Neutral citation [2025] CAT 58

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

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

25 September 2025

Before:

HODGE MALEK KC
(Chair)

Sitting as a Tribunal in England and Wales

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")

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

(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")

Heard at Salisbury Square House on 25 September 2025

RULING (DISCLOSURE) (NON-CONFIDENTIAL)

APPEARANCES

Anneliese Blackwood and Sarah O'Keeffe (instructed by Geradin Partners Limited) appeared on behalf of the Class Representative in the Rodger Proceedings.

Antonia Fitzpatrick (instructed by Hausfeld & Co. LLP) appeared on behalf of the Class Representative in the Coll Proceedings.

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 Class Representative in the Rodger Proceedings ("Professor Rodger") and by the Defendants ("Google") for disclosure in the Rodger Proceedings which were considered at a case management conference ("CMC") on 25 September 2025 (the "September 2025 CMC"). The applications were ruled upon at this hearing and this written ruling reflects the rulings given on each of the requests for disclosure.

B. BACKGROUND

2. Professor Rodger claims damages on behalf of UK-domiciled app developers alleging certain exploitative and exclusionary conduct by Google abusing its dominant position on the Android app distribution market and on the licensable smart mobile operating system market. The Rodger Proceedings are high-value and complex proceedings with a preliminary claim value of between £425 million to £1.036 billion (including interest). Similar claims are being pursued by the Claimants in the Epic Proceedings ("Epic"), a gaming app developer, seeking injunctive relief and by the Class Representative in the Coll Proceedings ("Ms Coll"), on behalf of downstream customers. The class size in the Rodger Proceedings is said to comprise at least 2,600 UK-domiciled app developers.

3. The trial in the Coll Proceedings had been listed to commence in October 2025 and included partial consolidation with the Epic Proceedings whereby Epic would be permitted to adduce evidence of fact but not expert evidence. This would have resulted in the final determination of the Coll Proceedings with consideration of Epic's expert evidence, and final determination of the Epic Proceedings, deferred until a later date.

4. On 6 March 2025, following a hearing to determine Professor Rodger's application for a collective proceedings order ("CPO"), which was not contested by Google, the Tribunal confirmed the Rodger Proceedings would be certified. A CPO was made on 23 May 2025 and the Tribunal's CPO Judgment was issued on 6 August 2025 ([2025] CAT 45).

5. Following the Tribunal's confirmation that a CPO would be granted in the Rodger Proceedings, a joint CMC took place on 14 March 2025 to consider the joint case management of the Rodger, Coll and Epic Proceedings (the "Joint CMC"). By Order dated 24 March 2025, the Tribunal ordered that the Rodger, Coll and Epic Proceedings be heard together at a trial listed in October 2026 (the "October 2026 Trial") to avoid "*the very real risk of inconsistent outcomes*". As a result of this order, the trial in the Coll Proceedings was vacated. On 30 April 2025, the Tribunal issued its judgment giving reasons for its decision ([2025] CAT 25) (the "Joint CM Judgment").

6. The Tribunal identified at paragraph 60(3) of the Joint CM Judgment that there was *"a[t] least one, and possibly two, main issues of the alleged exclusionary practices which are raised in the Rodger Proceedings but not in either the Coll or Epic Proceedings"*. At paragraph 70, the Tribunal acknowledged that the overlap between the Rodger Proceedings and the Epic and Coll Proceedings *"is not total"* and stated:

> "Ms Coll's class of UK app purchasers may have purchased apps from app developers that fall outside Professor Rodger's class, and Professor Rodger's class of UK app developers may have sold apps to purchasers all around the world. There is also a temporal difference between the relevant period for Ms Coll's claim and that applying to Professor Rodger's."

7. In relation to disclosure, the Tribunal noted at paragraph 70 that *"Professor Rodger is not starting from scratch in this case"* and a *"good deal of work has been completed on points in issue in the Rodger Proceedings which are common to those in the Coll and Epic Proceedings"*. At paragraph 74(1) the Tribunal stated:

> "On any analysis a substantial disclosure exercise has already been undertaken. The process of disclosure to date in the Coll and Epic Proceedings has been at times somewhat tortuous. However, the issues on which supplemental disclosure is required are likely to be narrow (see paragraph 60(3) above) and (we are told) potentially covered by disclosure already made by Google. Requests for further disclosure have been actively case managed throughout the Coll and Epic Proceedings and we anticipate that a similar process will be instituted in the directions that are given at the CMC on 1 May 2025."

8. Following the Joint CM Judgment, a joint CMC took place on 1 May 2025 (the "May 2025 CMC") to consider the timetable to the October 2026 Trial. On 4

August 2025, the Tribunal issued its directions further to the May 2025 CMC (the "May 2025 CMC Order").

9. In accordance with paragraph 4 of the May 2025 CMC Order, as amended by agreement between the parties, Google produced documents provided by way of disclosure in the Epic and Coll proceedings, amounting to c. 3.5 million documents, to Professor Rodger in tranches on 27 May 2025 and 11 June 2025 (ahead of the ordered deadlines). This disclosure included: (1) Google's existing disclosure in the Epic Proceedings, including the entirety of Google's US discovery (which includes supplemental productions on specific issues requested by Epic); (2) certain documents from Google's disclosure in the Australian proceedings; (3) further supplemental disclosure in response to Epic's additional disclosure requests; and (4) Google's existing disclosure in the Coll Proceedings (as an illustration, this led to around 80,000 documents being provided to Epic in July 2025 in addition to those already within the Epic Proceedings).

10. On 27 May 2025, Google also provided Professor Rodger with copies of its Disclosure Reports, EDQs and Disclosure Statements served in the Epic and Coll Proceedings. This is referred to as *"Stage 1 Disclosure"* in the May 2025 CMC Order.

11. Following receipt of Stage 1 Disclosure, Professor Rodger was to make any supplementary disclosure requests by reference to the issues in the Rodger Proceedings which were to be considered at a further CMC. Paragraph 4.3 of the May 2025 CMC Order required Professor Rodger to identify issues in the Rodger Proceedings that did not overlap with the issues in the Epic and Coll Proceedings. On 27 May 2025, Professor Rodger produced a table which identified such issues (the "Non-Overlapping Issues Table") which took into account material that had not been available at the time of the Joint CMC. The Non-Overlapping Issues Table comprised some 17 issues and 74 sub issues.

12. On 10 June 2025, Google responded to the Non-Overlapping Issues Table and provided search terms which Google considered would be useful to locate material potentially relevant to the pleaded issues within the existing disclosure.

13. Pursuant to paragraph 7 of the May 2025 CMC Order, Professor Rodger confirmed on 30 June 2025 that he *"does not intend to provide any disclosure at this stage"*.

14. On 4 July 2025, Professor Rodger served his supplemental disclosure request which comprised 23 requests and 57 sub-requests. On 25 July 2025, Google responded to these requests agreeing to give additional disclosure in relation to 12 out of 23 of the requests. Google provided tranches of that agreed disclosure on 8, 10 and 12 September 2025 (amounting to around 70,000 documents).

15. On 25 July 2025, Google requested that Professor Rodger provide disclosure on: (1) the matters addressed in the factual witness evidence that he intends to be adduced; and (2) documents related to the pleaded issues on pass-on and mitigation.

16. A further CMC took place on 1 August 2025 (the "August 2025 CMC") following which the parties agreed directions that Professor Rodger would provide a reply to Google's response to his disclosure requests (see paragraph 14). On 12 August 2025, Professor Rodger served amended supplemental disclosure requests which maintained 18 of his requests in some form. Google responded on 27 August 2025 to which Professor Rodger replied on 5 September 2025.

17. In accordance with the Tribunal's letter dated 13 August 2025, Professor Rodger and Google each filed a position statement on disclosure which set out their respective positions in relation to disclosure to date in the proceedings, including an indication of the costs incurred. Professor Rodger's position statement was accompanied by the Second Witness Statement of Anthony Ojukwu dated 29 August 2025. Ms Coll filed a position statement on 11 September 2025, further to the Tribunal's letter dated 2 September 2025. The Tribunal has found these documents helpful for the purposes of the Tribunal resolving issues as to disclosure. This has been particularly useful for Hodge Malek KC who had been assigned to deal with the parties' disclosure applications and had not been previously involved as Chair in these proceedings.

18. On 27 August 2025, the Tribunal issued an order following the August 2025 CMC in relation to the expert evidence that Epic and Professor Rodger are permitted to adduce in the proceedings (the "Expert Evidence Order").

19. By Order dated 2 September 2025, the Tribunal issued directions in relation to outstanding disclosure issues (the "Disclosure Directions Order"). On 11 September 2025, the parties' solicitors attended a meeting, on a without prejudice basis, to facilitate effective discussion of the outstanding disclosure issues. Following the meeting, the parties have been able to narrow the matters in dispute. The majority of Professor Rodger's disclosure requests were either withdrawn or agreed, with Google agreeing to provide further disclosure, witness evidence and/or information (including the provision of disclosure statements) in response. This illustrates the importance of solicitors between the parties resolving issues as to disclosure in a pragmatic and collaborative way. The advantage of such meetings is that matters can be argued out between solicitors and matters can be agreed, often involving an element of give and take. This has narrowed down the categories of disclosure requiring determination by the Tribunal.

20. On 17 September 2025, Professor Rodger filed a schedule containing his outstanding disclosure requests (the "Rodger Outstanding Disclosure Requests") and Google filed a schedule reflecting its outstanding disclosure requests (the "Google Outstanding Disclosure Requests"). These requests are considered in detail below in Sections D and E. Any further disclosure as Ordered at the September 2025 CMC (or agreed between the parties) is to be completed on a rolling basis and in any event within 21 days after the determination of the Tribunal (paragraph 9 of the Disclosure Directions Order).

21. On 19 September 2025, the parties filed submissions in advance of the September 2025 CMC. Professor Rodger's submissions were supported by letters from his accounting expert, Mr Harman, and his economic expert, Professor Fletcher (respectively, the "Harman Letter" and the "Fletcher Letter"). In addition, Ms Coll was permitted to file written submissions to the extent that the Google Outstanding Disclosure Requests in relation to pass on.

22. On 24 September 2025, following a CMC which took place on 23 June 2025 and 15 July 2025 (referred to as the "June 2025 CMC" for convenience), the Tribunal issued a ruling in relation to outstanding disclosure requests made by Epic and Google in relation to the Epic Proceedings ([2025] CAT 51) (the "Epic Disclosure Ruling").

C. LEGAL PRINCIPLES

23. Disclosure before the Tribunal is governed by rules 60 to 65 of the Competition Appeal Tribunal Rules 2015 (the "Tribunal Rules"). The Tribunal may at any point give directions in relation to disclosure (rule 60(3)). A party's duty to disclose is limited to documents which are, or have been, in its control. Rule 60(4) provides:

> "(4) A party's duty to disclose documents is limited to documents which are or have been in its control; and for this purpose, a party has or has had a document in its control if –
>
> (a) the document is or was in its physical possession;
>
> (b) it has or has had a right to possession of the document; or
>
> (c) it has or has had a right to inspect or take copies of the document."

24. When considering whether to order disclosure, the Tribunal will have regard to the governing principles as set out in rule 4 of the Tribunal Rules to ensure a case is dealt with justly and at proportionate costs.

25. In *Ryder Limited & Another v MAN SE & Other* [2020] CAT 3, the Tribunal identified the broad principles that it applies in relation to disclosure at [35] to [36]:

> "35. Even in cases where broad disclosure is required, it is possible to lay down some broad principles that are applied by the CAT. These are:
>
> (1) Orders for standard disclosure will not in general be made.
>
> (2) Disclosure will be confined to relevant documents. Relevance is determined by the issues in the case, derived in general by reference to the pleadings, although in appropriate cases disclosure can be in relation to matters not specifically pleaded.
>
> (3) A strong justification would be required to make any order along the lines of the 'train of enquiry' test in the classic formulation of

the test for disclosure enunciated by Brett LJ in *Compagnie Financière du Pacifique v. Peruvian Guano Co.* (1882) 11 QBD 55 at 63. An example where train of enquiry disclosure may be justified is a case alleging a cartel infringement where the underlying facts are unknown to the claimants but are in the hands of the defendants.

(4) Disclosure cannot be ordered in respect of a settlement submission which has not been withdrawn or a cartel leniency statement (whether or not it has been withdrawn). This does not preclude a party which made such a submission or statement providing it by way of voluntary disclosure.

(5) Disclosure will not be ordered in respect of a competition authority's investigation materials before the day on which the authority closes the investigation to which those materials relate.

(6) Ordinarily disclosure will be by reference to specific pleaded issues and specific categories of documents.

