



Neutral citation [2026] CAT 76

Case Nos: 1673/7/7/24

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

9 October 2026

Before:

JAMES WOLFFE KC
(Chair)
ROBERT HERGA
HUGH KELLY

Sitting as a Tribunal in England and Wales

BETWEEN:

PROFESSOR BARRY RODGER

Class Representative / Joint Applicant

- 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

Defendants / Joint Applicants

(the *Rodger Proceedings*)

Heard at Salisbury Square House on 15 and 16 September 2026

JUDGMENT (CSAO APPLICATION) (NON-CONFIDENTIAL)

APPEARANCES

Robert O'Donoghue KC, Anneliese Blackwood, Bethanie Chambers and Nicholas Bacon KC (instructed by Geradin Partners Limited) appeared on behalf of the Class Representative.

Kassie Smith KC (instructed by Reynolds Porter Chamberlain LLP) appeared on behalf of the Defendants.

Sarah Houghton (Partner at Mishcon de Reya LLP) appeared on behalf of Dream Games Publishing Limited.

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

A. INTRODUCTION

1. These are opt-out collective proceedings under section 47B of the Competition Act 1998. Professor Rodger, the Class Representative (the **CR**), seeks damages on behalf of UK-domiciled third-party app developers from Alphabet Inc. and a number of other companies in the same group (whom we shall collectively call **Google**). The proceedings have been jointly case managed along with opt-out proceedings brought by Ms Coll in case 1408/7/7/21 who seeks damages from Google on behalf of UK-domiciled consumer Android device users. The joint trial of these proceedings was listed to start on 28 September 2026 with an estimate of ten weeks.
2. On 25 August 2026, the Tribunal received a joint application (the **Application**) from the parties to these proceedings for a collective settlement approval order (**CSAO**) pursuant to r. 94 of the Competition Appeal Tribunal Rules 2015 (the **Rules**). The proposed settlement sum is £260 million, subject to adjustment in certain circumstances (the **Settlement Sum**). If approved, this will be the highest value settlement to date in collective proceedings before the Tribunal. The CR proposes to allocate £160 million of the Settlement Sum for distribution to class members and £100 million to payment of the fees, costs and disbursements of funders, ATE insurers, solicitors and counsel (collectively, the **Stakeholders**).
3. The Application was supported by the following documents:
 - (1) the proposed Settlement Agreement (the **Settlement Agreement**);
 - (2) a statement by the CR;
 - (3) a statement by David Gallagher, a partner at Geradin Partners Limited (**Geradin Partners**), who has conduct of these proceedings for the CR;
 - (4) a report from Angeion Group International (**Angeion**), who have been appointed by the CR to administer the claims and payment process, setting out the proposed distribution plan (the **Distribution Plan**);

- (5) a report from Fideres, setting out a proposed distribution methodology (the **Distribution Methodology**).

The Tribunal has also been provided, on the basis of strictly limited waivers of privilege, with an opinion of Mr O'Donoghue KC for the CR, and a joint opinion of Ms Smith KC and Mr Holmes KC for Google.

4. The Tribunal gave directions listing the Application for a hearing on 15 September 2026. Those directions required the CR to take specified steps with a view to bringing the application to the attention of Represented Persons and for permitted Represented Persons to make written submissions by 10 September 2026. The Tribunal received two written submissions, one on behalf of a developer which had previously applied to opt out of the proceedings and the other on behalf of Dream Games Publishing Limited (**Dream Games**), an app developer with a claim encompassed within these proceedings. Following receipt of these submissions the CR filed a revised Distribution Plan (the **Revised Distribution Plan**).
5. On 15 September 2026, the Tribunal heard Mr O'Donoghue KC and Mr Bacon KC on behalf of the CR and Ms Smith on behalf of Google. In light of an application received on the morning of the hearing on behalf of Dream Games to be allowed to make oral submissions, we also heard from Ms Houghton on behalf of that company.
6. In light of certain questions from the Tribunal, the parties agreed revisions to the Settlement Agreement and the CR clarified certain features of the Revised Distribution Plan. The Tribunal reserved judgment overnight. On 16 September 2026, the Tribunal advised the parties that it was satisfied that the Settlement is just and reasonable and that, subject to provision of a further revised Distribution Plan (the **Further Revised Distribution Plan**) taking account of the clarifications given in the course of the hearing and certain revisions to the proposed public notice of the Settlement, the Tribunal would make a CSAO.
7. On 18 September 2026, the Tribunal issued the CSAO. This judgment, which is unanimous, sets out the Tribunal's reasons for its decision.

B. THE LAW

8. Rule 94(1) of the Rules provides that the claims pursued in opt-out collective proceedings may not be settled other than by way of a CSAO. Rule 94(3) requires the parties to opt-out collective proceedings who wish to settle the proceedings to apply to the Tribunal for a CSAO. Rule 94(4) prescribes the content of that joint application. The purpose of these requirements is to protect the interests of members of the class whose claims will be compromised by the proposed settlement and yet will have had no part in reaching it. Represented Persons may be unaware that they have claims which are being pursued through the vehicle of the collective proceedings. Nevertheless, unless Represented Persons opt out of the settlement as is provided for in r. 94(11) and (12) of the Rules, they will be bound by an approved collective settlement, and their claims included in the collective proceedings will be extinguished.
9. The Rules accordingly require the Tribunal to be satisfied, before it may make a CSAO, that the terms of the collective settlement are just and reasonable: r. 94(8). In determining whether the terms are just and reasonable, the Tribunal is required by r. 94(9) to take account of all relevant circumstances, including in particular:
 - “(a) the amount and terms of the settlement, including any related provisions as to the payment of costs, fees and disbursements;
 - (b) the number or estimated number of persons likely to be entitled to a share of the settlement;
 - (c) the likelihood of judgment being obtained in the collective proceedings for an amount significantly in excess of the amount of the settlement;
 - (d) the likely duration and cost of the collective proceedings if they proceeded to trial;
 - (e) any opinion by an independent expert and any legal representative of the applicants;
 - (f) the views of any represented person in a case to which paragraph (11) applies, or of any class member in a case to which paragraph (12) applies; and
 - (g) the provisions regarding the disposition of any unclaimed balance of the settlement, but a provision that any unclaimed balance of the settlement amount reverts to the defendants shall not of itself be considered unreasonable.”

10. Rule 94(10) provides that a CSAO may specify the time and manner by which a represented person may opt out of the settlement. Rule 94(11) provides that where, after the expiry of the period specified pursuant to r. 82 for opting out of the proceedings, the Tribunal approves a collective settlement, the CSAO binds all Represented Persons except: (a) a person who opts out of the collective settlement by notifying the class representative in a manner and by a time specified in the CSAO; and (b) a person who is not domiciled in the United Kingdom on the domicile date and does not opt in to the collective settlement by notifying the class representative in a manner and by a time specified in the CSAO.

