Neutral citation [2026] CAT 12

**IN THE COMPETITION APPEAL TRIBUNAL**

Case No: 1572/7/7/23
1582/7/7/23

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

24 February 2026

Before:

THE HONOURABLE MR JUSTICE LEECH
(Chair)
JOHN ALTY
DR MARIA MAHER

Sitting as a Tribunal in England and Wales

BETWEEN:

**AD TECH COLLECTIVE ACTION LLP**

Class Representative

– v –

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

Defendants

Heard at Salisbury Square House on 18 December 2025

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**JUDGMENT (STRIKE OUT AND EXPERT EVIDENCE)**

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## APPEARANCES

Gary Facenna KC, Alison Berridge and Greg Adey (instructed by Hausfeld & Co. LLP) appeared on behalf of the Class Representative.

Meredith Pickford KC and Natasha Simonsen (instructed by Herbert Smith Freehills LLP) appeared on behalf of the Respondent.

## A. INTRODUCTION

1. On 18 December 2025 the Tribunal heard the second case management conference (**CMC2**) in these proceedings (the **Proceedings**) following certification. Most of the issues were resolved at CMC2 or between the parties, who were able to draw up and agree a draft form of order, except for two: first, whether expert reports should be exchanged or whether they should be served sequentially and, second, whether the Tribunal would be prepared to hear an application to be issued by the Defendants (together **Google**) to strike out parts of the **Claim Form** on grounds of limitation or whether, as the Class Representative (the **CR**) submitted, the Tribunal has already resolved this issue and it should not be re-opened. In this short judgment, we address both issues.

## B. EXPERT REPORTS

2. The Tribunal has power to direct whether the parties are permitted to provide expert evidence and the way in which evidence is put before the Tribunal: see the Competition Appeal Tribunal Rules 2015 (the **2015 Rules**). Neither party submitted that there was a settled practice of exchanging expert reports which the Tribunal should adopt, that there was any particular advantage in exchange or that the timetable could not accommodate sequential service of expert reports. In our judgment, therefore, the appropriate course is to direct sequential service and we adopt the directions proposed by Google (which are adopted in the **CMC2 Order** made on 19 February 2026).

3. The reasons which we prefer a sequential timetable can be briefly stated. The issues in the Proceedings are very complex but are well understood and the interests of both the parties and the Tribunal will be better served by a sequential dialogue between experts which will focus their minds on the critical differences of opinion between them. In our judgment, this is not a case in which it is appropriate for the parties to keep their powder dry pending an exchange of reports or that it would unduly benefit Google to see the CR's expert evidence in advance of serving its own.

## C. THE STRIKE OUT APPLICATION: LIMITATION

### (1) Procedural background

4. On 14 January 2025 the Proceedings were certified by the Tribunal following the hearing of the application for a collective proceedings order (the **CPO Application**). In its response to the CPO Application (the **CPO Response**) Google took a number of points about the way in which the CR's claim was formulated and, in particular, that the Claim Form was embarrassing for lack of particulars, that the methodology of its expert did not satisfy the test in *Pro-Sys Consultants v. Microsoft* [2013] SCC 57 in material respects, and that "[t]he claim is time-barred and should be struck out insofar as loss is claimed in the period prior to 1 October 2015 (see Section F below)".

5. Google's case was (and is) that any claim for losses arising before 1 October 2015 is subject to the two-year limitation period in r. 31 of the Competition Appeal Tribunal Rules 2003 (the **2003 Rules**). In Section F of the CPO Response, Google accepted that certain limitation issues were not capable of summary determination but in relation to claims for losses arising before 1 October 2015 its position was as follows:

> "136. However, the position is different regarding Google's application to strike out the claim insofar as it predates 1 October 2015. This can and should be addressed at the certification hearing:
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> > a. The start dates for the Relevant Period and the Class Period in the Amalgamated Claim Form are identical. If the Relevant Period is reduced by eliminating the period pre-1 October 2015, the Class Period will need to be abridged accordingly. The limitation issue thus has direct knock-on implications for class definition, which is a paradigm issue for certification.
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> > b. If the Tribunal determines that no collective action can be brought for the period pre-1 October 2015, it is important for class members to know as soon as possible, so that they can consider whether there are any further steps they can and should take to protect their position.
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> > c. A substantial reduction in the Relevant Period (and Class Period) will affect the scope of the economic and expert analysis required, again favouring an early determination of this issue.
> >
> > a. [*sic*] The elimination of a substantial part of the Relevant Period (21 months) is bound to have a significant impact on the size of the damages that can be claimed.

