Neutral citation [2026] CAT 28

Case No: 1424/5/7/21 (T)
1589/5/7/23 (T)
1596/5/7/23

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

26 March 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

RULING (COSTS)

A. INTRODUCTION

1. Between 17–19 March 2025, a trial of preliminary issues (the **Preliminary Issues Trial**) was held in four sets of proceedings, concerning comparison shopping services (**CSS**), which were being case managed together. The issues there addressed, which are common to all the proceedings, were: (i) which recitals in the EU Commission decision in Case AT.39740 *Google Shopping* (the **Decision**), insofar as that was disputed, are binding for the purpose of these proceedings; and (ii) the meaning of certain recitals. The Tribunal delivered its judgment on those issues on 9 July 2025, [2025] CAT 39 (the **Judgment**). All paragraph references below are to the Judgment, save as otherwise stated.

2. On 26 September 2025, the Claimants jointly submitted an application for an order for costs in their favour and an interim payment on account of those costs, accompanied by summary schedules of costs. In response, the Defendants (**Google**) submitted that the appropriate order was costs in the case; alternatively, they argued that there should be a significant discount from any costs ordered in the Claimants' favour to reflect the various issues on which Google was successful; and further, that as regards interim payment the costs claimed in the Claimants' schedules were unreasonable and disproportionate.

3. On 6 February 2026, the claimants in one of those four proceedings, referred to as **Connexity**, informed the Tribunal that they had reached a final settlement with Google and that they would no longer seek their costs of the Preliminary Issues Trial. Accordingly, this ruling concerns the costs of the claimants in the three continuing proceedings. Nonetheless, it will be necessary to make some reference below to the costs which had been claimed by Connexity since some of the work was shared between the Claimants in all four proceedings and, in particular, they jointly instructed a single counsel team for the Preliminary Issues Trial. In this ruling, it should be clear from the context whether reference to **the Claimants** includes or excludes Connexity.

B. THE JUDGMENT

4. As regards the question of 'bindingness', the parties agreed that the governing principles were those set out by the Tribunal in the *Trucks* preliminary issues judgment, *Royal Mail Group Ltd v DAF Trucks Ltd and Ors* [2020] CAT 7; [2021] 3 All ER 621 (***Trucks***). However, there were a number of areas of dispute as to the application of those principles, in particular:

   a) whether a recital that was "directly relevant" to a decision will on that basis be binding;

   b) whether two or more recitals would be binding if any one of them supported an element of the decision; and

c) whether it was relevant to distinguish between first order, second order and third order findings, such that only first order findings were binding.

Question (a) was decided in Google's favour: Judgment at [16]; the Claimants succeeded on questions (b) and (c): Judgment at [18]–[25] and [26]–[30], respectively.

5. As regards the meaning of the recitals, the Claimants succeeded on the question whether the Decision determined that the relevant market excluded merchant platforms: Judgment at [33]–[40]; and also on the question whether the reference to Google's own CSS in the Decision includes also the so-called 'shopping boxes' [43]–[62]. Google succeeded on the question whether the Decision held that it was a combination of the promotion and demotion conduct by Google that constituted the abuse that was found: [63]–[70].

6. The Judgment further dealt with some discrete disputes concerning the meaning of particular recitals: Judgment at [71]–[73], [80]–[99].

7. For the purpose of the hearing, the parties had prepared a schedule setting out their respective positions on the recitals, including those cases where the status was agreed or not contested. Based on the reasoning and findings in the body of the Judgment, the Judgment appended a table showing the final status of each recital.

C. LIABILITY FOR COSTS

8. It is important to recognise the role of the schedule of recitals prepared by the parties in the resolution of the preliminary issues. Since the Decision comprises 755 recitals, this was a significant document. Where the schedule showed that the question of whether or not a recital was binding was either agreed or alternatively not contested, that recital required no consideration at the hearing. I expect that this work was largely undertaken by the solicitors in advance of the hearing, and it would have been time-consuming. It was an important stage in advancing the matter and, to the extent that agreement was reached, there was no "winner". For those costs, I consider that the appropriate order is costs in the case. Given the massive level of solicitors' costs, which is largely a reflection here of the hours spent and not the charging rates, I think it is

reasonable to attribute a significant part of those costs to this process of analysis and agreement, including obtaining agreement as between the three separately represented Claimant groups. Taking a broad-brush approach, I shall therefore order that one half of Google's and the Claimants' solicitors' costs shall be costs in the case.

