggest that he was involved in Epic's strategy for the release of EGS on mobile which is what Requests 5 and 7 (and Requests G1 and G3) are specifically concerned with. I do not therefore consider he should be added as a custodian. In so far as Epic relies on the

evidence of Mr Allison to justify the additional custodians and search terms, Epic points out he is already a custodian.

62. Nor do I find it persuasive that Google has identified documents it regards as being *"missing"*. In that regard, I note Google has provided a list of 32 documents which were the subject of Request G2, and which Epic has agreed to provide. That is not inconsistent with how the disclosure exercise was intended to work. It was always open to Google to make further targeted requests, which it has done. The fact that documents are identified as *"missing"* does not justify conducting a wider, significantly extended disclosure exercise by reference to additional custodians and broad search terms.

63. In that regard, I note that executed versions of Epic's agreement with Telefonica and an amendment to Epic's agreement with [✂] were not included in the existing disclosure, but Epic explains this is because they fall outside the relevant timeframe. Epic has agreed to provide the executed versions.

64. Other documents said to be missing are in fact references to documentation which Google infers *ought* to exist. However, Mr Allison's evidence is that [✂]. The appropriate thing for Google to do is to make a targeted request aimed at ascertaining whether there is a written internal record setting out (for example) [✂] interest, rather than seeking to expand the disclosure exercise wholesale.

65. In any event, Epic has put forward a proposal whereby it will apply a specific, limited further disclosure exercise by running certain of Google's proposed additional search terms (Additional Search Terms 2, 5, 6, 7, 8, and 9 (the "Epic Additional Search Terms")) against the original four custodians. Epic also agrees to add Mr Tim Sweeney and Mr Eric Gass as custodians, for the original disclosure Requests 5 and 7 (which will also include the Epic Additional Search Terms). Mr Sweeney is Epic's CEO, and a witness in these proceedings, and Mr Gass is the "Senior Mobile Partnerships Lead". This is a sensible proposal and to my mind goes a significant way to addressing Google's concerns.

66. In my view, it is reasonable to expect that significant developments relating to third parties in relation to Epic's strategy for release of EGS on mobile and its expansion will be identifiable from Epic's internal documents. I will not, therefore, require Epic to undertake the disclosure exercise sought in Request G3. However, Epic should provide disclosure of any documents relating to reservations that third parties might have expressed relating to EGS on mobile, including issues arising in relation to Google's perceived reaction should they do so. If, as Mr Allison says, [✂], that ought not to be an extensive exercise. It also spans a relatively short time frame. The parties should attempt to agree a process by which this can be done, along with any necessary custodians and search terms that will elicit this type of document.

67. As regards the extension of date range from November 2024 to March 2025, this involves a degree of mission creep. It cannot be the case that every time an issue arises in relation to disclosure, a party can assert that an update is required to all disclosure already provided. Each time the disclosure exercise is done it is an expensive and time-consuming task. However, it is also fair to say that, by the time the trial happens, disclosure provided up until October 2024 will be almost two years out of date. There may well be a need to update disclosure before trial, but the appropriate way to deal with that is for the parties to endeavour to agree areas on which it is important for the Tribunal to have up to date evidence by reference to specific issues that arise on the pleadings or evidence. Whether or not it is necessary and proportionate for there to be an updating disclosure exercise, and if so what the scope of that should be is an issue that should be brought before the Tribunal in sufficient time before trial for such an exercise to be undertaken, and for the documents produced by it to be considered: the pre-trial review will in all likelihood be too late.

68. I will, however, order that in relation to the additional custodians it would be appropriate for the disclosure provided to be up to May 2025. I make no order to that effect in relation to the existing custodians. That is because, as I understand it, the cache of documents which form the base for the searches applied to them has already been captured by reference to the existing timeframe, and to extend it now would be an extensive, and potentially costly

process. If I am wrong in that, and it is a relatively straightforward process to extend the time period, Epic should do so.

(4) Request G4 – Documents related to Epic's app distribution strategy other than EGS on mobile

69. Request G4 relates to Epic's app distribution strategy *other than* on mobile. By Request G4, Google seeks the following:

(i) All slide decks or notes presented at, and minutes of, relevant meetings and groups that address Epic's app distribution strategy (other than in respect of EGS on mobile) from 13 August 2020 to 31 May 2025;

(ii) Disclosure of all documents related to the release and distribution of Fortnite through GeForce Now from 20 January 2022 to 31 May 2025, applying certain search terms, in relation to *"at least"* Ryan Dixon, and Epic's witnesses in these proceedings (including Andrew Grant) as custodians.

(iii) Documents and correspondence related to Epic's consideration of Samsung's *"Auto Blocker"* feature and Epic's decision to remove Fortnite from the Samsung Galaxy Store (including communications with Samsung regarding the same) from 1 October 2023 to 31 May 2025, and in relation to *"at least"* all of Epic's witnesses in the proceedings, and Epic's executive team.

70. Epic opposes G4(a) in its entirety. Epic partially agrees with G4(b), but proposes to conduct a more limited search. In relation to G4(c), Epic proposes to conduct a targeted disclosure exercise against Mr Sweeney's Gmail and Slack documents, and Ryan Dixon's documents from 1 June 2024 to 31 July 2024.

71. Request G4 reflects requests previously made under Request 9 of the December RS. I declined to make an order on that occasion, and instead required Epic to identify the documents relevant to this issue that it maintained were included in

their existing disclosure. Google was then to review the disclosure to be provided by Epic, and then renew its application (if so advised) by specific reference to the pleaded case, identifying the respects in which it was suggested that the existing disclosure was insufficient to enable the Tribunal to answer those pleaded issues.

72. Google maintains that this disclosure is necessary because it relates to Epic's Essential Facility Claim, and to Google's defence that there were many viable alternative distribution channels available to Epic such that the Google Play Store is not an essential facility, and Epic was not precluded from reaching Google Android users.

73. In support of its request for disclosure under Request G4(a) Google relies upon:

(1) The need to test what Mr Allison's witness statement says about Epic's distribution strategy generally, in particular given that there was a need to correct that statement (referred to in paragraph 27(4) above).

(2) The fact that Epic has made no disclosure of its app distribution strategy generally. Its disclosure has focused on its strategy for release on mobile. That disclosure also only goes up to August 2020 (being the date of the disclosure provided in the US Proceedings which formed the base for the disclosure provided in these proceedings).

(3) The request is for a limited category of documents relating to meetings and groups that address Epic's app distribution strategy other than in respect of EGS on mobile.

74. In support of its requests for disclosure under Request G4(b) and (c) Google relies upon the fact that it needs updated disclosure arising out of the disclosure that was ordered under Request 9. In particular, in relation to G4(b), disclosure needs to be provided from 20 January 2022 onwards (disclosure having been provided up until that date) which would include documents going to the success of the launch of Fortnite beta on Nvidia GeForce Now. In relation to G4(c),

disclosure is required in relation to the period after Samsung's decision to launch Samsung's Auto Blocker in October 2023.