> d. The point turns on a short question of law, which can efficiently be disposed of on this occasion."

6. The transcript of the hearing of the CPO Application held on 8, 9 and 10 May 2024 records that there was a detailed debate before the Tribunal about how the limitation points raised by Google should be dealt with as a matter of case management. But ultimately the Tribunal decided not to determine the question of limitation for the category of claims which arose out of losses incurred before 1 October 2015 and it set out its reasons in a judgment dated 5 June 2024 (the **CPO Judgment**): see [2024] CAT 38. In particular, it stated at §§47–48:

> "47. In this case, we consider it is preferable for these limitation points to be considered as part of the main trial of these proceedings, rather than as a preliminary issue. We have taken the following matters into account:
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> (1) The law involved in considering these points is less straightforward than suggested by Google, requiring the interpretation and application of EU law, with a high likelihood of an appeal by the losing party. The Tribunal has considered such questions in *Merchant Interchange Fee Umbrella Proceedings (Volvo Limitation Judgment)*, [2023] CAT 49, [2023] Bus L.R. 1879, which is currently awaiting appeal before the Court of Appeal. Although the limitation issues turn substantially on questions of law, not fact, that is not exclusively the case; the Tribunal may be required to determine questions as to when the claimants had, or can be deemed to have had, knowledge of the alleged abuses.
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> (2) The monetary significance of these points is sufficiently substantial as to justify the losing party to seek permission to appeal. Given the novel questions of law involved, it is on the cards that permission to appeal would be granted. An interlocutory appeal runs the risk of interrupting the timetable to trial, and may jeopardise the Tribunal's aim of dealing with the proceedings expeditiously. Essentially, the Tribunal is faced with the choice of staying proceedings pending the outcome of any appeal or proceeding regardless of the appeal. If the latter course is chosen, all other things being equal, it makes far more sense to deal with all issues, including questions of limitation, at a single trial. On the other hand, if there is a significant effect on the trial of the limitation issues being determined early, then (i) they should be determined early and (ii) the trial should await the outcome of any appeal.
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> (3) Given the limitation issues affect only the time periods for the pleaded abuses, rather than having the potential to strike out any of the claimed abuses altogether, we do not consider that trying the limitation issues as a preliminary issue would narrow the issues for the main trial such as would allow significant time or cost savings.
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> (4) In light of the above, we do not consider there is any real advantage in trying these limitation points early, and no real disadvantage in leaving them over to trial. The fact is that any regression or model used at trial will have to be sufficiently flexible to deal with multiple

> outcomes (e.g. where some abuses are found to exist, and some not). The time period of the claims is but one such variable, and we see no good reason for needing to determine limitation in advance of trial.
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> 48. Accordingly, as part of the blueprint to trial, we consider that these questions of limitation should be dealt with not as questions of strike out but as part of the main trial itself. Any other course would involve, for no good reason, disrupting the process to trial." (footnotes omitted)

7. Google applied for permission to appeal. The Tribunal refused permission and in an order dated 28 October 2024 (the **PTA Order**) it set out its reasons for doing so:

> "7. In its [CPO Response], Google sought that claims in respect of damage suffered pre-October 2015 be struck out on the basis they were time-barred (the 'Strike-Out Application'). At paragraph [136], Google stated that this application could and should be addressed at the Certification Hearing.
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> 8. After setting out the case management matters it had considered, the Tribunal held that 'these questions of limitation should be dealt with not as questions of strike out but as part of the main trial itself' (paragraph [48] of the Judgment). Google contends this amounted to an effective dismissal of the Strike-Out Application without having heard any argument on the substance of the application.
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> 9. In considering whether to exercise its power to strike out a claim in whole or in part under Rule 41(1)(b) of the [2015 Rules], the Tribunal will apply the principles set out by Lewison J in *Easyair v Opal Telecom* [2009] EWHC 339 (Ch) ('*Easyair*') at [15]. A key question to be answered is whether the relevant claim has a realistic prospect of success; both Ad Tech and Google directed submissions to this point in their skeleton arguments for the Certification Hearing.
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> 10. At the Certification Hearing, Google stated that it was 'not moving [the "Strike-Out Application"] before you today, but we are not seeking to withdraw the application. Of course, it is a question as to when it should be heard' (Transcript Day 3, p 44, lines 9-10). Counsel for Google then proceeded to address the Tribunal 'effectively as if this were an application for a preliminary issue' (Transcript Day 3, p 51, line 1) but stated that the application was one that was 'pending before the Tribunal which you ought to rule on in the same way that one rules on applications for strike out or summary judgment in all proceedings before the Tribunal' (Transcript Day 3, p 51, lines 7-9).
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> 11. The Tribunal stated (Transcript Day 3, p 52, lines 10-13) that it has a discretion as to when questions of strike out are dealt with, and noted that generally strike out applications do not complicate the process but narrow and simplify matters. Having found at paragraph [47] of the Judgment that this was an instance in which the Strike-Out Application could complicate the process, the Tribunal determined that the relevant limitation issues would be dealt with as part of the main trial.
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> 12. Noting Google did not move the Strike-Out Application at the Certification Hearing, case management considerations were relevant to determining when the application would be heard. The Tribunal has a broad discretion in relation