(7) Disclosure will only be ordered and the order will be framed to ensure that it is limited to what is reasonably necessary and proportionate bearing in mind a number of aspects, the most important of which are:

(a) the nature of the proceedings and the issues at stake;

(b) the manner in which the party bearing the burden of proof is likely to advance its case on those issues;

(c) the cost and burden of providing such disclosure;

(d) whether the information sought can be obtained by alternative means or be admitted; and

(e) the specific factors listed in r. 4(2)(c).

36. The search required will be a reasonable and proportionate search and it will be for the disclosing party to specify what search it has carried out and why it contends any particular search would be unreasonable when it complies with the order. In appropriate cases, the Tribunal may rule on what would be required by way of a reasonable search prior to disclosure being provided. The factors relevant in deciding the reasonableness of a search include (cf. CPR r.31.7):

(a) the number of documents involved;

(b) the nature and complexity of the proceedings;

(c) the costs of retrieval of any particular document which is likely to be located during the search;

(d) the significance of any document which is likely to be located during the search;

(e) the location of material, and the type and nature of databases and storage involved; and

(f) the resources available to the disclosing party."

26. In the vast majority of cases the pleadings of the parties play a central role in determining the issues on which disclosure may be ordered. Matthews and Malek, *Disclosure* (6th ed., 2024) states at paragraph 5-27:

> "In the past, relevance was primarily tested by reference to the pleadings (now "statements of case"). However, "matters in question" covered a wider ground than the issues as disclosed in the pleadings. On the other hand, discovery was not required of documents which related to irrelevant allegations in pleadings which even if sustained could not affect the result of the action. And, where a trial was split, so as to determine liability before considering quantum of damages, discovery as to quantum was not normally ordered until liability had been determined. The practice under the CPR is the same. The pleadings are the crucial reference point in determining what are the respective cases of the parties for the purposes of standard disclosure. Where disclosure is sought on matters which do not go to relevant issues on the pleadings, it will usually be refused. Where matters are admitted on the pleadings, usually disclosure in respect of such matters can be dispensed with as not being necessary, albeit there is no blanket rule to that effect as there may be special circumstances necessitating disclosure nevertheless. Even so the pleadings are not necessarily decisive. A wider view was taken in one case where the judge held it was not necessary for the issue to be identifiable on the face of the statements of case. He held that it was enough for the issue to be something that will need to be determined by the court in order for there to be a fair resolution of the proceedings. Of course where the disclosure is sought for the purposes of interlocutory proceedings, the disclosure may in fact not go to any pleaded issue, such as with disclosure for the purposes of a jurisdiction challenge. Aside from this, the general position is that disclosure ought to be by reference to the pleaded issues."
>
> (footnotes omitted)

27. In addition to the principles referred to above, the Tribunal will consider the following which are relevant to the current applications:

(1) The stage which the proceedings have reached and the impact of any further disclosure on the timetable in the proceedings.

(2) The disclosure that has already been provided or has been agreed to be provided at the time of the hearing of the application.

(3) How focused the requests for disclosure are, not just in terms of clarity but also in terms that they do not go beyond what is reasonably necessary and proportionate.

(4) The conduct of both sides in seeking to resolve any issues as to disclosure.

D. RODGER OUTSTANDING DISCLOSURE REQUESTS

28. The remaining Rodger Outstanding Disclosure Requests can be divided into four categories:

(1) Data on payments, specifically:

(i) Data on activation and other payments or equivalent made by Google pursuant to Placement Agreements ("PAs") to Original Equipment Manufacturers ("OEMs"), including Samsung (Request R8(c)).

(ii) Data on revenues (Request R20(d)).

(2) Accounting information, specifically data on the profitability of the Google Play Store (the "Play Store") (Requests R21(a) and R21(b) (save that Request R21(b)(iv) was withdrawn before the hearing)).

(3) Documents created in the context of the Competition and Markets Authority ("CMA") Investigation into "*Mobile browsers and cloud gaming final decision report*" dated 12 March 2025 (the "MBCG Report") (Requests R9(a) and R9(b)).

(4) Documents related to Google's suspension of the apps of 10 Indian app developers (Request R14).

29. Google raised the following overarching submissions in relation to the Rodger Outstanding Disclosure Requests:

(1) The Requests should be viewed against the backdrop of the extensive disclosure that has already been provided to Professor Rodger (including in response to supplemental requests) and the additional disclosure that will be provided as a response to Google's agreement, in response to his

supplemental requests (as now agreed) and the disclosure it will provide as a result of Epic's requests.

(2) The Requests concern a number of overlapping issues with the Coll and Epic Proceedings, rather than distinct (non-overlapping) issues that do not arise in those proceedings (particularly Requests R20(d) and R21(a)-(b)). The Requests concern data on service fees and Play Store revenues and profitability. Such requests are maintained by Professor Rodger notwithstanding that the allegation of excessive pricing is an obvious overlapping issue which is raised in both the Coll and Epic proceedings. Therefore, Professor Rodger has already received substantial disclosure and expert evidence in respect of the overlapping issues and further supplemental disclosure on the same issues is unnecessary and disproportionate.

(3) Professor Rodger has failed to conduct a proper review of Google's extensive existing disclosure, despite detailed explanations from Google about that disclosure. This has given rise to redundant requests based on misunderstandings or lack of knowledge where there is already identifiable existing disclosure on the topic. Therefore, the Rodger Outstanding Disclosure Requests are unnecessary and disproportionate.

(4) The Rodger Outstanding Disclosure Requests should also be viewed in the context of the agreed timetable to trial and the ordered process for the provision of any further supplemental disclosure:

(i) The trial date and timetable to that trial formed part of the basis upon which Professor Rodger requested the proceedings be joined and agreed to limit any supplemental disclosure requests of Google. Professor Rodger's disclosure requests fall to be determined within the context of that timetable to trial (in particular the deadline for preparing expert reports by 17 December 2025) so that the tight timetable to trial remains manageable and achievable.

(ii) As stated at paragraph 20 above, any additional disclosure is to be provided within 21 days after the determination of the Tribunal, pursuant to paragraph 9 of the Disclosure Directions Order. Those matters necessarily have an impact on the scope of any further supplemental disclosure that can be provided by Google and the date by which it can be provided. Professor Rodger's approach is wholly unrealistic, having regard to both the scale of disclosure and information Google has already agreed to provide and the additional material now sought in the Rodger Outstanding Disclosure Requests.

(5) Google has already incurred very substantial costs in connection with disclosure in the Epic, Coll and Rodger Proceedings to date. Google's estimated costs in connection with UK disclosure comprise over £7 million in solicitors' fees and over £1.1 million in disbursements connected with disclosure. Google estimates that supplemental disclosure that Google has offered to provide to Professor Rodger would result in further costs of approximately £300,000 (in addition to the additional costs of disclosure being provided by agreement in response to Epic's supplemental disclosure requests). Further costs will arise out of the additional disclosure that Google has since agreed to disclose.

(1) Overall approach of the Tribunal to the outstanding requests

30. Before dealing with each request the Tribunal considers it important to set out its approach in relation to the outstanding requests. The observations apply equally to the Rodger Outstanding Disclosure Requests and the Google Outstanding Disclosure Requests.

31. In addressing the Rodger Outstanding Disclosure Requests, the Tribunal has regard to the massive amount of documentation already disclosed and agreed to be disclosed, the comparatively late stage which these proceedings have reached with witness statements and expert reports to be disclosed in the coming months, and to what Professor Rodger has represented to this Tribunal at past hearings as to the extent to which he would be likely seek supplemental disclosure over

and above the documents Google has already disclosed in the Coll and Epic Proceedings. The Tribunal is therefore not inclined to order supplemental disclosure in respect of the remaining categories in issue unless it is satisfied that such disclosure is reasonably necessary and proportionate for a fair trial of the issues in these proceedings.

32. The Tribunal appreciates that Google has engaged in a constructive manner in relation to the supplemental disclosure sought by Professor Rodger and has agreed to provide further various categories of disclosure. That said, the remaining categories are relatively discrete and focused. The Tribunal takes into consideration what is clearly in issue on the pleadings and what the experts have said about the categories in issue. If disclosure is necessary for the experts to properly carry out a worthwhile exercise which will assist in them finalising their expert reports for trial, that is a significant but not conclusive factor in favour of disclosure.

33. In competition cases such as the present where a class of a significant size (approximately 2,600 app developers domiciled in the UK) are alleged to have suffered loss and damage as a result of an infringement, it is often the case that there is more than one way of establishing or rebutting infringement, and coming to an estimate of overcharge and pass-on. That does not mean that each party should, or the Tribunal will permit parties, to run every single route or permutation. Parties and their experts need to use their common sense and sense of proportion in which ways they want to prove their cases. Simply because a party or expert wants to run and get evidence on an alternative method of estimating overcharge or pass-on does not mean that will be encouraged or permitted by the Tribunal, especially at this late stage.

34. That does not mean that the Tribunal will ignore what is said by the experts as to what they say is necessary for them to carry out their analyses. Professor Rodger's expert Mr Harman, an expert for UK domiciled developers of applications for the Android mobile operating system against Google, in his letter dated 7 July 2025 has explained the scope of the economic and accounting expert evidence he intends to provide. In the Harman Letter he explains his position on the Rodger Outstanding Disclosure Requests and how they fit in

with the evidence he intends to provide in assisting him in assessing the Play Store's profitability in these proceedings.

35. Professor Fletcher (Professor Rodger's expert in the field of economics in relation to market definition, dominance, exclusionary and exploitative abuses, counterfactual analysis and damages) has also provided a letter, the Fletcher Letter, on certain of the Rodger Outstanding Disclosure Requests as well as the Google Outstanding Disclosure Requests.

36. Mr Noble's comments on the outstanding requests are sufficiently set out in Google's written submissions and in the Schedule of the Google Outstanding Disclosure Requests. The Tribunal has therefore taken into consideration what the experts have to say.

(2) Data on payments (Requests R8(c) and R20(d))

37. The outstanding Requests in relation to data on payments are as follows:

> "R8(c): Data on activation and other payments (or equivalent) made to Original Equipment Manufacturers ("OEMs") pursuant to Placement Agreements ("PAs") (including Samsung), including "Summarized Bounty Statements", during the Relevant Period (i.e. 22 August 2018 to 22 August 2024).
>
> R20(d): Google data on revenues generated from any OEM European Mobile Application Distribution Agreement ("EMADA") licensing fee during the Relevant Period."

(a) Parties' submissions

38. Professor Rodger submitted that the data in relation to Requests R8(c) and R20(d) is central to a piece of analysis that Professor Fletcher intends to conduct. As set out in the Fletcher Letter, the CMA appears to have conducted a very similar analysis in its 2022 MEMS Report, albeit on a different temporal and geographic scope than Professor Rodger's claim, and concluded that payments made by Google to OEMs under PAs *"outweigh the EEA licence fees manufacturers incur when entering the EMADA, which means that Google ends up not charging manufacturers at all for licensing its proprietary apps. Data*

from Google shows that in 2020 and 2021 payments made under the PAs were slightly larger than the license fees revenue generated under the EMADA".[1]

39. Professor Fletcher explains that she intends to use the data sought in Requests R8(c) and R20(d) to calculate whether the net of these payments between Google and OEMs in fact resulted in Google effectively paying OEMs to preinstall the Play Store, which is relevant to paragraph 84 of Professor Rodger's Collective Proceedings Claim Form ("CPCF"). In particular, she requires this data to be broken out at a device model level and by OEM, because she understands that some agreements only related to particular device models, and all agreements were OEM-specific. This level of granularity will enable her to identify whether and to what extent Google targeted particular downstream contractual partners and/or particular device models to ensure preinstallation and/or prominent positioning of the Play Store on strategically valuable devices. The data sought will also enable Professor Fletcher to analyse whether as-efficient competitors would have been able to match Google's offer to OEMs with equivalently-sized payments,[2] which will enable her to evaluate whether Google's conduct in this respect was exclusionary.

40. This data and intended analysis is plainly relevant to Professor Rodger's pleaded claim.[3] Professor Fletcher's preliminary report, on the basis of which the Rodger Proceedings were certified, includes a preliminary discussion of these agreements and payments under them on the basis of the publicly available high-level CMA indications.

41. R8(c) and R20(d) are discrete and narrow and relate to data of the same sort (subject to temporal and geographic differences) that Google appears to have produced recently to the CMA, both for the 2022 MEMS Report and the MBCG Report. It is the sort of data that Google would be expected to have ready access to for its ordinary business practices.

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[1] MEMS Report, Appendix E, paragraphs 64.
[2] As pleaded by Google at paragraph 121(f) of its Defence in the Rodger Proceedings.
[3] Professor Rodger's CPCF, paragraphs 114-116 and 171.

42. Google considered these Requests for additional data on payments are unnecessary and disproportionate. In particular:

(1) These Requests concern data on service fees and Play Store revenues and profitability notwithstanding that the allegation of excessive pricing is an obvious overlapping issue which is raised in both the Coll and Epic Proceedings and which has already been the subject of an extensive disclosure process and expert report process in those proceedings.

