COMPETITION APPEAL TRIBUNAL

NOTICE OF AN APPLICATION TO COMMENCE COLLECTIVE PROCEEDINGS UNDER SECTION 47B OF THE COMPETITION ACT 1998

CASE NO. 1720/7/7/25

Pursuant to Rule 76(8) of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (the "Rules"), the Registrar gives notice of the receipt on 16 April 2025 of an application to commence collective proceedings under section 47B of the Competition Act 1998 (the "Act"), by Or Brook Class Representative Limited (the "Proposed Class Representative" or "PCR") against: (1) Alphabet Inc; (2) Google LLC; (3) Google Ireland Limited; (4) Google UK Limited; (5) Google Asia Pacific Pte Limited; and (6) Google Commerce Limited (together, "Google"). The PCR is represented by Geradin Partners Limited, Copthall House, 14-18 Copthall Avenue, London, EC2N 2DL (Reference: Damien Geradin/ Patrick Teague).

The claims which the PCR seeks to combine are for loss and damage caused by Google's alleged breach of statutory duty, in particular, by its infringement of Article 102 of the Treaty of the Functioning of the European Union ("TFEU") (up to 31 December 2020) and Section 18 of the Act. The collective proceedings claim form (CPCF") alleges that:

1. Google is dominant in: (a) the worldwide market for licensable smart mobile operating systems ("OS"); (b) the worldwide market for Android app stores (where Google's product is called the Play Store); (c) the various national markets for general search services; and (d) the UK (or wider) market for the provision of search engine management services;

2. Google has abused its dominance (on at least some of the above markets) by preventing or dissuading others from competing (effectively or at all) in the general search and advertising markets; and

3. Google has thus driven up prices for search advertising, and reduced the value derived from such advertising, causing losses to those paying for it.

The PCR alleges that Google has restricted competition in the following ways:

1. In relation to the Android OS ("Android") "ecosystem", Google has excluded competitors from the general search markets by:

    a. imposing conditions in its mobile application distribution agreements ("MADAs") with manufacturers of Android devices ("original equipment manufacturers" or "OEMs") that have the effect of tying the Google Search app and the Play Store;
    b. imposing conditions in its MADAs which have the effect of tying Google's browser, Chrome with the Google Search app and the Play Store;
    c. making the licensing of the Play Store and the Google Search app conditional upon OEMs entering anti-fragmentation agreements ("AFAs"), or otherwise imposing anti-fragmentation obligations and thus preventing the development of "Android Forks"

(which are modified versions of Android that have not been approved as "Android Compatible"); and

d. paying monetary incentives – including by placement agreements ("PAs"), revenue sharing agreements ("RSAs"), and Mobile Incentive Agreements ("MIAs") with OEMs and mobile network operators ("MNOs") – for OEMs and MNOs to pre-install and give prominent placement to the Google Search and Chrome apps on their devices, and/or not to pre-install any competing general search services.

2. In relation to browsers more generally, Google has excluded competitors from the general search markets by paying monetary incentives to developers in exchange for a requirement that developers make Google Search the pre-set default search engine on their browsers. The CPCF states that the most notable monetary incentives are paid under an information services agreement between Google and Apple (the "ISAs"), but that there are agreements with other browser developers as well, such as Mozilla and Opera.

3. Google offers advertisers an advertising management tool (known as Search Ads 360 or "SA360") which can in theory be used to manage advertising across a range of advertising providers. However, Google has introduced functions on SA360 in relation to its own advertising offering, while refusing to introduce (or delaying the introduction of) those functions in relation to Microsoft's rival offering. It is alleged that this has restricted advertiser's use of multiple search/advertising platforms (known as "multi-homing").

The PCR therefore contends that:

1. By tying the Google Search app and Chrome with the Play Store, Google makes it practically impossible for OEMs producing devices with the Play Store to sell or supply those devices without the Google Search app or Google Chrome (which by default uses Google Search).

2. By tying Chrome with the Google Search app, Google makes it practically impossible for OEMs producing devices with the Google Search app to sell or supply those devices without Chrome.

3. Google Android only operates properly in combination with "Google Play Services". Google Play Services are only available through, or in combination with, the Play Store. By preventing the development of Android Forks, Google prevents OEMs and others from gaining access to OSs that might operate properly without Google Play Services and thus makes the Play Store essential. This reinforces the effect of the ties described above and makes it practically impossible for any Android ecosystem other than Google's to emerge.

