Neutral citation [2026] CAT 58

Case Nos: 1673/7/7/24
1408/7/7/21

<u>IN THE COMPETITION APPEAL TRIBUNAL</u>

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

9 July 2026

Before:

HODGE MALEK KC
(Chair)

Sitting as a Tribunal in England and Wales

BETWEEN:

PROFESSOR BARRY RODGER

<u>Class Representative / Interested Party</u>

\- v -

(1) ALPHABET INC.
(2) GOOGLE LLC
(3) GOOGLE IRELAND LIMITED
(4) GOOGLE ASIA PACIFIC PTE LIMITED
(5) GOOGLE COMMERCE LIMITED
(6) GOOGLE PAYMENT LIMITED
(7) GOOGLE UK LIMITED

<u>Defendants / Applicants</u>

(the ***Rodger*** **Proceedings**)

AND BETWEEN

ELIZABETH HELEN COLL

<u>Class Representative</u>

\- v -

(1) ALPHABET INC.
(2) GOOGLE LLC
(3) GOOGLE IRELAND LIMITED
(4) GOOGLE COMMERCE LIMITED
(5) GOOGLE PAYMENT LIMITED

Defendants

(the ***Coll*** **Proceedings**)

Heard remotely on 9 July 2026

RULING (DISCLOSURE) (NON-CONFIDENTIAL)

APPEARANCES

Robert O'Donoghue KC and Bethanie Chambers (instructed by Geradin Partners Limited) appeared on behalf of the Class Representative / Interested Party in the *Rodger* Proceedings.

Josh Holmes KC and Kassie Smith KC (instructed by Reynolds Porter Chamberlain LLP) appeared on behalf of the Defendants / Applicants.

Note: Excisions in this Judgment (marked "[✂]") relate to commercially confidential information: Schedule 4, paragraph 1 to the Enterprise Act 2002.

A. INTRODUCTION

1. This is the Tribunal's ruling on the Defendants' (**Google**) application under r. 89(1)(c) of the Competition Appeal Tribunal Rules 2015 (the **Tribunal Rules**) against [✂] ([✂]) dated 12 June 2026 (the **Application**), which was considered at a remote case management conference which took place on 9 July 2026 before Hodge Malek KC (the **July CMC**).

B. BACKGROUND

2. The application for a collective proceedings order (**CPO**) in the *Rodger* Proceedings was filed on 23 August 2024, seeking certification of the proposed collective proceedings on an opt-out basis on behalf of UK-domiciled app developers. The claim alleges that Google abused its dominant position on the Android app distribution market and on the licensable smart mobile operating system market by certain exploitative and exclusionary conduct. The *Rodger* Proceedings have a preliminary claim value of between £[✂] and £[✂].

3. On 25 September 2025, the Tribunal heard disclosure applications by both Professor Rodger and Google. The Ruling (Hodge Malek KC) sets out the disclosure to the date of that hearing and the basic principles as to disclosure being adopted in these proceedings: [2025] CAT 58 (the **September 2025 Disclosure Ruling**). In the September 2025 Disclosure Ruling the Tribunal bore in mind the stage at which the proceedings had reached, the necessity and proportionality of the categories of disclosure sought, and the costs and burden of the exercise. A disclosure request of Professor Rodger was dismissed on the basis that it had been raised at a late stage (at §69). Further, Google sought disclosure of documents in the hands of class members from Professor Rodger in respect of two categories of documents. That was also dismissed on the basis of the fact that they are not parties and documents were not in the control of Professor Rodger. It was pointed out that if Google was to seek disclosure from individual class members it would have to be by way of an application for non-party disclosure under r. 63 of the Tribunal Rules or against a represented person under r. 89(1)(c) of the Tribunal Rules (at §116).

4. A certification hearing took place on 6 March 2025, at which the Tribunal indicated it was minded to certify the *Rodger* Proceedings, subject to certain outstanding points. The CPO was made on 23 May 2025, and the Tribunal's written reasons were handed down on 6 August 2025 ([2025] CAT 45). Following certification, the *Rodger* Proceedings have been case managed with the *Coll* Proceedings, and a trial is listed to commence at the end of September 2026, with the precise timetable to be determined at the upcoming pre-trial review (**PTR**) listed on 31 July 2026. The PTR will be before the trial Tribunal chaired by the President.

5. On 27 February 2026, Google filed an application to vary the CPO in the *Rodger* Proceedings so that the claims of a limited number of larger app developers would proceed on an opt-in basis, with the balance of the class remaining opt-out (the **Variation Application**). At a hearing on 4 June 2026, the Tribunal issued its judgment refusing the Variation Application ([2026] CAT 49) (the **CPO Variation Judgment**).

6. In the CPO Variation Judgment, the Tribunal stated as follows in relation to refusing the Variation Application and the possibility of further evidence and disclosure from specific developers:

> "34. Even in the extremely unlikely case that all of these points could be overcome, the inevitable further hearings that would be required for disclosure, evidence and other consequential matters mean that the consequence of splitting the class at this stage will be to create a significant amount of further work for the parties and the Tribunal, which again we consider could not realistically be accommodated in the remaining time before the trial. We do not accept Google's submission that this could be resolved by moving some issues to be addressed in early 2027, after the trial has concluded. That would be entirely unsatisfactory in circumstances where the trial has been set down for a period of three months; this trial has already been delayed by a year in order to enable the Rodger and Coll claims to be heard together; and the expectation of all parties, including this Tribunal, is that all of the issues that are live in these proceedings should be addressed in the evidence and submissions at that trial.
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> […]
>
> 37. First, maintaining the proceedings on an opt-out basis does not mean that Google is left without procedural means to address the concerns which it says arise in relation to the claims of some of the developers in the class. Mr Holmes' position is that on any basis, whether Google's variation application succeeds or fails, limited and targeted

> disclosure will be required to address the discrete issues of whether certain developers fall within the class definition and/or have suffered actionable losses in the amount claimed on account of principal/agency relationships and/or intra-group arrangements. If that is the case, Google may make an application under Rule 89(1)(c), which provides for disclosure to be given by any represented person to any other represented person, the class representative or the defendant. Mr O'Donoghue KC accepts that an application is available to Google under that provision, whether the present proceedings are opt-in or opt-out.
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> 38. That application could, indeed, have been made at any time in the proceedings, and it is surprising that no such application has previously been made, if (as Google contends) the consequence of that disclosure might ultimately be that a large part of the claim volume falls away. If Google wishes to make that application now, it will need to do so very promptly, so that it can be addressed by the Tribunal and any disclosure provided by the relevant developers in good time before the trial."

7. The Tribunal issued directions in relation to Google's proposed disclosure applications by Order dated 4 June 2026 (the **4 June Order**): see §§15 to 18. In addition, the Tribunal issued directions in relation to the preparation of revised expert reports for trial (**Trial Expert Reports**), due on 22 July 2026: see §§6 to 8 of the 4 June Order.

8. On 10 June 2026, Google contacted various developers for the first time in writing, 13 of whom were contacted outside of working hours, and sought a substantive response by 5pm the following day, indicating that absent such disclosure Google would bring formal disclosure applications on 12 June 2026 (the **10 June Letters**).