C. THE CLAIMS ADVANCED IN THE COLLECTIVE PROCEEDINGS

11. The CR alleges that Google is dominant on the Android app and content distribution market and on the licensable OS market, and that Google has abused its dominance by: (i) engaging in various forms of exclusionary conduct which prevents others from competing (effectively or at all) in the provision of distribution services to Android app developers; and (ii) charging prices that are excessive and unfair. Google maintains that it does not occupy a dominant position on any properly defined market and denies that it has engaged in any exclusionary or exploitative abuse, or in excessive or unfair pricing.
12. The claims encompassed within the collective proceedings are claims for loss and damage said to have been sustained as a result of Google's alleged abuse of a dominant position by UK-domiciled third-party app developers who, during the Relevant Period, made one or more Relevant Sales (the **Class**). The Relevant Period is 22 August 2018 to 31 July 2026. Relevant Sales cover Google Play Store (**Play Store**) app sales and in-app and subscription sales on which commission was charged in the Relevant Period 22 August 2018 to 31 July 2026. Excluded from the Class are certain entities who opted out of the proceedings during the opt-out period and one entity which has since been given permission by the Tribunal to opt out. We refer to the entities whose claims are encompassed in the proceedings as **Represented Persons**.

13. The CR seeks to recover loss and damage sustained not only in connection with transactions made during the Relevant Period through Google Play storefronts in the UK and/or the EU but also transactions made through storefronts located elsewhere in the world. Google contends that the law applicable to claims for loss and damage sustained in connection with transactions through storefronts outside the UK (post-Brexit) and/or the EU (pre-Brexit) is not UK/EU law and that in any event the impugned conduct in respect of such transactions falls outside the territorial scope of the relevant UK/EU law.
14. According to the Application, the CR's economic expert, Professor Fletcher, estimates the aggregate damages in these proceedings up to 31 July 2026 as falling within the range £434 million to £1,482 million, depending on the counterfactual commission used, with an estimate of £[X] based on her preferred counterfactual commission of [X]%. Google's expert, Robin Noble, has estimated a range of aggregate damages as £0 to £191 million (including simple interest and on the basis that there was no pass-on) on an assumption of full liability (which is not admitted). Although other documents before us contained slightly different figures, the discrepancies are not material for the purposes of considering the Application.

D. PROCEDURAL HISTORY

15. The CR commenced the proceedings on 22 August 2024. The Tribunal certified them as suitable for opt-out collective proceedings by an order dated 23 May 2025. Following the exchange of pleadings, Google disclosed approximately 3.5 million documents and detailed developer transaction data (the **Rodger UK transaction data**). Factual and reply witness statements were filed in October and November 2025. The CR's expert evidence was filed in December 2025. Google's expert reports were filed in May 2026. Final trial expert reports were filed in July 2026. The CR amended the claim form on various occasions, including in July 2026 to extend the Relevant Period to 31 July 2026.
16. On 27 February 2026, Google applied to vary the CPO so that the claims of the 25 (later, in the alternative, amended to 5) largest developers by claim value would proceed on an opt-in basis, with the remainder of the claims proceeding

on an opt-out basis. On 4 June 2026, the Tribunal dismissed that application (see [2026] CAT 49). Thereafter, Google issued 17 applications for disclosure from developers. Following a hearing in July 2026, the Tribunal made a disclosure order against one developer and held that the remaining applications would be determined on the papers following further written submissions ([2026] CAT 58). In August 2026, the Tribunal granted further disclosure applications against ten developers. Following the disclosure applications, a number of developers applied under r. 82 of the Rules to opt out of the proceedings. One developer has been permitted to opt out of the proceedings. Applications by four others are pending.

17. At the Pre-Trial Review on 31 July 2026, the Tribunal directed that the relevance of agency and intra-group arrangements to the assessment of aggregate damages would, in the first instance, be determined at trial as an issue of principle only. The issue of principle is, broadly, whether such arrangements may, in law, render loss which would otherwise be attributed to a UK developer irrecoverable by that developer, with the consequence of an adjustment to the aggregate damages. The issue of principle is contested by the CR. The Tribunal has directed that if the issue were to be determined in Google's favour at trial, any residual issues – including quantum – would be determined at a further hearing following judgment in the main trial, with provision for further factual and expert evidence.
18. The matters in issue for trial in respect of liability include the following: market definition and dominance; the effect, individually and cumulatively, of the contractual and technical practices challenged by the CR and Google's asserted justifications for them; and whether the commissions charged were excessive and unfair. The matters in issue for trial in respect of quantum include: the appropriate counterfactual commission; pass-on; the applicable law and territorial scope of the claim; and Google's case concerning the corporate, agency and intra-group arrangements of certain class members.

E. THE PROPOSED SETTLEMENT

19. The Settlement Agreement provides that Google will pay the Settlement Sum in full and final settlement of the Claims. The headline Settlement Sum is £260 million inclusive of interest and costs. The Settlement Agreement contains provisions which emphasise that the proceedings and the alleged facts are contested and that the settlement does not imply, and should not be taken to imply, any admission of liability or wrongdoing on the part of Google.
20. The Settlement Sum is subject to adjustment if any of five specified developers (which are the five developers who have the largest claims by value) should opt out of the proceedings pursuant to r. 82 or opt out of the proposed settlement pursuant to r. 94. In that event the Settlement Sum will be reduced by the sum which would otherwise be due to those developers applying the Distribution Methodology. It is agreed that neither party will take any steps to encourage or procure any of these developers to opt out of the proceedings or the settlement.
21. The Settlement Agreement, as originally filed with the Application, defined the “Claims” as:

“all and/or any claims, causes of action, counterclaims, rights, demands, debts, set-offs, liabilities, losses, damages, costs, expenses, interest and remedies, whether in this jurisdiction or any other, that the Class Representative or any Represented Person, may have against the Defendants arising from the facts, matters or conduct alleged in the Proceedings or otherwise arising in relation to the issues in the Proceedings, including (without limitation) the policies, procedures, pricing or operation of Google’s app store (“**Google Play**”) that are the subject of the Proceedings.”

“Represented Persons” is defined to mean members of the Class who have not opted out of the Proceedings in accordance with r. 82 of the Rules.

22. In clause 2.4 of the Settlement Agreement, the parties commit themselves to seeking approval of a CSAO which has the effect of discontinuing the proceedings and, to the maximum extent permitted by law: (i) fully releasing and discharging Google and Google’s Related Parties (a widely defined term) from “any and all Claims that the Class Representative or any Represented Person who does not opt out under Tribunal Rule 94(11)-(12) may have against

Google and/or Google's Related Parties"; and (ii) waiving "any Claims that the Class Representative or any Represented Person who does not opt out under Tribunal Rule 94(11)-(12) may have against Google and/or Google's Related Parties". Clause 9.1 states that the CR and Represented Persons will not bring any proceedings against Google or Google's Related Parties in this jurisdiction or any other in respect of the Claims.

23. The payment is to be made into a bank account (the **Payment Account**) to be set up by Angeion for the purposes of receiving payment of the Settlement Sum on behalf of the Class and distribution to the Class. The Settlement Agreement provides that the Settlement Sum shall be held in the Payment Account and not released except in accordance with any CSAO and any subsequent order of the Tribunal (subject to provision for the Settlement Sum to be returned to Google in the event that the CSAO is overturned, quashed or set aside). If the Settlement Sum is adjusted by reason of one of the five identified developers opting out, the relevant sums will be paid to Google's solicitors' client account after the end of the Claim Period.
24. The Settlement Agreement states that the Settlement Sum shall be distributed to Represented Persons in accordance with the Distribution Plan and to pay costs, fees and disbursements as approved by the Tribunal. If any sums remain undistributed, the CR is required by the Settlement Agreement to notify the Tribunal and Google and the parties will seek the Tribunal's directions as to the treatment of any undistributed sums. Clause 4.3 requires that the Distribution Plan provide that, as a condition of receiving any distribution, 24 named developers (those with the largest claims) must give certain representations and warranties, broadly to the effect that they are entitled to pursue the claims and that they and related entities will not make any further claims in respect of the relevant transactions.
25. The parties agree that they will bear their own costs, save for the costs of enforcing the Settlement Agreement. They expressly agree that the Settlement Agreement does not affect orders which have already been made by the Tribunal requiring Google to meet the costs of Represented Persons in connection with the Defendants' disclosure applications dated 12 June 2026 and 13 July 2026.

