COMPETITION APPEAL TRIBUNAL

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

CASE NO. 1733/7/7/25

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 27 May 2025 of an application to commence collective proceedings, under section 47B of the Competition Act 1998 ("the Act"), by Mr Roger Kaye KC (the "Proposed Class Representative/PCR") against Alphabet Inc., Google LLC, Google Ireland Limited, and Google UK Limited (the "Proposed Defendants" or "Google"). The Proposed Class Representative is represented by KP Law Limited, 81 Chancery Lane, London, WC2A 1DD .

The Proposed Class comprises advertisers which between 1 January 2011 and the date of filing of this claim inclusive (the Qualification Period), paid Google (directly or through intermediaries) for the placement of advertisements on Google's search engine results page (SERP) which were targeted at users situated in the UK.

The PCR alleges that Google harmed advertisers by:

1. excluding rival General Search Services through agreements with original equipment manufacturers and third parties, which secured and maintained Google's actual or effective default status across key search access points. As a result, Google became the default General Search Service across almost all mobile devices and Apple devices sold in the UK and an unavoidable trading partner for advertisers. The PCR contends that this enabled Google to overcharge for its advertising service relative to competitive levels; and

2. exploiting advertisers by setting prices for its advertising services which were excessive and unfair.

The PCR alleges these are exclusionary and exploitative abuses of a dominant position by Google and are a breach of Article 102 TFEU and Article 54 EEA (up to 31 December 2020) and the Chapter II prohibition of the Act. The PCR further alleges that such breaches constitute tortious breaches of statutory duty under UK law.

The PCR proposes to bring one set of opt-out collective proceedings, comprising three (standalone and follow-on) damages claims:

1. The *Android* Claim. This follow on claim is made in respect of alleged abusive exclusionary behaviour since 1 January 2011 as found in the EU Commission's *Android* decision dated 18 July 2018 (Case AT.40099) (the "Android Decision"). The PCR states that the Android Decision found that Google had engaged in unlawful exclusionary behaviour in the EEA/EU (then including the UK) in breach of Article 102 of the Treaty on the Functioning of the

European Union (" TFEU") and Article 54 of the European Economic Area Agreement ("EEA").

2. The *ISA* Claim. This is a standalone damages claim made in respect of alleged abusive behaviour since 1 October 2015, alternatively May 2019 (i.e. six years prior to the issue of the CPCF), in the General Search Services market in the UK by the Proposed Defendants. It arises from Google's alleged conduct in connection with Information Services Agreements (ISAs) entered into between Google and Apple, by which it is alleged Google became the default internet search provider on Apple's devices (i.e. iPhones, iPads and Macs). The facts and matters underlying this claim are said to amount to: (i) unlawful exclusionary behaviour; and/or (ii) a Naked Restriction (as referred to in the Draft Guidelines on the Application of Article 10 TFEU) and constitute a breach by Google of Article 102 TFEU, Article 54 EEA and the Chapter II prohibition.

3. The *Exploitative* Claim. This claim is made in respect of alleged abusive exploitative behaviour by Google comprising of the imposition of excessive and unfair prices by Google on advertisers (i.e. prices which were, abusively too high and above the level they would have been in a normal competitive market and, in fact, were supracompetitive). This claim refers to infringements since 1 October 2015, alternatively May 2019 (i.e. six years prior to the date of the CPCF) and is made in respect of the imposition of allegedly excessive and unfair prices by Google with regard to the display of Text Ads and Product Listing Ads ("PLAs" – image based search ads) on Google's SERPs on all devices, including personal computers, laptops and mobile devices in the UK. The facts and matters giving rise to this claim are said to constitute a breach by Google of Article 102 TFEU, Article 54 EEA and the Chapter II prohibition.

The two exclusionary claims each relate to abuses connected with particular categories of device, while the exploitative claim applies to all devices, including Android, Apple and others.

The PCR alleges that the abuse and the losses caused to advertisers in all sectors which advertised on Google's search engine were pernicious. The ability to advertise, market and sell through search engines is an indispensable part of nearly all businesses. Google has imposed upon advertisers search advertising services which were and remain overpriced, of reduced value and, potentially, inferior in quality relative to competitive levels.

In addition, the PCR alleges that Google has conducted itself in a manner which lacks transparency and is deliberately obscure so that the Advertisers have suffered losses which are hard to recognise and quantify.

The PCR anticipates the Proposed Class comprises between 500,000 and 1.5 million UK-domiciled Advertisers (the "Proposed Class Members" or "PCMs"). The substantive scope of the Proposed Class is said though to include Advertisers domiciled in the UK and those domiciled elsewhere (which will need to opt-in in due course to participate).

The PCR estimates the aggregate losses for all alleged abuses (excluding pass-on (if any)) until 31 December 2024 as between £15.2 billion and £25.2 billion, including interest.

The PCR submits that it would be just and reasonable for him to act as class representative. In summary, the PCR contends he would act fairly and adequately in the interests the class member (Rule 78(2)(a) for the following reasons:

1. He is a retired judge who was a Deputy High Court Judge from 1990 until 2016 and a Senior Circuit Judge from 2005 until 2016.
2. He has previous experience of CPOs, having been the Chairman of UK Trucks Claim Limited ("UKTC") in Case 1282/7/7/18.
3. He will be supported by an advisory committee, comprising three individuals with relevant skills and experience who will be able to help the PCR in his role as Class Representative, should the claim be certified.
4. He is independent of the Third Party Funder as well as his solicitors. He has also received independent legal advice on funding.
5. He is supported by a legal team with extensive experience in competition law and competition litigation, including experience with managing group litigation.
6. He has prepared a Litigation Plan which is intended to ensure that the proposed collective proceedings will be effectively and efficiently pursued in the interests of the Proposed Class.
7. He will develop a Blueprint for Trial, drawing together the necessary component parts of the relevant economic theories of harm, analysis and data.