(2) Google has already provided significant financial data and information to Professor Rodger, and has agreed to provide more. Certain of the information now sought is or will already be available to Professor Rodger. For example, as explained above, the information sought in respect of activation payments for PAs is evident on their face, and, as explained in Google's response to Request R21(a), there is already significant information available for Professor Rodger's expert to be able to reconcile the data. Further disclosure by Google is therefore not necessary, reasonable or proportionate.

(3) Certain documents/information now sought are simply not available, or have already been provided to the extent available.

(b) Analysis

43. The following paragraphs of Professor Rodger's CPCF are relevant to Requests R8(c) and R20(d):

> "*(iv) The GMS bundle*
>
> 84. Google also produces a bundle called Google Mobile Services ("GMS"), which it defines as "a collection of Google applications and APIs that help support functionality across devices." The bundle is broad, including Google Play Services, the Play Store, and other Proprietary Apps. The Proprietary Apps in the GMS bundle have varied over time and between jurisdictions, but in the UK and EEA, as of August 2024, it included Gmail, Google Drive, Google Maps, YouTube, YouTube Music, Google Photos, and Google Duo. Google describes the GMS bundle as containing *"Google's most popular apps"*, albeit it bears emphasis that those apps are in many cases pre-installed rather than reflecting active user choice of those apps based on their popularity. Until 2019, the bundle also included Google

Search and Chrome. Following the EC's decision in *Google Android (EC)*, Google Search and Chrome were formally removed from the GMS bundle in the UK and EEA. However, licensing Google Search and Chrome in the UK and EEA remains conditional on the OEM entering into an EMADA, which requires the OEM to pre-install the GMS bundle in any event (see paragraph 102 below).

[…]

103. Under the MADAs, OEMs are required to pre-install all elements of the GMS bundle (that is, they cannot pre-install some but not all of the relevant apps or software). Users cannot uninstall (but can only *"disable"*) such apps (see paragraph 90.4 above).

[…]

105.4 Google requires OEMs to give the Play Store (and certain other Google apps) prominent placement on their devices.

[...]

*(v) Search and Chrome licence agreements and Placement Agreements ("**PAs**")*

114. Since having formally to unbundle them from the GMS (see paragraph 84 above), Google now licenses the Google Search and Chrome apps for distribution on Google Android devices in the UK and EEA under separate licence agreements. It remains a precondition of entering into such a licence agreement that an OEM sign a MADA. Under such a licence agreement, the Google Search and Chrome apps are distributed free of charge to OEMs on a device-by-device basis.

115. Google also offers to enter into PAs with OEMs to which it has licensed the Google Search and Chrome apps. As a pre-condition, the OEM must have made its devices *"Android Compatible"*, and obtained a licence for the GMS bundle. Under such PAs, Google pays OEMs *"activation payments"* for each device on which the OEM (i) preinstalls and (ii) satisfies certain placement obligations for Google Search and Chrome, the payment per device being significantly larger if the OEM does so for both.

116. The CMA estimates that, under PAs covering the UK in 2021, Google paid *"activation payments"* of between £100 and £200m to OEMs (mainly Samsung, i.e., the OEM which is also the developer of the most widely available alternative app store to the Play Store in the UK (the Galaxy Store))."

(footnotes omitted)

44. Paragraphs 161 and 171 of the CPCF are also relevant to these requests (see paragraph 84 below) In addition, the disclosure sought is also relevant to paragraph 121(e)-(f) of the Defence in the Rodger Proceedings which states:

"(e) It is denied that PAs make pre-installation and prominent position of the Google Play Store a pre-condition of any financial incentives. The

PAs provide for per-device payments for devices on which OEMs pre-install either Google Search and/or Chrome. The placement obligations in the PAs concern Google Search and/or Chrome, not the Google Play Store. The obligation is to place the Google Search and/or Chrome icon in the Google folder found on the default home screen, rather than place the apps on the default home screen.

(f) … The PAs are non-exclusive and do not prevent third-party apps, app stores or search browsers from being pre-installed or displayed prominently on a Google Android Device. Competitors could have matched any payments made by Google under any agreements."

45. In paragraphs 5 to 9 of the Fletcher Letter, Professor Fletcher explains the exercise that she wishes to carry out:

"5. As I explained at e.g. §19(i)(b) of my First Report (from the certification phase), I have identified, as one of Google's four broad strategies of exclusionary conduct, the foreclosure of rival app stores by ensuring that the Play Store is pre-installed and placed in a prominent position on Android devices and preventing rivals from gaining similarly favoured status for their app stores. I understand that one of the ways Google achieves this is by offering financial incentives to OEMs through PAs: *"PAs offer OEMs per-device payments if they agree to the EMADAs [which require OEMs to pre-install all elements of the Global Mobile Services (the "GMS") which includes the Play Store] and pre-install the Google Search and Chrome Apps on their devices. These agreements therefore provide apps in the GMS bundle at a negative price, further incentivizing OEMs to install the bundle"* (§19(i)(b) of my First Report). PAs therefore provide a discount on the licence fees that OEMs have to pay pursuant to the EMADAs, with that discount being indirectly conditional on preinstalling and giving prominence to the Play Store.

6. If the payments made pursuant to the PAs fully offset the licence fees incurred by OEMs under the EMADAs, the implied incentives for OEMs are large: if they enter into PAs, OEMs could effectively be paid to use Google's proprietary apps (i.e. GMS provision in reality occurs at a negative price). As I explained at §258-261 of my First Report, I understand from the CMA *'Mobile Ecosystems Market Study'* ("**MEMS**") Report (in particular Appendix E) that 'activation payments' under the PAs do in fact fully offset the EMADA licence fees, although I would require the underlying data (in particular on a device model level basis, as explained further below) to be able to establish that in my analysis. In particular, I note §64 of Appendix E to the MEMS Report, where the CMA concluded:

"PAs outweigh the EEA licence fees manufacturers incur when entering the EMADA, which means that Google ends up not charging manufacturers at all for licensing its proprietary apps. Data from Google shows that in 2020 and 2021 payments made under the PAs were slightly larger than the license fees revenues generated under the EMADA. This was the case both in the UK and the EEA."

7. Further, as I explained at §261 of my First Report, the high barriers to entry due *inter alia* to network effects mean that rival app stores are already highly unlikely to be able to match the must-have apps and Google Play Services functionality in the GMS bundle. My view at this stage is that the provision of the GMS bundle at negative prices helps ensure that the Play Store is pre-installed and prominently displayed on OEM's Android devices, effectively foreclosing the market.

8. To be able to assess whether and to what extent these payments under the PAs constituted exclusionary conduct, I need to be able to analyse, at a device model level: (i) the EMADA licencing payments from each OEM to Google in respect of each device model; and (ii) the corresponding activation payments (and equivalent) under PAs from Google to those OEMs in respect of each device model. This will enable me to calculate the net (positive or negative) payment in respect of each device model of each OEM. I require the data to be at this level of granularity because certain agreements only relate to specific device models, so this information will allow me to identify which OEMs (if any) and which devices (if any) Google may have targeted with proportionately larger activation payments, in order to secure preinstallation and/or prominent positioning of the Play Store on the devices that Google considered strategically important. For example, §116 of Prof. Rodger's claim form records the CMA's observation from its MEMS Report that most of the activation payments in the UK in 2021 were paid to Samsung (I record a similar CMA observation in respect of Revenue Sharing Agreements ("**RSAs**") at §275 of my First Report). As I explain at e.g. §79, §264 and §273-277 of my First Report, in addition to being an OEM with whom Google enters into PAs and RSAs, Samsung is also the developer of the most widely available alternative app store to the Play Store in the UK (the Galaxy Store)

9. The data requested on activation payments and other payments under PAs will also enable me to determine whether a competitor with similar costs could sustain payments of equivalent size to these OEMs in respect of these devices without incurring losses and thereby be able to effectively compete. That will be relevant to me distinguishing between pro-competitive conduct and exclusionary practices. Therefore, I have requested supplementary evidence of the size of the payments under the PAs. Moreover, I consider it will also be useful to the Tribunal for me to further assess the competitive effects of such agreements by analysing their scope, including how many and which OEMs signed such agreements, and the implied contract duration. I understand that Google has agreed to provide additional disclosure of the agreements themselves and therefore the outstanding request is limited to activation payment data."

46. Professor Fletcher also explains at paragraphs 10 to 13 why what has been provided so far is inadequate for her to carry out the task that she wants to carry out.

47. The Tribunal considers the task that she wants to carry out is a necessary and proportionate one in all the circumstances, and there is a good reason why she wants to do the analysis, on both ends.

48. There is, however, an issue between the parties as to the extent to which the material has already been provided or could be ascertained at a high level. By letter dated 24 September 2025, RPC on behalf of Google, has made a pragmatic proposal to resolve Requests 8C and R20(d) on the following terms:

> "In order to resolve Requests R8(c) and R20(d), and without prejudice to Google's position that it has already provided extensive and sufficient financial data, Google is prepared to provide a breakdown of the Net Payment Data to Prof. Rodger by OEM and by country for each year of the relevant period, i.e. data showing the net amount paid under the PAs (after deduction of EMADA licence fees) to each OEM by country in each year of the relevant period. This data would provide Prof. Fletcher with the information she seeks at the OEM level. Google considers that this additional information, together with the extensive disclosure already made in these Proceedings in relation to PAs and MADAs/EMADAs, is sufficient to satisfy Prof. Fletcher's requirements for Requests R8(c) and R20(d)."

49. The actual sums coming under the PAs, as well as the fact that one needs to be confident that the aggregated data and the analysis of Google has been properly carried out, all need to be analysed. It would be necessary for Professor Fletcher to go behind the sort of documents and schedules that are being offered. Google has suggested that it can be trusted and Professor Fletcher can do her own audit looking at the accounts. However, the Tribunal is not satisfied that that really is a complete answer in this case, not least because an expert report needs to be served in December 2025. Taking such an approach could result in an expert finding herself in the unsatisfactory position that it is not possible to undertake this exercise properly on the basis of the limited material so far received and offered in conjunction with the accounts, and without the disclosure being provided now it would be too late for a further disclosure application.

50. The Tribunal therefore orders these two categories of documents in the terms sought, having regard to the fact that a lot of it is going to be provided in any event, as per the offer dated 24 September 2025.

(3) Accounting information (Requests R21(a) and R21(b))

51. Professor Rodger requested the following accounting information:

> "R21(a): To enable a reconciliation of the Play Store general ledger costs with the costs in Alphabet's published financial statements, for each quarter in the Relevant Period, all costs that are relevant to operating the Play Store but are not yet allocated to the disclosed general ledger data for Play Store.
>
> R21(b): Best available evidence for each year during the Relevant Period on: (i & ii)[4] Google's assets required to operate the Play Store, throughout the relevant period, showing (insofar as possible) purchase date, disposal date, cost price, revaluation or impairment amount (if applicable), depreciation, accumulated depreciation, useful life, asset description, segment the asset pertains to (if applicable) and market value/replacement cost (if readily available); and (iii) all R&D expenditures relevant to the operation of Play Store, including (insofar as possible) descriptions of expenditures, segments to which the R&D relates (if applicable), and the time period in which the expense was incurred."

(a) Parties' submissions

52. Professor Rodger submitted that Mr Harman needs to calculate the Play Store's profitability for Professor Rodger's excessive pricing claim. This will involve [✂]. Mr Harman was granted permission to adduce additional expert evidence on the basis of his letter to the Tribunal dated 7 July 2025, including specific references to allocating the costs and assets.

53. In relation to Request 21(a), as explained in the Harman Letter at paragraphs 12-13, certain of Google's accounting documents have disclosed that [✂]. In the Coll Proceedings, Professor Easton, Google's expert, criticised Ms Coll's expert (Mr Dudney) for using Google's general ledger costs (i.e. the unadjusted accounting information disclosed by Google) as failing to account for the additional (joint and common) costs that are in fact required to operate the Play Store but not reflected in those accounts. Mr Harman therefore seeks the information to determine whether these additional (joint and common) costs should properly be attributed to the Play Store for his profitability analysis, and to avoid facing the same criticisms from Professor Easton.

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[4] This numbering is adopted to correspond to previous iterations of R21(b). Prof. Rodger consolidated what were previously R21(b)(i) and R21(b)(ii) in light of Google's claims about what information it holds.

54. Similarly, Request R21(b) seeks Google's best available evidence on the assets required to operate the Play Store and the R&D expenditure relevant to operating the Play Store. Mr Harman intends, and has been given permission, to conduct an alternative analysis, to that of Mr Dudney, of the capital employed in the operation of the Play Store. In line with CMA Guidance, this is to include allocation of any intangible assets and R&D expenditures relevant to the Play Store.

55. Professor Rodger modified his request to Google's best available evidence on these matters in light of Google's indication that it does not hold some of the data categories identified by Mr Harman.