75. Google submits that GeForce Now, which is a web streaming service, is a viable alternative distribution channel for Fortnite. Google submits that it is entitled to disclosure of both internal and external communications as the issue of whether there are viable alternative distribution channels must be tested by reference to Epic's communications with third parties who can provide Epic with services, or use of alternative distribution channels. Google points to the fact that Mr Allison provides an update regarding EGS as a PC store, which Google says is one of the alternative distribution channels that its defence refers to. His evidence is that Epic has been providing initiatives to encourage third-party developers to use that alternative distribution channel. This is said to be critical to the question of whether the Google Play Store is an essential facility and the only way that Epic can get its apps and app store to market.

76. Google submits that the decision of Samsung Galaxy Store to introduce its Auto Blocker must have been discussed internally, and seeks disclosure relevant to that decision.

77. Epic's position is as follows:

(1) Google has not complied with what was required by the January 2025 Order. It has simply resurrected its Request 9 without identifying specifically by reference to the pleaded issues how the existing disclosure is deficient, or attempting to formulate targeted searches.

(2) Request G4 is misconceived, disproportionate and exorbitant. Google in effect seeks all documents relating to Epic's distribution strategy for all apps, anywhere, and by any means, with the only exception being EGS on mobile (which is the subject of other requests). There is no pleaded basis for such a wide-ranging request.

(3) Google's summary of the issue that the Tribunal will have to decide is misconceived. Epic's pleaded case arises from anti-competitive conduct

by Google on the markets for the licensing of the Android operating system on mobile devices, the distribution of apps for mobile devices using the Android operating system and the market for the provision of payment services for purchases of digital content within such apps. In particular, the pre-installation restrictions and the technical restrictions, make it unreasonably difficult for distributors like Epic to distribute their rival apps and app stores on Android devices. The focus is on the Android operating system and on mobile devices. Disclosure of Epic's strategy beyond Android is not necessary to determine the Essential Facility Claim.

(4) Whilst Google pleads in its defence that developers cannot complain about competitive behaviour on Android markets because they can always distribute via non-Android devices like PCs and laptops and games consoles (paragraph 58(b)(ii) of the Re-Re-Amended Defence), that only suggests there are other such distribution channels available: a fact no one disputes. The plea relates to the existence and effect of these other distribution channels, rather than Epic's strategy in relation to them. It does not call for disclosure relating to Epic's distribution strategies on those channels, and the request in G4(a) cannot, therefore, be justified. Further, as regards the date range, there is no basis for seeking discovery over a period dating back to when disclosure in the US proceedings was provided. The breadth of the request simply cannot be justified and amounts to a request for Epic to provide standard disclosure across its business over a 5 year period.

(5) In relation to Request G4(b), Google is in reality seeking wholesale disclosure of Epic's commercial relationship with Nvidia GeForce Now, and that is unwarranted. Whilst Google claims this is relevant disclosure because it is interested in Epic's app distribution strategy, Epic does not in fact distribute native apps on Nvidia GeForce Now (which is a streaming service which hosts content, and not apps). Epic accepts that it may be peripherally relevant to Epic's strategy of distributing *content* on Android devices, and is prepared to undertake targeted searches. For this, Epic proposes that Eric Gass should be a custodian. He is said to be

the appropriate person as he is Epic's senior mobile partnerships lead who reports to Mr Stolfus. Epic's relationship with Nvidia GeForce Now is within the remit of Mr Gass. As regards Google's request to also add Ryan Dixon and Andrew Grant, neither are appropriate: Mr Dixon no longer has any involvement with GeForce Now, and Mr Grant's involvement relates to technical implementation, rather than strategic decision-making. Nor is there any basis for seeking the date range of 20 January 2022 (the latest date of the documents provided in the US Proceedings) to 31 May 2025. The proposal of that date range suggests Google wants a complete record of that commercial relationship. Epic proposes the date range of 1 January to 31 March 2025, which ought to be sufficient to provide the information as to the success of the strategy, and will capture the most recent developments. Epic will also apply Google's proposed search terms, but reserves the right to object and to propose modifications depending on the outcome in terms of the number and scope of documents produced.

(6) As regards G4(c), Epic's position is that Google seeks wholesale disclosure in relation to Epic's decision to remove Fortnite from the Samsung Galaxy store. Yet there has been no attempt to explain why the exceptional action taken by Epic in response to what it considered to be serious anti-competitive conduct on the part of Samsung and Google, has anything to do with Epic's distribution strategy generally, or to narrow the request in light of what is already publicly available and filed with the Court in the US Proceedings. Epic will, however, undertake targeted searches and further limited disclosure which would involve running the search terms proposed by Google to the appropriate custodians' documents being Mr Sweeney and Mr Ryan Dixon. They were the individuals who dealt with this issue when it came to light. There is no basis to add all of Epic's witnesses and the entirety of the executive team. As regards date range, Epic does not accept that it should be 1 October 2023 to 31 March 2025. Google's start date is nine months before Epic discovered Samsung's conduct, and the end date is nine months after Epic took the decision to remove its games from the

Samsung Galaxy Store. The period from 1 June 2024 to 31 July 2024 is sufficient to cover the period between discovery of Samsung's actions and the decision taken by Epic. Epic will consider the search terms proposed by Google, but reserves the right to object or propose modifications depending on the results.

(a) Analysis

78. As I understand it, and as Google accepted in the course of submissions, there is no real dispute about there being alternative ways of accessing Fortnite, for example, other than on Android, or that Epic's market definition and Essential Facility Claim relate to app distribution on mobile devices using the Android operating system. Google's point is that, whilst Epic's case may be limited to Android operating systems on mobiles, Google's defence is not so limited. Google disputes Epic's market definition, which is restricted to the distribution of apps on Android. Further, in relation to the Essential Facility Claim, Google's case is that, not only are there alternative routes to market on Android, there are also other routes to market outside Epic's definition of the relevant market: e.g. via sideloading, web apps and downloading via web streaming services.

79. In response, Epic pleads the more limited functionality and additional cost of using streaming services. In relation to Fortnite specifically, Epic pleads it is available through Nvidia's GeForce Now streaming service on personal computers and on Android mobile devices, but that this is not a satisfactory alternative channel for the distribution of Fortnite to Android mobile devices because the user experience is not equivalent. It is in that sense that it is denied that the distribution of Fortnite via web apps or streaming services are substitutes for the native Fortnite Android App.

80. Google says Epic is wrong to say there is no logical connection between the existence and the effect of the admittedly available alternative channels (which is an issue in these proceedings), and Epic's intentions and strategy regarding those channels. Epic's strategy, Google says, will form an *"important part of the evidential record that will help the Tribunal determine the viability of those alternative channels"*. Disclosure of such documents will shed light on Epic's

view of the comparative merits and potential feasibility of those channels, as well as the degree to which they are substitutable.

81. Google points to various developments, including the change in Google Play Store service fees in July 2021, the release of version 12 on Android in October 2021, the launch of EGS on Android in August 2024 and other new offerings and technological developments in the market. Google says Epic's approach will inevitably have evolved over time to address such developments, and that disclosure will be informative.

82. The question that then arises is *"informative as to what"*? I am not satisfied that the pleaded issues will be informed by the disclosure sought. In my view, Epic is correct to say that, whilst there is an issue in the proceedings as to the effectiveness of the alternative distribution channels, that does not mean that disclosure of Epic's entire future strategy in relation to these alternatives is required.