F. REVISIONS TO THE SETTLEMENT AGREEMENT

26. The Tribunal advised the parties that it was concerned about the definition of “Claims”. That definition is critical to the breadth of the discharge and waiver of Claims in clause 2.4 of the Settlement Agreement and to the agreement not to sue in clause 9.1. According to the Application, and as confirmed by both Mr O’Donoghue and Ms Smith at the hearing, the claims which the parties intend to compromise by the proposed settlement are the claims of the Represented Persons which are being pursued through these collective proceedings, no more and no less.
27. The Tribunal raised three points of concern: (i) whether the definition of “Claims”, as drafted, could encompass claims other than competition law claims but which arise from or relate to the facts alleged; (ii) whether the definition should contain reference to a specific time period; and (iii) whether it is appropriate for the definition to encompass claims in other jurisdictions.
28. The parties agreed revisions to the definition which addressed the first and second of these points, such that it now reads (amended wording underlined):
- “all and/or any claims, causes of action, counterclaims, rights, demands, debts, set-offs, liabilities, losses, damages, costs, expenses, interest and remedies, in relation to any competition or antitrust law, whether in this jurisdiction or any other, that the Class Representative or any Represented Person, may have against the Defendants arising from the facts, matters or conduct alleged in the Proceedings or otherwise arising in relation to the issues in the Proceedings, including (without limitation) the policies, procedures, pricing or operation of Google’s app store (“**Google Play**”) that are the subject of the Proceedings, arising at any time during the period covered by the Proceedings up to the date of the CSAO.”
29. The approach which the parties have taken to limiting the definition by time merits some explanation. The claims which are encompassed within these proceedings are claims by developers who have Relevant Sales during the Relevant Period, as defined in the amended CPO (see §12 above). The qualification added at the end of the definition ensures that it is only claims arising during that period which are encompassed within that definition. Mr O’Donoghue explained that it has been extended up to the date of the CSAO to allow for the possibility that there might be developers whose loss was sustained

after the Relevant Period ended. Fixing the end point at the date of the CSAO is a pragmatic means of accommodating that possibility. At the same time, the collective settlement of the present proceedings does not compromise any future claims which developers might have should they sustain loss by reason of any further breaches of competition law by Google after that date.

30. Ms Smith explained why, having regard to the nature of the claims advanced in these proceedings, it is appropriate for the definition of Claims (and therefore the waiver and release) to encompass claims in other jurisdictions. She pointed out that the claims in these proceedings, brought on behalf of UK-based app developers, encompass their worldwide sales, regardless of the “shopfront” through which the sales are made. It is possible to envisage a situation where a developer’s claim which has been settled in these proceedings could also be brought in another jurisdiction – if there were, say, collective proceedings in that other jurisdiction based on the very same allegations of breaches of competition law where the class is defined by reference to sales through the local Google shopfront regardless of the app developer’s base. Her position is that even though such a claim may proceed under the competition laws of that other jurisdiction, it should and would be barred by the settlement of these proceedings, since the loss sustained is part of the claim pursued (and settled) in these proceedings. She pointed out that a similar provision appeared in the CSAO’s in *Justin Gutmann v First MTR South Western Trains Limited and Another*, *Consumers’ Association v Qualcomm Incorporated* and *Mark McLaren Class Representative Limited v MOL (Europe Africa) Ltd and Others*.
31. In light of the revisions which have been made to the definition and the explanations which have been provided, we are content to accept the revised definition of “Claims” set out above. As Ms Smith pointed out, the definition plainly ties the claims back to these proceedings. If there were to be any imprecision or ambiguity in the language used, that would in any event fall to be resolved in light of the parties’ publicly expressed intention to compromise only the claims advanced in these proceedings. We acknowledge the practical force of the point made by Ms Smith about the potential for the very same loss claimed in these proceedings to be claimed also in proceedings in other jurisdictions, on the basis of the very same alleged wrong (albeit pursued under

the laws of that other jurisdiction) and we are accordingly content to accept, in these circumstances, that the definition of “Claims” should encompass claims in any jurisdiction.

32. The parties also revised clause 9.1 of the Settlement Agreement (the agreement not to sue) so that, consistent with clause 2.4, it expressly provides that it is only Represented Persons who have neither opted out of the proceedings under r. 82 nor opted out of the settlement under r. 94 who are bound by its provisions.

G. THE PROPOSED ALLOCATION OF THE SETTLEMENT SUM

33. The CR proposes to allocate the Settlement Sum as follows:

- (1) £160 million (the **Class Pot**) will be made available for distribution to class members in accordance with the Revised Distribution Plan; and
- (2) £100 million (the **Stakeholder Pot**) will be applied to meet the CR’s costs, fees and disbursements. These represent the claims of the **Stakeholders**.

34. We should set this proposed allocation in the context of the evidence before us about the cost of conducting this litigation and the arrangements which the CR has entered into with the Stakeholders.

35. As at 31 July 2026, £24,403,256.52 had been drawn down from the full litigation budget of £27,671,000. It is anticipated that the costs of distribution will be met within the overall litigation budget available under the existing funding arrangements. Mr Gallagher states that he does not consider the rate of spend in this case to be an outlier compared to budgets in other cases of equivalent value or complexity. He evidences that by reference to information about Ms Coll’s budget, as advised to the Tribunal, and the fees and disbursements (of over £45 million) incurred in the Merricks case by the time it settled.

36. The CR entered into a litigation funding agreement (the **LFA**) with Bench Walk Guernsey PCC Ltd contracting on behalf of the GPS UK Funding Cell (**Bench Walk**). Bench Walk's initial commitment was £16.5 million. The original funding proved insufficient, in light of various developments in the case. In 2025, and again in 2026, Bench Walk agreed to increase its maximum capital commitment, ultimately to £27,671,000, but insisted in each case on an increased return on capital in the event of success. The CR sought advice from his Consultative Panel and from Mr Bacon before agreeing to the budget increase.
37. If the full litigation budget is drawn down, Bench Walk will be entitled to a profit share of £82,786,849.42. This represents a blended return on capital under the LFA estimated by Mr Gallagher at 2.99 x capital outlay. The LFA does not give Bench Walk an unconditional right to receive that amount: it expressly provides that the Total Fee cannot exceed the amount which the Tribunal approves for distribution to Bench Walk. It provides that in the event of a collective settlement, the CR must use his best endeavours to seek an order permitting payment of the relevant costs, fees and disbursements, but the amount payable remains subject to the Tribunal's approval.
38. Geradin Partners, the CR's solicitors, entered into a conditional fee agreement (**CFA**) providing for its fees to be deferred and for success fees to be payable. The level of deferred fees has varied over time from [X]% (immediately after certification) to [X]% from 1 May 2026, following the most recent budget increase. We were shown a breakdown of the costs incurred over time, which discloses that the solicitors are acting on the basis of significantly discounted hourly rates. The individual members of the trial counsel team also act under CFAs. Cumulatively, these provide for success fees of [X]% and a percentage of fees (varying between [X]% and [X]%) has been deferred. Mr Gallagher states that, on the basis of these arrangements, if the full budget is drawn down, Geradin Partners will be entitled to £[X] and counsel will collectively be entitled to £[X].
39. The ATE arrangements provide adverse cost cover of £15 million. Premiums of £2.25 million plus IPT have been paid to date, and a contingent £6 million fee

becomes payable if a successful outcome is reached between the grant of the CPO and the first day of trial. Thereafter, the contingent premium would increase to £7.5 million. As part of the LFA, Bench Walk accepted liability for any adverse costs award not covered by the ATE insurer.