> to case management decisions, and appeal courts will not interfere with such decisions lightly.
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> 13. The Judgment was not dispositive of the limitation questions which are the subject of the Strike-Out Application, which will be considered as part of the Tribunal's overall case management duties. As the Judgment notes, the Tribunal considered that the certification hearing was not the time for hearing the Strike-Out Application, and all parties acceded to this. The Tribunal made no determination beyond this, but to express the view that (given the nature of the issue) strike-out ought to be considered at the main trial. That, however, is a matter that can be re-considered if hearing the Strike-Out Application earlier will be more case efficient. The Tribunal appropriately exercised its discretion as to case management on the question of scheduling, which (if there is a change in circumstance, can and should be reconsidered) and there is no real prospect of Google persuading the Court of Appeal to overturn this aspect of the Judgment."

8. Green LJ also dismissed an application for permission to appeal made directly to the Court of Appeal and for the same reason, namely, that the Tribunal had made a case management decision and not determined the application:

> "11. As to proposed ground III, it is incorrect to say that the CAT has effectively dismissed Google's strike out application. The CAT exercised its case management power directing that the limitation issue be heard at trial. It set out, in paragraph [47] of the judgment, a number of considerations justifying that conclusion. All of these factors are proper and relevant. It did not arguably err."

9. Google now seeks to renew its application to strike out those claims based on losses for which the cause of action accrued before 1 October 2015. It indicated that it intended to issue a new application rather than restore the earlier application (although nothing turns on this). Google also invited the Tribunal to give directions and to list the relevant application or applications for hearing at CMC3 which is listed on 21 May 2026 (with a day in reserve).

## (2) The statements of case

10. Since the determination of the CPO Application, the parties have served complex and detailed statements of case. For present purposes, it is sufficient to refer to Google's Defence dated 25 April 2025 (the **Defence**) in which it summarised its limitation defence to claims based on losses suffered before 1 October 2015 as follows (our <u>emphasis</u>):

> "22. In this Defence, the phrase **Relevant Period** is used (for simplicity and without admission) consistently with the [Claim Form], to mean the period

from 1 January 2014 (being the period for which the claim is brought). However, the claims are time barred:

> (a) in respect of the alleged First and Second Abuses, insofar as the cause of action accrued before 30 November 2016 (being six years before issue of the application by Mr Pollack to bring collective proceedings (case number 1572/7/7/22)); and
>
> (b) in respect of the alleged Third Abuse, insofar as the cause of action accrued before 29 March 2017 (being six years before issue of the application by Mr Arthur on 29 March 2023 to bring collective proceedings (case number 1582/7/7/23)).

23. The time bar in each case is pursuant to s.47E of the Competition Act 1998 and s.2 of the Limitation Act 1980 as regards any claims arising on or after 1 October 2015; and pursuant to r.31 of the [2003 Rules] and r.119(2) of the [2015 Rules] as regards any claims arising before that date."

11. In the CR's Reply to the Defence dated 27 June 2025 (the **Repl**y) the CR replied to these paragraphs from the Defence and, in doing so, it relied on two principles which have been the subject matter of consideration or discussion both in this jurisdiction and in the European Union (**EU**). First, the CR relied on the principle that the limitation period for an infringement of Article 102 of the Treaty on the Functioning of the EU (the **TFEU**) does not begin to run until the infringement has ceased (the **Cessation Requirement**). Second, it relied on the principle that the limitation period does not begin to run until the CR or class members had the knowledge required to bring the relevant claims (the **Knowledge Requirement**):

