



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1589/5/7/23 (T)

BETWEEN:

INFEDERATION LIMITED
(Foundem)

Claimant

- v -

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

Defendants

Case No: 1424/5/7/21 (T)

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
(together, **Google**)

Defendants

ORDER

UPON the Order of the Tribunal made on 15 May 2024 establishing a ‘Confidentiality Club’ and ‘LEO Confidentiality Club’ (the **Confidentiality Order**)

AND UPON the Order of the Tribunal made on 1 August 2025 and drawn on 4 August 2025 (the **Trial 1 Directions Order**) giving directions to Trial 1 in Case No: 1589/5/7/23 (T) (the **Foundem Proceedings**), Case No: 1424/5/7/21 (T) (the **Kelkoo Proceedings**), and Case No: 1596/5/7/23 (the **Ciao Proceedings**) (the Foundem Proceedings, the Kelkoo Proceedings, and the Ciao Proceedings together the **UK Shopping Proceedings**)

AND UPON the Order of the Tribunal made on 26 March 2026 (the **PTR Directions Order**) containing procedural directions for the Pre-Trial Review listed on 21 May 2026 with a time estimate of one day (the **PTR**)

AND UPON Foundem’s application challenging Google’s assertions of privilege in respect of 11 documents (the **Privileged Documents**) (the **Privilege Application**)

AND UPON Kelkoo and Ciao (the **KC Claimants**) filing and serving the Fourth Witness Statement of Richard Stables on 19 May 2026 (**Stables 4**)

AND UPON the KC Claimants’ application that certain material in and exhibited to Stables 4 be designated as ‘External Legal Eyes Only’ and be restricted to external solicitors and counsel who are members of the LEO Confidentiality Club (the **Stables 4 Confidentiality Application**)

AND UPON Google's application pursuant to Rule 55(4) of the Competition Appeal Tribunal Rules 2015 for permission for certain witnesses of fact to give their evidence at the First Trial by way of video-conferencing link (**VCF**)

AND UPON the Tribunal hearing from leading counsel for Foundem, leading and junior counsel for the KC Claimants, and leading counsel for the Defendants at the PTR on 21 May 2026

AND UPON the first trial in the UK Shopping Proceedings being listed for 5 weeks (with 1 week in reserve), commencing on 22 June 2026 (**Trial 1**)

AND UPON the parties filing a draft composite order following the PTR on 19 June 2026 for the Tribunal's consideration

IT IS ORDERED THAT:

A. TRIAL DOCUMENTS

1. The agreed List of Headline Issues for Trial 1 (as referred to at paragraph 7 of the PTR Directions Order) shall be as set out in Schedule 1 to this Order.
2. The Defendants shall file and serve an agreed chronology and *dramatis personae* by **4:00 pm** on **12 June 2026**.

B. WRITTEN SUBMISSIONS

3. The page limits for the parties' written opening submissions for Trial 1 are varied as follows: (a) the KC Claimants shall have 65 pages for their joint written opening submission; (b) Foundem shall have 50 pages for its written opening submission; and (c) Google shall have 90 pages for its written opening submission.
4. The parties shall file and serve their written closing submissions by **5:00 pm** on **22 July 2026**.