40. The CR proposes that the following payments be made from the Stakeholder Pot: £27,671,000 to Bench Walk, representing a full return of its capital outlay; £56,213,149 to Bench Walk in respect of its profit share (compared with £82,786,849 which it would receive under the LFA assuming full budget draw down); £4,074,064 to the ATE insurers (compared with the £6 million contingent premium); a total of £12,041,787 to his solicitors and counsel (compared to £[£] under their CFAs).
41. Mr Gallagher's statement explains that the ultimate shortfall which a Stakeholder Pot of £100 million represents against the Stakeholders' contractual entitlements, will be known only once the final figures due to the various stakeholders are known. The shortfall against Stakeholders' contractual entitlements, other than the return to Bench Walk of its capital outlay (which it is proposed should be met in full) may ultimately be as much as 32% (assuming the entire litigation budget of £27,671,000 is used) and will not be less than 13% (assuming, unrealistically, that no costs have been or are incurred after 31 July 2026).
42. Whilst the CR seeks approval at this stage of the allocation between the Class Pot and the Stakeholder Pot, he does not propose payment to Stakeholders until further order of the Tribunal. The CR envisages that once claims have been received and dealt with in accordance with the Further Revised Distribution Plan, he will apply to the Tribunal for approval of payments both to Stakeholders and Represented Persons who have made claims.
43. The CR explains that it has been important to him that the settlement structure should produce a substantial recovery for the Class. In determining the allocation of the Settlement Sum, he has taken into account: (i) the importance of securing a substantial recovery for the Class; (ii) the level of take-up which he expects by value; (iii) the financial risks assumed by the Stakeholders and

their roles in enabling the Proceedings to be pursued; (iv) his contractual obligations to Stakeholders and the extent to which those would be satisfied; and (v) the importance of preserving the Tribunal's control over any undistributed balance.

44. He states that his overriding concern has been to secure the best outcome reasonably available for class members. However, he does not consider that the risks assumed by Stakeholders should be ignored when deciding upon a fair allocation. He makes the point that the proceedings could not have been pursued on their present scale without substantial funding and professional work being provided at risk to the Stakeholders. Bench Walk committed substantial capital to the proceedings, bore the risk that its capital outlay would not be recovered and agreed to meet any adverse costs liability to the extent not met by ATE insurance. Solicitors and counsel had borne substantial proportions of their fees on CFAs, with recovery dependent on a successful outcome, and the ATE insurers assumed adverse cost risk.
45. The CR makes the point that:
 - (1) this allocation which he proposes between the Class Pot and the Stakeholder Pot ensures that at least 68.9% of the Settlement Sum (net of costs incurred) is available to the class; and
 - (2) the Stakeholder Pot represents a significant discount (approximately 32% assuming full draw-down of the litigation budget) against the Stakeholders' contractual entitlements.
46. The former point assumes that there is no opt-out which results in adjustment of the Settlement Sum by reason of clause 1.3 of the Settlement Agreement. The CR has confirmed that if the Settlement Sum is adjusted in terms of clause 1.3, the adjustment will reduce the Class Pot. In other words, he proposes to pay £100 million to the Stakeholders regardless of any such adjustment in the Settlement Sum.

H. THE DISTRIBUTION PLAN

47. In the Distribution Plan, Angeion explains that it has experience of class action and mass tort settlement administration. In particular, it has administered two substantial US app developer settlements. This has given it experience of using platform and transactional data to establish eligibility and calculate entitlements without requiring developers to recreate records already maintained by the relevant platform. The cases to which Angeion referred differed from the present case in that they concerned classes comprised only of small developers. In this case, approximately 94% of the value of the claim is concentrated in the 50 developers with the largest claims.
48. The Distribution Plan envisages that developers matched to transactions in the Rodger UK transaction data will not be required to prove matters already established by those records. They will, rather, be required to authenticate their identity, take proportionate steps to confirm their entitlement, review their calculated entitlement and provide payment details. A requirement to provide further evidence will arise only where: (i) the developer cannot be readily matched to transactions in the transaction data, or (ii) there are disputes or ownership or succession issues. There will be enhanced authority and other controls for developers with particularly large claims.
49. Angeion proposes an outreach programme, with a view to reaching Represented Persons, as follows:
- (1) direct email notices to developers for whom contact details are available, whether from Google or otherwise;
 - (2) reminders during the claim period;
 - (3) fallback outreach where appropriate, including the use of postal, telephone and other channels;
 - (4) paid search, social and programmatic advertising;

- (5) a website providing information about the distribution process; and
 - (6) email, chatbot and telephone support to provide information about the distribution process.
50. Angeion noted that Google had agreed to provide email addresses for the developers in the Rodger UK transaction data where the information is available to Google, and to the extent that Google is able to share that information in compliance with its regulatory requirements. Following discussion at the hearing, a provision was inserted into the CSAO requiring Google to provide such information within four weeks.
51. The Distribution Methodology is based on Professor Fletcher's preferred methodology for assessing damages in these proceedings. A single counterfactual commission rate will be applied in all cases. In order to simplify the calculations, no account will be taken of pass-on, simple interest or additional off app-store damages. Fideres advise that the settlement can be allocated among claimants efficiently by reference to each developer's share of the damages calculated by Professor Fletcher, with that share then applied to the amount of the settlement fund.
52. One complicating factor is that the Rodger UK transaction data only extends to March 2025. Fideres proposes to extrapolate from that data to 31 July 2026, both to calculate the aggregate damages figure and to assess the commission paid by each developer. In the latter case, a simplifying assumption will be made that the developer's share will be assumed to remain unchanged over the extrapolation period. This will avoid the need for developers to submit additional transaction data for the extrapolation period. At the hearing, Mr O'Donoghue explained that if a developer took issue with the accuracy of the extrapolation, it would be open to it to submit evidence of the actual position.
53. The proposed methodology set out in the Distribution Methodology is as follows:

- (1) Calculate the aggregate damages by extrapolating the Rodger UK transaction data to 31 July 2026. That aggregate damages thereby identified will provide the denominator by reference to which the relative entitlement of developers receiving an individual calculation will be determined.
- (2) Identify and verify each developer. Each claimant will provide its developer ID. Where this is matched to the CR's transaction data, this will enable the transactions attributable to that developer to be identified. Where a developer cannot be matched – for example, if it only made sales after March 2025 – or if it disputes the transactions attributed to it, further supporting information may be requested.
- (3) Identify the transactions attributable to each developer by extrapolating the relevant Rodger UK transaction data to 31 July 2026.
- (4) Simplified payments for smaller developers. Developers with total Play Store revenues of £7,500 or less between 22 August 2018 and 31 July 2026 will receive a lump sum payment of £200 unless they choose to have an individually calculated pro rata payment. Fideres have undertaken an analysis which shows that £200 exceeds the average settlement sum for developers in all sub-bands within that range, and indeed for developers in the range £7,501 to £10,000.
- (5) Individual damages calculation. For developers with revenues over £7,500 and for smaller developers who request an individual calculation, Fideres will calculate damages using the transactions attributable to that developer in the Rodger UK transaction data extrapolated as described above. The resulting individual damages figure will be divided by the aggregate damages already calculated to determine that developer's percentage share of the Class Pot.

