Neutral citation [2026] CAT 3

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

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

13 January 2026

Before:

SIR PETER ROTH
(Chair)

(Sitting as a Tribunal in England and Wales)

BETWEEN:

INFEDERATION LIMITED
("**Foundem**")

Claimant

- v -

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

Defendants

AND BETWEEN:

(1) KELKOO.COM (UK) LIMITED
(2) KELKOO SAS
(3) JAMPLANT LIMITED
(4) KELKOO INTERNET SL
(5) KELKOO AS
(6) KELKOO SRL
(7) KELKOO NETHERLANDS BV
(8) KELKOO AB

(9) KELKOO DEUTSCHLAND GMBH
(10) KELKOO DANMARK A/S
(11) JOLT LIMITED
(together "**Kelkoo**")

Claimants

- v -

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

Defendants

AND BETWEEN:

WHITEWATER CAPITAL LIMITED
("**Ciao**")

Claimant

- v -

(1) GOOGLE LLC
(2) ALPHABET INC

Defendants

AND BETWEEN:

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

Claimants

- v -

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

Defendants

Heard at Salisbury Square House on 13 January 2026

RULING (SCOPE OF STAGE 1 TRIAL)

APPEARANCES

Daniel Jowell KC and Sarah Love (Instructed by Humphries Kerstetter LLP and Linklaters LLP) on behalf of Kelkoo, Ciao and Connexity.

Colin West KC (Instructed by Hausfeld & Co LLP) on behalf of Foundem.

Meredith Pickford KC and Brendan McGurk KC (Instructed by Herbert Smith Freehills Kramer LLP and Bristows LLP) on behalf of the Defendants.

1. This is an application by the Defendants ("Google"), in these four sets of proceedings, which are being case managed together, and for which there is to be a trial of certain issues common to all the proceedings, pursuant to an Order made by this Tribunal on 26 March 2024 (the "March 2024 Order"). That Order, as then varied by a further Order made on 20 December 2024, directed that what was called the first trial and now has been referred to as the "Stage 1 Trial" should cover:

> "12. […] (a) whether, on the assumption that the relevant search markets were and are those defined by the European Commission in the Google Shopping Decision and that Google was and remains dominant on the said relevant markets as the Claimants allege, Google abused its dominant position on each of the said relevant markets and, if so, in what respect and over what periods; and
>
> (b) the appropriate counterfactual, had Google complied with applicable competition laws over the entire period of the infringement or infringements as found in the Google Shopping Decision or by the Tribunal."

2. I should add that there has been an initial trial of preliminary issue in all the proceedings to determine which of the recitals in the Google Shopping Decision are binding for the purpose of these proceedings. That preliminary issues trial was held in March 2025, resulting in a judgment issued on 9 July 2025: [2025] CAT 39.

3. Detailed directions for the Stage 1 Trial were given on 1 August 2025 (the "August 2025 Order"). The trial is fixed to commence in late June this year, and pursuant to the August 2025 Order, factual witness statements for that trial have now been served and expert reports are to come fairly soon.

4. The background to this matter is that on 27 June 2017, the European Commission ("the Commission") adopted what has been called the Google Shopping Decision, which found that Google had committed an infringement of Article 102 of the Treaty on the Functioning of the European Union ("TFEU") and the corresponding provision of the EEA Agreement in 13 national markets, including the United Kingdom, by positioning and displaying more favourably in its general search results pages its own comparison shopping site ("CSS"), compared to competing CSSs. The Commission imposed a fine of a little over €2.4 billion.

5. The Google Shopping Decision found that the infringement started on different dates for different countries. For example, in the United Kingdom, the Commission found

that it commenced in January 2008. The decision required Google to bring the infringement to an end, and Google put in place arrangements, which were submitted to the Commission and which have been referred to in this hearing as "the Remedy".

6. The Claimants in all four proceedings are companies which operate, or have operated, CSSs. They claim damages against Google for alleged abuse of its dominant position, in breach of Article 102 TFEU. In each case, that breach encompasses the period covered by the Google Shopping Decision, by which the Tribunal is bound to find that there was an infringement as determined by the Commission.

