

COPY

judgment

AMSTERDAM DISTRICT COURT

Private law division

judgment of 15 January 2025

in the matter with case number / docket number: C/13/739486 / HA ZA 24- 1
and in the matter with case number/ docket number: C/13/745042 / HA ZA 24-
54

between

(in the case with number HA ZA 24- 1)

STICHTING BESCHERMING PRIVACYBELANGEN,

a foundation based in Amsterdam,

claimant,

represented by J.H. Lemstra LLM, attorney practising in Amsterdam,

and

(in the case with number HA ZA 24-54)

STICHTING MASSASCHADE & CONSUMENT,

a foundation based in Oegstgeest,

claimant,

represented by V.A. Zwaan LLM, attorney practising in Amsterdam,

versus

1. **ALPHABET INC.,**

a legal person incorporated and existing under foreign law,
having its registered office in California, United States of America,

2. **GOOGLE LLC,**

a legal person incorporated and existing under foreign law,
having its registered office in California, United States of America,

3. **GOOGLE IRELAND LIMITED,**

a legal person incorporated and existing under the laws of Ireland,
having its registered office in Dublin, Ireland, and

4. **GOOGLE NETHERLANDS B.V.,**

a private company with limited liability [B.V.],

having its registered office in Amsterdam,

defendants,

represented by: M.H. de Boer LLM, attorney practising in Amsterdam,

The parties will hereinafter be referred to as SBP, SMC and Google.

The case in brief

At the heart of this collective action is the lawfulness of the collecting and processing by Google of personal data at a time an individual uses a Google service or product. This stage concerns the cause of action of the claimant foundations and the funding of the proceedings conducted by the foundations.

This judgment is structured as follows:

1. The procedure. This states what procedural steps have been taken up to this judgment and which subjects are and are not dealt with in this judgment.
2. The facts relevant to the cause of action of SBP and SMC.
3. The dispute. This briefly sets out the claims and the substantive views of SBP and SMC and the parties' views on the cause of action of SBP and SMC.
4. Jurisdiction of the Dutch court. The part where the district court rules that it has jurisdiction to hear this case.
5. Applicable collective action law. Here, the court determines that SBP's and SMC's claims are governed by the new law on collective actions.
6. The moment of reviewing the case in the light of the requirements on admissibility under the WAMCA [Settling of Large-scale Losses or Damage (Class Actions) Act]. In this section the court determines that the moment of reviewing the admissibility is the time of this judgment and not the time of the serving of the writs of summons.
7. Similar interests (article 305a (1) of Book 3 DCC). This is where the district court rules that the claims brought by SBP and SMC satisfy the similarity requirement.
8. Guarantee requirement representativeness (article 305a (2) of Book 3 DCC). Here, the court rules that SBP and SMC are representative as interest organisations for the individuals whose interests they wish to represent.
9. Safeguarded interests (article 305a (2) (a-f) of Book 3 DCC). In this section the court finds that SBP and SMC meet the requirements of article 305a (2) of Book 3 DCC.
10. Admissibility requirements of article 305a (3) of Book 3 DCC. Here, the court finds that SBP and SMC meet the requirements of this article.
11. Interim conclusions on the admissibility requirements of article 1018c (5) opening words and (a) DCCP (and article 305a (1-3) of Book 3 DCC).
12. A collective action is more effective and more efficient (article 1018c (5) (b) DCCP).
13. The claims are not *prima facie* unfounded (article 1018c (5) (c) DCCP).
14. Final observations and the continuation of the proceedings.
15. The decision.

1. The proceedings

- 1.1. The course of the proceedings appears from:
 - SBP's writ of summons pursuant to article 305a of Book 3 DCC dated 12 September 2023, containing exhibits 1 - 321,
 - the decision of the cause list judge dated 8 November 2023, in which SMC's request to be granted a postponement for the filing of a competing summons is denied,
 - SMC's two writs of summons dated 12 December 2023, containing exhibits 1 - 40,

- the decision of the cause list judge of 21 January 2024, in which it was mentioned that one of SMC's two writs of summons had been withdrawn due to an incorrect time limit for the submission of statements by Alphabet Inc., Google LLC and Google Ireland Limited,
- the decision of the cause list judge of 20 March 2024,
- the statement of reply on cause of action and the *prima facie* unfoundedness in the action brought by SBP, containing exhibits 1 - 33,
- the statement of reply on cause of action and the *prima facie* unfoundedness in the action brought by SMC, containing exhibits 1 - 23,
- the interim judgment of 29 May 2024, ordering an oral hearing on the first phase,
- the decision of the cause list judge of 10 July 2024 on the content of the oral hearing and further information on funding and a decision on demonstrating that SBP and SMC are representative,
- the motion commenting on the submission of SBP's financing agreement,
- the motion commenting on the submission of SMC's financing agreement,
- Google's reply to SBP's motion in the matter of the submission of the financing agreement,
- Google's reply to SMC's motion in the matter of the submission of the financing agreement,
- the decision of the cause list judge of 18 September 2024, in which it was ruled that SBP's and SMC's financing agreements had to be submitted,
- the document submitting SBP's financing agreement,
- the document submitting SMC's financing agreement, containing exhibits (E41 and E42),
- the district court's e-mail dated 11 October 2024 containing the agenda for the oral hearing,
- SBP's motion containing additional exhibits (E322 and E323),
- SBP's motion commenting on representativeness, also containing additional exhibits (E324-E333) and a change of the claim,
- SMC's motion commenting on representativeness, with one exhibit (E43),
- SBP's document submitting additional exhibits E334 and E335,
- Google's document submitting additional exhibits G34 - G43 in response to SBP,
- SMC's document submitting additional exhibits (E44 - E50),
- Google's document submitting additional exhibits (G24 and G23) in response to SMC,
- the record of 22 October 2024 of the oral hearing and the documents referred to therein,
- the parties' responses with comments on the record.