C. TRIAL TIMETABLE

5. The trial timetable for Trial 1 shall be as set out in Schedule 2 to this Order.

D. WITNESSES

6. Permission is granted for the following factual witnesses for Google to give their evidence at the First Trial by way of VCF:
 - a. Bharat Kalyanpur, former Senior Engineering Director at Google, who is based at a private residential address in California, United States, and who filed a trial witness statement in these Proceedings dated 23 October 2025; and
 - b. Jeremiah Ginsberg, former Staff Software Engineer at Google, who is based at a private residential address in New Zealand, and who filed two trial witness statements in these Proceedings dated 23 October 2025 and 23 December 2025 respectively.
7. In respect of evidence to be given by way of VCF pursuant to paragraph 6 above, the following conditions shall apply:
 - a. An independent lawyer (who is not an employee of the Defendants) must be in physical attendance with the factual witness; and
 - b. the Claimants are entitled to the additional physical attendance of an independent lawyer of their choosing (who is not an employee of any of the Claimants).
8. The Stables 4 Confidentiality Application is dismissed.
9. The KC Claimants have permission to file and serve a replacement fourth witness statement from Richard Stables limited to necessary details about his remuneration by no later than **5:00 pm** on **27 May 2026**. The content of the replacement witness statement shall be non-confidential.

E. THE PRIVILEGE APPLICATION

10. Google shall file and serve a witness statement from Mr Stephen Wisking of Herbert Smith Freehills Kramer LLP confirming the outcome of his re-review of the Privileged Documents by **5:00 pm** on **27 May 2026**.

F. FOREIGN JUDGMENTS

11. The Defendants shall file with the Tribunal, and serve on all parties, certified English translations of the following foreign court judgments relating to Google Shopping by no later than **4:00 pm** on **17 June 2026**:
 - a. the judgment of the Amsterdam District Court of 5 November 2025 in *Wolfson v Google*, case C/13/722072 ECLI:NL:RBAMS:2025:8356; and
 - b. the judgments of the Berlin Regional Court (Landgericht Berlin II) dated 13 November 2025 in *Idealo v Google*, 16 O 195/19 Kart (2).
12. If the Claimants wish to rely on any other Foreign Judgment for which a certified translation has not already been provided, they shall notify Google of the same and shall arrange with Google for certified translations to be provided.
13. The costs of obtaining such certified translations shall be costs in the case.

G. FURTHER MATTERS

14. Costs in the cases.
15. There be liberty to apply.

Sir Peter Roth
Chair of the Competition Appeal Tribunal

Made: 19 June 2026
Drawn: 19 June 2026

SCHEDULE 1 – AGREED LIST OF HEADLINE ISSUES FOR TRIAL 1

This is a draft Agreed List of Headline Issues, produced by the parties pursuant to the order of the Competition Appeal Tribunal (the **Tribunal**) of 26 March 2026 containing procedural directions for the Pre-Trial Review (the **Order**).

In line with the Tribunal’s indication in the Order that the List should be of “Headline” issues only,¹ and moreover that it should be agreed insofar as possible, this List provides a high-level overview of the issues to be determined at Trial 1. The issues in sections (1) and (2) are agreed between all of the parties; the issues in section (3), arising only as between Foundem and Google, are agreed between those parties.

The order in which the issues identified below appear is indicative only and without prejudice to the Tribunal’s discretion to decide the issues in the order it considers most appropriate.

DEFINITIONS

The following abbreviations/terms have the meanings set out below:

Compliance Mechanism/Shopping Remedy	The arrangements introduced by Google following the Decision governing the display of Comparison Shopping Service (CSS) results on its Search Engine Results Page (SERP).
CSS	Comparison Shopping Service
Decision	The Commission’s <i>Google Shopping</i> Decision dated 26 June 2017.
Decision Period	The infringement period found in the Decision, e.g., for the UK, 1 January 2008 – 27 June 2017. The infringement continued in all countries where the abuse was found between 27 June 2017 until 28 September 2017 when Google implemented the Compliance Mechanism/Shopping Remedy.

¹ Emphasis as contained in the Order.

PIJ	The Tribunal’s Preliminary Issue Judgment [2025] CAT 39 dated 9 July 2025
Post-Decision Period	For a country where an infringement was found, the date when the Compliance Mechanism/Shopping Remedy was introduced until the present date.
Pre-Decision Period	The relevant period prior to the Decision Period, relevant for the UK only in these proceedings, is 27 June 2006 to 31 December 2007.
SERP	Search Engine Results Page

ISSUES ARISING BETWEEN ALL THE PARTIES

(1) The alleged Post-Decision Period abuse

1. Did the Compliance Mechanism/Shopping Remedy (in its various formats over time) end Google’s abuse of dominance?
2. If a finding of abuse is made in the Post-Decision Period, what is the duration of that abuse and, in particular, (i) is it still continuing; and (ii) if not, when did it end?