> "146. As to paragraphs 22 and 23, the CR denies that any of the Claims, or any part of any of the Claims, are time barred.
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> 147. The CR's case on these matters was set out in detail in its Reply of 16 January 2024 to Google's Response to the CPO Application, at paragraphs 81-137. In summary:
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> > (1) In relation to Claims arising before 1 October 2015, the CR denies that Rule 31 of the [2003 Rules] applies to bar the Claims under Article 102 TFEU. This would be contrary to the principle of effectiveness, both because the unlawful conduct had not ceased, and because both Class Members and the CR/potential class representatives lacked knowledge indispensable to be able to commence the Claims.
> >
> > (2) In relation to Claims arising on or after 1 October 2015, the CR asserts that Limitation Act s.32 is applicable, because Google deliberately concealed facts relevant to the claims from Class Members and potential class representatives, and or deliberately acted in an infringing manner in circumstances where it was unlikely to be discovered for some time. Further or alternatively, the principle of

effectiveness means that the Claims under Article 102 are not time barred, as described above."

## (3) The law

12. In their written submissions dated 21 January 2026 on behalf of the CR, Mr Facenna KC and his team relied on a number of authorities for the well-known proposition that it is not open to a party to re-open an interlocutory decision unless there has been a material change of circumstances: see, e.g., *Chanel Ltd v Woolworth & Co Ltd* [1981] 1 WLR 485 at §§492–493 (Buckley LJ) and *Thevarajah v Riordan* [2015] UKSC 78, [2016] 1 WLR 76 at §18 (Lord Neuberger PSC). Google accepted the general principle and we apply it. It is sufficient to cite the decision of the Court of Appeal in *Tibbles v SIG plc* [2012] EWCA Civ 518, [2012] 1 WLR 2591 at §39 where Rix LJ set out the following principles:

> "39. In my judgment, this jurisprudence permits the following conclusions to be drawn:
>
> (i) Despite occasional references to a possible distinction between jurisdiction and discretion in the operation of CPR r 3.1(7), there is in all probability no line to be drawn between the two. The rule is apparently broad and unfettered, but considerations of finality, the undesirability of allowing litigants to have two bites at the cherry, and the need to avoid undermining the concept of appeal, all push towards a principled curtailment of an otherwise apparently open discretion. Whether that curtailment goes even further in the case of a final order does not arise in this appeal.
>
> (ii) The cases all warn against an attempt at an exhaustive definition of the circumstances in which a principled exercise of the discretion may arise. Subject to that, however, the jurisprudence has laid down firm guidance as to the primary circumstances in which the discretion may, as a matter of principle, be appropriately exercised, namely normally only (a) where there has been a material change of circumstances since the order was made, or (b) where the facts on which the original decision was made were (innocently or otherwise) misstated.
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> (iii) It would be dangerous to treat the statement of these primary circumstances, originating with Patten J and approved in this court, as though it were a statute. That is not how jurisprudence operates, especially where there is a warning against the attempt at exhaustive definition.
>
> (iv) Thus, there is room for debate in any particular case as to whether and to what extent, in the context of principle (b) in (ii) above, misstatement may include omission as well as positive misstatement, or concern argument as distinct from facts. In my judgment, this debate

> is likely ultimately to be a matter for the exercise of discretion in the circumstances of each case.
>
> (v) Similarly, questions may arise as to whether the misstatement (or omission) is conscious or unconscious; and whether the facts (or arguments) were known or unknown, knowable or unknowable. These, as it seems to me, are also factors going to discretion: but where the facts or arguments are known or ought to have been known as at the time of the original order, it is unlikely that the order can be revisited, and that must be still more strongly the case where the decision not to mention them is conscious or deliberate.
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> (vi) *Edwards v Golding* [2007] EWCA Civ 416 is an example of the operation of the rule in a rather different circumstance, namely that of a manifest mistake on the part of the judge in the formulation of his order. It was plain in that case from the master's judgment itself that he was seeking a disposition which would preserve the limitation point for future debate, but he did not realise that the form which his order took would not permit the realisation of his adjudicated and manifest intention.
>
> (vii) The cases considered above suggest that the successful invocation of the rule is rare. Exceptional is a dangerous and sometimes misleading word: however, such is the interest of justice in the finality of a court's orders that it ought normally to take something out of the ordinary to lead to variation or revocation of an order, especially in the absence of a change of circumstances in an interlocutory situation."

13. Rix LJ also went on to describe certain circumstances in which it might be possible for a court or tribunal to vary an order even though there had been no change of circumstances. For example, he considered that such a situation might arise where the parties had overlooked an issue through a genuine error and applied promptly to vary the order: see §§41–42. In *British Telecommunications plc v Office of Communications* [2018] CAT 1, the Tribunal cited and applied these principles to an application to vary a costs order.