9. On 12 June 2026, Google proceeded to file 17 disclosure applications (the **Disclosure Applications**), including the Application.

10. On 19 June 2026, Google's solicitors (**RPC**) wrote to the Tribunal enclosing an initial response from [✂] which Google suggests indicates that [✂] does not consider itself to fall within the class definition in the *Rodger* Proceedings and/or does not consider that it has suffered any loss in relation to the claims in the *Rodger* Proceedings.

11. On 23 June 2026, [✂] provided a written response opposing the Application and reserving its position as to whether it is properly treated as a represented person and/or class member for the purposes of the *Rodger* Proceedings. It noted that "Google appears to proceed on assumptions in that regard". On 23 June 2026, Professor Rodger's solicitors (**Geradin Partners**) wrote to the Tribunal in relation to the Application and filed a substantive response to the Disclosure Applications (including the Application) on 25 June 2026, as an interested party. On 26 June 2026, RPC and Geradin Partners filed further correspondence in relation to the Application. On 3 July 2026, in response to a request by the Tribunal dated 30 June 2026, [✂] estimated that it would take approximately two months for the relevant disclosure to be provided, from the date of any order, and a cost of approximately £30,000 depending on the scope of disclosure ultimately ordered, if any.

12. On 7 July 2026, Google and Professor Rodger filed skeleton arguments in advance of the July CMC. RPC on behalf of Google wrote to Professor Rodger with a significant narrowing down of the disclosure sought, which was represented in a draft order submitted by Google.

C. LEGAL FRAMEWORK

13. Pursuant to r. 89(1)(c), the Tribunal may order disclosure to be given by any represented person to any other represented person, the class representative or the defendant.

14. Disclosure before the Tribunal is governed by rr. 60 to 65 of the Tribunal Rules. The legal principles applied by the Tribunal in relation to disclosure are set out in the September 2025 Disclosure Ruling: see §§23 to 27. In summary, the relevant principles to be applied in relation to the Application are as follows:

    (1) A party's duty to disclose is limited to documents which are, or have been, in its control: r. 60(4) of the Tribunal Rules.

(2) When considering whether to order disclosure the Tribunal will have regard to the governing principle set out in r. 4 of the Tribunal Rules to ensure a case is dealt with justly and at proportionate costs.

(3) Orders for standard disclosure will not generally be made.

(4) Disclosure will be limited to relevant documents, ordinarily by reference to specific pleaded issues and specific categories of documents.

(5) Disclosure will be limited to what is reasonably necessary and proportionate having regard to a number of aspects, including: (i) the nature of the proceedings and the issues at stake; (ii) the cost and burden of providing such disclosure; (iii) whether the information can be obtained by alternative means or be admitted; (iv) the stage at which the proceedings have reached and the impact of any further disclosure on the timetable in the proceedings; (v) the conduct of both sides in seeking to resolve any issues as to disclosure; and (vi) the specific factors listed in r. 4(2)(c).

15. The Tribunal has jurisdiction to order disclosure from a class member either by way of non-party disclosure under r. 63 or by way of application under r. 89(1)(c). Neither is intended to be a means of obtaining general disclosure from a class member as opposed to a form of specific disclosure where individual documents or discrete categories of documents may be sought. Class members are not parties to the proceedings and non-party disclosure or r. 89(1)(c) disclosure should be carefully circumscribed so as not to impose too high a burden on class members. Unlike the class representative who will be funded and fully aware of the issues in the proceedings, in most cases the class member will have to bear the cost and burden of responding to such applications and may even need to engage lawyers to deal with them, subject to whatever costs order the Tribunal may make on applications.

16. In the context of r. 89, specific guidance has been given in *Ad Tech Collective Action LLP v Alphabet Inc. & Others* [2026] CAT 54 where the Tribunal

concluded that there is no requirement to show exceptional circumstances before a class member may be required to give disclosure:

> "91. Furthermore, we are not satisfied that when she described an order for class member disclosure as the exception not the rule, Ms Lucas was intending to lay down a principle that there must be a truly exceptional basis for disclosure before such an order can be made. Rule 89(1)(c) is not qualified in this way and this is not the way in which she herself exercised this case management power: see §§30–33 (above at §85). We understood her to mean that the fact that class members occupied a middle ground meant that it was necessary for the Tribunal to adopt an exceptional process in scrutinising and supervising the disclosure process. Indeed, this appears to have been the way in which the Court of Appeal understood her ruling: see §101.
>
> 92. But, if it was necessary for the Tribunal to be satisfied that there are exceptional grounds for disclosure, then she clearly considered the composition of the class and the limited number of LFOs from whom the defendant was asking for disclosure to be sufficiently exceptional to justify a limited carve out from the general principle: see §33. This conclusion is also supported by the reasoning in Evans. Large commercial organisations who stand to gain substantially from collective proceedings and who have the most "skin in the game" must be expected to engage with the process more fully than the smaller entities for whose benefit opt-out proceedings have been brought and certified."

17. The nature and membership of collective proceedings varies considerably in make-up and size. In proceedings where there are very large numbers of class members with relatively small claims the Tribunal may be very cautious before ordering disclosure by class members. This may impose a disproportionate burden on class members with small claims in relation to providing information which may not be particularly useful in resolving the issues between the parties.

18. However, there may be proceedings, such as the *Rodger* Proceedings, where certain class members represent a significant percentage of the substantial aggregate damages claimed. In such circumstances, these sophisticated parties may well have documents which shed important light on issues such as class membership and pass-on. Even in such cases applications for disclosure from non-parties need to be properly handled, generally after liaising with the class representative, and in a way that does not encourage class members to opt out of proceedings to avoid the burden and consequences of disclosure. Such applications should not be regarded as routine. Although there is no threshold requirement of exceptional circumstances that must be shown before an order

is made against a class member under r.89(1)(c), it is expected that any order must be justified as necessary and proportionate in order to fairly resolve the issues in the proceedings, and disclosure will be limited to specific documents and categories of documents as one would expect with any order for non-party disclosure.

19. As with non-party disclosure applications, in the ordinary case (absent unreasonable conduct or unreasonable opposition to an application), the applicant should be prepared to bear the costs of the application and to pay the respondent’s reasonable costs in responding to any application and in complying with any order, including legal costs. The class representative should be notified of any intended application and be able to comment on the process and the documents sought. In most cases the class representative can play a constructive role in dealing with the class members from whom disclosure is sought, and where the respondent wishes to oppose any order or its terms then in principle the Tribunal will be prepared to receive submissions from the class representative both in writing and at any hearing, in addition to the submissions from the respondent.

D. GOOGLE’S APPLICATION

20. Google initially sought disclosure of the following documents/categories of documents in relation to [✂] 2018 to 2024 financial years:

    (1) All intra-group sales, publishing, IP, licensing and development arrangements (however named) entered into between [✂] and (i) [✂] ([✂]), (ii) [✂] and (iii) any other entity within the [✂] Group.

    (2) All intercompany agreements entered into between [✂] and any other entity within the [✂] Group relating to (i) intragroup revenue share costs, and (ii) payments made or received by [✂] in respect of amounts recorded in [✂] financial statements as being owed by or to group undertakings.