83. As I understand the parties' respective positions, whether or not the alternative channels are viable alternatives will turn on matters such as whether a web app version of Fortnite performs to a sufficiently high standard to be viewed as a viable alternative; or whether the PC version available through GeForce Now and Amazon Luna on PCs and Android mobile devices (through a web browser) offers an equivalent experience to the native app. It will be for the Tribunal to determine these issues, and Google has not explained how that determination will be assisted by having the evidential record of Epic's entire app distribution strategy (by means other than on mobile) over the past 5 years (which will presumably also cover its future strategy).

84. Google also suggested it needed the disclosure in order to test Mr Allison's evidence as to the reaction of app developers in discussions relating to the use of these alternative channels. However, [✂] (Requests G1 and G3), not to EGS as a PC Store. Mr Allison does give evidence regarding EGS as a PC store, but his evidence is that there is an increasing interest in apps being listed on the EGS PC store.

85. Google also directed my attention to the witness statement of Mr Andrew Grant dated 1 March 2023 which, at paragraphs 9(g) and 48 addresses alternative methods of obtaining Fortnite on Android. Mr Grant accepts that web apps can be used as an alternative to native apps in *"certain, limited situations"* and goes on (at paragraph 49) to point out the disadvantages of a web app compared to native apps. In my view, Mr Grant's evidence does not open up the door to disclosure of Epic's web app distribution strategy generally. The dispute, if there is one, will be as to whether or not the disadvantages are as he describes, and whether or not a web app is a realistic option for distributing Fortnite on mobile.

86. Mr Grant also addresses the use of cloud gaming services such as Nvidia GeForce Now (paragraphs 51 to 55). He accepts that this is a reasonable alternative in some situations, but says it is *"unlikely to be a good alternative for mobile users"*. Again, the dispute, if there is one, will be to whether this statement is correct. I do not think it is proportionate for full disclosure to be provided in relation to Epic's entire strategy on cloud gaming services.

87. In relation to G4(b), Google points to Epic's own pleading which it says accepts that streaming amounts to app distribution: *"Streaming services rely on third-party servers to reliably host and operate an app such that it can be streamed to a user's device. The user's ability to access an app is thus contingent on third parties over which the user has no control"* (Epic's Re-Re- Amended Reply at paragraph 3(v)(iv)). Epic has accepted that Nvidia GeForce Now may be relevant to Epic's strategy of distributing its content on Android devices. The issues are therefore the appropriate date range and custodians.

88. As regards the appropriate date range, Google says that Epic's proposed restricted time period of three months (1 January 2025 to 31 March 2025) excludes a period in which there have been many developments including in relation to Nvidia GeForce Now. However, it seems to me that what is relevant to the issues in these proceedings is how successful the decision to distribute Fortnite through Nvidia GeForce Now has been. Again, I cannot see how disclosure of the entire, historic commercial relationship between Epic and Nvidia GeForce Now is necessary to inform that assessment. Epic proposes the

date range of 1 January to 31 March 2025, which ought to be sufficient to provide up to date information as to the success of the strategy and will reflect the most recent developments. I agree that this is a proportionate approach, but will order that the disclosure be provided up to 31 May 2025.

89. As regards the appropriate custodians, again I consider that Google's approach is disproportionate. However, I consider it unsatisfactory for there be disclosure from only one custodian: Mr Gass. I have made an order for disclosure covering a limited period, and it is not, therefore, appropriate to include Mr Dixon, given Epic's evidence that he is no longer involved. Epic suggests Mr Grant is not involved in strategy, but he is a witness in these proceedings and provides specific evidence relating to his assessment of users' experience when accessing Fortnite through Nvidia GeForce Now. I do not consider that his evidence opens up disclosure relating to Epic's app distribution strategy other than on mobile generally, but he should be included for the more limited purposes of Request G4(b). He may have documents relevant to Epic's distribution of Fortnite through this specific channel which ought to be disclosed.

90. In relation to Request G4(c):

(1) the difference between Google and Epic relating to the date range is, in substance, the difference between the date that Samsung launched the Auto-Blocker as an optional feature (October 2023) and the date that it made it a default feature on the Samsung Galaxy Store (June 2024). Google seeks disclosure from the earlier date, and Epic proposes the latter. I am told that Epic only discovered what it considered to be anti-competitive conduct from the latter date, and that resulted in the decision to remove Fortnite from the Samsung Galaxy Store. I do not therefore understand the basis upon which Google suggests that, nevertheless, it should be entitled to disclosure from the earlier date. Nor do I understand the basis upon which Google proposes that the relevant period for disclosure should end on 31 May 2025. The disclosure sought relates to Epic's consideration of the Auto Blocker feature and decision to remove Fortnite from the Samsung Galaxy Store. That decision relates to the

window 1 June 2024 to 31 July 2024. That is the appropriate period for disclosure.

(2) As regards the appropriate custodians, it seems to me that it should be Mr Ryan Dixon, given his involvement at the relevant time, and Mr Sweeney. In relation to Mr Sweeney, the exercise should extend to email and Slack communications. I understand that there are certain practical issues that relate to documents hyperlinked to Slack. If and to the extent that such documents are identified by the searches to be conducted by Epic, Google are of course entitled to request them, and Epic should take reasonable steps to locate copies. If there are issues relating to the disclosure of such attachments, Google is entitled to bring them to the attention of the Tribunal.

C. EPIC'S DISCLOSURE REQUESTS

91. Epic has sought disclosure of the following broad categories of documents:

(1) Revenue Sharing Agreements ("RSA") and Mobile Incentive Agreements ("MIA") as between Google and OEMs; Google and Samsung; and Google and carriers (Requests E1 to E12).

(2) Documents relating to Google's introduction of User Choice Billing (Requests E13 to E16).

(3) The Competition and Markets Authority ("CMA") Investigation documents (Request E17).

(4) Documents relating to an addendum agreement entered into with Spotify ("the 2022 Spotify Addendum") (Requests E18 to E23).

(1) Requests E1 to E12

92. Requests E1 to E12 all relate to incentive agreements that Google enters into. E1 to E4 relate to incentive agreements with OEMs; E5 to E8 to incentive

agreements with Samsung specifically; E9 to E12 relate to incentive agreements that are entered into with MNOs (also referred to in these proceedings as carriers). Under the terms of those agreements Google shares the revenues it earns from the use of devices (via RSAs with OEMs), or networks (via MIAs with carriers).

93. Epic says that Google's conduct creates an anti-competitive cycle which it leverages at various stages. Google leverages its dominance on the licensing operating system - the licensable operating systems market - to restrict competition on downstream markets, in particular the Android app distribution market. It pays OEMs and carriers substantial sums of money, essentially to make it more difficult for app developers other than Google to access their devices and networks. Google then leverages the dominance it enjoys on the Android app distribution market to restrict competition for the provision of payments services, maximising use of Google's in-app billing system. Google then maximises the revenue it earns from use of its in-app billing system to feed back into the payments it makes to OEMs and carriers. The incentive agreements are clearly an important part of the alleged anti-competitive conduct.

94. It is important for Epic to be able to ascertain how prevalent such arrangements are, the proportion of the relevant markets they affect, as well as their objective purpose and effect. Working with its experts, Epic will seek to ascribe the value that Google places on such arrangements by quantifying the profits Google is willing to share with OEMs and carriers.

(1) Under Request E1, Epic seeks all RSAs, MIAs and documents of a similar nature between Google and OEMs which are current as at 31 May 2025, and any other agreements that replaced or supplemented prior RSAs and/or MIAs disclosed by Google in August 2024 (regardless of whether they are currently active).