56. In response, Google reiterated points raised in relation to Requests R8(c) and R20(d) (see paragraph 42 above).

57. In addition, Google referred to the witness evidence of Ms Kourakina, provided in the Coll Proceedings, to highlight the disclosure that has already been provided in relation to these requests and that [✂]. Ms Kourakina has provided two witness statements in the Coll Proceedings, dated 23 November 2023 and 22 February 2024 respectively, to enable Mr Dudney to undertake his profitability analysis. Google submitted that the evidence of Ms Kourakina explained the extent of the disclosure provided to date and that the data sought is not available.

58. The Tribunal was referred to the Expert Evidence Order to emphasise the basis on which Mr Harman was permitted to provide evidence in these proceedings. Paragraph 9(b) of the Expert Evidence Order states "*Mr Harman shall not duplicate any of the evidence contained in the reports of Mr Dudney and/or Professor Fletcher. His report must be supplemental to the evidence already provided by Mr Dudney and/or Professor Fletcher*". To reflect the fact that Mr Harman's report was to be supplemental, his report was limited to 50 pages, excluding annexes (paragraph 13 of the Expert Evidence Order). Google contended that the exercise Mr Harman was seeking to undertake was duplicative of the exercise that Mr Dudney has undertaken in relation to the Coll

Proceedings which is contrary to the basis on which Mr Harman was given permission to adduce expert evidence in these proceedings.

59. Google submitted that it has already provided the data in respect of R&D costs, where available which is included in the allocated costs in the general ledger data. [✂]. In the Coll Proceedings, Mr Dudney has conducted a profitability analysis in relation to the Play Store by reference to the Play Store general ledger data, and making a slight adjustment for R&D spend and by [✂]. Mr Dudney produced a supplemental report, at the same time as his main report, in relation to sensitivity analyses to his primary profitability analysis, which included [✂]. Google's expert, Professor Easton, has criticised Mr Dudney's primary approach of using general ledger data to calculate profitability, due to certain common costs, assets and R&D that spend do not appear in the Play Store general ledger data. Professor Easton also criticised Mr Dudney's sensitivity analyses by using illustrative examples of what he considers the Play Store's profitability would be. Both experts have undertaken the same task making certain assumptions using the same data.

(b) Analysis

60. As regards Request R21(a) in relation to unallocated costs, it is quite clear that [✂].

61. That leaves a potential difficulty as Professor Rodger wishes to carry out a profitability analysis, which is critical in this case and it is highly important, but he is faced with a potential argument that any profitability analysis overstates the profitability if it does not take into account unallocated costs. Indeed, that is a point that was made by Mr Easton, instructed by Google in the Coll Proceedings, in one of his expert reports in response to the position set out by Mr Dudney, the expert instructed by Ms Coll.

62. [✂], it would be quite an undertaking for Google to effectively carry out the exercise for them and to provide the actual underlying data. The Tribunal appreciates that this may lead to a difficulty for Professor Rodger, however these types of things may have to be dealt with on a broad axe basis, on the basis

of estimates. Insofar as it is not possible to get to the detail of what the allocated costs are, and that Google is claiming that the unallocated costs are higher than is accepted by Professor Rodger's expert, the Tribunal may well take adverse inferences against Google in the sense that Google has not been able to prove the amount of the unallocated costs and has not provided the disclosure and information to enable it to be done or verified by Mr Rodger's expert.

63. At trial, Google may contend that the profitability analysis is going to be overstated because certain unallocated costs have not been factored in. They may seek to criticise Professor Rodger's expert, Mr Harman, on his analysis in not taking into account such unallocated costs. The extent to which the Tribunal may find that such a contention is a valid one may well depend on what material in the form of disclosure Google provides. Mr Harman will have to work from the material disclosed but in the sense that he is unable to take into account supposedly unallocated costs it may be difficult for Google to prove its case on this issue if they do not provide the data and information to enable him to know what they are, how they are calculated and for him to come up with a sufficiently reliable calculation. If the disclosure really is not available the Tribunal may have to deal with the question of unallocated costs on a broad axe basis. It would no doubt help both Mr Harman and the Tribunal if Google can provide details of what it says are the heads of the unallocated costs, why it says these particular heads should be treated as costs to be deducted from the profitability analysis, how it contends such costs should or may be calculated and on the basis of what information and assumptions.

64. [✂], and that even if the exercise is undertaken it may not be conclusive. This is because assumptions are going to have to be made and there will be a challenge between the parties as to which assumptions are right and which assumptions are wrong.

65. The Tribunal also has regard to the fact that Mr Harman has got permission to give expert evidence pursuant to the Expert Evidence Order, which effectively requires him not to duplicate the work that has been done in the Coll Proceedings (see paragraphs 8(b), 9(b) and 11 of the Expert Evidence Order).

66. It may be suggested that Mr Harman is going to be duplicating Dudney's analysis because he is going to go further into the matter and actually look at the data, meaning a more precise allocation of unallocated costs can be done [✂]. However, such a task at this stage of the proceedings is not particularly practicable. It is going to take time to do the exercise properly, and whatever is going to be produced is going to be debatable.

67. Professor Rodger has to work from the material already provided. If there is any material that he wishes to consider that Google says has already been disclosed, the Tribunal directs that Google state exactly where that information is to be located in the disclosure already provided. Therefore to the extent targeted requests have already been or are now made for Google to identify the data or information, to the extent already provided, Google is required to identify it.

68. The Tribunal appreciates any decision is not going to be satisfactory for both parties, but it may well be that on certain issues the parties and the Tribunal may need to work on a rough and ready basis and this may well be the case when it comes to allocation of costs that were not allocated at the time and it is not possible to precisely allocate those costs now for the purpose of these proceedings. Whilst Google states that Mr Harman's profitability analysis is either flawed or comes up with an overstated figure as it fails to take into account either at all or adequately the level of particular heads of unallocated costs, it should be as specific as possible on what they are and their quantum and provide him with whatever information and documents that are available for him to come up with an estimate. Dealing with matters on an *ex post facto* basis, on limited information and where there is significant room for differing views on what should be deducted in any profitability analysis is not going to be an easy task. However, as stated above, insofar as there is data that could be proved at trial that would have really assisted the task, then it is going to be open to Professor Rodger to at least submit to the Tribunal that inferences should be drawn.

69. If this application had been made much earlier in the proceedings a different position may have been taken. However, this is the position that we are in and

expert reports have to be exchanged at the end of this year. If this material has not already been disclosed in the Coll Proceedings, which have been ongoing for some time, then in the face of Google's objection and position it is not appropriate to order additional material to be disclosed at this stage.

70. Google needs to make sure that it is absolutely clear what these unallocated costs are and, unless it has already been done, they have to provide the information referred to in paragraph 63 above to the extent practicable on a best endeavours basis. This can be done at the same time as providing the other information specified at paragraph 67 above.

71. Therefore, Request R21(a) has not been completely dismissed, but it is limited to the extent specified above.

72. In relation to Request R21(b), the position of the parties is that the unallocated costs, both of the assets and R&D costs, which have been [✂], are relevant in assessing the profitability analysis. However, as in relation to Request R21(a), whatever happens there is going to have to be an element of assumptions and gap filling, [✂].

73. In the Coll Proceedings estimates have been done using the disclosure provided by Google in response to requests from Mr Dudney. Data responsive to Professor Rodger's requests, if available, might lead to a more precise calculation of these costs (i.e. the costs of acquiring the assets and the R&D costs [✂]). However, as the Rodger Proceedings were issued after the Coll Proceedings, and a joint trial in the Rodger Coll and Epic Proceedings in September 2026, it is not going to be productive, at this stage, to order this disclosure. Again, had the application been made sooner, it may well be that a different approach would be taken. Insofar as there are important gaps on evidence at trial and the trial judge feels that should have been filled, and it is Google's choice not to provide this data, then inferences may well be drawn, but that will be a matter for trial taking into account all of the evidence and submissions of the parties.

74. The Tribunal fully understands the supplemental analysis Mr Harman proposed to provide, as explained in his letter of 7 July 2025, and why, in an ideal world, this data should be disclosed. It is also appreciated that Professor Easton, in his report, makes a criticism of Mr Dudney, because he says that his first report has not taken into account the unallocated costs, but in the supplemental report, where he has made assumptions and estimates, such costs are too low are actually higher, and that he gives examples, for illustrative purposes, as to what should have been taken into account or possibly could be taken to account that is not in the Dudney analysis.

75. It will be open at trial for Mr Harman to say that those examples are not necessarily to be taken at face value as such examples may have been selected to benefit Google. There is going to be an element of rough and readiness on this. However, given the stage of the proceedings and the complexity of raising this issue at this late stage this request is refused.

(4) CMA Investigation in mobile browsers (Requests R9(a)-(b))

76. Requests R9(a)-(b) are as follows:

> "R9(a): A copy of paragraphs §7.187 - 7.230, §8.199 - 8.324, 12.145-12.147 of the MBCG Investigation Report, unredacted for Google confidential information, and Appendix B unredacted.
>
> R9(b): The (i) Google written submission(s), including Google's responses, and (ii) pre-existing documents that Google submitted, cited in Appendix B."

77. Request R9(a), as set out above, has been amended (additional wording underlined) to reflect that Professor Rodger intended this request to include an unredacted version of Appendix B, and for this to also be provided in addition to the specified paragraphs of the MBCG Report.

(a) Parties' submissions

78. Professor Rodger submitted that the MBCG Report records the CMA's findings in its investigation into mobile browser apps and cloud gaming on iOS and Android devices. Although not a decision directly concerning the alleged infringements in issue in the Rodger Proceedings, it is a recent investigatory

report by the CMA that is highly likely to provide insight on several elements of Professor Rodger's pleaded claim. Referring to the Tribunal's joint CPO Judgment in *Hammond/Stephan v Amazon.com, Inc. & Others* [2025] CAT 42 ("*Hammond/Stephan CPO*") at [79(3)-(4)], Professor Rodger submitted that the Tribunal will ordinarily expect regulatory reports and their underlying materials to be disclosed if they are relevant to matters in dispute between the parties.

79. Paragraphs 16(a)-(f) of the Fletcher Letter identify the key redacted portions of the MBCG Report that she considers likely to shed light on the relevant pleaded issues. Professor Rodger's position was that *inter alia*:

(1) The MBCG Report analyses in some detail, and makes findings relating to, Google's agreements with OEMs to bring about the pre-installation, prominent placement, and setting *"as default"* of Google's proprietary apps, including through the OEM European Mobile Application Distribution Agreements ("EMADAs"), PAs and Revenue Sharing Agreements between Google and OEMs/MNOs ("RSAs"). Professor Rodger pleads that, through these types of agreement, Google ensures that the Play Store is pre-installed and prominently positioned on virtually all Android devices (and that other competing app stores are not).[5]

(2) The MBCG Investigation interrogated Google's motivations for developing those agreements, as well as those agreements' aims and effects. The results of that interrogation remain relevant to Professor Rodger's pleaded claim[6], even if they concerned the impact on a different (but comparable) Google proprietary app (i.e. Google's proprietary browser rather, than Google's proprietary app store).

(3) The MBCG Report describes how the CMA considers Google is able to control the choice architecture (i.e. incentivise the preinstallation, prominent positioning and setting *"as default"*) of Google's proprietary

[5] Professor Rodger's CPCF, paragraphs 169-172; and Defence in the Rodger Proceedings, paragraphs 118-122.
[6] Professor Rodger's CPCF, paragraphs 161 and 163.1.

browser on from-factory devices, through Google's influence over OEMs via its network of contractual agreements (including EMADA obligations), with particular *"focus"* on PAs and RSAs: MBCG Investigation Report, Appendix B, paragraphs 4-16. Professor Rodger's pleaded case is similarly that Google used PAs and RSAs financially to incentivise OEMs to preinstall and prominently position the Play Store on from-factory devices, via its network of contractual agreements.[7]

(4) Further, it appears that several of the arguments advanced by Google in relation to the Play Store – including that OEMs could have preinstalled alternative app stores and would have preinstalled the Play Store anyway because of its alleged superiority – are also submissions that Google made to the CMA about mobile browsers and which the CMA appears to have rejected.

80. For the same reasons, Professor Rodger considers that the Google submissions and pre-existing documents cited in Appendix B will be of significant assistance in determining the matters in issue. He also considers them likely to contain relevant informative material going beyond what is recorded in the MBCG Report itself.

81. The CMA's "*Mobile Ecosystems Market Study*" ("MEMS") Report was published in June 2022 and the MBCG Report includes nearly three more years of the period in respect of which Professor Rodger claims loss.[8] Google's pre-existing disclosure of material relevant to PAs and RSAs would not give Professor Rodger the CMA's analysis of these documents, which he considers will be of assistance both to himself and to the Tribunal. Given the redactions, Professor Rodger unable to check whether all the PAs and RSAs referred to in the MBCG Report are included in the pre-existing disclosure.