1.2. This case concerns an action under the WAMCA¹, as provided for in article 305a of Book 2 DCC² and articles 1018b - 1018n (of Book III, Title 14A) DCCP³. Accordingly, Google was first given the opportunity to reply to the cause of action of SBP and SMC (article 1018c (5) DCCP). This issue was further debated at the oral hearing of 22 October 2024.

1.3. The actions by SBP and SMC are largely based on the GDPR⁴. The GDPR also contains admissibility requirements for claimants in a collective action, including, according to Google,

¹ Settling of Large-scale Losses or Damage (Class Actions) Act

² Dutch Civil Code

³ Dutch Code of Civil Procedure

⁴ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

the requirement of the provision of a mandate by persons to the party representing their interests regarding the claiming of damages. This issue has not yet been debated by the parties thus far and is not a subject of this judgment. This means that the requirements on admissibility under the GDPR will be discussed later in the proceedings.

1.4. Finally, a date was set for judgment to be rendered.

2. The facts relevant to the standing of SBP and SMC

Regarding SBP

2.1. SBP's object under the articles of association, to the extent relevant for the purpose hereof, is to represent the interests of users of Google products and/or services whose privacy is being violated, or has been violated, or is likely to be violated at any moment in time by the processing of personal data when using a Google service or product.

2.2. SBP is funded for these proceedings by Lieff Cabraser Heimann & Bernstein LLP (hereinafter LCHB), a law firm based in the United States of America (hereinafter the U.S.).

2.3. SBP has entered into an exclusive cooperation agreement with the Dutch Consumers' Association Consumentenbond. Consumentenbond is the holder of 50% of the shares in the private company with limited liability Consumentenbond Claimservice B.V. (CCS). The other 50% of the shares are held by the private company with limited liability Consumentenclaim B.V. CCS handles the administrative processing of those applying to join SBP's collective action. Consumentenbond and CCS have entered into agreements with LCHB with a view to the funding of certain activities.

2.4. By letter of 30 August 2022, SBP invited Google to have consultations. In said letter, SBP wrote that Google's business activities were believed to be in breach of privacy laws. Following a request for further information by Google, SBP and Google in the end discussed SBP's views on 13 July 2023.

Regarding SMC

2.5. SMC's object under the articles of association, to the extent relevant for the purpose hereof, is to represent the interests of consumers and small businesses - residing or based in the Netherlands - in general and participants of the foundation in particular, by, among other things, conducting legal proceedings through collective actions.

2.6. For the purpose of these proceedings, SMC is funded by Eaton Hall Funding LLC (hereinafter: Eaton Hall), a legal entity based in the U.S. Eaton Hall has ties with the U.S. law firm of Grant & Eisenhofer (hereinafter: G&E).

2.7. By letter of 23 November 2023 SMC's lawyers invited Google to have consultations. This letter states that technical investigations had been carried out into the way Google processes personal data from all Android devices, a practice that, according to SMC, represents a violation of several laws and case law on the subject. Several conditions were imposed on the talks by Google, which SMC did not comply with. In 2024, talks were in the end held by SMC and Google.

Regarding Google

2.8. Google offers all kinds of internet applications such as Google Search, Google Shopper, Google Maps, Google Chrome, Gmail, Google Play, YouTube, Google Docs (and Sheets and Slides), Google Translate, Google Drive and Google Calendar. For consumers, these services are free, but they are ad-based.

2.8.1. Displaying ads to users occurs through a Real Time Bidding auction (RTB auction). Google is active in the online advertising market in various ways and operates a number of services to that end: Google Ads, Google AdSense and Google Ad Exchange.

2.8.2. The RTB auction takes place in the background the moment a person visits a website with advertising space or opens an app in which ads are displayed. In an RTB auction, the ad space of a website or in an app is sold to the highest bidder. There are several providers of RTB auctions. The owner of a website or app determines which RTB auction is to be used. Google Ad Exchange is the most widely used Real Time Bidding auction system on the internet.

2.8.3. To use Google Ad Exchange, Google compiles a profile of the user and provides this profile to the parties taking part in the auction (i.e. the companies that want to advertise). Based on that profile, the participant in the auction decides whether to put in a bid for advertising its products, and, if it decides to do so, at what price.

2.9. Google also offers other b2b services, such as Google Analytics, Firebase, Google Cloud and Google Workspace. These services can be used by companies and government agencies in exchange for payment.

2.10. Google furthermore offers a software system for smartphones running the Android operating system. This software (Google Play Services, not to be confused with the online shop for apps Google Play) is middleware between the applications (apps) on those devices and the underlying Android operating system. Google Play Services forms part of Google Mobile Services and is only offered in devices from manufacturers that have entered into an agreement with Google (and that make use of the Android operating system).

