[redacted]

In The Competition Appeal Tribunal **Case No ~~[ ]~~1673/7/7/24**

B E T W E E N:

Professor Barry Rodger

~~Proposed~~ Class Representative

- and -

(1) Alphabet Inc
(2) Google LLC
(3) Google Ireland Limited
(4) Google Asia Pacific Pte Limited
(5) Google Commerce Limited
(6) Google Payment Limited
(7) Google UK Limited

~~Proposed~~ Defendants

RE-RE-AMENDED COLLECTIVE PROCEEDINGS CLAIM FORM

INTRODUCTION AND SUMMARY

1. By this Re-Re-Amended Collective Proceedings Claim Form ("**RRACPCF**") filed pursuant to rule 75 of the Competition Appeal Tribunal Rules 2015 (the "**Rules**"), the ~~Proposed~~ Class Representative (the "**~~P~~CR**") seeks to commence opt-out collective proceedings under section 47B of the Competition Act 1998 (the "**Act**").

2. The claims which the ~~P~~CR 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 ("**TFEU**") (up to 31 December 2020) and section 18 of the Act.

3. 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,[1] which is an app that functions as a gateway through which Android device users may

[1] Sometimes referred to as Google Play.

[redacted]

download other apps for use on their Android devices. The ~~P~~CR alleges that Google is dominant on the Android app and content distribution market and on the licensable ~~smart mobile~~ OS market, and has abused its dominance by:

3.1 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

3.2 charging prices (in the form of the commission charged on purchases of apps and of additional content or subscriptions within those apps) that are:

3.2.1 excessive and unfair in their own right (the rate of commission typically being 30%); and

3.2.2 unfair and abusive as a system of pricing.

4. The ~~P~~CR seeks to bring these proceedings on an opt-out basis on behalf of all UK-domiciled Android app developers that have, during the "*Relevant Period*" (defined below), paid the unfair commission. ~~The PCR estimates that there are around 2,200 such developers.[2]~~

5. ~~The PCR does not have, at this early stage, prior to disclosure and factual and expert evidence, all of the information that will ultimately be relevant to determining the Claims. For example, Google's relevant costs and revenues are central to the unfair pricing claim and only certain of this information is public.~~ This RRACPCF is ~~therefore~~ filed ~~with this substantial asymmetry of information in place and~~ without prejudice to any amendments or further statements of case that may be required in due course.

6. The Competition Appeal Tribunal Guide to Proceedings (the "**Guide**") states, at paragraph 6.11, that a collective proceedings claim form should be in three parts. The remainder of this RRACPCF is structured in that way.

I. PART I: RULE 75(2)

A. Rule 75(2)(a): the ~~P~~CR

7. The ~~P~~CR is:

~~[2] The first expert report of Prof Amelia Fletcher CBE dated 21 August 2024 ("**Fletcher 1**"), at [637].~~

[redacted]

Prof Barry Rodger
The Law School
University of Strathclyde
Lord Hope Building
141 St James Rd
Glasgow G4 0LT

B. Rule 75(2)(b): the ~~P~~CR's legal representative

8. The ~~P~~CR's legal representative is:

Geradin Partners Limited
Copthall House
14-18 Copthall Avenue
London
EC2R 7DJ

C. Rule 75(2)(c): the ~~P~~CR's address for service in the United Kingdom

9. The ~~P~~CR's address for service in the United Kingdom is:

Geradin Partners Limited
Copthall House
14-18 Copthall Avenue
London
EC2R 7DJ

10. The ~~P~~CR will also accept service by email to all of the following addresses (but will not accept service by email unless all of the addresses are used, and reserves the right to change the email addresses from time to time by notice to the ~~Proposed~~ Defendants):

dgeradin@geradinpartners.com
~~shuijts@geradinpartners.com~~
dgallagher@geradinpartners.com
jreeves@geradinpartners.com
aojukwu@geradinpartners.com
gp-rodgergoogle@geradinpartners.com

D. Rule 75(2)(d): the ~~Proposed~~ Defendants

11. The ~~Proposed~~ Defendants are:

Alphabet Inc
1600 Amphitheatre Parkway
Mountain View
CA 94043
United States

with a registered address at:

[redacted]

251 Little Falls Drive
City of Wilmington
County of New Castle
Delaware 19808
United States

Google LLC
1600 Amphitheatre Parkway
Mountain View
CA 94043
United States

Google Ireland Limited
Gordon House
4 Barrow Street
Dublin 4
D04 V4X7
Ireland

Google Asia Pacific Pte. Limited
70 Pasir Panjang Road, #03-71
Mapletree Business City II
117371
Singapore

with a registered address at:

8 Marina Boulevard, #05-02
Marina Bay Financial Centre
018981
Singapore

Google Commerce Limited
70 Sir John Rogerson's Quay
Dublin 2
D02 R296
Ireland

with a registered UK establishment at:

Belgrave House,
76 Buckingham Palace Road
London
SW1W 9TQ

Google Payment Limited
5 New Street Square
London
EC4A 3TW

[redacted]

Google UK Limited
Belgrave House
76 Buckingham Palace Road
London
SW1W 9TQ

12. The ~~Proposed~~ Defendants are members of the Google corporate group. They form part of a single overall Google undertaking for the purposes of article 102 TFEU and/or section 18 of the Act (and are referred to collectively in this RRACPCF as "**Google**").

E. Rule 75(2)(e): application for CPO

13. By ~~this~~ the Collective Proceedings Claim Form ("**CPCF**"), the ~~P~~CR made an ~~applies~~ application for a collective proceedings order ("**CPO**").

F. Rule 75(2)(f): opt-in vs opt-out

14. ~~This~~ The CPO application ~~relates~~ related to proposed opt-out collective proceedings. The Tribunal granted that application.

G. Rule 75(2)(g): ADR

15. The parties have not used an alternative dispute resolution procedure. However, the ~~P~~CR is open to any fair and reasonable proposals for such procedures.

H. Rule 75(2)(h): real prospect of success

16. The ~~P~~CR believes that the Claims have a real prospect of success: see Rodger 1 (which was filed with ~~this~~ the CPCF), at [49].

II. PART II: RULE 75(3)(a)-(e)

A. Rule 75(3)(a): description of ~~proposed~~ class

17. The ~~PCR proposes the following~~ class definition is as follows:

"*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 "**~~P~~CMs**").

[redacted]

18. 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.

19. For the purposes of the above class definition and the rest of this RRACPCF:

"**Android**" means the mobile OS of that name.

"**Android app**" means a 'native' app programmed to be installed on an Android Device (and so does not refer to a 'web' app, which instead functions *via* an internet browser).

"**Android Device**" means any smartphone, tablet or other device that uses Android as its OS.

"**Android Fork**" means a version of Android that does not meet Google's requirements set out in the CDD or pass the CTS (see paragraphs 89.1 and 113 below).

"**app**" means a software application.

"**Commission**" means any commission charged by Google in connection with any sale made (i) via the Play Store and/or (ii) within an app.

"**Google Android**" means a version of Android that meets Google's compatibility requirements set out in the CDD and that passes the CTS (as to which see paragraph 113 below).[3]

"**GPB**" means the Google Play Billing system, i.e., the proprietary payment system that Google provides to process Relevant Sales.

"**MNO**", means mobile network operator i.e. a firm that operates a mobile network, such as O2, EE or Three.

"**OEM**", means original equipment manufacturer, i.e. a firm that manufactures a mobile device, such as Samsung, Sony or Nokia.

"**Play Store**" means Google's proprietary app store.

"**Proprietary App**" means an Android app developed by Google (but does not include the Play Store).

"**Relevant Period**" means the period starting six years before the date of ~~this~~ the CPCF and ending on ~~the date that~~ ~~this~~ ~~the CPCF is filed~~ 31 July 2026.[4] (The

[3] There have been multiple major releases of Google Android over time. The versions are sequentially numbered, so that (for example) the ~~current~~ version of Google Android released in 2023 is Android 14 and in 2024 is Android 15.

~~[4] The PCR reserves his right to seek to amend this definition depending on the outcome of the appeal in *Umbrella Interchange Fee Claimants v Umbrella Interchange Fee Defendants (Volvo Limitation)* [2023] CAT 49, [2023] Bus LR 1879 and/or clarification of the effect of the decision in case C-605/21 *Heureka Group a.s. v Google LLC*~~

~~P~~CR seeks to combine Claims that accrued during the Relevant Period; but each of those underlying Claims will be in respect of all corresponding losses, whenever suffered, including after the end of the Relevant Period.)

"**Relevant Sale**" means:

(a) any sale of a Third-Party App via the Play Store; and

(b) any sale to an Android Device user within a Third-Party App

on which the Commission is charged, and includes:

(i) any sale of a Third-Party App via the Play Store in connection with which an Android Device user pays a fee for the app and/or to download the app (a "**Relevant App Sale**");

(ii) any one-time sale to an Android Device user within a Third-Party App for which the Android Device user pays a fee (a "**Relevant In-App Sale**"); and

(iii) any recurring sale to an Android Device user within or for a Third-Party App for which the Android Device user pays a fee (a "**Relevant Subscription Sale**").

"**Third-Party App**" means an Android app developed by a Third-Party App Developer, but does not include any Android app that is or functions as an Android app store, Android app marketplace, or Android app distribution service.

"**Third-Party App Developer**" means a third-party developer (i.e., not Google) of an Android app or Android apps, but does not include:

(a) developers of any Android app that is or functions as an Android app store, Android app marketplace, or Android app distribution service; or

(b) developers that, as at the Domicile Date:

    (i) in the case of natural persons, are deceased; or

    (ii) in the case of legal persons, have been dissolved and/or struck off the register and/or otherwise ceased to exist.

20. In defining the scope of the ~~Proposed~~ Class, the ~~P~~CR has considered the guidance on class definition at paragraph 6.37 of the Guide, which states as follows:

"*the class should be defined as narrowly as possible without arbitrarily excluding some people entitled to claim. If the class is too broad, the proposed collective proceedings may raise too few common issues and accordingly not be worthwhile*."

~~[2024] EU:C:2024:324 on limitation periods applying to claims before the Tribunal for breaches of EU competition law before the end of 2020.~~

[redacted]

21. With that guidance in mind, the ~~P~~CR makes the following observations about the ~~proposed~~ class definition:

21.1 The class is restricted to the app developer level of commerce—i.e., it does not include persons at other levels of commerce (such as consumers).

21.2 The Claims do not cover apps developed for devices other than Android Devices, because these cannot be installed on Android Devices.[5]

21.3 The term "*Third-Party Apps*" excludes any Android app that is or functions as an Android app store, Android app marketplace, or Android app distribution service, because these do not belong to the same product market as other apps.[6]

21.4 The term "*Third-Party App Developers*" (i) includes all third-party developers because they all have contracts with Google in materially identical terms; but (ii) excludes deceased natural persons and legal persons that have ceased to exist to ensure simplicity and efficiency in the progress of the Claims.

21.5 The "*Relevant Period*" is limited so as to include only those Claims that (i) are obviously in time, and (ii) obviously exist as at the date of ~~the collective proceedings~~ ~~claim form~~ this RRACPCF.[7] The ~~P~~CR reserves his right to apply in future to combine claims in these collective proceedings that ~~do~~ ~~did~~ do not exist as at the date of ~~this~~ ~~the~~ this RRACPCF, but that will exist as at the date of any such application, in the manner envisioned in *Neill*, at [70].

B. Rule 75(3)(b): sub-classes

22. The ~~P~~CR does not consider it necessary or helpful to define sub-classes. As explained below, the relevant issues of fact and law are common across the ~~Proposed~~ Class.

[5] See case AT.40099 *Google Android* (Commission decision of 18 July 2018), at (284) and (306), upheld on appeal in case T-604/18, *Google LLC v Commission*, EU:T:2022:541, [2023] 4 CMLR 5.

[6] See case AT.40099 *Google Android* (Commission decision of 18 July 2018), at (270) to (273), upheld on appeal in case T604/18, *Google LLC v Commission*, EU:T:2022:541, [2023] 4 CMLR 5.

[7] *Neill v Sony* [2023] CAT 73, at [62] to [73].

C. Rule 75(3)(c): estimate of class size

23. Prof Fletcher, the ~~P~~CR's expert economist, originally ~~estimates~~ estimated that there ~~will~~ would be around 2,200 members of the ~~Proposed~~ Class.[8] The Defendants have now provided UK developer transaction data which covers [redacted] distinct developers who recorded at least one Relevant Sale between 22 August 2018 and 22 August 2024.[9] ~~The PCR expects that the Proposed Defendants will also be able to provide their own estimate of this figure, since the members of the Proposed Class are all Google's own customers.~~

D. Rule 75(3)(d): assessment under rule 78 of authorisation condition

(1) Rule 78(1)(a): ~~P~~CR as class member

24. The ~~P~~CR is not a member of the ~~Proposed~~ Class.

(2) Rule 78(1)(b): whether just and reasonable for the ~~P~~CR to act

25. It is just and reasonable, taking into account all of the circumstances, for the ~~P~~CR to be authorised to bring the Claims on behalf of the ~~P~~CMs. In summary:

    25.1 The ~~P~~CR is a highly experienced academic with particular expertise in UK and EU competition law.

    25.2 He has a workable plan for the proceedings.

    25.3 He has access to experienced and knowledgeable advisors.

    25.4 He has adequate arrangements in place to fund the proceedings.

    25.5 He has no conflict of interest.

    25.6 There is no carriage dispute.

    25.7 He has adequate arrangements in place to cover the risk of adverse costs.

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

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[8] The first expert report of Prof Amelia Fletcher CBE dated 21 August 2024 ("**Fletcher 1**"), at [637].

[9] The second expert report of Prof Amelia Fletcher CBE dated 23 December 2025 ("**Fletcher 2**"), at [794].

[redacted]

(3) Rule 78(2)(a): whether the ~~P~~CR would act fairly and adequately

(a) General

26. Rule 78(2)(a) also requires the Tribunal, when determining whether the ~~P~~CR would act fairly and adequately in the interests of the class members, to take into account the matters listed at Rule 78(3). Those matters are now considered in turn.

(b) Rule 78(3)(a): ~~P~~CR as class member

27. As noted at paragraph 24 above, the ~~P~~CR is not a member of the ~~Proposed~~ Class.

(c) Rule 78(3)(b): pre-existing body

28. The ~~P~~CR is a natural person, not a pre-existing body.

(d) Rule 78(3)(c): plan for the collective proceedings

(i) Representation and notice

29. The ~~P~~CR's plans for bringing the proceedings on behalf of the ~~P~~CMs and for notifying ~~P~~CMs of the progress of the proceedings are detailed in the notice and administration plan exhibited to Rodger 1 (the "**Notice and Administration Plan**"). In short:

    29.1 The ~~P~~CR has instructed Angeion, an experienced class action notice and claims administration company, to act as the claims administrator in this case. The ~~P~~CR has also instructed 89up, a public relations firm, to assist him and Angeion with aspects of their public relations.

    29.2 The ~~P~~CR'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 Angeion has planned to cater for each specifically.

    29.3 A claims website will be available online. It will serve various functions as appropriate at each stage, including (i) allowing ~~P~~CMs to register interest to receive additional information about the claim, (ii) explaining how ~~P~~CMs can opt out, (iii) providing ~~P~~CMs with information about the claim as it progresses, and (iv) displaying any notices required by the Tribunal or the Rules. Angeion will use search engine marketing to make the claims website easy to find.

[redacted]

29.4 The website will allow users to submit questions, to be answered directly and/or in a "*FAQs*" section. Should the Claims proceed to the recovery stage, there will also be an interactive voice recording telephone line to provide information about the Claims.

29.5 Angeion has considered the characteristics of the ~~Proposed~~ Class, and devised general principles of communication which it will use to promote engagement from ~~P~~CMs. It will use a combination of direct noticing, mailouts, press releases, digital advertisements, social media advertisements, and trade-specific advertisements in trade-specific publications to generate engagement. It has set targets for the number of impressions to be delivered in each of the digital media, social media, and trade-specific campaigns.

29.6 Angeion has also considered the need for paper forms alongside digital communications (albeit that, because the ~~P~~CMs are all app developers, Angeion expects that they will have a high level of digital literacy).

29.7 Angeion will keep its plan under review and adjust it if necessary or desirable.

(ii) Governance and consultation

30. The ~~P~~CR's plans for governance and consultation are detailed in the Litigation Plan. As explained in that document, the main method of communication with ~~P~~CMs will be the integrated (primarily digital) communications and claims website described above.

(iii) Arrangements as to costs, fees and disbursements

31. The ~~P~~CR's funding arrangements are detailed in Rodger 1, at paragraphs [16] - [17]. In short:

31.1 The ~~P~~CR has entered into a litigation funding agreement with third-party funder Bench Walk Guernsey PCC Limited, contracting on behalf of the GPS UK Funding Cell (the "**Funder**"), to enable him to pay the costs of the proceedings.

31.2 The Funder ~~has~~ originally committed to providing the ~~P~~CR £16.5m in claim funding. That commitment has subsequently been increased to £22.3m.

[redacted]

31.3 A comprehensive budget ~~has been~~ was agreed in connection with the original funding arrangements and is exhibited to Rodger 1. On 19 December 2025, an updated budget was filed with the Tribunal.

(4) Rule 78(2)(b): conflict of interest

32. The ~~P~~CR has no material interest that is in conflict with the interests of the ~~P~~CMs.

(5) Rule 78(2)(c): carriage disputes

33. The ~~P~~CR is not aware of any other applicant seeking approval to act as the class representative in respect of the same claims.

(6) Rule 78(2)(d): ability to pay the Proposed Defendants' costs

34. The ~~P~~CR's adverse costs arrangements are detailed in Rodger 1, at paragraphs [26] – [29]. In short:

34.1 The Funder has agreed to indemnify the ~~P~~CR for any adverse costs that the ~~P~~CR is ordered or agrees to pay to the ~~Proposed~~ Defendants.

34.2 The Funder has bought insurance which will provide it with insurance cover of £15m (against the risk of having to pay out under the indemnity).

35. That level of cover is adequate and appropriate given that:

35.1 the ~~Proposed~~ Defendants will already have substantial knowledge of the factual and legal issues in this case because of the proceedings described at paragraph 47 and in RRACPCF Annex A (including the claims in *Coll*, which are for infringements substantially similar to those set out herein); and

35.2 in *Coll*, cover of £10,000,000 was held to be sufficient.[10]

(7) Rule 78(2)(e): interim injunction

36. The ~~P~~CR does not seek an interim injunction.

[10] *Coll v Alphabet Inc & others* [2022] CAT 39, at [42] and [43].

[redacted]

E. Rule 75(3)(e): assessment under rule 79 of eligibility condition

(1) Rule 79(1)(a): identifiable class

37. Paragraph 6.37 of the Guide states, "*It must be possible to say for any particular person, using an objective definition of the class, whether that person falls within the class*".

38. In the present case, the class is identifiable because it is possible objectively to determine whether a person is a ~~P~~CM by reference to the Class Definition: a person is a ~~P~~CM 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.

39. Further, 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.

(2) Rule 79(1)(b): common issues

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

    40.1 the definition of the relevant markets;

    40.2 whether Google held, and continues to hold, a dominant position on those markets;

    40.3 whether Google abused, and continues to abuse, its dominant position, including by:

        40.3.1 the alleged exclusionary conduct; and/or

        40.3.2 the alleged unfair and excessive pricing;

    40.4 whether any such abuse of dominance caused ~~P~~CMs to suffer loss and damage;

    40.5 the quantification of any aggregate award of damages; and/or

    40.6 the basis, rate and duration of interest to which the ~~P~~CMs are entitled.

41. The list of common issues may increase once the ~~Proposed~~ Defendants file a defence.

[redacted]

(3) Rule 79(1)(c): suitable to be brought in collective proceedings

(a) Rule 79(2)(a): fair and efficient means of resolving the common issues

42. 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 ~~P~~CMs 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. Prof Fletcher originally ~~estimates~~ estimated that, on the basis of her provisional calculations, 70-77% of the approximately 2,200 ~~P~~CMs will have suffered losses of less than £10,000.[11] Those ~~P~~CMs' Claims are therefore precisely the type of claims that collective proceedings provisions are designed to enable.[12] It would be neither fair, efficient, nor in the interests of access to justice, to require ~~P~~CMs to litigate these claims individually. Indeed, it is overwhelmingly unlikely they would do so at all.

43. Some ~~P~~CMs are expected to have suffered larger losses. For example, Prof Fletcher originally ~~estimates~~ estimated that, on the above assumptions, 2-3% of ~~P~~CMs ~~may~~ might have claims of over £1 million.[13] ~~Those PCMs can opt out if they wish.~~ That some of the Third-Party App Developers might have larger claims does not render collective proceedings inappropriate. In *McLaren*, a minority of the proposed class members (so-called "*Large Business Purchasers*") had larger claims ("*in the region of £1.2m to £2.4m for the very largest*"), compared to individual car purchasers with an illustrative per-vehicle overcharge estimated at "*a few pence to approaching £60*".[14] Nonetheless, collective proceedings were appropriate (and was not to be brought on an opt-in basis, in respect of either all or some of the class).[15] Similarly, the present ~~proposed~~ collective proceedings remain a fair and efficient means of resolution, in light of the issues that remain common to the ~~Proposed~~ Class.

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[11] Fletcher 1, at [673-674].

[12] *Le Patourel v BT Group plc* [2022] EWCA Civ 593, [2022] Bus LR 660, at [29].

[13] Fletcher 1, at [673-674].

[14] *Mark McLaren Class Representative Limited v MOL (Europe Africa) Ltd* [2022] CAT 10, at [84] and [158(2)].

[15] *McLaren*, at [158] to [164].

[redacted]

44. Furthermore, if each underlying Claim were to be brought on an individual basis, the common issues would in any event need to be resolved in each separate individual litigation. It is fair and efficient to resolve those issues together in these ~~proposed~~ proceedings, particularly because variation in the following features of the underlying Claims is likely to be minimal:

44.1 the relevant principles of law;

44.2 any defences raised by Google;

44.3 the relevant evidence; and

44.4 the factual background to each Claim, including (as developed further below):

44.4.1 the relevant technical features of Android and the relevant devices;

44.4.2 the practical means of Google implementing the abuses; and

44.4.3 the relevant contractual terms.