14. In their written submissions dated 21 January 2026, Mr Conall Patton KC and Ms Natasha Simonsen for Google submitted that the *Tibbles* principles (above) do not necessarily apply to all interlocutory orders and that there is a residual discretion to revisit or vary case management decisions although they accepted that it is not normally open to a party to ask the Tribunal to do so unless there has been a material change of circumstances.

15. But in any event, Google submitted that there had been a change of circumstances because of recent legal developments. Mr Patton and Ms

Simonsen argued on behalf of Google that the law "must now be regarded as settled". They relied on two recent authorities: see *Umbrella Interchange Fee Claimants v Umbrella Interchange Fee Defendants* [2024] EWCA Civ 1559, [2025] 2 All ER 1009 (***Interchange***) and *Gutmann v Vodafone Ltd* [2025] CAT 77 (***Gutmann***).

16. In *Arcadia Group Brands Ltd v Visa Inc* [2015] EWCA Civ 883, [2015] Bus LR 1362 (***Arcadia***) the Court of Appeal rejected a submission that the English limitation rules (as reflected in the Court's application of section 32 of the Limitation Act 1980) infringed the EU principles of effectiveness and compensation: see §§73–79 (Sir Terence Etherton C). In the Tribunal's decision in *Interchange* ([2023] CAT 49), this Tribunal held that it was bound by *Arcadia* and dismissed the Claimants' argument that the EU principle of effectiveness required it to adopt a rule that the limitation period for claims founded on an infringement of Articles 101 and 102 TFEU only began to run once the infringement had ceased.

17. The Claimants in *Interchange* appealed and on 19 December 2024 the Court of Appeal handed down judgment. Sir Geoffrey Vos MR (with whom Sir Julian Flaux C and Falk LJ agreed) set out the case which the Claimants had argued before the Tribunal below at §§3–4:

> "3. The claimants argued before the Tribunal that the EU law principle of effectiveness required that a limitation period for a claim founded on an alleged infringement of articles 101 (and 102) of the TFEU only began to run once the infringement had ceased. This alleged principle of EU law has been referred to by the parties as the "Cessation Requirement", and that is how I shall refer to it in this judgment.
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> 4. The Cessation Requirement was included in what the CJEU said in the post-[Implementation Period Completion Day (**IP Completion Day**)] case of *Volvo AB and DAF Trucks NV v. RM* (2022) (Case C-267/20) [(***Volvo***)] at [61]:
>
> > … it must be considered that **the limitation periods applicable to actions for damages for infringements** of the competition law provisions of the member states and of the European Union **cannot begin to run before the infringement has ceased** and the injured party knows, or can reasonably be expected to know, (i) the fact that it had suffered harm as a result of that infringement and (ii) the identity of the perpetrator of the infringement [emphasis added]."

18. The Master of the Rolls summarised the three reasons why the Tribunal had rejected this argument: see §§5–7. After referring to the decisions of the Court of Justice of the EU (**CJEU**) in Case C-605/21 *Heureka Group v Google LLC* EU:C:2024:324 and of the Supreme Court in *Lipton v BA Cityflyer Ltd* [2024] UKSC 24, [2024] 3 WLR 474 (both of which had been decided since the Tribunal's decision in *Interchange*), he reframed the issues which the Court had to decide and he set out his conclusions on those issues: see §§12–14. We cite those paragraphs in full:

> "12. In the light of *Heureka* and *Lipton*, and the way the appeal was actually argued by the claimants, it seems to me that the issues that we need to resolve are as follows: (i) Should this court follow Lipton's complete code analysis and decide that the Tribunal was right to think it was not bound by *Volvo* and *Heureka* as post-[IP Completion Day] CJEU decisions? (ii) If so, were the claimants nevertheless right to submit that *Volvo* and *Heureka* should be followed, because those cases simply declared that the Cessation Requirement had always been part of EU law? (iii) In any event, is the court bound by *Arcadia* to hold that the Limitation Act 1980, as it applies to competition claims, accords with the EU law principle of effectiveness, and that a Cessation Requirement (as required to be imported into English law on a prospective basis by article 10 of the Damages Directive (2014/104/EU)) is new law and was not part of EU law at the time of Arcadia?
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> 13. The claimants' main oral argument was based on section 6(2) of the Withdrawal Act (section 6(2)), which provided that the court could "have regard" to post-[IP Completion Day] CJEU decisions. It was submitted that section 6(2) did not override or abrogate section 4(1) of the Withdrawal Act (preservation of pre-[IP Completion Day] rights, powers, liabilities, obligations, restrictions, remedies and procedures recognised by section 2(1) of the ECA 1972) or section 5(2) of the Withdrawal Act (supremacy of pre-[IP Completion Day] EU law). Sections 4(1) and 5(2) preserved the Cessation Requirement that had always been an essential element of the EU law principle of effectiveness, even if that was not entirely transparent before *Volvo* and *Heureka*. Since it was now clear that EU law had always required limitation periods in competition cases to run only from cessation of the infringement, this court should, in "having regard" to *Volvo* and *Heureka*, give effect to that principle. Arcadia was not binding in the face of CJEU authority declaring the Cessation Requirement to be part of pre-[IP Completion Day] EU law.
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> 14. In summary, I have decided, for the reasons contained in the remainder of this judgment that: (i) This court should follow (without revisiting)' Lipton's complete code analysis, and that we should leave it to the claimants to seek to persuade the UKSC to hear further debate between the complete code analysis and the Interpretation Act analysis so soon after Lipton. (ii) The Tribunal was right to think it was not bound by *Volvo* (or *Heureka*) as post-[IP Completion Day] CJEU decisions. (iii) *Volvo* and *Heureka* reflected a departure for EU law. There was no pre-[IP Completion Day] CJEU authority that made it clear that the EU law principle of effectiveness would always require that a limitation period for a claim founded on an alleged infringement of articles 101 and 102 of the TFEU only began to run once the infringement had ceased. (iv) The Tribunal was right to think that it was bound by *Arcadia* to hold that the

> Limitation Act 1980, as it applies to competition claims, accords with the EU law principle of effectiveness."

19. *Interchange* was only concerned with the Cessation Requirement. In *Gutmann*, the proposed defendants pursued applications to strike out all of the claims based on losses which arose before 1 October 2015 at the certification stage (or, alternatively, for reverse summary judgment) and, unlike in the present case, the Tribunal heard and determined that application. The Tribunal decided the issue in favour of the proposed defendants and struck out the claims. The Tribunal (which included a member of the present constitution) stated as follows at §77:

> "Properly analysed, the [proposed class representative's] position comes to be that it would, in some way, run contrary to the statutory scheme for collective proceedings introduced in [Consumer Rights Act 2015] for standalone claims arising before 1 October 2015 to be treated in the same way as that scheme treats follow-on claims which arise before that date. When considered in this way, the flaws in this part of the [proposed class representative's] argument are exposed. Far from impeding standalone claims arising before 1 October 2015 before the Tribunal, the Tribunal's construction of rule 119(2) gives effect to a clear policy choice by the legislator that such claims, together with equivalent follow-on claims, should be subject to the limitation rules contained in rule 31(1) to (3) of the 2003 Rules."

**(4) Application**

20. The first reason why the Tribunal declined to deal with limitation as a preliminary issue was that the law was not straightforward: see the CPO Judgment, §47(1). Mr Pickford KC and Ms Simonsen argued that in the light of *Gutmann* and *Interchange* the law is now settled because r. 31 of the 2003 Rules is the relevant limitation rule applying to claims based on losses incurred before 1 October 2015: see *Gutmann* at §77. They also argued that neither the Knowledge Requirement nor the Cessation Requirement can be read into r. 31 by applying the EU principle of effectiveness: see *Interchange* at §14. Google also relied on the decision in *BCL Old Co Ltd v BASF plc* [2012] UKSC 45, [2012] 1 WLR 2922 at §43 (Lord Mance) in support of the second proposition.

21. Mr Facenna and his team submitted that the relevant principles had not become settled and the position remained substantially the same as it was when the Tribunal handed down the CPO Judgment. He argued that the Court of Appeal did not address the Knowledge Requirement in *Interchange* and did not deal

exhaustively with the Cessation Requirement. He also argued that *Gutmann* was concerned only with domestic law and breach of Chapter II of the Competition Act 1998 rather than Article 102 TFEU and, as such, it was not open to the CR in that case to rely on the principle of effectiveness.

## (5) Discussion

22. We start from the position that a party to proceedings before the Tribunal should normally be entitled to invoke the Tribunal's procedural rules and to apply to strike out a claim or part of a claim. We also observe that it would normally be appropriate to hear and determine such an application at an interlocutory stage and well before trial. This is because the Tribunal will normally wish to exercise its case management powers to avoid a trial and dispose of claims summarily which have no real prospect of success. At CMC2, therefore, we were minded to take the view that Google ought to not to be prevented from issuing a new strike out application and that the Tribunal ought to determine it.