2.11. Google Play Services helps ensure that apps from Google or other parties can run safely and correctly on all the different versions of Android. Google Play Services in addition offers the following features:

2.11.1. A developer of Android apps can make use of Google Play Services (if installed on that smartphone, of course) via Application Programming Interface (API) and Software Development Kit (SDK), which Google makes available to that developer. One example is the MAPS API that enables Google Maps to be integrated into the app. Another example is the Firebase SDK, with which an app can retrieve information from Google Play Services (for example, the location of the app user, or the time or date).

2.11.2. Almost all smartphone brands with the Android operating system have Google Play Services installed on them. This depends on the agreement the phone manufacturer enters into with Google. Most manufacturers have an agreement with Google that provides for this.

2.12. Other Google products include:

- smartphones (Pixel) with an Android operating system and Google Play Services
- Chromebooks,
- Google Nest and Google Home (Wi-Fi connected smart home product lines for speakers, thermostats, smoke detectors, security cameras, doorbells, entertainment equipment as well as home appliances such as washing machines),
- Google Wi-Fi (wireless routers for home use),
- Google Fitbit (wearable technology such as fitness trackers and smartwatches).

3. The dispute

3.1. The claims of SBP and SMC have been set out in full in Annex 1 and Annex 2 at the end of this judgment. To the extent relevant at this moment, these can be divided into three main subjects: (i) declaratory decisions to the effect that Google has acted unlawfully towards the members of SBP and SMC, (ii) an order to pay damages (both immaterial and material) and (iii) a number of injunctions and orders to be issued against Google.

SBP's views - regarding Google's practices

3.2. At the heart of SBP's contentions is the allegation that Google is acting unlawfully towards the users by collecting, aggregating and processing excessive amounts of data from users. Those data processing operations may be divided into five categories:

- (1) the combining of excessive quantities of data obtained from different products and services,
- (2) the processing of location data,
- (3) the continuous tracking of the online behaviour of all the users of its services,
- (4) the sharing of this personal data with third parties in RTB auctions,
- (5) the transferring of personal data to the U.S.

With these five data processing categories, Google is violating the fundamental right to privacy, Dutch and European data protection law (in particular the Wbp⁵ and the GDPR) as well as consumer law (including the prohibition on unfair commercial practices). More specifically, Google is violating the following legal protection rules:

- the principle of data minimisation and the requirements of privacy by design and privacy by default, as a result of the way in which it collects and processes data;
- its duties of disclosure, by not or inadequately informing its users about the processing of their personal data;
- the requirement of a basis for processing, due to the lack of actual consumer consent for its practices;
- the prohibition on processing, by processing special personal data;
- the applicable prohibition on the transfer of data by storing data on servers in the U.S.

As a result of the sale of all the unlawfully obtained personal data, Google has moreover been unjustly enriched.

3.2.1. With its services and products Google is dominating consumers' online lives. By doing so, Google enables itself to collect and process personal data on a very large scale for the purpose of its advertising services. With every consumer service or product provided by Google, it collects personal data from the user. Google in part acquires these by requiring users to provide personal information in order to use the services. Users are often required to create an account, during which process they provide personal information such as their names, e-mail

⁵ The Personal Data Protection Act

addresses, and phone numbers (optional and otherwise), their addresses and payment information (e.g. credit card details). Google also collects personal data indirectly from publicly available sources and through trusted partners, marketing partners and advertisers. Moreover, the Google privacy policy on Google's website is regularly amended. All this is confusing to the average user, who does not know in what way his or her personal data are processed, and as part of which service, and who does not know that those collected data will be combined when further use of the internet is made, for the purpose of being sold to third parties. An average user will moreover not know exactly for what purpose permission is granted when Google asks for consent to collect and process the user's personal data.

3.2.2. When someone uses a Google service, for example YouTube or Google Maps, it is possible for Google to continue tracking that person's behaviour. It is virtually impossible for an internet user not to use one of the Google services, but even without using such a service, a user cannot avoid the processing of personal data by Google. Google constantly obtains location data from users via Android mobile devices, allowing Google to track them everywhere. For Android users, there is no escaping from the incessant collection of personal data by Google. This also applies to users of other Google products, such as Google Wi-Fi and Google Home. Another method of collecting personal data by Google is the use of cookies on Google websites, and through cookies on third-party websites. Google groups together the personal data it collects according to service or product. This happens even when the user is not actively using a Google service and even when the phone is not being used. In particular, the physical location of users is constantly and continuously being monitored by Google. This is a form of surveillance by Google. Location data reveal much more than just a person's geographical movements. Through location data, or their analysis, it is also possible to identify an individual's personal lifestyle as well as his or her choices and preferences. Location data thus reveal personal data that are potentially very sensitive and extremely valuable for parties such as Google. Through Firebase SDK, Google can also access location data of the user of an app from a company other than Google, when in that app the location data are requested and shared with Google.

A user's location data collected by Google are stored for a long period and are grouped together with other personal data, for the purpose of being used in the sale (RTB auction) of advertising space to third parties. In that process, third parties will thus have access to a user's personal data as collected by Google.