(b) Rule 79(2)(b): costs and benefits

45. The benefits of having the Claims brought in collective proceedings outweigh any costs to the parties. While there are inevitably costs associated with bringing the proceedings and administering the claims on behalf of a ~~fairly~~ large class (as set out in the original costs budget exhibited to Rodger 1 and the updated budget), such costs:

45.1 remain fair and proportionate in view of the Claims' aggregate value (currently estimated in the hundreds of millions of pounds: see paragraph 203 below);

45.2 are outweighed by the benefits to ~~P~~CMs from being able to pursue compensation for losses suffered due to the infringements, which would otherwise not be practically possible; and

45.3 are accompanied by benefits to the ~~Proposed~~ Defendants from being able to resolve the Claims in a single set of proceedings.

46. Further, the ~~Proposed~~ Defendants face no material disadvantage from the collective proceedings because, as explained at paragraph 34 above, to any extent that the ~~P~~CR is unsuccessful, their reasonable costs are to be covered by the Funder and/or its insurers.

[redacted]

(c) Rule 79(2)(c): separate proceedings

47. While no other claim has been commenced on behalf of the ~~Proposed~~ Class in respect of the relevant loss and damage ~~(i.e., the PCR is not aware of any carriage dispute)~~, the ~~P~~CR is aware of several proceedings relating to the same or similar conduct by Google, brought in this jurisdiction and others. Details are provided at paragraphs 58 to 65 below and RRACPCF Annex A. In terms of similar claims in this jurisdiction, the ~~P~~CR is aware of the following:

47.1 *Coll v Alphabet Inc*, case 1408/7/7/21 ("***Coll***"). The Tribunal on 31 August 2022 certified collective proceedings against Google for abuse of dominance "*by imposing a network of contractual and technical restrictions that eliminate all meaningful competition to Google's Play Store on GMS Devices*[[16]] *enabling Google to collect an excessive and unfair Commission on Relevant Purchases*", causing loss and damage to device users.[17] Google did not contest certification.[18] The Tribunal was satisfied that the claim raised "*common issues which are the same or substantially the same*" for all class members, namely: "*the definition of the relevant economic markets; whether [Google] hold a dominant position on those relevant markets; whether [Google] abused and/or continue to abuse their dominant positions; and the rate and duration of [class members'] entitlement to pre-judgment interest*".[19] "*Taking a high-level view of the strength of the claims, whilst there has been no decision as to infringement,*" bearing in mind the regulatory and legal proceedings in this jurisdiction and others, the Tribunal considered the proposed claims "*sufficiently strong to proceed*" (and on an opt-out basis).[20] *Coll* is downstream of the present proposed proceedings. They are strongly interlinked in terms of the factual, legal, and economic issues. The consumers' proof of loss in that case necessarily depends on establishing that app

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[16] i.e. Android Devices which run Google Android specifically and on which the GMS bundle has been pre-installed. The GMS bundle is a bundle which Google describes as "*a collection of Google applications and APIs that help support functionality across devices*": see paragraph 84 below.

[17] *Coll v Alphabet Inc* [2022] CAT 39, at [1].

[18] *Coll v Alphabet Inc* [2022] CAT 39, at [6].

[19] *Coll v Alphabet Inc* [2022] CAT 39, at [51].

[20] *Coll v Alphabet Inc* [2022] CAT 39, at [61].

[redacted]

developers (including the app developers in the present case) (i) suffered loss as a result of Google charging them an abusive Commission, and (ii) passed on an increased price to consumers.

47.2 *Epic Games, Inc v Alphabet Inc*, case 1378/5/7/20 ("***Epic (UK)***"). On 29 December 2020, the developer Epic Games, Inc ("**Epic**") filed a claim in the Tribunal against Google, seeking various injunctions to enable Epic to operate on the Play Store free of Google's anticompetitive terms and restrictions (but not seeking damages). In that claim, Epic alleges that Google has infringed Chapter~~s I and~~ II of the Act by, *inter alia*: (i) unfairly restricting competition from alternative app stores and other channels for distributing apps to Android Device users; (ii) reserving to itself the sole billing mechanism for purchases of in-app content through the Play Store; (iii) using its market position to charge unfair prices for distributing apps and in-app content *via* the Play Store; and (iv) excluding Epic from the Play Store in response to Epic's attempt to direct users to alternative platforms/billing services. On 22 February 2021, the Tribunal granted Epic permission to serve documents on Google entities out of the jurisdiction, finding serious issues to be tried in respect of the injunctions Epic sought, and confirming that the claim was limited to injunctive relief.[21] The "*potential restrictive effects on competition*" were "*apparent from the description of the impugned conduct*".[22]

48. *Epic (UK)* is a separate set of proceedings in which an app developer is making a claim of a similar nature. However, as Epic does not seek damages in that claim, there is no risk of overcompensation or double recovery. Further, the claimant entities in *Epic (UK)* do not include Epic's UK entity,[23] and so are not within the ~~Proposed~~ Class.

49. The ~~P~~CR also notes the overlap of issues between these ~~proposed~~ proceedings, the *Coll* consumer action, and the *Epic (UK)* claim. The overlap ~~is~~ was partly reflected in the Tribunal's order dated 15 May 2024, in which the Tribunal ~~has~~ ordered that factual evidence in *Epic (UK)* shall stand as evidence (and be heard) in *Coll*, the trial listing in *Coll* shall be extended accordingly, Epic shall have permission to appear and make

[21] *Epic Games, Inc v Alphabet Inc* [2021] CAT 4, at [86] to [88].

[22] *Epic Games, Inc v Alphabet Inc* [2021] CAT 4, at [88].

[23] *Epic Games, Inc v Alphabet, Inc* [2021] CAT 4, at [52].

submissions in *Coll*, and the trial in *Epic (UK)* shall be adjourned. The overlap is now reflected in the Tribunal's order dated 24 March 2025, in which the Tribunal has ordered that the *Coll, Epic (UK)* and *Rodger* proceedings shall be jointly case managed and tried together, and the trial in the *Coll* and *Epic (UK)* proceedings shall be vacated. ~~The PCR is open to proposals for joint case management of this litigation with *Coll* and *Epic (UK)*, consistent with the Tribunal's overriding principles generally and the letter and spirit of the Umbrella Proceedings Practice Direction 2/2022 more specifically.~~

(d) *Rule 79(2)(d): size and nature of the class*

50. As noted at paragraph 23 above, the ~~P~~CR originally ~~estimates~~ estimated that there ~~will~~ would be around 2,200 members of the ~~Proposed~~ Class. A class of this size, in which each claimant has substantially the same claim, can realistically only bring its claims by way of collective proceedings. Any other mechanism for grouping together claims would simply not present a viable method of resolving the dispute.

51. Further, as noted at paragraphs 21 and 42 to 45 above, the nature of the ~~Proposed~~ Class is such that: (i) it only includes members whose interests in the outcome of the litigation are substantially aligned; (ii) its members are relevantly homogeneous; and (iii) it is made up of many members who could not be expected to bring Claims individually.

(e) *Rule 79(2)(e): determining whether a person is a member of the class*

52. As noted at paragraphs 37 to 39 above, it is possible objectively to determine whether a person is a ~~P~~CM.

(f) *Rule 79(2)(f): suitability for an aggregate award of damages*

53. ~~The claims are suitable for an~~ An aggregate damages award, ~~as explained in detail in Fletcher 1. This~~ a 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.

54. The distribution of any aggregate damages award will be a matter for detailed consideration after one is obtained or a settlement payment proposed. Indeed, "*In many cases the selection of the fairest method will best be left until the size of the class and*

the amount of the aggregate damages are known".[24] Therefore, at this stage, the ~~P~~CR does not set out detailed proposals. His provisional view is as follows:

54.1 A reasonable approach may be to distribute damages by reference to estimates of each ~~P~~CM's Relevant Sales. This seems workable in practice, because each Third-Party App Developer can reasonably be expected to know or estimate the value of its own Relevant Sales, and to have documentary evidence in support (e.g., accounting and sales records and/or records of commission paid to Google). Further, the ~~Proposed~~ Defendants can also reasonably be expected to know or estimate those values, and to have similar supporting evidence (e.g. accounting and sales records, invoices, and/or receipts).

54.2 However, aggregate damages need not be distributed on strict compensatory principles. The only requirement is that the distribution should be just.[25] Therefore, it may well be appropriate to distribute damages by another method.

54.3 The ~~P~~CR's preliminary proposal for the notice, administration and distribution of any aggregate award of damages is set out in sections 10 to 12 of the Notice and Administration Plan, prepared by Angeion.

54.4 The ~~P~~CR expects to draw on Angeion's experience of other cases to propose suitable distribution models at the appropriate stage.

(g) *Rule 79(2)(g): availability of ADR*

55. The ~~P~~CR is open to any fair and reasonable proposals to compensate the ~~P~~CMs for their losses. ~~However, at this stage of the proceedings (and especially before certification and disclosure), the PCR does not believe that the dispute is likely to be resolved fairly by alternative means, particularly in light of (i) the information asymmetry between the parties and (ii) the PCR's duties to the Proposed Class~~.

[24] *Merricks v MasterCard Inc* [2020] UKSC 51 [2021] 3 All ER 285, at [77].

[25] *Merricks v MasterCard Inc* [2020] UKSC 51 [2021], 3 All ER 285, at [76], [77], and [149]; *Lloyd v Google LLC* [2021] UKSC 50, [2022] AC 1217, at [32].

[redacted]

(4) Opt-in vs opt-out

(a) Rule 79(3)(a): strength of the Claims

56. The Claims are strong for the purposes of Rule 79(3)(a). ~~In matters of fact and law (and subject to the caveat regarding asymmetry of information made at paragraph 5, the Claims are supported by a range of findings and decisions in other proceedings (addressed in detail at paragraphs 58 to 65 below and CPCF Annex A). In particular, in~~ In the substantially similar collective proceedings in *Coll*, the ~~P~~CR alleges that Google has breached article 102 TFEU and section 18 of the Act by abusing "*its dominant positions by engaging in* […] *mutually reinforcing exclusionary and exploitative practices*", including "*bundling the Play Store with other important Proprietary Apps* […]*; imposing a series of contractual and technical restrictions which restrict the ability of Android App developers to distribute Android Apps to GMS Device users via distribution channels other than the Play Store* […]*;*[…] *requiring that payments for Relevant Purchases be made exclusively through* [GPB] […]*;* [and] *charging the excessive and unfair Commission in respect of all Relevant Purchases*".[26] The Tribunal considered "*that the Proposed Claims are sufficiently strong to proceed on an opt-out basis*".[27]

(b) Rule 79(3)(b): practicability of opt-in proceedings

57. It would not be practicable for the proceedings to be brought on an opt-in basis, given:

57.1 the relatively modest amounts that many ~~P~~CMs could recover (including compared to the costs of administering an opt-in claim);

57.2 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 ~~P~~CMs to conduct their own assessments of the strengths and the values of their various Claims;

57.3 the (~~fairly~~ large) size of the ~~Proposed~~ Class;

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[26] *Coll v Alphabet Inc* [2022] CAT 39, at [2].

[27] *Coll v Alphabet Inc* [2022] CAT 39, at [61].

57.4 the fact that many of the ~~P~~CMs 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

57.5 the fact that many ~~P~~CMs 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.

III. PART III: RULE 75(3)(f)-(j)

A. Rule 75(3)(f)

(1) Introduction

58. The Claims are standalone, and not in respect of an infringement decision. However, conduct on Google's part that is the same as, similar to, or related to the conduct impugned in these proceedings is already the subject of many regulatory proceedings, legislative changes, and civil claims in various jurisdictions, including the UK, the EU, and elsewhere. In the interests of concision, the ~~P~~CR provides a brief summary below, with greater detail in RRACPCF Annex A. ~~Without prejudice to the totality of the evidence or submissions to be advanced at trial, the PCR reserves the right to rely on the findings and decisions in those proceedings in support of his case.~~

(2) Relevant regulatory proceedings and legislation (by jurisdiction)

59. UK: The Competition and Markets Authority ("**CMA**") has conducted two relevant investigations into Google's dominant position and relevant conduct:

59.1 The *CMA mobile ecosystems market study* (10 June 2022), which relevantly concluded that "*the lack of competition faced by the* […] *Play Store allows* [Google] *to charge above a competitive rate of commission to app stores.*"[28]

59.2 The *CMA chapter II investigation*. This investigation concerned "*Google's distribution of apps on Android devices in the UK, in particular Google Play's rules which oblige app developers offering digital content to use Google*

[28] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), at [4.206] and page 82.

[redacted]

*Play's own billing system for in-app purchase*s".[29] The CMA closed the investigation on 21 August 2024 on the grounds of administrative priority (expecting to consider the competition concerns raised in the investigation under the new digital markets regime instead),[30] having first rejected Google's proposed commitments.[31] In its earlier notice of intention to accept commitments (19 April 2023), the CMA had been "*concerned that Google requiring the exclusive use of GPB by developers of Digital Content Apps may amount to an abuse of a dominant position.*"[32]

60. EU: The European Commission ("**EC**") and various national competition bodies have imposed sanctions in respect of (or otherwise sought to regulate) Google's relevant conduct:

60.1 In *EC case AT.40099 Google Android* (July 2018) (*"**Google Android (EC)***"), the EC fined Google €4.34bn for abuse of dominance by its conduct relating to the Android OS and certain Android apps. The EC found that Google had infringed article 102 TFEU by (i) tying the Google Search and Chrome apps with the Play Store; (ii) making licensing of the Play Store and Google Search apps conditional on anti-fragmentation obligations (which prevented hardware manufacturers from selling devices based on Android Forks, taking actions that might result in the fragmentation of Android, or distributing software development kits derived from Android); and (iii) granting revenue share

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[29] CMA, "*Investigation into suspected anti-competitive conduct by Google*", available at <https://www.gov.uk/cma-cases/investigation-into-suspected-anti-competitive-conduct-by-google> (last accessed 21 August 2024).

[30] CMA, "*Case 51183 – Google – Google Play Billing: Statement regarding the CMA's decision to close an investigation on the grounds of administrative priority*", available at <https://assets.publishing.service.gov.uk/media/66c596e9808b8c0aa08fa861/Case_closure_statement.pdf> (last accessed 21 August 2024); CMA, "*CMA looks to new digital markets competition regime to resolve app store concerns*" (21 August 2024), available at <https://www.gov.uk/government/news/cma-looks-to-new-digital-markets-competition-regime-to-resolve-app-store-concerns> (last accessed 21 August 2024).

[31] CMA, "*Decision not to accept commitments, Competition Act 1998, Google Play Billing 51183*" (21 August 2024), available at <https://assets.publishing.service.gov.uk/media/66c5970bb75776507ecdf525/Decision_not_to_accept_commitments.pdf> (last accessed 21 August 2024).

[32] CMA, "*Notice of intention to accept binding commitments offered by Alphabet Inc, Google Ireland Limited, Google UK Limited and Google LLC in relation to Google Play's rules which oblige app developers offering digital content to use Google's own billing system for in-app purchases*", available at <https://assets.publishing.service.gov.uk/media/6440148d6dda69000d11e144/Notice_of_intention_to_accept_commitments___Google.pdf > (last accessed 21 August 2024).

payments to OEMs and MNOs in exchange for them not pre-installing competing general search services on their devices.[33] On 14 September 2022, the General Court rejected Google's application to annul the Decision.[34]

60.2 *The Netherlands Authority for Consumers and Markets ("**ACM**") market study into mobile app stores* (11 April 2019) concluded that the Play Store enables Google to treat developers unfairly, requiring further investigation into whether the identified conduct was systematic.[35] Relevant observations included that the 30% commission was an "*important part of the discussion around the app store ecosystems*", and that "*[f]or Android, bundling of APIs with the Play store cause Google to control their app-ecosystem.*"[36]

60.3 *French Commercial Court judgment* (29 March 2022). The French Commercial Court fined Google €2m for subjecting trading partners to a significant imbalance, in particular through various clauses in its developer agreements, contrary to a prohibition in the French Commercial Code on unfair trading practices restrictive of competition. The Court reasoned that the 30% Commission could not be justified, including by reference to Google's costs, *inter alia* because Google bore no financial risk in app development.[37]

60.4 *ACM investigation* (4 May 2022). The ACM opened an investigation into whether Google is abusing its dominance in the app store market.[38]

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[33] *Google Android (EC)*, article 1; sections 11-13.

[34] Subject to annulling one finding: see Case T-604/18 *Google LLC v European Commission* EU:T:2022:541, [2023] 4 CMLR 5 at [800-802].

[35] ACM, "*Market study into mobile app stores*", available at <https://www.acm.nl/sites/default/files/documents/2019-04/marktstudies-appstores.pdf> (last accessed 21 August 2024), pages 106 to 109.

[36] *Ibid*, pages 4 and 86.

[37] Tribunal de Commerce de Paris, n° TG 2018017655, *Google Inc c/ Ministre de l'économie*, available at <https://cdnx.nextinpact.com/data-next/file-uploads/DECISIONGOOGLEMINISTREanonymise.pdf> (last accessed 21 August 2024).

[38] Reuters, "*With Apple fight ongoing, Dutch watchdog ACM to investigate Google Play store practices*" (4 May 2022), available at <https://www.reuters.com/technology/dutch-watchdog-acm-investigate-google-play-store-practices-2022-05-04/> (last accessed 21 August 2024).

60.5 *Further EC investigation*. Alphabet has reported that the EC opened a further formal investigation into the Play Store's business practices in May 2022, although the PCR is not aware of further details at this stage.[39]

60.6 *EC gatekeeper designation* (6 September 2023). The EC has designated Google as a "*gatekeeper*" under the Digital Markets Act ("**DMA**") in respect of, *inter alia*, the Play Store (intermediation), and Google Android (OSs).[40] Google was one of only six undertakings to be designated in the Commission's first wave of gatekeeper designations, and was designated in relation to more core platform services than any other. Google has not appealed against this designation.

60.7 *EC DMA investigation* (ongoing). On 25 March 2024, the EC opened an investigation into, *inter alia*, whether Google is in breach of article 5(4) DMA by not allowing app developers to promote offers under different conditions, to end users acquired through the Play Store.[41]

61. The ~~P~~CR is also aware of a number of regulatory interventions in other jurisdictions, including Australia, India, Japan, South Africa, South Korea, Russia, Turkey and the US. Details of those proceedings are summarised in the RRACPCF Annex A.

(3) Relevant private proceedings (by jurisdiction)

62. Further to the *Coll* and *Epic (UK)* proceedings in this jurisdiction (see paragraph 47 above), the ~~P~~CR is also aware of the following foreign proceedings.

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[39] Alphabet Inc., "*Form 10-Q*" (26 July 2022), page 28, available at <https://www.sec.gov/Archives/edgar/data/1652044/000165204422000071/goog-20220630.htm> (last accessed 21 August 2024).

[40] European Commission Decision of 5 September 2023 in Case DMA.100011 – Alphabet – OIS Vertical, DMA.100002 – Alphabet – OIS App Stores, DMA.100004 – Alphabet – Online search engines, DMA.l00005 – Alphabet – Video sharing, DMA.100006 – Alphabet – Number-independent interpersonal communications services, DMA.l00009 – Alphabet – Operating systems, DMA.l00008 – Alphabet – Web browsers, DMA.100010 – Alphabet – Online advertising services, available at <https://ec.europa.eu/competition/digital_markets_act/cases/202344/DMA_100011_147.pdf> (last accessed 21 August 2024).

[41] European Commission, "*Commission opens non-compliance investigations against Alphabet, Apple and Meta under the Digital Markets Act*", available at <https://ec.europa.eu/commission/presscorner/detail/en/ip_24_1689> (last accessed 21 August 2024).

[redacted]

63. EU: *App Stores Claims Foundation* (Netherlands, filed February 2022). This is a collective action on behalf of Dutch Play Store users. The Amsterdam District Court certified the action in March 2024.[42]

64. USA: *In re Google Play Store Antitrust Litigation*. This consolidated action in the US combines several claims that Google illegally monopolised the Android app distribution market by engaging in exclusionary conduct, including: Epic Games' US claim against Google ("***Epic (US)***");[43] claims brought by several US state attorneys-general;[44] claims brought by a class of US Android app developers;[45] claims brought by a class of US consumers;[46] and a claim brought by dating app developer, Match Group ("***Match (US)***").[47] Google has reached settlements in respect of some of those claims, although the court rejected the settlement Google had agreed with the US state attorneys general and the consumer class.[48] Epic's claim proceeded to jury trial on 11 December 2023. The court found that, in respect of the relevant markets for Android app distribution and in-app billing, Google had: (i) wilfully acquired/maintained monopoly power by engaging in anticompetitive conduct; (ii) entered into various agreements (including with OEMs) that unreasonably restrained trade; (iii) unlawfully tied the Play Store to GPB; and (iv) injured the developer Epic by each of those infringements.[49]

65. Australia: An individual developer claim (*Epic Games, Inc. v Google LLC* NSD190/2021 ("***Epic (Australia)***")) and representative proceedings brought on behalf

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[42] App Store Claims, "*Update Google*" (6 March 2024), available at <https://appstoresclaims.nl/update-bigtech-fairplay-maart-2024/> (last accessed 21 August 2024).

[43] *Epic Games Inc v Google LLC*, no 3:20-cv-05671.

[44] *State of Utah v Google LLC*, no 21-cv-05227.

[45] *In re Google Play Developer Antitrust Litigation*, no 20-cv-05792.

[46] *In re Google Play Consumer Antitrust Litigation*, no 20-cv-05761.

[47] *Match Group, LLC v Google LLC*, no 3:22-cv-02746.

[48] *In re Google Play Developer Antitrust Litigation*, no 3:21-md-02981, settlement agreement and release filed on 18 December 2023, available at <https://www.texasattorneygeneral.gov/sites/default/files/images/press/Google%20Play%20Settlement%20Filestamped.pdf> (last accessed 21 August 2024); and Bloomberg Law, "*Google Play Deal Rebuke Puts Settling Defendants on Notice*" (6 March 2024), available at <https://news.bloomberglaw.com/antitrust/google-play-deal-rebuke-puts-settling-defendants-on-notice> (last accessed 21 August 2024).