7. In the case brought by Foundem, the breach is alleged to encompass an earlier period starting in June 2006, which is the date when Foundem's CSS was launched. That has been referred to as the "pre-decision period". In all four cases, the breach is alleged to have continued beyond the decision period. The allegation, as regards what has been called the "post decision period", which the Claimants will have to prove as it does not follow on from a binding Commission decision, accordingly, contends that the Remedy was not effective to bring the infringement to an end.

8. In the usual way, for the purpose of determination of what, if any, damages each Claimant has suffered, the Tribunal will have to decide on the appropriate counterfactual. The fact that it is not possible to proceed to estimate damage until a counterfactual has been decided is one reason why the question of damages has been separated to be addressed after the judgment in the Stage 1 Trial.

9. These proceedings, save for the action brought by Ciao, have been running for an unusually long time: the Foundem claim started as long ago as 2012; the Kelkoo claim started on 23 December 2015; and the Connexity claim was commenced on 4 October 2017. The extensive delay in bringing these matters to trial is not the fault of any of the parties. Because the allegations of abuse reflected, initially, complaints made to the Commission, which were then the subject of the Commission investigation, it was necessary to wait for the conclusion of that investigation. Once the Google Shopping Decision was taken, finding an infringement, it was then necessary to await the determination of appeals to the EU courts.

10. The Commission investigation in this case was exceptionally long, and the final appeal to the Court of Justice of the European Union ("CJEU") was determined only by the Judgment of the Grand Chamber on 10 September 2024. But a consequence of all that is that the Claimants, other than Ciao, have been waiting a very long time for their cases to come to trial.

11. By this application, Google seeks to reduce the scope of the Stage 1 Trial by effectively hiving off part of what was covered by the March 2024 Order, for that to be dealt with later.

12. No variation is sought to the first aspect: the question of whether Google committed abuse and over what period. Google also accepts that the Stage 1 Trial should address aspects of the counterfactual. But it now proposes that, as regards the counterfactual, the Stage 1 Trial should consider and determine only the counterfactual for the decision period, and as regards Foundem, the pre-decision period. The question of the counterfactual for the post decision period, Google submits, should not be covered.

13. Depending on precisely the correct analysis of the claim which Foundem advances for the decision period, there may need to be some qualification of the counterfactual being considered for Foundem as regards the decision period as well, because of the way Foundem advances its case on abuse, which is not at present entirely clear to me. But for reasons that will become evident, it is unnecessary to go into that further. I accordingly did not ask Mr West KC, appearing on behalf of Foundem, to address me on that.

14. At the forefront of his argument, Mr Pickford KC contends that Google is unable to plead a counterfactual for the post decision period. Of course, Google's primary case is that for the post decision period, there was no abuse at all. It contends that the Remedy effectively ended the abuse, and by amendment to its defences in all four cases, Google's position for the decision period is that the actions involved in the Remedy are the appropriate counterfactual.

15. The Claimants, of course, do not accept that. Since they all allege that the abuse continues in the post decision period, it is their case that the Remedy is not adequate to

cure the abuse. Mr Pickford KC makes the point that there is a significant variation in the assertions made by the different Claimants as to what the counterfactual should be. On that basis, Mr Pickford KC says that the position for his clients, Google, is unfair since they cannot put forward a positive counterfactual for the post decision period until the Tribunal has established why or in what respects the Remedy was inadequate. There are, he said, a wide variety of possibilities.

16. In my judgment, there are a number of problems with Google's argument. Google's primary position, as I have just mentioned, is that for the decision period, the Remedy is the counterfactual. If that is correct, then the issue as regards the post decision period falls away as *ex hypothesi* there is then no abuse once the Remedy is in place.

17. But if Google is wrong on that, then the question is: what is the correct counterfactual for the decision period? Google has not put forward any alternative, and the Claimants' case (on this, as I understand it, they are all at one) is that the counterfactual for the decision period, whatever it should be found by the Tribunal to be, continues through to the post decision period. Each Claimant contends that the abuse continues beyond the decision period, and each Claimant contends that the counterfactual is the same for the decision and the post decision period, albeit that there is some variation between them as to what they say the correct counterfactual is.