3.2.3. In 2012, Google created a new privacy policy that allowed it to combine the data it collects according to service or product with the personal data it collects in other services and products. This new Google policy allowed it to track users more easily, create better profiles and have more targeted ads sent to the websites or apps which that person was using at that moment. In 2016, this policy was developed even further for the purpose of aggregating information obtained from cookies.

3.2.4. As a result of this collecting and processing of a large amount of personal data, consumers have lost control over their personal data. Those consumers have not consented to this wide-scale collecting of personal data by Google, or it is at least impossible to know for a consumer what data about that consumer are being collected and processed by Google and at what moment, all this still according to SBP.

SBP's views - regarding its standing in this collective action

3.3. Insofar as relevant to the admissibility of SBP's complaints, it argues that it meets all the requirements for admissibility.

3.3.1. SBP defines the Relevant Period for the collective action brought by it as the period starting on 1 March 2012 and ending on the day the judgment, or final judgment, is rendered in the principal action.

3.3.2. SBP states that it represents "*the interests of all users of Google services and products residing in the Netherlands at any time during the Relevant Period*" and estimates that the average number of users of the two largest services (YouTube and Google Search) amounts to some 15 million Dutch people. Up to the time of the summons, tens of thousands of individuals have expressed their support for this collective action.

3.3.3. The Dutch Consumers' Association Consumentenbond has performed an extensive investigation into SBP. The cooperation with Consumentenbond reinforces the central position of the interests of the individuals whose interests SBP represents in this collective action. CCS also handles the registration process for other collective actions, such as those against Meta and TikTok.

3.3.4. Besides by Consumentenbond, support for SBP has also been openly expressed by BEUC (The European Consumer Organisation), NOYB (none of your business - European Center for Digital Rights), Privacy First, Waag Futurelab, AlgorithmWatch and Bits of Freedom.

SMC's views - regarding Google's practices when an Android smartphone is used

3.4. At the heart of SMC's contentions is the allegation that too many data of Android phone users are unreasonably and unlawfully processed by Google for the sale on the online advertising market. Briefly put, SMC argues that Google is acting in breach of the GDPR and the Telecommunications Act. In addition, Google is guilty of unfair commercial practices and is acting unlawfully towards Android smartphone users.

3.4.1. In summary, SMC argues that, in consultation with G&E, it has commissioned a study into the way in which personal data are collected and processed when an Android smartphone is used. This revealed that this is done on a large scale and virtually without limitation on an Android smartphone running Google Play Services and the Firebase SDK contained therein. Apps for Android use Firebase SDK for data retrieval and storage. In the process, Google Play Services - i.e. Google - also monitors which app is used when, for how long and from which location by the user of the Android smartphone, a process that is continued even if the user does not use the smartphone. As a result, Google processes and collects a lot of personal data from those users, often without there being a need to do so and for the sole purpose of selling those personal data to advertisers. The user of the Android smartphone has no idea of the ways in which Google continues to collect data, all this still according to SMC.

SMC's views - on its standing in this collective action

3.5. Insofar as relevant to the admissibility of SMC's claims, that party argues that it meets all the admissibility requirements.

3.5.1. SMC defines the Relevant Period for the collective action brought by it as the period starting 28 May 2018 and ending on the day judgment, or final judgment, is rendered in the principal action.

3.5.2. According to SMC, it represents the interests of "*all natural persons habitually residing in the Netherlands who have used an Android smartphone after 25 May 2018*" and that it is estimated that well over 9 million Dutch people use an Android phone.

3.5.3. While preparing for this class action, SMC was surprised by the filing of what appears to be the same collective action by SBP. SMC filed a request to be granted leave to postpone the issuing of its summons. That request was denied. Subsequently, the summons had to be finalised at great speed. Furthermore, the final report of the technical investigation into the processing of personal data on an Android smartphone subsequently had to be finalised. During that investigation, SMC had been consulting with G&E, and with Eaton Hall, regarding the funding of a collective action in the Netherlands. These consultations also had to be expedited, following the refusal of the request to be granted leave to issue the summons at a later date. Under these circumstances, no prior publicity was given to the collective action (first, a summons had to be issued on time) nor was a website set up for the registration of Android users for this action. After the summons had been served, the funding agreement with Eaton Hall was concluded, after which SMC had a website created for the registration of persons whose interests SMC is representing in this collective action.

3.5.4. Google was invited for consultations, but imposed unreasonable conditions on these talks, for example because it wanted the number of SMC's members to be specified in greater detail. Thereupon the summons was issued and SMC continued to negotiate the funding agreement. Only after that agreement had been concluded did SMC announce the action on its website in greater detail and did it invite persons to register for these proceedings. At this stage, SMC therefore satisfies all the requirements, all this according to SMC.

Google's defence on the standing of SBP and SMC

3.6. According to Google, the parties' cause of action should be reviewed in the light of the facts and circumstances at the time of the summons, in any case when it concerns the extent to which the claimant is representative, and the question whether the collective representation of interests may be entrusted to that claimant (through good governance). This follows from the provisions and the legislative history of Book III, Title 14A DCCP.

Specifically with respect to SBP

3.7. SBP has no cause of action, because its claims do not lend themselves to being grouped together, meaning that there is no question of similar interests. Furthermore, it cannot be established that a collective action would be more effective and more efficient. SBP does not meet the guarantee requirement, it is too dependent on its funder (LCHB), particularly the substantive knowledge and expertise required in these proceedings entirely originate from LCHB. SBP is not representative, as it has purchased its members from Consumentenbond. SBP fails to specify which events giving rise to the damage it bases its claims on, and when those events are supposed to have taken place.