[49] *In re Google Play Store Antitrust Litigation*, no 3:21-md-02981, verdict form filed on 11 December 2023, available at <https://storage.courtlistener.com/recap/gov.uscourts.cand.364325/gov.uscourts.cand.364325.606.0.pdf> (last accessed 21 August 2024).

of Android app developers and consumers (*McDonald v Google LLC* VID342/2022 ("***McDonald (Australia)***") were heard together between 18 March 2024 and 5 July 2024. It was alleged that Google had infringed Australian competition law by *inter alia* (i) requiring pre-installation of Google's proprietary apps as a pre-condition to pre-installing the Play Store; (ii) imposing technical and contractual restrictions to prevent distribution of apps by channels other than the Play Store; (iii) requiring developers to use GPB; and (iv) contractually requiring OEMs to display the Play Store prominently on Android devices. ~~As at the date of this CPCF, judgment is pending.~~

B. Rules 75(3)(g) and 75(3)(h): relevant facts and contentions of law[50]

(1) The parties

66. The ~~P~~CR is an academic at Strathclyde University Law School. His CV is exhibited to Rodger 1.

67. The ~~Proposed~~ Defendants are all members of a single Google undertaking. Their roles within the Google undertaking were relevantly as follows:

67.1 The First ~~Proposed~~ Defendant is Alphabet Inc. It is the ultimate holding company of the Google corporate group, including the Second to Seventh ~~Proposed~~ Defendants. It is responsible for setting global policies for its subsidiaries, including as relate to the present Claims. It was named as an addressee in the CMA's Chapter II investigation into Google's conduct, and as one of four Google companies that offered commitments in respect of the Play Store under section 31A of the Act.[51]

[50] Relevant paragraphs of this section are drafted in the present tense for convenience. Except where expressly stated or the context requires, the facts and matters alleged in those paragraphs are alleged to have been true at all material times. ~~The matters set out herein are subject to the caveat regarding asymmetry of information made at paragraph 5 above.~~

[51] CMA, "*Notice of intention to accept binding commitments offered by Alphabet Inc, Google Ireland Limited, Google UK Limited and Google LLC in relation to Google Play's rules which oblige app developers offering digital content to use Google's own billing system for in-app purchases*" (19 April 2023), available at <https://assets.publishing.service.gov.uk/media/6440148d6dda69000d11e144/Notice_of_intention_to_accept_commitments___Google.pdf> (last accessed 21 August 2024), [1.1]; and [2] of schedule 1 to that Notice, available at <https://assets.publishing.service.gov.uk/media/643ef2c98b86bb000cf1b4b7/Schedule_1.pdf> (last accessed 21 August 2024).

[redacted]

67.2 The Second ~~Proposed~~ Defendant is Google LLC. It develops Android.[52] It is a counterparty to the Google Play Developer Distribution Agreements (the "**DDA**"), as to which see paragraph 134 below.[53] In respect of certain territories, the DDA designates it as the app developer's "*agent or marketplace service provider*" to make the developer's apps available in the Play Store,[54] such that it charges the Commission (known as the "service fee") at issue in the present case. It is also, under the Google Play Terms of Service,[55] the entity with which Android Device users contract to use the Play Store, including to download or purchase app content through it. It was named as an addressee in the CMA's Chapter II investigation into Google's conduct, and as one of four Google companies that offered commitments in respect of the Play Store under section 31A of the Act.[56]

67.3 The Third ~~Proposed~~ Defendant is Google Ireland Limited. It operates Android.[57] It is also one of the counterparties to the DDA. It was named as an addressee in the CMA's Chapter II investigation into Google's conduct, and

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[52] Android, "*Legal Notice*", available at <https://source.android.com/legal> (last accessed 21 August 2024).

[53] The DDA, at [2.1], states, "*This agreement* […] *forms a legally binding contract between You and Google in relation to Your use of Google Play to distribute Products*". The DDA defines "*Google*" as "*Google LLC* [the Second Proposed Defendant], *a Delaware limited liability company with principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA 94043, United States; Google Ireland Limited* [the Third Proposed Defendant], *a company incorporated in Ireland with principal place of business at Gordon House, Barrow Street, Dublin 4, Ireland; Google Commerce Limited* [the Fifth Proposed Defendant], *a company incorporated in Ireland with principal place of business at Gordon House, Barrow Street, Dublin 4, Ireland; or Google Asia Pacific Pte. Limited* [the Fourth Proposed Defendant], *a company incorporated in Singapore with principal place of business at 70 Pasir Panjang Road, #03-71, Mapletree Business City, Singapore 117371.* […]".

[54] The DDA, at [3.1], states, "*You hereby appoint Google as Your agent or marketplace service provider as outlined here* [https://support.google.com/googleplay/android-developer/answer/10532353?hl=en-gb] *to make Your Products available in Google Play, and subject to the terms and conditions of this Agreement, Google will allow You to use Google Play for Your Products*." The link in the word "*here*" takes the reader to a page which directs the reader to a further page at https://play.google.com/supported-locations/?hl=en-GB&sjid=7559206828843794O2-EU. That page explains that (in very broad terms) the "*agent or marketplace service provider*" is (i) Google LLC (the Second Proposed Defendant) where products are made available to Android Device users in the Americas, (ii) Google Commerce Limited (the Fifth Proposed Defendant) where products are made available to Android Device users in Europe, Africa, and West Asia, and (iii) Google Asia Pacific Pte (the Fourth Proposed Defendant) where products are made available to Android Device users in Australasia and East Asia.

[55] Available at <https://play.google.com/intl/ALL_uk/about/play-terms/> (last accessed 21 August 2024).

[56] See footnote ~~50~~ 51 above.

[57] European Commission, Case DMA.100002 – Alphabet – OIS App Stores, C(2023) 6101 final, at (5). The conditions Google imposes on smart mobile device manufacturers that license Android is one of the mechanisms through which Google imposes the restrictions at issue in this case.

as one of four Google companies that offered commitments in respect of the Play Store under section 31A of the Act.[58]

67.4 The Fourth ~~Proposed~~ Defendant is Google Asia Pacific Pte Limited. It is one of the counterparties to the DDA. In respect of certain territories, the DDA designates it as the app developer's "*agent or marketplace service provider*" to make the developer's apps available in the Play Store, such that it charges the Commission (known as the "*service fee*") at issue in the present case.[59]

67.5 The Fifth ~~Proposed~~ Defendant is Google Commerce Limited. In respect of certain territories, the DDA designates it as the app developer's "*agent or marketplace service provider*" to make the developer's apps available in the Play Store, such that it charges the Commission (known as the "*service fee*") at issue in the present case.[60] Further, according to the Google Play Terms of Service, "*Content on* [the Play Store] *is offered by Google Commerce Limited, and when you download, view, use, or purchase Content on or using* [the Play Store]*, you will enter into a separate contract based on these Terms (as applicable) with Google Commerce Limited*".[61]

67.6 The Sixth ~~Proposed~~ Defendant is Google Payment Limited. It processes payments made by UK Android Device users through the Play Store.[62]

67.7 The Seventh ~~Proposed~~ Defendant is Google UK Limited. It provides research and development and marketing services to the Google corporate group.[63] It was named as an addressee in the CMA's Chapter II investigation into

[58] See footnote ~~50~~ 51 above.

[59] See paragraph 67.2 and footnotes ~~52~~ 53 and ~~53~~ 54 above.

[60] See paragraph 67.2 and footnotes ~~52~~ 53 and ~~53~~ 54 above.

[61] The European Commission has also stated that "*content on Play Store is offered by Google Commerce Ltd, established in Ireland*": European Commission, Case DMA.100002 – Alphabet – OIS App Stores, C(2023) 6101 final, at (5(a)).

[62] Google Payment Limited, Directors' Report and Financial Statements for the financial year ended 31 December 2022, page 2.

[63] Google UK Limited, Directors' Report and Financial Statements for the financial year ended 31 December 2022, page 3.

Google's conduct, and as one of four Google companies that offered commitments in respect of the Play Store under section 31A of the Act.[64]

(2) The factual background

(a) The operation of mobile devices

68. In general, mobile devices require an OS. The OS provides basic functions, including, for example, the user interface. The OS manages all device hardware and any additional software (including apps) subsequently loaded onto the device.

69. Apps can be used for many functions. For example, they can allow users to add functionality to devices, or to access certain content or services.

70. Native apps are programmed to be compatible with a specific OS. An app developed for one OS will not function on a mobile device which uses another OS. For example, an app that runs on Google's Android OS will not function on the Apple iOS.

71. Apps can be developed by the developer of the OS or by others. Where others develop apps for a particular OS, they require an application programming interface ("**API**"), which is a set of functions used by a computer program to communicate and exchange data with other systems. An API allows Third-Party App Developers to program their apps to connect to and interact with functions provided by the OS.

72. Some apps are free to download and to use. For others, the device user must pay a fee before they can download the app. Other apps are free to download but have limited functionality until the user pays a fee, or otherwise provide for in-app purchases. (This is especially a feature of some gaming apps.)

73. There is a range of business models which may in principle be adopted by Third-Party App Developers. Among those models are the following:

73.1 the "*paid*" model, whereby users pay once to download an app and use all its functions;

73.2 the "*paymium*" model, whereby users pay to download an app, and can buy additional features, content, or services within the app;

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[64] See footnote ~~50~~ 51 above.

[redacted]

73.3 the "*freemium*" model, whereby users pay nothing to download an app, and are then offered optional in-app purchases for premium features, additional content, subscriptions, or digital goods;

73.4 the "*subscription*" model, whereby the app is typically free, but users can buy a subscription to access content, services, and experiences;

73.5 a model whereby users do not pay to download or use the app, but buy physical goods or services in-app;

73.6 a model whereby users do not pay to download or use an app at all, but the developer makes money by displaying advertisements in the app; and

73.7 a model whereby users do not pay to download or use an app at all, and the developer hopes to gain market recognition or another non-monetary benefit.

74. App stores function as digital distribution platforms which allow users to search for, download, manage, and pay for apps using a single interface.

(b) *Google's system*

(i) *General*

75. Google licenses (*inter alia*) Android, the Play Store, and its own Proprietary Apps (such as Google Maps, Chrome, and YouTube). Google also manufactures Android Devices, such as the Google Pixel.

(ii) *Android and Google Android*

76. Android is the OS, first released in 2008, owned by Google~~ on Android Devices~~. It ~~therefore~~ controls the basic functions of Android Devices. Most Android device OEMs use a specific, consistent proprietary version of Android OS that meets Google's compatibility requirements set out in the Compatibility Definition Document (see paragraph 113 below) and that passes the Compatibility Test Suite ("**Google Android**").

77. Google pre-installs Google Android on those mobile devices that it manufactures itself. Google Android is also pre-installed on ~~all~~ most Android Devices manufactured by other OEMs, such as Samsung, OnePlus and Huawei.

78. Android is currently the only licensable mobile OS in the UK and is by far the most prevalent licensable OS worldwide.[65] As the EC has observed:[66]

> "*no alternative provider of licensable smart mobile OSs has been able to enter and expand successfully* […] *The share of the second most important player in this market – Microsoft – dropped below 2% in 2016. Microsoft exited the market shortly afterwards* […] *Other providers including Firefox OS, Tizen or Sailfish have also been unable to gain more than 0.2% market share*."

79. Most Android Devices (for example Samsung and OnePlus) use Google Android specifically. Google contracts with the OEMs, allowing them to use Google Android on their devices.

80. Nominally, an open-source and free version of Android is available through the Android Open Source Project (the "**AOSP**"). OEMs could in theory use that version of Android to produce devices with Android Forks.

81. However, in practice, Android Forks are rare in the relevant market for a number of reasons.[67] In particular:

81.1 As explained at paragraphs 107, 114, and 115 below, Google offers payments to OEMs for pre-installing certain Proprietary Apps. OEMs are only entitled to those payments for devices that use Google Android (not for devices that use Android Forks).[68]

81.2 Devices that use Android Forks cannot run Google's Proprietary Apps.[69]

81.3 App developers require additional code or software (i.e. APIs) for their apps to function as intended. The APIs included in the Android OS itself are limited. As explained at paragraph 82 below, many of the most important APIs are included only in Google Play Services, which is or contains a vital software package that allows apps to function on Google Android. Google does not license Google Play Services to OEMs for use on devices using Android

[65] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), at [3.66].

[66] *Google Android (EC),* at [472].

[67] Fletcher 2, at [244-245].

[68] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), appendix E, at [66].

[69] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), at [3.163].

Forks.[70] This means that many Android apps that rely on APIs included in Google Play Services may not function properly on devices that use Android Forks.[71]

(iii) Google Play Services

82. Third-Party App Developers require APIs for their apps to be able to interface with Android (e.g., to enable push notifications, security services, and interactions with Proprietary Apps such as Google Maps, Search, and Gmail) and Android Device hardware (e.g., to allow the app to use the camera, microphone, or GPS).[72] Some of these APIs are included in the Android OS, an open-source version of which is available from AOSP. However, others are only included in Google's proprietary software package, Google Play Services.[73] Without access to these APIs, many apps (including all or almost all Proprietary Apps)[74] would either crash or lack important functions.[75]

83. As explained at paragraphs 84 to 106 below, Google only licenses Google Play Services to OEMs together with the Play Store.[76] In addition, the APIs included in Google Play Services are updated via the Play Store,[77] with the result that those APIs are linked to the Play Store not only contractually but also technically.

(iv) The GMS bundle

84. Google also produces a bundle called Google Mobile Services ("**GMS**"), which it defines as "*a collection of Google applications and APIs that help support functionality across devices.*"[78] The bundle is broad, including Google Play Services, the Play Store,

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[70] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), at [3.162].

[71] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), at [3.165].

[72] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), at [3.166] and [5.108] and appendix E, at [5] to [7].

[73] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), at [3.166]; *Google Android (EC)*, at (142).

[74] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), appendix E, at [39]; *Google Android (EC)*, at (141).

[75] *Google Android (EC)*, at (142).

[76] *Google Android (EC)*, at (~~146~~ 144).

[77] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), appendix E, at [48].

[78] Google, "*The best of Google, right on your devices*" available at < https://www.android.com/intl/en_uk/gms/> (last accessed 21 August 2024).

and other Proprietary Apps. The Proprietary Apps in the GMS bundle have varied over time and between jurisdictions, but in the UK and EEA, as of August 2024, it included Gmail, Google Drive, Google Maps, YouTube, YouTube Music, Google Photos, and Google Duo.[79] Google describes the GMS bundle as containing "*Google's most popular apps*"[80], albeit it bears emphasis that those apps are in many cases pre-installed rather than reflecting active user choice of those apps based on their popularity. Until 2019, the bundle also included Google Search and Chrome. Following the EC's decision in *Google Android (EC)*, Google Search and Chrome were formally removed from the GMS bundle in the UK and EEA.[81] However, licensing Google Search and Chrome in the UK and EEA remains conditional on the OEM entering into an EMADA, which requires the OEM to pre-install the GMS bundle in any event (see paragraph 102 below).[82]

(c) <u>*Apps*</u>

(i) *App stores*

85. To run an Android app on an Android Device, it must either be pre-installed on the device or be downloaded and installed by the user.

86. The vast majority of apps are downloaded and installed through app stores. App stores present users with a range of apps to choose from, organised e.g. by category or by user search term, and displayed on the user's screen. App stores are also designed to allow the downloading and installation of apps in a manner intended to make the app function properly on the OS, so that the download and installation process through app stores is uncomplicated.

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[79] Fletcher 1, at [245]~~.~~; Fletcher 2, at [63] and footnote 724.

[80] Google, "*The best of Google, right on your devices*" available at < https://www.android.com/intl/en_uk/gms/> (last accessed 21 August 2024).

[81] Google, "*Complying with the EC's Android decision*" available at <https://blog.google/around-the-globe/google-europe/complying-ecs-android-decision/> (last accessed 21 August 2024); CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), appendix E, at [51].

[82] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), appendix E, at [7].

[redacted]

(ii) The Play Store

87. Google's proprietary app store is the Play Store. Both Proprietary Apps and Third-Party Apps can be downloaded through the Play Store for use on Android Devices. Over 90% of Android apps are downloaded through the Play Store.[83]

88. The Play Store is typically pre-installed on Android Devices by the OEM (along with certain other apps, which – as explained above and below – includes Proprietary Apps in respect of which Google imposes particular contractual requirements). The Play Store also contains specific APIs and ~~The PCR does not know the detail of how these APIs relate to those included in Google Play Services (see paragraphs 81.3, 82, and 83 above), but understands that~~ Third-Party App Developers who wish to use any Play Store-specific APIs must distribute their apps *via* the Play Store.[84]

89. It is also technically possible to download apps directly onto an Android Device (e.g., from a developers' website, or from another device) without going through the Play Store or other app store. This process is sometimes called "*sideloading*". Direct downloading on Google Android devices is rare.[85] That is because Google has intentionally driven Google Android device users away from direct downloading. For example (without prejudice to the evidence or submissions to be advanced at trial):

89.1 Through the Compatibility Definition Document ("**CDD**") (see paragraph 113 below), Google requires OEMs to:[86]

89.1.1 make it technically and operationally more difficult to download an app directly than to download it through the Play Store;[87]

[83] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), at [4.35] and figure 4.2.

[84] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), appendix E, at [45] to [47].

[85] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), at [4.109].

[86] See Android, "*Android Compatibility program overview*", available at <https://source.android.com/docs/compatibility/overview> (last accessed 21 August 2024).

[87] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), at [4.115] to [4.117] and [8.83]; *Google Android (EC)*, at (635) and footnote 295~~.~~; Fletcher 2, at [205-206].

89.1.2 ensure that, before being able to download any apps directly, users are required to change their security settings to enable access to apps from "*Unknown sources*"[88] or to access "*Unknown apps*";[89] and

89.1.3 ensure that, during the process of direct downloading, the device displays messages to discourage the use of direct downloading and encourage the use of the Play Store.[90]

89.2 Documents from Google's Behavioural Economics Team have stated that "*seemingly small friction points in user experiences can have a dramatically disproportionate effect on whether people drop or stick*".[91]

89.3 Most apps are not available to be downloaded directly, because:

89.3.1 Until Android 12 (released 4 October 2021), Google prevented directly downloaded apps from being automatically updated.[92] Instead, unlike apps downloaded from the Play Store, Google only allowed directly downloaded apps to be updated by user action.

89.3.2 Google introduces further frictions to direct downloading in its purported security programmes. For example, "*Google Play Protect*" (a default app scanning system) may show additional discouraging prompts or block installation altogether, while

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[88] See in relation to Android 14, for example, the requirements under the CDD, section 4 ("*Application Packaging Compatibility*"), which states "*Device implementations* […] *MUST NOT install application packages from unknown sources, unless the app that requests the installation meets all the following requirements:* […] *It MUST have been granted permission by the user to install apps from unknown sources*", available at <https://source.android.com/docs/compatibility/14/android-14-cdd#97_security_features> (last accessed 21 August 2024).

[89] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), figure 4.7.

[90] See in relation to Android 14, for example, the requirements under the CDD, section 4 ("*Application Packaging Compatibility*"), which states, "*Device implementations* […] *MUST display a warning dialog with the warning string that is provided through the system API PackageManager.setHarmfulAppWarning to the user before launching an activity in an application that has been marked by the same system API PackageManager.setHarmfulAppWarning as potentially harmful*", available at <https://source.android.com/docs/compatibility/14/android-14-cdd#97_security_features> (last accessed 21 August 2024).

[91] ~~Fletcher 1~~ Fletcher 2, at [~~317~~ 421].

[92] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), at [4.119]; Google, "*Android 12 is live in AOSP!*" (4 October 2021), available at <https://android-developers.googleblog.com/2021/10/android-12-is-live-in-aosp.html> (last accessed 21 August 2024); Google, "*Features and APIs Overview*", available at <https://developer.android.com/about/versions/12/features#automatic-app-updates> (last accessed 21 August 2024).

Google's "*Advanced Protection Program*" (an optional enhanced security programme) blocks the direct downloading of most apps.[93]

89.3.3 As noted at paragraph 88 above, the Play Store contains specific APIs, forcing Third-Party App Developers who wish to use those APIs to distribute their apps *via* the Play Store.

89.3.4 The majority of users (and developers) are already driven to the Play Store by network effects: knowing that many apps are available (and often exclusively so) through the Play Store, most users will adopt it as their preferred (or only) channel for the supply of apps, in turn prompting developers to make their apps available for download through the Play Store (potentially at the expense of offering direct downloads), further driving users away from direct downloads.

90. Conversely, Google has also intentionally driven users towards the Play Store. For example (without prejudice to the evidence or submissions to be advanced at trial):

90.1 Google requires that OEMs to which it licenses the GMS bundle pre-install the Play Store on those devices (see paragraphs 102 and 103 below);

90.2 Google requires OEMs to give the pre-installed Play Store icon a prominent position on their devices (see paragraphs 105.4 below);

90.3 Google does not allow the downloading of other app stores or distributor apps through the Play Store (see paragraph 134 below); and

90.4 Google programs the Play Store and/or Android so that a user cannot uninstall (but can only "*disable*") the Play Store if an OEM has chosen to pre-install it on the user's device (see paragraph 102 below).

91. Similarly, Google has intentionally driven developers towards the Play Store. For example (without prejudice to the evidence or submissions to be advanced at trial):

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[93] Google, "*Advanced Protection Program*", available at <https://landing.google.com/advancedprotection/#enroll-in-minutes> (last accessed 21 August 2024); XDA, "*Google's Advanced Protection program now blocks sideloading non-Play Store apps*" (18 March 2020, available at <https://www.xda-developers.com/google-advanced-protection-play-protect-sideloaded-apps/>, last accessed 21 August 2024).

91.1 Through programmes such as "*Project Hug*" and the "*Living Room Accelerator Program*" (see paragraphs 137 and 138 below), Google confers special benefits on particularly significant Third-Party App Developers, to ensure that they use the Play Store as their primary means of app distribution.

91.2 Until 4 October 2021, Google only offered automatic updates of apps downloaded through pre-installed app stores (see paragraph 89.3.1 above).

91.3 Third-Party App Developers who wish to use Play Store APIs are required to distribute their apps *via* the Play Store (see paragraphs 88 and 89.3.3), making those developers perceive the Play Store as the best route to market.

92. The various means (including those described above at paragraphs 89 to 90) by which Google drives users away from direct downloading and towards the Play Store, and as a result drives developers towards the Play Store, are referred to as the "**Restrictions on Direct Downloading**".

(d) *Billing*

93. In 2009, Google introduced a Commission of 30% for "*paid apps*".[94] In 2011 and 2012, it imposed that same level of Commission on "*in-app billing*" and "*in-app subscriptions*".[95] It has since introduced limited exceptions and reductions, including those set out below at paragraph 94 below. The dates on which those exceptions and reductions were introduced are explained in Fletcher ~~1~~ 2, section ~~3.9~~ 3.5.