(2) Under Request E2, Epic seeks internal Google Communications (to 31 May 2025) regarding the extension or variation of existing RSA version 3.0, and/or MIAs and the introduction or negotiation of RSA version 4.0,

new MIAs and/or any other agreements that replaced or supplemented prior RSAs and/or MIAs.

(3) Request E3 seeks external communications (to 31 May 2025) as between Google and OEMs discussing the differences between RSA 3.0 and RSA 4.0, and/or MIAs.

(4) Request E4 relates to data or analysis relating to the RSAs and/or MIAs including data relating to Google's costs in entering into RSAs and/ or MIAs.

95. By letter dated 17 June 2025 (the "17 June Letter"), Epic indicated that in relation to Requests E2 to E4 (and E10 to E12), it would be prepared to narrow its requests to a sample of relevant documents as long as Google disclosed its internal communications relating to the justification and strategy for replacing RSA 3.0 with RSA 4.0, and provided a witness statement (the "RSA Statement") which addressed various factual issues as set out in a letter dated 4 June 2025 (the "4 June Letter"), including a list of every relevant agreement Google has entered into between 1 January 2020 and 4 June 2025, and certain information relating to each agreement (such as the parties, duration and confirmation of which version it is).

96. Google resists, either in whole or in part, each of Requests E1 to E4. In relation to Request E1, Google has offered to *"carry out reasonable and proportionate searches and to give disclosure of RSAs and MIAs related to the UK entered into between Google and OEMs which are current as at 31 May 2025 (inclusive of any amendments to and/ or waivers of the same)"* (emphasis added). Requests E2 to E4 are resisted in their entirety on the basis that they are neither necessary, reasonable or proportionate.

97. In relation to Request E1, Epic says that Google's proposal is insufficient. In summary:

(1) Whilst it is true to say that Epic only seeks injunctive relief in relation to the UK, its pleaded case relates to the collective effect of Google's

incentive agreements which is to reinforce its dominance on the app distribution market. The app distribution market that Epic pleads (and will need to prove) is affected is a worldwide market: *"The geographic scope of the Android App Distribution Market is worldwide excluding China. Alternatively, if there are separate regional or national markets for Android App Distribution, that does not affect Google's market position on the said markets"* (paragraph 121, RRRRACF). Epic also says that the worldwide incentive agreements are relevant because of the evidence of Mr Gennai, Vice President of Product Management at Google LLC. In his second witness statement, Mr Gennai refers to the application of a particular requirement under RSA 3.0 to a limited number of devices *worldwide* (paragraph 62).

(2) It is necessary to include documents *"of a similar nature"*. That wording is intended to cover documents which have a similar effect to an RSA or MIA, expand on those documents, or have the effect of disincentivising the installation of alternative app distribution stores. The intention is to capture all types of incentive agreements.

(3) The need to cover preliminary, non-binding documents arises: (1) because this is a fast moving industry - if Google is negotiating with OEMs to conclude new or replacement incentive agreements - such documents should also be disclosed; and (2) because they may shed light on why Google is entering into them.

(4) There is a need to provide disclosure of past agreements (in so far as they would be targeted by Epic's proposed date range) because it is relevant for Epic to be able to point to Google's course of conduct over a period of years, which establishes the way in which Google has sought to restrict competition, as well as the need for it to come to an end.

98. In relation to Request E2, Epic seeks internal communications relating to the transition between RSA 3.0 to RSA 4.0 or the introduction of new incentive agreements in place of old ones. Epic says it needs to understand whether restrictions have been moved and, if so, why.

99. Request E3 relates to external communications with OEMs discussing the transition from RSA 3.0 to RSA 4.0 or equivalent replacements which go to the same issue as Request E2.

100. Request E4 is for data and analysis relating to the RSAs and or MIAs and how much they cost Google. This is required to ascertain how much revenue Google is prepared to forego in return for incentivising OEMs and carriers to restrict potential competitors of Google from accessing the Android ecosystem and Android app distribution market.

101. Google objects on several bases: (1) that it has now provided the *"harmonisation"* disclosure which Epic ought to consider first; (2) it has given the disclosure that was provided in the Australian Proceedings (which Epic says is 39 documents); and (3) Epic previously suggested at the time that its amendments were made (some of which relate to RSAs and MIAs) that they would not give rise to a need for further disclosure. In particular, Google refers to the witness statement dated 2 August 2024 of Mr Tricker, a solicitor for Epic, made in support of Epic's application for permission to amend. That statement referred to the fact that Epic had learned more about the incentive arrangements entered into by Google, and confirmed that Epic did *not* consider that any additional categories of documents for disclosure ought now to be identified, or new witness statement evidence required as a result of the amendments relating to the RSAs and MIAs. As regards disclosure that has already been provided, Google states that it has produced approximately 140,000 documents identified through keyword searches relevant to Epic's Requests E1 to E12, in addition to over 3,500 documents disclosed as part of its *"harmonisation"* exercise, all of which are also responsive to those Requests. For that reason, it is not reasonable or proportionate to require Google to provide further disclosure in the circumstances.

102. Epic's response is that: (1) there had not (by the hearing) been sufficient time to consider the harmonisation disclosure, and in any event, it would not provide the relevant current agreements; (2) the Australian Proceedings disclosure is plainly insufficient; and (3) the incentive agreements formed part of its pleaded case prior to the amendments being made, making clear that further disclosure

was required in relation to them. Epic had asked for disclosure of such agreements even before it further amended its Claim Form. Even its further amendments are drafted so as to be subject to the need for disclosure in relation to incentive arrangements.

103. In relation to Request E1, Google submits, in summary:

(1) There is no basis for extending disclosure to include RSAs and MIAs entered into worldwide, which would be neither necessary nor proportionate. Epic's claim is limited to the UK, and the Tribunal's jurisdiction is limited to the UK. Pursuant to paragraph 4 of the Tribunal's Order of 21 December 2021, the parties agreed to limit disclosure to UK specific custodians and issues. Epic specifically pleads that the harm takes place in the UK, is suffered by Epic, developers and consumers based in the UK, and that the effects of Google's alleged conduct are effects on trade in the UK. The relief sought is orders which will have effect in the UK and not elsewhere. Ms Smith KC for Google referred to section 18(1) of the Competition Act 1998 ("CA98"), which provides that any conduct on the part of one or more undertakings which amounts to an abuse of a dominant position is prohibited if it may affect trade within the UK, and section 18(3) which provides that "*dominant position"* is geographically defined by reference to the UK. Ms Smith submitted that the effect on trade has to be within the UK, and that the focus is on dominance in markets that affect the UK. Epic does not explain how agreements that do not relate to the UK could affect markets in the UK, or how their effects could amount to an abuse of a dominant position within the UK. When considering the conduct in issue and its effects, the focus is on the UK, and again, when considering the relief (if any) to be granted, the focus is on the UK.

(2) The inclusion of preliminary documents is not appropriate, because it is the effect of a binding agreement that is relevant to Epic's pleaded case. Epic pleads that it is the effect of RSAs and MIAs that reinforce Google's dominance: not the history of how they were arrived at or why

the parties agreed to them, and "effect" is an objective issue. I return to this in paragraph 120 below.