[7] Professor Rodger's CPCF, paragraphs 169-172.
[8] In this regard it should be noted that while Professor Rodger's class is defined by reference to the Relevant Period, the proceedings claim for their losses whenever suffered, including after the end of the Relevant Period (22 August 2024): Professor Rodger's CPCF, paragraph 19.

82. Professor Rodger submitted that this material should not be onerous to provide. The request concerns: (i) a single recent CMA investigation report; and (ii) documents relating to just one 18 page Appendix of the resulting Report, which have been recently provided to the CMA and should be readily identifiable. To the extent that Google has concerns as to the burden associated with the disclosure of the whole of MBCG Investigation Report (due to the need to possibly redact confidential material) Professor Rodger was prepared to accept disclosure of paragraphs 7.187-7.230, 8.199-8.324, 12.145-12.147 of the MBCG Report (52 pages in the non-confidential version) and Appendix B to the MBCG Report (18 pages in the non-confidential version). Professor Rodger contends such disclosure would be proportionate.

83. Google objected to the provision of such disclosure for the following reasons:

(1) The investigation was concerned with browsers and cloud gaming, <u>not</u> the Play Store/app distribution (i.e. the subject matter of Professor Rodger's claim). The Requests represent an unwarranted fishing expedition, given that very large swathes of the report will be irrelevant.

(2) In any event, disclosure in respect of parts of the MBCG Report (most notably Appendix B) that do mention PAs and RSAs and is not necessary or proportionate. Appendix B makes clear that it focussed on the impact of those agreements on "*choice architecture for mobile browsers*". By contrast, Professor Rodger's claim is about the pre-installation and prominence of the Play Store.

(3) Professor Rodger already has extensive disclosure concerning RSAs and PAs, which will be addressed by Google's disclosure statement which it has agreed to provide. Google has also agreed to provide further extensive disclosure as a result of Google's agreement to Requests R8(a)-(b) and R10. Summary/descriptive material in the CMA's MBCG Report and provided to the CMA is therefore unnecessary. It is also disproportionate given the extensive review for confidentiality and irrelevance that Google will have to conduct in providing this disclosure.

(b) Analysis

84. The documents sought under this category are relevant to the issues set out in Professor Rodger's CPCF as follows:

> "161. Google has adopted a series of mutually reinforcing exclusionary practices, which are, collectively and individually, aimed at, and have the effect of, making entry into (or substantial participation in) the Android app distribution market practically difficult if not impossible for anyone other than Google. The practices are set out in this section (7). Each of the practices is the result of, or is effected by, one or more of the Restrictions on Direct Downloading, the Anti-Steering Requirements, the OEM/MNO Conditions, and the Developer Conditions.
>
> [...]
>
> 163. Each of the practices set out in this section (7) is inter-connected and, taken together, they constitute a single and continuous infringement, in particular because:
>
> 163.1 each of those practices pursues a (common) single economic aim, namely to retain and extend Google's market power in respect of distribution;
>
> [...]
>
> *(c)* *<u>First category: practices ensuring that the Play Store is the only app store pre-installed and prominently positioned on virtually all Android devices</u>*
>
> 169. **First**, by the OEM/MNO Conditions (or certain of them) in MADAs, Google requires any OEM wishing to distribute a device that can access the Play Store, or that includes any element of the GMS bundle, Google Search, or Google Chrome, must pre-install the Play Store on the device. Similarly, Google does not license critical APIs to OEMs unless they also pre-install the Play Store and/or distribute their apps via the Play Store. This makes it difficult if not practically impossible for any Google Android device to be supplied to a device user without the Play Store pre-installed.
>
> 170. **Second**, by the OEM/MNO Conditions (or certain of them) in MADAs, Google requires that any OEM wishing to distribute a device that can access the Play Store must give the Play Store a prominent position on the device. This makes it difficult if not practically impossible for a Google Android device to be supplied to a device user without the Play Store prominently displayed.
>
> 171. **Third**, by the OEM/MNO Conditions (or certain of them) in PAs, Google offers additional financial incentives for OEMs to take licences of the GMS bundle, making pre-installation and prominent positioning of the Play Store a precondition of those desirable financial incentives. The amounts paid out, particularly to Samsung (see paragraph 116 above), make it even harder for actual or potential competitors to be

> able to match Google's offer. This reinforces the difficulty if not practical impossibility of any Google Android device being supplied to a device user without the Play Store preinstalled and prominently displayed.
>
> 172. **Fourth**, by the OEM/MNO Conditions (or certain of them) imposed by RSAs and MIAs, Google provides substantial financial incentives for OEMs/MNOs to limit competition with the Play Store, by offering them a share of Google's Play Store and general advertising revenues in return for agreeing to restrict the availability, preinstallation and/or prominence of competing (inter alia, distribution) services.225 The amounts paid out, particularly to Samsung (see paragraph 121 above) make it even harder for actual or potential competitors to be able to match Google's offer. This reinforces the difficulty if not practical impossibility of any Google Android device being supplied to a device user with any alternative to the Play Store pre-installed or prominently displayed."
>
> (Footnotes omitted)

85. Google addresses these points at paragraphs 111, 113 and 119-122 of the Defence in the Rodger Proceedings.

86. As regards to the CMA investigation into mobile browsers, the requests are R9(a)-(b). They do clearly relate to issues on the pleadings, perhaps not as directly as others, and the relevant paragraphs are the paragraphs cited above. The relevance of this material is explained in the Fletcher Letter, at paragraph 16, and she also explains why this information is needed for her analysis, which the Tribunal has been taken through, in addition to the relevant parts of Appendix B. Appendix B is redacted and Professor Rodger wishes to have an unredacted version, as well as the various submissions and other documents referred to in the footnotes.

87. The Tribunal appreciates that the CMA investigation relates to app browsing, focusing on choice architecture, and there are references to PAs and RSAs in Appendix B, so on both sides, one will say it is not relevant, and the other one will say it is relevant. The Tribunal does consider that the material sought is relevant. However, the key issue is whether or not disclosure is necessary or proportionate, given the stage at which the proceedings have reached and what will actually be entailed in providing disclosure.

88. The Tribunal does not consider that it is going to be a burden at all for Google to produce unredacted versions of the relevant paragraphs cited in the

application and Appendix B, and that is a proportionate exercise. The real question is the extent to which the material in R9(b) should be disclosed. Counsel for Google says that even if these requests for materials are relevant, its relevance is of minimal relevance, and in any event, it's tangential, particularly pointing out that the CMA report was dealing with a different matter, and it was primarily focusing on Apple and not Google. However, the Tribunal is satisfied on relevance and there is real utility in this material being provided to Professor Fletcher, and her supporting team, for the reasons already given.

89. However, it is important to consider the burden on Google in providing such material because if it is not proportionate then the Tribunal will not order disclosure.

90. The burden is said to be that it is going to take time to essentially identify the materials referred to in Appendix B, and once it is tracked down, there will need to be a redaction exercise for both confidentiality and relevance. Obviously, it is a choice of Google, as to whether or not it wishes to carry out such a process, but, unless it is already provided elsewhere, such material can be provided pursuant to the Joint Confidentiality Ring Order dated 15 May 2025, and so there will not be unnecessary prejudice. However, if Google wish to carry out the confidentiality and relevance redaction exercise, which may or may not be proportionate in itself, they are perfectly entitled to do so. The Tribunal appreciates there will be costs involved, and it will take time, but they have a very skilful and highly resourced team, both at the Google level and at the lawyers' level, that such an exercise is not considered to be unduly burdensome.

91. Therefore, the Tribunal orders disclosure in the terms sought (as set out at paragraph 76 above, including the amendment made during the course of the hearing, that there will be a reference in Request R9(a) to an unredacted version of Appendix B.

(5) Suspension of Indian app developers (Request R14)

92. Professor Rodger maintains the following request:

> "R14: Documents relating to suspension of the apps of 10 Indian developers in March 2024, including internal Google communications and external communications between Google and the 10 Indian developers, including enforcement warnings and appeal documents."

(a) Parties' submissions

93. Professor Rodger submitted that this is relevant to his pleading that Google's removal from the Play Store of the apps of "*10 Indian app developers"* was an example of it enforcing the Anti-Steering Requirements (as defined in Professor Rodger's CPCF), which Professor Rodger pleads are an element of Google's exclusionary conduct.[9] It is also relevant to Google's denial that the removal of these developers' apps was such an enforcement, and its denial that the Anti-Steering Requirements were anticompetitive.[10]

94. Therefore, the aim and effects of the Anti-Steering Requirements, including whether and to what extent they were enforced through removing these developers' apps from the Play Store, is plainly in issue on the parties' pleadings.

95. Although the Rodger Proceedings relate to losses suffered by UK-domiciled app developers, liability is concerned with whether Google's global conduct was anticompetitive in its aims or effects. In addition, Google's treatment of foreign developers is relevant evidence of how they would have treated UK domiciled app developers if they also sought to challenge the Anti-Steering Requirements, and is already in issue in the Rodger Proceedings.[11]

96. The material sought does not appear to be in the pre-existing disclosure, which is unsurprising as it is not in issue in the Coll or Epic Proceedings. Professor Rodger requires Google's internal documents to evidence the reason(s) for the suspensions. Professor Rodger is seeking disclosure in relation to this discrete issue for a narrow 4-month period which is reasonable and proportionate.

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[9] Professor Rodger's CPCF, paragraphs 96, 97.3 and 175.
[10] Defence in the Rodger Proceedings, paragraphs 48.b.iii and 125.
[11] Professor Rodger's CPCF, paragraphs 97.1 to 97.2.

97. Google considered this request unnecessary as Professor Rodger's claim is pursued on behalf of UK-domiciled developers.

98. In any event, Google contended there was no relevant dispute between the parties in this regard. Professor Rodger's contention at paragraph 97 of his CPCF regarding the Indian app developers falls under a heading of "*factual background*". At paragraph 48(a) of its Defence in the Rodger Proceedings, Google admits that it has certain enforceable contractual rights and that it removed the apps pursuant to them. There is no allegation of abuse. The only *"issue"* that could be said to arise (although not a relevant one for the purposes of a claim from UK-domiciled developers forming part of Professor Rodger's Class) is, at best, a tangential one concerning the reasons for the suspensions of the Indian developers in India. But that is already explained in the extensive public material cited in Google's response to Request R14 and the parties' pleadings.

99. Despite this, on 24 September 2025, RPC wrote to Geradin Partners enclosing a document dated February 2024, already within the disclosure provided to Professor Rodger, which it says fully addresses Request R14 (the "RPC R14 Letter").

(b) Analysis

100. In respect of Request R14, the following paragraphs are relevant (which are addressed by Google at paragraphs 48.b.iii and 125 of the Defence in the Rodger Proceedings):

> "96. Google also contractually requires Third-Party App Developers not to direct users to payment methods other than GPB, even where that payment method or purchase may be cheaper. This prevents Third-Party App Developers from, e.g., including in the app (i) buttons or links to pay through a system other than GPB; or (ii) messages steering users to make the purchase outside of the app. The means by which Google prevents Third-Party App Developers from directing users to payment methods other than GPB, including as described in this paragraph, are known as the "**Anti-Steering Requirements**".
>
> 97. Google enforces the requirements to use GPB, and the Anti-Steering Requirements, with the threat of removing access to the Play Store

and/or Google Play Services generally, as it has done on multiple occasions. For example:

97.1 In August 2020, Google removed Epic's popular *Fortnite* app from the Play Store for introducing an alternative billing system f97.3or user payments.

97.2 In June 2022, Google suspended updates to the South Korean messaging app *KakaoTalk* for containing a link within the app to KakaoTalk's external website where users could make payments. In response to the suspension, KakaoTalk removed the external payment option from its app in July 2022.

97.3 In March 2024, Google removed the apps of 10 Indian developers from the Play Store for refusing to pay 11% or 26% fees on payments processed through alternative billing systems under Google's *"user choice billing"* scheme.

[…]

175. Seventh, by requiring Third-Party App Developers to ensure all Relevant Sales (subject to certain exceptions) are processed via GPB, and by the Anti-Steering Requirements, Google prevents app developers from being able to inform consumers about alternative offers for in-app content, even where they may be provided cheaper or through a more efficient sales channel. Thus, Google helps protect the Play Store from competitive pressure to reduce its own Commission for such transactions, and impedes developers from being able to build stronger direct relationships with consumers by which they could make them aware of alternative offers, strengthening the anticompetitive effects of its other practices." (Footnotes omitted)

101. At the June 2025 CMC, Google objected to certain categories of disclosure sought by Epic for being unnecessary and disproportionate as there was no basis for extending disclosure to include RSAs and MIAs entered into worldwide. Google submitted that Epic's claim is limited to the UK, the parties agreed to limit disclosure to UK specific custodians and issues pursuant to a previous order of the Tribunal, Epic pleads that the harm takes place in the UK and the relief sought is in relation to the UK and not elsewhere (see paragraph 103(1) of the *Epic Disclosure Ruling*). However, the Tribunal stated at paragraph 118 of the *Epic Disclosure Ruling*:

> "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"."