94. Google has also developed a proprietary billing system, GPB. Subject to certain exceptions, Google contractually requires Third-Party App Developers to ensure all Relevant Sales are made via GPB (see paragraph 134 below). The exceptions to the requirement to use GPB include the following:

94.1 Payments for the delivery of *physical* goods or services may not be made *via* GPB.

[94] Android Developers Blog, "*Android Market: Now available for users*" (22 October 2008), available at <https://android-developers.googleblog.com/2008/10/android-market-now-available-for-users.html> (last accessed 21 August 2024).

[95] ACCC, "*Digital platform services inquiry Interim report No. 2 – App marketplaces*" (March 2021), available at <https://www.accc.gov.au/system/files/Digital%20platform%20services%20inquiry%20-%20March%202021%20interim%20report.pdf> (last accessed21 August 2024), page 72.

[redacted]

94.2 Google has entered into bespoke agreements with certain developers allowing them, in some contexts, to use alternative billing systems.[96]

94.3 In some jurisdictions, Google has adopted different rules, including in response to legislative and regulatory requirements. Where it has done so, Google has still required the developer to pay a Commission, reduced by 3 or 4 percentage points. These are considered further at paragraph 135 below.

95. GPB is not used in "*consumption-only*"[97] apps, where "*any product(s) or service(s), whether digital or physical, cannot be purchased from within the app*".[98]

96. Google also contractually requires Third-Party App Developers not to direct users to payment methods other than GPB, even where that payment method or purchase may be cheaper.[99] This prevents Third-Party App Developers from, e.g., including in the app (i) buttons or links to pay through a system other than GPB; or (ii) messages steering users to make the purchase outside of the app. The means by which Google prevents Third-Party App Developers from directing users to payment methods other than GPB, including as described in this paragraph, are known as the "**Anti-Steering Requirements**".

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[96] For example, in October 2023, Match announced it reached a binding term sheet for a settlement of its US claims against Google, by which the parties agreed that Match would be permitted to offer users of its app an alternative billing system. Under the terms of the settlement, where the user uses an alternative billing system, Google still requires Match to pay a Commission, reduced by 4 percentage points: Match, "*Letter to Shareholders Q3 2023*" (October 31 2023), available at <https://s22.q4cdn.com/279430125/files/doc_financials/2023/q3/Earnings-Letter-Q3-2023-vF.pdf> (last accessed 21 August 2024). In November 2023, it was reported that Spotify had agreed with Google that it would pay a Commission of *nil* when users chose to buy subscriptions through Spotify's own payment system, and a Commission of 4% when users chose to use GPB: The Verge, "*A secret Google deal let Spotify completely bypass Android's app store fees*" (20 November 2023), available at <https://www.theverge.com/2023/11/20/23969690/google-spotify-android-billing-commission-secret-deal> (last accessed 21 August 2024). It appears that the arrangement had been in place for some time: Android Developers Blog, "*Exploring User Choice Billing With First Innovation Partner Spotify*" (23 March 2022), available at <https://android-developers.googleblog.com/2022/03/user-choice-billing.html> (last accessed 21 August 2024).

[97] "*Consumption only*", or "*reader*" apps are apps which do not allow users to buy anything within the app, but instead only allow users to consume or read content purchased elsewhere.

[98] Google, "*Understanding Google Play's payments policy*", under the question, "*Can I offer a consumption-only (reader) app on Google Play?*", available at <https://support.google.com/googleplay/android-developer/answer/10281818?hl=en-GB#zippy=%2Can-i-offer-a-consumption-only-reader-app-on-google-play> (last accessed 21 August 2024).

[99] The DDA, clause 4.1, requires that Third-Party App Developers and their products "*must adhere to the Developer Program Policies.*" The "*Developer Program Policies*" include Google's "*Payments*" policy, i.e.. Google, Play Console Help, "*Payments*", available at <https://support.google.com/googleplay/android-developer/answer/9858738?sjid=11486273099112006638-EU&visit_id=638459529662758963-363037881&rd=1> (last accessed 21 August 2024).

[redacted]

97. Google enforces the requirements to use GPB, and the Anti-Steering Requirements, with the threat of removing access to the Play Store and/or Google Play Services generally, as it has done on multiple occasions. For example:

97.1 In August 2020, Google removed Epic's popular *Fortnite* app from the Play Store for introducing an alternative billing system for user payments.[100]

97.2 In June 2022, Google suspended updates to the South Korean messaging app *KakaoTalk* for containing a link within the app to KakaoTalk's external website where users could make payments.[101] In response to the suspension, KakaoTalk removed the external payment option from its app in July 2022.[102]

97.3 In March 2024, Google removed the apps of 10 Indian developers from the Play Store for refusing to pay 11% or 26% fees on payments processed through alternative billing systems under Google's "*user choice billing*" scheme.[103]

(e) *Conditions Google incorporates into agreements with OEMs/MNOs*

(i) *Introduction*

98. ~~In the agreements it enters into with licences that it grants to OEMs/MNOs to use its software (including Google Android, its Proprietary Apps, Google Play Services, and~~

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[100] *Epic Games, Inc v Alphabet, Inc* [2021] CAT 4, at [65] to [67].

[101] Kate Park, "*Google halts KakaoTalk updates on Play Store in Korea after messaging app refused to remove its own payment links*" (Tech Crunch, 5 July 2022), available at <https://techcrunch.com/2022/07/05/google-halts-kakaotalk-updates-on-play-store-in-korea-after-messaging-app-refused-to-remove-its-own-payment-links/> (last accessed 21 August 2024).

[102] Kate Park, "*Kakao confirms that it is removing its external payment option after standoff with Google*" (Tech Crunch, 14 July 2022), available at <https://techcrunch.com/2022/07/14/kakao-confirms-withdrawal-external-payment-option-after-standoff-with-google/> (last accessed 21 August 2024); Choi Moon-hee, "*Kakao Gives up Outlink Payment Method Opposed by Google*" (Business Korea, 8 July 2022), available at < https://www.businesskorea.co.kr/news/articleView.html?idxno=96212> (last accessed 21 August 2024).

[103] Aditya Kalra and Munsif Vengattil, "*Google removed Indian matrimonial, job search apps as fees row escalates*" (Reuters, 1 March 2024), available at <https://www.reuters.com/world/india/google-enforce-action-against-10-apps-india-not-paying-service-fee-2024-03-01/> (last accessed 21 August 2024). Google, "*Upholding a fair and equitable experience for India's thriving digital ecosystem*" (1 March 2023), available at <https://blog.google/intl/en-in/products/platforms/upholding-a-fair-and-equitable-experience-for-indias-thriving-digital-ecosystem/> (last accessed 21 August 2024). The developers had considered that "user choice billing" was effectively a re-packaging of GPB and had refused to comply on this basis: CCI, order of 15 March 2024 in cases 37/2022, 17/2023, and 27/2023, available at <https://www.cci.gov.in/antitrust/orders/details/1106/0> (last accessed 21 August 2024); The Economic Times, "*CCI orders probe in to Google's Play Store billing policies*" (15 March 2024), available at <https://economictimes.indiatimes.com/tech/startups/competition-watchdog-orders-probe-into-googles-play-store-billing-policies/articleshow/108528079.cms> (last accessed 21 August 2024).

~~the Play Store),~~ Google incorporated and continues to incorporate a number of contractual conditions, as set out in more detail in this section (e), into the agreements it enters into with OEMs/MNOs.

99. At trial, the ~~P~~CR will rely on the agreements between Google and OEMs/MNOs in full for their terms and effects. ~~At this stage, however, the PCR has only limited access to such agreements, and so the details in this section (e) are the best particulars that he can currently give. The PCR will seek disclosure of relevant documents, and reserves his right to expand or amend these particulars following disclosure and evidence.~~

100. At present, ~~and in light of the asymmetry of information described at paragraph 5 above, the PCR does not fully understand the relationships between Google and MNOs, or how OEMs participate in or affect those relationships. However, on the basis of the information currently available to him,~~ the ~~P~~CR's case is that the conditions that Google incorporates into its agreements with MNOs complement, reinforce, and exacerbate the effects of the conditions that Google incorporates into its agreements with OEMs.

101. The conditions that Google incorporates into its agreements with OEMs/MNOs, as set out in this section (e), are referred to as the "**OEM/MNO Conditions**".

*(ii) Mobile Application Distribution Agreements ("**MADAs**")*

102. Google requires OEMs wishing to obtain licences of products in the GMS bundle (which may be highly desirable: see paragraph 84 above) to enter into Mobile Application Distribution Agreements ("**MADAs**"; in UK and EEA, "**EMADAs**").

103. Under the MADAs, OEMs are required to pre-install all elements of the GMS bundle (that is, they cannot pre-install some but not all of the relevant apps or software). Users cannot uninstall (but can only "*disable*") such apps (see paragraph 90.4 above).[104]

104. Between March 2009 and April 2017, Google entered into MADAs with up to 300 OEMs,[105] including Samsung, HTC, Huawei, Lenovo, LG and Sony.[106] ~~The~~ At the time the CPCF was filed the ~~P~~CR ~~has been~~ was able to access:

[104] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), appendix E, at [40].

[105] *Google Android (EC)*, at (~~183~~ 189) and footnote ~~171~~ 185.

[106] *Re* HTC and Samsung, see below; *re* Huawei, Lenovo, LG, and Sony, see *Google Android (EC)*, at (189).

[redacted]

104.1 five publicly available MADAs, which Google entered into with Motorola (from May 2009);[107] HTC (from January 2011);[108] Samsung (from January 2011);[109] Samsung (from March 2017);[110] and Motorola (from January 2018);[111] and

104.2 references to the content of MADAs with other OEMs, in third-party documents (including regulatory decisions and pleadings in other actions).

105. ~~Based on that limited sample, the~~ The ~~P~~CR observes the following about the MADAs:

105.1 The MADAs use the concept of "*Android Compatible Device(s)*", i.e. devices that comply with the CDD (see paragraph 113 below).[112] Google only grants an OEM a licence to distribute "*Google Applications*", which includes the products in the GMS bundle, including Google Play Services,[113] on devices that are "*Android Compatible*".[114]

105.2 Google grants an OEM a licence to distribute "*Google Applications*" only if all relevant "*Google Applications*" (including the Play Store) are pre-installed on the devices.[115]

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[107] Google-Motorola MADA dated 1 May 2009, available in heavily redacted form only at <https://www.sec.gov/Archives/edgar/containers/fix380/1495569/000119312510271362/dex1012.htm> (last accessed 21 August 2024).

[108] Google-HTC MADA dated 1 January 2011, available at <https://www.benedelman.org/docs/htc-mada.pdf> (last accessed 21 August 2024).

[109] Google-Samsung MADA dated 1 January 2011, available at <https://www.benedelman.org/docs/samsung-mada.pdf> (last accessed 21 August 2024).

[110] Google-Samsung MADA dated 1 March 2017, available at <https://www.courtlistener.com/docket/17443962/623/39/epic-games-inc-v-google-llc/> (last accessed 21 August 2024).

[111] Google-Motorola MADA dated 1 January 2018, available at <https://www.courtlistener.com/docket/17443962/623/40/epic-games-inc-v-google-llc/> (last accessed 21 August 2024).

[112] See, e.g. the HTC and Samsung (2011) MADAs, section 1.2; the Samsung (2017) MADA, section 1.3, and the Motorola (2018) MADA, section 1.3~~.~~; Fletcher 2, section 6.3.1.1.

[113] See, e.g., GOOG-PLAY-010847528.

[114] See, e.g. the HTC and Samsung (2011) MADAs, section 2.7, and the Samsung (2017) MADA, section 2.7. On compatible devices and the CDDs, see paragraph 113 below~~.~~; Fletcher 2, section 6.3.1.1.

[115] See, e.g., the HTC and Samsung (2011) MADAs, section 2.1 ("*Devices may only be distributed if all Google Applications (excluding any Optional Google Applications) authorized for distribution in the applicable territory are pre-installed on the Device, unless otherwise approved by Google*"); the Samsung (2017) MADA, section 2.1 (an OEM may distribute "*Devices*" with "*Google Applications*", "*if it preloads each Device with all Core Applications and Flexible Applications authorized for distribution in the applicable Territory, unless otherwise*

[redacted]

105.3 Google prohibits the OEMs ~~and any third party~~ from distributing Android-derived SDKs and building on ~~Android and~~ the Google Applications.[116]

105.4 Google requires OEMs to give the Play Store[117] (and certain other Google apps[118]) prominent placement on their devices and restricts the number of additional non-Google apps that can be included alongside the Play Store.[119]

105.5 To distribute "*Google Applications*" on their devices, OEMs must receive Google's approval.[120]

105.6 Google requires OEMs not to include any processes, instructions, promotions, or other means that directs, instructs or encourages the "*End User*" to change the "*Default Home Screen*".[121]

106. In *Google Android* *(EC)*, the EC found that "[t]*he number of mandatory Google apps ha*[d] *increased at least until 2014. For example, while the MADA entered into by [MADA signatory] in 2009 required the pre-installation of twelve Google apps, [MADA signatory]'s latest MADA, dated 1 March 2014, required the pre-installation of thirty Google apps*."[122] The CMA also found that the minimum number of Google apps required to be pre-installed as part of the GMS bundle in the UK has varied over time, with a net increase from 2009 to 2021.[123]

approved by Google"); and the Motorola (2018) MADA, section 2.1 (an OEM "*may only distribute a Device with Google Applications if it makes all Core Applications and Flexible Applications authorised for distribution in the applicable Territory available on such Device*"). Cf the HTC and Samsung (2011) MADAs, section 3.4(1), under which the OEMs are required to "*preload all Google Applications approved in the applicable Territory* […] *on each device*"; and the Samsung (2017) MADA, section 3.3(1), and the Motorola (2018) MADA, section 4.4(a), under which the OEMs are required to preload/distribute "*all Core Applications and Flexible Applications approved in the Territory*"~~.~~; Fletcher 2, at [83] and section 6.3.1.1.

116 See, e.g., the HTC and Samsung (2011) MADAs, section 2.2: the OEM "*shall not, and shall not allow any third party to:* […] *(f) take any actions that may cause or result in the fragmentation of Android*", including through distributing any software development kit derived from Android that could help developers develop apps for Android Forks~~.~~; Fletcher 2, at [339].

117 See, e.g., the HTC and Samsung (2011) MADAs, section 3.4(2); the Samsung (2017) MADA, section 3.3(2)(c); and the Motorola (2018) MADA, section 4.4(b)~~.~~; Fletcher 2, at [331].

118 See, e.g., the HTC and Samsung (2011) MADAs, section 3.4(3); the Samsung (2017) MADA, section 3.3(3); and the Motorola (2018) MADA, section 4.4(c).

119 Fletcher 2, at [332].

120 See, e.g., the HTC and Samsung (2011) MADAs, section 4.3; the Samsung (2017) MADA, section 4.3; and the Motorola (2018) MADA, section 4.9.

121 Fletcher 2, at [331-334].

122 *Google Android (EC)*, at (182) and (183).

123 CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), at [6.62].

107. Google also offers OEMs that have entered into EMADAs both fixed payments *per* device and shares of net advertising and Play Store revenue. Specifically:[124]

107.1 Google offers fixed payments *per* device *via* placement agreements or "*PAs*" (see paragraphs 114 and 115 below).

107.2 Google offers shares of net advertising and Play Store revenue *via* Revenue Sharing Agreements (or "*RSAs*") and Mobile Incentive Agreements (or "*MIAs*") (see paragraphs 117 to 121 below).

108. In *Epic (US)*, the jury expressly found that the MADA was an anticompetitive restraint on trade: see paragraph 64 above.

*(iii) Android Compatibility Commitments ("**ACCs**") and Anti-Fragmentation Agreements ("**AFAs**"))*

109. Google requires OEMs wishing to obtain licences of any product in the GMS bundle (which may be highly desirable: see paragraph 84 above) to enter into MADAs/EMADAs. However, OEMs can only enter into MADAs/EMADAs if they have also entered into ACCs/AFAs.[125]

110. By AFAs, Google requires generally that OEMs do not modify the Android source code or take actions resulting in Android Forks, including Android Forks that could permit frictionless direct downloading. In *Google Android (EC)*, the EC recorded that "[i]*n its internal documents, Google* […] *refers to the fact that AFAs are meant to 'Stop* […] *our partners and competitors from forking Android and going alone'. In other words, members of the Android ecosystem 'didn't just commit to ship Android-compatible devices; they committed to *not* ship incompatible devices'.*"[126] As noted at paragraph 60.1 above, in *Google Android (EC)*, the EC found that Google had infringed article 102 TFEU by making "*the licensing of the Play Store and the Google Search app conditional on the anti-fragmentation obligations*" in the AFAs.

[124] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), at [3.148] and [3.149]; cf appendix E, at [8].

[125] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), appendix E, at [21] and [33]; *Google Android (EC)*, at (167).

[126] *Google Android (EC)*, at (160). The ~~P~~CR also notes the AFA provisions set out in full at (157).

[redacted]

111. In 2016 or 2017, Google introduced the ACCs.[127] ~~In *Google Android (EC)*, the EC recorded that~~ ACCs appear to ~~would~~ allow OEMs to manufacture 'incompatible' Android devices for third parties, and to supply those third parties with components.[128] ~~On 16 October 2018, Google stated that it was taking action to update its compatibility agreements with OEMs, pending its appeal of the EC's decision.[129]~~ However, OEMs are still not allowed to distribute or market non-"Android Compatible Devices" under their own brand.[130] ~~The PCR does not know to what extent Google has made changes to its ACCs and AFAs in the UK and EEA since making that statement.~~

112. ~~Without prejudice to the generality of paragraph 99 above, the PCR reserves his right to seek disclosure of relevant documents, including by reference to the issues in dispute in *McDonald (Australia)* (which include issues relating to ACCs and AFAs).[131]~~

(iv) Compatibility Definition Document and Compatibility Test Suite

113. *Via* the MADA[132] and the ACCs/AFAs,[133] Google requires that a Google Android device must adhere to the requirements of the "*Compatibility Definition Document*" (i.e. CDD) and pass the "*Compatibility Test Suite*" ("**CTS**"). In the CDD, Google sets out certain hardware and software requirements with which the OEMs' devices must comply. The CDD is amended and determined at Google's sole discretion.[134] The CTS is a Google-developed automated tool designed to detect compatibility issues.

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[127] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), appendix E, at [24]; *Google Android (EC)*, at (170).

[128] *Google Android (EC)*, at (171)~~.~~; see also, for example, GOOG-PLAY2-000456884.

~~[129] Google, "*Complying with the EC's Android decision*" (16 October 2018), available at <https://blog.google/around-the-globe/google-europe/complying-ecs-android-decision/> (last accessed 21 August 2024).~~

[130] See, for example, GOOG-PLAY2-000456884.

~~[131] See, e.g., *McDonald v Google LLC* (VID342/2022), further amended statement of claim, filed 15 December 2023, available at <https://www.playstoreclassaction.com.au/content/dam/mbl-microsites/single-page/google-play-store/Further%20Amended%20Statement%20of%20Claim.pdf> (last accessed 21 August 2024), at [69] and [70].~~

[132] See footnotes ~~110~~ 124 and ~~111~~ 125 above.

[133] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), appendix E, at [5] and [20].

[134] See footnotes ~~110~~ 124 and ~~111~~ 125 above.

(v) *Search and Chrome licence agreements and Placement Agreements ("**PAs**")*

114. Since having formally to unbundle them from the GMS (see paragraph 84 above), Google now licenses the Google Search and Chrome apps for distribution on Google Android devices in the UK and EEA under separate licence agreements.[135] It remains a precondition of entering into such a licence agreement that an OEM sign a EMADA.[136] Under such a licence agreement, the Google Search and Chrome apps are distributed free of charge to OEMs on a device-by-device basis.[137]

115. Google also offers to enter into PAs with OEMs to which it has licensed the Google Search and Chrome apps. As a pre-condition, the OEM must have made its devices "*Android Compatible*", and obtained a licence for the GMS bundle.[138] Under such PAs, Google pays OEMs "*activation payments*" for each device on which the OEM (i) pre-installs and (ii) satisfies certain placement obligations for Google Search and Chrome, the payment per device being significantly larger if the OEM does so for both.[139]

116. The CMA estimates that, under PAs covering the UK in 2021, Google paid "*activation payments*" of between £100 and £200m to OEMs (mainly Samsung, i.e., the OEM which is also the developer of the most widely available alternative app store to the Play Store in the UK (the Galaxy Store)).[140] Across the 2018 – 2025 period, [redacted].[142]

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[135] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), at [6.62] and [6.63].

[136] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), at [3.147].

[137] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), appendix E, at [49].

[138] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), appendix E, at [60].

[139] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), appendix E, at [54].

[140] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), appendix E, at [63]~~; cf Fletcher 1, at [259-260].~~

[141] Fletcher 2, at [337] and table 3.

[142] See GOOG-COLL2-001354789 at -792, Table QII.2.; Fletcher 2, at [336]

[redacted]

*(vi) Revenue Sharing Agreements ("**RSAs**")*

117. Google has also entered into RSAs with OEMs/MNOs, by which Google agrees to share a portion of its revenue with the OEM/MNO if it meets certain conditions. ~~At this stage, the~~ The ~~P~~PCR understands that RSAs can relate to the Play Store, or Google Search, or both.

118. ~~The PCR has been able to access:~~

~~118.1 two publicly available RSAs that Google entered into with OnePlus (from February 2020)[143] and Samsung (from July 2020);[144] and~~

~~118.2 references to the content of RSAs with other OEMs/MNOs contained in third party documents (including regulatory decisions and pleadings in other actions).~~

119. ~~At present, the~~ The ~~P~~PCR understands that RSAs are bespoke to each OEM/MNO, and that they generally provide for the proportion of revenue shared with the OEM/MNO to increase with the number of RSA requirements that a device meets.[145] As to RSAs:

119.1 The EC has noted that "*Google is or has been* [...] *(4) granting revenue share payments to* [OEMs and MNOs] *on condition that they preinstall no competing general search service.*"[146] It gave the example of an RSA under which an OEM undertook that "*it 'will not, and will not allow any third party to: implement' on Google Android devices 'any application, product or service which is the same as or substantially similar to Android Market* [an old name for the Play Store]*, Google Phone-top Search or the Google Mobile Search Service (or any part thereof)*",[147] in exchange for Google paying the OEM a revenue share. It gave a further example of an RSA under which a MNO

~~[143] OnePlus RSA dated 1 February 2020, available at <https://www.courtlistener.com/docket/17443962/622/45/epic-games-inc-v-google-llc/> (last accessed 21 August 2024).~~

~~[144] Samsung RSA dated 1 July 2020, available at <https://www.justice.gov/d9/2023-11/418307.pdf> (last accessed 21 August 2024).~~

[145] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), at [3.149]; cf appendix E, at [8]~~.~~; Fletcher 2, section 6.3.1.4.