3.7.1. Google further argues that SBP has largely based its assertions about 'surveillance' on two policy changes made by Google in 2012 and 2016. The 2012 policy change was approved by the Dutch DPA and the linking of the collected personal data requires the user's consent. Thus, this policy change is not in breach of any law. From 2016 onwards, information from authenticated users on the use of third-party websites and apps has been collected with the user's consent. This cannot be unlawful or in breach of the law. Moreover, the 2016 policy change was reported to several European regulators, who thus far have raised no objections.

3.7.2. Google furthermore argues that the above shows that the events alleged by SBP (the 2012 and 2016 policy changes) occurred before 15 November 2016, meaning that SBP's claims are governed by the old regime of collective actions and not by the WAMCA.

3.7.3. Moreover, in view of the long period covered by the claims, and in the absence of a clear position on the part of SBP on the specific events giving rise to the damage, Google for now takes the view that SBP's claims are time-barred under article 310 of Book 3 DCC, to the extent that the relevant events occurred before 12 September 2018 or before 30 August 2017. To that extent, SBP's claims should be regarded as *prima facie* unfounded, alternatively it should be ruled that SBP has no cause of action where those claims are concerned, all this according to Google.

Specifically with respect to SMC

3.8. SMC has no cause of action, because its claims do not lend themselves to being grouped together, meaning that there is no question of similar interests. Furthermore, it cannot be established that a collective action would be more effective and more efficient. To that is added that, at the time of the summons, SBP did not have any members and had not in any way disclosed its intention to sue Google prior to the summons. Furthermore, SMC failed to send a timely request to Google to have consultations. SMC did not have a website with information about this collective action at the time of the summons. All this does not demonstrate a proper representation of the interests of the potential members. SMC is insufficiently transparent in its summons about the litigation funder and the role played by it in the investigation of the facts on which SMC has based its claims about the data processing on Android smartphones. This also applies to G&E's involvement in that investigation and throughout these proceedings, all this according to Google.

3.9. To the extent relevant, the parties' contentions on the standing of SBP and SMC will be discussed in greater detail below.

4. Jurisdiction of the Dutch court

4.1. Google has appeared in court and has put forward its defence on the cause of action of SBP and SMC, at the same time stating that it would not dispute the jurisdiction of this court.

4.2. Alphabet Inc., Google LLC and Google Ireland Limited have been summoned to appear before this court and not before a court in their respective domiciles abroad. For that reason, it should be determined by the court of its own motion that it has jurisdiction to hear and determine the claims brought by SBP and SMC against these three defendants.

4.3. The case brought against Google by SBP and SMC falls within the scope of the Brussels I-bis regulation⁶ (which applies to the case in respect of Google Ireland Limited). Furthermore, the legal relations between the parties are at the sole determination of the parties (article 9 DCC, which applies in respect of Alphabet Inc. and Google LLC). Thus, the formal requirements of these applicable regulations have been met. Since Google has appeared without disputing the jurisdiction of this court, the jurisdiction of this court in this dispute is established on the basis of the parties' tacit choice of forum (article 26 (1) Brussels I-bis with respect to Google Ireland Limited, article 9 DCCP with respect to Alphabet Inc. and Google LLC).

5. Applicable collective action law

5.1. According to the transitional law, the WAMCA applies to lawsuits filed on or after the time of the act's entry into force and that concern an event or events that took place on or after 15 November 2016.

5.2. Both writs of summons were issued after the WAMCA entered into force.

5.3. SMC's claims are governed by the WAMCA regulations, because it has exclusively raised events that occurred after 25 May 2018.

5.4. Google has argued that SBP has failed to provide a clear description of the alleged unlawful events and that it is actually inferred from SBP's contentions that those alleged wrongful events are the 2012 and 2016 policy changes. These took place before 15 November 2016, meaning that the old collective action law applies to SBP's claims, all this according to Google.

5.5. SBP has argued that these proceedings concern the unlawful conduct by Google that started when it combined data from various services and products in 2012 and was expanded in 2016 when it started to combine these data with the data it processes with the use of third-party cookies and similar technologies. All this entails a large number of violations of data protection law and consumer law that have continued until this day in any case. The above means that Google's unlawful conduct or the events giving rise to the damage have continued beyond 15 November 2016 and that the WAMCA applies, all this according to SBP.

5.6. In the context of the preliminary question which collective action right applies, the court need not yet examine the merits of the case. What matters for this preliminary question is what alleged unlawful conduct SBP has based its claims on. Taking into account what the parties have argued in that regard, the court determines when the event giving rise to the damage has occurred, meaning that the alleged unlawful conduct will not yet be fully assessed on the merits in these proceedings.

5.7. The question is whether the infringements alleged by SBP qualify as an individual infringement at the time of the implementation of the alleged policy (as argued by Google) or whether there is a question of one continuous infringement that started at that time and is still continuing (as argued by SBP).

