Neutral citation [2025] CAT 25

Case Nos: 1673/7/7/24
1408/7/7/21
1378/5/7/20

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

30 April 2025

Before:

THE HONOURABLE MR JUSTIICE MORRIS
(Chair)
BRIDGET LUCAS KC

Sitting as a Tribunal in England and Wales

BETWEEN:

PROFESSOR BARRY RODGER

Class Representative

- 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

(the "Rodger Proceedings")

AND BETWEEN

ELIZABETH HELEN COLL

Class Representative

- v –

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

Defendants

(the "Coll Proceedings")

AND BETWEEN

(1) EPIC GAMES, INC.
(2) EPIC GAMES ENTERTAINMENT INTERNATIONAL GMBH

Claimants

- v –

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

Defendants

and

THE COMPETITION AND MARKETS AUTHORITY

Intervener

(the "Epic Proceedings")

Heard at Salisbury Square House on 14 March 2025

JUDGMENT (JOINT CASE MANAGEMENT)

APPEARANCES

Robert O'Donoghue KC, Daniel Carall-Green and Bethanie Chambers (instructed by Geradin Partners Limited) appeared on behalf of the Class Representative in the Rodger Proceedings.

Ronit Kreisberger KC and Sarah Bousfield (instructed by Hausfeld & Co. LLP) appeared on behalf of the Class Representative in the Coll Proceedings.

Colin West KC and Daisy Mackersie (instructed by Norton Rose Fulbright LLP) appeared on behalf of the Claimants in the Epic Proceedings.

Josh Holmes JC and Thomas Sebastian (instructed by Reynolds Porter Chamberlain LLP) appeared on behalf of the Defendants.

A. INTRODUCTION

1. There are currently three sets of proceedings before the Tribunal concerning alleged abuses of dominance including in the market for the provision of native application ("app") distribution services by the Defendants[1] ("Google"), via the Google Play Store (the "Play Store"). The Coll Proceedings are opt-out collective proceedings which seek damages from Google on behalf of around 19.5m UK domiciled consumer Android device users. The Rodger Proceedings are also opt-out collective proceedings which seek damages from Google, but on behalf of around 2,200 UK domiciled app developers. The Epic Proceedings are brought by the well-known developer of apps and software for game consoles, personal computers and mobile devices, and in particular, the well-known app, "Fortnite". The claimants in the Epic Proceedings seek injunctive relief.

2. All three sets of Proceedings allege, in broad terms, that, by virtue of various exclusionary practices (i.e. technical and contractual restrictions), it is impossible or impracticable for app and in-app purchases to be made other than via the Google Play Store and Google's own billing system, thereby attracting a 30% commission charge, which is said to be unfair and excessive. The Coll Proceedings seek damages on the basis that the overcharge was ultimately to a significant extent borne by UK consumers. By contrast, the Rodger Proceedings seek damages on behalf of UK app developers on the basis that they absorbed a substantial part of the overcharge, rather than passing it on to consumers. The Epic Proceedings seek injunctive relief which in broad terms is aimed at restraining Google from pursuing the allegedly exclusionary practices and from charging unfair or excessive commissions.

3. The Tribunal convened a joint case management conference relating to all three sets of Proceedings. The case management issues arise from the fact that, although there is a degree of commonality in relation to the claims across all three sets of proceedings, the Rodger Proceedings have only recently been

[1] Alphabet Inc, Google LLC, Google Ireland Ltd, Google Commerce Ltd and Google Payment Ltd are defendants common to all three sets of proceedings. Google Asia Pacific Pte Limited and Google UK Ltd are defendants in the Rodger Proceedings only.

certified. The Coll Proceedings, on the other hand, have been listed for trial in October 2025 (the "October 2025 Trial"), and preparations are well advanced. The Epic Proceedings are already partially (but not fully) consolidated with the Coll Proceedings. Pursuant to an order made by the Tribunal on 15 May 2024 (the "Partial Consolidation Order") Epic's factual evidence is to be heard at the hearing in October 2025 ("Epic Phase 1"), so that the factual witnesses will only be heard once. Directions for expert evidence are to be given after the conclusion of the trial in the Coll Proceedings. Epic's expert evidence would be heard at a second trial to be listed in 2026 ("Epic Phase 2").

4. We were therefore faced with the possibility of there being at least two, and possibly three hearings raising similar points against Google. Whether there would be two or three hearings depends on whether or not it was appropriate or practicable for some or all of the issues in the Rodger Proceedings to be determined either at the October 2025 Trial, or in Epic Phase 2, or whether the Rodger Proceedings should be heard entirely separately. A further option was for the October 2025 Trial to be utilised to determine at least some of the common issues, even if that meant adjourning part of the Coll Proceedings (for example, pass-on) to a later date. A further possibility was for all three sets of proceedings to be adjourned such that all issues could be heard and determined together.

5. Following the joint case management conference ("Joint CMC") on 14 March 2025, and by Order dated 24 March 2025, the Tribunal ordered that, in the particular circumstances arising in this case, the Coll, Epic and Rodger Proceedings should be heard together at a trial listed in October 2026. The trial in the Coll Proceedings, which would have included Epic Phase 1 was adjourned. (At the same time, the Tribunal made certain limited consequential directions.) This judgment sets out the Tribunal's reasons for its decision.

B. THE PROCEEDINGS

6. As we have indicated, all three claims concern the distribution of apps and associated digital content on the Android platform. The claimants all allege that various of Google's policies and practices have unlawfully limited the scope for

rival distribution channels and platforms to compete with the Google Play Store; and that Google's service fees to developers using the Google Play Store are excessive and unfair.

7. The Epic Proceedings involve a claim for injunctive relief by Epic, a single large developer, to remove the features of the Android ecosystem which, in Epic's view, currently prevent fair competition in app distribution and in-app payment services. Epic is the developer of 'Fortnite' and the Epic ecosystem has nearly 900 million registered cross-platform accountsin 2024. Fortnite is not currently available on the Play Store. After Epic offered an alternative payment option to Google's own billing system in relation to in-app purchases within Fortnite, Google removed Fortnite from the Play Store, relying on its terms and conditions. Epic's claim was filed on 29 December 2020; initially the trial date was fixed in June 2023 and listed to take place on 5 May 2025, with a provisional time estimate of six weeks (including one week for pre-reading).

8. The Coll Proceedings involve an opt-out collective claim on behalf of 19.5 million UK domiciled consumers and alleges an abuse of dominance through Google's conduct in relation to the Play Store. The claim is for damages that are said to have been suffered by consumers as purchasers of apps and in-app content. The damages are said to arise as a result of Google charging higher prices to developers by reason of the alleged infringing conduct, those higher prices having been paid by consumers, with Google remitting the payment (minus its Commission/service fee) to developers. The proceedings were filed on 29 July 2021; the trial date was fixed in December 2022 and listed to take place from 6 October 2025, with a time estimate of eight weeks.

9. On 7 February 2024, in light of the substantial overlap in the issues, Epic applied for an order that the Epic and Coll Proceedings be case managed and tried together. A hearing took place on 25 March 2024 to consider joint case management of the Epic and Coll Proceedings, chaired by the President of the Tribunal as Chair of the Epic Proceedings, and Ms Lucas KC as Chair of the Coll Proceedings.

10. By the Partial Consolidation Order, the Tribunal ordered partial consolidation of the Epic and Coll Proceedings. In particular, the Tribunal directed that Epic's factual evidence be heard at the October 2025 hearing, and the October 2025 Trial was extended by one week to accommodate this.

11. The Tribunal was mindful of the fact that the resulting increase in trial length would increase Ms Coll's costs. To protect Ms Coll's position in relation to the additional costs, the Tribunal therefore required Epic to indemnify Ms Coll in relation to such additional costs as would be caused by the partial consolidation (subject to an overall cap of £1 million) (the "Epic Indemnity"). [2]

12. In short, Ms Coll could seek payment from Epic on a monthly basis by providing a detailed schedule in relation to work performed and costs incurred in relation to the partial consolidation. Epic would be entitled to refuse a request for payment if it considered the additional costs to have been unreasonably incurred, but not otherwise. Any dispute in this regard would be referred to the Tribunal for determination. The indemnity was subject to the Tribunal's discretion pursuant to Rule 104 of the Competition Appeal Tribunal Rules (the "Tribunal Rules") to determine how the additional costs should ultimately be borne in either the Coll Proceedings or the Epic Proceedings, which may involve a proportion of costs being repaid in certain circumstances, including where the Tribunal was of the view that Epic's factual evidence had materially benefitted Ms Coll's case ("the Material Benefit Provision"). This is to address the possibility that evidence from Epic as an app developer might bridge what might otherwise be an evidential gap given that, as a class representative, Ms Coll is not in the position to give direct evidence in relation to app developers (but has served evidence from an app developer expert).