[146] *Google Android (EC)*, at (4).

[147] *Google Android (EC)*, at (202).

[redacted]

"*committed that '[n]o widget, pointer, bookmark or application that is substantially similar to Google Search, Google Maps or Android Market may be preloaded*'."[148] The EC gave a further non-exhaustive list of example RSAs, which in broad summary sought to restrict the development or distribution of any application, product or service that was "*the same as or substantially similar*" to Google Search.[149] Some standard RSA restrictions appear to include obliging the counterparty (i) not to implement, (ii) not to allow/instruct/encourage third parties to implement, and (iii) not to "*pre-install, install, incorporate or otherwise make available*", similar applications/products/services.[150] Some RSAs also included obligations to set particular defaults, including that Chrome be the default browser,[151] and that the default home page of a pre-installed browser not be the website of a competing general search service.[152]

119.2 The CMA has observed that "*Google shares a proportion of net revenue from Play Store transactions with some manufacturers where devices meet certain additional requirements in relation to the Play Store, namely setting the Play Store as the default app store and not preloading similar services, such as alternative app stores, launchers, and apps not available on the Play Store, on those devices*".[153] It has also stated, in respect of RSAs relating to search, that "*Google shares a proportion of net advertising revenue from specific search access points on manufacturers' devices in return for meeting a number of placement and promotion requirements relating to Google's apps including Google Search and Google Assistant such as setting the Google Search app as the default search engine on all preloaded manufacturer browsers*."[154] As to MNOs, the CMA also found that Google "*has RSAs in place with all non-virtual Mobile Network Operators (MNOs) active in the UK*", under which

[148] *Google Android (EC)*, at (206).

[149] *Google Android (EC)*, at (200) to (205).

[150] *Google Android (EC)*, at (200)~~-~~ to (205).

[151] *Google Android (EC)*, at (203).

[152] *Google Android (EC)*, at (204) and (205).

[153] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), at [3.149]; cf appendix E, at [8] (emphasis added).

[154] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), at [3.149]; cf appendix E, at [8].

[redacted]

> *"MNOs agree to promote Google's apps and services on their devices in exchange for a share of Google's net search advertising revenue generated by those devices' users when searching through access points covered by the MNOs' RSAs in the same fashion as Google's RSAs with manufacturers."*[155]

120. In 2019, Google launched its "*Premier Device Program*", offering RSAs with a "*Premier*" tier.[156] Based on the OnePlus RSA, the ~~P~~CR understands that, in such RSAs, the OEM becomes entitled to shares of Google's revenue from advertising and the Play Store (divided into "*Basic*", "*Optimised*", and "*Premier*" categories) depending on whether it meets certain conditions:[157]

120.1 To qualify for revenue sharing in the "*Optimised*" category, one of the conditions is that the Play Store must be "*Placed on Default Home Screen, only application store on Default Home Screen, and set as default marketplace for applications, games, books, movies, music, and all other digital content (including subscriptions)*".[158]

120.2 To qualify for revenue sharing in the "*Premier*" category (which confers the most benefits on OEMs), in addition to the above, the OEM must also ensure that neither it nor any third party will (i) include any "*Alternative Service* [including alternative app stores or search services[159]] *or any application, bookmark, product, service, icon, launcher, Hotword, Gesture, or feature that has the primary purpose of providing access to any Alternative Service*", "*in any manner*"; (ii) "*introduce, promote, or suggest (including via over-the-air prompt) an Alternative Service to an End User*"; or (iii) "*change in any manner*", "*prompt End Users to change, or engage in any promotion or*

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[155] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), appendix E, at [70] (emphasis added).

[156] *Epic (US)*, second amended complaint for injunctive relief, filed 17 November 2022, available at <https://cdn2.unrealengine.com/dkt-376-02-2022-11-17-exhibit-a-epic-second-amended-complaint-ac136b0a7870.pdf> (last accessed 21 August 2024) at (105).

[157] The OnePlus RSA, sections 4 to 6, 9, 13.1, and attachments A to D.

[158] The OnePlus RSA, section 5.1(b) and attachment C.

[159] Under section 1.9, "*Alternative Service*" is defined as "*any Alternative Search Service, Alternative Assistive Service, Alternative Play Service or Alternative Functions*". Under section 1.7, "*Alternative Play Service*" is defined as "*any service that is substantially similar to Google Play (as determined by Google in its sole discretion)*".

[redacted]

campaign that suggests to End Users that they change in any manner", the Play Store as pre-loaded onto the device.[160]

121. The CMA estimates that, under worldwide RSAs in 2020, Google paid between $1.5b and £2b to OEMs (mainly Samsung, i.e., the OEM which is also the developer of the biggest alternative app store to the Play Store (the Galaxy Store)).[161]

122. In *Epic (US)*, the jury expressly found that the RSAs in that case were an anticompetitive restraint on trade: see paragraph 64 above.

123. ~~Without prejudice to the generality of paragraph 99 above, the PCR reserves his right to seek disclosure of relevant documents, including by reference to the issues in dispute in *Epic (US)*, *Utah v Google*, and *Match (US)*[162].~~

*(vii) Mobile Incentive Agreements ("**MIAs**")*

124. Google has also entered into MIAs with OEMs, offering OEMs financial incentives for meeting certain conditions.[163] ~~The PCR has been able to access one publicly available MIA that Google entered into with Motorola, effective as of 1 February 2020.[164]~~

125. For example, the ~~The P~~CR can give the following particulars of the Motorola MIA:

125.1 The OEM becomes entitled to the "*Incentive*" (i.e., cash payments, which are divided into the "*Foundation Tier*" and the "*Premier Tier*") depending on whether it meets certain conditions.[165]

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[160] One-Plus RSA, section 6.2.

[161] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), appendix E, at [79]; ~~cf Fletcher 1, at [275].~~ See more generally ~~Fletcher 1~~ Fletcher 2, section~~s~~ ~~6.1.2.1.2~~ 6.3.2.2 ~~and 6.1.2.2.2~~.

[162] See, e.g., *Epic (US)*, second amended complaint for injunctive relief, available at <https://cdn2.unrealengine.com/dkt-376-02-2022-11-17-exhibit-a-epic-second-amended-complaint-ac136b0a7870.pdf> (last accessed 21 August 2024), at [105] to [114]; *State of Utah v Google LLC*, no 21-cv-05227, complaint (partially redacted), available at <https://storage.courtlistener.com/recap/gov.uscourts.cand.381462/gov.uscourts.cand.381462.1.0.pdf> (last accessed 21 August 2024), at [126] to [131]; and *Match (US)*, complaint and demand for jury trial, available at <https://storage.courtlistener.com/recap/gov.uscourts.cand.395326/gov.uscourts.cand.395326.1.0_5.pdf> (last accessed 21 August 2024), at [107] to [110].

[163] Fletcher 2, at [348-350].

~~[164] Motorola MIA dated 1 February 2020, available at <https://www.courtlistener.com/docket/17443962/622/75/epic-games-inc-v-google-llc/> (last accessed 21 August 2024).~~

[165] The Motorola MIA, sections 4, 5, 7, 11.1, and attachment A.

125.2 To qualify for the Foundation Tier "*Incentive*", the OEM must, *inter alia,* do the following:

125.2.1 It must "*preload those Google applications as set forth in the Incentive Implementation Requirements.*"[166] The ~~PCR does not have access to the~~ "*Incentive Implementation Requirements*~~,~~ include a range of Google applications such as Messages, Contacts, Google Assistant, Google Pay, and Google Home.~~ but infers that the applications in question include the Play Store~~. The Google Applications listed therein "*represent some (but not necessarily the comprehensive list) of incremental Google Applications that must be preloaded*".[167] The "*Incentive Implementation Requirements*" also provide, "*Google Apps Placement […] Default Home Screen*: […] *Google Folder and Google Play will represent two of the icons*".[168]

125.2.2 It must allow Google "*to designate the placement of Google Application Preloads shortcut icons on the bottom row of the Default Home Screen, Application Dock*".[169] The "*Google Application Preloads*" are defined by reference to the "*Incentive Implementation Requirements*".~~, which the PCR again infers include the Play Store.~~

125.2.3 It must not (and must not allow any third party to) (i) include any "*Alternative Service,*[[170]] *or any application, service, or functionality that has the primary purpose of providing access to any Alternative Service*", on the device; (ii) "*introduce, promote, or suggest (including via over-the-air prompt) an Alternative Service*

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[166] The Motorola MIA, section 4.1(b)(ii).

[167] See, e.g., GOOG-PLAY4-005450870.

[168] See, e.g., GOOG-PLAY4-005450870.

[169] The Motorola MIA, section 4.1(b)(iii).

[170] Under section 1.8, "*Alternative Service*" is defined as "*any Alternative Search Service, Alternative Visual Search Service, Alternative Assistive Service, Alternative Play Service, or Alternative Functions*". Under section 1.6, "*Alternative Play Service*" is defined as "*any service that is substantially similar to Google Play (as determined by Google in its sole discretion)*".

[redacted]

to an End User"; ~~or~~ (iii) "*change in any manner*", *(a) "the default search settings from initial factory settings for Google Applications that are preloaded on a Foundation Tier Device*" or […] *(b) "Default Functions, in each case that are preloaded on a Foundation Tier Device*".[171] The "*Default Functions*" are defined to mean that certain apps, including the Play Store, "*will serve as the default Android system intents*";[172] or (iv) "*prompt End Users to change, or engage in any promotion or campaign that suggests to End Users that they change in any manner*", the Play Store as pre-loaded onto the device.[173]

125.2.4 It must comply with the "*Incentive Implementation Requirements subject to* […] *Attachment D*",[174] which provides that (subject to certain exceptions) certain features "*MUST be available in Google Play*", and that "*OEM Application preloads MUST NOT contain INSTALL_PACKAGES permissions*". ~~As noted at paragraph 125.2.1 above, the PCR does not have access to the~~ The "*Incentive Implementation Requirements*"~~. But the PCR infers from the pleadings in *McDonald (Australia)* that they~~ require that any apps that the OEM pre-installs "*MUST be available in Google Play*".~~[175]~~ Because Google prohibits Third-Party App Developers from using the Play Store to distribute app stores (see paragraph 134 below), this would prohibit the OEM from preinstalling a rival app store.

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[171] Under section 1.37, "*Google Applications*" is defined as the "*the machine-readable binary code version of the Google applications found at https://supportqoogle.com/androidpartners gms/topic/9159858 (or such other URL as may be provided by Google from time to time)*".

[172] The Motorola MIA, section 1.21.

[173] The Motorola MIA, section 4.3.

[174] The Motorola MIA, section 4.1(b).

~~[175] See, e.g., *McDonald v Google LLC* (VID342/2022), further amended statement of claim, filed 15 December 2023, available at <https://www.playstoreclassaction.com.au/content/dam/mbl-microsites/single-page/google-play-store/Further%20Amended%20Statement%20of%20Claim.pdf> (last accessed 21 August 2024), at [79] in respect of the "*Premier RSA Revenue Sharing Agreement entered into by HMD Global, effective 1 December 2019 through 30 November 2022*".~~

[redacted]

125.3 To qualify for the Premier Tier "*Incentive*", the Device must *inter alia* comply with those same Foundation Tier Device requirements.[176]

125A. Google's MIAs with other OEMs also appear to include Play Store exclusivity provisions.[177] Some MIAs do not directly, or formally, require Play Store exclusivity, but they provide the OEM with a share of Google's Play Store revenues. This indirectly rewards OEMs for making the Play Store the exclusive third-party app store and reduces the incentive for the OEM app store to compete with Play Store for market share.[178]

126. In *Epic (US)*, the jury expressly found that "*Agreements with OEMs that sell mobile devices (including MADA and RSA agreements)*" were an anticompetitive restraint on trade: see paragraph 64 above.

127. ~~Without prejudice to the generality of paragraph 99 above, the PCR reserves his right to seek disclosure of relevant documents, including by reference to the issues in dispute in *Epic (US)* (which include issues relating to MIAs).[179]~~

(viii) Projects Banyan and Agave

128. Projects Banyan and Agave are projects that Google has undertaken to target Samsung's Galaxy Store specifically, the Galaxy Store being the next-most popular Google Android app store after the Play Store. As explained in Fletcher ~~1~~ 2, at [~~79~~375] under these projects, Google would financially incentivise Samsung to not offer popular titles or exclusive releases, the ultimate goal being to bring to an end Samsung's commercial relationships in app distribution with consumers and developers. Google also

[176] The Motorola MIA, section 5.1(a).

[177] See, e.g., GOOG-COLL-006904079 [redacted].

[178] Fletcher 2, at [349].

~~[179] See, e.g., *Epic (US)*, second amended complaint for injunctive relief, available at <https://cdn2.unrealengine.com/dkt-376-02-2022-11-17-exhibit-a-epic-second-amended-complaint-ac136b0a7870.pdf> (last accessed 21 August 2024), at [111].~~

considered a proposal whereby the Galaxy Store would essentially serve as a 'wrapper' for the Play Store, to provide and distribute apps under Google's terms.

129. The ~~P~~CR ~~does not know whether either~~ understands that neither of these projects resulted in any concluded agreement with Samsung ~~or what impact they may have had on Samsung regardless of whether agreement was reached~~.

130. ~~Without prejudice to the generality of paragraph 99 above, the PCR reserves his right to seek disclosure of relevant documents, including by reference to the issues in dispute in *Epic (US)* and *Match (US)* (which include issues relating to Projects Banyan and Agave).[180]~~

(f) *Conditions Google imposes on Third-Party App Developers*

(i) *Introduction*

131. Google also imposes conditions directly on Third-Party App Developers, in particular to (i) restrict the means by which apps can be distributed; (ii) require payment of the Commission to Google on all Relevant Sales; and (iii) ensure that Third-Party App Developers use GPB to process Relevant Sales.

132. At trial, the ~~P~~CR will rely on the agreements between Google and Third-Party App Developers in full for their terms and effects. ~~At this stage, however, the PCR has only limited access to such agreements. The details in this section (f) are the best particulars he can currently give. The PCR will seek disclosure of relevant documents, and reserves his right to expand or amend these particulars following disclosure and evidence~~.

133. The conditions that Google imposes on Third-Party App Developers, as set in this section (f), are referred to as the "**Developer Conditions**".

~~[180] See, e.g., *Epic (US)*, second amended complaint for injunctive relief, available at <https://cdn2.unrealengine.com/dkt-376-02-2022-11-17-exhibit-a-epic-second-amended-complaint-ac136b0a7870.pdf> (last accessed 21 August 2024), at [119] to [121]; *Match (US)*, complaint and demand for jury trial, available at <https://storage.courtlistener.com/recap/gov.uscourts.cand.395326/gov.uscourts.cand.395326.1.0_5.pdf> (last accessed 21 August 2024), at [112].~~

[redacted]

*(ii) Google Play Developer Distribution Agreements ("**DDAs**")*

134. Google requires any developer wishing to distribute through the Play Store to accept a mandatory DDA,[181] through which it requires the developer (i) not to use the Play Store to distribute app stores,[182] (ii) to pay the Commission as applicable,[183] and (iii) to use GPB to process payments relating to Relevant Sales, save insofar as certain exceptions described at paragraph 135 below apply.[184]

135. It appears that in certain foreign jurisdictions, as a result of regulatory interventions, Google has allowed Third-Party App Developers to pay a lower Commission if they use an alternative billing service (i.e. not GPB).[185] For example, in 2022, Google introduced a programme for developers offering non-gaming apps to users in the EEA ("*developer-only billing*") which allows those developers to offer an alternative billing service without also offering GPB. For transactions completed via the alternative billing service, Google has reduced the Commission by 3 percentage points.[186] This programme was extended to gaming app developers in the EEA as of 2024.[187] It has also introduced a pilot programme ("*user choice billing*") in the EEA, Australia, Brazil,

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[181] See the current version of the DDA, available at <https://play.google.com/about/developer-distribution-agreement.html> (last accessed 21 August 2024).

[182] See, e.g., DDA clause 4.5; and clause 4.9 of versions of the DDA in force until 29 August 2023, e.g. that effective from 17 November 2020 to 3 October 2022, available at <https://storage.courtlistener.com/recap/gov.uscourts.cand.364325/gov.uscourts.cand.364325.624.85.pdf> (last accessed 21 August 2024). Cf the summary of changes to the DDA, available at <https://play.google/intl/ALL_uk/developer-distribution-agreement/summary.html> (last accessed 21 August 2024), which states the following: "*Main changes implemented on 29 August 2023* […] *We revised section 4.9 by deleting the prohibition on developers using user information outside of Google Play to sell their products*".

[183] See e.g. DDA clauses 3.4, and Google, Play Console Help, "*Service Fees*", available at <https://support.google.com/googleplay/android-developer/answer/112622?hl=en-GB> (last accessed 21 August 2024).

[184] See e.g. DDA clause 4.1, requiring Third Party App Developers and their products to "*adhere to the Developer Program Policies*", which includes Google's "*Payments*" policy: Google, Play Console Help, "*Payments*", available at <https://support.google.com/googleplay/android-developer/answer/9858738?sjid=11486273099112006638-EU&visit_id=638459529662758963-363037881&rd=1> (last accessed 21 August 2024). The ~~P~~CR will rely on that policy in full for its terms and effects. *Inter alia*, it provides that developers charging for the download of apps or in-app features or services must use GPB save in relation to defined limited exceptions; and may not lead (steer) users to payment methods other than GPB unless exceptions apply.

[185] See, in relation to South Korea, CPCF Annex A at [20] – [22]; and in relation to India, CPCF Annex A at [14] – [16].

[186] Fletcher 2, at [75]; see https://blog.google/around-the-globe/google-europe/an-update-on-google-play-billing-in-the-eea/.

[187] Fletcher 2, at [75]; see also https://support.google.com/googleplay/android-developer/answer/12348241?hl=en-GB#zippy=%2Ci-am-currently-offering-google-plays-billing-system-can-i-now-offer-both-google-plays-billing-system-alongside-an-alternative-billing-system-to-users-in-the-eea

[redacted]

Indonesia, Japan, South Africa, and the USA, which at least in the EEA appears to have been introduced in response to the DMA.[188] On 29 March 2025, Google introduced user choice billing for developers offering non-gaming apps to users in the UK. In practice, enrolment in user choice billing in the UK has been negligible. ~~In each case,~~ Google has reduced the Commission by 4 percentage points for Third-Party App Developers enrolling in user choice billing.[189] Third-Party App Developers do not have any, or any material, incentive to use an alternative billing service where the reduction in Google's usual Commission is insufficient to cover the total cost of developers offering alternative billing.[190] ~~None of these exceptions are (or ever have been) available in the UK.[191]~~

~~*(iii) Google Play Developer API Terms of Service*~~

136. ~~The Google Play Developer API Terms of Service restrict Third-Party App Developers' use of the "*Publishing API*" and the "*the Play Developer Reporting API*", providing that they can only be used in relation to app distribution through the Play Store.[192] Violating this may result in suspension or termination of access to the API, of access to the developer's account, or of the third party apps created in violation of the provisions.[193] The effect is that, insofar as a developer builds an app that relies on either API, by contract the developer can only distribute that app *via* the Play Store.~~

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[188] Google, "*EU Digital Markets Act (EU DMA) Compliance Report Non-Confidential Summary*" (7 March 2024), page 151, available at <https://storage.googleapis.com/transparencyreport/report-downloads/pdf-report-bb_2023-9-6_2024-3-6_en_v1.pdf> (last accessed 21 August 2024).

[189] Google, Play Console Help, "*Enrolling in the user choice billing pilot*", available at <https://support.google.com/googleplay/android-developer/answer/12570971?hl=en> (last accessed 21 August 2024). Cf Google, Play Console Help, "*Understanding user choice billing on Google Play*", available at <https://support.google.com/googleplay/android-developer/answer/13821247?sjid=11486273099112006638-EU#zippy=%2Cuser-choice-billing-over-eligible-countries-including-the-european-economic-area-eea> (last accessed 21 August 2024).

[190] Fletcher 2, at [448].

~~[191] Google, Play Console Help, "*Enrolling in the external offers program*", available at <https://support.google.com/googleplay/android-developer/answer/14372887> (last accessed 21 August 2024).~~

~~[192] In particular, they provide for the developer to only use the Publishing API and only use the Play Developer Reporting API "*for your own activities related to your distribution of products under the Google Play [DDA]*". See Google Play Developer API Terms of Service, available at <https://developers.google.com/android-publisher/terms> (last accessed 21 August 2024).~~

~~[193] Google Play Developer API Terms of Service, available at <https://developers.google.com/android-publisher/terms> (last accessed 21 August 2024).~~

[redacted]

(iv) Project Hug, the Living Room Accelerator Program etc.

137. Further, since at least 2019, Google has entered into, or has sought to enter into, a series of agreements with Third-Party App Developers aimed at ensuring the presence of their apps on the Play Store and thus mitigating the risk to the Play Store from rival app distribution channels. ~~This initiative was known internally at Google as~~ These include Project Hug, ~~although it was~~ later renamed the Games Velocity Program, targeted at game app developers, and a series of 'App Accelerator' programs targeted at various categories of app developers.[194] These offer developers reduced Commission in return for agreeing to additional restrictions, in some cases including provisions for content parity and/or pricing parity with other app distribution platforms.[195] At trial, the CR will rely on the agreements between Google and Third-Party App Developers in full for their terms and effects. In total, at least USD 575 million has been allocated to Project Hug.[196]

138. Under Project Hug, Google has agreed to give benefits to certain Third-Party App Developers (in particular large and growing game developers) in exchange for treating the Play Store "*at least comparably to other distribution platforms in terms of feature and content availability and timing of launch of their apps*".[197] It appears that Project Hug agreements take effect *via* addendums to the DDA. ~~The PCR has been able to access two publicly available versions of such addendums, entered into with developers, Riot Games (from 9 March 2020)[198] and Activision Blizzard (from 24 January 2020),[199] as well as descriptions of Project Hug agreements in third-party documents (including regulatory decisions and pleadings in other actions). Based on that limited sample, the PCR is able to provide the following particulars.~~

[194] *Epic (US)*, transcript of trial, 410:8 – 410:23~~.~~; Fletcher 2, sections 3.232 and 6.6.1.