(2) The counterfactual

3. For the Decision Period and, insofar as a finding of abuse is made, for the Post-Decision Period, what is the appropriate and realistic counterfactual for the assessment of damages?

Sub-issues

- 3.1. What is the legal test for determining the appropriate counterfactual?
- 3.2. Must the counterfactual remove both the ‘promotion limb’ and the ‘demotion limb’ of the abuse (as defined in the PIJ at ¶63) to be lawful?
- 3.3. Is the Compliance Mechanism/Shopping Remedy implemented by Google (in any of its various formats over time) a lawful counterfactual for the Decision Period?
- 3.4. Without prejudice to 3.1, what is the lawful, appropriate and realistic counterfactual for each of the Decision Period and Post-Decision Period?

ISSUES ARISING ONLY AS BETWEEN FOUNDEM AND GOOGLE

(3) The Pre-Decision Period and other Foundem-specific issues

4. **Abuse:** Did Google abuse its dominant position by applying Algorithm A to Foundem's website between around 27 June 2006 and 1 December 2009, or alternatively, 31 December 2007?

Sub-issues

- 4.1. **Discriminatory abuse:** Was Google's conduct a discriminatory abuse of dominance?
- 4.1.1. What is the legal test for discriminatory abuse of dominance? In particular:
- 4.1.1.1 Is there a requirement that for discrimination to exist, there must be differential treatment of competitors who are materially / sufficiently similarly situated?
- 4.1.1.2 Does it need to be shown as part of the test for discriminatory abuse that any difference in treatment was unjustified? If so, is this a separate requirement to those in 4.1.1.1 above and 4.1.1.3 below?
- 4.1.1.3 Is there a requirement that any difference in treatment diverted traffic to Google's CSS where that traffic represented a large proportion of traffic to rival CSSs which could not effectively be replaced by other sources?
- 4.1.1.4 What test of effect on competition applies (e.g. potential, appreciable)?
- 4.1.2. Were the necessary elements of the legal test as determined under 4.1 above (including any of the matters in the sub-paragraphs of 4.1.1 above, if the Tribunal holds them to be legal requirements) made out in this case as between Foundem and (i) Google and/or (ii) other CSSs?
- 4.1.3. Were other relevant CSSs not demoted at all, or to the same extent on Google's SERP by Algorithm A?
- 4.1.4. Is it open to Google to argue that Foundem's site was demoted for reasons of quality?
- 4.1.5. If Google's conduct would otherwise have been a discriminatory abuse of dominance, was it objectively justified?
- 4.2. **Abuse by way of search penalty without objective justification:** Was the application of Algorithm A an abuse of dominance in that it demoted Foundem's site on grounds which are not objectively justified?

- 4.3. **Appeals procedure:** Did Google fail to operate a fair and responsive appeals procedure, or to give timely and accurate responses to requests by Foundem to lift the Algorithm A penalty over the said period? If so, does that constitute an abuse of dominance?
5. **Counterfactual regarding the search penalty claims (paragraph 4 above):** In so far as any such abuse of dominance occurred, what is the appropriate counterfactual in relation to it?