13. The Rodger Proceedings are also an opt-out collective claim brought not on behalf of consumers but instead on behalf of UK Android app developers. The claim is for damages which are said to have resulted directly to developers as a result of higher prices caused by Google's allegedly infringing conduct. The Rodger Proceedings were issued on 23 August 2024 (over three years after the

[2] Paragraphs 5 to 8 of the Partial Consolidation Order.

Coll Proceedings), and a case management conference was held on 20 December 2024 relating to the application for a Collective Proceedings Order. Prior to this first CMC in the Rodger Proceedings, the parties had raised matters in relation to overlapping issues with the Coll and Epic Proceedings. The Tribunal considered it premature to consider the wider interaction of the Rodger Proceedings with the Epic and Coll Proceedings prior to certification.

14. A hearing was held on 6 March 2025 to consider Professor Rodger's application for a collective proceedings order ("CPO"). The Tribunal confirmed at the conclusion of the hearing that the proceedings would be certified with written reasons to follow. The Tribunal's written reasons in relation to certification are pending.

C. THE INITIAL OPTIONS

15. In advance of the Joint CMC, Professor Rodger canvassed four possible options as to how the claims could be managed:

(1) **Option 1:** the Tribunal could allow Professor Rodger to participate in some way in the October 2025 Trial, for example to a similar degree to which Epic is permitted to participate.

(2) **Option 2:** the Tribunal could adjourn the October 2025 Trial, so as to enable full participation by Epic and Professor Rodger.

(3) **Option 3:** the Tribunal could permit the October 2025 Trial to continue without any interaction with the Rodger Proceedings, but the Rodger and Epic Proceedings be tried together in mid to late 2026 on the basis that they are both developer claims. The 2026 trial would cover liability in the Rodger Proceedings with quantum being decided at a later date. A variation of this option raised by Ms Coll would be to defer all issues in the Epic Proceedings until 2026, so that the October 2025 Trial would only involve the Coll Proceedings.

(4) **Option 4:** the Tribunal could decide that the October 2025 Trial should proceed as ordered and the Rodger Proceedings be managed entirely separately.

16. At the time of filing skeleton arguments, Professor Rodger did not specify a preference for any of the four options. Google and Epic in principle favoured full consolidation (i.e. Option 2). Ms Coll opposed full or limited participation by Professor Rodger in the October 2025 Trial and considered that the October 2025 Trial should be preserved at all costs (i.e Options 3 or 4).

17. In advance of the Joint CMC, the Tribunal raised the possibility of excluding the issue of pass-on from the October 2025 Trial, trying it instead jointly with the Rodger Proceedings at a subsequent date. The Tribunal invited the parties to address whether pass-on could feasibly be dealt with separately from the issue of any "overcharge" (i.e. the level of the service fee in the counterfactual as compared to the actual service fee).

18. The parties filed their skeleton arguments for the Joint CMC on 7 March 2025. Ms Coll's skeleton was supported by the First Witness Statement of Joanna Christoforou ("Christoforou 1"). Ms Coll raised a complaint as to Professor Rodger's silence in relation to her additional costs should the Tribunal order a joint trial in all three proceedings.

19. On the morning of the Joint CMC, Professor Rodger and Epic wrote jointly to the Tribunal stating their preference for Option 2, and enclosing a proposal to meet Ms Coll's costs reasonably incurred as a result of any consolidation (the "Proposed Indemnity"). The mechanics of the Proposed Indemnity were as follows:

(1) Both Professor Rodger and Epic were prepared to offer Ms Coll up to £1.5 million each to meet her objections to Option 2.

(2) The payments would be made using the same mechanism as that set out in paragraphs 5 to 8 of the Partial Consolidation Order.

(3) The payments would be subject to the Tribunal's power to make an order as to costs, including at the end of proceedings.

(4) Insofar as Ms Coll were in due course to recover from Google costs that had in fact been paid by Professor Rodger or Epic under the arrangement, Ms Coll would be required to repay those costs to Professor Rodger or Epic.

20. After the hearing, the Tribunal wrote to Professor Rodger and Epic on 17 March 2025 requesting further clarification as to the basis of the Proposed Indemnity, and in particular an explanation as to the circumstances, if any, in which funds could be withheld from Ms Coll, as well as any circumstances in which she would be required to repay funds prior to the determination of the action. On the same date, Ms Coll sought to adduce further evidence in the form of a second witness statement of Ms Christoforou ("Christoforou 2") as to the additional costs likely to be incurred should there be a consolidated, extended trial, and the manner in which the Epic Indemnity had operated to date.

21. Epic and Professor Rodger wrote to the Tribunal on a joint basis on 18 March 2025, clarifying that their proposal was for payment to mirror the process set out in the Partial Consolidation Order. In particular, Ms Coll would provide invoices to Epic and Professor Rodger on a monthly basis, who would have the opportunity to review each request within 7 days. Approval could be withheld where costs were perceived to be unreasonably incurred. If payment was not approved, Ms Coll would have permission to apply to the Tribunal for a payment on account of such costs. Both Epic and Professor Rodger confirmed that they did not consider it appropriate to include a provision allowing Ms Coll to apply to the Tribunal for the £3 million cap to be increased (as is currently the case under the Epic Indemnity). Epic and Professor Rodger also confirmed that the Material Benefit Provision would not be included in the Proposed Indemnity. Given that Ms Coll has now filed her evidence, and at least the first round of expert reports, it is unlikely at this stage for any further work to be necessary to bridge the perceived possible evidential gap. Finally, Epic and Professor Rodger confirmed that the Proposed Indemnity is to be treated separately from the Epic Indemnity.

22. Epic and Professor Rodger also wrote on 18 March 2025 and 19 March 2025 respectively objecting that Christoforou 2 was inadmissible and making limited submissions as to its contents.

D. KENT/ENNIS CONSOLIDATION

23. During the hearing, the Tribunal was referred to the Ruling in *Dr Rachael Kent v Apple Inc and another* and *Dr Sean Ennis v Apple Inc. & Ors* ([2024] CAT 64) (the "*Kent/Ennis Ruling*") which concerned a recent application to case manage and hear two related collective proceedings against Apple Inc. (and others) (together, "Apple").

24. The claim brought by Dr Kent was issued on 10 May 2021 and is brought on behalf of consumers (the "Kent Proceedings"). The claim alleges anti-competitive practices by Apple relating to the iOS mobile operating system, similar to those alleged against Google in these proceedings. The Kent Proceedings are, in essence, the Apple equivalent of the claims brought against Google in the Coll Proceedings, and (for example) the class representative in each claim is represented by the same firm of solicitors: Hausfeld & Co LLP. A CPO was made in the Kent Proceedings on 29 June 2022. The trial was listed to commence on 13 January 2025. (That trial has now concluded, with judgment reserved).

25. The claim by Dr Ennis was issued on 23 July 2023 and is made on behalf of app developers domiciled in the UK (the "Ennis Proceedings"). It makes allegations against Apple that are similar to the allegations against Google in the Rodger Proceedings. The Ennis Proceedings are, in essence the Apple equivalent of the claims brought against Google in the Rodger Proceedings and (for example) the class representative in each case is represented by the same firm of solicitors (Geradin Partners Limited). Following a hearing on 16 September 2024, the Tribunal informed the parties of its decision to certify the Ennis Proceedings and gave reasons for its decision in a judgment dated 18 October 2024.

26. Following confirmation from the Tribunal that the Ennis Proceedings would be certified, Dr Ennis sought a joint hearing in both the Kent and Ennis Proceedings

to facilitate some form of consolidation. At the conclusion of that hearing which took place on 23 September 2024, the Tribunal informed the parties that it would not alter the timetable in the Kent Proceedings or case manage them together, and the Ennis Proceedings would have to continue independently. The Tribunal's reasons were provided in the *Kent/Ennis Ruling*.