(3) Copies of [✂] transfer pricing (i) Master File (however named) (i.e. the material providing an overview of the [✂] Group's business operations, transfer pricing policies and global allocation of income and economic activity), and (ii) UK Local File (however named) (i.e. the material supplementing the Master File providing details relating to specific intercompany transactions involving [✂]).

21. On 7 July 2026, RPC wrote to Geradin Partners, narrowing Google's requests to the following:

(1) The executed intercompany agreement(s) entered into between [✂] and [✂] (or any other [✂] Group entity) governing the revenue sharing arrangements between them / the revenue share costs charged to [✂]. Google seeks copies of executed agreements that have applied in [✂] 2022 to 2024 financial years.

(2) Copies of [✂] transfer pricing UK Local File (i.e. the material providing details relating to specific intercompany transactions involving [✂]). Google seeks copies of such material for [✂] 2023 to 2024 financial years.

E. THE PARTIES' SUBMISSIONS

(1) Google

22. Google states that the disclosure sought is relevant to the pleaded issues, in particular:

(1) Professor Rodger's Re-Amended Claim Form states:

> "201. The CR claims damages representing the loss caused by Google's breaches of statutory duty, i.e.:
>
> 201.1 the difference between the Commission in fact paid by the Class and the lower fees for the distribution of apps or in-app content which the Class would have paid (if any) absent the infringements set out herein; or

201.2 alternatively, the loss of the (real and substantial) chance that the Class would have had to pay lower fees for the distribution of apps or in-app content (if any), including the chances of benefitting from:

201.2.1 new entry by competitors (e.g. providers of alternative distribution channels); and

201.2.2 changes in Google Android device users' behaviour (e.g. through the increased use of direct downloading);

201.2A. to the extent that Google is successful in establishing any pass-on by the Class, losses arising from the consequential reduction in Relevant Sales; and

201.3 in any event, compound interest, or alternatively simple interest under section 35A of the Senior Courts Act 1981 and/or Rule 105 on such sums, for such period, and at such a rate as the Tribunal thinks fit."

(2) Google's Amended Defence states:

"149. As to ¶201:

(a) It is denied that Google has committed any breach of statutory duty or has caused any loss and damage to the class for the reasons set out in this Defence as alleged or at all. Without prejudice to the generality of the foregoing, it is averred that the class has not suffered, and will not suffer, any loss:

[…]

viii. The class (formed of UK-domiciled developers) is not entitled to recover any loss that has not, in fact, been incurred by them including because a member of the class acts as agent for another (non-UK domiciled) entity and/or because there are intra-group arrangements between a class member and one or more other (non-UK domiciled) entities which result in the class member not incurring any such loss.

(b) Further and in any event, the CR is put to strict proof as to:

[…]

xi. The UK domiciles of the entities who are said to fall within the class; and

xii. The extent to which class members have suffered losses including having regard to any agency arrangements and/or intra-group arrangements and/or obligations to parent entities and/or other group companies domiciled outside the UK."

[…]

151. ¶203 is noted save that:

a. It is denied, insofar as alleged, that any aggregate award of damages can be calculated without regard to situations where particular class members: (i) are domiciled outside of the United Kingdom (and so do not properly fall within the class and/or their claims for any losses are outside of these proceedings and/or the jurisdiction of the Tribunal); and/or (ii) have suffered no loss or a reduced loss in respect of the sales in question including having regard to any agency arrangements and/or intra-group arrangements and/or obligations to parent entities and/or other group companies domiciled outside the UK. It is averred that any award of damages must be calculated to take account of these matters.

[…]

154. Further or alternatively, the class cannot recover damages for loss which it did in fact avoid (including by passing on any overcharge, as to which see ¶152 above, and/or through agency arrangements and/or intra-group arrangements and/or obligations to parent entities and/or other group companies domiciled outside the UK, as to which see ¶149 above) or could have avoided by taking reasonable commercial steps to mitigate any loss…."[1]

23. Google considers that the material sought is necessary to dispose of the *Rodger* Proceedings, being required to establish whether [✂] falls within the *Rodger* class definition and/or has suffered recoverable losses and, if so, the amount of any such losses. Such requests are limited and narrowly defined, being targeted to three specific clearly defined categories of documents and/or data that will likely be readily retrievable from [✂] existing systems and/or records. The material sought is focused on discrete issues arising from [✂] publicly filed UK financial statements and the requests are formulated with a view to ensuring that they are proportionate.

24. Google states that publicly filed UK financial statements of [✂] during the Relevant Period (22 August 2018 to 22 August 2024: see §6(h) of the CPO) suggest that some or all of the alleged losses/revenues claimed by Professor Rodger on behalf of [✂] are not properly attributable to it for the purpose of the *Rodger* Proceedings, due to intra-group arrangements within the [✂] Group. Publicly available materials show that revenues [✂] receives from

[1] Professor Rodger disputes Google's pleaded position in §§10A to 10C of his Amended Reply.

Google are subject to a revenue sharing arrangement with its parent, [✂], which undertakes all of the development work of games published by the [✂] Group. It appears from [✂] published accounts that the vast majority of its revenues are allocated to [✂]. However, the extent of the revenue share arrangements cannot be ascertained purely from public records.

25. The issues raised by the Application, and the Disclosure Applications, are material to the quantum of the *Rodger* Proceedings. In aggregate, the issues associated with the losses claimed on behalf of the 17 developers from whom Google seeks disclosure affect c.£[✂] in claimed damages and c.[✂]% of the alleged claim value. The limited disclosure sought by the Application must be seen against the substantial value of [✂] alleged claim of c.£[✂] (using Professor Fletcher's lowest case scenario) or c.£[✂] (using Professor Fletcher's highest case scenario). The documents will be readily available or easy to locate given the references to them in the materials cited in the Application. Any concerns as to confidentiality can be protected pursuant to the Joint Confidentiality Ring Order dated 15 May 2025 in the *Rodger* and *Coll* Proceedings (the **JCRO**). Such material can be designated as "Non-Party Highly Confidential Material" pursuant to §§ 17 to 20 of the JCRO, with such material only being available only to Google's external legal counsel and independent experts, but not available to Google's in-house legal counsel or other employees.

26. The material sought by the Application is therefore needed to shed light on whether the revenues (and any resulting alleged loss) attributed in Professor Fletcher's modelling to [✂] as a class member should in fact be revenues allocated to [✂] under the applicable intra-group arrangements. In respect of such revenues, [✂] would not have suffered any loss; and any claim would lie, if at all, with [✂] to which the revenues were attributed under the revenue share arrangements and therefore fall outside Professor Rodger's claim.

27. Google states that the calculation of damages remains compensatory in nature: s. 47C(1) of the Competition Act 1998 (the **Act**). The quantum "should be calculated so that an award of damages does not overcompensate" the class, as was common ground in Gutmann v LSER [2022] EWCA Civ 1077 at §38

(***Gutmann CA***). Professor Rodger misunderstands the effect of s. 47C. Collective proceedings require the members of the class to have a claim under s. 47A of the Act. Section 47B of the Act does not of itself provide a cause of action. The provision for aggregate damages in s. 47C does not avoid these requirements, i.e. valid class membership and the completion of a cause of action, including actionable loss.