9. However, that leaves the balance of the solicitors' costs and the very substantial costs here expended on counsel, which largely relate to the hearing. As regards those costs, I think it is appropriate to make an adverse costs order. That follows the approach for a preliminary issues trial set out and explained by the Tribunal in *Merricks v Mastercard (Costs)* [2024] CAT 57 at [19]. I consider that this is all the more appropriate where, as in the present cases, the preliminary issue gave rise to significant costs being incurred. I do not accept Google's submission that the Tribunal's ruling following the preliminary issues trial in *Trucks* supports a different approach. The Tribunal there made an adverse costs order as regards the domestic law issue; although it did not do so as regards the EU law issue, in that regard there was no application for such an order since the parties agreed that the costs should be in the case: *Royal Mail Group Ltd v DAF Trucks Ltd and Ors (Costs)* [2020] CAT 14.

10. As is almost always the case, some of the disputed matters involved considerably more time and argument than others, and I do not think a fair picture results from simply counting up disputed questions or recitals. I consider that to a large extent the Claimants were successful but, as noted above, they were not successful on all aspects. Accordingly, although I think there should be an order for costs in their favour, there should be a discount to reflect the matters on which Google succeeded. Taking again a broad-brush approach, in my judgement, the Claimants (other than Connexity) should recover 75 per cent of the balance of their costs (i.e. after deducting costs as set out in paragraph 8 above).

11. Those costs are to be subject to detailed assessment on the standard basis if not agreed. My observations below on the costs may perhaps assist that process. I do not regard it as appropriate to suspend or delay the order for detailed assessment, but it is of course up to the Claimants as to when, if agreement is not reached, they wish to initiate such an assessment.

D. INTERIM PAYMENT

12. The Claimants – including Connexity prior to the settlement – all sought interim payments on account of their costs. They served schedules of their costs showing the following totals:

    a) in respect of Foundem: £249,851.30;

    b) in respect of Kelkoo and Ciao[1]: £531,014.71; and

    c) in respect of Connexity: £285,874.97.

    The Claimants submitted that they should be paid 60% of those figures by way of payments on account.

13. The Preliminary Issues Trial involved no disclosure and no evidence. There was limited citation of authority, beyond the *Trucks* case. The argument was essentially conducted on the basis of the judgment of the Tribunal in *Trucks* and on basic principles, by reference to the Decision and the judgments of the EU Courts on the appeals from the Decision. In those circumstances, I regard the Claimants' total costs of over £1 million as a truly jaw-dropping amount. I consider it wholly unreasonable and disproportionate.

14. In *Kington SARL v Thames Water Utilities Holdings Limited* [2025] EWCA Civ 1003 at [27], the Court of Appeal referred with approval to the observations of Leggatt J (as he then was) in *Kazakhstan Kagazy PLC v Baglan Abdullayevich Zhunus* [2015] EWHC 404 (Comm) at [13]. In determining an application for interim payment in hard-fought commercial litigation, Leggatt J emphasised that the test is not what a party might consider subjectively it was reasonable to pay to advance its interests in the litigation; the test is an objective one:

> "13. In a case such as this where very large amounts of money are at stake, it may be entirely reasonable from the point of view of a party incurring costs to spare no expense that might possibly help to influence the result of the proceedings. It does not follow, however, that such expense should be regarded as reasonably or proportionately incurred or reasonable and proportionate in amount when it comes to determining what costs are recoverable from the other party. What is reasonable and proportionate in that

[1] Kelkoo and Ciao shared legal representation by the same solicitors and counsel.