27. The Tribunal's approach to common issues was set out at [20] to [25] in the following terms:

> "20. As the Tribunal observed in *Mark McLaren Class Representative Limited v MOL (Europe Africa) Ltd and Volkswagen AG v MOL (Europe Africa) Ltd* [2023] CAT 25, it is inherent in competition law that a single infringement may well generate multiple claims by different claimants against the same group of defendants. For example, an overcharge by a cartelist may cause distinct harm to multiple persons, whether direct customers of the cartelist or customers at different levels in the supply chain. This gives rise to a risk of inconsistent outcomes unless common issues are heard by the same court or Tribunal.
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> 21. The risk of inconsistent outcomes is particularly acute where claims are made which involve pass-on. As explained by the Tribunal in *Re Merchant Interchange Fee Umbrella Proceedings* [2022] CAT 31 ("the Interchange Fee Umbrella Proceedings"), at [3]:
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> > "Where there has been a competition law infringement by infringer A, and as a result party B has paid more for a good or service than B would, but for the infringement, have paid, then prima facie it appears to be the case that B has a claim, against A, for the amount of the overcharge. However, A may contend that the prima facie case does not hold, in that B has passed on the loss (sustained by B), in whole or in part, to party C. C could be someone who bought a good or service from B where the price paid by C to B included, in whole or in part, the overcharge which was originally paid by B to A. Matters are complicated by the fact that if the overcharge was indeed passed on by B to C, then C has a self-standing claim against A, as the party who has in fact borne the loss arising out of A's infringement."
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> 22. The Tribunal went on to consider how best to determine the issue of pass-on in relation to the same overcharge:
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> > "13. Such are the perils of bilateral dispute resolution, where B's claim and C's claim in respect of the same loss are progressed in separate proceedings. Of course, the courts are alive to this risk, and will seek to avoid inconsistency of outcome by consolidating related proceedings or hearing them together. But that may not

always be possible: B may commence proceedings in one jurisdiction, and C in another. Of course, courts of differing jurisdictions will conscientiously apply their own laws, but it is important that the principles by which this jurisdiction at least operates be articulated, so as to assist (if no more than that) in achieving consistency of outcome. Equally, it may be that B's claim and C's claim are commenced in the same jurisdiction, but so far apart in time that it is not practically possible to hear both claims together. Here, the importance of a clear articulation of the relevant principles is, if anything, even more important, so as to achieve consistency of outcome.

14. Accordingly, when framing the appropriate principles for dealing with pass on in relation to the same overcharge, it is incumbent upon the court to have regard to, and to seek to achieve, consistency of outcome so that A does not pay too much, and that neither B nor C receive too little."

23. The Tribunal proceeded on the assumption that, on the facts of that case, there was no risk of either over or under compensation because of the different time periods to which the claims related but emphasised that consistency of outcomes in the broader sense of deciding like cases alike was nevertheless a goal worth striving for. This was for the following two reasons (at [15]):

"(1) The first reason – founded in principle and the rule of law – is that it is important to the credibility of a legal system that similar cases have similar outcomes. One of the issues that competition law regularly gives rise to is that a single infringement (here, alleged overcharges in Merchant Interchange Fees) can give rise to multiple, independent, claims that are all, broadly speaking, the same. It is critical that such cases have similar outcomes, and that is why … the Court of Appeal indicated that cases such as the interchange fee cases be heard under "one roof" in this Tribunal … But having a single tribunal hear similar cases is but the first step: it is incumbent upon that tribunal to take the necessary procedural steps to ensure consistency of outcome in all of these cases, to the extent this can be achieved in accordance with the other objectives that guide and inform that tribunal in the exercise of its functions.

(2) The second reason – a practical one – is simply this. Where a tribunal is faced with a claim brought by [a direct purchaser] against [the defendant], that tribunal cannot know whether, some time down the line, there will not also be a claim brought by [an indirect purchaser] against [the defendant] (whether before that or another tribunal). Such an outcome is certainly "on the cards" in any given case, and it is incumbent upon the tribunal seised of the first case to do all that it can to ensure that later cases can be decided consistently."

24. To give effect to those principles, the Tribunal has issued Practice Direction 2/2022, which expanded upon the Tribunal's extensive case management techniques (such as consolidation) by providing for the making of an "Umbrella Proceedings Order" ("UPO"), pursuant to which common issues (known as "Ubiquitous Matters") in multiple "Host Cases" can be decided together. The consequence of making a UPO is that an Umbrella Proceedings Tribunal has conduct of the Ubiquitous Matters, and decisions that it makes on those matters bind the parties in all of the individual "Host Cases". None of the parties in the Kent and Ennis proceedings suggested that there should be a UPO where there are only two sets of proceedings, but it was submitted by Apple that the Practice Direction illustrates the breadth of the Tribunal's concern for consistency.

25. In *Sportradar AG & Another v Football Dataco Ltd & Others* [2022] CAT 12 ("Sportradar") the Tribunal was faced with different sets of proceedings, at different stages of progress, but in which there were overlapping competition law issues. The Tribunal considered that there were three options ranging from (i) "complete detachment", i.e. "try[ing] two or more actions raising related claims or issues as if they were separate… tak[ing] no account of any synergies or similarities" through to (ii) complete consolidation, whereby common issues are articulated across all relevant proceedings, so that they can be heard and tried together (see [14] to [15]). The Tribunal also recognised a possible "third way", namely "Read-Across" which was envisaged as an informal process whereby there would be a liberty to the court in the second action effectively to translate or read across facts, matters and decisions from one set of proceedings to another."

28. The *Kent/Ennis Ruling* also summarised, at [27] to [28], the Tribunal's approach to adjournments:

> "27. The Tribunal has the power to give a range of procedural directions as set out in Rule 19(2) of the Competition Appeal Tribunal Rules 2015 or "such other directions as it thinks fit to secure that proceedings are dealt with justly and at proportionate cost": Rule 19(1). The Tribunal therefore has "specific but flexible powers", which include the power to adjourn the trial of particular issues, but in exercising its powers the Tribunal must "at all times be guided by the governing principles set out in Rule 4, particularly the need to "ensure that each case is dealt with justly and at proportionate cost"": *cf. Royal Mail Plc v Ofcom* [2019] CAT 19 ("Royal Mail") at [19]. In relation to the question of when an adjournment is necessary or appropriate, the Tribunal must "stand back and take a view of what is sensible and proportionate and in the interests of justice to all parties, and also to other litigants before the CAT": *Royal Mail* at [33], citing *UK Trucks Claim Limited v Fiat Chrysler & Others* [2019] CAT 15 at [22]. Subject to an "…overall requirement of fairness, each situation has to be judged on its own facts…": *Royal Mail* at [34].

> 28. Where necessary to inform the application of its own rules, the Tribunal may also have regard to the corresponding rules in the High Court: *Royal Mail* at [23]. Dr Kent referred us to the decision of Coulson J (as he then was) in *Fitzroy Robinson Limited v Mentmore Towers Limited* [2009] EWHC 3070 (TCC) in which he held that a court when considering a contested application at the 11th hour to adjourn the trial, should have specific regard to the following:
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> > "a) The parties' conduct and the reason for the delays;
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> > b) The extent to which the consequences of the delays can be overcome before the trial;
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> > c) The extent to which a fair trial may have been jeopardised by the delays;
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> > d) Specific matters affecting the trial, such as illness of a critical witness and the like;
> >
> > e) The consequences of an adjournment for the claimant, the defendant, and the court."

29. The Tribunal went on to consider the extent of the overlap between the claims in the Kent and Ennis Proceedings and concluded, at [29], that *"both sets of proceedings raise a number of similar if not identical common issues as to market definition, dominance, overcharge and pass on."* The Tribunal accepted that there was a real risk that, if heard separately, a Tribunal might reach inconsistent conclusions on market definition, dominance and overcharge. At [30] the Tribunal referred to the experience of the three interchange fee cases heard separately by the Tribunal and the High Court as illustrative of the potential for reaching inconsistent conclusions on the same or similar facts.

30. At [36], the Tribunal acknowledged that there was a real risk of inconsistent outcomes, in particular in relation to pass-on, and that inconsistent judgments might lead to significant uncertainty as to the legality of Apple's ongoing business practices, and undermine public confidence in the justice system. It also acknowledged that there was a real risk of injustice and significant over or under compensation, given the differing positions on pass-on adopted by the class representative in each case. However, the Tribunal continued (at [37]) that the principle that such inconsistency should be avoided is not an absolute one. In practice it may not be possible to determine common issues jointly and the

aim of achieving consistency may have to yield to the aim of dealing with cases expeditiously and fairly in accordance with the overriding objective.