28. Therefore, any non-class members/unactionable losses must, as the Court of Appeal has put it, be "winnowed out": see *Gutmann CA* at §38. Where particular revenues (and any resulting losses) are not properly attributable to a UK-domiciled entity falling within the class, they should not be included in Professor Rodger's claim and cannot be used as a basis for calculating any alleged recoverable aggregate damages. This conclusion is not affected by the alleged "top down" nature of the damages calculation methodology used by Professor Fletcher.

29. Google's approach does not "compel" the Tribunal to consider the individual position of every class member. Google has taken a proportionate approach and limited the Disclosure Applications to 17 developers (out of the top 25) which appear from publicly available materials to have intra-group arrangements. Google has never suggested that the Tribunal needs to consider any of the other class members' individual circumstances.

30. In relation to the possibility of there being entities whose losses should be transferred into the class (i.e. the converse of the position regarding the 17 developers), it would be incumbent on Professor Rodger to identify any particular developers for whom he alleges any "transferring in issue" arises.

31. Google states that it cannot be faulted for having brought the Disclosure Applications alongside/very promptly after making the Variation Application and the resolution of that application. If developers had been required to opt in and decided not to do so, there would have been no need for disclosure from them.

32. In any event Professor Rodger is wrong to suggest that he suffers any prejudice on the basis that the trial date or trial timetable is jeopardised. There is sufficient time to receive and address the limited disclosure sought before trial in an orderly way that does not cause prejudice to Professor Rodger or the developers concerned as the legal consequences of intra-group arrangements will be a matter for submission. The disclosure is needed not for these broader legal questions but rather to work out what specific adjustments would be appropriate if Google's case on the legal significance of the arrangements is accepted. The detailed operation of the arrangements is not apparent from the public materials, as is common ground between Professor Rodger's and Google's experts. Any resulting adjustment to quantum would be a mechanical exercise and would not need to be done in the Trial Expert Reports, and all parties accept that the quantum calculations will need to be updated at or after trial in any event.

33. [✂] has indicated it may require up to two months to provide the disclosure sought and would therefore be available in advance of trial, allowing any issues of construction to be identified and addressed.

34. In addition, as set out above at §21, Google has since narrowed its requests and seeks only executed revenue-sharing agreement(s) that have applied in the financial years 2022 to 2024; and [✂] transfer pricing UK Local File (i.e. the material providing details relating to specific intercompany transactions involving [✂]) for the 2023 and 2024 financial years. No issue of privilege should arise in relation to these documents and disclosure ought to be possible within two to three weeks at most.

35. Google disputes the suggestion that there is anything inappropriate or unusual about it seeking disclosure from a limited number of developers, including [✂], or the manner in which it has done so. There is nothing in the Disclosure Applications designed to deter developers' continued involvement in these proceedings. The Disclosure Applications have been brought to address a key, pleaded issue between the parties, which has significant implications for quantum. The developers are large, well-established and sophisticated entities with substantial alleged claims, including in the context of opt-out proceedings. The Disclosure Applications have been made in accordance with 4 June Order

and there is no general prohibition on a defendant in collective proceedings communicating with class members.

36. In relation to costs, Google confirms that it: (i) is prepared to pay the reasonable and proportionate costs incurred by [✂] in providing the disclosure; and (ii) does not seek the costs of and occasioned by the Application from [✂] (or any other developer). Google does, however, reserve its rights to seek costs from Professor Rodger in respect of additional costs of and occasioned by his response to the Disclosure Applications, given that that Response has raised many lengthy objections beyond those raised by [✂] itself.

(2) [✂]

37. [✂] objects to the Application and states that the disclosure sought is of highly sensitive internal group material which goes to the core of the [✂] Group's commercial model, IP structure, internal pricing, tax compliance, revenue allocation and business strategy. Disclosure of such material would be highly prejudicial and cannot be justified merely by reference to broad assertions as to relevance. The request for transfer pricing documentation is particularly inappropriate. Such documentation is prepared for tax compliance purposes and contains sensitive information.

38. [✂] considers the Application to be overbroad and disproportionate. The Application is not limited to specific documents directly necessary for the determination of any pleaded issue but instead seeks wide categories of internal group documents over a period of several years. The disclosure sought is excessive and goes well beyond what could properly be regarded as targeted disclosure. [✂] notes that Google appears to be targeting documents based on inferences drawn from publicly available financial statements and the existence of intra-group revenue share arrangements. That does not justify the production of broad categories of confidential IP, commercial and tax documentation. The issue of whether any loss is properly attributable to [✂] could be addressed, if necessary, by less intrusive means, such as a limited explanation of the relevant intra-group model or narrowly defined information, rather than wholesale disclosure of sensitive group documents.

39. As stated above, [✂] reserves its position as to whether it is properly treated as a represented person and/or class member for the purposes of the *Rodger* Proceedings. [✂] has not advanced any individual claim against Google and, as a non-party or alleged represented person, it should not be required to disclose highly confidential internal group documentation unless the Tribunal is satisfied that it is strictly necessary and proportionate.

40. The requested disclosure may include granular non-public information concerning the [✂] Group's revenue allocation, IP structure, transfer pricing policies, tax position, profitability, margins, internal forecasts, cash-generating units and business strategy. Such information may not only be relevant to [✂] but also [✂], as the listed parent company, and to the wider market-facing reporting, governance and disclosure framework applicable to the group. [✂] states that any disclosure of such material to Google, a major commercial counterparty and market participant in the mobile games ecosystem, would create risks which go beyond ordinary confidentiality concerns.

41. [✂] contends that the existence of a confidentiality ring does not cure the defects in the Application. While appropriate confidentiality protections would be essential if any disclosure were ordered, confidentiality protections are not a substitute for satisfying the requirements of relevance, necessity and proportionality. The risk arising from disclosure of commercially and tax-sensitive material to Google cannot be fully undone once disclosure has taken place.

42. In the alternative, should the Tribunal be minded to order any disclosure, [✂] submits that any disclosure should be materially narrowed and should exclude transfer pricing documentation, group-wide IP and development documentation, historical drafts and superseded versions, and documents not within [✂] possession, custody or control. Any disclosure should be limited to strictly necessary documents, subject to appropriate redactions, designated as Non-Party Highly Confidential Material pursuant to the JCRO, and accessible only to a tightly restricted external counsel and independent expert ring, with no access for Google's in-house personnel.

(3) Professor Rodger

43. Professor Rodger considers Google's egregious conduct to be a compelling reason for rejecting the Application (and the Disclosure Applications) as the applications are a cynical and oppressive attempt by Google to derail Professor Rodger's substantial opt-out claim on the eve of trial. The way Google has pursued the Disclosure Applications is tantamount to an abuse of process that would, if accepted, amount to a serious threat to the legislative objectives underpinning the collective proceedings regime.