> context must be judged objectively. The touchstone is not the amount of costs which it was in a party's best interests to incur but the lowest amount which it could reasonably have been expected to spend in order to have its case conducted and presented proficiently, having regard to all the relevant circumstances. Expenditure over and above this level should be for a party's own account and not recoverable from the other party. This approach is first of all fair. It is fair to distinguish between, on the one hand, costs which are reasonably attributable to the other party's conduct in bringing or contesting the proceeding or otherwise causing costs to be incurred and, on the other hand, costs which are attributable to a party's own choice about how best to advance its interests. There are also good policy reasons for drawing this distinction, which include discouraging waste and seeking to deter the escalation of costs for the overall benefit for litigants."

15. For solicitors' fees, guidance as to the hourly rates that may be reasonable is provided by the Guideline Hourly Rates published and updated as an appendix to the Guide to the Summary Assessment of Costs. As regards counsel's fees, in *Athena Capital Fund SICAV-FIS SCA v Secretariat of State for the Holy See* [2022] EWCA Civ 1061, Males LJ stated, at [7]:

> "7. Counsel's fees are not subject to guideline rates in the same way that solicitors' fees are, but it is nevertheless important to stress that, whatever clients may be prepared to pay their own counsel, only a reasonable and proportionate fee may be recovered from the other side. […]"

16. Here, the Claimants say in their submissions on costs that their legal representatives (including counsel) "charged discounted rates for the work associated with the Preliminary Issues Trial"; and that they jointly instructed counsel at an early stage for the trial, thereby saving costs.

17. It is therefore instructive to see the breakdown as between the total solicitors and counsel's fees:

Foundem	Solicitors:	£135,185.30
	Counsel:	£111,130.35
Kelkoo/Ciao	Solicitors:	£375,819.54
	Counsel:	£150,987.24
Connexity	Solicitors:	£77,111.48
	Counsel:	£205,227.84

18. The costs schedules set out the solicitors' hourly rates charged, and I agree that in general they are reasonable rates for a case of this kind, by reference to the Guideline Rates. It is unnecessary to comment on the Connexity figure. I note that almost half the

fees of Foundem's solicitors were incurred by work done on documents, and over half of that related to the analysis of the Decision and assessment of the individual recitals. Nonetheless, for the totality of the solicitors' work involved in the Preliminary Issues Trial, I do not see that solicitors' fees for each set of Claimants of more than £80,000 are reasonable as an estimate of recoverable costs. I note that this is close to 60% of Foundem's solicitors' costs, which as noted above is the proportion that the Claimants seek by way of interim payment.

19. The figure for Linklaters' costs charged to Kelkoo and Ciao is in my view extraordinary. I accept that it can reasonably be slightly higher than for the other two Claimants since they were dealing with two clients, but not to anything like this extent, given the nature of the Preliminary Issues Trial. A substantial part of the Kelkoo/Ciao total relates to "analysis and drafting of [the] Claimants' submissions" and "review [of] Google's submissions and [preparing a] response": the solicitors fees for those combined come to over £185,000, representing over 600 hours of solicitors' time. Since the Claimants' submissions were drafted by counsel, and the Claimants indeed had no less than 4 counsel instructed, including a KC and a senior junior (now herself a KC), I regard this as wholly unreasonable and disproportionate. Such criticism also applies to other elements of the schedule. For example:

    a) It is striking that Kelkoo and Ciao were charged £43,816 for "attendance at the hearing". As well as a partner and a trainee, their costs schedule states that attendance at the hearing by "Managing Associate" involved 35.5 hours and attendance by "Associate" involved 51 hours. Since this was a three-day hearing, those hours appear to be explicable only on the basis that Linklaters attended with more than one managing associate and more than one associate. By contrast, Foundem was charged £15,541 for attendance at the same hearing, in that case by a senior associate and one trainee, with the partner also attending for under 4 hours. Connexity was charged £16,143 for attendance at the hearing. To be clear, a party may bring as many lawyers as it wishes to attend a hearing, but that does not mean that the costs of attendance by all those lawyers' is recoverable from the other side.

b) The Kelkoo and Ciao costs schedule shows over £65,000 for "post-trial work", relating to work on the transcripts, the Judgment and the application for costs itself, which together are stated to have taken 215 hours of solicitors' time, including 10.5 hours of partner time (although the costs submissions themselves were settled by counsel). By contrast, Foundem's schedule shows £10,638 for work on the costs schedule and costs submissions; and Connexity's work on the transcripts, and its costs schedule is shown as costing £4,080.