31. At [38], the Tribunal went on to observe that the Kent Proceedings were on the eve of trial, and the Ennis Proceedings had barely started. An adjournment would significantly delay the final resolution of Dr Kent's claim. Further it was *"unclear when an adjourned trial of all common issues in both sets of proceedings would take place"*. The Tribunal considered Dr Ennis's proposed timetable leading to a trial in October 2025 (i.e. within 12 months) to be over-optimistic. That uncertainty was compounded by Apple having indicated it might appeal the certification of the Ennis Proceedings, and any decision not to hear the Ennis Proceedings with Dr Kent's.

32. The Tribunal (at [39]) decided that, although the damages recoverable per class member would be relatively small, Kent class members were entitled to have their claim determined without an indefinite period of delay. The Tribunal did not attach significant weight to the fact that Apple's witnesses would have to give evidence twice. The Tribunal considered (at [40]) that delay was the main prejudice to the Kent class, but accepted that Dr Kent would be further prejudiced by the impact on costs.

33. The Tribunal concluded (at [41]) that the considerations of overall fairness pointed firmly against the adjournment of the Kent Proceedings notwithstanding the risk of inconsistent outcomes.

E. THE PARTIES' POSITIONS AT THE JOINT CMC

34. We had alighted on the possibility of certain common issues being determined at the trial scheduled in the Coll Proceedings for October 2025 with pass-on being decided at a later stage. For similar reasons to those summarised by the Tribunal in the *Kent/ Ennis Ruling* at [34] that option was not advocated by any party and was considered unworkable.

35. As matters developed during the course of the Joint CMC, the options had narrowed to, in essence, a choice between Option 2 (adjournment) and Option

4 (with the October 2025 Trial proceeding as currently directed, and the Rodger Proceedings continuing completely independently). Epic, Professor Rodger and Google favoured the former; Coll advocated the latter.

(1) Submissions of Ms Coll

36. Ms Coll's ultimate position was that the October 2025 Trial should proceed as directed. Ms Kreisberger KC relied heavily on the approach of the Tribunal in the *Kent/Ennis Ruling* at [20] to [28] (set out at paragraphs [27]-[28] above), and the prejudice that would be caused to the class in the Coll Proceedings by an indefinite period of delay and the increase in costs as a result of an adjournment.

37. Ms Kreisberger KC referred to the balancing exercise that the Tribunal must undertake as between the need to avoid inconsistent decisions and the need to ensure that cases are conducted fairly, expeditiously and at proportionate cost in accordance with the overriding objective (Rule 4 of the Tribunal Rules). She relied in particular on the statement at [37] of the *Kent/Ennis Ruling*. She sought to draw parallels between the Kent Proceedings which had been in the course of preparation for three years, and were on the eve of trial, and the position in the Coll Proceedings which has been pro-actively case managed and is in the final stages before trial in October 2025.

38. Ms Kreisberger referred to the approach the Tribunal had taken when considering consolidation with Epic in March 2024. Even with 19 months to go before trial, the Tribunal had only been prepared to order partial consolidation, and only then on the basis that Ms Coll was indemnified for the additional costs that would be incurred as a result.

39. Referring to the first factor in the judgment of Coulson J in *Fitzroy Robinson Limited v Mentmore Towers Limited* [2009] EWHC 3070 (TCC), namely "the parties' conduct and reasons for delay", she submitted that Professor Rodger has been dilatory. He had provided no explanation for the delay in commencing proceedings. There were multiple trigger points when Professor Rodger could have brought his claim sooner. The Tribunal in the *Kent/Ennis Ruling* was

critical of Dr Ennis' two-year delay in issuing following the filing of Dr Kent's claim. In the present proceedings, there has been a three-year delay between the time Ms Coll issued her claim to the date on which Professor Rodger filed his claim. That is all the more pertinent given that Dr Ennis and Professor Rodger are represented by the same lawyers.

40. It was submitted that Professor Rodger bears a heavy responsibility for the delay. The litigation plan filed with his CPO application set out a strategy of at least partial consolidation with the Coll Proceedings and being ready for trial in October 2025. It was therefore incumbent on him to act expeditiously. In fact, Ms Kreisberger said, that strategy was never realistic, but Professor Rodger has now pivoted to an adjournment of the October 2025 Trial – again far too late.

41. Even now, Ms Kreisberger submitted, the timetable put forward by Professor Rodger to demonstrate that he can be ready for a trial if it were to be adjourned to October 2026 is hopelessly optimistic and does not provide a sound basis on which to adjourn Ms Coll's trial which is only a few months away. She urged us to treat with great scepticism the proposition that the trial need only be delayed by one year. In all likelihood, she said, it will prove to be longer.

42. Ms Kreisberger submitted that the timetable is naive in its assumptions, and detached from the practical realities of litigating against a defendant like Google. In relation to disclosure, for example, Professor Rodger's proposals are simply not realistic, given the sheer volume of disclosure to be reviewed, and nor does it accord with Ms Coll's experience when making disclosure requests to Google and the iterative process that tends to follow. There are the practical difficulties of agreeing confidentiality regimes. Whilst service of factual evidence is included in Professor Rodger's timetable, service of reply evidence by Ms Coll, Epic and Google is not. Whereas Professor Rodger had suggested only adducing one expert, it is now suggested that he may seek to adduce expert evidence in other areas (already covered by reports provided by Ms Coll).

43. Ms Kreisberger also pointed to the fact that Professor Rodger says he "will be relying on Epic, Coll and Google to act very quickly and be very proactive about identifying and providing documents that they consider will be relevant at trial".

First, this demonstrates that Professor Rodger will be putting a significant burden on Ms Coll; and secondly Ms Coll does not know what Professor Rodger will consider to be relevant. If Professor Rodger is relying on Ms Coll in this way, then that will impose a burden (and costs) on Ms Coll.

44. Further delay might arise depending on the outcome of the decision of the Supreme Court in *Michael O'Higgins FX Class Representative Ltd and Another v MUFG Bank Ltd and Others* ("*FX*") relating to the suitability of opt-out claims for businesses which she suggests may affect the certification decision in relation to the Rodger Proceedings. She also referred to the possibility that larger entities in a class may need to be more actively involved in collective proceedings (as considered in the *Bulk Mail* case[3]).

45. The prejudice that the class will suffer if the Coll Proceedings are adjourned falls into three categories:

(1) Delay: Ms Kreisberger characterised this as the main prejudice that the class would suffer: see the *Kent/Ennis Ruling* at [39] to [40]

(2) Costs: the adjournment would result in (a) some wastage of sunk costs (e.g. brief fees which have been incurred); (b) additional costs incurred as a result of the delay before the case gets to trial which Ms Coll estimates to be £6.4m (including an ATE premium of around £1m); and (c) expanding and extending the trial to accommodate three claimants. As regards (b), Ms Coll's solicitors have suggested that additional work required will include the review of further pleadings, inter-partes correspondence, consideration of further requests for disclosure from Google by Professor Rodger, review of disclosure, attendance at further CMCs, review of additional expert evidence from Professor Rodger, and Google, (being further factual or industry expert evidence) and preparation of a further expert report on incidence (i.e. pass-on) in response to Professor Rodger's expert report. Ms Kreisberger cautioned that the estimate of £6.4m may prove to be an underestimate. As regards

[3] Bulk Mail Claim Limited v International Distribution Services PLC [2025] CAT 19.

(c), Professor Rodger suggests that the length of trial will be 12 weeks, which is significantly longer than the 8 week trial currently listed.

(3) Funding disruption: Ms Christoforou at paragraph 26(b) of her first witness statement stated that there was no certainty that the litigation funder would fund future increases to the litigation budget, and that delay to the trial would inevitably be a significant consideration for the litigation funder's investment committee. Ms Kreisberger submitted that it would be a matter of serious concern to the funder, and funders in general, if the Tribunal was to show that it was amenable to "upending funding arrangements at the 11th hour, where a trial has been in the diary for a number of years, and a party has dragged its feet and then brings a last minute application, in substance to derail it".

46. There may be further disruption if the October 2025 Trial was adjourned if, for example, there are difficulties in relation to Counsel availability. Any requirement to switch Counsel would cause further prejudice to Ms Coll.