(3) As it is the effect of the agreement that is relevant, it is only agreements in force that are relevant, and that is why Google intends to search for agreements which are current as at 31 May 2025. Drafts, or documents of no binding effect are irrelevant. Epic's relief is injunctive and forward looking: Epic does not seek damages.

104. Epic submits that Google's arguments relating to disclosure being confined to the UK market, and UK RSAs and MIAs are simply wrong. Epic's claim is that Google has abused its position on a worldwide market, although its claim is confined to the UK when it comes to relief. If Epic is right in relation to worldwide markets, then Google has plainly abused its position in relation to the UK market. The issue that the CA98 is seeking to avoid is one of territorial jurisdiction. So, for example, the Tribunal should not be dealing with claims of abuse of dominant position on the French market. International anti-competitive behaviour can affect claimants within this jurisdiction and section 18 CA98 does not affect that. Nor is it right to say that the parties agreed to confine disclosure to the UK by the January 2021 Order, and nor are Google's own requests for disclosure so confined.

105. Mr Scannell submitted that agreements with international OEMs are relevant because they relate to how Google operates and attains its dominance at a worldwide level. It cannot be assumed that all of the RSAs are the same or similar, because Google has changed the way the RSAs operate in response to regulatory interventions in different jurisdictions. An RSA with an OEM in one jurisdiction may well affect its behaviour in other jurisdictions including in the UK if the OEM provides devices elsewhere (and potentially in the UK).

106. Google objects to providing any disclosure under Requests E2 or E3 which go to the reasons why such agreements were entered into. This is on the basis that Google's state of mind is irrelevant to Epic's claims relating to Google's alleged anti-competitive conduct. What is important is the effect of such conduct.

107. Epic's answer to that point is to say that, whilst it is correct that it is the effect that is relevant, there is still a dispute as to what the effect of the conduct is. If there are documents that show that Google's intention was to bring about an anti-competitive effect, then that will be relevant to an assessment of whether or not those agreements in fact had that effect. Further, the reasons for Google entering into incentive arrangements are specifically addressed by Mr Gennai at paragraph 57 of his second witness statement, and paragraph 59 of his third witness statement, where he suggests that one reason was to help OEMs to reduce their prices and improve user satisfaction. Epic says it must be entitled to test that evidence by reference to contemporaneous documents.

108. In relation to Mr Gennai's evidence, Google points to the fact that he refers to the different iterations of the RSAs and in particular, in relation to RSA 4.0 states that these were entered into around mid 2022 and do not contain the terms that require the exclusive pre-installation of Google Play as the only app store on a device. He refers to his understanding that the early RSA 3.0s have now been terminated or replaced by other agreements, for example, the RSA 4.0s. Ms Smith submits that Google has already provided substantial disclosure relating to the period up to mid 2022, and for the period after that, the evidence is that the RSAs do not include the pre-installation terms. She also points to the fact that whilst Epic pleads that RSA 3.0 had an exclusionary effect, that is not expressly pleaded in relation to RSA 4.0. There is therefore no reason to say that disclosure is required in order to test Mr Gennai's evidence.

109. Epic suggests that its proposal of a sampling exercise accompanied by a witness statement addressing the information listed in its 4 and 17 June Letters is a proportionate compromise. That would entail Google providing the information requested in Requests E2 to E4 in relation to only a sample of the OEMs with whom Google has entered into agreements responding to Request E1, together with: (1) internal communications relating to the overall justification and strategy for the transition between RSA 3.0 and RSA 4.0, and; (2) a witness statement setting out the information listed in the 4 June Letter for all of the Request E1 documents.

110. Google has suggested that a witness statement along the lines sought by Epic would not comply with the Tribunal's Practice Direction on witness statements, which requires that a witness must have personal knowledge of the matters referred to. This is a bad point. First, the Practice Direction is addressing witness statements prepared for the purposes of a trial or appeal, rather than addressing points arising in relation to interim applications. It is commonplace for solicitors, for example, to provide witness statements addressing issues arising in relation to interim applications on the basis of information provided by their clients: as has been done by Mr Cran of RPC LLP for Google in this case. Secondly, witness statements have been ordered to be provided in this case where it is a reasonable, efficient and a cost-effective way of ensuring that the disclosure exercise is kept within proportionate bounds, including, where necessary, explaining how documents are prepared or dealt with within the relevant organisation. So, for example, Epic was required to file a witness statement explaining how and why it had selected its proposed custodians, and why that approach ought to yield the documentation sought by Google in a proportionate manner, whilst avoiding unnecessary duplication. Further, in the related Coll Proceedings, Google was required to provide a witness statement explaining how certain financial information is recorded, and in this case, Epic was required to file a witness statement (ultimately provided by Mr Allison) explaining matters relating to the launch of EGS on mobile.

111. Google's better point is that the witness statement should not be, in effect, a list of documents, and a substitute for Epic carrying out its own inspection and analysis of documents provided. Google says that Epic can inspect the documents provided itself and find the information it seeks.

112. Google also submits that the witness statement proposal is unnecessary. There is no need for a list of all RSAs or MIAs, let alone those other than currently in force. In any event, Google is already intending to disclose the current agreements and so a list of them is unnecessary.

113. By Requests E9 to E12, Epic seeks the equivalent categories of documents, relating to MIAs (or similar arrangements) entered into with carriers, for the same reasons as apply to Requests E1 to E4.

114. Google proposes to conduct a reasonable and proportionate search limited to agreements entered into which relate to the UK, and otherwise objects to Epic's requests relating to agreements entered into with carriers for the same reasons it objects to Epic's requests regarding arrangements with OEMs in Requests E1 to E4.

(a) Requests E5 to E8: Samsung RSAs and/or MIAs

115. In addition to Requests E1 to E4 which relate to OEMs generally, Epic seeks disclosure of various documents which relate specifically to Samsung. The compromise Epic proposes in relation to Requests E2 to E4 and Requests E10 to E12 does not apply to Samsung. Epic says that Samsung is by far the largest OEM with whom Google has concluded these sorts of incentive agreement, and there are specific allegations that relate to that arrangement which it is claimed has caused Epic specific harm (which is also the subject of Google's Request G4). It is particularly important and relevant for Epic to be able to ascertain how much Google is prepared to pay Samsung under the arrangements, which will provide a key insight into the value Google attaches to maintaining dominance in the Android app distribution market.

116. The scope of the requests is broadly similar to Requests E1 to E4, save that: (1) draft agreements are sought in relation to Samsung, but not OEMs generally; and (2) the timeframe is narrower (from 1 January 2024 to 31 May 2025). The justification for Requests E5 to E8 is the same as Requests E1 to E4. Epic submits that, whilst draft agreements would be relevant in relation to all OEMs, they have sought to be proportionate and therefore narrowed the request for all OEMs, seeking drafts only in relation to Samsung. Epic also points to disclosure that it has received in relation to Project Banyan, an incentive programme that was not ultimately implemented but which Epic claims shows that Google was aware that it would be unlawful to pay Samsung to deprioritise the Samsung Galaxy Store.

117. Google objects to these requests relating to Samsung for the same reasons as it objects to providing disclosure under Requests E1 to E4, save to the extent that

it agrees to carry out a reasonable and proportionate search and give disclosure of the current RSA(s) that relate to the UK.