⁶ Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

5.8. In the context of answering the preliminary question on the applicable collective action law, the court finds that this case concerns continuing, alleged harmful events. It follows from SBP's contentions that the implementation of the alleged policy is the starting point of the alleged events giving rise to the damage. To this is added that the continued implementation and the failure to discontinue that policy result in the continuation of those alleged harmful events. Indeed, the breaches alleged by SBP are the collecting of personal data across Google's various services and products and the subsequent combining of those collected personal data with a view to selling advertising space on websites and in apps and transferring those collected personal data to third parties, while at the same time exporting these to the U.S. According to SBP, this alleged infringement started after the 2012 policy change and has continued until this day. In addition, SBP has labelled the collecting of users' personal data from cookies of third-party websites an infringement, which was made possible by the 2016 policy change. That alleged infringement too has continued until this day.

5.9. The above means that the WAMCA applies to SBP's claims against Google.

5.10. This outcome is also in line with the rationale of transitional law. The essence of the transitional law of the WAMCA is that the new law applies if the event giving rise to the damage occurred after 15 November 2016, the idea behind this being that old events shall not be assessed under the new law that a party was not required to take into account at the time. This is different in the case of an event that, although commencing before the entry into force of the WAMCA might have been expected (so before 15 November 2016), nevertheless continued after that date. In that case, the party causing the damage could have been aware of the fact that it might also be sued under the new law if it continued the conduct in question. In this case, by choosing to continue its policy after 15 November 2016, Google accepted that it could be sued for this under the new law. Moreover, the introduction of the WAMCA did not change the substantive law under which it is assessed whether or not something is unlawful; all that was changed is the way in which damages can be claimed. Thus, there is no question of a conflict with the principle of legal certainty.

5.11. Google's further defences will be addressed at the substantive stage of the proceedings. These defences cannot be assessed on the merits in proceedings on admissibility under the WAMCA.

6. The moment of reviewing the case in the light of the admissibility requirements of the WAMCA

6.1. With regard to the standing of the claimant in WAMCA proceedings, article 1018c (5) DCCP provides that

- a) the admissibility requirements of article 305a (1-3) of Book 3 DCC must be met,
- b) it must be argued convincingly that conducting this collective action is more efficient and effective than bringing individual actions, and
- c) there must be no *prima facie* evidence of the collective action being unfounded.

6.2. In its defence on the standing of SBP and SMC, Google has argued that the admissibility requirements should be assessed in the light of the facts and circumstances at the time of the summons. Article 1018c (1) opening words and under (d) DCCP states that the summons provide a description of the manner "*in which the admissibility requirements*" of article 305a (1-3) of Book 3 DCC "*have been met*". This means that that, at the time of the summons, the

foundations must meet the requirements of article 305a (1-3) of Book 3 DCC, in particular with regard to the aspects of representativeness and governance and how the claimants are organised and how the supervision of the board has been ensured. This was confirmed in the Supreme Court judgment of 11 March 2022⁷. Moreover, the legislative history on this subject states that "*it must be clear in advance that, in terms of numbers, it* [the claiming party, district court] *represents a sufficiently large proportion of the group of aggrieved persons.*"⁸ The assessment as to whether SBP and SMC meet those statutory requirements should therefore be made *ex tunc* (according to the facts as they were at the time of the summons), all this according to Google.

6.3. The Supreme Court's judgment of 11 March 2022 concerned a request for a preliminary witness hearing in preparation for a collective action. It was ruled that such a request may be rejected if it is not plausible that the requesting interest organisation meets the admissibility requirements of article 305a of Book 3 DCC. In the situation at issue in those proceedings, no action had been brought yet. For that reason, it cannot be automatically inferred from this according to what point in time the admissibility should be assessed after the action has been brought. SBP and SMC on the other hand did file collective claims.

6.4. Article 1018c (1) (d) DCCP stipulates that the summons must state the way in which the claimant meets the admissibility requirements of article 305a (1-3) of Book 3 DCC. Contrary to what Google has argued, it does not necessarily follow from the words "*in advance*" in the explanatory memorandum to the WAMCA that the claimant must meet all the admissibility requirements at the time it is summoned to appear in court. Rather, the use of those words "*in advance*" indicates that the court will make the decision on admissibility based on the debate conducted up to that point. This interpretation allows the current state of affairs to be taken into account, thus causing the decision to as much as possible do justice to the actual state of affairs.

6.5. This applies in particular to the representativeness (or the number of registrations or expressions of support for a collective action). The rationale behind the tightening of the admissibility requirements in proceedings under the WAMCA is, among other things, the desire to keep unwanted claimants out, having in mind in particular claimants, or their funders, with improper commercial motives of their own and claimants who are incompetent. The extent to which a claiming party in a collective action is representative is a dynamic fact that may be subject to significant change during the proceedings. It is therefore only natural to assess the claimant's representativeness at the time when the admissibility of the claiming legal entity's action is decided in the proceedings on the basis of article 1018c (5) DCCP. It cannot be inferred from the text of the law or from the legislative history that the assessment of the representativeness of a claimant in a collective action should take place according to the number of registrations the claimant has received at the time of the summons.

6.6. Google has argued that the consultation requirement of article 305a (3) (c) of Book 3 DCC makes no sense if a foundation pursuing a collective action does not have members at that time (like SMC in this case, more about which in 6.7). To some extent, the court agrees with Google's defence. However, it follows from legislative history that, upon the introduction of the new law on collective actions⁹, particular attention was paid to the adequate representation of

⁷ Supreme Court , 11 March 2022, ECLI:NL:HR:2022:347, ground 3.1.3.