47. On the other side of the equation (the need to avoid inconsistent judgments), Ms Kreisberger submitted that it was important not to overstate the extent of the overlap between the issues arising in the three sets of proceedings. The affected sales of apps will not necessarily overlap as between the Coll class (i.e. UK domiciled purchasers of apps provided by app developers anywhere in the world); and the Rodger class (i.e. UK domiciled app developers selling to purchasers anywhere in the world). There are also different relevant time periods: in Coll the relevant period is 1 October 2015 to March 2024; and in Rodger, it is August 2018 to August 2024. Ms Coll's expert has provided evidence relating to UK purchasers, and there is no reason, Ms Kreisberger said, to assume that pass-on rates relating to purchasers in other territories (i.e. relevant to Rodger's class) are the same or similar. What is more, Ms Coll does not allege that there is 100% pass-on to purchasers: it is in the range of 50-90%. It may therefore be that, at the lower end of that range, the risk of double recovery raised by Google is exaggerated.

48. Finally, Ms Kreisberger invited us to attach little weight to the inconvenience to Google's witnesses in having to attend two trials if the Coll Proceedings are not adjourned. That point was not considered to be a compelling reason to adjourn the Kent Proceedings and Google is, in any event, engaged in similar litigation all around the world, and therefore evidence is already being given multiple times.

(2) Submissions of Professor Rodger, Epic and Google

49. At the Joint CMC, the positions of Professor Rodger, Epic and Google had coalesced around a preference for Option 2.

50. Mr Holmes KC, for Google, stressed that the balancing exercise the Tribunal must undertake is particular to the facts of the case in issue. He sought to distinguish the *Kent/Ennis Ruling*. First, there were only two sets of proceedings in issue, whereas here there are three. There is a substantial risk of multiple trials covering duplicative ground, with a risk of inconsistencies at each stage. Secondly, there has already been a degree of partial consolidation (between Coll and Epic) but - with a third party in the mix - only full consolidation will now be effective. Thirdly, here there is an offer on the table from Epic and Rodger to mitigate the additional costs burden.

51. On the issue of inconsistent judgments, Mr Holmes submitted that the claims advance almost identical cases, and, as regards Epic, have moved closer over time. Epic has now amended its claim (since the Partial Consolidation Order) alleging exploitative abuse, as well as exclusionary abuse, thereby aligning with the case advanced by both Ms Coll and Professor Rodger. The claims raise the same core questions, even though when it comes to damages, the answer contended for by Ms Coll and Professor Rodger may be different. Any difference in the way the Rodger Proceedings are pleaded is likely to be substantially covered by the disclosure already provided.

52. Mr Holmes stressed that, whilst Professor Rodger's claim does cover sales other than to UK purchasers, in so far as UK app developers sold apps to UK Purchasers there is direct, "pound for pound" overlap. There was no reason to

think that pass-on in the UK would be any different to pass-on in other territories, and pointed to the use in these proceedings by Ms Coll's expert of certain EEA and US data in reaching an estimate of pass-on, albeit that the level of fee advanced is, we are told, materially different.

53. Epic's case as now amended seeks, as part of the injunctive relief, the imposition of a level of service fee going forward, which will entail the same counterfactual exercise in relation to overcharge as will be required in relation to the Coll and Rodger Proceedings.

54. If the Coll Proceedings are heard first, it is unlikely to reduce the risk of multiple trials. If Ms Coll fails, it is likely that Epic and Rodger would wish to have their day in court advancing different evidence (factual and expert) or arguments which may lead to a different result. If Google loses, the Coll judgment would need to decide the level of any overcharge; and the level of pass-on from developers to the Coll class. Whatever the decision in relation to that, it is likely that either Epic or Rodger (or both) will relitigate those arguments. Epic assumes that the counterfactual world would involve no service fee at all, which is lower than that alleged by Ms Coll's expert for the exploitative abuse (which posits a range between 10 and 20%, with 15% most likely). As regards the Rodger Proceedings, Ms Coll's pleaded pass-on rate is now, we are told, between 50% and 90%, whereas Professor Rodger's pass-on rate is significantly lower.

55. There is also a real risk of inconsistent outcomes even if the same panel hears each case, because they will be faced with different evidence. An inconsistent conclusion is likely to lead to significant risk of unfairness and over or under compensation. Both Ms Coll and Professor Rodger claim around £1bn in damages, but based on diametrically opposing cases relating to the rate of pass-on from app developers to consumers. If, in Coll, the rate is found to be at the upper end, such that her claim of £1bn succeeds, but subsequently, for the purposes of Rodger, it is found to be at the lower end and his £1bn claim also succeeds, then Google will end up "picking up the bill twice".

56. Mr Holmes went on to point to the similarity in issues arising in the Kent Proceedings, and the Coll Proceedings. The claimant in each is represented by the same law firm, and in all but one instance by the same experts. In many respects the experts deployed a similar analysis and methodology. It would be desirable for the judgment in the Kent Proceedings to be available in good time before the Coll Proceedings if at all possible, and that was a factor to be weighed in the balance.

57. To have potentially three trials (Coll and Epic Phase 1 followed by Epic Phase 2, and then Rodger), is highly inefficient, and wastes significant amounts of Tribunal time. It also involves large additional costs, not only for Google (who must participate in all three cases), but for the claimants who will duplicate their efforts fighting points which are in their common interest and on which they could coordinate.

58. Mr Holmes stressed the unfairness of the same Google witnesses giving evidence on repeated occasions (with the stress and strain which that entails). Not only will that be unfair to the witnesses, but it also allows a second (and in this case possible third) bite at the cherry, with the benefit of the evidence already obtained in earlier trials.

59. If we were starting with a blank sheet of paper, the obvious solution would be to hear the three cases together in a single trial in the interests of efficiency, consistency and justice. An adjournment would have the added advantage of ensuring a more rational spacing between the actions against Apple and Google. However, given that there is a trial already listed, other factors fall to be weighed in the balance. As to this:

    (1) Delay: the cost of a speedier resolution is the risk of inconsistent judgments. Delay in receipt of damages can be compensated for in interest. The sums in issue are not substantial or life-changing to individual class members (as opposed to what may be the case, for example, in a personal injury case). A trial in October 2026 ought to be achievable. For example, concerns relating to the disclosure process

were likely to be overstated, given the amount of disclosure that had been provided already.

(2) Costs: the Proposed Indemnity offered makes a real difference. It is also a distinguishing factor from the position in the Kent and Ennis Proceedings. As regards Ms Coll's costs, Mr Holmes noted that there was no evidence before the Tribunal that Ms Coll's funder would not be prepared to pay some part of the increased costs. In any event, any burden would be temporary and subject to final allocation based on the outcome of the litigation and Ms Coll had a £4.78 million contingency to draw from (as set out in her updated litigation budget dated 18 October 2024). (We should add that Ms Kreisberger, in reply, indicated that Ms Coll did not have the full amount of contingency left.) Mr Holmes also submitted that Ms Coll would be likely to enjoy some efficiencies and benefits from consolidation, which need to be weighed in the balance when considering any additional costs. Hearing the three claims together was likely to add 3 weeks to the current time estimate. Ms Coll's additional costs were likely to be below Ms Christoforou's estimate, and that a combined £3 million of additional costs via the Proposed Indemnity was reasonable.

60. Mr O'Donoghue KC, for Professor Rodger submitted that with two materially overlapping claims already on foot, a trial in October 2026 ought to be achievable. There are many substantial commercial matters that are expedited and can be ready within an 18 month timeframe, although he made clear that Professor Rodger's legal team did not underestimate the amount of work (or indeed, pain) that might entail. He confirmed that there would be no need for duplication of work where that already undertaken by Ms Coll, and by Epic was sufficient, and pointed to the commonality between the claimants on, for example, issues of market definition and dominance.

(1) In relation to practical issues such as confidentiality, where the necessary confidentiality rings are already in place, admitting a third claimant to the confidentiality ring ought not to present an obstacle.

(2) In relation to factual evidence, Professor Rodger's evidence would be of benefit to the Tribunal (and potentially to Ms Coll) because, whilst Epic is a large and very successful app developer, Professor Rodger's class would consist of small, medium and some larger sized app developers (and in particular developers who might be unwilling to be seen as taking on the might of Google). That evidence ought to be available within the nine month or so period envisaged by Professor Rodger's timetable.

