



IN THE COMPETITION
APPEAL TRIBUNAL

Case Nos: 1378/5/7/20

1408/7/7/21

BETWEEN:

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

Claimants

and

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

Defendants

(the “Epic Proceedings”)

AND BETWEEN:

ELIZABETH HELEN COLL

Class Representative

and

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

Defendants

(the “Coll Proceedings”)

ORDER

UPON Epic’s application for joint case management and joint trial of the Epic and Coll Proceedings (the “**Application**”)

AND UPON each of Google and the Class Representative filing submissions, and the Class Representative filing evidence, in respect of the Application; and Epic filing responsive submissions

AND UPON hearing Leading Counsel for each of Epic and Google and Counsel for the Class Representative at the hearing directed by the Tribunal on 25 March 2024

AND BY CONSENT IT IS ORDERED THAT:

1. The Class Representative and Epic shall seek to agree the documents to be disclosed to the Class Representative from the Disclosure given by Epic in the Epic Proceedings. In the absence of agreement, the issue shall be determined by the Tribunal, and a hearing shall be listed with a time estimate of ½ a day on the first available date after the date of this order. The parties shall advise the Tribunal if agreement has been reached and the hearing is not required.
2. The evidence of fact in the Epic Proceedings shall stand as evidence in the Coll Proceedings and shall be heard in the Coll Proceedings, including any exhibits to witness statements and any evidence filed and served pursuant to a hearsay notice that the parties to the Epic Proceedings may seek to rely on (the “**factual evidence**”).
3. The trial listing in the Coll Proceedings shall be extended by one week, to accommodate oral hearing of the factual evidence in accordance with paragraph 2 above.
4. Epic shall have permission to appear and make submissions in the Coll Proceedings in relation to the factual evidence:
 - a. Any cross-examination of the factual witnesses in either the Epic Proceedings or the Coll Proceedings shall take place at the trial of the Coll Proceedings.
 - b. The factual evidence excludes all expert evidence. Expert evidence in the Coll Proceedings will be heard in those proceedings. The Coll Proceedings will not deal with any expert evidence in relation to the Epic Proceedings.
 - c. The Tribunal shall resolve any and all factual issues arising out of either set of Proceedings in its Judgment following the trial of the Coll Proceedings. Specifically:

- i. The Tribunal will, after hearing the Coll Proceedings, render judgment in relation to those Proceedings.
 - ii. The Tribunal will not, after hearing the Coll Proceedings, render any judgment that is specific to issues in the Epic Proceedings until the Epic Proceedings have been completely heard (as to which, see paragraph (9) of this Order). However, the factual evidence in the Coll Proceedings stands as evidence in the Epic Proceedings and findings of fact in the Coll Proceedings may stand as the Tribunal's findings in the Epic Proceedings.
5. Epic shall, subject to paragraphs 6 to 8 below, pay the additional costs of and occasioned by the work done by the Class Representative pursuant to paragraphs 1 to 4 above (the "**additional costs**"), subject to an overall cap of £1 million.
6. The Class Representative shall maintain a detailed schedule, including a specific description of the work performed and costs incurred arising from paragraphs 1 to 4 above. The Class Representative shall request payment from Epic on a monthly basis and shall provide a copy of such detailed schedule alongside the request:
 - a. Subject to paragraph 6(b) and 6(c) below, Epic shall confirm in writing whether it has approved the Class Representative's payment request within 7 days of receipt (the "**approval period**"). Once a payment request is approved by Epic, Epic shall endeavour to pay the additional costs to the Class Representative within 30 days of approval, but in any event shall pay the additional costs within no more than 45 days of approval.
 - b. Epic shall reserve the right to withhold approval of a payment request if it considers the Class Representative's additional costs have been unreasonably incurred. In the event that Epic does not approve the payment request in accordance with paragraph 6(a) above, the Class Representative has permission to apply to the Tribunal for a payment on account of such incurred costs. Such application shall be determined on the papers, unless otherwise ordered by the Tribunal. For the avoidance of doubt, nothing in this paragraph (b) shall prevent Epic from seeking repayment of additional costs in accordance with paragraph 8, to the extent that Epic considers such additional costs relate to evidence that is of material benefit to the Class.
 - c. In the event that Epic requires further information relating to the Class Representative's payment request, a reasonable request for such further information may be sent to the Class Representative and the approval period shall be suspended until the requested information has been provided.
7. In the event that the Class Representative's additional costs are likely to exceed £1 million, the Class Representative has permission to apply to the Tribunal for the overall limit in paragraph 5 above to be amended. For the avoidance of doubt, Epic has permission to make submissions in response.
8. The present Order (including any prior agreement by Epic to approve the additional costs

in accordance with paragraph 6) shall be without prejudice to the Tribunal's discretion pursuant to Rule 104 to determine how the additional costs should ultimately be borne in either the Coll Proceedings or the Epic Proceedings. For the avoidance of doubt and by way of example, and without prejudice to the generality of the foregoing, an order relating to the additional costs may result in a proportion of the costs paid to the Class Representative by Epic being repaid by the Class Representative (and/or being met by Google), including, but not limited to circumstances in which:

- a. The additional costs relate to Epic's disclosure or factual evidence of material benefit to the Class Representative in support of her case; or
 - b. The additional costs are unreasonably incurred; or
 - c. The Coll Proceedings reach resolution by way of settlement, in which case any additional costs borne by Epic will be repaid by the Class Representative to the extent such additional costs have been recovered by way of settlement.
9. The trial in the Epic Proceedings listed for nine weeks beginning on 5 May 2025 shall be adjourned, and the Proceedings should be tried as follows:
- a. So far as concerns the factual evidence, in accordance with paragraphs 1 to 4 of this Order.
 - b. So far as any other evidence is concerned, in a further trial to be provisionally listed in mid to late 2026 following the hand-down of Judgment in the Coll Proceedings, to be listed based on the availability of the Tribunal and the reasonable availability of the parties' counsel. This trial shall be listed with a current provisional time estimate of four weeks before a Tribunal chaired by Ms Lucas, KC and, so far as possible, the other members of the constitution of the Tribunal which heard the trial in the Coll Proceedings.
10. All future procedural hearings in either the Epic or Coll Proceedings shall take place before a Tribunal chaired by Ms Lucas, KC. It shall be a matter for the Tribunal whether any such hearing takes place in one or other case or in both.
11. In the event that the Coll Proceedings reach resolution by way of settlement before the date of the pre-trial review in those proceedings, the parties shall investigate the possibility of utilising the trial window for the Coll Proceedings for trial in the Epic Proceedings.
12. Non-confidential versions of any factual witness evidence already served in the Epic Proceedings shall be served in the Coll Proceedings within five business days of this Order being drawn, save for any third party factual witness evidence which shall be served in the Coll Proceedings within five business days of third party consent being obtained to such service. Confidential versions of such factual witness evidence shall be served in the Coll Proceedings in accordance with the terms of paragraph 18 below.
13. Google shall serve witness evidence of fact in the Coll Proceedings and its witness

evidence in reply in the Epic Proceedings jointly on 17 May 2024.

14. Epic shall serve its factual witness evidence in reply in the Epic Proceedings on 17 May 2024.
15. The parties to the Coll Proceedings and the Epic Proceedings shall serve hearsay notices by 4pm on 1 October 2024:
 - a. Paragraph 8 of the Tribunal's Order of 16 December 2022 in the Coll Proceedings (as amended) is hereby amended to read: "*By 4pm on 17 May 2024, the parties shall serve signed statements of witnesses of fact, and the parties shall file and exchange hearsay notices where required by CPR 4 33.2 by 4pm on 1 October 2024*".
 - b. Paragraph 10 of the Tribunal's Order made on 6 December 2021 and drawn on 21 December 2021 in the Epic Proceedings (as amended) is hereby amended to read: "*The parties shall file and exchange signed witness statements of fact by 4pm on 3 March 2023, such witness statements to stand as evidence-in-chief at trial, and the parties shall file and exchange hearsay notices where required by CPR 33.2 by 4pm on 1 October 2024*".
16. Any factual witness evidence served in the Epic or Coll Proceedings shall be served at the same time in the Coll or Epic Proceedings, respectively, subject to the necessary confidentiality arrangements being in place as per paragraph 18 below.
17. As to the expert evidence to be served in the Epic Proceedings, paragraphs 13 to 15 of the Tribunal's Order made on 6 December 2021 and drawn on 21 December 2021 in the Epic Proceedings (as amended) shall be stayed. The Tribunal shall give further directions for expert evidence in the Epic Proceedings at the conclusion of the trial in the Coll Proceedings.
18. A common confidentiality ring order shall be established between the Coll and Epic Proceedings as soon as practicable and in any event no later than 24 April 2024. In the absence of agreement, the parties shall file their respective draft orders and written submissions by 4pm on 26 April 2024, and the form of order will be determined on the papers, unless the Tribunal otherwise orders. The parties shall serve confidential versions of any factual evidence filed within five business days of the common confidentiality ring order being drawn.
19. The Tribunal shall give further directions at the conclusion of the trial in the Coll Proceedings for the remainder of the outstanding directions to trial in the Epic Proceedings being those set out in paragraph 18 of the Tribunal's Order made on 6 December 2021 (as amended) in the Epic Proceedings.
20. There shall be liberty to apply.
21. Save as aforesaid, costs in the case (that is to say, Epic's costs of the present application

and hearing shall be costs in the Epic Proceedings; the Class Representative's costs shall be costs in the Coll Proceedings; and Google's costs should be allocated equally as between the Epic Proceedings and the Coll Proceedings).

Bridget Lucas, KC

Chair of the Competition Appeal Tribunal

Sir Marcus Smith

President of the Competition Appeal Tribunal

Made: 15 May 2024

Drawn: 15 May 2024