(b) Analysis

118. Epic's pleaded case relates to Google's abuse of dominance on the worldwide market for app distribution, and Google's incentive arrangements with OEMs and carriers are central to that claim. Epic is therefore entitled to disclosure of the incentive arrangements that exist not only in the UK market, but also worldwide. I understand the distinction that Ms Smith seeks to draw between market definition - which does involve a consideration of the worldwide position - and the effects of any abuse of dominant position that may be established, which focuses on the UK. However, I do not think it follows that the latter determines the limits of the disclosure required of documents that may be relevant to the former. In my view section 18 does not prevent a claimant from seeking to establish a worldwide position of dominance and deriving from that a position of dominance in the UK. That is how Epic's case is pleaded in these proceedings. Nor do I accept that the parties entered into an agreement that somehow restricts the ability of Epic to seek disclosure of RSAs or MIAs beyond those *"related to the UK"*. In that regard, I note that the order of January 2021 did not restrict disclosure if it related to UK specific issues, and an issue specific to these proceedings in the UK is whether or not Google occupies a worldwide position of dominance. Further, in light of the submissions, there is an unacceptable degree of uncertainty and subjective interpretation as to which RSAs or MIAs should be considered as being *"related to the UK"*.

119. I do not, however, think that it is necessary and proportionate to require Google to provide all non-binding preliminary documents, internal Google communications and external communications relating to all worldwide RSAs and MIAs. That said, I think some disclosure of internal and external communications relating to the extension or variation of existing RSA 3.0s or introduction of RSA 4.0s is required, for the reasons explained by Mr Scannell and summarised in paragraph 105 above. I consider it is reasonable and proportionate to limit this disclosure to internal and external communications relating only to the UK-specific OEMs identified by Epic's solicitors in the 17

June 2025 Letter. I also consider there may be documents regarding the variation of the RSA 3.0s and introduction of the RSA 4.0s which were presented to Google's senior executives, and that those should also be disclosed if and in so far as they have not already been.

120. Samsung is a significant OEM, and is specifically relevant to this case in relation to, for example, the Auto Blocker: as is evident from Google's own requests for disclosure relating to Epic's reaction to its discovery that Samsung had introduced this feature as a default and its impact on EGS on mobile. Disclosure is therefore appropriate in relation to Samsung which is more extensive than that which is required for OEMs more generally, and I consider Epic's Requests E5 to E8 to be necessary and proportionate. I do not think it is appropriate to limit disclosure to the current in force RSA, as Google seeks to do. That would be inadequate to enable the Tribunal to determine the issues arising in relation to Samsung, which include the effect of the incentive arrangements to which it is party, and the past conduct that has led to what the position is today.

121. I consider that the appropriate course is as follows:

(1) Google shall provide disclosure of all RSAs, MIAs and other concluded agreements which are a similar incentive agreement between Google and OEMs and Carriers which are current as at 31 May 2025, or which replaced or supplemented prior RSAs or MIAs disclosed by Google in August 2024 (regardless of whether those agreements are currently active). This disclosure shall not be confined to the UK. A document will be considered to be a similar incentive agreement if it refers to or otherwise expands on an RSA or MIA (including an amendment or waiver) and/or if it creates an incentive to hinder the installation of alternative app distribution stores. This obligation does not extend to non-binding preliminary documents.

(2) If disclosure has not already been provided, Google should provide disclosure of all internal Google Communications to 31 May 2025 regarding the reasons for, and strategy relating to the extension or variation of existing RSA 3.0 agreements and/or MIAs (or similar

incentive agreements) with OEMs or carriers (together the "RSA 3.0/ MIA variation agreements"), and the introduction or negotiation of RSA 4.0 agreements or new MIAs (or similar incentive agreements) ("RSA 4.0/new MIA agreements"). For the avoidance of doubt, this is intended to capture documents of a general nature, considered at a relatively senior level within Google, and does not require Google to conduct a disclosure exercise relating to each and every counterparty. The parties should endeavour to agree custodians and search terms which will capture this category of document (if such documents have not already been provided).

(3) Google shall provide internal Google Communications up to 31 May 2025 regarding the RSA 3.0/MIA variation agreements, and the RSA 4.0/new MIA agreements limited to the sample OEMs and carriers listed in Epic's 17 June Letter.

(4) Google shall provide external communications between Google and OEMs and carriers in the period to 31 May 2025 relating to the differences between, and purposes for the RSA 3.0/MIA variation agreements and RSA 4.0/new MIA agreements limited to the sample OEMs and carriers listed in Epic's 17 June Letter.

(5) In relation to Samsung, Google shall disclose the documents sought in Requests E5 to E8 in the period between 1 January 2024 and 31 May 2025. It is important that Google knows what it is that it is required to disclose.

122. I have sought to provide some clarity as to what would be regarded as a *"similar incentive agreement"*. I will leave it to the parties to seek to agree whether or not that is workable.

123. I will not require Google to provide a witness statement listing all of the RSA/MIA agreements and the information set out in paragraph 7 of the 4 June Letter. It seems to me that it would be wrong to require Google to do so when it is a task that Epic can undertake, in light of the disclosure I have ordered.

(2) Requests E13 to E16: UCB and DOB

124. The requests still in dispute in relation to Requests E13 to E15 are requests for the following:

(1) Documents and communications, including internal Google Communications and external Communications between Google and other stakeholders, relating to the decision to (1) extend User Choice Billing ("UCB") and Developer-only billing ("DOB") to gaming apps in the EEA in March 2024 and (2) the launch of UCB in the UK (created between 8 June 2022 and 29 March 2025), including but not limited to Communications relating to:

(i) the financial impact for Google of introducing UCB;

(ii) Google's decision to reduce the commission by 4%;

(iii) analysis prepared by third parties on the launch of UCB; and

(iv) potential alternatives to UCB in the UK specifically, including but not limited to the introduction of DOB in the UK or special deals for individual developers

(2) Documents and communications relating to the take-up rates of UCB and/or DOB in the territories in which they become available.

125. These requests relate to UCB and DOB. UCB refers to a situation where within an app, users have a choice as to whether to use Google's in-app billing system, or a different billing system for in-app purchases. DOB refers to a situation where in those apps, Google's in-app billing is not available at all.

126. Epic submitted that its understanding is that the take up of UCB and DOB is low, and it is important to have disclosure in order to ascertain whether that is correct. UCB and DOB are also relevant to Epic's tying claim and to its excessive pricing claim. As regards the former, Epic contends that there is no

good reason to tie Google Play Store to Google's in-app billing system. In that regard, Epic points to what it says is an inconsistency in Google's position. On the one hand, Google suggests that Google Play Store and Google's billing system are inseparable, and yet on the other, in certain jurisdictions (and, Epic says, in response to regulatory pressure) it has introduced UCB and DOB. Epic submitted that whilst the availability of UCB and DOB might superficially look like progress, Google still charges very high commissions of 26% for UCB and 27% for DOB. Epic submits that either UCB and DOB have, in reality, changed nothing or they are indeed attractive options, in which case Google's suggestion that Google Play Store and Google's billing system are inseparable is undermined. In relation to the excessive pricing claim, Epic claims that Google's commissions are still excessive, and Google alleges that they are not.