(3) In relation to disclosure, Professor Rodger produced a table of the areas of overlap between the Coll, Epic and Rodger Proceedings, a copy of which is annexed to this Judgment. There is a least one, and possibly two, main issues of alleged exclusionary practices which are raised in the Rodger Proceedings but not in either the Coll or Epic Proceedings (see issues 11 and 12 on Table 2)[4]. Google had suggested that the documents relevant to the additional issue(s) is in the disclosure already provided. If it is not, the formulation of requests for further disclosure need not await the completion of a review of the disclosure already provided, and could start straightaway.

(4) On the issue of expert evidence, whilst in his skeleton argument he had indicated that it was likely he would require expert evidence in the six areas where Ms Coll had been granted permission to adduce expert evidence, in the course of submissions, Mr O'Donoghue again suggested that there was no incentive on his client's part to duplicate that work where, on review, the issues were adequately covered by others.

61. In short, Mr O'Donoghue submitted that the rate of future progress in the Rodger Proceedings has to be seen in light of the work that has already been done in the Coll and Epic Proceedings, and that there is no need to duplicate what has already been done. Once that is taken into account, a trial in October 2026 is achievable.

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[4] The parties subsequently produced a revised version of the table, subject to various caveats. Ms Coll considers that issue 11 *is* raised in the Coll Proceedings. Professor Rodger was unable to verify this version of the table. For present purposes, it suffices to annex Professor Rodger's table to this Judgment.

62. Echoing Mr Holmes, Mr O'Donoghue stressed the points of difference between the position in the Kent and Ennis Proceedings, and the position here. If there was an analogy to be drawn, he suggested it was not with the *Kent/Ennis Ruling* but with the *Interchange* cases where the Tribunal and High Court reached materially different conclusions across three cases based broadly on the same facts: a situation which the Court of Appeal considered was undesirable.

63. As to the suggested lack of temporal overlap, Mr O'Donoghue made two points: first, that although there were 2 ½ years which do not overlap, there are 5 ½ years that do, and secondly, that unless it is suggested that there are factors that affect earlier and later time periods differently, it is a point without substance.

64. In relation to Professor Rodger's own conduct, Mr O'Donoghue drew a distinction between, first, the period prior to issuing the claim and, secondly, the period post-issue. In relation to the former, as part of the relevant matrix he referred to the first opt-out B2B claim (the *FX* claim) being certified in 2023. Prior to that point, whether or not such a claim would be certified was untested. Professor Rodger's first discussions with his solicitors took place in September 2023, after they had filed the Ennis Proceedings. Funding then had to be obtained, which happened in December 2023. Work on producing the necessary documentation and reports could only then commence. In relation to the one year delay between the issue of the Ennis Proceedings, and the Rodger Proceedings, Mr O'Donoghue referred to the relatively small size of Geradin (acting in both). The criticisms levelled against his client relating to the pre-claim period were misplaced, but in any event delay is only one factor to be weighed with others. Delay in the post-claim period he attributed to the conduct of others, and in particular Google who, for example, initially suggested that jurisdiction would be contested. He also pointed to the fact that Ms Coll would not engage in joint case management until the Rodger Proceedings had been certified.

65. Mr O'Donoghue accepted that, once the timetable is set for trial, it would be fair to assume that anyone coming to the Tribunal to seek a further adjournment of the trial would be likely to receive a "frosty reception". He submitted that the

prospect of future delay because of pending Supreme Court appeals was "alarmist" and was no reason not to continue with the present proceedings.

66. Both Mr O'Donoghue and Mr West KC for Epic made submissions as to the level of Ms Coll's estimated costs caused by any adjournment, and to the effect that the £3m indemnity on offer is likely to be sufficient, or will at least be a significant contribution to any additional costs:

(1) Ms Christoforou's figure £6.4m for the costs incurred as a result of a 12 month delay is calculated on the basis of the current "run rate" of Ms Coll's monthly costs of £900,000, dividing it by two, and multiplying it by 12, to which a £1m ATE premium has been added. However, Mr West submitted that there was no basis for assuming that the costs of consolidation would be half of the costs of preparing her own case for trial. A monthly run rate of around £500,000 is simply not realistic. On Ms Christoforou's evidence, the partial consolidation with Epic had led to additional costs of around £70,000 per month: a significantly lower figure.

(2) It is unlikely that significant work will be required in relation to any additional disclosure, or factual evidence. In relation to expert evidence full consolidation would mean that both Epic and Professor Rodger would be entitled to adduce expert evidence, but the Tribunal will expect the parties to liaise to avoid duplication. Given the common issues raised by the claimants against Google, and the fact that Ms Coll's evidence has already been produced, it may be that further expert evidence on the part of Ms Coll will be limited to a response to Professor Rodger's case on pass-on.

(3) It is inconsistent for Ms Coll to contend that she is ready for trial and yet that she will incur additional costs of at least £6.4m if the October 2025 Trial were to be postponed.

(4) Whilst there will be the added costs of trial, which will be extended by three to five weeks, Ms Coll has not estimated those costs, and they are

unlikely to warrant an increase over the £3m that Epic and Professor Rodger have proposed.

67. Mr O'Donoghue and Mr West also addressed whether there would be disruption to Ms Coll's funding arrangements. Under the Epic Indemnity, Ms Coll's funder is not required to fund the costs up front, rather Ms Coll can recover them directly from Epic. Epic pays the costs on receipt of the invoice. Ms Coll will not need to seek funding from the funder for them. In any event, in October 2024, Ms Coll had obtained an increase in funding from £11.2m to £25.5m, and she had not explained whether, and if so, how that additional funding had been spent. Mr O'Donoghue pointed to the fact that the funder is one of the largest funders in the world, with more than $6bn of claims funded globally. He invited us to treat with a degree of scepticism the suggestion a funder would cease funding a £1bn claim which is almost ready for trial. In the event that Ms Coll wins at trial, Ms Coll's costs will ultimately be met by Google, and to that extent the issue is one of cash flow.

F. ANALYSIS

68. In weighing up the various options as to the ways in which the Coll, Epic and Rodger Proceedings cases ought to be heard, we apply the principles summarised in the *Kent/Ennis Ruling* as set out in paragraphs [27]-[28] above. However, the decision in that case, as in the present case, was a case management decision. As such, each case turns on its own facts and particular circumstances. We are required to make decisions as to what we consider to be the best way of case managing the three sets of proceedings that are before us. The conclusion we have reached – that the October 2025 Trial should be adjourned - is different to that reached in the *Kent/Ennis Ruling*. That is because, whilst certain aspects of the present case may be similar, or even the same, as those in the Kent and Ennis Proceedings, other factors are different. As a result, the balancing exercise is not the same. We must conduct a balancing exercise that addresses the specific issues in this case. The result of that exercise, once all relevant factors are taken into account, clearly points in favour of an adjournment of the October 2025 Trial, and a joint trial of all three proceedings

(1) The overlap and the risk of inconsistent outcomes

69. The claims brought in the Coll, Epic and Rodger Proceedings significantly overlap, with all three sets of proceedings raising a number of similar if not identical common issues as to market definition, dominance, overcharge and pass-on. The extent of the overlap in terms of issues is apparent from the tables produced by Professor Rodger and annexed to this Judgment.

70. The overlap is not total. Ms Coll's class of UK app purchasers may have purchased apps from app developers that fall outside Professor Rodger's class, and Professor Rodger's class of UK app developers may have sold apps to purchasers all around the world. There is also a temporal difference between the relevant period for Ms Coll's claim and that applying to Professor Rodger's. However, the classes are not mutually exclusive: no one has, for example, suggested that UK app purchasers will not have purchased from UK app developers, and there is a substantial overlap of 5 ½ years in the periods of claim. Nor has anyone suggested that there is any reason to consider that rates of overcharge or pass-on will have been different depending either on the location of the app developer, or purchaser, or across the combined period relevant to the Coll and Rodger Proceedings.

71. We accept Mr Holmes' submission that it is unlikely that a decision in Coll will necessarily be the end of the matter – and it is therefore likely that there will be multiple trials. In that context, the position in relation to Epic appears to have shifted since the Partial Consolidation Order by virtue of the most recent amendments made to its claim form. Epic now seeks an injunction requiring Google, in summary, not to charge excessive or unfair commissions above a rate as determined by the Tribunal. Whilst damages are not an issue in the Epic Proceedings, as now framed, Epic's claims require the Tribunal to consider what rate is not excessive or unfair. That will entail an assessment of the level of overcharge in a way that did not arise in the earlier versions of the claim form, and in relation to which we are told Epic's position is different to Ms Coll's. That means (a) that Coll and Epic are more aligned than they were previously, and (b) the partial consolidation, previously considered appropriate, may no

longer be as effective given there is now an increased risk of inconsistent judgments as between Coll and Epic.