Sub-issues

- 5.1. Is the appropriate counterfactual for the assessment of damages one in which Google:
- 5.1.1. removed Algorithm A entirely; or
 - 5.1.2. amended it so that it did not have the characteristics found by the Tribunal to be unlawful; or
 - 5.1.3. Provided a timely and effective appeals process; or
 - 5.1.4. applied Algorithm A to all CSSs (including Google's own CSS)? If that is answered 'yes', would Google's CSS have been demoted on the SERP?
6. **Further penalty claims:** Whether any further relevant penalty was applied by Google to Foundem's site? If so:
- 6.1 Did that further penalty adversely affect Foundem's search rankings between December 2009 (when it was whitelisted from Algorithm A) and April 2011 (when it was hit with the Panda penalty)?
 - 6.2 If so, was the said conduct abusive?
7. **Counterfactuals for other abuse claims:** In so far as any such further abuse of dominance occurred, what are the appropriate damages counterfactuals in relation to the matters set out in Issue 6?

SCHEDULE 2 – TRIAL TIMETABLE

Day	Date	Subject ²
Week 1		
Monday	22 June 2026	Claimants’ Opening
Tuesday	23 June 2026	Claimants’ Opening/ Google’s Opening
Wednesday	24 June 2026	Google’s Opening / Claimants’ witnesses (Richard Stables, Kelkoo and Ciao)
Thursday	25 June 2026	Claimants’ witnesses (Richard Stables, Kelkoo and Ciao)
Friday	26 June 2026	Non-sitting day
Week 2		
Monday	29 June 2026	Claimants’ witnesses (Shivaun Raff / Adam Raff, Foundem)
Tuesday	30 June 2026	Claimants’ witnesses (Adam Raff, Foundem, 10:30 am to 1:00 pm) / Google’s witnesses (Matthew Cutts, 2:00 pm to 4:30 pm)
Wednesday	1 July 2026	<i>Commence at 9:30 am</i> Google’s witnesses (Matthew Cutts) <i>Rise by 4:15pm</i>
Thursday	2 July 2026	<i>Commence at 9:30 am</i> Google’s witnesses (Jeremiah Ginsberg, 9:30 am to 10:30 am) [Remote evidence, New Zealand], (Hyung-Jin Kim, 10:45 am to 1:00 pm and 2:00 pm onwards) <i>Rise by 3:15 pm</i>
Friday	3 July 2026	Non-sitting day
Week 3		
Monday	6 July 2026	Google’s witnesses (Elizabeth Howard Dorfman, 10:30 am to 10:45 am), (Cristos Goodrow, 10:45 am to 1:00 pm and 2:00 pm onwards) <i>Rise by 4:45 pm</i>
Tuesday	7 July 2026	Google’s witnesses (Cristos Goodrow, 10:30 am to 12:00 noon) (Greg Friedman, 12:00 noon to 1:00 pm, and 2:00 pm onwards)
Wednesday	8 July 2026	Google’s witnesses (Greg Friedman, 10:30 am to 12:00 noon) (Sam Braendle, 1:00 pm to 3:30 pm) (Bharat Kalyanpur 4:00 to 5:00 pm) [Remote Evidence, California] <i>Rise by 5:00pm</i>

² Includes note of commencement and rising times where they differ from ordinary Tribunal scheduling.

Day	Date	Subject²
Thursday	9 July 2026	Run-over / non-sitting day
Friday	10 July 2026	Non-sitting day
Week 4		
Monday	13 July 2026	Expert evidence
Tuesday	14 July 2026	Expert evidence
Wednesday	15 July 2026	Expert evidence
Thursday	16 July 2026	Expert evidence / run-over
Friday	17 July 2026	Non-sitting day - Closing prep
Week 5		
Monday	20 July 2026	Non-sitting day - Closing prep
Tuesday	21 July 2026	Non-sitting day - Closing prep
Wednesday	22 July 2026	Non-sitting day - Written closings submitted at 5:00 pm
Thursday	23 July 2026	Non-sitting day
Friday	24 July 2026	Non-sitting day
Week 6		
Monday	27 July 2026	Claimants' Closing
Tuesday	28 July 2026	Google's Closing
Wednesday	29 July 2026	Google Closing AM Claimants' Replies PM
Thursday	30 July 2026	[Reserve]
Friday	31 July 2026	[Reserve]