54. Ordinarily, additional evidence will only be required from a developer if it cannot be matched to the Rodger UK transaction data, or if the developer considers that the transactions attributed to it are incomplete or inaccurate or

that the constant-share extrapolation does not fairly reflect its activity in the period of the claim not covered by the Rodger UK transaction data. It is intended that any additional information sought will be limited to what is reasonably necessary to establish or correct the developer's transaction history.

55. The proposed methodology admittedly involves simplifications. Fideres proposes to ignore the effects of pass-on, interest and additional off-app-store damages. These are liable to result in particular developers being under- or over-compensated against their "true" loss. Mr Gallagher explains that these simplifications have been adopted for reasons of proportionality and administrability.
56. Angeion states that it expects take-up by value to be high. For administrative planning purposes, it considers that a broad range of 50-80% by value is reasonable. That assessment reflects the concentration of claim value among a relatively small number of high value developers and the existing engagement between the CR and his lawyers and the larger developers. There is, though, a "long tail" of developers with very small claims. Angeion states that, for administrative planning purposes, an 8-15% participation range by number may provide a reasonable planning assumption, although actual participation may differ materially from that figure.
57. In its written representations to the Tribunal, Dream Games raised a specific issue as to how the CR would deal with the intra-group/agency issue which had been raised by Google. This led the CR to make a revision to the Distribution Plan to the effect that the CR would, where there is an issue about ownership, authority or contested entitlement to advance a claim, and potentially in other cases, take advice from an independent KC before deciding how to proceed. This, in turn prompted Dream Games to raise an issue about the transparency of the KC's advice. At the hearing, Mr O'Donoghue stated, on behalf of the CR, that the CR would have no objection to sharing the KC's advice with the developer to whom it related; but he would not, for reasons of confidentiality as between class members, share such advice with other developers.

58. Ultimately, the concern which Dream Games had initially raised was answered when Mr O'Donoghue confirmed, on behalf of the CR, that where a developer has transactions within the Rodger UK transaction dataset, the CR will simply accept that the developer has title to them. That entitlement will be underpinned by the warranty and representation which the 24 largest developers are required to give under clause 4.3 of the Settlement Agreement, as a condition of receiving payment under the scheme.
59. At the hearing, the Tribunal interrogated certain features of the Distribution Plan. In particular, the Tribunal raised the following issues:
- (1) The Tribunal questioned whether the £200 figure referred to above was a minimum payment in respect of developers with revenues under £7,500 and more generally. Mr O'Donoghue confirmed, on behalf of the CR: (i) that a developer with revenues under £7,500, who chooses to apply for an individual assessment of loss will be entitled to £200 or the outcome of that assessment, whichever is higher; and (ii) that the £200 payment is a floor which will apply generally. The latter point will ensure that the scheme does not generate the paradoxical effect that the loss sustained by a developer whose revenue is just above £7,500 might be less than £200, with the consequence that such a developer would receive less by way of compensation than a developer whose revenue is just below £7,500 and who would accordingly be eligible under the Revised Distribution Plan for the £200 payment.
 - (2) The Tribunal interrogated the possibility that the use of a single counterfactual commission rate could produce anomalies. In particular, in a context where Google charges different commission rates (with larger developers potentially paying a higher commission rate), the application of a single counterfactual commission might be thought to favour those developers (the larger developers) who have also paid a higher commission rate. Mr O'Donoghue explained that, in approaching the quantification of claims in this way, the CR has sought to approximate the actual loss of individual claimants, applying the very methodology on which the CR had been prepared to go to trial. His

position at trial would have been based on identifying a single counterfactual commission rate as the rate which would apply were it not for the alleged breaches of competition law. Mr O'Donoghue contended that there would be no unfairness in those who have paid a higher commission rate (*ex hypothesi* a commission rate which exceeds by a greater margin the counterfactual rate) receiving a higher damages award than those who had paid a lower commission rate: that would simply reflect their greater loss. It is implicit in the proposed scheme that some developers, who have paid a discounted commission rate, may receive no payment under the scheme apart from the £200 minimum payment.

60. Mr O'Donoghue seemed, at one point during the hearing, to suggest that it would be open to any developer to present evidence to the CR to support a true evaluation of its actual loss, and that any dispute between a developer and the CR in that regard would fall to be determined by the Tribunal. This would, it seems to us, have been unworkable or at least practically very difficult to administer at a proportionate cost and in a manner which would treat all developers fairly. It would have implied that, whereas most developers' claims would be assessed by reference to the methodology we have described, developers who brought forward such evidence could have their claims reassessed (and, presumably if a larger sum were to be brought out, every other claim reduced proportionately). As the hearing proceeded, Mr O'Donoghue clarified that certain of the parameters of the methodology were fixed. The only points on which developers who fell within the Rodger UK transaction data would be able to present evidence would be if they disputed the level of transactions (and therefore revenue) and the actual commission rate attributed to them.

I. CONSULTATION AND INDEPENDENT ADVICE

61. In deciding to agree the £260 million settlement in principle, and in determining the appropriate allocation between the Class and the Stakeholders, the CR had the benefit of advice from his legal team, both solicitors and counsel. He has also had the benefit of advice from a Consultative Panel, comprising Sue

Prevezer KC, Professor Richard Whish KC (Hon) and Mark McLaren. They bring, collectively, very significant relevant expertise. Their remuneration is not contingent upon the outcome of the Proceedings or the proposed allocation.

62. The CR explains that he took advice from his Consultative Panel at a number of stages. Before agreeing the £260 million in principle he discussed it with Ms Prevezer and Professor Whish. Before the terms of the Settlement Agreement were finalised, he consulted the full Panel. He states that the Panel was unanimous in its view that a settlement of £260 million represented an excellent outcome for the class.
63. The CR further explains that he subsequently discussed the proposed Class/Stakeholder allocation with the Consultative Panel in greater detail, including in discussions at which his solicitors, who would have a financial interest in the allocation, were not present. Following those discussions, he instructed his solicitors that his final proposal would be the allocation which he invites us to approve, but with the intention that he would seek Tribunal approval to apply some or all of any residual monies in the Class Pot towards outstanding costs, fees and disbursements.
64. The CR obtained separate advice from Mr Bacon, whose remuneration is also not contingent on the outcome of the proceedings or the proposal allocation. He sought advice from Mr Bacon, at meetings in the absence of the CR's trial solicitors and counsel, on the costs, funding and Stakeholder aspects of the proposed settlement and proposed allocation of the Settlement Sum. Mr Bacon appeared at the hearing, and answered questions from the Tribunal about certain aspects of those matters, without waiving privilege.

J. THE STATUTORY CONSIDERATIONS

65. Rule 94 requires us to take account of all relevant circumstances, but specifies a number of matters to which we are particularly required to have regard.