⁸ Parliamentary Papers II 34608, 2016-2017, no 3 (explanatory memorandum), p. 19

⁹ The WAMCA under which, on the contrary, financial compensation can be claimed

the members by the interest organisation. There is nothing to show that this debate, or political debate, was focused on the representativeness of the claimant, other than that the interest organisation has to define which group of persons it stands up for, or that this has to be assessed at the time of the summons.

6.7. Specifically with regard to SMC, Google has furthermore argued that SMC did not have any members at the time of summons and further failed to comply with some other guarantee requirements: SMC's website did not contain any information about this collective action and SMC did not enter into a funding agreement with Eaton Hall until four months after the summons. For this reason, SMC's claims should be declared inadmissible, all this according to Google.

6.7.1. In addition to the foregoing considerations on the timing of the assessment of the admissibility requirements, it is held that none of this can be alleged against SMC in this case. Importantly, in its collective action, SMC was apparently taken by surprise by a similar collective action by SBP. After the refusal of SMC's request for an adjournment, it had to serve its writ of summons and make arrangements with Eaton Hall about the litigation funding within a period of three months after SBP's summons. Only after all this had been completed was SMC in a position to acquire members and set the agreements with Eaton Hall down in writing.

6.7.2. It is furthermore noted that SMC has brought collective actions on more occasions - including on issues other than the GDPR - and was duly found to have a cause of action in those cases. It is not an ad hoc foundation set up specifically for the collective action against Google. In other words, there is less likely to be a situation where an unwanted claimant has to be barred by stricter admissibility requirements (see above 6.5).

6.7.3. The above circumstances constitute a ground for the dismissal of Google's defence that SMC should be ruled to have no cause of action due to its failure to meet certain admissibility requirements at the time of the summons.

6.8. The admissibility requirements of article 305a (1-3) of Book 3 DCC will for both foundations be reviewed in the light of the facts and circumstances as they were at the time of the oral hearing held on 22 October 2024.

7. Similar interests (article 305a (1) of Book 3 DCC)

7.1. Article 305a (1) of Book 3 DCC 1) of the Civil Code contains the following requirements that have to be met by a claimant in a class action: the legal personality of the claimant, the similarity of the interests represented by that claimant and the adequate safeguarding of those interests.

7.2. SBP and SMC are both foundations. It has neither been stated nor become apparent that the collective actions brought by both SBP and SMC are incompatible with their respective articles of association.

7.3. Article 305a (1) of Book 3 DCC further contains the so-called similarity requirement: an interest organisation can only bring a legal action that serves to protect the similar interests of other persons. This requirement is met if the interests which the legal action seeks to protect lend themselves to being grouped together, thus ensuring an efficient and effective legal protection on

behalf of the interested parties. In this way, the issues and claims raised by the action can be decided on in one single procedure, without any special circumstances on the part of any individual interested parties having to be considered.¹⁰

Google's position on similarity in this collective action

7.4. Google has argued - briefly put - that it processes personal data in different ways for different services and products. Those services and the way it processes personal data actually cannot be compared with or linked to each other. Google argues as follows.

7.4.1. The processing of personal data according to Google depends on the type of user:

- the authenticated user (has a Google account and is logged in to Google at the time of using a service or product),
- the unauthenticated user (does have a Google account but is not logged in to Google at the time of using a service or product), and
- the passive user (does not have a Google account).

Moreover, someone with a Google account may have chosen not to receive personalised ads.

7.4.2. In addition, Google has pointed to the consent the user may have given (which again depends on which service is being used), the duration of the use of the service and the moment a service or product is used. At various times since 2012, different legislation on personal data has come into force, Google has used different conditions on privacy data, while Google's products and services have been subject to change over the years, including in terms of the collecting and processing of personal data. All this means that no uniform way of processing data exists.

7.4.3. With respect to users of Android smartphones with Google Play Services, it is pointed out in particular that the processing of personal data depends on that user's general preference settings (about, for example, location data or viewing personalised ads), the settings in the app used and which API or SDK in Google Play Services that app uses.

When using third-party apps, Google's processing of personal data may also be a service to the app developer and Google does not use those collected data for its own (other) services. Furthermore, the version of the Android phone and the version of Google Play Services installed on it play an important part in the contentions of SMC and SBP. Thus, there are many possible variations in both SBP's and SMC's contentions, all of which are relevant to the question of whether Google's processing of personal data is lawful. Consequently, this may be different for each user, at least the large number of variables makes it impossible to define groups of users.

7.5. Moreover, because of the above, the alleged material and immaterial damage differ significantly according to each user. It follows from all this that the two collective actions do not involve similar interests, all this according to Google.

Assessment of the similarity requirement

7.6. The question of whether the interests that the action seeks to protect lend themselves to being grouped together in part depends on the nature of the claims brought. As shown in Annex 1 and Annex 2 to this judgment, SBP and SMC have brought a wide variety of claims. As has been

¹⁰ Supreme Court 26 February 2010, ECLI:NL:HR:2010:BK5756

held in 3.1 above, SBP's and SMC's claims, insofar as relevant for the purpose hereof, can be divided into three main areas: (i) declaratory decisions to the effect that Google has acted unlawfully towards the members of SBP and SMC, (ii) an order to pay damages (both immaterial and immaterial) and (iii) orders and injunctions to be imposed on Google.