102. Whilst the claim is brought on behalf of UK-domiciled app developers, they make sales worldwide.

103. Insofar as Google has any internal documents or any documents which indicate that the reasons for termination are anything other than what is represented in the RPC R14 Letter, then that has got to be disclosed. The Tribunal considers this to be a fair approach in light of the submissions in which Google state that they do not have such material.

104. In relation to category R14, it is clear why it is relevant to know the reasons why the ten Indian app developers were suspended and that does relate to an issue in the pleadings. It is quite clearly covered by the relevant paragraphs of the pleadings set out at paragraph 100 above. Therefore, if Google does have documents which indicate that the reasons for their termination are anything other than the reasons set out in the material appended to and in the RPC letter dated 24 September 2025, that should be disclosed. Google is required then to do a search for such material. If no such material exists, then there is nothing further to disclose. Tribunal expects that matters will be dealt with responsibly by Google and a proper search will be carried out. Once done it should confirm in broad terms what enquiries were made and searches done.

E. GOOGLE OUTSTANDING DISCLOSURE REQUESTS

105. Having regard to Professor Rodger's position that he does not intend to provide any disclosure at this stage (see paragraph 13 above), the Google Outstanding Disclosure Requests are in summary:

(1) Disclosure in connection with the pleaded issues of pass-on and mitigation of any alleged loss as raised by Google in paragraphs 152-154 of the Defence (Requests G1 and G2).

(2) Disclosure of material in relation to the matters to be addressed in the factual evidence that Professor Rodger intends to be adduced (Request G3).

(3) Additional information/disclosure concerning:

(i) communications with the Class in respect of the disclosure requested under Requests G1-G2;

(ii) the membership of Professor Rodger's consultative group of Class members; and

(iii) opt-outs from the Class.

(1) Disclosure on pass-on and mitigation (Requests G1 and G2)

106. Google seeks the following disclosure in relation to pass-on and mitigation:

> "G1 Disclosure, from a representative sample of members of the class and any entity from which Professor Rodger proposes to adduce witness evidence, for the Relevant Period (defined in paragraph 19 of the Rodger CR's Claim Form as 23 August 2018 to 22 August 2024), in connection with pass-on, covering the following material:
>
> i. Transaction data for UK developers in respect of transactions of apps or digital content on platforms other than Google Play.
>
> ii. Documents and data that explain and / or evidence developers' pricing strategies and practices for apps and digital content on any platform, including pricing data for apps and digital content where available.
>
> iii. Documents and data which evidence the type and magnitude of marginal costs incurred by developers in connection with the sale of apps and digital content on any platform.
>
> iv. Documents which evidence the categorisation and/or treatment of Google's service fees in its management reporting and accounting.

v. Documents which evidence procurement policies of developers, and negotiations between developers and their suppliers.

G2 Disclosure, from a representative sample of members of the class and any entity from which Professor Rodger proposes to adduce witness evidence, for the Relevant Period (defined in paragraph 19 of the Rodger CR's Claim Form as 23 August 2018 to 22 August 2024), in connection with other steps taken by developers to mitigate their alleged losses, including:

i. Distributing their apps and / or in-app content through non-Google Play Store distribution channels and / or other platforms.

ii. Making use of and / or marketing other distribution channels and / or other platforms.

iii. Seeking to enter into preinstallation agreements with OEMs and / or MNOs.

iv. Making their digital content available in an app obtained through the Google Play Store even where purchased elsewhere.

v. Enrolling into "user choice billing" or "developer-only billing".

vi. Distributing their apps in additional or other jurisdictions."

(a) Parties' submissions

107. Google contended that Professor Rodger's response that Google *"has not pleaded a pass-on defence"* and, therefore, there is no evidential burden on Professor Rodger in relation to pass-on is misconceived on the face of the pleadings. The pleaded issues of pass-on and mitigation are, clearly, central issues in dispute in both the Rodger and Coll Proceedings.

108. Moreover and in any event, pass-on is clearly an issue in these proceedings given the interaction between the Rodger Proceedings (brought on behalf of developers) and Coll Proceedings (brought on behalf of consumers). When assessing whether there has been any alleged loss or damage, and the quantum of any such loss, the Tribunal will clearly need to determine pass-on and what amounts, if any, should be apportioned between the consumer and developer classes. This issue is necessarily in dispute to avoid double recovery and overcompensation. In addition, Professor Rodger has previously accepted, whether expressly or implicitly, that pass-on is in issue in the Rodger Proceedings.

109. Google noted Professor Rodger's position that the legal burden of proof in the Rodger Proceedings in relation to pass-on is on Google. However, Google argued that on the pleadings there is a heavy evidential burden on the Class to provide evidence as to how class members dealt with the recovery of their costs in their businesses, which the class must produce in order to forestall adverse inferences taken against it: *Sainsbury's Supermarkets Ltd and others v MasterCard Incorporated and others* [2020] UKSC 24.

110. Google anticipates that the members of the Class are well-placed to provide information relevant to pass-on and mitigation as to how they acted in relation to Google's service fees, including how they categorised or treated those fees, their pricing strategies and practices, and the type and magnitude of costs incurred by them.[12]

111. In relation to Professor Rodger's position that Google should instead make third-party disclosure requests, Google submitted that this is misconceived as it understands that:

(1) Professor Rodger is already (at the Tribunal's request) engaging in formal consultation with what he considers to be a representative group of app developers. In the letter dated 25 March 2025 from Professor Rodger's solicitors, Geradin Partners Limited ("Geradin Partners"), it was stated that there had been informal discussions with "*four app developers*" that Professor Rodger considers "*vary sufficiently in type and size to be able to provide him with a range of views on the case.*" The letter went on to say that he intended to "*invite these four developers to speak with him on a more regular (he proposes quarterly) basis*".

(2) Professor Rodger has also communicated with members of the Class via his claims website. Professor Rodger has already issued a request for relevant material to 2,600 members of the Class.

[12] Defence in the Rodger Proceedings, paragraph 154.

112. In such circumstances, Google argued that it is more appropriate for Professor Rodger to liaise with members of the class in respect of this request and to disclose all relevant information and documentation received, rather than for Google to duplicate the request by making a third-party disclosure application, thus risking confusing and multiple overlapping requests.

113. Google submitted there is no procedural bar for rejecting Requests G1-G2, as suggested by Professor Rodger. As the Tribunal stated in *Mark McLaren Class Representative Ltd v MOL (Europe Africa) Ltd* [2023] CAT 71 at [55]:

> "Given that the CR represents the class members in relation to their claims and acts in the interests of class members, in the ordinary course it might be expected that the CR and the Defendants, acting in accordance with Rule 4(7), would discuss and agree the data and documentation required from class members (if any), and that it would be the CR who would communicate requests for data and documentation to class members."

114. Professor Rodger highlighted the information sought by Google is not within his control for the purpose of rule 60(4). The only material that Professor Rodger holds that is potentially relevant to Google's requests has been generated from Google's systems. Therefore, he does not have the requested material in his possession or control. Whilst he can ask represented persons for material relevant to the Google Outstanding Disclosure Requests, he cannot compel them to provide such information or data.

115. Despite the above, Professor Rodger sent a mailout on 9 September 2025, to over 2,600 UK app developers, to enquire whether they would be willing to provide documents and/or data that pertain to the Google Outstanding Disclosure Requests. As at the time of filing his written submissions, Professor Rodger was yet to receive any positive responses.

116. Professor Rodger referred to rule 63 of the Tribunal Rules which enables a party to apply for "*disclosure by a person who is not a party*". In addition, Professor Rodger referred to rule 89(1)(c) which provides that "*[i]n addition to the Tribunal's general powers under these Rules to order disclosure, the Tribunal may order, on any terms it thinks fit, disclosure to be given… by any represented person to… the defendant*".

117. Professor Rodger submitted that rule 63 is relevant as neither (i) represented persons nor (ii) "*entit[ies] from which Professor Rodger proposes to adduce witness evidence*" are parties to the proceedings for the purposes of rule 60:

(1) It is apparent from rule 89, which distinguishes between disclosure from parties in the collective proceedings and represented persons. Professor Rodger submits neither represented persons nor witnesses are parties to collective proceedings.

(2) In *Mark McLaren Class Representative Ltd v MOL (Europe Africa) Ltd* [2022] CAT 53 ("*McLaren Ruling (Communications with Class)*") the Tribunal considered Rule 77(1) but the concept of *"parties"* is materially the same for these purposes. At [19]-[20] the Tribunal considered it *"absolutely clear"* that *"the 'parties' are the proposed class representative and each and every proposed defendant. The 'parties' does not include any putative member of the class to be certified. Such persons may in due course become 'represented persons', and prior to that point in time might be referred to as 'potential' or 'putative' represented persons. The one thing such persons are not is a party"*.

118. Professor Rodger submitted that Google should have sought disclosure from identified persons pursuant to rule 63 and/or 89(1)(c). The adoption of this procedural approach is important:

(1) Google needs to identify the relevant persons against whom it seeks disclosure to enable them to have the opportunity to make submissions as appropriate.

(2) The disclosure route adopted will likely have costs implications and Google will likely need to pay the costs of the disclosure it seeks (CPR rule 46.1(2)) and Google is seeking to artificially re-package a third-party disclosure request in an attempt to avoid such costs.

(3) By identifying the represented persons whom it considers should provide disclosure, Professor Rodger and Ms Coll will have the opportunity to make submissions as to the whether the represented persons selected by Google constitute a representative sample for the purpose of the pass-on and mitigation disclosure sought.

119. In addition to the above, Professor Rodger submitted that Google has not explained why disclosure at this level of granularity is necessary or proportionate for Requests G1 and G2. In this regard it is important to recognise that in collective proceedings damages are assessed on a *"top down"* and not *"bottom up"* basis.[13]

120. In *Gutmann v First MTR & Others*, in relation to calling the members of the class, the Court of Appeal emphasised at [62]:

> "…The logic behind an opt-out order is that the representatives of the class will not have contact with class members at any point prior to distribution and in an aggregate damages case not only is the CAT forgiven the task of considering individual evidence but the probative value of evidence from a small handful of carefully selected consumers out of millions might be strictly limited. The class representative is not prohibited from looking to the class representative, for instance to answer a survey. But the CAT is unlikely to be moved by a generic complaint that the class representative is not calling individual members."

121. In *Le Patourel v BT Group Plc* [2024] CAT 76 the Tribunal stated at [1345] that *"in collective proceedings, one would not expect to see individualised evidence from Class Members"*.

122. In relation to G1 (pass-on) Professor Rodger contended:

(1) Mr Noble (Google's economic expert) and Dr. Singer (Ms Coll's economic expert) have already managed to assess the rate of pass-on by relying on consumer transaction-level data which Google already possessed, without requiring additional information from external sources, including app developers. Google's expert has indicated that he considers the UK transactional dataset produced by Google to be "*fit for*

[13] *Gutmann v First MTR & Others* [2022] EWCA Civ 1077 at [25].

the purpose of estimating pass-on". The use of this data allows an aggregate assessment of pass-on across the class.

(2) Professor Fletcher has confirmed that she similarly intends to use developer-level transaction data which Google has already provided to assess pass-on and does not require additional information from app developers. Professor Fletcher has indicated that she intends to conduct an econometric assessment of events where Google has changed its commission to developers.

(3) Google did not consider it necessary to seek disclosure from app developers in the Coll Proceedings. This is notable as the issue of pass-on does not appear to be materially in dispute as between Professor Rodger and Google.

(4) Google has not explained why disclosure of individual pass-on data from app developers is necessary: (i) in light of the availability of transaction data that has already been used to assess pass-on (or indeed why such individualised information/data would be helpful for a *"top-down"* assessment of pass-on across the class when aggregated data is available); and (ii) when Google did not consider it necessary to seek such material from app developers in the Coll Proceedings.

123. Professor Rodger contended that Request G2 (mitigation) should be refused:

(1) In light of the Court of Appeal guidance regarding the *"top-down"* assessment of damages, it is submitted that the better approach would be for Google to seek to gather information on mitigation in an aggregate form, for example by means of data across the class already held by Google, a survey or the use of pre-existing market research. He also anticipates that Google may well already have data relevant to mitigation as a result of its own market research. Google has not explained why it could not use such material rather than individualised mitigation evidence.

(2) Disclosure from a sample of class members is unlikely to be particularly helpful in establishing mitigation on an aggregate basis. Google has not explained why individualised disclosure from a sub-set of represented persons would be helpful, necessary or proportionate to the resolution of these issues.