127. Epic says that disclosure is necessary in relation to the tying claim, in order for it to assess what the take up of UCB and DOB has been, what the developer's experiences has been, and whether there has been any real impact on Google's profits. Disclosure is necessary in relation to the excessive pricing claim because it is relevant to the value Google ascribes to the billing system, and more generally to the experts' assessment of the fairness of the commissions.

128. In particular:

(1) Request E13 relates to Google's UCB and DOB strategy in the context of the extension of UCB and DOB to gaming apps in the EEA in March 2024 and launch of UCB in the UK within the date range June 2022 and 29 March 2025.

(2) Request E14 focuses on developer feedback on UCB and DOB, now limited to the date range 1 June 2023 to 29 March 2025.

(3) Request E15 addresses the unfair pricing aspect of UCB and DOB, and Google's payment processing costs in particular, but Epic has agreed to narrow its request to disclosure relating to such costs when its billing system is used within an app that offers UCB (and not within all apps), and applying the date range that applies to Request E14. This disclosure

is said to be important because the disclosure previously provided is now very out of date.

129. Google maintains that Epic has already received extensive disclosure relating to UCB in various jurisdictions around the world as a result of the disclosure from the US Proceedings, the Australian Proceedings, the Coll Proceedings and the harmonisation disclosure. Further:

(1) Google has already offered to conduct reasonable and proportionate searches for documents concerning the extension of the UCB pilot to the UK, and that is sufficient. Any further disclosure under Request E13 is unnecessary and disproportionate. This is because Epic accepts that the impact in the UK will be similar to that experienced in other jurisdictions, and Google has already provided extensive disclosure relating to other jurisdictions, including after June 2022, which is the start date sought by Epic. Google has disclosed by way of harmonisation disclosure over 2,000 documents that may relate to UCB and post-date 8 June 2022. Google also submits that disclosure in relation to UCB's introduction in the EEA is not relevant to Epic's pleaded case, or the relief it seeks, which is limited to the UK. The issue to which this disclosure goes is the effects of Google's alleged conduct, and that is a UK focused issue.

(2) In relation to Request E14, there are 1,000 documents which refer to specific search strings relating to UCB, DOB and which include *"feedback"*. This ought to be sufficient.

(3) In relation to Request E15, searches have already been applied across 16 Google custodians in the Coll Proceedings by reference to search strings which were specifically intended to capture material related to UCB, DOB and Google's payment processing costs. The general ledger data that has been provided provides data at profit centre and cost centre levels. Mr Dudney had that data and was able to address UCB and DOB and payment processing costs in his expert evidence for Ms Coll, and Google's own expert has also addressed these issues. It is for Epic's

experts to explain in what ways the disclosure is insufficient for their purposes, which they have not done. Google also maintains that it has provided the appropriate route map which will assist Epic's experts to interrogate the data in the general ledger which was provided in the Coll Proceedings by Ms Kourakina in two witness statements. Google also refers to the fact that it intends to provide documents produced in the CMA Investigation (this is the subject of Request E17, below), and that will mean that documents dating after June 2022 and into 2023 will also be provided to Epic.

(4) As regards Request E16, the request is a fishing expedition. In order to make a case on the willingness of developers to adopt UCB or DOB, all that is required is the underlying data. It is not necessary to also have documents and correspondence underlying that data (as sought in Request 13(d)) and it is unnecessary and disproportionate.

130. As to each of these objections, Epic says;

(1) For the reasons already summarised in paragraph 104 above, there is no reason why disclosure should be limited to the UK. Epic's claims relate to abuse of a dominant position on a worldwide market. In any event, Epic has nevertheless now narrowed the international aspect of its requests to disclosure relating to the EEA except in relation to Request E14. Further, and importantly, the only way to obtain meaningful information in relation to UCB or DOB is to order disclosure that is wider than the UK, given that Google only introduced UCB in March 2025. Google introduced UCB in the EEA in June 2022, and extended it to gaming apps in March 2024. Disclosure that reflects these developments is likely to be relevant because there is no significant difference between the UCB and DOB models Google has introduced in the EEA and those it proposes to introduce in the UK, save that in the UK it is not intended to extend to gaming apps.

(2) As regards whether or not sufficient disclosure has already been provided, Epic says that it has not. The fact that the harmonisation

disclosure happens to give rise to a number of hits that appear to be relevant to UCB and DOB is not a substitute for a targeted exercise which is designed to capture relevant categories of documents. In any event, the current disclosure only covers the period before 8 June 2022. Even the harmonisation disclosure only covers the period up to 1 June 2023. Given that UCB was only introduced in the EEA in March last year, more recent disclosure is required.

(3) As regards Request E15, in addition to the points made about the harmonisation disclosure, the experts have been unable to ascertain from the existing general ledger data, Google's payment processing costs when UCB is offered. As regards Mr Dudney, footnote 31 of his expert report makes clear that he has not sought to analyse the payment processing costs where UCB and DOB is offered, because he says that he does not have the data available to enable him to do so. Mr Scannell also submits that Ms Kourakina's evidence does not make clear where payment processing costs can be found which reflect the position where UCB and DOB apply.

131. If and in so far as Google takes issue with any failure on Epic's part to identify custodians or search strings, Epic says that it had expected Google to engage on this, and it has not done so. It is really for Google to identify the appropriate custodians.

(a) Analysis

132. I am satisfied that Epic's requests, as modified, are well founded. For the reasons explained in paragraph 119 above, I do not accept that disclosure must be limited to documents relating to the UK. In particular, in relation to Request E13, disclosure provided by reference to the implementation of UCB in the UK would be likely to be minimal, and of little probative value given that it was only introduced in March 2025. Epic has narrowed its request to the implementation of UCB in the EEA. Both parties appear to accept that what happens in another jurisdiction will inform what is likely to happen in the UK.

As such, it seems to me that disclosure relating to the experience in the EEA will assist the Tribunal.

133. It does not follow from the fact that certain search strings happen to identify certain documents that refer to UCB or DOB that adequate disclosure has been provided. In any event, it seems that disclosure already provided only goes up to 8 June 2023.

134. Mr Dudney's report suggests that he was unable to analyse the payment processing costs where UCB and DOB is offered, specifically because, having considered the general ledger data, he was unable to identify those costs. Nor do any of the passages I was referred to in Ms Kourakina's statements identify where they would be found.

135. I will make an order that Google provide the disclosure sought by Requests E13 to E16 in the narrow form proposed by Epic. In relation to each of those requests, Google should propose its custodians, and the parties should endeavour to agree the appropriate search terms.

(3) Request E17: The CMA Investigation Documents

136. Epic seeks *"Documents created in the context of the CMA Investigation (whether subsequently provided to the CMA or not)"*.

137. In relation to this category, Google offered to disclose the documents that were disclosed in the Coll Proceedings (and in fact, these have already been provided to Epic).

138. Epic confirmed that Google's proposal was acceptable subject to three conditions:

(1) Google must confirm that the materials provided to Ms Coll include all *"Investigation Materials"* within the meaning of paragraph 3 of Schedule 8A CA98 for the period 10 June 2022 up to and including the date on which the CMA closed its investigation;

(2) Google must identify which of the documents in the materials provided to Ms Coll were submitted to the CMA; and

(3) Should the material provided to Ms Coll not constitute the entirety of the Investigation Materials, Google will supplement the Coll disclosure to ensure that it does comprise all Investigation Materials.