23. However, on reflection we now take the view that it is not open to the Tribunal (which now has a different constitution) to change its mind unless there has been a material change of circumstances or there are reasons for varying the order which, if not exceptional, take the present case outside the norm. At the hearing of the CPO Application the Tribunal made a clear decision refusing to hear Google's strike out application and ruled that questions of limitation should be dealt with as part of the main trial itself: see the CPO Judgment, §§47–48.

24. Mr Patton and Ms Simonsen sought to argue that the Tribunal intended to reserve a general discretion to reconsider its decision if it would be more case efficient: see the PTA Order at §13. We disagree. In our judgment, that paragraph was intended to reflect the general principle that the Tribunal would only reconsider its decision where there was a material change of circumstances. It is fair to say that the Tribunal did not make an order expressly adjourning Google's original strike out application until trial or, indeed, dismissing it. However, in our judgment, the words in parentheses in the last sentence of the PTA Order at §13 expressly stated that the Tribunal could and should reconsider the issue but only if there was a material change of circumstances.

25. Nevertheless, we are satisfied that there has been a material change in the law since the hearing of the CPO Application. This can be tested in a relatively simple way. In their skeleton argument for the CPO hearing the CR's team set out their submissions in answer to Google's strike out application in the following terms (original emphasis but footnotes omitted):

> "64. Google applies to strike out the part of the claim relating to damages incurred prior to 1 October 2015 on the basis that it is time barred. It characterises the issue as '*a short question of law, which can efficiently be disposed of on this occasion*' ([CPO] Response §136(d) [C/1/59]).
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> 65. Google's argument is based on the limitation scheme applicable to "claims arising" prior to 1 October 2015, which is contained in Rule 31 of the (old) 2003 Rules. According to Rule 31, in relation to standalone claims, '*a claim for damages must be made within a period of two years beginning on the date on which the cause of action accrued*'. Google argues that this means the present claims "would have to have been brought by 1 October 2017 at the latest" ([CPO] Response §131 [C/1/57]).
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> 66. Google's argument however ignores the effect of retained EU law, in particular the EU principle of effectiveness applicable to the claims under Article 102 TFEU (which applies inter alia in relation to the part of the claim relating to damages incurred prior to 1 October 2015), and case law addressing how this applies to limitation. The Tribunal must interpret Rule 31, if at all possible, so as to comply with the EU principle of effectiveness. That obligation is 'broad and far-reaching', and permits inter alia a 'departure from the strict and literal application of the words' in Rule 31 and the 'implication of words necessary to comply' with the EU principle of effectiveness.
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> 67. It is useful to consider the case law in two parts: cases decided before IP completion day on 31 December 2020, and those decided after that date. The pre-IP completion day case law is undoubtedly applicable to the claims under Article 102, because: (i) the position immediately before that date is explicitly preserved by the Competition (Amendment etc) (EU Exit) Regulations 2019/93;80 and/or (ii) such case law continues to bind the Tribunal pursuant to section 6 of the European Union (Withdrawal) Act 2018. That case law includes [Case C-637/17 *Cogeco Communications v Sport TV Portugal* EU:C:2019:263], which establishes that limitation cannot start to run until such time as the claimants have the knowledge indispensable to be able to commence their action. The issue therefore cannot be determined without an understanding of when the claimants had, or can be deemed to have had, such knowledge.
>
> 68. In this case there is good reason to believe that the claimants could not have had such essential knowledge until considerably after the pre-October 2015 harm was suffered. For example, the complaints brought by the DOJ and State AGs explain that many aspects of Google's infringing conduct were not transparent, and in some cases deliberately misrepresented, deceived, or otherwise concealed. The [CR] has made clear that this will be the subject of a disclosure application.
>
> 69. The post-IP completion day case law includes *Volvo*, which may establish that limitation cannot start to run until the infringement(s) have ceased, and

> Heureka, in which the CJEU confirmed that '*the limitation period cannot begin to run before the infringement concerned has come to an end*' (§59). The questions of (i) what *Volvo* decided and (ii) its applicability to claims before this Tribunal, are currently before the Court of Appeal and likely to be decided well within the timeframe of these proceedings. Depending on what the Court of Appeal determines, it may be necessary also to determine when the infringement(s) can be said to have ceased. This will again be the subject of disclosure.
>
> 70. In the circumstances, and bearing in mind the standard applicable to strike out, there is no basis to conclude that the [CR] has no realistic prospect of succeeding on this point. Google's application should be rejected."