72. In these circumstances, there is a very real risk of inconsistent outcomes. That risk may well lead to over or under compensation, with either Google ultimately over-paying compensation, or the class members being under compensated. Even if that were not the case, "*consistency of outcomes in the broader sense of deciding like cases alike is a goal worth striving for*" for all of the reasons set out in the *Kent/Ennis Ruling* at [23]: see paragraph [27] above.

73. As stated in the *Kent/Ennis Ruling* at [37], the principle of avoiding inconsistency of outcomes is not absolute and must be weighed in the balance with the aim of dealing with cases expeditiously and fairly in accordance with the overriding objective, also taking into account the efficient use of the Tribunal's resources, and the resources of the parties.

(2) Delay

74. An adjournment of the trial of the Coll Proceedings will plainly delay the resolution of Ms Coll's claims. However, in our view, the timetable leading to a trial in October 2026 ought to be achievable. We have listed a CMC which will be heard on 1 May 2025 to set directions leading to a trial commencing in October 2026. Professor Rodger is not starting from scratch in this case. A good deal of work has been completed on points in issue in the Rodger Proceedings which are common to those in the Coll and Epic Proceedings. Moreover:

(1) On any analysis a substantial disclosure exercise has already been undertaken. The process of disclosure to date in the Coll and Epic Proceedings has been at times somewhat tortuous. However, the issues on which supplemental disclosure is required are likely to be narrow (see paragraph 60(3) above) and (we are told) potentially covered by disclosure already made by Google. Requests for further disclosure have been actively case managed throughout the Coll and Epic Proceedings and we anticipate that a similar process will be instituted in the directions that are given at the CMC on 1 May 2025.

(2) Factual witness statements have already been served in the Coll Proceedings. This will mean that any further factual evidence required for the Rodger Proceedings should be able to be provided within a relatively short timeframe,

(3) Ms Coll has filed her first round of expert reports, and the expert reports of Google have been served. Ms Coll's reply reports are due to be provided shortly. Again, if and to the extent that further expert evidence is required for the Rodger or Epic Proceedings, this ought to be available in a more efficient manner than would be the case if the parties were starting from scratch.

75. Professor Rodger has stated that he will not seek unnecessarily to duplicate either factual evidence or expert evidence that has already been filed. Professor Rodger will be required to seek permission for the service of expert evidence, and to justify why it is required. When considering that application, the Tribunal will consider whether it is proportionate, and how it may fairly and efficiently be dealt with. For example, shorter supplemental reports cross referring to existing reports may be an option. These are matters that can be considered in due course.

76. A trial in October 2026 is achievable; unlike the position in the *Kent/Ennis Ruling*, where the adjournment would have been for an indefinite period. By contrast, here we are looking at a delay of 12 months. Moreover, the possibility that judgment may be handed down in the meantime in either *FX*, or *Bulk Mail* is not a reason to consider that the delay may prove to be indefinite.

77. An adjournment does however mean that there will be a delay of 12 months. As regards the parties' conduct and the reason for the delay, we note that the situation arising in the *Fitzroy Robinson* case (see paragraph [28] above) was very different to that which arises here. In the present case, none of the parties to the October 2025 Trial have made any application to adjourn the trial. The Joint CMC was convened by the Tribunal to enable it to hear from the parties and consider how the three sets of proceedings ought best to be case managed and determined. In that context, various options have been considered. The

situation is far removed from a "standard" two party case in which one of the parties to the litigation seeks an adjournment shortly before trial. It is far more complex than that.

78. Mr O'Donoghue has provided an explanation of the various considerations that were taken into account by Professor Rodger before commencing the claim, and (for example) the need to secure funding. There remains a question mark over whether the Rodger Proceedings could have been progressed more quickly. We have in mind specifically the fact that the Rodger Proceedings were commenced 12 months after the Ennis Proceedings, notwithstanding the fact that Professor Rodger must have appreciated that, were his claim to be certified, it would also have serious knock-on consequences for the Coll and Epic Proceedings.

79. We consider that Professor Rodger should have provided a witness statement explaining why the claim was not issued earlier: all the more so when Dr Ennis's failure to do so was a matter that prompted adverse comment by this Tribunal in the *Kent/Ennis Ruling*. However, we accept that there may be various reasons, as were explained by Mr O'Donoghue, as to why it was not practicable to do so, and we do not consider it assists to apportion "responsibility" for the delay in this case.

80. More generally, where a claim is made and there is the potential for claims by direct purchasers higher up the chain, or indirect purchasers lower down the chain, the Tribunal expects those who may seek to bring related claims to proceed with proper expedition, and to seek, wherever practicable, to ensure that the Tribunal at least has a reasonable opportunity to consider whether the claims can, if appropriate, be heard together. Parties cannot expect that in future in similar circumstances the course adopted in this case will be followed. If they do not proceed suitably promptly, then they risk having to wait until judgment in the first case is decided before any significant progress can be made with their case.

(3) Prejudice to Ms Coll

81. We accept that this delay will cause some prejudice to Ms Coll. There will be a delay in the claim being determined, and litigants are entitled to have their claims considered fairly and expeditiously. The Tribunal in the *Kent/Ennis Ruling* attached great weight to the prejudice caused by delay. In that case, the delay was for an uncertain duration, in circumstances where the trial was due to commence in just three months' time. The situation had gone beyond the point of no return, in particular where no sensible proposals had been made for any alternative. Here the position is somewhat different: the trial is seven months away; certain directions have already been made in the Order dated 24 March 2025; and there will be a further detailed timetable set at the 1 May CMC that should mean that a trial will take place a year later than originally scheduled.

82. In our view, the principle tangible prejudice from delay per se is delay in the receipt by a claimant of compensation. Here however the amounts at stake are relatively small for the individual class members and any delay in receiving damages can be compensated for by payment of interest.

83. As to the costs incurred as a result of the adjournment of the October 2025 Trial, these are addressed to a significant extent by the Proposed Indemnity. We are satisfied that £3m is a reasonable sum which ought to redress, at least to a significant degree, the additional costs caused by the adjournment. There is an inconsistency in saying that Ms Coll's case is ready for trial and at the same time suggesting that significant further costs will be incurred in the interim. That is particularly so where the overlap of issues arising in the case is significant, and Ms Coll, Epic and Professor Rodger appear to be making common cause on a number of issues going to, in particular, liability.

84. In reaching our view that the level of the Proposed Indemnity is reasonable, we note in particular:

    (1) The costs wasted, such as brief fees incurred, ought not to be as high as they would have been had the trial been a matter of weeks away (as was the position in the Kent Proceedings).

(2) Ms Coll's costs incurred over the period of the adjournment are very much an estimate and based on a run rate which has applied during active preparation of her own case. We are not satisfied that the same rate is necessarily indicative of the costs likely to be incurred in order to deal with the review of documents produced by Professor Rodger (and potentially Epic and Google), in particular when the intention is that further evidence will not be duplicative and where the claimants are, to a significant degree, making common cause against Google. The actual rate is probably likely to lie somewhere between that, and the rate incurred as a result of the consolidation with Epic, and, subject to the point we make in (4) below, probably more towards the latter.

(3) A distinction can be drawn between costs incurred as a result of the adjournment, and costs incurred as a result of the expansion and extension of the trial. Strictly speaking, the latter should not be regarded as costs of and occasioned by the adjournment *per se*. There is something to be said for the fact that Ms Coll's funding has been obtained on the basis of certain expectations in terms of trial length and scope. In these circumstances, the Proposed Indemnity should provide some recompense for this, whilst recognising that there is likely to be the opportunity for some cost efficiencies and savings as a result of there being three claimants, rather than Ms Coll's team bearing the brunt alone.

(4) However within this latter category of costs arising from the expansion of the trial, there will be costs incurred as a result of the fact that Ms Coll will have to address Professor Rodger's case on pass-on. (Pass-on is already in issue in the Coll Proceedings; Google's expert evidence is that there was little, if any, pass-on). Costs incurred in relation to dealing with the latter should not be regarded as costs occasioned by an adjournment. In any event, it would not be appropriate to require Professor Rodger, still less Epic, to provide an indemnity in respect of them.

85. Taking all of these matters into account, we consider that £3m is a significant sum and reasonable contribution to make to Ms Coll in terms of increased costs.