139. These conditions gave rise to immediate and obvious difficulty on the part of Google. Paragraph 3 of Schedule 8A, defines *"Investigation Materials"* as: (a) information prepared by a person (other than a competition authority) for the purpose of an investigation by the competition authority into an infringement of competition law; (b) information sent by the competition authority, during the course of such an investigation, to an undertaking which is the subject of the investigation and; (c) a settlement submission which has been withdrawn.

140. That is a very broad definition and includes material produced by Google, whether or not it was ultimately provided to the CMA, including drafts of submissions which may be subject to legal privilege and settlement submissions which would be subject to without prejudice privilege. Ms Smith pointed to the fact that, seen in its proper context, the definition of investigation materials arises in relation to part 6 of Schedule 8A as regards disclosure in damages actions, which is intended to ensure that such materials are <u>not</u> disclosable in damages actions before the investigation is closed. Ms Smith submitted that it does not follow that they would be disclosable after the date that the investigation was closed. That would be subject to the normal rules applying to privilege.

141. In light of this explanation by Ms Smith, Mr Scannell confirmed that Epic was not suggesting it would be entitled to privileged documents. He did, however, suggest that such documents be listed. Mr Scannell said that was being sought was all disclosable documents, whether or not that is the same as what was provided to Ms Coll. In that sense, what was provided in the Coll Proceedings is irrelevant.

(a) Analysis

142. Google has already provided the investigation materials that it considers to be disclosable, which is reflected in the documents that were provided to Ms Coll. It is for Epic now to identify any inadequacy in that disclosure.

(4) Requests E18 to E23: Spotify

143. Epic sought disclosure in the following terms:

(1) E18: All documents (from June 2022 to 31 May 2025), including but not limited to data or analysis, which (whether formally or informally): (1) record the impact on Google's business of the addendum to the DDA with Spotify with an effective date of [✂] 2022 (the "2022 Spotify Addendum") and/or; (2) evaluate the performance of the 2022 Spotify Addendum, as well as:

(i) The [✂];

(ii) The [✂]; and

(iii) the [✂]

(2) E19: Internal Communications (from 8 June 2022 to 31 May 2025) which (whether formally or informally): (1) discuss the impact on Google's business of the 2022 Spotify Addendum; and/or (2) evaluate the performance of the 2022 Spotify Addendum; and/or (3) relate to the documents referred to in request E18(a) to (c).

(3) E20: External Communications (from 8 June 2022 to 31 May 2025) between Google and Spotify in relation to the 2022 Spotify Addendum.

(4) E21: All documents (to 31 May 2025) in relation to negotiations for the extension and/or variation of the 2022 Spotify Addendum, or negotiations with Spotify for any new agreement(s) (including new addendums to the DDA) regarding Google Play and/or in-app billing.

This includes but is not limited to data or analysis supporting such negotiations.

(5) E22: Internal Communications (to 31 May 2025) in relation to negotiations for the extension and/or variation of the 2022 Spotify Addendum, or negotiations with Spotify for any new agreement(s) (including new addendums to the DDA) regarding Google Play and/or in-app billing.

(6) E23: External Communications (to 31 May 2025) between Google and Spotify in relation to negotiations for the extension and/or variation of the 2022 Spotify Addendum, or negotiations with Spotify for any new agreement(s) (including new addendums to the DDA) regarding Google Play and/or in-app billing.

144. This category of requests relate to disclosure sought arising out of a Developer Distribution Agreement between Google and Spotify with an effective date of [✂] 2022. These requests are said to be relevant to Epic's tying claim, and the Unfair Pricing Claim. In particular:

(1) In relation to Request E18, Epic seeks documents which record the impact on Google's business of the Spotify Addendum and which evaluate the performance of the Addendum. This is a narrower formulation than that which was originally proposed.

(2) Requests E19 and E20 are designed to capture internal and external communications relating to the Spotify Addendum. This is relevant because Epic will wish to test at trial Google's pleaded case that the Google Play Store and its internal billing system are inseparable, and its assertion that its commission rates are fair, in circumstances where it is able to offer a lower rate to Spotify.

(3) Requests E21, E22 and E23 seek disclosure of documents relating to negotiations for any extension or variation of the Spotify Addendum. This arises out of information gleaned from the US Proceedings that

Google is in the process of negotiating with Spotify. An offer to provide only the agreement when finally agreed would not be sufficient: it is important to see any final agreement in its proper context. If disclosure is not ordered, then it is likely that any final agreement will be disclosed only on the eve of trial. On the other hand, if there are no ongoing negotiations, there will be nothing to disclose. The obligation is therefore not an onerous one.

145. Epic seeks disclosure from four custodians, and invites Google to propose the appropriate search terms, it being the repository of the relevant information to enable them to do so.

146. Google's position is as follows:

(1) In relation to Requests E18, E19 and E20, it highlights the fact that, whereas Requests E18 and E19 have been narrowed to documents reflecting or evaluating the impact of the Spotify Addendum on Google's business, E20 has not been. Google agrees to provide not only the Spotify Addendum, but also the material that is referred to in it. Google says that is extensive material which negates the need for further disclosure of internal and external documents. It is the effect of the Spotify Addendum that is relevant, and not the history of how it came into being. Further, and in any event, substantial disclosure has been provided in relation to the Spotify Addendum. A search of the harmonisation disclosure by reference to the term Spotify results in 2,500 hits, which do include internal and external communications.

(2) In relation to Requests E21 to E23, any new agreement that is reached with Spotify before trial will be provided to Epic. Disclosure of ongoing negotiations that do not result in a concluded agreement is unjustified.

147. Epic points out that in the disclosure provided already only one of its four proposed custodians for Google can be identified. This is said to underline the piecemeal nature of the disclosure that has been provided in relation to Spotify, the documents in relation to which are identified by happenstance.

(a) Analysis

148. Request E18 as now framed is narrowly focused, and seeks documents recording the impact of the Spotify Addendum on Google's business within the period 8 June 2022 to 31 May 2025. That appears to me to be a proportionate proposal focused on documents likely to be relevant to issues arising in these proceedings, in particular in relation to whether or not Google's commission rates are fair. I will also order that Google should provide disclosure under Request E19 for the same reason. In relation to Request E20, I do not see a need to qualify the external communications by reference to the impact of the Spotify Addendum on Google's business. It seems to me that all communications with Spotify relating to the Spotify Addendum should be provided. Such communications will enable the Spotify Addendum to be put into its proper context.

149. Consistent with the position relating to negotiations with OEMs and carriers and Samsung, and for the same reasons as regards relevance, and the need to provide proper context, I will also order that Google provide disclosure of internal communications and external communications relating to the negotiations for any extension and/or variation of the Spotify Addendum under Requests E21 to E23. There is of course a risk that this will mean that documents are disclosed which relate to positions that are not reflected in any final agreement reached (or communicated to the other side). However, that does not to my mind mean that they are irrelevant when it comes to putting any final agreement into its proper factual matrix and for the purposes of assessing its effects. That is particularly pertinent given that Spotify is neither a carrier nor OEM, but a developer.

150. The parties should seek to agree language that is not over-inclusive. Further, Google should consider its appropriate custodians, and search terms, and the parties should endeavour to agree them.

Bridget Lucas KC
(Chair)

Charles Dhanowa, CBE., KC (Hon)
Registrar

Date: 24 September 2025