



**IN THE COMPETITION
APPEAL TRIBUNAL**

Case No: 1408/7/7/21

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

(together **Google**)

and

THE COMPETITION AND MARKETS AUTHORITY

Intervener

(the **Coll Proceedings**)

Case No: 1378/5/7/20

AND BETWEEN:

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

Claimants (together, **Epic**)

and

**(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)

ORDER

UPON the Tribunal’s Order in the Coll Proceedings and Epic Proceedings made on 7 October 2024 and drawn on 23 October 2024 *inter alia* relating to the categories of disclosure sought by the Defendants from Epic set out in paragraph 35 of the Fifth Witness Statement of David Michael Cran dated 6 September 2024 (**Cran 5**)

AND UPON reading the Defendants’ requests for further disclosure from Epic, as set out in the Redfern Schedule dated 3 December 2024 (the **Redfern Schedule**) and the evidence referenced therein, together with the letter and enclosures from Norton Rose Fulbright dated 4 December 2024

AND UPON the agreement reached between the Defendants and the Class Representative in respect of the Class Representative’s application to designate the members of her “Consultative Group” as Permitted Persons pursuant to the Re-Amended Confidentiality Ring Order made and drawn on 22 April 2024 (the **Re-Amended CRO**)

AND UPON reading the Defendants’ application to amend the deadline in paragraph 3.3 of Schedule 2 to the Composite Confidentiality Ring Order dated 15 May 2024 (the **Composite CRO**) as it applies to documents referred to within the Class Representative’s expert reports dated 2 October 2024

AND UPON hearing Counsel for each of Epic and the Class Representative and the Defendants at the case management conference directed by the Tribunal on 5 December 2024

AND UPON the Tribunal's Ruling dated 19 December 2024 regarding Requests 5 to 9 of the Redfern Schedule

IT IS ORDERED THAT:

Further disclosure by Epic

Paragraph 35(a) of Cran 5 - documents and data relating to the profitability of the Epic Games Store (EGS)

1. Epic shall by 13 December 2024 file a witness statement addressing what financial data Epic holds at the general ledger level (or equivalent) in relation to allocated and unallocated costs of the Epic Games Store (“EGS”).
2. Epic shall by 20 December 2024 disclose financial data Epic holds at the general ledger level (or equivalent) as described in the witness statement referred to in paragraph 1 above in relation to allocated and unallocated costs of the EGS for the period 1 December 2018 to 30 September 2024 inclusive.
3. To the extent not covered by Epic's existing disclosure or the disclosure referred to at paragraph 2 above Epic shall by 20 December 2024 provide details of the costs of development and maintenance of EGS.
4. Epic shall by 20 December 2024 disclose all documentation and financial data (including forecasts and assumptions) relied on for the purposes of Epic's allegation in paragraph 13d of its Re-Amended Reply that *“Epic expects the Epic Games Store to achieve positive operating income between 2026 and 2028 (subject to certain assumptions) using the current fee structure and commission rates”*.
5. Epic shall by 20 December 2024 file a disclosure statement addressing whether:
 - a. updated versions of the documents referenced in the Request 4 in the Redfern Schedule (the **R4 Documents**) exist; and
 - b. whether any other documents exist, in whatever form, that contain the same or similar updated information as contained in R4 Documents.

6. To the extent that any documents referred to in paragraph 5 exist, Epic shall provide such disclosure as it considers to be reasonable and proportionate (save in so far as disclosure of such documents has already been provided) and an explanation (in correspondence) of the basis upon which it has concluded that any further disclosure would be unreasonable and disproportionate. For the avoidance of doubt, Google has liberty to apply should it consider the disclosure to be inadequate.

Paragraph 35(b) of Cran 5 - documents and data relating to Epic's app distribution strategy

Request 5

7. Epic shall by 10 January 2025 propose a revised set of search terms for the disclosure to be provided by Epic in response to Request 5 of the Redfern Schedule (the **Request 5 disclosure**), including search terms to identify relevant documents which refer to the arrangement reached between Epic and Telefonica in respect of the pre-installation of the EGS on Telefonica Android devices announced on 12 December 2024 (the **Telefonica Arrangement**) (the **R5 Proposed Search Terms**).
8. Epic shall by 15 January 2025 file a witness statement setting out its proposed custodians for the Request 5 disclosure and the basis on which it is suggested that those custodians are of a senior level and likely to have documents relevant to the Proposed Search Terms (the **R5 Proposed Custodians**).
9. Google shall by 17 January 2025 respond to Epic's R5 Proposed Search Terms and R5 Proposed Custodians.
10. Epic shall consider Google's response referred to at paragraph 9 above and shall seek to agree with Google the R5 Proposed Search Terms and R5 Proposed Custodians, failing which Epic shall notify Google by 24 January 2025 of any outstanding areas of disagreement regarding the R5 Proposed Search Terms and R5 Proposed Custodians.
11. Epic shall by 14 February 2025 provide disclosure to Google of all documents responsive to Request 5 for the period 1 December 2023 to 30 November 2024, for those search terms and custodians that have been agreed between the parties and, failing agreement, at least so as to reflect Epic's R5 Proposed Search Terms and R5 Proposed Custodians subject to a review for relevance, privilege and Non-Party Highly Confidential Material

(for the purposes of carrying out the third-party notification process as set out in paragraphs 18 to 21 of Schedule 1 to the Composite CRO).