(1) The amount and terms of the settlement, including any related provisions as to the payment of costs, fees and disbursements

66. The amount of the settlement is £260 million, subject to adjustment in the event of opt-out by one of the five developers with the largest claims. We have set out the principal terms of the Settlement Agreement above. As we have explained, the CR proposes to allocate £100 million to the payment of costs, fees and disbursements. We will discuss these matters further below.

(2) The number or estimated number of persons likely to be entitled to a share of the settlement

67. The CR's present estimate of the number of developers who are likely to be entitled to a share of the settlement is [X].

(3) The likelihood of judgment being obtained in the collective proceedings for an amount significantly in excess of the amount of the settlement

68. The Tribunal's Guide to Proceedings, explains at §6.125 that:

“... the Tribunal need not conduct a detailed analysis of the claims to determine what it would have awarded in damages (if anything) following trial. Rather the Tribunal will adopt a broad brush assessment of the position, having regard to the prospect of success and estimated quantum of damages”.

69. The evidence before us indicates a wide range of possible outcomes at trial. Whether any judgment would significantly exceed the Settlement Sum would depend on the Tribunal's determination of disputed issues bearing on liability and quantum. Of particular significance in the present case is the very wide range – from £0 to £1,482 million - within which damages have been assessed by the parties' respective experts, assuming full liability. Whilst the CR's expert's preferred methodology would bring out an award of £[X] based on her preferred counterfactual commission, the highest figure in the range identified, on a full liability basis, by Google's expert, is £191 million, which is materially less than the Settlement Sum. We accordingly proceed on the footing that, whilst a judgment for a sum significantly in excess of the Settlement Sum would be a possible outcome after trial, there are uncertainties as regards both liability and

quantum, such that a significant discount from the figure brought out by the CR's expert using her preferred methodology (and assuming full liability) would be justified. We discuss this further below.

(4) The likely duration and cost of the collective proceedings if they proceeded to trial

70. The trial has been listed for ten weeks, beginning on 28 September 2026. Mr Gallagher estimates that a first instance judgment would be unlikely before summer 2027 and that any appeal could add a further 12-24 months before the proceedings are finally resolved. Any second hearing to deal with Google's point about intra-group and agency arrangements (should that be determined in Google's favour at trial) would further delay the final resolution of the proceedings.
71. Mr Gallagher explains that the CR is presently budgeted to incur approximately £3.35 million in additional costs through trial. The LFA provides for a materially increased return to the Funder after the commencement of the liability trial. The CR estimates that the costs of any appeal are likely to exceed £750,000 depending on the issues appealed. The costs of any further hearing to deal with the intra-group and agency issue, should that be required, have not been budgeted for but the evidence indicates that, assuming a 3-5 day hearing, this could cost the CR over £1 million. The current funding arrangements do not extend to such a hearing.
72. Furthermore, the CR's current budget does not include work required in relation to dealing with any material disclosed by Represented Persons, pursuant to disclosure orders which require to be met by 2 October 2026. The costs of doing so could exceed £1 million. The CR anticipates further costs in responding to outstanding applications to opt out from these proceedings which were made following Google's developer Disclosure Applications, and any further such applications. Mr Gallagher explains that to the extent that costs are not already budgeted for, additional funding would need to be agreed with Bench Walk and that there is a risk that this would increase the funding costs ultimately sought from any recovery.

(5) Any opinion by an independent expert and any legal representative of the applicants

73. The Tribunal has been provided, on a confidential basis and without further waiver of privilege, with opinions by Mr O'Donoghue KC, counsel for the CR, as well as by Ms Smith KC and Mr Holmes KC, on behalf of Google. They each, from their separate perspectives, analyse the claims and express the view that the proposed settlement is just and reasonable. As we have observed, the CR also obtained advice and views from his independent Consultative Panel. The CR states that the Consultative Panel was unanimous that a settlement of £260 million represented an excellent outcome for the class. We have also explained the further advice which the CR took from the Panel and from Mr Bacon, at discussions to which his trial team was not party, on questions of costs and the allocation of the Settlement Sum.
74. The CR advises that he considered whether to commission a separate independent written opinion for the purposes of the Application. He concluded that the cost of doing so was not necessary. Any outside legal adviser brought in at this stage would face real difficulty in conducting a meaningful assessment of the proceedings in the short time available. We are satisfied that, in the circumstances, it is not necessary to insist on an independent written opinion being obtained. Mr Bacon appeared at the hearing and answered questions which the Tribunal had relating to the position of the Stakeholders.

(6) The views of any represented person

75. As we have explained above, we received two sets of written representations on behalf of three Represented Persons. One set was on behalf of two app developers which had previously applied to opt out of the present proceedings. They intimated that they were content to remain as class members for present purposes, for the opt-out applications to remain undetermined at this stage and, indeed, to withdraw their opt-out application following the hearing of the Application should the Tribunal consider this to be required prior to any settlement distribution.

76. We have already referred to the representations on behalf of Dream Games. Whilst these welcomed, in principle, the fact of settlement, they invited us to impose certain conditions. They raised three concerns: (i) the CR's proposal to seek approval to apply undistributed funds to the payment of Stakeholders rather than to class members; (ii) the treatment of the intra-group/agency issue; and (iii) the reliance of the proposed settlement on data provided by Google. We have already referred to the first and second of these points. Dream Games' third point was a concern that the Distribution Plan does not adequately address a scenario where the total volume of transactions claimed materially exceeds the known transactions based on the data which has been disclosed by Google. Dream Games requested that the Tribunal include in the CSAO a mechanism by which the Tribunal reserves the right to review the settlement terms should the volume of validated transactions materially exceed those which underpin the settlement value. We address the second and third points below.

(7) The provisions regarding the disposition of any unclaimed balance of the settlement, but a provision that any unclaimed balance of the settlement amount reverts to the Defendants shall not of itself be considered unreasonable

77. The Settlement Agreement provides that within 14 days following the end of the Claim Period, to the extent that any of the Settlement Sum remains after distribution to class members and after any deduction for costs, fees and disbursements approved by the Tribunal, the CR shall notify the Tribunal and Google and the parties shall seek the Tribunal's directions as to the treatment of any undistributed sums. It follows that the ultimate disposal of any undistributed funds remains to be determined by the Tribunal at that point.

78. The CR states that his current proposal would be to seek approval for any residual amount to be applied to costs, fees and disbursements to which he has contractually agreed but which are not covered by the Stakeholder Pot. He would then propose a pro rata top-up payment to class members which have submitted valid claims. He understands that Google will make its own submissions as to the disposal of undistributed sums. As we have already explained, we have representations from Dream Games to the effect that any

part of the Class Pot which is undistributed should be distributed to class members pro rata, to the exclusion of Stakeholder claims. We will discuss this further below.