(b) Ms Coll's submissions in relation to G1

124. Google relies on the interaction between the Coll Proceedings and the Rodger Proceedings as the primary basis for Request G1.

125. Ms Coll raised two concerns in with regard to Request G1:

(1) That, unless she is involved in the mechanics of any selection or sampling exercise, Request G1 will very likely result in an unfair and distortive cherry-picking of evidence adverse to the opinion of her economic expert, Dr Singer, that the rate of pass-on is high. That is a particularly serious concern in circumstances where Google's economic expert Mr Noble agrees (in his evidence filed in the Coll Proceedings) with Professor Rodger's pleaded position that pass-on is either zero or very low, meaning that (as the Tribunal has recognised at the May CMC) Google and Professor Rodger are aligned against Ms Coll on this issue.

(2) That a complex sampling exercise involving various parties is likely to be infeasible within the existing timetable to trial and to result in significant additional costs. Such an exercise could derail the trial completely. That would cause unacceptable prejudice to Ms Coll's Class, in circumstances where the trial of her claim has already been postponed by a year (at significant cost) due to its joint case management with the Rodger Proceedings.

126. If and to the extent that the Tribunal is minded to order disclosure pursuant to Request G1, Ms Coll seeks a direction that: (a) provides that she participate in identifying the "representative sample" of class members to ensure that it is fairly selected; and (b) Request G1 be supplemented to ensure that it

encompasses material relevant to her claim and potentially adverse to the shared position of Google's economic expert and Professor Rodger (the "Coll Disclosure Requests").

127. Ms Coll did not see a basis on which the Tribunal may compel Professor Rodger to produce disclosure not within his control or otherwise compel members of the Class in the Rodger Proceedings to provide disclosure (absent an application).

(c) Analysis

128. As regards Requests G1 and G2, the Tribunal is satisfied from the pleadings that pass on and mitigation are live issues in the proceedings. However, the material being sought is material which would be held by class members who are not parties to the action. Where documents are in the control of a party, even in the hands of a non-party, then that party may be expected to take steps to obtain such documents.

129. However, documents in the hands of class members are not within the control of the class representative. Class members are not parties. The relevant principles are set out in *McLaren Ruling (Communications with Class)* at [19] to [20] (as referred to at paragraph 117(2) above) and Matthews and Malek, *Disclosure* (6th ed., 2024), at paragraph 4-39.

130. Ordinarily one would expect that if Google wished to have these types of documents from class members, they would take out an application under rule 63 and it is likely that, given the nature of things, they would have the addresses or the contact details of most or at least some of the class members. The Tribunal is not necessarily convinced that it is going to be a productive exercise looking at these documents because whatever is provided an analysis would at best be on a sample basis in circumstances where there may be difficulties in assessing how representative any samples taken are.

131. One can calculate pass on and mitigation on a more global basis and that seems to be the position that is currently being undertaken by the parties. The Tribunal

is not convinced that a sample route based on non-party disclosure from a limited number of class members is going to be that fruitful. However, it is not appropriate at this stage to rule out a sample route and to prevent Google from undertaking such an exercise. There are some doubts as to whether this will result in something that is helpful.

132. The email, dated 9 September 2025, has been sent to over 2,000 UK app developers, which effectively is asking whether they are willing to provide documents in these categories. And insofar as such documents are supplied by those class members, they do become documents within the control of the CR. The Tribunal's analysis is not confined simply to what has been supplied in response to the email of 9 September 2025. There are indications that other letters and communications have also been sent. Copies of those communications are not necessary to be disclosed not least because ordinarily there are arguments that such documents may be privileged, because it is seeking evidence from non-parties. However, any documents provided in response to those communications, to the extent that they cover Requests G1 and G2, should be provided to Google and Ms Coll, and Epic on request. Nil returns do not need to be disclosed.

133. In relation to any responses to Professor Rodger's communication, Ms Coll does not accept that such responses are representative of the developers that are relevant to the Coll Proceedings. It was submitted that there is less than a 1% overlap between the categories of developers in the Rodger and Coll Proceedings. Therefore, the extent of "*representativeness*" means something quite different as between the two sets of proceedings.

134. As stated above, Professor Rodger will only be required to provide documents in response to any communications, which are relevant to Requests G1 and G2, as they will now be within his control. Professor Rodger is not required to seek further information or send any further communications.

135. The Tribunal has some scepticism in relation to the outcome of sampling exercises in comparison to the more global exercise that has already been undertaken by Professor Rodger, having regard to the broad axe principles.

Precise figures for both pass-on and mitigation are unlikely, especially as regards collective proceedings such as the present. In collective proceedings the overcharge is usually considered collectively, as opposed to on an individual basis, and if one consider the detail of individual members it makes the task for the parties' experts, and the Tribunal, much more difficult due to considerations as to how representative and useful the precise sample is, especially where the sample has not been agreed as being representative. Such a sampling exercise would take a significant amount of time to resolve, and disputes may remain as to how representative the sample is. In these proceedings, as there are other methods for estimating pass-on and mitigation, on a broad axe basis, a sampling exercise is not encouraged at this comparatively late stage.

(2) Disclosure in relation to Professor Rodger's factual witness evidence (Request G3)

136. By Request G3, Google seeks the following:

> "Disclosure from Professor Rodger's proposed factual witnesses / the entities engaging them, of material relevant to the matters that will be the subject of Prof. Rodger's factual witness evidence in order to test such factual evidence by reference to contemporaneous documents."

(a) Parties' submissions

137. Google submitted that G3 is necessary to enable the Tribunal and Google to be able to test such factual evidence by reference to contemporaneous documents, both supporting and adverse to propositions raised in that evidence.

138. Professor Rodger has identified three factual witnesses that he proposes to call but has not clarified the precise scope of the factual evidence that he intends to adduce from each proposed witness, such that Google is unable to formulate precise disclosure requests at this time.

139. Professor Rodger considers this Request to be premature. It is only once Google has seen the factual witness statements and accompanying exhibits that it will be able to determine if it in fact needs further disclosure and be able to identify precisely what more it requires (if anything). The vague and wide-ranging

nature of Google's requests under G3 underscores the prematurity of Google's application.

140. Professor Rodger's factual witness statements are due to be served on 31 October 2025. Given the deadline for the service of Google's expert evidence is 1 April 2026, there is sufficient time for Google to request any further disclosure it considers necessary following the service of those witness statements. At that point the disclosure requests (if any) can be appropriately targeted.

141. Professor Rodger will, in the ordinary way, identify materials his factual witnesses choose to rely on (or which they have referred to or been referred to for the purpose of providing their evidence) with their witness statements in due course.

(b) Analysis

142. Rule 61 of the Tribunal Rules provides:

> "Documents referred to in statements of case etc.
>
> 61. A party may request disclosure of any document mentioned in—
>
> [...]
>
> (b) a witness statement or affidavit…"

143. In relation to the request G3, in respect of matters in Professor Rodger's witness statements, it would be premature to order disclosure of the documents sought in advance of the witness statements being served.

144. Once the witness statements have been provided, rule 61 of the Tribunal Rules allows a party may request disclosure of any document mentioned in a witness statement or affidavit. However, there is a difficulty with simply relying on rule 61 given the timetable is so compressed. There is going to be a gap, unless directed otherwise, between the witness statements being provided and the documents referred to in the witness statements being provided.

145. Therefore, in relation to G3, the Tribunal directs that when witness statements are served they should be provided with the documents referred to in the witness statements, together with the documents which have been shown to the witness for the purposes of taking the witness statement, save for documents over which a claim for legal professional privilege is properly claimed. The documents over which legal professional privilege is properly claimed shall not be provided so as to avoid a possible waiver of such privilege.

146. Once that process has been completed, Google has liberty to apply by letter for disclosure of any other material relating to the facts and matters covered by the witness statements, to the extent to which they are within the control of Professor Rodger. Professor Rodger may respond to any such application by letter. The Chair, Mr Malek KC, will consider the application on the papers and give an informal indication (on a currently minded to basis) as to his proposed approach.

147. Should any party disagree with the informal indication, then the parties will be permitted to file detailed written submissions and a short hearing will be listed to determine the application. However, one would hope lawyers acting sensibly can avoid the need for a hearing to determine such an application.

148. Although not granting it the disclosure sought on the terms specified in Request G3, the Tribunal accepts the intent of the application and envisages that the approach set out above will in effect achieve what Google really requires.

(3) Google's further requests for disclosure/additional information

149. Google also seeks additional information and/or disclosure concerning:

(a) communications with the Class in respect of the disclosure requested under Requests G1-G2;

(b) the membership of Professor Rodger's Consultative Group of class members; and

(c) opt-outs from the Class.

(a) Parties' submissions

150. Google submitted that Professor Rodger has provided the text of a single communication he has sent UK app developers in respect of disclosure connected to pass-on and mitigation (see paragraph 116 above). However, Professor Rodger has confirmed that there have been other communications with members of the class about disclosure, including a mailout in June 2025 seeking "*information on issues relevant to the litigation*" and requests for provision of documents made to four app developers with whom Professor Rodger was in informal discussions.

151. Therefore, Google sought the disclosure of all copies of (a) any documents or information received by Prof. Rodger that now respond to Requests G1-G2; and (b) communications with the Class relating to the content of Google's disclosure requests G1-G2, including any requests for relevant material sent prior to Professor Rodger's confirmation on 30 June 2025 that he "*does* not *intend to provide any disclosure at this stage*".

152. Google submitted that, if Professor Rodger is intending, at trial, to make a submission that his evidential burden with respect to mitigation and pass-on is modified in the context of collective proceedings and/or, in any event, has been met by his attempts to obtain disclosure from class members, then the communications in which Professor Rodger has sought information/disclosure ought to be disclosed so that the Tribunal can test that submission and Google can challenge it insofar as the communications may, for instance, have not been timely, comprehensive, or appropriate.

153. In respect of membership and app developer engagement, at the hearing of the CPO application, the Tribunal indicated that Professor Rodger should establish "*a more formalised basis for consultation with class members*". Professor Rodger made proposals for formal consultation with the class on 25 March 2025, including to (i) consult with four developers he had been in informal discussions with; (ii) send mailouts to those who had expressed interest on his

claim website; and (iii) meet with the CMA to discuss app developer engagement. Professor Rodger also undertook to "*write to the Tribunal with an update on [the proposals] in due course*". However, at the time of filing written submissions in advance of the September CMC, Professor Rodger has not provided any update. Google has requested that Professor Rodger provide details of the membership of the consultative group of Class Members, which Google considered of particular importance in light of Professor Rodger's responses in relation to the Google Outstanding Disclosure Requests at paragraphs 115 to 119 above.

154. Professor Rodger has also confirmed he met with the CMA to discuss app developer engagement on 25 April 2025. Google also requests that he provide records of that meeting in order to evaluate what disclosure may be available and from whom.

155. Finally, in respect of opt-outs from the Class, pursuant to paragraph 8 of the CPO, the deadline for members of the Class to opt-out of the claim expired on 23 August 2025. On 18 September 2025, RPC wrote to Geradin Partners to request details of any requests to opt out from the Class. Google submits that information on both the number and identity of any members of the Class that have requested to opt out is important to: (a) understand the impact on relevant aspects of the proceedings, including the quantum of Professor Rodger's claim; and (b) understand the pool of developers who remain connected with the proceedings and have relevant disclosure.

156. In relation to the identity of the Consultative Group, following the CPO hearing, by letter dated 25 March 2025, Geradin Partners set out proposals further to the Tribunal's indication that Professor Rodger should establish a "*more formalised basis for the consultation with class members*". This included the following:

> "2. Prof Rodger proposes to adopt a tripartite approach:
>
> a. **First,** direct contacts: Prof Rodger has already had informal discussions with four app developers. For the reasons discussed at the certification hearing, he intends to keep the identity of those developers confidential (which may entail withholding certain details about them, so as to prevent jigsaw identification). However, Prof Rodger considers that the developers in question

> vary sufficiently in type and size to be able to provide him with a range of views on the case. Prof Rodger intends to invite these four developers to speak with him on a more regular (he proposes quarterly) basis, so that he can update them on the case, and they can share their views with him."

157. A further update in relation to general class engagement was provided by Geradin Partners to RPC by letter dated 10 September 2025, which states at paragraph 10:

> "As set out in a letter to the Tribunal dated 25 March 2025 (the "**Class Consultation Letter**") and in response to your request for an update on Prof Rodger's class engagement set out in paragraph 11 of your letter, Prof Rodger confirms that he:
>
> a) has and will continue to invite the four app developers that were known to him prior to the CPO hearing to consult with him on a quarterly basis (as well as more regularly, where necessary and appropriate). As made clear in the Class Consultation Letter, the identity of those developers is confidential. Prof Rodger has enquired as to whether these four app developers would be willing to give disclosure of the documents Google has requested;
>
> b) has and will continue to invite other members of the class to speak with him on a quarterly basis. Prof Rodger arranged for a notice to be published on the claims website (https://www.googleplaystoredeveloperclaim.com/) on 4 June 2025, and for an email to be sent to those who had registered for updates, inviting them to join a meeting in June 2025 to discuss the claim and ask questions about its progress. A similar invitation process is taking place in relation to the forthcoming September consultation meeting, with a notice set out on the home page of the claims website and an email being sent to registered persons; and
>
> c) attended a meeting with the CMA on 25 April 2025 to discuss app developer engagement, the details of which remain privileged and confidential."