[195] Fletcher 2, at [79].

[196] *Epic (US)*, transcript of trial, 441:11 – 441:23; 541:7 – 541:11.

[197] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), appendix E, at [10]; cf [80] to [89]; cf *Epic (US)*, second amended complaint for injunctive relief, at [128], available at <https://cdn2.unrealengine.com/dkt-376-02-2022-11-17-exhibit-a-epic-second-amended-complaint-ac136b0a7870.pdf> (last accessed 21 August 2024)~~.~~; Fletcher 2, at [468]

~~[198] *Epic (US)*, Exhibit 162, available at <https://www.courtlistener.com/docket/17443962/622/13/epic-games-inc-v-google-llc/> (last accessed 21 August 2024).~~

~~[199] *Epic (US)*, Exhibit 153, available at <https://www.courtlistener.com/docket/17443962/622/9/epic-games-inc-v-google-llc/> (last accessed 21 August 2024).~~

139. Pursuant to Project Hug, Third-Party App Developers have received benefits such as (i) "*an effective reduction*" in payable Commission;[200] (ii) various forms of assistance from Google relating to marketing and user engagement,[201] including "*advertising credits*" which can be spent on advertising with Google[202] and monetary contributions towards advertising and promotion of the Third-Party App Developers' products;[203] and (iii) "*Google Cloud credits*" which can be spent on cloud platform services with Google.[204]

140. In exchange, Third-Party App Developers have agreed to conditions such as (i) "*sim ship*" (i.e., simultaneous shipping, whereby apps must be distributed *via* Google Play no later than *via* any competing channel);[205] (ii) obligations not to remove apps from the Play Store during certain periods;[206] (iii) "*feature parity*", whereby the version of the app distributed *via* Google Play must be materially the same as *via* any competing channel,[207] including by reference to the quality, promotion, features, and functionality of apps,[208] as well as user ratings;[209] and (iv) various ancillary obligations aimed at promoting distribution *via* the Play Store.[210]

141. The CMA has stated of Project Hug that, "*by ensuring that important game developers keep distributing via the Play Store, Google makes it more difficult for rival app stores to compete by attracting material from these top apps which would not already be*

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[200] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), appendix E, at [10]; cf *Epic (US)*, transcript of trial, 471:15 – 474:22: Riot Games was offered a payment of USD 17 million to distribute *via* the Play Store and not *via* its own distribution channel~~.~~; Fletcher 2, at [469].

[201] *Epic (US)*, transcript of trial, 493:8 – 493:21~~.~~; Fletcher 2, at [469] and footnote 608.

[202] The agreement with Riot Games, section 2A; the agreement with Activision Blizzard, section 2A~~.~~; Fletcher 2, at [469] and footnote 608.

[203] The agreement with Riot Games, sections 2C to 2E; the agreement with Activision Blizzard, section 2D~~.~~; Fletcher 2, at [469] and footnote 608.

[204] The agreement with Riot Games, section 2B; the agreement with Activision Blizzard, section 2B~~.~~; Fletcher 2, at [469] and footnote 608.

[205] *Epic (US)*, transcript of trial, 441:24 – 444:5; the agreement with Riot Games, section 3C; the agreement with Activision Blizzard, section 3E~~.~~; Fletcher 2, at [468] and footnote 606.

[206] The agreement with Riot Games, section 3C; the agreement with Activision Blizzard, section 3E.

[207] *Epic (US)*, transcript of trial, 444:5 – 444:18~~.~~; Fletcher 2, at [468].

[208] The agreement with Riot Games, section 3B; the agreement with Activision Blizzard, section 3B.

[209] The agreement with Riot Games, section 3E; the agreement with Activision Blizzard, section 3C.

[210] The agreement with Riot Games, sections 3D and 3F.

[redacted]

present on the Play Store."[211] *Per* the CMA, "*Project Hug appears to have been successful*".[212]

142. Google also has several programmes under which Google offers certain Third-Party App Developers additional benefits in exchange for ensuring the presence of their apps on the Play Store.[213] In one such programme, known as the "*Living Room Accelerator Program*" (the "**LRAP**"), Google offered "*better economics* […] *for* […] *distribution through Play*" in exchange for Third-Party App Developers' investing in Android TV or Google's Cast protocol (which allows videos to be streamed from a smartphone to a television).[214]

142A. Further programmes include:

142A.1 An expansion of the LRAP to the 'Living Room Accelerator Program Plus' ("**LRAP++**"), in which Google offers a further reduction in payable Commission to Third-Party App Developers supplying live TV apps in exchange for those Third-Party App Developers meeting certain conditions including "*pricing parity*", whereby the price of the app distributed *via* Google Play must be the same as the price of the app distributed *via* any competing channel, and feature parity.[215]

142A.2 The 'Transactional Video on Demand Program' ("**TVAP**"), in which Google offers Third-Party App Developers supplying transactional video on demand ("**TVOD**") apps a reduction in payable Commission in exchange for those Third-Party App Developers meeting conditions such as (i) using GPB; and (ii) maintaining content, feature and pricing parity.[216]

142A.3 'Subscribe with Google' ("**SwG**"), in which Google offers Third-Party App Developers who are news publishers with a subscription business model a

[211] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), appendix E, at [15]~~.~~; Fletcher 2, at [485] and [487] to [493].

[212] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), appendix E, at [89]~~.~~; Fletcher 2, at [492].

[213] Fletcher 2, section 6.6.2.

[214] *Epic (US)*, transcript of trial, 1281:12 – 1282:14; cf 621:6 – 621:20; and 1194:23 – 1200:13~~.~~; Fletcher 2, section 6.6.2.1.

[215] Fletcher 2, at [475].

[216] Fletcher 2, section 6.6.2.4.

reduction in payable Commission for (i) using GPB; and (ii) maintaining content, feature and pricing parity.[217]

142A.4 The 'Audio Developer Accelerator Program' ("**ADAP**"), in which Google offers Third-Party App Developers with music and audio apps a reduction in payable Commission in exchange for those Third-Party App Developers (i) investing in additional product integrations, such as Google Wear, Auto, and Material Design; (ii) using GPB; and (iii) maintaining content, feature and pricing parity.[218]

142A.5 The 'Audio Developer Accelerator Program Plus' ("**ADAP+**"),, in which Google offers Third-Party App Developers' investing in music and audio apps a further reduction in payable Commission in exchange for those Third-Party App Developers (i) using GPB; and (ii) maintaining content, feature and pricing parity.[219]

142A.6 The 'Books and Comics Accelerator Programs' ("**BCAP**" and "**BCAP+**") in which Google offers Third-Party App Developers' books, audiobooks and comic apps a reduction in payable Commission in exchange for those Third-Party App Developers (i) using GPB; and (ii) maintaining content, feature and pricing parity.[220]

~~*(v) Google App Campaigns*~~

143. ~~Google also runs an advertising programme known as "*App Campaigns*", through which it allows developers to advertise their apps in prominent places controlled by Google, such as Google Search and YouTube. To be eligible to use App Campaigns, Google requires developers of Android Apps to list their apps in the Play Store. By contrast, Google offers its App Campaigns services to iOS app developers without any such precondition.[221]~~

[217] Fletcher 2, section 6.6.2.3.

[218] Fletcher 2, section 6.6.2.2.

[219] Fletcher 2, at [477].

[220] Fletcher 2, section 6.6.2.4.

~~[221] Fletcher 1, at [84].~~

[redacted]

144. ~~Without prejudice to the generality of paragraph 132 above, the PCR reserves his right to seek disclosure of relevant documents, including by reference to the issues in dispute in *Epic (US)* and *Utah v Google* (which include issues relating to App Campaigns).~~[222]

(3) Relevant markets

(a) Overview

145. The definition of the relevant markets will be a matter for expert evidence ~~in due course~~. ~~Pending and without prejudice to such evidence,~~ Prof Fletcher ~~conducts~~ conducted a preliminary analysis of the relevant markets in Section 4 of Fletcher 1. Prof Fletcher's updated analysis, upon which the CR relies, is in Section 4 of Fletcher 2, summarised below. She identifies the principal market relevant to these proceedings as the market for Android app and content distribution for app developers. She first analyses the upstream market for licensable ~~smart mobile~~ OSs for OEMs, which is also relevant owing to Google's leveraging of its dominance in that market to have effects in the Android app and content distribution market. fd

145A. In the alternative, the Play Store is active in two markets: (a) the "Android App Distribution" market (as per the second expert report of Dr Hal J. Singer dated 2 October 2024 ("**Singer 2**"), section E(4)); and (b) the "Android In-App Aftermarket" (as per Singer 2, section E(5)).[223]

(b) Licensable ~~smart mobile~~ OSs

146. As to the market for licensable ~~smart mobile~~ OSs for OEMs, Prof Fletcher's ~~preliminary~~ conclusions are that the product market:

146.1 includes smart mobile OSs for smartphones and tablets; but

146.2 excludes PC, basic/feature phone, and non-licensable smart mobile OSs.

~~[222] See, e.g., *Epic (US)*, second amended complaint for injunctive relief, at [127], available at <https://cdn2.unrealengine.com/dkt-376-02-2022-11-17-exhibit-a-epic-second-amended-complaint-ac136b0a7870.pdf> (last accessed 21 August 2024); and *State of Utah v Google LLC*, no 21-cv-05227, complaint (partially redacted), available at <https://storage.courtlistener.com/recap/gov.uscourts.cand.381462/gov.uscourts.cand.381462.1.0.pdf> (last accessed 21 August 2024), at [107] to [109].~~

[223] Fletcher 2, at [145] and [147].

147. She considers that the market's geographic scope is likely worldwide (except China), although the precise geographic scope would not make a difference to her assessment of dominance.

148. The ~~P~~CR's case, and Prof Fletcher's evidence, on this is consistent with regulatory findings. For example, in *Google Android (EC)*, the EC decided (*inter alia*) that the licensing of smart mobile OSs constituted a separate relevant product market, taking into account each of the products identified above.[224]

(c) *Android app and content distribution*

149. As to the market for Android app and content distribution for app developers (i.e., the provision of distribution and related services to Third-Party App Developers), Prof Fletcher's ~~preliminary~~ conclusions are as follows:

149.1 The Play Store is a two-sided platform, providing services to developers on one side and users on the other. The most appropriate way to approach market definition in the present case is to define separate interrelated product markets for each side of the platform, and take into account the influence that demand on one side of the market may have on the other when interpreting the available evidence.[225]

149.2 The product market includes the Play Store and any third-party app stores that can be installed on Google Android devices.

149.3 It has the potential to include direct distribution by developers, though in practice this rarely occurs due to restrictions imposed by Google.

149.4 The product market does not include app stores for non-Android OSs, distribution through pre-installation of apps, or distribution of web apps.

150. She considers that the market's geographic scope is likely to be at least UK-wide for developers who sell to global customers, although the precise geographic scope would not make a difference to her assessment of dominance.

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[224] *Google Android (EC)*, at (218) to (267), upheld on appeal in case T-604/18, *Google LLC v Commission*, EU:T:2022:541, [2023] 4 CMLR 5.

[225] ~~Fletcher 1~~ Fletcher 2, at [~~109-110~~ 153-155].

[redacted]

151. The ~~P~~CR's case, and Prof Fletcher's evidence, is consistent with regulatory findings. For example, in *Google Android (EC)*, the EC decided (*inter alia*) that there was a separate relevant product market for Android app stores, to which Apple's App Store did not belong.[226] Further, in its Chapter II investigation into Google's Play Store conduct (see paragraph 59.2 above), the CMA's preliminary view was that the product market was "*likely to comprise the supply of services to app developers that enables the installation, distribution and operation of native apps on Android devices*",[227] and that the geographic market was provisionally "*at least UK-wide*".[228] The CMA provisionally considered the supply of native app distribution services on Android devices to be in a separate market to the potential alternatives, including app distribution on iOS devices, supporting its view by reference to its mobile ecosystems market study final report.[229]

(4) Dominance

(a) Licensable ~~smart mobile~~ OSs

152. Google is dominant in the licensable ~~smart mobile~~ OS market for OEMs. While dominance is to be assessed in light of the factual and expert evidence in due course, without prejudice to the evidence and submissions that the ~~P~~CR may advance at trial, at present he relies on:

152.1 Prof Fletcher's analysis in Section 5 of ~~Fletcher 1~~ Fletcher 2, in particular section 5.4, and the further evidence referred to therein;

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[226] *Google Android (EC)*, at (268), (306) ff. This finding was not disturbed on appeal.

[227] CMA, "*Notice of intention to accept binding commitments offered by Alphabet Inc, Google Ireland Limited, Google UK Limited and Google LLC in relation to Google Play's rules which oblige app developers offering digital content to use Google's own billing system for in-app purchases*" (19 April 2023), available at <https://assets.publishing.service.gov.uk/media/6440148d6dda69000d11e144/Notice_of_intention_to_accept_commitments___Google.pdf> (last accessed 21 August 2024), at [3.3].

[228] CMA, "*Notice of intention to accept binding commitments offered by Alphabet Inc, Google Ireland Limited, Google UK Limited and Google LLC in relation to Google Play's rules which oblige app developers offering digital content to use Google's own billing system for in-app purchases*" (19 April 2023), , available at <https://assets.publishing.service.gov.uk/media/6440148d6dda69000d11e144/Notice_of_intention_to_accept_commitments___Google.pdf> (last accessed 21 August 2024), at [3.15].

[229] CMA, "*Notice of intention to accept binding commitments offered by Alphabet Inc, Google Ireland Limited, Google UK Limited and Google LLC in relation to Google Play's rules which oblige app developers offering digital content to use Google's own billing system for in-app purchases*" (19 April 2023), available at <https://assets.publishing.service.gov.uk/media/6440148d6dda69000d11e144/Notice_of_intention_to_accept_commitments___Google.pdf> (last accessed 21 August 2024) at [3.5] to [3.8].

[redacted]

152.2 the facts and matters pleaded at paragraph ~~77~~ 78 above, relating to Android's position as by far the most prevalent licensable smart mobile OS; and

152.3 regulatory findings and decisions, including:

152.3.1 the EC's finding that Google is dominant in the market for licensing of smart mobile OSs in *Google Android (EC)*;[230]

152.3.2 the EC's designation of Google as a "*gatekeeper*" under the DMA in respect of (*inter alia*) the Android OS (see paragraph 60.6 above above); and

152.3.3 the CMA's view in its mobile ecosystems market study that Google has "*substantial and entrenched market power in the supply of mobile operating systems*".[231]

(b) Android app and content distribution

153. Google is dominant in the market for Android app and content distribution for app developers. While dominance is to be assessed in light of the factual and expert evidence in due course, without prejudice to the evidence and submissions that the ~~P~~CR may advance at trial, at present he relies on:

153.1 Prof Fletcher's analysis in Section 5 of ~~Fletcher 1~~ Fletcher 2, in particular section 5.5, and the further evidence referred to therein; and

153.2 The facts and matters pleaded elsewhere in this RRACPCF that allow Google to conduct itself independently of actual and potential competitors (i.e. alternative distributors of Third-Party Apps), including (without limitation):

153.2.1 that the Play Store is overwhelmingly the most-used channel for distribution of Third-Party Apps (>90%) (see paragraph 87 above).

153.2.2 that by the OEM/MNO Conditions and the Developer Conditions, Google ensures that no alternative channels for distributing Third-Party Apps to Google Android devices can constitute viable

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~~[230] *Google Android (EC)*, at (439). Again, this finding was not disturbed on appeal.~~

~~[231] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), appendix L, at [79].~~

[redacted]

competitors to the Play Store or exercise any significant competitive constraint on the Play Store.

153.2.3 that Google is not constrained by competition in the smart mobile device market.

153.2.4 that, as explained at paragraph 191 below, Google is able to charge a Commission considerably higher than those seen in comparable markets. Google's ability to do so confirms Google's dominance; and

153.2.5 Regulatory findings and decisions, including, for example:

153.2.5.1 the CMA's statement that the Play Store faces a "*lack of competition*" (see paragraph 59.1 above);

153.2.5.2 the CMA's notice of intention to accept Google's commitments in relation to its chapter II investigation (see paragraph 59.2 above), considering Google *"likely to be dominant in the supply of native app distribution services on Android devices*" and preliminarily finding that Google has abused its position;[232]

153.2.5.3 the EC's finding in *Google Android (EC)* of Google's dominance in the market for Android app stores (see paragraph 60.1 above);[233]

153.2.5.4 the EC's designation of Google as a "*gatekeeper*" under the DMA in respect of (*inter alia*) the Play Store (see paragraph 60.6 above); and

153.2.5.5 the US Department of Commerce's finding that it is "*challenging for other firms to compete in the mobile*

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[232] CMA, "*Notice of intention to accept binding commitments offered by Alphabet Inc, Google Ireland Limited, Google UK Limited and Google LLC in relation to Google Play's rules which oblige app developers offering digital content to use Google's own billing system for in-app purchases*" (19 April 2023) available at <https://assets.publishing.service.gov.uk/media/6440148d6dda69000d11e144/Notice_of_intention_to_accept_commitments___Google.pdf > (last accessed 21 August 2024) at [3.19].

[233] *Google Android (EC)*, at (439).

[redacted]

ecosystem for […] *distribution mechanisms (e.g., mobile app stores and web browsers* […])" (see RRACPCF Annex A at [26]).

153A. In the alternative, Google is dominant on the Android App Distribution market and the Android In-App Aftermarket.[234]

(5) Abuse: introduction

154. The ~~P~~CR contends that Google has infringed section 18 of the Act and article 102 TFEU by:

154.1 engaging in a course of exclusionary conduct which prevents others from competing (effectively or at all) in the provision of distribution services to Android app developers; and

154.2 charging prices (in the form of the Commission) which are:

154.2.1 excessive and unfair in their own right; and

154.2.2 unfair and abusive as a system of pricing.

155. Section 18(1) of the Act and article 102 TFEU expressly prohibit dominant undertakings from engaging in any conduct which "*amounts to the abuse of a dominant position*". They prohibit, at a general level, a dominant undertaking from eliminating competitors and strengthening its position by methods other than competition on the merits.[235]

(6) Exclusionary abuse: legal principles

156. The categories of abuse are not closed.[236] It is thus "*an erroneous approach*" to try to create "*pigeon-holes into which one must fit a case*" or to say that a claim must "*fit in*

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[234] Fletcher 2, at [232].

[235] Case C-457/10 P *Astra Zeneca v Commission* [2012] ECLI:EU:C:2012:770, at [74] and [75].

[236] Case 6/72 *Europemballage Corporation and Continental Can Company Inc v Commission* EU:C:1973:22 [1973] CMLR 199, at [26]; case C-333/94 P *Tetra Pak v Commission* [1996] ECR I-5951, at [37]; case T-612/17 *Google LLC v European Commission (Google Shopping)* EU:T:2021:763, [2022] 4 CMLR 6, at [154]; case C-52/09 *Konkurrensverket v TeliaSonera Sverige AB* EU:C:2011:83, [2011] 4 CMLR 18, at [26].

to [a] *category*".[237] However, in broad terms, abuses are typically placed into two categories: (i) exclusionary abuses, and (ii) exploitative abuses.

157. The broad test for an exclusionary abuse is ultimately whether the conduct tends to restrict or is capable of restricting competition (including in upstream or downstream markets).[238] There is no requirement to show actual effects; a potential effect, or capability, may suffice.[239]

158. One form of exclusionary abuse involves the dominant undertaking abusing its position on a market to foreclose actual or potential competitors in that market. This may, for example, take the form of the dominant undertaking charging predatory prices, offering certain discount schemes, imposing vertical restraints, or refusing to supply certain (actual or would-be) customers.[240]

159. Another form of exclusionary abuse involves the dominant undertaking "*leveraging*" its power on one market into another. "*Leveraging*" is "*a generic term in relation to the impact which a practice identified on one market may have on another market*".[241] Several kinds of leveraging practices have previously been found to be abusive.[242] In particular, leveraging has been found to be abusive where:

159.1 the leveraging is "*discriminatory*" and "*tends to* […] *hinder the competitive position of some of the business partners of that undertaking in relation to the others*";[243]

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[237] *Purple Parking Limited v Heathrow Airport Limited* [2011] EWHC 987 (Ch), at [79] and [105]; *Streepmap.EU Limited v Google Inc* [2016] EWHC 253 (Ch), at [60]; and see for example *TeliaSonera* (*supra*), at [54] to [56].

[238] *MEO—Serviços de Comunicações e Multimédia SA v Autoridade da Concorrência* EU:C:2018:270, [2018] Bus LR 1155, at [24].

[239] Case C-549/10 *Tomra Systems ASA v Commission* EU:C:2012:221, [2012] 4 CMLR 27, at [68]; *Telefónica SA v European Commission* EU:T:2012:172, [2012] 5 CMLR 20, at [266] to [276].

[240] See, by way of summary, Office of Fair Trading, "*Abuse of a dominant position*" (December 2004), at [5.5] to [5.7].

[241] *Google Shopping* (General Court), at [163]

[242] *Google Shopping* (General Court), at [164].

[243] Case C-525/16 *MEO—Serviços de Comunicações e Multimédia SA v Autoridade da Concorrência* EU:C:2018:270, [2018] Bus LR 1155, at [25]; cf [37]; case C-95/04 *British Airways Plc v European Commission* [2007] EU:C:2007:166, [2007] 4 CMLR 22, at [144].

159.2 the defendant "*may be discriminating between competitors and its own downstream operations*";[244] and/or

159.3 the leveraging constitutes abusive self-preferencing.[245]

160. For purposes of establishing liability under article 102 TFEU and/or section 18 of the Act it is not mandatory to consider the counterfactual of what would have occurred in the absence of the conduct in question.[246] Nevertheless, counterfactuals are important tools for analysing the market effects of alleged abuses of dominance and unlawful conduct must be removed from the counterfactual.[247]

(7) Exclusionary abuse: application to the facts

(a) *Introduction*

161. Google has adopted a series of mutually reinforcing exclusionary practices, which are, collectively and individually, aimed at, and have the effect of, making entry into (or substantial participation in) the Android app and content distribution market practically difficult if not impossible for anyone other than Google. The practices are set out in this section (7). Each of the practices is the result of, or is effected by, one or more of the Restrictions on Direct Downloading, the Anti-Steering Requirements, the OEM/MNO Conditions, and the Developer Conditions.