26. In answer to this argument, Google relies on *Gutmann* as providing authority for the proposition that r. 31 of the 2003 Rules contains the limitation rule (and the only limitation rule) applicable to claims based on losses which occurred before 1 October 2015. Mr Facenna and his team sought to distinguish *Gutmann* in their written submissions dated 21 January 2026 on the basis that it was concerned with domestic law only and that it was not necessary for the Tribunal in *Gutmann* to consider whether the Tribunal should read into r. 31 the principle of effectiveness under EU law because it was not concerned with claims under Article 102 of the TFEU.

27. But even if there are good grounds for distinguishing *Gutmann*, Google relies on the decision of the Court of Appeal in *Interchange* as authority for the proposition that the Knowledge and Cessation Requirements were not established principles of EU law before IP Completion Day and that even if the principle of effectiveness applied, it would not require the Tribunal to read into r. 31 either of the Knowledge or the Cessation Requirements: see, in particular, §14(iii) in *Interchange* above. Mr Facenna and his team sought to distinguish *Interchange* on the basis that it was not dealing with the Knowledge Requirement at all and that, insofar as it dealt with the Cessation Requirement, it was a decision limited to its specific facts.

28. We express no view now on the merits of either of these arguments. But in our judgment, the law has been sufficiently clarified – in particular, by the Court of Appeal in *Interchange* – to justify the Tribunal reconsidering its earlier decision. If Google's submissions are correct as a matter of law, then they provide a complete answer to the case which the CR advanced at the hearing of the CPO

Application. Moreover, as Mr Facenna and his team anticipated, the Court of Appeal has now decided the applicability of both *Volvo* and *Heureka* to the claims before this Tribunal and well before those claims have come to trial. The issue between the parties is as to the correct application of that decision.

29. We accept that the law is still not entirely straightforward and requires the interpretation and application of EU law. But if we have characterised the legal issues between the parties correctly, then they are pure issues of law and ought to be capable of summary determination by the Tribunal. If the principle of effectiveness applies to the relevant claims under Article 102 TFEU and that principle requires that either or both of the Knowledge and Cessation Requirement should be read into r. 31, then the strike out application will be dismissed and those claims will go to trial. The CR will be permitted to call evidence to prove either or both of the Knowledge and the Cessation Requirements and also to address the merits of the claims themselves.

30. However, as the Tribunal observed in the CPO Judgment at §47(1)–(2), there was a high likelihood that the unsuccessful party would appeal, that they would be given permission to appeal and that an appeal would disrupt the trial timetable. Mr Patton and Ms Simonsen submitted that the legal developments which we have discussed make it much less likely that the unsuccessful party would appeal. We are unconvinced by this submission. However, we have now given directions for trial with a PTR listed for on or after 24 July 2028 and, in those circumstances, we now consider it much less likely that an appeal on this discrete issue is unlikely to interfere with the trial (or, perhaps more importantly, derail the preparations for trial).

31. There remains some force in the reasons which the Tribunal gave at §47(3)–(4) of the CPO Judgment. We accept that the early determination of this limitation point may involve limited savings in time and costs (when compared with the overall Proceedings). But if Google's argument is correct as a matter of law, then it will be unnecessary for the CR to call evidence in relation to claims which arose out of losses incurred before 1 October 2015 or to call separate evidence in relation to the satisfaction of either the Knowledge Requirement or

the Cessation Requirement before that date or, indeed, any separate evidence directed to the merits of the claims themselves.

32. On balance, therefore, we have reached the conclusion that the Tribunal ought to be able to resolve that question after hearing argument at CMC3 and that it would be more case efficient to list and hear Google's new strike out application at CMC3. We make it clear, however, that the application will be limited solely to the issues of law which Google has raised in its written submissions dated 21 January 2026 and that the Tribunal will not engage with any detailed submissions on the facts if Google tries to widen the scope of the strike out application.

## D. DISPOSITION

33. For these reasons, therefore, we make the Order accompanying this judgment (the **Strike Out Application Order**), as well as the CMC2 Order made on 19 February 2026. Paragraph 27 of the CMC2 Order reflects our decision on expert reports and we have given no further directions in relation to the proposed strike-out application referred to in paragraph 17.

34. We also give directions for the hearing of Google's strike out application at CMC3 in the Strike Out Application Order, made today. We accept the submission made by the CR in the letter from Hausfeld & Co. LLP dated 26 January 2026 that the decision to hear the strike out application at CMC3 is a case management decision and we are not prepared to order the Class Representative to pay Google's costs of dealing with the objection. We order that those costs should be costs in the application.

The Hon. Mr Justice Leech
Chair

John Alty

Dr Maria Maher

Charles Dhanowa, CBE, KC (Hon)
Registrar

Date: 24 February 2026