4. Through the payment of large monetary incentives, which the CPCF states, amount to the sharing of monopoly rents that Google generates through its dominance in search, Google: (i) makes it irrational (or at least unattractive) for OEMs distributing Android devices to do anything but sell or supply them with the Google Search and Chrome apps pre-installed and prominently placed; and/or (ii) forecloses competition among search providers (or at least raises barriers to entry and expansion for rival providers) who might otherwise compete to have their apps pre-installed and prominently placed.

5. Through the payment of (other) large monetary incentives, which said the CPCF states amount to similar rent-sharing, Google: (i) makes it irrational (or at least unattractive) for browser

developers to do anything but supply their browsers with Google search set as the default search engine; and/or (ii) forecloses competition among search providers (or at least raises barriers to entry and expansion for rival providers) who might otherwise compete to have their search engines set as the default.

6. Google ensures that a very large proportion of devices and browsers are supplied so that Google Search is pre-installed, prominently placed, and/or set as the default, meaning that device users are overwhelmingly likely to use Google Search instead of any rival search engine.

7. Google ensures that its own search platform is the only viable means of serving search advertisements to the vast majority of device users.

8. Google also ensures that SA360 offer more and better functionality as regards Google's own advertising offering than it does as regards Bing's (Bing being Google's main rival in search). Google thus ensures that users of SA360 are artificially biased towards advertising on Google.

9. Through all of the above, Google prevents rivals from achieving the scale necessary to compete effectively with Google in price, quality, and other non-price dimensions.

The overall result is said to be that Google has been able to and has: (i) charge(d) supra-competitive prices for advertising (which it is alleged Google has reinvested in maintaining its monopoly); and (ii) reduce(d) the value of its search advertisements.

The PCR's claims are in part, follow-on claims, relying on the European Commission's decision in AT.40099 dated 18 July 2018, as partially annulled by the General Court ("*Google Android (EC)*"). They are also in part standalone claims since the PCR's case is that there are various elements of Google's conduct that have not been established as unlawful by *Google Android (EC)*, but which are part of the abuse, and the abuse continued and evolved after the end of the period covered by Google Android (EC).

The PCR says that all of Google's conduct constitutes a single and continuous abuse, which is aimed at, and has succeeded in: (i) securing Google's dominance on the general search markets; and (ii) allowing Google to distort auction outcomes in line with its own financial incentives, leading to supra-competitive prices and sub-competitive quality/value on the search advertising market. The PCR says that the result is that advertisers have paid more for advertising and have achieved a lower return on advertising spend.

The PCR seeks to bring these proceedings on an opt-out basis on behalf of all UK-domiciled advertisers that have, between 1 January 2011 and 15 April 2025 (the "Relevant Period") paid for search advertising on Google Search (either directly or via an advertising agency). The proposed class definition is as follows:

> *"All UK-domiciled Advertisers who, during the Relevant Period, paid for search advertising services provided by Google (whether they purchased directly or via a media agency)".*

The PCR estimates that there are approximately 250,000 such advertisers (the "Proposed Class Members" or "PCMs"), and the PCR's expert economist preliminarily estimates that the total damages are likely to be in the region of £5 billion.

The CPCF states that it would be just and reasonable for the PCR to act as the class representative in the proposed collective proceedings. In summary, the PCR:

1. Is a company incorporated for the purpose of these proceedings. It is controlled by Dr Or Brook, who is an experienced academic with particular expertise in UK and EU competition law. Although the PCR acts through Dr Brook alone, Dr Brook intends to take advice from a consultative panel.

2. Has prepared plans for the proposed collective proceedings - the Litigation Plan, and the Notice and Administration Plan. In particular:

    (a) the PCR has instructed an experienced class action notice and claims administration company to act as the claims administrator in this case, as well as a public relations firm to assist the claims administrator with aspects of their public relations.
    (b) the PCR's plan is divided into three broad stages: the pre-CPO stage, the CPO stage, and the recovery stage. Each stage requires different steps for notice and administration, for which the claims administrator has planned to cater specifically.
    (c) A claims website will be available online. It will serve functions as appropriate at each stage, including: (i) allowing PCMs to register interest to receive additional information about the claim (ii) explaining how PCMs can opt out, (iii) providing PCMs with information about the claim as it progresses, and (iv) displaying any notices required by the Tribunal or the Rules.
    (d) The PCR has appointed a consultative panel made up of prominent individuals with experience in law and business to provide the PCR with advice and guidance on the conduct of this case.