44. By its Variation Application, Google sought to undermine the claim by requiring 25 developers with the larger claims from opt-out proceedings to opt-in at the 11^{th} hour, in an attempt to render the *Rodger* Proceedings unviable. In the CPO Variation Judgment, the Tribunal identified that the proximity of the trial "means that excising the largest claimants from the class would fundamentally alter the viability of funding, leading to a real risk of the collapse of the *Rodger* Proceedings" and that "the inevitable further hearings that would be required for disclosure, evidence and other consequential matters mean that the consequence of splitting the class at this stage will be to create a significant amount of further work for the parties and the Tribunal, which again we consider could not realistically be accommodated in the remaining time before the trial": see the CPO Variation Judgment at §§33-34.

45. Professor Rodger suggests that having failed to knock out the claim directly by its Variation Application, Google is now attempting to achieve the same result indirectly via the Application/Disclosure Applications, in a striking, oppressive and dilatory manner. In relation to the 10 June Letters, Google must have been aware that the developers concerned would have been wholly unable to obtain specialist legal representation on matters raised in less than 24 hours. Professor Rodger considers such an approach was deliberate to cause maximum chaos and alarm. The 10 June Letters consistently sought extremely sensitive information and, in relation to one developer, Google threatened to seek its costs should it not provide the disclosure sought voluntarily. In light of Google's approach as set out in the 10 June Letters, the Tribunal set out its expectations in relation to any future communications with members of the class, by letter dated 19 June 2026.

46. In any event, Google's oppressive strategy prompted DAZN Group Limited to opt out of the claim and, following the disclosure requests, there have been further requests to opt out of the *Rodger* Proceedings.

47. Professor Rodger submits that the Application is unjustifiably late and Google was, or should have been, aware of its alleged need for this disclosure years, and certainly months ago:

(1) Google knew, or should have known, from either: (i) Professor Fletcher's first expert report dated 21 August 2024, or (ii) its own transaction data that it has always had and which was disclosed to Professor Rodger in summer 2025 (the **Rodger Transaction Data**), that significant amounts of damages would be attributable to a small number of developers.

(2) Google cannot suggest that the Disclosure Applications are responsive to new expert evidence and it acted swiftly in issuing the Disclosure Applications after filing Professor Easton's second expert report on 7 April 2026 (**Easton 2**). The new arguments in Easton 2, which are said to form the basis of the Disclosure Applications: (i) did not originate with Professor Easton, but from instructions from Google; (ii) were not prompted by Google obtaining access to previously unseen material; and (iii) stem from public material, which was always available to Google (and its expert).

(3) In any event, Google did not act swiftly as the Disclosure Applications were not issued until over two months after Easton 2 was filed, and over four months after Google first raised the issue in correspondence.

48. In addition, Google has delayed making the Disclosure Applications for at least one year. It was well aware of the need for such disclosure applications at the CMC on 1 May 2025. In its skeleton argument for the 1 May 2025 CMC, Google proposed a date of 7 July 2025 to submit any requests for disclosure for from members of the class in the *Rodger* Proceedings. This highlights that

Google was well aware of the need to make prompt disclosure requests from members of the class at that stage, given the tight timetable to trial.

49. Google sought disclosure of class member documents from Prof Rodger relating to pass-on and mitigation on 25 July 2025. In the September 2025 Disclosure Ruling, the Tribunal confirmed that Google should have sought disclosure directly from class members pursuant to r. 63 and/or r. 89(1)(c) of the Tribunal Rules but noted that, in any event, disclosure of the kind Google sought was "not encouraged at this comparatively late stage": see September 2025 Disclosure Ruling at §135. Google had been given clear guidance by the Tribunal as to the correct procedural route for seeking disclosure and such disclosure was already considered late at the date of the September 2025 Disclosure Ruling. Despite this, Google waited a further nine months before making the Disclosure Applications.

50. Professor Rodger emphasises that Google could have made the Disclosure Applications at a much earlier stage of the proceedings and chose not to do so. The Tribunal observed that these disclosure applications "could, indeed, have been made at any time in the proceedings, and it is surprising that no such application has previously been made": see CPO Variation Judgment at §38. The lateness of the Disclosure Applications is entirely of Google's own making and weighs very heavily against the grant of any disclosure.

51. Professor Rodger submits that any disclosure ordered by the Tribunal cannot be fairly factored in during the compressed timetable to trial, with the PTR due to take place on 31 July 2026, and the trial date would inevitably be disrupted. It would be essential for any new disclosure to be addressed by the parties' expert reports but there are serious practical and procedural fairness issues with seeking to address the wide range of disclosure that Google is now seeking through the Trial Expert Reports. The purpose of the Trial Expert Reports is to summarise the experts' past reports, in relation to disputed issues, to narrow and focus the experts on the matters most relevant for trial. The purpose of the Trial Expert Reports is not to introduce swathes of entirely new and contested areas of analysis which risk de-railing the process.

52. It would be highly prejudicial to allow Google to obtain disclosure of the material they seek at this late stage in the proceedings when it will not be realistically possible for Professor Rodger to properly address that material at trial through obtaining further evidence. If Google is correct that transfer pricing documentation is important, that merely underscores the prejudice caused by its delay since understanding the documents would require a wholly new area of expert investigation at a point when the parties' experts should be finalising their trial reports and preparing for trial. If Professor Rodger were allowed the requisite time to address this material it would disrupt the trial date.

53. Professor Rodger states that Google's disclosure requests, as set out in the Application and the Disclosure Applications generally, appear to target highly confidential material. Such requests are disproportionate and unnecessary, for the reasons identified by [✂] above at §38.

54. The disclosure sought is not necessary for the fair disposal of the issues in the proceedings as the information sought cannot be usefully deployed in the context of the *Rodger* Proceedings. Pursuant to s. 47C(2) of the Act, the Tribunal may make an award of damages in collective proceedings "without undertaking an assessment of the amount of damages recoverable in respect of the claim of each represented person." To date, the experts' methodologies have proceeded, in substance, with a "top-down" approach to estimating class-wide loss, through the proxy of the Rodger Transaction Data, rather than a "bottom-up" approach of identifying every class member *ab initio* and calculating how much loss each has suffered.

55. The disclosure now sought by Google relates to developers' individual circumstances. However, the legal principles are clear that not only is it not necessary to approach the aggregate damages calculation in a "bottom-up" manner, but such an approach should not be adopted in collective proceedings. Google's proposed "bottom-up" approach is flawed, including because it does not take into account the position of the rest of the (by Google's count) [✂] class members, whose structures may be very different to the 17 developers selected by Google. Google does not say the 17 developers constitute a representative sample, nor has Google identified any methodology capable of explaining how an analysis conducted in relation to the 17

developers could properly be extrapolated to the wider class of [✂]. Even if conclusions could be drawn in relation to particular developers, there is no reason to assume that those conclusions would hold true for the remaining [✂] class members.

56. Google also seeks one-way information. If disclosure on intra-group transactions is necessary and proportionate, it should include any losses transferred into the class, and not merely, as Google proposes, alleged transfers out of the class. This asymmetric approach is also a reason why the disclosure cannot fairly be accommodated within the current trial timetable and why it is disproportionate.

57. The disclosure sought is disproportionate for the reasons identified by [✂] and there has been no attempt by Google to limit the requested documents to what is necessary (see §38 above). Google has not explained, let alone justified, why such wide disclosure is necessary. On the contrary, the oppressively wide nature of the requests appears designed to deter the targeted developers from remaining class members rather than to obtain information actually necessary to advance Google's defence.