The PCR states that he has put in place arrangements to pay the Proposed Defendants recoverable costs if need be, as well as arrangements to fund his own costs through to trial.

The PCR states that the claims are brought on behalf of an identifiable class of persons given the requirement that PCMs must have paid Google whether directly or indirectly in respect of ads attributable to UK users (i.e. ads acquired and/or displayed in the UK). The PCR states that this is predicated on evidence which is empirically determinable.

The PCR also states that the claims raise common issues. With regard to the standalone *ISA* and *Exploitative* claims, those common issues are:

(a) the relevant time periods for limitation purposes and for calculating damages;
(b) the relevant product markets;
(c) whether the UK is the relevant geographic market for each of the relevant product markets;
(d) whether Google is dominant on any of the relevant markets;
(e) with regard to the *ISA* Claim, whether the conduct complained of is an exclusionary abuse and, of so, whether it amounts to a 'Naked Restriction';
(f) with regard to the *Exploitative* claim, whether the prices charged were excessive and unfair;
(g) the relevant counterfactual absent the alleged abusive behaviour for the *ISA* Claim;
(h) whether the difference between the actual and relevant counterfactual demonstrate that the Proposed Class Members suffered loss;
(i) with regard to the *Exploitative* Claim, were the prices charged 'excessive' and 'unfair' for all or part of the applicable claim period.
(j) for claims under the Chapter II prohibition, whether there was an effect on trade in the UK.
(k) whether the abuses led to an overcharge for the PCMs and, if so, the level of that overcharge;
(l) whether the prices of Search Advertising remain inflated as a result of the exclusionary abuses after the cessation of the exclusionary abuses and, if so, by how much and for how long;
(m) the level of pass-on;

(n) losses suffered by the PCMs and how aggregate damages should be calculated;
(o) the level of interest to be awarded.

With regard to the follow-on Android Claim, the list is the same, although the PCR states it is not necessary to define the markets or establish dominance or abuse to the extent as already found in the Android Decision.

The PCR submits that the claims are suitable to be brought in collective proceedings. In particular:

(a) The claims are suitable for an aggregate award of damages considering the similarity of damage suffered by all of the PCMs, which arises out of the same conduct affecting all members; and the impracticability and disproportionality of seeking to undertake any more 'granular' or 'personalised' assessment of damages.
(b) The claims and losses are potentially significant for individual class members given the size of the Proposed Class and the average loss per PCM.
(c) The vast majority of advertisers are likely to be SMEs and microbusinesses.
(d) Of the PCMs who spent the most on Search Advertising, they would need to have spent many multiples of the average before the prospect of bringing a private claim would become economically viable. Even for the largest advertisers, the cost of pursuing an individual claim for damages could easily exceed the quantum of their loss.
(e) This proposed action is the best means of potential redress, for all advertisers large and small; and especially for SMEs and micro-enterprises.
(f) The method for attribution of the award of aggregate damages to a PCM on a compensatory basis would be straightforward to determine.
(g) The potential value of the claim compared with the cost of pursuing the claim is such that the potential benefits to the PCMs far outweigh the costs.

The PCR notes that there is factual and legal overlap between the proposed claim and Case 1606/7/7/23 ("Stopford") with regard to the exclusionary cases (the Android Claim and the ISA Claim) being advanced by the PCR even though Ms Stopford and the PCR propose to represent different Class Members. The PCR seeks to represent advertisers who acquired advertising services directly or indirectly from Google, whilst Ms Stopford represents the downstream customers who purchased goods or services from those advertisers. The PCR states that, unlike the PCR, Ms Stopford is not advancing a Naked Restriction infringement in respect of her ISA claim nor an Exploitative abuse claim.

The PCR also notes that Case 1720/7/7/25 ("Or Brook CRL") materially overlaps with the PCR's claim in two respects, (1) Or Brook CRL seeks to represent many of the advertisers which the PCR proposes to represent, also on an opt-out basis; and (2) it seems to the PCR that Or Brook CRL will be advancing exclusionary abuse claims similar to the PCR's Android and ISA Claims. However there appears to the PCR to be three clear points of divergence between his and Or Brook CRL's Claims: (i) CRL is seeking to represent only UK- domiciled advertisers; (ii) Or Brook CRL is not proposing to advance an Exploitative abuse case; and (iii) Or Brook CRL is not proposing to bring a Naked Restriction case. Insofar as there is overlap, the PCR notes that the Tribunal might be called upon to decide which of the two proposed class representatives would be preferable.

The PCR seeks an order for Opt-out collective proceedings with those PCMs who are domiciled outside the UK being entitled to opt-in to the claim by a specified date.

The relief sought in the Proposed Proceedings is:

1. Damages, to be assessed on an aggregate basis pursuant to section 47C(2) CA98.

2. Interest at 2% over the Bank of England Base Rate or alternatively pursuant to section 35A of the Senior Courts Act 1981 or alternatively at such rate as the Tribunal may determine;

3. The PCR's costs; and

4. Such further or other relief as the Tribunal thinks 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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