158. Therefore, it is clear that it was communicated to the four app developers that their identity would remain confidential.

159. In addition, Professor Rodger submitted that there is confusion as to the status of the Consultative Group. It was suggested that the status had been elevated to that of a consultative committee to which people are appointed, which is not the position. There are four app developers with whom Professor Rodger has been engaging, and so they were not told "*you are being appointed*". They have been approached to understand if they would engage, and they were told that this

material is going to be kept confidential, and that their engagement was confidential.

(b) Analysis

160. During the hearing, Google confirmed that it has been provided with information in relation to opt-out from the members of the class. Therefore, the issue identified above at paragraph 150(c) has been resolved. Google's request was perfectly reasonable and the information has been, or will be, supplied by Professor Rodger. Google need to know what the scope of this claim is, and the potential level of damages, and if there are significant number of opt outs, that may reduce the value of the claim.

161. In relation to the identity of the membership of Professor Rodger's Consultative Group (paragraph 150(b) above), it is understood that the Consultative Group only has four members, and when they were approached it was on the understanding that their names, and communications with the with the Consultative Group, would be confidential and not disclosed. Whilst it is helpful to describe the four developers as being part of the Consultative Group as explained in Geradin Partners' letter dated 6 October 2025, it is not a formal group but they are developers that Professor Rodger interacts with on progress of the litigation and they can act as a sounding board for ideas. Whether or not one labels that as a "Consultative Group", does not really change the analysis.

162. The Tribunal considers that having a Consultative Group in cases such as the present is beneficial for the class members as a whole, and for collective proceedings. Thus, the Tribunal does have an interest that there is a proper consultation mechanism where appropriate with representatives of the class members. However, that level of communication would quite often involve the sharing of privileged information, and there will be reluctance to go into the detail of who the members are.

163. Experience suggests that it is quite often easier said than done to identify and go on to recruit persons who are willing to join these types of groups, and that is something the Tribunal does not want to discourage. There is an expressed

concern that people may have reprisals, if they are seen to be acting against Google. There are two limbs to that: (i) whether they have that perception; and (ii) whether that perception is well founded (i.e. likely to happen)

164. The Tribunal accepts that there is a fear of reprisals. However, it does not accept that that fear is necessarily well founded. Some of the literature refers to people being unfairly treated, but this Tribunal does not need to go that far. If the view is taken that naming members of the Consultative Group is going to deter people and deter free dialogue between the class representative and them, this Tribunal would be reluctant to order disclosure of their names in the absence of a compelling reason as to why such disclosure is necessary for the fair resolution of the proceedings.

165. A further aspect relates to why Google wishes to have the names. The first reason given is that Google wishes to have the names so it can be satisfied that the Consultative Group is a proper one, and is properly being run. As to that first reason, that is a matter for the Tribunal, as part of its supervisory jurisdiction, to be satisfied that class proceedings have been brought properly, and there is due consultation as and when necessary. It is not the function of the defendant to interrogate as to how that consultation is going and who the members are.

166. The second reason is that Google may wish to ask for further information, either from Professor Rodger, or directly from the members of the Consultative Group. If members of the Consultative Group think, by virtue of them joining the group, that they are going to be requested and targeted to provide disclosure, which other members of the class are not going to be required to give, that again could be a disincentive to persons joining such groups.

167. Updates in relation to the Consultative Group have been provided to the Tribunal as these proceedings have progressed, and that is reflected in the letters from Geradin Partners dated 25 March 2025 (at paragraphs 2(a) and 3) and 10 September 2025 (at paragraph 10). On 29 September 2025 a further update was provided following the hearing by Geradin Partners which stated the following

in relation to communications with developers generally, and the "*four developers*" referred to in the 25 March 2025 letter specifically that:

> "3. …Prof. Rodger's representatives have informed them that they will keep the discussions confidential from Google (or any other third party). The discussions have therefore taken place on the understanding – and on occasion on the express condition requested by the app developer – that the identity of the developer will not be revealed to Google. The exception to that is Xigxag, where personnel at Xigxag have agreed to reveal the fact of their discussions with Prof. Rodger's reprentatives [sic] in line with their role as witnesses in these proceedings.
>
> 4. Prof. Rodger's approach to confidentiality has also been in accordance with his 25 March 2025 letter to the Tribunal, which he wrote to the Tribunal on his proposals for consultation after the certification hearing. In that letter, he said that he *"intends to keep the identity of those* [four] *developers confidential (which may entail withholding certain details about them, so as to prevent jigsaw identification)"* (see also his similar comments at the certification hearing). Prof. Rodger understood the Tribunal to have been content with that approach. Google, having received that letter and having been present at the certification hearing, made no complaint about Prof. Rodger's intention in this regard."

168. Ultimately it may be a matter for the Tribunal trying this matter to consider as to whether or not the names of the members of the Consultative Group need to be disclosed. However, at the moment, the Tribunal is not inclined to order disclosure. This does not mean that any further application to the Tribunal Chair determining the proceedings is precluded. For present purposes the application is not granted. Whilst such a renewed an application is not precluded, it is also not encouraged. There are sound public policy reasons, and for the collective proceedings regime in particular, why it may well be undesirable, to make such an order absent compelling reasons why in a particular case such disclosure is necessary.

F. GOOGLE'S DISCLOSURE COSTS

(a) Parties' submissions

169. In its position statement on disclosure filed on 13 August 2025, Google estimated its disclosure costs to be approximately £8.1 million in relation to the Epic, Coll and Rodger Proceedings combined. Ms Coll considered that the scale

of costs was unforeseen, particularly as Google justified its approach to disclosure in the Coll Proceedings (i.e. approximately 95% of which comprises off-the-shelf disclosure of 2.2 million documents from the US proceedings[14] without any re-review) as one which would avoid "*massive unnecessary expense*".

170. As a result, on 15 September 2025, Ms Coll wrote to Google seeking: (a) an explanation for its estimated incurred disclosure costs of £8.1 million; and (b) clarification of what portion of those estimated costs have been incurred in the Coll Proceedings. Ms Coll sought such information as a class representative is required to ensure that her insurance covers her ability to pay any adverse costs that may be ordered against her. Ms Coll considered that a figure in relation to the Coll Proceedings should be readily available. RPC wrote to Ms Coll by letter dated 24 September 2025 but the breakdown sought was not provided.

171. Google submitted that it is unclear why such a figure is required at this stage and provision of such information is neither necessary nor appropriate to provide now. However, Google estimate a substantial proportion of the disclosure costs have been incurred in relation to the Coll Proceedings.

172. Google also submitted that Ms Coll has outstanding formal obligations to keep the Tribunal properly informed as to her litigation budget. Certification is an ongoing issue and having a litigation budget which is appropriately revised as the proceedings develop is relevant. Despite numerous requests since it was decided that the Epic, Coll and Rodger Proceedings would be heard together, Ms Coll has not provided a revised litigation budget. Therefore, Google sought a direction for a revised litigation budget to be provided by Ms Coll within a short period of time.

173. In addition, Google requested that Ms Coll provide public access to the litigation funding agreement, or the arrangements made for litigation funding, as other

[14] Proceedings brought against Google before United States District Court for the Northern District of California (San Francisco Division) (cases 3:20-cv-05671-JD, 3:20-cv-05761-JD, 3:21-cv-05227-JD and3:22-cv-02746-JD).

class representatives have done in other proceedings. Such information should be open to public scrutiny as envisaged by the Tribunal's regime.

(b) Analysis

174. In relation to the request for a specific breakdown of the £8.1 million disclosure costs incurred that are relevant to the Coll Proceedings, such tasks are often more difficult and costly than may appear at first sight. The level of costs that have been incurred by Google is not surprising in complex litigation involving three sets of proceedings, the earliest of which was commenced in 2020.

175. Nevertheless, it is important that Ms Coll is aware of her potential exposure as regards a potential adverse costs order. It is not necessary for this figure as to disclosure costs to be overly precise. During the hearing it was suggested by the Tribunal that Google provide a figure of the disclosure costs attributable to Ms Coll to the nearest million. This proposal was accepted by Google. The Tribunal appreciates that although it seems a simple exercise, it is not simple in litigation involving multiple defendants, multiple claimants and multiple proceedings. However, the Tribunal also appreciates that Ms Coll wants to know what her exposure as to adverse costs is to ensure that she has sufficient ATE insurance cover in place.

176. The Tribunal directs Google to provide Ms Coll with a breakdown of disclosure costs attributable to the Coll Proceedings to the nearest million pounds.

177. In relation to Google's request for a revised litigation budget, the Tribunal is not prepared to order provision of a revised litigation budget now but Ms Coll is encouraged to provide one in advance of the next hearing. Litigation budgets, even at a general level, are useful to understand how proceedings are progressing in terms of costs and projected costs.

178. In addition, having regard to its supervisory jurisdiction, the Tribunal should have a clear understanding as to whether there is sufficient funding in place. Such information is also important as regards any possible settlement where there is a limited sum available to be distributed to class members and shared

with the various stakeholders, including the funder who usually will seek to obtain a return on its outlay. Therefore, it is important to know what the actual outlay is should it be necessary to consider when approving a proposed settlement.

179. Any revised litigation budget provided by Ms Coll should be on the same terms as the previous budget and should indicate any difference between the two.

180. At the next CMC in these proceedings, it will be for the Chair to determine the agenda and whether or not to include in the agenda items regarding issues related to funding and costs, including consideration of any revised litigation budget and whether Ms Coll's insurance is sufficient in relation to the costs incurred by Google in the Coll Proceedings.

G. COSTS

181. In relation to costs it was submitted on behalf of Professor Rodger that he had more success than Google at the hearing and on that basis he should be awarded the costs of the hearing.

182. The Tribunal considers that it is important that the parties on both sides collaborate in relation to any Redfern schedule process to crystallise any issues on which the parties are unable to agree.

183. It is also important that the parties do not engage in the process fearful of having an adverse costs order made against them in circumstances where both sides have taken reasonable positions and have been willing and able to agree certain items as part of their dialogue, as has been the case in relation to the matters addressed above and the disclosure already agreed to be provided prior to the hearing. The Tribunal is here to assist the parties in such circumstances to resolve any issues that remain in dispute.

184. On one view, it may be suggested that more requests have been decided in favour of one particular party but this is not a mathematical exercise. It is a matter of considering whether a hearing has been productive for the parties and

the Tribunal, and whether anyone has acted unreasonably. In the circumstances, the hearing has been productive to determine the issues set out above and no party has acted unreasonably.

185. Therefore, the costs in relation to the Rodger Outstanding Disclosure Requests and the Google Outstanding Disclosure Requests shall be costs in the case.

H. DISPOSITION

186. In relation to the Rodger Outstanding Disclosure Requests:

(1) Requests R8(c) and R20(d) are ordered in the terms sought.

(2) Request R21(a) is refused save that Google is required to identify where information relevant to R21(a) is contained in the disclosure provided. In addition, to the extent not already done, Google shall provide a list of the categories, at least, of the unallocated costs.

(3) Request R21(b) is refused.

(4) Requests R9(a)-(b) are ordered on the terms (as amended) set out at paragraph 76 above.

(5) In relation to Request R14, Google shall provide disclose any internal documents or any documents which indicate that the reasons for termination are anything other than what is represented in the RPC R14 Letter.

187. In relation to the Google Outstanding Disclosure Requests

(1) In relation to Requests G1-G2, Professor Rodger is ordered to provide to Google and Ms Coll any documents provided in response from app developers to the email dated 9 September 2025, and any other communications, that are relevant to Requests G1-G2.

(2) In relation to G3, the Tribunal directs that when Professor Rodger's factual witness statements are served, any documents referred to in the witness statements, together with the documents which have been shown to the witness for the purposes of taking the witness statement, save for documents over which a claim for legal professional privilege is properly claimed, shall also be provided.

(3) Google's request for disclosure of identities of the app developers in Professor Rodger's Consultative Group is refused at this stage.

188. In relation to Ms Coll's request as to Google's disclosure costs, Google shall provide Ms Coll with a breakdown of disclosure costs attributable to the Coll Proceedings to the nearest million pounds.

189. Costs in the case.

Hodge Malek KC
(Chair)

Charles Dhanowa, CBE., KC (Hon)
Registrar

Date: 25 September 2025