
Competition Appeal Tribunal approves historic consolidation of £13.6bn claims against Google

17 October 2023, London. In a first, the UK Competition Appeal Tribunal (CAT) has approved the consolidation of two multi-billion pound claims in the ad tech sector brought by Charles Arthur and Claudio Pollack against Google. The consolidated claim will now proceed to a certification hearing on 29-31 January 2024.

Mr Pollack and Mr Arthur previously filed separate claims against Google in the CAT. Each sought to bring an opt-out collective claim on behalf of a class of UK publishers of websites and apps who have suffered loss due to Google's abuse of its dominant position in the advertising technology (or "ad tech") market.

In what is a first for the UK's competition collective proceedings regime, Mr Arthur and Mr Pollack have been granted permission by the CAT to consolidate their claims against Google in respect of its breaches of competition law in the ad tech sector. The CAT would otherwise have been required to determine which one of Mr Arthur's and Mr Pollack's claims would be the most suitable to be certified and proceed to trial.

The consolidation of Mr Arthur's and Mr Pollack's individual claims has significant benefits for the proposed class, including:

1. Bringing together the strengths of each individual claim such that the consolidated claim will better serve the proposed class members and offer them the best chance for compensation;
2. Providing the proposed class with the benefit of the combined expertise and experience of Mr Arthur and Mr Pollack's advisers and experts; and
3. Saving time and costs which would otherwise be spent on determining which claim was to proceed and instead focusing the efforts of the parties on bringing the case against Google.

To help to ensure an appropriate governance structure for bringing the consolidated claim, Mr Arthur and Mr Pollack have incorporated a special purpose vehicle (Ad Tech Collective Action LLP) which will replace them as the proposed class representative in the consolidated claim. Mr Arthur and Mr Pollack are the partners of the LLP together with Kate Wellington, a long-standing consumer rights champion who has significant experience of the UK's collective proceedings regime.

Claudio Pollack, a partner of Ad Tech Collective Action LLP, said:

"Google's abusive conduct in the ad tech market is the subject of various regulatory and legal proceedings around the world, including in the UK, and is a well-known issue. In keeping with its conduct in those proceedings, Google has made clear that it intends to fight this claim with all of its might, and by consolidating Charles Arthur's and my individual claims we are able to ensure that the UK publishers are given the best chance possible for justice to be delivered. Ad Tech Collective Action LLP looks forward to working closely with its advisers to do just that."

Luke Streatfeild of Hausfeld & Co. LLP, Toby Starr of Humphries Kerstetter LLP and Damien Geradin of Geradin Partners Limited, who are leading the litigation on behalf of Ad Tech Collective Action LLP, stated jointly:

“The Competition Appeal Tribunal has set an important precedent for the UK collective proceedings regime and allowed the claims of Mr Arthur and Mr Pollack to be consolidated in order for the claim against Google by Ad Tech Collective Action LLP to proceed without any delay. Publishers continue to lose significant revenue from advertising as a result of Google’s conduct and have done so for nearly a decade. This claim, which is made at no cost to publishers, is the best way for them to obtain proper compensation. We look forward to working with Ad Tech Collective Action LLP to accomplish this and help put a stop to Google’s anti-competitive conduct.”

Google’s conduct in the ad tech market has come under scrutiny in various jurisdictions. For example, in June 2021, the French competition authority concluded that Google had abused its dominant position in this market. Google did not contest the decision, accepted a fine of €220m and agreed to change its conduct. The UK Competition and Markets Authority, the European Commission and the US Department of Justice have also commenced investigations into or legal proceedings regarding Google’s conduct in ad tech.

Ad Tech Collective Action LLP has secured third-party litigation funding from CF ADT LTD, an entity owned by funds and / or accounts managed by affiliates of Fortress Investment Group LLC, to bring the proposed claim and insurance in respect of Google’s costs of defending the claim, which means affected UK publishers will not pay costs to participate in this legal action nor will they have any financial risk in relation to Google’s costs.

Ad Tech Collective Action LLP is represented by Hausfeld & Co. LLP, Humphries Kerstetter LLP and Geradin Partners Limited and a team of barristers: Robert O’Donoghue KC of Brick Court Chambers, Gerry Facenna KC, Julian Gregory and Alison Berridge of Monckton Chambers and Greg Adey of One Essex Court.

NOTES FOR EDITORS:

- The consolidated claim against Google is being brought at the CAT as an Application for a Collective Proceedings Order against Alphabet Inc., Google LLC, Google Ireland Limited and Google UK Limited under CAT Claim Nos. 1572/7/7/22 and 1582/7/7/23.
- Before the claim can proceed to trial, the CAT will need to approve Ad Tech Collective Action LLP to (i) act as the class representative and (ii) bring the claim on an “opt-out” basis. The CAT has listed a hearing for this on 29-31 January 2024. If the CAT provides this approval, Ad Tech Collective Action LLP will represent all publishers in the UK who have suffered as a consequence of Google’s misconduct unless they choose to opt out. A smaller “opt-in” class of publisher partners (resellers) will also be included.
- A website providing further details regarding the claim and the key parties and individuals involved can be found at www.adtechclaim.co.uk.
- Details of Mr Arthur’s claim could previously be found at <https://googleadclaim.co.uk/>. Following the consolidation, that website will remain operational for a short period of time and redirect users to www.adtechclaim.co.uk.
- For interviews, please contact Jonathan Russell by email at jr@lacinguk.com or by telephone at 07791 295766.