COMPETITION APPEAL TRIBUNAL

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

CASE NO. 1673/7/7/24

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 23 August 2024 of an application to commence collective proceedings, under section 47B of the Competition Act 1998 ("the Act"), by Professor Barry Rodger (the "Applicant/Proposed Class Representative/PCR") against (1) Alphabet Inc; (2) Google LLC; (3) Google Ireland Limited; (4) Google Asia Pacific Pte Limited; (5) Google Commerce Limited; (6) Google Payment Limited; and (7) Google UK Limited (together, "Google/the Respondents/Proposed Defendants/PDs"). The PCR is represented by Geradin Partners Limited, Copthall House, 14-18 Copthall Avenue, London EC2R 7DG (Reference: David Gallagher, Anthony Ojukwu, and Gina Sternberg).

The Collective Proceedings Claim Form ("CPCF") states that claims which the PCR seeks to combine (the "Claims") are for loss and damage caused by Google's breach of statutory duty, in particular by its infringements of Article 102 of the Treaty on the Functioning of the European Union (up to 31 December 2020) and section 18 of the Act.

The group of companies known as Google (the top holding company of which was renamed Alphabet in 2015) is the well-known owner of the mobile device operating system ("OS") known as Android. Google is also the creator of the Play Store, which is an app that functions as a gateway through which Android device users may download other apps for use on their Android devices. The PCR alleges that Google is dominant on the Android app distribution market and on the licensable smart mobile OS market, and has abused its dominance by:

(1) engaging in various forms of exclusionary conduct which prevent others from competing (effectively or at all) in the provision of distribution services to Android app developers; and

(2) charging prices (in the form of the commission charged on purchases of apps and of additional content or subscriptions within those apps) that are: (i) excessive and unfair in their own right (the rate of commission typically being 30%); and (ii) unfair and abusive as a system of pricing.

The PCR seeks to bring these proceedings on an opt-out basis on behalf of all UK domiciled Android app developers that have paid the unfair commission. The PCR estimates that there are around 2,200 such developers.

The PCR proposes the following class definition:

"All UK-domiciled Third-Party App Developers who, during the Relevant Period, made one or more Relevant Sales"

(such class being the "Proposed Class" and the members of such class being the "Proposed Class Members", or "PCMs" and the "Relevant Period" meaning the period starting six years before the date of the CPCF and ending on the date that the CPCF was filed).

All persons who fall within the definition of the Proposed Class and who are domiciled in the UK on the date of domicile to be determined by the Tribunal (the "Domicile Date") are proposed to be included in the Proposed Class.

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:

(1) The PCR is a highly experienced academic with particular expertise in UK and EU competition law.

(2) He has a workable plan for the proceedings.

(3) He has access to experienced and knowledgeable advisors.

(4) He has adequate arrangements in place to fund the proceedings.

(5) He has no conflict of interest.

(6) There is no carriage dispute.

(7) He has adequate arrangements in place to cover the risk of adverse costs.

(8) He does not seek an interim injunction, meaning there is no need to consider any possible undertaking as to damages.

Further, the CPCF states that the PCR would act fairly and adequately in the interests of PCMs:

(1) The PCR is not a member of the Proposed Class.

(2) The PCR is a natural person, not a pre-existing body.

(3) The PCR's plans for bringing the proceedings on behalf of the PCMs and for notifying PCMs of the progress of the proceedings are detailed in the notice and administration plan. In summary:

  (a) The PCR has instructed an experienced class action notice and claims administration company, to act as the claims administrator in this case. The PCR has also instructed a public relations firm, to assist him and 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, and the claims administrator has planned to cater for each specifically.

  (c) A claims website will be available online. It will serve various 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. The claims administrator will use search engine marketing to make the claims website easy to find.

  (d) The claims administrator has considered the characteristics of the Proposed Class, and devised general principles of communication which it will use to promote engagement from PCMs.

(e) The claims administrator has also considered the need for paper forms alongside digital communications (albeit that, because the PCMs are all app developers, the claims administrator expects that they will have a high level of digital literacy).

(4) In relation to the PCR's funding arrangements:

(a) The PCR has entered into a litigation funding agreement with a third-party funder to enable him to pay the costs of the proceedings.

(b) A comprehensive budget has been agreed in connection with the funding arrangements.

(5) The PCR has no material interest that is in conflict with the interests of the PCMs.

(6) The PCR is not aware of any other applicant seeking approval to act as the class representative in respect of the same claims.

(7) As to the PCR's ability to pay the Proposed Defendants' costs if he is ordered to do so:

(a) The Funder has agreed to indemnify the PCR for any adverse costs that the PCR is ordered or agrees to pay to the Proposed Defendants.

(b) The Funder has bought insurance which will provide it with insurance cover (against the risk of having to pay out under the indemnity).

(c) The level of cover is adequate and appropriate given that: (i) the Proposed Defendants will already have substantial knowledge of the factual and legal issues in this case because of the claims in *Coll v Alphabet Inc and Others* [2022] CAT 39 at [42] and [43], which are for infringements substantially similar to those set out herein); and (ii) in *Coll*, cover of £10,000,000 was held to be sufficient.

The PCR submits that:

(a) the class is identifiable because it is possible objectively to determine whether a person is a PCM by reference to the Class Definition: a person is a PCM if, and only if, that person is a UK-domiciled Third Party App Developer that has made a Relevant Sale (i.e., has paid the Commission) within the Relevant Period. Also, the Proposed Defendants (or other members of the Google undertaking) ought to have records of the Third-Party App Developers that were charged the Commission; and

(b) the following issues are "common issues" (i.e., issues that are the "same, similar or related" from Claim to Claim):

(i) the definition of the relevant markets;

(ii) whether Google held, and continues to hold, a dominant position on those markets;

(iii) whether Google abused, and continues to abuse, its dominant position, including by: the alleged exclusionary conduct; and/or the alleged unfair and excessive pricing;

(iv) whether any such abuse of dominance caused PCMs to suffer loss and damage;

(v) the quantification of any aggregate award of damages; and/or

(vi) the basis, rate and duration of interest to which the PCMs are entitled.

The PCR submits further that 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 infringements set out herein. That is because many of the Claims are likely to be low in value on an individual basis but very substantial in aggregate. It is estimated that 70-77% of the approximately 2,200 PCMs will have suffered losses of less than £10,000. Those PCMs' Claims are therefore precisely the type of claims that collective proceedings provisions are designed to enable. It would be neither fair, efficient, nor in the interests of access to justice, to require PCMs to litigate these claims individually. Indeed, it is overwhelmingly unlikely they would do so at all.

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

Further, the Claims are suitable for an aggregate damages award: this remedy unique to collective proceedings will enable victims of the Proposed Defendants' abusive conduct to recover damages where they otherwise could not (or would be unlikely to), including for the reasons explained above. In *Coll*, an aggregate damages award was (and remains) considered (i) suitable, and (ii) capable of being estimated with sufficient accuracy by modelling.

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 (including compared to the costs of administering an opt-in claim);

(b) the complexity (and cost) involved in competition claims in general, and this claim in particular, which 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 (fairly large) size of the Proposed Class;

(d) the fact that many of the PCMs are 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

(e) the fact that many PCMs might be deterred from actively participating in an opt-in action because of Google's position as a key (in many cases, unavoidable) trading partner.

The relief sought in these proceedings is:

1. Damages and interest.

2. The PCR's costs.

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 OBE, KC (Hon)
Registrar
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