F. ANALYSIS

58. In determining the Application, the Tribunal considers that the main aspects that need to be focused on are as follows:

(1) relevance;

(2) specificity and scope of the disclosure sought;

(3) the stage at which the proceedings have reached; and

(4) whether the disclosure is reasonably necessary and proportionate.

(1) Relevance

59. The documents sought do fall within the issues on the pleadings. They fall within the matters pleaded at paragraphs 149(a)(viii), 149(b)(xi) and (xii), 151(a), and 154 of the Amended Defence (see above at §22). These points are

not in the original Defence, which was filed on 25 April 2025, but they had been introduced by amendment on 13 March 2026.

(2) Specificity and scope of disclosure sought

60. The Application as originally filed on 12 June 2026 sets out in an annex the three categories of requests sought, the period for which disclosure is sought and the relevance:

No.	**Documents to be disclosed by [✂]**	**Date range of documents to be disclosed by [✂]**	**Relevance to Prof. Rodger's and Google's pleaded cases**
1.	All intra-group sales, publishing, IP, licensing and development arrangements (however named) entered into between [✂] and (i) [✂], (ii) [✂] and (iii) any other entity within the [✂] Group.	Copies of all versions in place in [✂] 2018 to 2024 financial years.	The intra-group sales, publishing, IP, licensing and development arrangement(s) (however named) are relevant to the issue as to whether any loss has, in fact, been suffered by a UK-domiciled entity ([✂]), as Prof. Rodger is required to establish under the class definition, and whether [✂] has suffered any recoverable losses and, if so, the extent of any such loss. This is directly relevant to Google's position at paragraphs 149(a)(viii), 149(b)(xii) and 154 of its Amended Defence (and Prof. Rodger's pleaded position in paragraphs 10A to 10C of his Amended Reply which disputes such matters).
2.	All intercompany agreements entered into between [✂] and any other entity within the [✂] Group relating to (i) intragroup revenue share costs; and (ii) payments made or received by [✂] in respect of amounts recorded in [✂] financial statements as being owed by or to group undertakings.	Copies of all versions in place in [✂] 2018 to 2024 financial years.	To the extent they differ from the documents in request 1, the documents relating to intragroup revenue share costs and payments owed by or to group undertakings, are also relevant to the issue as to whether any recoverable loss has, in fact, been suffered by [✂]and, if so, the extent of any such loss. They are, therefore, also relevant to Google's pleaded position at paragraphs 149(a)(viii), 149(b)(xii) and

			154 of its Amended Defence (and Prof. Rodger's pleaded position in paragraphs 10A to 10C of his Amended Reply which disputes such matters).
3.	Copies of [✂] transfer pricing (i) Master File (however named) (i.e. the material providing an overview of the [✂] Group's business operations, transfer pricing policies and global allocation of income and economic activity), and (ii) UK Local File (however named) (i.e. the material supplementing the Master File providing details relating to specific intercompany transactions involving [✂]).	Copies of all versions in place in [✂] 2023 to 2024 financial years and, to the extent they were in place, copies of all versions in place in [✂] 2018 to 2022 financial years.	[✂] transfer pricing Master File and UK Local File (however named) will provide details of the [✂] Group's business operations, transfer pricing policies and global allocation of income and economic activity. That material is relevant to the issue as to whether any recoverable loss has, in fact, been suffered by [✂] and, if so, the extent of any such loss. That material is, therefore, also relevant to Google's pleaded position at paragraphs 149(a)(viii), 149(b)(xii) and 154 of its Amended Defence (and Prof. Rodger's pleaded position in paragraphs 10A to 10C of his Amended Reply which disputes such matters).

61. [✂] was asked by a letter from the Tribunal dated 30 June 2026 to estimate how long it would take to list and disclose all of the material requested by Google in the Application and the likely cost of disclosing such material. By email dated 3 July 2026, [✂] estimated that the process of identifying, reviewing, listing and disclosing the material would take up to approximately two months from the date of any order requiring disclosure and a cost of up to £30,000 approximately.

62. It is not uncommon for requests for disclosure to be narrowed down either by agreement or by the applicant removing or refining categories by the time disclosure applications are heard. In the present case, the draft order submitted by Google on 7 July 2026 along with its skeleton argument is significantly narrower than the Application itself. In RPC's letter dated 7 July 2026, Request 1 is dropped altogether and Requests 2 and 3 are narrowed as follows:

"***Request 2: All intercompany agreements entered into between*** [✂] ***and any other entity within the*** [✂] ***Group relating to (i) intragroup revenue share costs; and (ii) payments made or received by*** [✂] ***in respect of amounts recorded in*** [✂] ***financial statements as being owed by or to group undertakings.***

5. Google further narrows this request to seek disclosure only of "*the executed intercompany agreement(s) entered into between* [✂] *and* [✂]. *(or any other* [✂] *Group entity) governing the revenue sharing arrangements between them / the revenue share costs charged to* [✂]."

6. As regards the time period for the request, Google seeks copies of executed agreements that have applied during the three most recent financial years (i.e. 2022, 2023 and 2024). This narrowing is proposed on the basis that such executed agreements are representative of the relevant period covered by the claim advanced by Prof. Rodger on [✂] behalf. In this regard, Google's position is that the Tribunal and the parties should proceed on that basis, absent any written explanation from [✂] to the contrary, setting out what material changes and alternative arrangements were in place during the balance of the relevant period (i.e. in the financial years 2018 to 2021, inclusive), to be verified by a statement of truth from a Director of [✂]. Google reserves its right to raise further queries of [✂] in this regard should that prove necessary.

7. As Google's request is limited to executed agreements, there should be no issue as to the existence of any privileged material in respect of this request. In addition, as previously noted, Google proposes that the executed agreements be designated as 'Non-Party Highly Confidential' (i.e. the highest tier of confidentiality protection under the JCRO) in their entirety.

Request 3: Copies of [✂] ***transfer pricing (i) Master File (however named) (i.e. the material providing an overview of the*** [✂] ***Group's business operations, transfer pricing policies and global allocation of income and economic activity), and (ii) UK Local File (however named) (i.e. the material supplementing the Master File providing details relating to specific intercompany transactions involving*** [✂]***).***

8. Google is content to confine this request to the UK Local File (i.e. providing details relating to the specific intercompany transactions involving [✂]), and only for the 2023 and 2024 financial years.

9 Such documentation sets out a description of [✂], the inter-group transactions to which it is a party, and its relevant financial information. It is therefore directly relevant to the pleaded issues in the Rodger Proceedings.

10. As the relevant documentation is maintained for provision to HMRC, there should be no issue of legal privilege in respect of this request. In addition, Google proposes that this material would also be designated as 'Non-Party Highly Confidential' in its entirety.

<u>Conclusion</u>

11. Google is therefore maintaining only two narrow document requests: (1) specific intra-group agreements executed between [✂] and [✂] (or any

> other [✂] Group entity) for a 3 year period (which we anticipate may amount to only a single document, or a handful of documents at most); and (2) the UK Local File for the last two financial years (which we anticipate may amount to only two documents, or a handful of documents at most).”