12. Any disagreement remaining in relation to the R5 Proposed Search Terms and / or the R5 Proposed Custodians following Google's review of Epic's Request 5 Disclosure, shall be referred to the Tribunal by 14 March 2025.

Request 7

13. Epic shall by 10 January 2025 propose a set of search terms for the disclosure to be provided by Epic in response to Request 7 of the Redfern Schedule (the **Request 7 disclosure**), which is likely to produce relevant documents (including slide decks, presentations or similar) which evidence Epic's strategy in relation to the release of EGS on mobile (the **R7 Proposed Search Terms**), including documents that do not use the phrase "EGS Expansion".
14. Google shall by 17 January 2025 respond to Epic's R7 Proposed Search Terms.]
15. Epic shall consider Google's response referred to at paragraph 14 above and shall seek to agree with Google the R7 Proposed Search Terms failing which Epic shall notify Google by 24 January 2025 of any outstanding areas of disagreement regarding the R7 Proposed Search Terms.
16. For the avoidance of doubt, the custodians for the Request 7 disclosure shall be the same as for the Request 5 disclosure.
17. Epic shall by 14 February 2025 provide disclosure to Google of all documents responsive to Request 7 for the period 1 December 2023 to 30 November 2024, for those search terms and custodians that have been agreed between the parties and, failing agreement, at least so as to reflect Epic's R7 Proposed Search Terms and R5 Proposed Custodians, subject to a review for relevance, privilege and Non-Party Highly Confidential Material (for the purposes of carrying out the third-party notification process as set out in paragraphs 18 to 21 of Schedule 1 to the Composite CRO).
18. Any disagreement remaining in relation to the R7 Proposed Search Terms following Google's review of Epic's Request 7 Disclosure, shall be referred to the Tribunal by 14 March 2025.

Request 8

19. Epic shall by 10 January 2025 provide disclosure to Google of the EGS Global surveys, their results and the supporting data.

Request 9

20. Epic shall by 31 January 2025 identify to Google in writing which documents have already been disclosed by Epic to Google in these proceedings that relate to: (1) the release of Fortnite on Nvidia GeForce Now; and (2) the removal of Fortnite from the Samsung Galaxy Store.
21. Google shall by 21 March 2025 identify to Epic in writing, by reference to the RRRACF and the documents already disclosed by Epic in these proceedings (including Epic's further disclosure in response to Requests 5 and 7), the basis on which it is alleged Epic's disclosure is deficient.
22. The parties shall seek to agree by 11 April 2025 further, targeted searches for Epic to provide disclosure in response to Request 9 of the Redfern Schedule, failing which Google may renew its application for disclosure in respect of Request 9 of the Redfern Schedule.

Paragraph 35(c) of Cran 5 - documents and data evidencing service fees and rates of pass-on

23. The Defendants shall by 12 December 2024 file a witness statement made by their economic expert identifying the documentation and data required from Epic for the purposes of the Defendants' pass-on analysis and explaining why it is needed.
24. Epic shall by 31 December 2024 file witness evidence in response addressing the availability of documentation and data requested, and Epic's position on whether such material should be provided.
25. The parties are to seek to agree the extent and timing of such disclosure, with any disagreement to be referred to the Tribunal by 10 January 2025 for determination on the papers.

Amendments to the Re-Amended CRO

26. Pursuant to the Re-Amended CRO, and subject to the Class Representative providing to the Tribunal and the Defendants signed undertakings of the individuals referred to below in the form set out in Annex B to the Re-Amended CRO (as amended in a form agreed between the parties):
- a. Professor Christine Riefa is designated as a “Permitted Person” pursuant to the Re-Amended CRO, save that she is not entitled to view any document in disclosure that is identified as containing third party / non-party highly confidential information;
 - b. Although not designated as a “Permitted Person” pursuant to the Re-Amended CRO, Mr Mark O’Keefe shall be entitled to view the confidential copies of the parties’ expert reports, save that he is not entitled to view:
 - i. the confidential version of the expert report of Mr Francesco Burelli or any of the Defendants’ expert reports or Class Representative’s reply reports relating to payment issues;
 - ii. any “Confidential Information” as contemplated in the Re-Amended CRO that relates to payment issues contained in any of the parties’ other expert reports;
 - iii. any documents referenced in any of the parties’ expert reports designated as containing “Confidential Information” as contemplated in the Re-Amended CRO; or
 - iv. any documents containing third party / non-party highly confidential information.

Amendment to the Composite CRO

27. The deadline in paragraph 3.3 of Schedule 2 to the Composite CRO as it applies to the balance of the documents referenced in the expert reports filed by the Class Representative in the Coll Proceedings that have not yet been provided by the Defendants to the Class Representative with highlighting for confidential information and in non-confidential form shall be extended to 5pm on 18 December 2024.

Costs

28. Costs in the case.

Liberty to apply

29. There parties shall have liberty to apply in respect of this order.

Bridget Lucas KC
Chair of the Competition Appeal Tribunal

Made: 10 January 2025
Drawn: 10 January 2025