86. As regards the impact of our decision in relation to the funding of the claim as a whole, as we have said, the Proposed Indemnity is reasonable and goes a significant way to addressing the adverse costs consequences of the adjournment. It is for the funders now to decide their own future course of action. As regards possible further prejudice, it has not been suggested to us that Ms Coll's legal team would not be available in October 2026.

87. Ms Christoforou's second witness statement was provided after the Joint CMC. It sought to address the Proposed Indemnity (which was provided only shortly before the Joint CMC) and explain why it was insufficient to cover Ms Coll's costs, and other points made in submissions at the Joint CMC. In short, Ms Christoforou:

(1) provided a figure of £250,000 for brief fees that will be wasted if the trial date is moved;

(2) indicated that costs of £6m had been budgeted for the trial phase of the Coll Proceedings, based on an 8 week trial, and the costs would be likely to increase by £3.5m if the trial increased to 12 weeks;

(3) acknowledged that the extent of any additional costs arising from the consolidation would depend on the extent of Epic and Professor Rodger's participation in the trial, but the original £6.4m was likely to be conservative;

(4) suggested that the estimate of total costs occasioned by consolidation and adjournment would be in the region of £9,445,000 to £9,950,000;

(5) sought to clarify the position as regards the contingency.

88. As we have indicated, Epic[5] and Professor Rodger both objected to the evidence on the basis that it was inadmissible, having been produced after the hearing, in circumstances where evidence on the level of costs could and should have been adduced by Ms Coll prior to the Joint CMC, and the level of costs was squarely in issue for the CMC having been specifically addressed on the proposed agenda.

89. In our view, even bearing in mind the fact that the Proposed Indemnity was put forward on the morning of the hearing, Ms Coll had the opportunity to put forward evidence relating to the level of the likely additional costs given that this was already in issue at the Joint CMC, and Ms Coll had in fact done so. There is no reason why the evidence in Christoforou 2 could not have been obtained earlier. However, in any event, it makes no difference to our assessment that the amount of the Proposed Indemnity is reasonable. In particular:

(1) It is not reasonable to proceed on the basis of an estimate that suggests that the effect of extending the trial by four weeks to 12 weeks will necessarily lead to an increase in the cost of trial of over 60% of the figure which is already budgeted for 8 weeks.

(2) The overall costs that Ms Coll now suggests will be entailed in relation to a 12 week trial are not that far off the entire budget originally put forward for the whole of the Coll Proceedings.

(4) Other considerations

90. Finally, in reaching our decision, we have also considered the following matters:

(1) If the Rodger Proceedings are heard separately, the Google witnesses will give evidence twice, and on the second occasion Professor Rodger's legal team will have the benefit of knowing how the evidence in the Coll Proceedings unfolded. However, on the basis that there is litigation

[5] Relying on *Vauxhall v Denso* [2025] EWHC 213(Ch) at [137] to [145], applying, in the context of an interlocutory hearing in a competition case, the principles of *Ladd v Marshall*.

relating to similar issues arising in other jurisdictions, this is a factor that attracts less weight than otherwise might be the case.

(2) If matters remain as they are, the Tribunal is likely to be faced with three fairly substantial trials, lasting perhaps in total twenty or more weeks, leaving aside the time spent on administrative and procedural matters, and case management hearings leading up to three separate trials. The impact on other tribunal users as a result is also likely to be not insignificant.

(3) If the Coll Proceedings are adjourned, it is more likely that the judgment in the Kent Proceedings will be available. Whilst of some relevance, this is not a determinative factor in the balancing exercise, not least because it is unclear as to how, and if so the extent to which, any finding relating to Apple will be informative on the particular allegations made against Google.

(5) The balance in this case

91. In our view, standing back and taking a view of what is sensible and proportionate and in the interests of justice to all parties, and taking into account the impact on other litigants and the Tribunal, the balance clearly falls in favour of an adjournment of the October 2025 Trial, and in favour of the Tribunal hearing the Coll, Epic and Rodger Proceedings together.

92. In reaching this decision, we recognise that it is, in effect, the opposite to that reached by the Tribunal in the *Kent/Ennis Ruling*. However, that only goes to underline the fact that each case is different, and must be assessed having regard to its own particular circumstances. In our view, there are clear factors that differentiate the present scenario from that facing the Tribunal in the Kent and Epic Proceedings. First, the present case concerns the management of three sets of proceedings, and not just two, and with the prospect of three separate trials, rather than two (leading both to the increased burden of cost and resources and to the inevitable increased risk of inconsistent judgments). Secondly, whilst the Coll Proceedings are close to trial, they are not at the eve of trial. Thirdly,

whilst there will obviously be a delay as a result of the adjournment as regards the Coll Proceedings, it is not of uncertain, indeterminate length and the parties are to work towards a trial in October 2026. Fourthly, we are satisfied that the prejudice to Ms Coll in terms of additional costs has been reasonably and significantly addressed by the Proposed Indemnity.

G. CONCLUSION

93. For the reasons set out, we concluded that the Coll, Epic and Rodger Proceedings should be heard together at a trial listed in October 2026 and that the October 2025 Trial should be adjourned.

94. This decision is unanimous.

The Honourable Mr Justice Morris (Chair)

Bridget Lucas KC

Charles Dhanowa, CBE., KC (Hon)
Registrar

Date: 30 April 2025

ANNEX A
ISSUES ARISING IN EPIC, COLL AND RODGER

Table 1: overview of overlapping issues

No.	Issue	Arises in *Epic*	Arises in *Coll*	Arises in *Rodger*
Market Definition				
1.	Licensable smart mobile OS market	Yes	Yes	Yes
2.	App distribution market	Yes	Yes	Yes
3.	Payment services market	Yes	Yes	No
Dominance				
4.	Licensable smart mobile OS market	Yes	Yes	Yes
5.	App distribution market	Yes	Yes	Yes
6.	Payment services market	Yes	Yes	No
Abuses				
7.	Exclusionary	Yes	Yes	Yes
8.	Exploitative (unfair pricing)	Yes	Yes	Yes
Loss, damage and remedies				
9.	Counterfactual price	Yes	Yes	Yes
10.	Pass-on	Yes	Yes	Yes
11.	Injunctive relief	Yes	No	No
Other issues				
12.	Jurisdiction/ applicable law	No (resolved)	No	Yes

Table 2: overview of alleged exclusionary practices

No.	Issue	Arises in *Epic*	Arises in *Coll*	Arises in *Rodger*
Practices ensuring that the Play Store is the pre-installed and prominently positioned app store				
1.	Google requires devices that can access the Play Store to have the Play Store pre-installed	Yes	Yes	Yes
2.	Google requires devices that can access the Play Store to have the Play Store prominently positioned	Yes	Yes	Yes
3.	Google rewards the pre-installation of Chrome and Search (each tied to the Play Store) using PAs	No	No	Yes

4.	Google rewards restrictions on alternative app stores using RSAs	Yes	No	Yes
Practices restricting rivals from acccessing users via the Play Store				
5.	Google prohibits the use of the Play Store to distribute app stores	Yes	Yes	Yes
Practices restricting developers and consumers from bypassing the Play Store				
6.	Google restricts direct downloading of apps, including alternative app stores	Yes	Yes	Yes
7.	Google restricts steering to alternative sources and requires the use of Google Play Billing	Unclear	Partially	Yes
8.	Google prohibits forking	Yes	Yes	Yes
Agreements with developers that limit the ability of rival app stores to compete				
9.	Google pays app developers for giving the Play Store preferential treatment (Project Hug etc)	Yes	No	Yes
10.	Google sought to enter into agreements with Samsung to compete less vigorously in app stores	Yes	No	Yes
11.	Google makes app developers' access to Play Store APIs conditional on distributing via the Play Store	No	No	Yes
12.	Google requires developers wishing to use App Campaigns to list their apps on the Play Store	No	No	Yes
Other exclusionary practices (not pleaded in *Rodger)*				
13.	Google requires those distributing Android apps through the Google Play Store to use Google's proprietary payment service	Yes	Yes	No

Table 3: overview of expert evidence

No.	**Issue**	**Ordered in *Epic***	**Ordered in *Coll***	**Likely to be needed in *Rodger***
1.	Economics	Yes	Yes	Yes
2.	IT security	Yes	Yes	Yes
3.	Payment systems	Yes	Yes	Yes
4.	Accounting	No	Yes	Yes
5.	Development/distribution/monetisation of apps	No	Yes	Yes