63. It was also confirmed that Google was not seeking the costs of the Application from [✂] and it would pay [✂] reasonable costs of providing the disclosure.

64. At the hearing, Mr Holmes KC, on behalf of Google, confirmed that Google was prepared to pay the reasonable costs of and occasioned by the application itself, including the taking of legal advice, as well as the costs of collating and getting the documents together. That will also include the costs of preparing an explanatory statement if [✂] considers it would like to file one. Of course, to do that, no doubt, it would need the advice of an external solicitor. The Tribunal envisages the costs of providing the disclosure sought and of preparing an explanatory statement, if so advised, may well still be in the region of £30,000, even though the request has narrowed since the estimate was provided by [✂].

65. The Tribunal considers that the Application, as filed on 12 June 2026, was far too wide, and it would have been unduly burdensome to comply. As a non-party, with little or no prior involvement in the proceedings, to have a request like the present in the run up to trial would be a substantial task to comply with.

66. As regards the revised Application, the Tribunal considers that Request 2 is sufficiently precise and specific. It is important with applications for disclosure against non-parties that any request should be either for specific individual documents or classes of documents, in a way that it is clear that the documents can readily be identified. The period has been narrowed to the most recent financial years (i.e. 2022, 2023 and 2024). However, the assumption sought in paragraph 6 of the RPC letter dated 7 July 2026 adds a further aspect of complexity and would in effect require [✂] to carry out a review to satisfy itself that the arrangements for the earlier periods (i.e. 2018 to 2021) were not materially different from the periods that are being disclosed, 2022 to 2024. For this process, [✂] may well feel that the material would need to be reviewed in some detail with external counsel and would need to seek and obtain advice on the form and the content of any accompanying statement.

67. As regards Request 3, it is said by Google that this would entail the disclosure of only two documents, or a handful at most. The Tribunal is not convinced that this is necessarily correct, in the sense that even if it is only contained in two documents, the documents themselves may in fact be lengthy, complex, and contain a significant amount of information. It may well be that there's a great deal of backup documents, which would need to be disclosed at the same time, to make any sense of the material being provided.

68. The fact that it may not be a straightforward and simple exercise to provide off-the-shelf the information is reflected in the Macfarlanes letter dated 3 July 2026, on behalf of another developer. The Tribunal is nevertheless satisfied that the revised Application is sufficiently specific in the case of [✂] that it should not be dismissed on a lack of specificity terms.

(3) The stage at which the proceedings have reached

69. There is no doubt that the Application was taken out and is being heard at a late stage in these proceedings. In particular:

(1) At the hearing on 25 September 2025, Google sought disclosure of two categories of class member documents from Professor Rodger. It was made clear that the documents were not in the control of Professor Rodger, and there were more direct routes to seeking such documents from class members, in particular, non-party disclosure under r. 63 and represented person disclosure under r. 89. Despite that, it was not until 12 June 2026 that Google filed 17 disclosure applications against the developer class members, representing 17 out of the largest 25 class members in the *Rodger* Proceedings.

(2) Both factual and expert evidence have been filed for the trial, which has been listed for some time. The trial is due to commence on 28 September 2026, the first week being designated as a reading week, which is just over two months away.

(3) The PTR is listed to take place on 31 July 2026, and it is doubtful that even if [✂] is able to produce the documents sought by then, the parties and their experts will have been able to finalise their position on the significance of and how they are going to deal with all this additional material. Applications so close to trial require particular scrutiny, because they may impact on the preparation for trial, entail further factual and expert evidence, and have a risk that the trial itself may be disrupted, including preparation for the trial. It may be that the trial will have to be adjourned if the trial Tribunal allows the material in, or that this may have to be heard later separately from the main trial.

70. However, whilst there are numerous examples in practice where late applications for disclosure have been dismissed on the grounds of timing, it does not automatically follow that applications heard at a late stage will be refused on that ground alone. Sometimes a need for disclosure arises between the parties even during the trial, such as where a witness refers to documents which had not been disclosed in the proceedings and the court may make an order for disclosure of a specific document or category of documents.

(4) Reasonableness and proportionality

71. The Tribunal will only order non-party disclosure (including under r. 89(1)(c)) if it is satisfied that such disclosure is reasonably necessary and proportionate. Reasonably necessary for this purpose is reasonably necessary for the fair trial of these proceedings. It is evident that Google is seeking the disclosure against [✂] and 15 other class member app developers so that this may be used at trial. Google envisages that the material will be placed before the Tribunal and the parties can make submissions on the basis of their content, without further comment by the relevant class member or further witness or expert evidence.

72. Mr O’Donoghue KC, on behalf of Professor Rodger, disputes this, highlighting that the material being produced may be extremely complex. It is not simply a question of looking at the data and feeding it into the value of commerce. Mr O’Donoghue considers that it may be necessary to get factual evidence. To address the new material, a statement may have to be taken from each of the

relevant developers who produce disclosure. Mr O'Donoghue KC also suggests that expert evidence may be needed to analyse the material, including the question of transfer pricing, which is a very complex area in itself, as evidenced by the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* issued in January 2022. Mr O'Donoghue suggests that the expertise may not, in fact, be expertise held by the expert currently retained on behalf of Professor Rodger. It may be necessary to seek to obtain expertise from other experts, including perhaps a taxation expert.

73. Various specific factors are particularly relevant in determining reasonableness and proportionality. These include:

(a) the burden of providing the disclosure sought by [✂];

(b) the burden on Professor Rodger in having to review and deal with the disclosure;

(c) the timing of the Application;

(d) the conduct of the parties;

(e) the ability of both sides to pursue their cases at trial, with or without the disclosure; and

(f) fairness.

(a) The burden of providing the disclosure sought on [✂]

74. As regards the burden on the class member, the Tribunal considers that the burden on the class member is not such that it is so excessive that it is a reason for dismissing the Application. However, the Tribunal does accept it will take time, will entail costs and probably requires the involvement of a solicitor, including obtaining advice on whether any information statement should be provided with the material. That burden is not simply a question of finance.

There will be an element of disruption for the class member in dealing with the Application.

75. There is one aspect which has been raised by [✂], as well as by other developers, which is that the material sought is highly confidential and that such material's confidentiality will need to be maintained. Google's response is that this material will go into the highest level at the JCRO and will not be seen by Google itself. The Tribunal considers that does deal with the confidentiality concerns in a way that reflects a fair balance between the interests of the disclosing party and the interests of the administration of justice to have potentially relevant material deployed at trial.

(b) The burden on Professor Rodger in having to review and deal with the disclosure

76. Professor Rodger is preparing for trial. In the run up to trial, anyone experienced in dealing with large cases will appreciate that there is a limited amount of resources. The relevant legal teams are working extensively and there is a whole host of things to prepare, including trial bundles, preparing the factual and expert witnesses, and refining the material. That burden is substantial in collective proceedings, such as the present, and this is a very substantial claim. The burden will significantly be increased in the present case by the potential introduction of material from 16 developers, the need to obtain legal advice on any material that is obtained, instructing experts, and making enquiries of the disclosing parties. That may entail having to prepare further witness statements, and it is likely to result in preparing further expert evidence.