162. None of the practices set out in this section (7) reflects competition on the merits. On the contrary, each constitutes a means by which Google has artificially directed commerce through its Play Store distribution channel and away from other (actual or potential) distribution channels, to the detriment of competition.

163. Each of the practices set out in this section (7) is inter-connected and, taken together, they constitute a single and continuous infringement, in particular because:

[244] *Google Shopping (General Court)*, at [239]; cf [188] and [212].

[245] Case AT.39740 *Google Search (Shopping)*, decision of 27 June 2017 (upheld in *Google Shopping (General Court)*), at (341) and (649); case T-201/04 *Microsoft Corp v Commission* EU:T:2007:289, [2007] 5 CMLR 11; *Streetmap.EU Ltd v Google Inc* [2016] EWHC 253 (Ch), [2016] Info TLR 146, at [60]; and case T-336/07 *Telefónica SA v Commission* EU :T :2012:172, [2012] 5 CMLR 20, at [204].

[246] *National Grid plc v Gas and Electricity Markets Authority* [2010] EWCA Civ 114 at [70].

[247] *Nikki Stopford v Alphabet Inc and others* [2024] CAT 67, at [18] to [19].

[redacted]

163.1 each of those practices pursues a (common) single economic aim, namely to retain and extend Google's market power in respect of distribution; and

163.2 the practices complement each other by producing effects that interact with, reinforce, and/or multiply one another, so as to promote the aim described above.

164. Alternatively, each of the practices set out in this section (7), or any combination of them, constitutes an abuse of dominance. Further, and in the alternative, if the relevant markets are the Android App Distribution market and the Android In-App Aftermarket (as per Singer 2) rather than the Android app and content distribution market (as per Fletcher 2, Section 4.4), then the requirement imposed on Third-Party App Developers to ensure all Relevant Sales (subject to certain exceptions) are made *via* GPB, operates as an unlawful tie between the Android App Distribution market and the Android In-App Aftermarket.[248] More particularly:

164.1 The tying product (the Play Store) and the tied product (GPB) are separate products, as pleaded at paragraphs 87 to 94 above.[249]

164.2 Google holds a dominant position in the market for the tying product, as pleaded at paragraphs 153 to 153B above.[250] It is not necessary to show that Google holds a dominant position on the market for the tied product, i.e. GPB, but in fact, Google does so;[251]

164.3 Google does not give customers a choice, save insofar as certain exceptions described at paragraph 135 above apply, to obtain the tying product without the tied product, as pleaded at paragraphs 131 to 143A above;[252] and

164.4 The tying is at least capable of restricting competition, as pleaded at paragraph 175 below.[253]

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[248] Fletcher 2, at [307]; In substance, therefore, the plea is the same as the tying case relied upon by Ms Coll at [137-147] of her Re-Re-Amended Claim Form.

[249] Fletcher 2, at [218-219]; Singer 2, at [144-146], and [265].

[250] Fletcher 2, section 5.5.

[251] Singer 2, at [208-218].

[252] Fletcher 2, section 6.5.2; Singer 2, at [258-260], and [265].

[253] Fletcher 2, at [218-222]; Singer 2, at [267-271].

[redacted]

165. In any event the ~~P~~CR's primary position is that~~, for the purposes of certification,~~ he is not required to analyse each of the practices as separate, free-standing infringements. ~~As the Tribunal has recently noted in the context of certification, where a single and continuous infringement is pleaded with multiple mutually reinforcing abuses are pleaded, "*we do not consider that each and every combination of failure or success at trial needs to be stated*".[254]~~

(b) *Categorisation of the practices*

166. The exclusionary practices take place on one or both of the relevant markets. Insofar as they take place on the licensable ~~smart mobile~~ OS market, they constitute or contribute to a form of leveraging.

167. For ease of understanding and analysis, the practices are organised into the following categories, in accordance with Prof Fletcher's analysis:[255]

167.1 practices ensuring that the Play Store is the only app store pre-installed and prominently positioned on virtually all Android devices;

167.2 practices restricting rivals from accessing users via the preinstalled and prominent Play Store;

167.3 practices restricting developers and consumers from bypassing the preinstalled and prominent Play Store; and

167.4 agreements with developers that limit the ability of rival app stores to compete.

168. Each of those is now examined in turn.

(c) *First category: practices ensuring that the Play Store is the only app store pre-installed and prominently positioned on virtually all Android devices*

169. **First**, by the ~~OEM/MNO Conditions (or certain of them) in~~ MADAs/EMADAs, Google requires any OEM wishing to distribute a device that can access the Play Store, or that includes any element of the GMS bundle, Google Search, or Google Chrome, must pre-

~~[254] *Ad Tech Collective Action LLP v Alphabet Inc* [2024] CAT 38, at [35(2)].~~

[255] ~~Fletcher 1~~ Fletcher 2, section 6.

install the Play Store on the device.[256] Similarly, Google does not license critical APIs to OEMs unless they also pre-install the Play Store and/or distribute their apps *via* the Play Store.[257] This makes it difficult if not practically impossible for any Google Android device to be supplied to a device user without the Play Store pre-installed.

170. **Second**, by the ~~OEM/MNO Conditions (or certain of them) in~~ MADAs/EMADAs, Google requires that any OEM wishing to distribute a device that can access the Play Store must give the Play Store a prominent position on the device.[258] This makes it difficult if not practically impossible for a Google Android device to be supplied to a device user without the Play Store prominently displayed.

171. **Third**, by the ~~OEM/MNO Conditions (or certain of them) in~~ PAs, Google offers additional financial incentives for OEMs to take licences of the GMS bundle, making pre-installation and prominent positioning of the Play Store a precondition of those desirable financial incentives.[259] The amounts paid out, particularly to Samsung (see paragraph 116 above), make it even harder for actual or potential competitors to be able to match Google's offer. This reinforces the difficulty if not practical impossibility of any Google Android device being supplied to a device user without the Play Store pre-installed and prominently displayed.

172. **Fourth**, by the ~~OEM/MNO Conditions (or certain of them) imposed by~~ RSAs and MIAs, Google provides substantial financial incentives for OEMs/MNOs to limit competition with the Play Store, by offering them a share of Google's Play Store and general advertising revenues in return for agreeing to restrict the availability, pre-installation and/or prominence of competing (*inter alia,* distribution) services.[260] The amounts paid out, particularly to Samsung (see paragraph 121 above) make it even harder for actual or potential competitors to be able to match Google's offer. This reinforces the difficulty if not practical impossibility of any Google Android device being supplied to a device user with any alternative to the Play Store pre-installed or prominently displayed.

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[256] ~~Fletcher 1~~ Fletcher 2, section ~~6.1.1~~ 6.3.1; cf paragraphs 84, 102 to 106, and 108 above.

[257] ~~Fletcher 1~~ Fletcher 2, ~~at [250] to [255]~~ section 6.3.1.2; cf paragraphs 82, 83 above.

[258] ~~Fletcher 1~~ Fletcher 2, section ~~6.1.1.1~~ 6.3.1 and [331]; cf paragraphs 105.4 above.

[259] ~~Fletcher 1~~ Fletcher 2, section ~~6.1.1.3~~ 6.3.1.4; cf paragraphs 107, and 114 to 116 above.

[260] ~~Fletcher 1~~ Fletcher 2, sections ~~6.1.2.1 and 6.1.2.2~~ 6.3.2; cf paragraphs 107 and 117 to 128 above.

[redacted]

(d) *Second category: practices restricting rivals from accessing users via the preinstalled and prominent Play Store*

173. **Fifth**, by the ~~Developer Conditions (or certain of them)~~ DDAs, Google prohibits Third-Party App Developers from using the Play Store to distribute app stores.[261] Google thus abuses its dominance in the Android app and content distribution market to erect artificial barriers to other (actual or potential) providers of distribution services entering (or effectively compete in) that market.

(e) *Third category: practices restricting developers and consumers from bypassing the preinstalled and prominent Play Store*

174. **Sixth**, by the Restrictions on Direct Downloading, many of which are built into the design of the Google Android (e.g., technical restrictions, behavioural triggers, and other 'frictions'), Google makes the direct downloading process unintuitive and complicated. This is intended to, and does (i) limit users' ability to access third-party app stores that might compete with the Play Store, and (ii) prevent consumers from accessing apps directly from the web.[262] Thus, Google leverages its dominance in the licensable ~~smart mobile~~ OS market to drive developers and consumers away from using an alternative to the Play Store for reasons that do not reflect competition on the merits.

175. **Seventh**, by requiring Third-Party App Developers to ensure all Relevant Sales (subject to certain exceptions) are processed *via* GPB, and by the Anti-Steering Requirements, Google prevents app developers from being able to inform consumers about alternative offers for in-app content, even where they may be provided cheaper or through a more efficient sales channel.[263] Thus, Google helps protect the Play Store from competitive pressure to reduce its own Commission for such transactions, and impedes developers from being able to build stronger direct relationships with consumers by which they could make them aware of alternative offers, strengthening the anticompetitive effects of its other practices.

176. ~~**Eighth**, by (certain of) the OEM/MNO Conditions, and in particular by the anti-forking restrictions contained in the AFAs, the ACCs, the CDD and CTS, and the MADAs,~~

[261] ~~Fletcher 1~~ Fletcher 2, section ~~6.2~~ 6.4; cf paragraph 93 to 97 and 134 above.

[262] ~~Fletcher 1~~ Fletcher 2, section ~~6.3.1~~ 6.5.1; cf paragraphs 81 and 102 to 113 to above.

[263] ~~Fletcher 1~~ Fletcher 2, section ~~6.3.2~~ 6.5.2; cf paragraphs 93 to 97 and 134 above.

~~Google requires that OEMs do not modify the Android source code or take actions resulting in Android Forks, including Android Forks that could permit frictionless direct downloading.[264] Google thus leverages its dominance in the licensable smart mobile OS market to prevent the development of alternatives to the Play Store (or infrastructure that could facilitate the use of such alternatives) for reasons that do not reflect competition on the merits.~~

(f) *Fourth category: agreements with developers that limit the ability of rival app stores to compete*

177. ~~**Ninth**~~ **Eighth**, by various projects, programmes, and initiatives pleaded at paragraphs 137-143A above, including but not limited to Project Hug and the Living Room Accelerator Program, Google enters into agreements with Third-Party App Developers whereby, in exchange for financial incentives, they agree to give Google's Play Store preferential treatment over other distribution platforms (or at least to treat the Play Store no less favourably than any actual or potential competitors), including in respect of content availability and launch timings.[265] This blocks rival app stores from being able to negotiate preferential terms, such as high-profile exclusives or special deals, which would give them a chance to overcome the barriers constituted by Google's advantages from economies of scale and indirect network effects. As Google acknowledged in the documents it submitted to the CMA's mobile ecosystem market study, "*the key aims of Project Hug are to* […] *discourage relevant developers from co-listing on other app stores in addition to the Play Store.* […] *Alternative app stores would have less top titles and in turn less users.*"[266] Google has thus sought to ensure that, for reasons that do not reflect competition on the merits, rival app stores are unable to differentiate themselves from the Play Store or to gain scale and compete effectively with the Play Store.

178. ~~**Tenth**,~~ Relatedly, by ~~various projects, programmes, and initiatives, including but not limited to~~ Projects Banyan and Agave, Google ~~has entered into, or~~ has sought to enter into, agreements or understandings with ~~at least~~ Samsung, as an OEM provider of an

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~~[264] Fletcher 1, section 6.3.3; cf paragraphs 81 and 102 to 113 above.~~

[265] ~~Fletcher 1~~ Fletcher 2, section ~~6.4.1~~ 6.6; cf paragraphs 137 to 142.

[266] CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), appendix E, at [88]; cf Fletcher 1, at [342].

[redacted]

alternative app store, whereby Samsung was offered financial incentives to place its alternative app store under Google's control, and/or to stop its alternative app store from competing fully with the Play Store.[267] ~~As explained elsewhere, the PCR's access to information on Projects Banyan and Agave, or of any similar projects relating to other OEMs or non OEM actual or potential developers of rival app stores, is limited. The PCR expects to discover more through disclosure. Without prejudice to its right to amend the rest of this CPCF in light of further information, the PCR reserves its right to add further particulars of such initiatives should they come to light. In any event, through~~ Through Projects Banyan and Agave, Google has sought to eliminate/temper and/or succeeded in eliminating/tempering competition from rival app stores by means other than competition on the merits.

179. ~~**Eleventh**, Google makes Third Party App Developers' access to certain highly desirable services, including important APIs and significant functionalities such as automatic updates, conditional on distribution *via* the Play Store, erecting barriers to developers de-listing from the Play Store.[268] Google thus leverages its dominance in the Licensable smart mobile OS market, and/or abuses its dominance in the Android app distribution market, to use its agreements with and offers to app developers to reduce rival app stores' ability to compete with the Play Store for reasons that do not reflect competition on the merits.~~

180. ~~**Twelfth**, Google requires Third Party App Developers who wish to use App Campaigns to reach Android Device users to list their apps on the Play Store.[269] Google thus abuses its dominance in the Android app distribution market to reinforce its dominance in that market.~~

(g) *Effects*

181. Google has engaged in a single continuous abuse under which it has restricted every possible alternative route to market for UK-domiciled Third-Party App Developers making Relevant Sales.[270] The cumulative effect of the conduct described above is that

[267] ~~Fletcher 1~~ Fletcher 2, ~~section [3.6.4] and~~ at ~~[346]~~ [356] and [375]; cf paragraphs 128-129.

~~[268] Fletcher 1, at [351-353]; cf paragraphs 88, 89.3.1, and 136-136.~~

~~[269] Fletcher 1, at [355]; cf paragraphs 143 and 144 above.~~

[270] Fletcher 2, at [551] and [554].

[redacted]

effective competition in the relevant markets has been eliminated.[271] ~~The~~ As a result ~~of the conduct described above is that~~ the Play Store is overwhelmingly the most-used channel for the distribution of Third-Party Apps for reasons that do not reflect competition on the merits.[272] By way of example, as a result of Google's conduct:

181.1 All OEMs selling Google Android devices have entered into a MADA, thereby agreeing to pre-install the Play Store and give it a prominent position on the device.[273]

181.2 Over 90% of Android apps are downloaded through the Play Store (see paragraph 87 above).

181.3 Other app stores find it more difficult to attract Third-Party App Developers, even where they offer more favourable commissions.[274]

182. The consequence of thus entrenching the Play Store as overwhelmingly the most-used channel for the distribution of Third-Party Apps is that Google is able to maximise the number of sales on which it can charge a Commission. Google is also able to mandate the use of GPB, thereby ensuring that it captures all Commission payments directly through a billing system over which it maintains control. Google thus confers an unfair advantage on the Play Store and artificially diminishes use of rival app stores, as well as other alternative distribution channels, and dampens competition in distribution. It thereby increases prices for Third-Party App Developers.

(8) Exploitative abuse (excessive/unfair pricing): legal principles

183. Article 102(a) TFEU and section 18(2)(a) of the Act expressly prohibit "*directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions*".

[271] Fletcher 2, at [555].

[272] Fletcher 2, at [300-302], and section 6.7.

[273] *Epic (US)*, transcript of trial, 1354:22 – 1354:25; 1356:19 – 1356:21.

[274] For example, Opera Mobile Store and Aptoide offer a 15% commission: *Google Android (EC)*, at (602).

[redacted]

184. The following propositions are set out in *United Brands*,[275] approved by the Court of Appeal in *Competition and Markets Authority v Flynn Pharma Ltd*:[276]

184.1 Unfair pricing involves an overarching inquiry "*to ascertain whether the dominant undertaking has made use of the opportunities arising out of its dominant position in such a way as to reap trading benefits which it would not have reaped if there had been normal and sufficiently effective competition*".

184.2 Pricing is excessive if "*it has no reasonable relation to the economic value of the product supplied*".

184.3 Pricing can be shown to be unlawful if:

184.3.1 "*the difference between the costs actually incurred and the price actually charged is excessive*" (the "**excessive limb**"); and

184.3.2 "*a price has been imposed which is either unfair in itself or when compared to competing products*" (the "**unfair limb**").

184.4 "*Other ways*" may be devised of showing that prices are excessive or unfair.[277]

185. For these purposes, the concept of "*economic value*" is not determined solely by reference to what a customer is willing to pay.[278] That is all the more so where customers have no choice but to buy the product or service sold by the dominant firm.[279]

186. As to the excessive limb, the price charged can be compared to a benchmark or standard (which need not be a (hypothetical) benchmark price).[280] It suffices under the excessive limb to compare relevant costs and revenues to determine whether the return above costs is "*excessive*". This may include methods such as a return on capital employed

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[275] *United Brands Company v European Commission* EU:C:1978:22, [1978] 1 CMLR 429, at [248] to [253].

[276] [2020] EWCA Civ 339, [2020] 4 All ER 934, [97] (by reference to the discussion of *United Brands* at [59] to [71].

[277] *CMA v Flynn Pharma Ltd* [2020] EWCA Civ 339, [2020] 4 All ER 934, at [97] and [251].

[278] *CMA v Flynn Pharma Ltd* [2020] EWCA Civ 339, [2020] 4 All ER 934, at [154].

[279] *CMA v Flynn Pharma Ltd* [2020] EWCA Civ 339, [2020] 4 All ER 934, at [163] to [167].

[280] *CMA v Flynn Pharma Ltd* [2020] EWCA Civ 339, [2020] 4 All ER 934, at [120] to [125] and [248] to [254].

[redacted]

("**ROCE**"), a return on sales ("**ROS**") analysis, or other reasonable methods (although no particular method is mandatory).[281]

187. As to the unfair limb:

187.1 There is no fixed list of categories of evidence relevant to unfairness.[282]

187.2 There are two alternative parts to the unfairness limb. It is therefore possible to use either the first part (unfair in itself) or the second part (unfair when compared to competing products) to determine unfairness.[283] Equally, both parts of the unfairness limb can be used together or sequentially.

187.3 Under the first part of the unfair limb:

187.3.1 When assessing the potential unfairness of a price, it is necessary to "*take into account the competitive conditions and any related abusive conduct that may enable the undertaking concerned to fulfil its pricing ambitions*".[284]

187.3.2 The factors establishing a dominant position may be relevant to assessing whether an excessive price is unfair.[285]

187.3.3 It is necessary to look at "*whether the relevant market is capable of functioning in a manner that is likely to produce a reasonable relationship of price to economic value of the services to be supplied*".[286]

187.4 Under the second part of the unfair limb:

[281] *CMA v Flynn Pharma Ltd* [2020] EWCA Civ 339, [2020] 4 All ER 934, at [97] and [253].

[282] *CMA v Flynn Pharma Ltd* [2020] EWCA Civ 339, [2020] 4 All ER 934, at [97(vi)].

[283] *CMA v Flynn Pharma Ltd* [2020] EWCA Civ 339, [2020] 4 All ER 934, at [259-269].

[284] *Albion Water Ltd v Water Services Regulation Authority (Albion Water II)* [2008] CAT 3, at [266].

[285] *Albion Water Ltd v Water Services Regulation Authority (Albion Water II)* [2008] CAT 3, at [213].

[286] *Albion Water Ltd v Water Services Regulation Authority (Albion Water II)* [2008] CAT 3, at [268].

187.4.1 The term "*competing products*" in *United Brands* means "*comparable*" products rather than directly-competing products in the same relevant product market as the dominant firm's.[287]

187.4.2 The Tribunal may consider "*a range of relevant factors including, but not limited to, evidence and data relating to the defendant undertaking itself and/or evidence of comparables drawn from competing products and/or any other relevant comparable, or all of these*".[288]

(9) Exploitative abuse: application to the facts

188. ~~The PCR does not at this stage have access to important information, in particular in relation to the relevant costs incurred by and revenue earned by Google; paragraph 5 above is repeated. Therefore, this section is based on the evidence currently available, and is without prejudice to such amendments as the PCR may seek to make after disclosure and further evidence.~~

189. As to the excessive limb, the ~~P~~CR will say that Google enjoys an extraordinary and excessive profit margin in respect of its distribution operations. Without prejudice to the evidence or submissions to be advanced at trial, the PCR relies on the following:

189.1 Section 7 of ~~Fletcher 1~~ Fletcher 2 which ~~provisionally~~ concludes that the Commission is excessive. Prof Fletcher relies on the expert accounting report of Mr Greg Harman ("**Mr Harman**") of Berkeley Research Group dated 17 December 2025 ("**Harman 1**").[289] ~~Prof Fletcher's preliminary~~ Mr Harman's ROCE analysis ~~based on public information~~ demonstrates ~~a "*significant positive difference*" between~~ that the Play Store~~'s~~ has consistently earned returns far in excess of ~~and~~ its cost of capital~~, which has widened over time, rather than narrowed as one might expect in a competitive market~~. In particular, Mr Harman calculates the Play Store's average ROCE as [redacted] which is significantly higher than the average WACC benchmark of [redacted]. Therefore, Mr Harman concludes that the Play Store's Commission has led to

[287] *Pfizer UK Limited v Competition and Markets Authority* [2018] CAT 11, at [373].

[288] *Competition and Markets Authority v Flynn Pharma Ltd* [2020] EWCA Civ 339, [2020] 4 All ER 934, at [97].

[289] Fletcher 2, section 7.2.

a significant and persistent excess over the period.[290] ~~Prof Fletcher's ROS~~ Mr Harman's Truncated Internal Rate of Return ("**TIRR**") analysis, which ~~she~~ he conducts as a robustness check ~~also based on public information~~, further demonstrates ~~a "*substantially and persistently positive*" ROS~~ that the Play Store's Commission is excessive over the period. In particular, Mr Harman calculates the Play Store's pre-tax TIRR as [redacted] which was significantly higher than the pre-tax WACC over the same period.[291]

189.2 Prof Fletcher's evidence is consistent with the findings of various authorities. For example:

189.2.1 As noted at RRACPCF Annex A at [2], the CMA has stated that "*the lack of competition faced by the* […] *Play Store allows* [Google] *to charge above a competitive rate of commission to app developers*".