20. In all the circumstances, I find it impossible on the material before me to estimate the amount that Kelkoo and Ciao are likely to recover on detailed assessment for their solicitors' work. In those circumstances, I draw assistance from the fees charged by the solicitors for the other Claimants and, only because Linklaters here had two clients, will allow £100,000 as the total amount to be allowed in arriving at the interim payment.

21. Turning to counsel, the Claimants were jointly represented by four counsel: Mr Philip Moser KC, Ms Sarah Love (2006 call), Mr Matthew O'Regan (2015 call) and Mr Hugh Whelan (2022 call), and all four signed the Claimants' skeleton argument. The fees of counsel were shared between the Claimants (although the Foundem costs schedule does not include a charge for Mr O'Regan, and Mr Whelan seems to have done less work for Foundem). The total costs of counsel incurred by Foundem, Kelkoo and Ciao were £262,118. The charge to Connexity specifically for attendance of these four counsel at the trial (i.e. excluding their fees for advice) was £143,189. In my view, it was neither reasonable nor proportionate for the Claimants to have four counsel at the hearing, and I note that Google, arguing all the same points, were represented by two counsel. Moreover, a total cost of counsel for the Preliminary Issues Trial of over £400,000 is well beyond the bounds of reasonableness.

22. Foundem's costs schedule states that the fees of Mr Moser and Ms Love as regards "[a]dvising, reviewing correspondence and draft order, preparation for and attendance at hearing" were "split equally" as between the Claimants in the different proceedings. The figures for counsel in the Kelkoo/Ciao costs schedule shows that Kelkoo and Ciao were treated together for this purpose, so that this was a three-way split. However, the different costs schedules are drawn up in different ways, and it is not very clear which costs of counsel were shared equally between the three Claimant groups or how the

work was shared between junior counsel. I am not in a position reasonably to estimate what may be allowed on detailed assessment, save that I consider that the costs of one of the two more senior juniors should be disallowed. Therefore, I am not prepared to derive figures for interim payment on the basis of a proportion of what was actually charged. Instead, and reflecting the level of uncertainty, I shall estimate total fees of £90,000 as a reasonable and proportionate figure for Mr Moser KC and £60,000 for a senior junior. Mr Whelan's fees are shown as £4,635 for Foundem and £29,620.50 for Kelkoo/Ciao. Since the Connexity costs schedule states that they incurred £21,750 in fees for Mr Whelan for the hearing, I shall allow £20,000 as an estimate of Mr Whelan's reasonable fees in respect of Kelkoo/Ciao.

23. In addition, the Claimants incurred disbursement (for preparation of bundles and the transcript), in amounts that I regard as reasonable and proportionate. However, Kelkoo and Ciao also claim to recover £2,500 spent on expert economists. That figure is of course small in the total picture; nonetheless, since the Preliminary Issues Trial involved no economic issues, I do not regard it as reasonable.

24. On the basis set out above, I therefore award interim payments as follows:

a) **To Foundem**: £73,627.99 [i.e. 75% x (£40,000 on account of solicitors' costs + (⅓ x £150,000) + £4,635 on account of counsel's fees + £3,535.65 disbursements)].

b) **To Kelkoo and Ciao**: £91,280.95 [i.e. 75% x (£50,000 on account of solicitors' costs + (⅓ x £150,000) + £20,000 on account of counsel's fees + £1,707.93 disbursements)].

25. Google is to make these payments within 21 days of the date of this ruling.

Sir Peter Roth
Chair

Charles Dhanowa CBE, KC (Hon)
Registrar

Date: 26 March 2026