K. DISCUSSION

79. The proposed settlement has been reached at a very advanced stage in the proceedings, after substantial disclosure, service of several rounds of factual and expert evidence, and shortly before trial. The parties have the benefit of all of the trial evidence against which to assess whether or not they should settle this case, and if so on what terms. The CR has received advice from senior counsel and from his Consultative Panel as regards the proposed settlement. He also took advice from Mr Bacon, in the absence of his trial lawyers, on the aspects of the arrangements in which the latter have a financial interest.
80. It is apparent that the CR has extensive information regarding the collective proceedings, amply sufficient to allow him to make an informed assessment about the merits of settling the claims and as regards the terms of the settlement. Mr Gallagher confirms that the settlement has been reached following arm's length negotiations between the parties and on the advice of their legal representatives. The CR has, further, taken steps to put himself in a position to assess, independently, the appropriate allocation of the Settlement Sum as between Stakeholders and Represented Persons.
81. The question for us is whether the settlement which the parties have reached and which they ask us to approve is just and reasonable. Our function is a supervisory one. In relation to any complex litigation, there will likely be a range of settlements which might be regarded as acceptable. We have focused on the essential features of the Settlement and the ancillary arrangements which we are asked to approve. We have taken into account all of the material which has been placed before us and in particular the information about the matters specifically referred to in r. 94 and have concluded that the proposed settlement is just and reasonable. The following issues call for specific discussion.

(1) The headline Settlement Sum

82. The headline Settlement Sum is £260 million. In presenting the application, the parties have stated that this is the largest ever settlement of collective proceedings before the Tribunal. Although a striking fact, that is not, in and of itself, particularly illuminating since every case must be considered on its own merits. A figure which may seem in absolute terms large has to be assessed against an assessment of the value of the claim and the relevant risks and contingencies. The preferred approach to quantum of the CR's own expert brings out an aggregate value of the claim of £[38], and the range of potential outcomes which her evidence would support extends to £1,482 million. The Settlement Sum is a substantial discount against those figures.
83. Nevertheless, we are satisfied that a settlement well below the CR's full value claim is just and reasonable, once the downside risks for the CR in proceeding to trial are also taken into account. We proceed on the assumption – without making any finding or detailed assessment of the position – that the CR's fundamental case on liability is a strong one, albeit it is a case which is disputed and which could fail at trial. Running any case to trial entails risk and uncertainty, which a settlement buys off, and even a strong case may reasonably be settled at a not insignificant discount from full value.
84. There are, in any event, very material risks and uncertainties in relation to quantum which justify regarding the headline Settlement Sum as just and reasonable even if, as we assume, the case on liability is strong. The range of potential aggregate damages, assuming full liability, supported by the two experts is exceptionally wide, ranging from £0 to £1,482 million. Notably, the settlement exceeds by a significant margin the upper end of the range supported by Google's own expert (£191 million). Indeed, the £160 million which the CR proposes to allocate to the Class Pot is close to the upper end of Mr Noble's assessment of damages, assuming full liability.
85. The risks and uncertainties as regards quantum, in the present case, arise not simply because there is expert support for a wide range of full liability assessments of aggregate value. There are a number of issues, any one of which

would be capable of affecting quantum, in some cases very materially indeed: (a) the applicable law/territoriality issue, which is disputed and which has not yet been tested following trial let alone at appellate level; (b) the intra-group/agency issue lately raised by Google; and (c) pass-on (which, since these proceedings are to be tried along with the Coll case, would be a live issue). Further, the value of the claim is concentrated in a small number of developers, some of whom have applied to opt out of the proceedings. If any of them were to be permitted to opt out, this would reduce materially the aggregate value of the proceedings.

86. In light of these uncertainties, it is not difficult to envisage scenarios in which the CR could do appreciably worse following a trial than the headline Settlement Sum, even if there are also scenarios in which he could do significantly better. Further, the proposed settlement brings immediate certainty. If there were to be no settlement, as we have explained above: (i) there would be further and ongoing uncertainty as regards the ultimate outcome; (ii) even if the CR is ultimately wholly successful, any payment would be deferred, potentially for a further two years or more; and (iii) those proceedings would entail material further cost. The proposed settlement buys off all those risks and uncertainties at a level which in our view may readily be characterised as just and reasonable.

(2) The allocation of the Settlement Sum

87. The CR invites us to approve his proposed allocation of the Settlement Sum - £160 million to the Class Pot, and £100 million to the Stakeholder Pot. The purpose of the collective proceedings regime is not to obtain benefits for lawyers, funders and insurers, but to secure access to justice for class members. The sum which the CR proposes to allocate to the Stakeholder Pot is a very large one. Nevertheless, having scrutinised the information available about the CR's arrangements with Stakeholders and about the proposed payments to them, we are content to approve the proposed allocation of the Settlement Sum. Collective proceedings such as these could not be raised and pursued if funders were not willing to support them financially, and if lawyers were not prepared to put in time and work. Funders are entitled to a reasonable return which reflects the significant risk which they bear. Lawyers are entitled to reasonable

remuneration and, where they have been prepared to defer or discount their fees, may legitimately insist on an uplift in the event of success.

88. It is a material consideration that this settlement represents a successful outcome to the proceedings, in the sense that it secures a very significant sum of money for distribution to the class members. That has been achieved only by reason of the willingness of Bench Walk to commit the substantial capital sum, necessary to the funding of this litigation, taking the risk that it would not recover that sum, and the willingness of solicitors and counsel to accept CFAs. Further, the Class Pot represents almost 70% of the Settlement Sum (net of the litigation budget), assuming no opt out. The CR appears to have taken a firm approach towards Stakeholders, insisting that they accept, at this stage, a Stakeholder Pot which would, if ultimately approved, represent a material discount on their contractual entitlements, with no guarantee that the Tribunal will accept his proposal that any undistributed funds should be applied towards those entitlements. He also proceeds on the basis that no payment should be made to Stakeholders until the Tribunal has approved the overall distribution of the funds in the Payment Account.

(3) The adjustment to the Settlement Sum

89. Clause 1.3 of the Settlement Agreement provides for an adjustment to the headline Settlement Sum if any of the developers with the five largest claims should opt out of the settlement. The consequence will be that the amount of the claim or claims in question will be deducted from the Settlement Sum. If one of the large developers (who have very significant claims) should opt out of the settlement, that developer will not be bound by the CSAO. It will be free to pursue its claim against Google on a standalone basis. It is accordingly not unreasonable that the overall Settlement Sum should be reduced by the amount of that developer's claim – i.e. that Google should have the benefit of such an opt out.
90. The CR has made clear that, if there is such an opt out, he would propose that this should reduce the Class Pot rather than the Stakeholder Pot. Mr O'Donoghue explained that, if that approach were to be taken, the other

Represented Persons, and indeed the Stakeholders, will retain the same claims as they would have had if there had been no opt out. The work done by the Stakeholders would be no different, and it would not, he contended, be appropriate for them to be prejudiced. Ms Smith told us that Google's preference was for money to go to class members rather than Stakeholders, albeit that she recognised that it was not in Google's interest for the balance to tilt so far that funders would not support the proposed settlement. She suggested that the consequence of any opt out would best be addressed at the second hearing, when the Tribunal deals with the CR's application to approve payments out of the Payment Account. The issue may, at that point, be moot. Whilst we recognise the general force of Mr O'Donoghue's submission, we accept the proposal that the issue will best be addressed, if it arises, in the concrete context of an application to approve payments when we have full information about the extent to which funds have been distributed to Represented Persons.

(4) The discharge of claims

91. It is a consequence of the CSAO that Represented Persons who do not opt out of the settlement are bound by it. The claims which they advance in these collective proceedings will be compromised or settled. That is the legal effect of the settlement, approved by the Tribunal. It is buttressed by the specific provisions for discharge and waiver, and the agreement not to sue, contained in the Settlement Agreement. With the amendments to the definition of Claims, these simply give effect to the intrinsic purpose of the settlement, which is to compromise the claims being advanced in these collective proceedings.