18. True it is that Google has not pleaded a counterfactual for the post decision period. But that, it seems to me, is the result of it having tied its colours to the mast of the Remedy, which it contends is the complete answer. It is, in my view, an artificiality to say that because for the decision period, Google has pleaded that the Remedy is the counterfactual and has not put forward any alternative to the Remedy by way of a counterfactual, whereas for the post decision period, Google has pleaded that the Remedy means that there is no abuse and has not put forward any alternative to the Remedy by way of a counterfactual, there is, in consequence, unfairness to Google such that it should be given a chance to put forward a counterfactual for the post decision period at a further trial, after the Tribunal has pronounced on whether or not the Remedy cures the abuse. Reliance on the Remedy is the choice which Google has made, no doubt after careful consideration of the options with the assistance of its skilled and experienced advisers. I do not see that any unfairness results.

19. Faced with questioning from the bench in the course of argument, after the short adjournment, Mr Pickford KC articulated what he said would be a more logical division of the issues by advancing a different formulation. He suggested that the Stage 1 Trial could consider only whether the Remedy addressed the Commission's concern for the decision period, and whether the Remedy was lawful: that is to say, created a situation where there was no abuse for the post decision period. That indeed seems to me the logic of Mr Pickford KC's earlier contentions. But that is not the application which is now before the Tribunal that the Claimants have come to this hearing to meet. The fact that such a significant recasting was even contemplated only illustrates the problem with what has been proposed.

20. Mr Pickford KC also took me to passages in the particulars of claim, as amended, of Connexity and Kelkoo, where they allege that Google did not comply with the Commission's requirement to repair the damage to the market and thus, they say, to enable them to recover their commercial position (see, for example, paragraph 95E of Kelkoo's amended particulars of claim). But as Mr Jowell KC explained, and it is now on the record, that is not put forward as an independent head of abuse but relates to the consequence of the otherwise abusive conduct in terms of the resulting damage.

21. My conclusion is strengthened by the time at which this application is made, which I have to say I find quite extraordinary. It was first notified by letter to the Claimants' representatives on 18 December 2025; that is to say, about a week before Christmas. In that letter, one of Google's solicitors stated:

> "[…] Google cannot plead a damages counterfactual for the Post Decision Period as it has yet to be determined precisely in what way or respects Google abused its dominant position (if at all)."

22. But of course, Google had pleaded defences to each of the claims, and those defences have been through multiple re-iterations. Google first pleaded a defence to Foundem's claim as long ago as 21 January 2013. It amended its defence on 16 September 2013. It served a re-amended defence on 11 May 2015, and on 28 June 2022, Google served a re-re-amended defence. More recently, on 29 January 2025, Google served a further amendment to the defence to reflect the judgment of the CJEU, and on 3 October 2025, a further amended defence to reflect this Tribunal's Judgment on binding recitals.

23. In the case of Kelkoo, Google served a defence on 12 September 2016, an amended defence on 13 September 2022 and then, as in the Foundem case, further amended defences on 29 January and 24 September 2025.

24. In the Connexity case, Google served a defence on 15 June 2018, and then the amendments as in the other cases last year.

25. Since all the Claimants have been claiming all along that the abuse continued post decision and that the Remedy was not adequate to cure the abuse, if Google wished to advance a counterfactual for the post decision period, then any difficulty which it faced in doing so would have been evident from the outset. Google, as one would expect, has been represented all along by experienced senior and junior counsel, specialised in competition law, and now has not one but two leading City firms of solicitors advising it. But Google took no objection to the formulation of the issues for the Stage 1 Trial in March 2024, nor even when attention was given to reformulating those issues in November 2024, resulting in the Order of 20 December 2024.

26. As Mr Pickford KC realistically and very properly accepted, there is no good reason why this application could not have been made in 2024. Furthermore, such a change to the shape of the Stage 1 Trial at this stage is considerably to the prejudice of the Claimants, most of whom have been waiting, as I have said, to progress their cases for a very long time. The application has been made when the Stage 1 Trial is six months away. It is made after witness statements have been served. Those statements have no doubt all been prepared on the basis that the trial would cover the matters set out in the existing order. No material change of circumstances is here relied upon which could justify such an exceptionally late change of course.

27. I therefore reject this application.

Sir Peter Roth
Chair

Charles Dhanowa CBE, KC (Hon)
Registrar

Date: 13 January 2026