77. The expert reports that the Tribunal has already seen are already lengthy. It is easy to understand that dealing with the position of 16 developers could entail a significant amount of additional work. However, it is unclear to the Tribunal at this stage how much work that will in fact be. The Tribunal is nevertheless satisfied that there will be a significant burden on Professor Rodger and his legal team and experts in dealing with this material.

(c) The timing of the Application

78. As the Tribunal has already indicated above, the Application is being made at a late stage very close to trial. The Tribunal does consider that there is a real risk that this material cannot be analysed, absorbed and covered by whatever further evidence is necessary by the beginning of trial. It will have an impact on the preparation of trial and may well lead to a need for further factual and expert evidence.

(d) The conduct of the parties

79. This Tribunal is particularly keen that disclosure exercises are managed properly and in a particular way. At the September 2025 hearing, the Tribunal dealt with complicated requests for disclosure which had been refined using a Redfern Schedule process. The Tribunal made its ruling dealing with the remaining issues of disclosure between the parties.

80. That process has not been replicated on the present Application. The Application has been made without any consultation with Professor Rodger, who would be the best person to help at least manage this process, and it has been imposed on the 17 developers with effectively very little notice. The respective developers received a letter whereby they were asked to respond within a very short period of time.

81. The Tribunal has no criticism at all of the conduct of Professor Rodger in dealing with what is a rather unfortunate and difficult situation. As regards Google, there are arguments that they could have done it better, and the Tribunal has no doubt at all it could have been better handled had more time been available. However, what has happened is there has been a compression in the timetable to trial. Google had an amendment to its Defence approved by the Tribunal and amended their pleadings on 13 March 2026. There is an argument that such amendments could have been pursued earlier. Mr O'Donoghue KC highlighted the fact that there may have been transfer pricing or money being exchanged between group companies is pretty obvious in the industry. Google itself would know who the main developers are because they are, after all, their

clients and the financial statements which have been relied on, certainly those mentioned in the Application, have been in the public domain. This is reinforced by the fact that Professor Easton and Mr Harman considered them in their second expert reports filed in April and May 2026.

82. The Tribunal is not too critical of Google in amending its defence as late as March 2026 to introduce the issues in the proceedings to which the disclosure sought relates, because these things happen in complex litigation and sometimes the significance of points may not be fully understood until later in the proceedings. This appears to be what has happened. Where the Tribunal considers that Google may have done better is in relation to this Application. It was brought only on 12 June 2026, without proper consultation with Professor Rodger, the 16 App developers were given very little notice, and the app developers were by and large not content to give the disclosure sought, were concerned about the burden of disclosure and maintaining confidentiality in very sensitive commercial information. Indeed it has led to some considering to opt out of the proceedings altogether. The lateness and way the Application has been brought do have consequences and it is very unfortunate that we are in the current position. The Tribunal does not accept on the material it has considered on this Application, that the 17 applications are part of a deliberate attempt to disrupt or derail the proceedings. Had the Tribunal determined that the Application and the other Disclosure Applications have been brought for the collateral purpose of inducing App developers to opt out of the proceedings, then on that ground the Tribunal would have refused the Application.

(e) The ability of both sides to pursue their cases at trial, with or without the disclosure

83. As regards Professor Rodger, the ability for him to pursue his case at trial on behalf of UK app developers is arguably affected. He has the preparations for trial and will have to get his experts and factual witnesses prepared. It is a very short period between now and the commencement of trial. Having to deal with potential disclosure from represented persons is going to take time and may affect his and his team's ability to prepare for trial by having to consider related issues and any further material.

84. On the other hand, the amendments have been approved by the Tribunal, and in the CPO Variation Judgment the Tribunal did envisage that there may be further disclosure applications (see §34, set out above at §6). In any event, it would have been evident to all concerned that it was likely that there would be further disclosure applications once the pleading had been amended on 13 March 2026.

85. However, the Tribunal can see that it would be difficult for Google to pursue properly, or at least adequately, its amended case on these aspects for which it has been granted permission to amend. Merely working from financial statements publicly available would provide only an incomplete picture. Very large sums are involved in the *Rodger* Proceedings; these are big claims. Google contends that there may be certain developers that have been included in the class who should not have been included on the basis that they have suffered no loss. Or at least certain claims and volume of commerce which have been included for various major app developers in circumstances where they should not have been included due to intra-group arrangements and transactions. The validity of such an argument will be an issue for trial.

86. The Tribunal has to stand back bearing in mind all the circumstances, with the potential prejudice to both sides in the balance and decide what is going to be a fair and proportionate outcome on this Application. Had I been the trial Chair for these proceedings I would have been prepared to have come to a final view as to how this information may be used or deployed at trial, if at all. In addition, I would have determined whether I would be willing, if need be, either to adjourn the trial or to direct these issues be dealt with separately at a further hearing after the trial window.

87. However, I am not part of the trial Tribunal in this case. That puts me in an invidious position because if I refuse the disclosure today it may effectively permanently shut the door on Google from running its defence on an aspect for which it has been granted permission to amend.

(5) Conclusion

88. In light of the above, I am prepared to make an order in respect of the documents sought against [✂] in the revised Application of 7 July 2026, as set out above at §62. The documents are relevant to the issues in the Amended Defence, it would not be unduly burdensome to produce, [✂] can be compensated in costs, and disclosure is reasonably necessary and proportionate for the fair resolution of those issues.

89. Within that, [✂] has liberty to file an explanatory statement explaining the material which is being disclosed and will be awarded the reasonable costs of the exercise of dealing with the Application and getting advice on the documents to be disclosed and any possible explanatory or information statement. Those reasonable costs will be paid by Google.

90. In making this order, I am making it clear that I am not prejudging any decision the trial Tribunal may take at the PTR on 31 July 2026, or any other occasion, on whether or not this material should be admitted for trial; what further factual or expert evidence may be admitted or needs to be admitted; or whether the issues to which the Application relates should be heard separately or later than the main trial starting in September 2026.

G. COSTS

91. Google shall pay [✂] reasonably incurred costs in responding to the Application and searching for and providing disclosure, including any information or explanatory statement and taking legal advice on the same. These costs if not agreed may be assessed summarily by the Tribunal on application by [✂], which can be dealt with on paper.

92. As regards the costs of the Application as between Professor Rodger and Google, the Tribunal directs that the costs of Professor Rodger be costs in the case.

93. The reason for this is that Professor Rodger is in the best position to argue the points on the Application, as opposed to [✂], and was included as an interested party for the purpose of the Application. It was critical to hear his submissions, not just in relation to what documents should be disclosed, but also what is the impact of all this and where we go from here. Therefore, in those circumstances, Professor Rodger's costs be costs in the case.

H. DISPOSITION

94. The revised Application is granted:

(1) [✂] shall provide the agreements sought pursuant to the revised Application within two weeks of the date of this ruling.

(2) [✂] shall provide the remaining disclosure, and any explanatory statement, within five weeks.

95. Google shall pay [✂] reasonably incurred costs in responding to the Application and in searching for and providing the disclosure, including any explanatory statement.

96. Professor Rodger's costs of the Application be costs in the case.

Hodge Malek KC
Chair

Charles Dhanowa CBE, KC (Hon) Date: 9 July 2026
Registrar