(5) The Distribution Plan

92. We are satisfied that the Further Revised Distribution Plan should be approved. We recognise that it makes a number of simplifying assumptions, which may result in particular developers being over- or under- compensated relative to their "true" entitlements. The scheme, as modified in light of the discussion at the hearing, also applies a minimum lump sum of £200 for those who wish to claim it, a figure which on the information provided to us is likely to over-

compensate developers with revenue of less than £7,500 compared to a strict pro rata allocation of the settlement sum.

93. We are satisfied that these simplifying assumptions do not justify us in withholding approval. The purpose of the exercise, in the context of the settlement of collective proceedings, is to achieve a fair allocation of the Class Pot amongst class members. That does not require the assessment of actual loss. Indeed, it is legitimate to seek to design a scheme which is relatively simple to apply and requires the minimum additional information to be provided by class members. That will not only reduce the cost of administration but may encourage take-up.

94. As Lord Briggs observed, giving the judgment of the majority in *Mastercard Inc. v. Merricks* [2020] UKSC 51, at [77]:

“A central purpose of the power to award aggregate damages in collective proceedings is to avoid the need for individual assessment of loss. While there may be many cases in which some approximation towards individual loss may be achieved by a proposed distribution method, there will be some where the mechanics will be likely to be so difficult and disproportionate, eg because of the modest amounts likely to be recovered by individuals in a large class, that some other method may be more reasonable, fair and therefore more just.”

95. Mr O’Donoghue emphasised, in our view rightly, that any distribution scheme, in the context of the statutory collective proceedings regime, may involve the wielding of a “broad axe” in the interests of achieving an acceptably fair distribution which is administratively workable without imposing excessive costs and burdens both on the CR and on Represented Persons claiming on the scheme.

96. In the present case, the proposed scheme provides a minimum floor to all class members of £200. Although this will over-compensate the very large number of small claims which form part of the collective proceedings compared to a strict pro rata distribution, a simple lump sum payment at this level reasonably balances the desirability of encouraging take-up amongst those with small claims, administrative simplicity, and the overall objective of benefiting the class as a whole. At the same time, the methodology proposed, whilst it involves a number of simplifying assumptions, does seek broadly to compensate

developers who have been charged a commission in excess of the assumed counterfactual commission rate on which the CR was prepared to go to trial in a manner proportionate to the excess commission which has been charged. Whilst other algorithms could have been adopted, we are satisfied that the approach which has been taken is a reasonable one, in the context of approving the overall settlement as just and reasonable.

97. We have decided not to accept Dream Games' proposal that we should build in a review mechanism should there turn out to be many more claims than is suggested by the Rodger UK transaction data. The methodology in the Distribution Plan would continue to be capable of applying, regardless of such additional claims. Insofar as Dream Games' concern is that its own share might be diluted relative to its current expectations, that would simply reflect the actual number of developers with entitlements who make a claim. Dream Games' remedy in such a circumstance would be to opt out of the settlement. We have included provision in the CSAO which would allow a Represented Person to seek an extension of the opt-out period, potentially to quite a late stage in the distribution process. This would allow Dream Games (and any other Represented Person with a similar concern) effectively to reserve their position as regards opting out until the overall position has become clear.

(6) Likely take-up and undistributed funds

98. We have referred above to Angeion's advice about likely take-up. We accept that the concentration of the value of the claims in a relatively small number of larger developers is likely to result in a significant take-up of the Class Pot by value. We understand that the CR and his advisers have engaged with those larger class members, including as a result of the recent applications for disclosure and to opt out. We also accept that, even if the percentage take up by number which Angeion suggests may be regarded as quite low, there are features of the case which may result in a better take-up by number even amongst smaller developers than has been experienced in some other cases. These include: (i) the ability of the CR to identify class members and, on the basis that Google provides contact details, to seek to engage with them; and (ii) the £200 minimum payment available to all developers.

99. Nevertheless, the actual take-up remains to be seen, and there may well turn out to be undistributed funds in the Class Pot. The Settlement Agreement envisages that, in the event that there are any undistributed funds, the parties will apply to the Tribunal to determine the disposal of those funds. The CR states that his present intention would be, consistent with his contractual commitment under the LFA, to invite the Tribunal to allow such funds to be applied in the first instance to the Stakeholders' entitlements, so that they would be required, overall, to take less of a discount. However, he acknowledges that there may be other potential claimants on undistributed funds – including Represented Persons who have made claims, Google and, potentially, charities which provide access to justice.
100. In these circumstances, the CR invites us not to make a decision in the abstract, but to leave this issue to be decided, if it requires to be decided, when the additional sum available is known and when the various interested parties can present argument in a real, rather than hypothetical situation. Ms Houghton, for Dream Games, urged us to decide now that any undistributed monies in the Class Pot should simply be redistributed pro rata to class members who have made valid claims. In support of that contention, she contrasted the proposed 32% discount against contractual entitlements of the Stakeholders with the position of the developer, who she suggested will receive, only 15% of the CR's estimate of the full value of their claims, with an implied discount of 85%. Her position was that funds in the Class Pot should be distributed to members of the class.
101. We have decided not to determine the disposal of undistributed funds at this stage. We reject Ms Houghton's comparison – the discount which developers are being expected to take cannot sensibly be assessed without taking full account of the risks and uncertainties which the settlement will buy off. Although we have sympathy with her general proposition that class members have an obvious claim on any undistributed funds in the Class Pot, Mr O'Donoghue explained that the CR would propose that any such funds should be used to make a further contribution to meeting the contractual entitlements of Stakeholders. Ms Smith, for her part, pointed out that the Rules envisage that such funds may be returned to the Defendants, and suggested that the Tribunal

might take the view that there was no reason why large developers should receive even more simply because smaller developers have not claimed on the Class Pot. There may be other options – including the application of undistributed funds to an appropriate charitable purpose. It would be far better to determine this issue if it arises and in light of concrete information about the amount at stake and the success or otherwise of the distribution process.

(7) Period for opting out of the settlement

102. We are required to identify in the CSAO the period during which Represented Persons may opt out of the settlement. During the hearing there was a discussion, to which we have already referred, about allowing a prolonged period, so that Represented Persons could make that election once they know the amount to which they will be entitled under the Further Revised Distribution Plan. It seems to us that a general deferral of the settlement opt out period would tend to give rise to uncertainty and complexity, since it would involve a provisional allocation of the Class Pot, following potentially by opt outs, and then a redistribution of the Pot in light of those opt outs. We have accordingly decided to allow a three-month period for opt outs from the settlement, but to recognise that certain developers who anticipate that there may be a dispute about their claims may reasonably wish to reserve their position by granting liberty to any Represented Person to apply before the expiry of that period if that Represented Persons wishes an extension of the period during which it may opt out of the settlement. Any extended period must expire not less than 14 days before the hearing at which the Tribunal will be invited to approve the release of funds from the Payment Account.

L. CONCLUSION

103. Ultimately, the question of whether the proposed settlement is just and reasonable involves the Tribunal in making an evaluative judgment on the basis of all of the relevant information, in particular the matters specifically mentioned in r.94. We have taken into account the material before us and, for all the reasons we have set out above, we have concluded that the proposed settlement in this case is just and reasonable.

104. This Judgment is unanimous.

James Wolffe KC
Chair

Robert Herga

Hugh Kelly

Charles Dhanowa CBE, KC (Hon)
Registrar

Date: 9 October 2026