3. Has access to experienced and knowledgeable advisors.

4. Has adequate arrangements in place to fund the proceedings. In particular, the PCR has entered into a litigation funding agreement with a third-party funder to pay the costs of the proceedings.

5. Has no conflict of interest.

6. Has adequate arrangements in place to cover the risk of adverse costs.

7. Does not seek an interim injunction, meaning there is no need to consider any possible undertaking as to damages.

The CPCF states that the claims are eligible to be brought in collective proceedings because:

1. The Claims are brought on behalf of an identifiable class of persons because it is possible objectively to determine whether a person is a PCM by reference to the proposed class definition.

2. The Claims raise common issues. In particular: (a) the definition of the relevant markets; (b) whether Google held, and continues to hold, a dominant position on those markets; (c) whether Google abused, and continues to abuse, its dominant position; (d) whether any such abuse of dominance caused PCMs to suffer loss and damage; (e) the quantification of any aggregate award of damages (subject to the point that, if agency pass-on (where advertising was bought from Google via media agencies) was less than 100%, part of the aggregate award may be reduced to reflect that lower rate of agency pass-on); and/or (f) the basis, rate and duration of interest to which the PCMs are entitled.

3. The proposed collective proceedings are an appropriate means for the fair and efficient resolution of the issues common to the underlying Claims. Indeed, collective proceedings are likely to be the only practically and economically viable method for many PCMs to obtain compensation for the losses suffered as a result of the abuse. That is because many of the Claims are likely to be low in value on an individual basis but very substantial in aggregate.

4. The benefits of having the Claims brought in collective proceedings outweigh any costs to the parties.

Further, the CPCF states that proposed collective proceedings should proceed on an opt-out basis because:

1. The Claims are strong for the purposes of Rule 79(3)(a). In matters of fact and law the Claims are supported by a range of findings and decisions in other proceedings. Most notably: (a) the Claims are based in part on the Commission's decision in *Google Android (EC)*; (b) the Claims in the present case are substantially similar to the claims in *Stopford v Alphabet Inc: Case 1606/7/7/23*, and the Tribunal has already decided to make a Collective Proceedings Order in that case; (c) many elements of the PCR's claims are supported by the CMA's "Mobile Ecosystems, Market study final report" dated 10 June 2022, the CMA's "Online platforms and digital advertising, Market study final report" dated July 2019, the CMA's "Mobile browsers and cloud gaming, final decision report" dated 12 March 2025, and the CMA notices under section 11(1) of the Digital Markets, Competition and Consumers Act 2024 to commence initial strategic market status investigations into google; (d) many elements of the PCR's Claims are supported by the judgment in the District Court for the District of Columbia in *United States v Google 20-cv-3010* dated 5 August 2024 ("Google Search (DC)").

2. It would not be practicable for the proceedings to be brought on an opt-in basis, given: (a) the relatively modest amounts that many PCMs could recover; (b) the complexity (and cost) involved in competition cases in general, and this case in particular, which it is said will require detailed economic analysis, and would make it difficult for PCMs to conduct their own assessments of the strengths and the values of their various Claims; (c) the size of the Proposed Class; the fact that, given the size of their claims, many of the PCMs are likely to be small businesses that would want to recover their losses but would be insufficiently resourced to take the proactive steps required for opt-in participation; and the fact that many PCMs might be deterred from actively participating in an opt-in action because of Google's position as a key trading partner.

The relief sought in these proceedings is:

1. damages and interest;

2. the PCR's costs; and

3. such further or other relief as the Tribunal may think fit.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively, the Tribunal Registry can be contacted by post at Salisbury Square House, 8 Salisbury Square, London EC4Y 8AP, or by telephone (020 7979 7979) or email (registry@catribunal.org.uk). Please quote the case number mentioned above in all communications.

Charles Dhanowa CBE, KC (Hon)
Registrar

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