189.2.2 The CMA has further stated as follows:[292]

> "*To assess whether the 30% commission rate is reflective of the competitive level, we have also considered the profitability of* […] *Google's* [Play Store]. […] *Google* [has] *been making substantial profits overall since at least 2011 and in relation to* [the Play Store] *since at least 2018.* […] *The Play Store's global operating margins were [50-75]% in 2021 while their gross profit margins were [50-75]%. This is consistent with market power.*"

189.2.3 As noted at RRACP~~F~~CF Annex A at [7], the French Commercial Court has found that the 30% Commission cannot be justified.

189.2.4 As noted at RRACPCF Annex A at [12], the ACCC has formed the view that Google's "*commission rates are inflated by the market power that* […] *Google* [has] *in* [its] *dealings with app developers*".

189.2.5 As noted at RRACPCF Annex A at [26], the US Department of Commerce has found that Google's ecosystem has "*made possible*

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290 ~~Fletcher 1, at [449]~~. Harman 1, at [7.4.8], table 7-2.

291 ~~Fletcher 1, at [456]~~. Harman 1, at [7.4.9].

292 CMA, "*Mobile ecosystems Market study final report*" (10 June 2022), at [4.191].

[redacted]

> *the extraction of disproportionate returns* […] *yielding an outsized economic share for* [Google]".

190. As to the unfair limb, the ~~P~~CR will say that the Commission is "*unfair in itself*". Without prejudice to the totality of the evidence or submissions to be advanced at trial, the ~~P~~CR will say as follows:

190.1 As noted at paragraph 189 above, Google enjoys an extraordinary and excessive profit margin in respect of its Play Store: Google's extraordinary level of excess margin is itself a strong *prima facie* indicator of unfairness.[293]

190.2 Payment of the Commission is effectively inescapable. Third-Party App Developers are unable, or in practice highly likely to be unable, to avoid payment of the Commission.[294]

190.3 Google is not subject to any relevant competitive pressure.[295] So long as Google retains control over entry into its ecosystem, and maintains conditions that artificially bias Third-Party App Developers and Google Android device users towards the Play Store, the use of GPB, and payment of the Commission, there will be no competitive pressure to bring down the Commission, with the result that the market is not "*capable of functioning in a manner that is likely to produce a reasonable relationship of price to economic value of the services to be supplied*".[296] Put simply, the Play Store and GPB are the only viable ways for the vast majority of app developers to sells apps and in-app content to Google Android device users. There is accordingly no competitive pressure from other distribution channels.

190.4 Prof Fletcher's evidence is that the Commission is also unfair in itself,[297] because:

[293] Fletcher 2, section 7.3.2.1; Harman 1, at [7.7.1].

[294] See paragraph 192 below; cf ~~Fletcher 1, section 7.1.~~ Fletcher 2, section 7.3.2.3.

[295] Fletcher 2, section 7.3.2.3.

[296] *Albion Water Ltd v Water Services Regulation Authority (Albion Water II)* [2008] CAT 3, at [268].

[297] ~~Fletcher 1, section 7.4.~~ Fletcher 2, section 7.3.

190.4.1 high Commission is not a reward for any risks undertaken by Google in developing or operating the Play Store;[298]

190.4.2 Google imposes the high Commission on only a small portion of the developer population (i.e. those making Relevant Sales) even though the Play Store service is substantially the same for all developers who use it (including the vast majority who do not make Relevant Sales and therefore pay no commission);[299]

190.4.3 the Commission is charged on the basis of undue and arbitrary distinctions between 'physical' and 'digital' goods;[300] and

190.4.4 the Commission fails to take into account the value that apps feed back into the Android ecosystem.[301]

190.5 Further, as noted at paragraph 94.2 above, Google has entered into bespoke agreements with particular Third-Party App Developers allowing them, in particular contexts, to use alternative billing systems. Similarly, as noted at paragraphs 137 to 142 above, Google has conferred bespoke benefits on particular Third-Party App Developers in return for their agreeing to treat the Play Store no less favourably than any other distribution channel. These facts and matters give rise to an additional reason why the Commission and/or the system whereby the Commission is charged is, overall, unfair. In particular:

190.5.1 A small minority of Third-Party App Developers are given special exemptions from the requirement to pay the Commission.

190.5.2 There is no objective feature or characteristic of those Third-Party App Developers such as might justify the difference in treatment.

191. As to the unfair limb, the ~~P~~CR will also say that the Commission is unfair when compared to comparable products. Prof Fletcher has given ~~preliminary~~ consideration to other products/services which might serve as relevant comparators to the Play Store,

[298] ~~Fletcher 1, section 7.4.2.~~; Fletcher 2, section 7.3.3.6

[299] ~~Fletcher 1, section 7.4.1~~ Fletcher 2, section 7.3.2.4; cf paragraph 94 above.

[300] ~~Fletcher 1, section 7.4.3~~ Fletcher 2, section 7.3.2.5; cf paragraph 94 above.

[301] ~~Fletcher 1, section 7.4.4.~~ Fletcher 2, section 7.3.2.2.

[redacted]

and concluded that the Commission is unfair compared with other ~~digital distribution stores~~ appropriate comparators. In section ~~7.5~~ 7.4, ~~Fletcher 1~~ Fletcher 2 identifies a number of potential candidate comparators, assessing their relevance for the comparison exercise and identifying the ones that can provide the most meaningful insight. Prof Fletcher's analysis suggests that "*in a more competitive comparable market, the commission rate for digital distribution is generally substantially lower than that charged by Google in relation to its Play Store*".[302]

192. To the extent necessary, as to any "*imposing*" of unfair purchase or selling prices:

192.1 the contractual provisions identified above, individually and collectively; and

192.2 the exclusionary practices identified in section (7) above

mean that Third-Party App Developers wishing to make any sales of digital content are unable to avoid payment of the Commission.

(10) Effect on trade

193. The infringements set out herein may (as applicable) appreciably affect trade between Member States of the European Union or within the UK or a part of it. In particular, the infringements affect the conditions in which Third-Party App Developers are able to offer cross-border services and/or services within the UK.

(11) Counterfactual

(a) General

194. The relevant counterfactual is a matter for detailed expert evidence at trial ~~in due course, especially in light of disclosure and expert evidence~~. However, the CR relies ~~in this CPCF, the PCR relies~~ on the ~~preliminary~~ analysis in Fletcher 2 ~~1~~, in particular in sections ~~6.5 and 7.7. Prof Fletcher expects to be able to refine her analysis~~ 6.8 and 7.6. ~~once Google provides the relevant data and/or following other disclosure; and the PCR reserves his right to seek to amend his case accordingly.~~

[302] ~~Fletcher 1, at [552].~~ Fletcher 2, at [664].

[redacted]

(b) *Exclusionary abuse*

195. By a single continuous course of conduct, Google had committed an exclusionary abuse comprising the various practices (alternatively, some of the practices) detailed in section 7 above. Those forms of conduct are all aimed at the same objective and had the mutually reinforcing anticompetitive effects of foreclosing competition.[303]

196. Absent the abuse, there would have been a far more competitive Android app and content distribution market.[304] This would have led to lower commissions on app store transactions, and more use of direct downloads and content sales by app developers.[305] It is also likely to have delivered other benefits for consumers and business users, such as higher quality app stores, greater differentiation and innovation across app stores, and perhaps specialised curation for particular audiences.[306]

197. ~~As explained below,~~ Prof Fletcher has designed a methodology to estimate damages to the developer class when compared against that non-abusive counterfactual. She considers that the most appropriate counterfactual to measure against is the counterfactual in which no element of Google's abusive conduct occurred whatsoever~~,~~. Prof Fletcher considers that different combinations of the restrictions, or even individual restrictions, could be viewed as abuses in their own right. Her damages ~~although she has ensured that her~~ methodology is accordingly capable of application by reference to such counterfactual as ~~sufficiently flexible to adapt should~~ the Tribunal ultimately determines at trial ~~determine~~ including in the event that it finds that only part of the conduct alleged in section (7) above occurred and/or was abusive.[307] ~~For example, Prof Fletcher considers that:~~

~~197.1 Absent the various agreements that require and incentivise OEMs to pre-install the Play Store, make it prominent, and in some cases pre-install it exclusively, the Play Store would not be the only app store that was pre-installed and~~

[303] ~~Fletcher 1, at [360].~~ Fletcher 2, at [517].

[304] ~~Fletcher 1, at [362].~~ Fletcher 2, at [520].

[305] ~~Fletcher 1, at [363].~~ Fletcher 2, at [522-523].

[306] ~~Fletcher 1, at [364-366].~~ Fletcher 2, at [520] and [525-528].

[307] ~~Fletcher 1, at [361] and section 6.5.2.~~ Fletcher 2, section 6.8 and 8.1.

[redacted]

~~prominent across all Android devices, allowing entry by more and differentiated app stores.[308]~~

~~197.2 Absent the restriction on app store developers distributing their app stores through the Play Store, pre installed app stores would distribute rival app stores.[309]~~

~~197.3 Absent the restrictions on developers distributing directly to consumers, whether through direct downloads or through direct sales of in app content, some consumers and developers would bypass the pre-installed and prominent app store.[310]~~

~~197.4 Absent restrictions on app developers delisting from the Play Store, rival app stores would not be restricted from differentiating their service from that of Google.[311]~~

198. Prof Fletcher also does not quantify the value to app developers of these other benefits, i.e. those associated with a more vibrant app and content distribution market, rendering her damages estimate conservative overall.[312]

(c) *Exploitative abuse (excessive/unfair pricing)*

199. The exploitative abuse is simply that Google charged a price that was excessive and unfair. Therefore, absent the exploitative abuse, Google would have charged a price that was not excessive and unfair. The counterfactual is this (lower) fair price.

~~[308] Fletcher 1, section 6.5.2.1.~~

~~[309] Fletcher 1, section 6.5.2.2.~~

~~[310] Fletcher 1, section 6.5.2.3~~.

~~[311] Fletcher 1, section 6.5.2.4.~~

[312] ~~Fletcher 1, at [367].~~ Fletcher 2, at [529].

[redacted]

(12) Loss

(a) Legal principles

200. The victim of a tort must be put in the position that it would have been in had the wrong not occurred.[313] The assessment may be carried out with the aid of the "*broad axe*".[314] Where aggregate damages are to be awarded, section 47C of the Act removes the ordinary requirement for the separate assessment of each claimant's loss.[315] In collective proceedings, to be certified, the ~~P~~CR's methodology must be "*sufficiently credible or plausible to establish some basis in fact for the commonality requirement*", i.e., "*must offer a realistic prospect of establishing loss on a class-wide basis*".[316]

(b) Damages claimed

201. The ~~P~~CR claims damages representing the loss caused by Google's breaches of statutory duty, i.e.:

201.1 the difference between the Commission ~~profits~~ in fact paid ~~earned~~ by the ~~Proposed~~ Class and the lower fees for the distribution of apps or in-app content ~~profits~~ which the ~~Proposed~~ Class would have paid (if any) ~~earned~~ absent the infringements set out herein ~~(taking into account, *inter alia*, any volume effect)~~; or

201.2 alternatively, the loss of the (real and substantial) chance that the ~~Proposed~~ Class would have had to pay lower fees for the distribution of apps or in-app content (if any)~~make such increased profit~~, including the chances of benefitting from:

201.2.1 new entry by competitors (e.g., providers of alternative distribution channels); and

201.2.2 changes in Google Android device users' behaviour (e.g., through increased use of direct downloading); ~~and~~

[313] *Sainsbury's Supermarkets Ltd v MasterCard* [2020] UKSC 24, [2020] 4 All ER 807, at [194].

[314] *Mastercard Inc v Merricks* [2020] UKSC 51, [2021] 3 All ER 285, at [47-53].

[315] *Mastercard Inc v Merricks* [2020] UKSC 51, [2021] 3 All ER 285, at [58].

[316] *Pro-Sys Consultants Ltd v Microsoft Corpn* (2013) SCC 57; [2013] 3 SCR 477 ("***Pro-Sys***"), at [118].

[redacted]

201.2A to the extent that Google is successful in establishing any pass-on by the Class, losses arising from the consequential reduction in Relevant Sales; and

201.3 in any event~~, compound interest, or alternatively~~ simple interest under section 35A of the Senior Courts Act 1981 and/or Rule 105 on such sums, for such period, and at such a rate as the Tribunal thinks fit.

202. ~~At this stage, any assessment of quantum is necessarily provisional, not least because several assumptions, including those derived from publicly available information, will need to be tested against the evidence. Following certification, and with the benefit of disclosure and evidence, Prof Fletcher is likely to be able to refine her analysis.~~

203. The ~~P~~CR seeks an aggregate award of damages. ~~Prof Fletcher's preliminary analysis indicates that such an award would be in the range of £374m to £859m pre-interest, or £425m to £1,036m including compound interest.~~~~[317]~~ Prof Fletcher has calculated that such an award is in the range of £[redacted]m to £[redacted]m pre-interest using a range of possible counterfactual commission rates.[318] Prof Fletcher has calculated that such an award is in the range of £[redacted]m to £[redacted]m including simple interest, pass-on and volume effects, and using her preferred "Pooled Estimate" counterfactual rate.[319]

204. As to pass on, without prejudice to Google's burden in relation to any it may plead in due course, the ~~P~~CR's ~~primary~~ case is that the ~~Proposed~~ Class did not pass on any of its losses in relation to Relevant App Sales and Relevant In-App Sales but passed on losses in the range of [redacted]% to [redacted]% in relation to Relevant Subscription Sales.[320] ~~If, contrary to that primary case, the Tribunal find any pass-on to have occurred, the PCR claims in the alternative any and all losses arising from corresponding volume effects. Prof Fletcher has devised a methodology by which such losses may be quantified, for any given level of pass on, should any be found.~~~~[321]~~

~~[317] Fletcher 1, table 21. As to the distribution of any aggregate award of damages, paragraph 54 is repeated.~~

[318] Fletcher 2, at [805] and table 16.

[319] Fletcher 2, at [813] and table 17.

[320] Fletcher 2, section 9.3 and at [807].

~~[321] Fletcher 1, section 8.4 and at [668]. In table 20, Prof Fletcher also provides an illustrative calculation of pre-interest losses to the Proposed Class if the Tribunal were to find 5% pass on, taking into account the additional losses this would cause by way of volume effect. Use of this 5% figure is for illustrative purposes only, to demonstrate that the methodology can calculate volume effect losses for a given percentage, and is without prejudice to the PCR's position in respect of any pass on that Google may allege in due course. As explained above, the PCR's primary case is that there was no pass on by PCMs.~~

[redacted]

(c) *Liability*

205. The ~~Proposed~~ Defendants are jointly and severally liable for the infringements set out herein on the following bases:

205.1 The ~~Proposed~~ Defendants all knowingly and intentionally participated in and/or implemented the infringements (see paragraph 67 above).

205.2 Further or alternatively, insofar as any of the ~~Proposed~~ Defendants participated in or implemented the infringements unknowingly or unintentionally, any requisite knowledge or intention of one entity in the Google undertaking is to be treated as knowledge or intention of the relevant ~~Proposed~~ Defendants.[322]

205.3 Further or alternatively, insofar as any of the ~~Proposed~~ Defendants is a parent of an entity which has infringed competition law, that ~~Proposed~~ Defendant is liable for the infringement as parent.[323]

205.4 Further or alternatively, all of the ~~Proposed~~ Defendants form part of the single Google undertaking, which is responsible for the infringements, and "*being part of an undertaking which has infringed competition law is sufficient in and of itself to fix a legal entity with liability*".[324]

C. Rule 75(3)(i): relief sought

206. The ~~P~~CR claims:

206.1 damages and interest on the basis set out in Section 12(b) above;

206.2 the ~~P~~CR's costs; and

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[322] *Provimi Limited v Aventis Animal Nutrition SA* [2003] EWHC 961 (Comm), [2003] 2 All ER (Comm) 683, at [31]; *Cooper Tire & Rubber Co Europe Ltd v Shell Chemicals UK Ltd* [2010] EWCA Civ 864, [2010] Bus LR 1697, at [34] to [47]; *Nokia Corporation v AU Optronics Corporation and Others* [2012] EWHC 731 (Ch), at [82]; *Toshiba Carrier UK Ltd v KME Yorkshire Ltd* [2012] EWCA Civ 1190, at [38]; *Media-Saturn Holding GmbH v Toshiba Information Systems UK Ltd* [2019] EWHC 1095 (Ch), [2019] 5 CMLR 7, at [139] to [157].

[323] Case C-97/08 *Akzo Nobel NV v Commission* EU:C:2009:536, [2009] 5 CMLR 23; *Sainsbury's Supermarkets Ltd v Mastercard Inc* [2016] CAT 11, [2016] Comp AR 33, at [363(22)].

[324] *JJH Enterprises Limited v Microsoft* [2022] EWHC 929 (Comm), at [37] (applying *inter alia* case C-882/19 *Sumal SL v Mercedes Benz Trucks España SL* EU:C:2021:800. [2021] Bus LR 1755, at [44] ("*the concept of an 'undertaking' and, through it, that of 'economic unit' automatically entail the application of joint and several liability amongst the entities of which the economic unit is made up at the time that the infringement was committed*")).

[redacted]

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

207. ~~As to the PCR's claim for compound interest, the PCMs are entitled to full compensation for the loss and damage caused to them by Google's breach of statutory duty, including such loss and damage as arises from loss of use of money. As developers that were paying Commissions on Relevant Sales, the PCMs were undertaking expenditure and generating revenue during the relevant period. Through being deprived of money to which they were entitled, the PCMs:~~

~~207.1 lost the returns that they would otherwise have made on that money; and/or~~

~~207.2 incurred costs of funding that they would not otherwise have incurred, with the result that they needed to borrow less and/or raise less equity capital than they did to finance their capital expenditure and operations,~~

~~and have suffered a loss of return on investment and/or additional financing costs and/or interest losses as a result.~~

208. In light of the nature of the Claims and the size of the ~~Proposed~~ Class, it is not possible or proportionate to particularise the detail of such loss to each ~~P~~CM on an individual basis. Instead, the ~~P~~CR will adduce evidence (both expert and factual) in respect of such losses on an aggregate average basis ~~, as he will in respect of the other heads of loss,~~ in light of the collective nature of the proceedings. ~~The PCR reserves the right to provide further particulars on compound interest in due course.~~

209. ~~At this preliminary stage, Prof Fletcher has calculated compound interest on a conventional basis, reflecting the cost of borrowing of claimants in general, at a rate of 3% and 5% *per annum* above the Bank of England Base Rate quarterly.[325] The PCR claims compound interest:~~

~~209.1 on that basis; or~~

~~209.2 in the alternative, on the basis of the Class's cost of borrowing; or~~

~~209.3 in the further alternative, on such other basis and at such other rate as the Tribunal determines is appropriate,~~

~~[325] Fletcher 1, at [672].~~

[redacted]

~~and in any event for such period and at such frequency of compounding as the Tribunal determines is appropriate.~~

210. ~~Prof Fletcher reserves the right to amend her methodology for calculating compound interest in light of disclosure and evidence, in particular about the Proposed Class's business operations, nature and/or size.~~

211. The ~~P~~CR is not making an application for an injunction.

D. Rule 75(3)(j): part of the UK where the proceedings are taking place

212. The proceedings should be treated as taking place in England and Wales. In particular, and having regard to the factors specified in Rule 18(3):

212.1 The ~~P~~CR's legal representatives are located in London.

212.2 The ~~Proposed~~ Defendants' legal representatives are also located in London.

212.3 It is expected that the majority of the ~~P~~CMs will be located in England and Wales. To the extent that ~~P~~CMs are located in Scotland or Northern Ireland, the Tribunal will be able to consider whether any different arrangements are needed, notwithstanding the fact that the Tribunal is a statutory tribunal with powers extending to those jurisdictions.

212.4 The Funder is represented by personnel with offices in London.

IV. MANDATORY ANNEXES: RULE 75(5)

213. The following ~~are~~ were annexed to ~~this~~ the CPCF:

213.1 a draft CPO in the form prescribed by Rule 80; and

213.2 a draft of the CPO notice in the form prescribed by Rule 81.

V. ACCOMPANYING DOCUMENTS

214. The following ~~are~~ were served with ~~this~~ the CPCF:

214.1 applications for:

214.1.1 permission to serve the relevant documents on the First to Fourth ~~Proposed~~ Defendants out of the jurisdiction; and

214.1.2 an order for service by alternative means;

214.2 Ojukwu 1, made in support of the applications described at paragraph 214.1 above;

214.3 Fletcher 1, prepared in support of ~~this~~ the CPCF; and

214.4 Rodger 1, which addresses (*inter alia*) the requirements of Rule 78. Exhibited to that witness statement are (*inter alia)*:

214.4.1 the ~~P~~CR's *curriculum vitae*;

214.4.2 the litigation funding agreement between the ~~P~~CR and the Funder;

214.4.3 the ~~P~~CR's plan for the collective proceedings (as contemplated by Rule 78(3)(c)), which also contains ~~P~~CR's proposed timetable for the litigation (as it stood as at the date of the CPCF), as contemplated by paragraph 6.30 of the Guide;

214.4.4 the Notice and Administration Plan; and

214.4.5 the ~~P~~CR's costs budget, as contemplated by paragraph 6.30 of the Guide.

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[redacted]

Amended on 13 February 2026

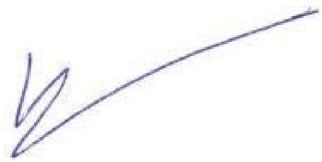
Re-Amended on 08 June 2026

Re-Re Amended on 31 July 2026

Statement of truth

I believe that the facts stated in this Re-Re-Amended Collective Proceedings Claim Form are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed: Dated:

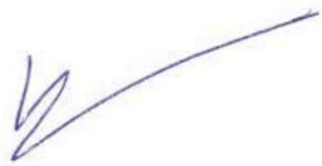


31 July 2026

~~**Statement of truth**~~

~~I believe that the facts stated in this Re-Amended Collective Proceedings Claim Form are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.~~

~~Signed: Dated:~~



~~08 June 2026~~

~~**Statement of truth**~~

[redacted]

~~I believe that the facts stated in this Amended Collective Proceedings Claim Form are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.~~

~~Signed:~~ ~~Dated:~~

~~13 February 2026~~

~~**Statement of truth**~~

~~I believe that the facts stated in this Collective Proceedings Claim Form are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.~~

~~Signed:~~ ~~Dated:~~

~~22 August 2024~~

~~Prof Barry Rodger~~