7.7. When assessing the similarity of the claims referred to in categories (i) and (iii), it is important to note that both SBP and SMC have argued that

- (a) Google processes users' personal data in a way that does not comply with the statutory regime on personal data protection,
- (b) Google does this in and with all products and services,
- (c) various Google products and services are capable of using personal data collected in other Google products and services used by that person and
- (d) those persons suffer damage as a result.

7.8. The question at the heart of the matter is therefore whether Google as a company collects and processes the personal data of users of services and products in a way that violates the legal regime on the protection of personal data. In that sense, these are legal actions aimed at protecting similar interests of the users of Google services or products: termination of the alleged violation of the various laws on the protection of their personal data and payment of compensation for the damage suffered as a result. This is unrelated to the individual position of the user. After all, for every user of a Google service and product, there is a chance that Google has also processed those personal data in relation to that user and that this user has lost control over them. That means that all Google users are in an equal position in that sense and that the interests of those users of Google services are in that case capable of being grouped together. That the infringements alleged by SBP and by SMC against Google come in many versions, that due to policy changes and changes in legislation there may be differences from period to period, and that all this will lead to a complicated discussion and assessment at the substantive stage, does not change the similarity of interest established above. If necessary, this can be taken into account in the assessment of the case in the main action.

7.9. Both SBP and SMC furthermore demand compensation for material and immaterial damage (category (ii) in 3.1 and 7.6). These claims are based on provisions in the GDPR and on the general unlawful act (Title 3 of Book 6 of the Dutch Civil Code), so that in that context it will also be possible to assess the issue of similar interests. The assessment of this category of claims is more likely to involve particularities of the case and of the person involved than is the case with the other claims. That fact in itself does not preclude the assumption of similarity, as otherwise the possibility introduced by the WAMCA to claim damages in a collective action would be meaningless.

7.10. Whether these are claims that lead to an entitlement to damages cannot be said with certainty at this stage of the proceedings. If, after a substantive debate at a later stage of these proceedings, the court should come to the conclusion that Google processes or has processed personal data in a way that is or was unlawful, it cannot be ruled out that its users suffer similar damage as a result and that, therefore, their interests lend themselves to being grouped together. The assessment thereof will have to in line with the nature of that damage; if it should not be possible to assess it accurately, it will have to be estimated (article 97 of Book 6 DCC). If a group of users suffers the same damage or runs the same risk, the basic principle is that their damage will be assessed at the same amount. If there are differences, categories of damage might be used.

7.11. The foregoing generally also applies to the immaterial damage claimed. At this point in these proceedings, it cannot be ruled out that compensation for immaterial damage - on the basis of the unlawful act in any case - also satisfies the similarity requirement¹¹. It may be different for the claim for damages based on infringements of the GDPR, but the debate on the admissibility requirements in that context has yet to take place.

7.11.1. It is also worth noting in this respect that a collective action that also decides on possible damages is efficient, as it is to the advantage of all parties that the matter may be confined to one procedure (more about which in 12.1 et seq.). Moreover, not allowing the damages component to already be dismissed at the admissibility stage is in line with the rationale of the current WAMCA.

7.12. The interim conclusion is that the actions brought by the foundations satisfy the similarity requirement.

8. Guarantee requirement representativeness (article 305a (2) of Book 3 DCC)

8.1. Article 305a (1) of Book 3 DCC ends with the admissibility requirement that the similar interests of others for whom the foundation stands up with its action must be sufficiently safeguarded. The second paragraph of this article works out the guarantee requirement into, briefly put, the representativeness requirement and the other requirements. These requirements are exhaustive and apply cumulatively. Below, the court will discuss the representativeness of SBP and SMC, while from 9.1 onwards the other guarantee requirements of article 305a (2) of Book 3 DCC are discussed.

8.2. In 6.8, it has been held that the representativeness of SBP and of SMC is assessed in the light of the facts and circumstances at the time of the oral hearing on the admissibility in these proceedings.

8.3. First and foremost it is pointed out that the law does not set a numerical criterion in this regard. The lengthy legislative history of the WAMCA shows that it was deliberately decided not to introduce a number, either absolute or relative. From the circumstance that not only associations, which obviously have members, but also foundations, which do not, can act as claimants, it follows that the legislature apparently did not consider it automatically necessary to be able to determine who exactly are the claimant's members, nor is it necessary to argue convincingly that the entire group, further to be narrowly defined, that may benefit from the actions brought by SBP and SMC, currently desires or supports this action. *Free riding* is permitted. It is essential, but also sufficient, that a group of members exists, i.e. that a significant number of persons belonging to that narrowly-to-be-defined group, supports this action of SBP and SMC.

8.4. SBP and SMC have each substantiated their representativeness as at 1 October 2024 with reports from RSM Netherlands Accountants N.V. (RSM) and accounting firm BDO Nederland (BDO), respectively. RSM's report shows that, on 1 October 2024, SBP had 150,248 registrations. BDO's report shows that SMC had 96,062 registrations on that date.

8.5. Google has argued that it is not certain or clear that RSM and BDO were correctly informed by SBP and SMC about the number of registrations.

¹¹ See Amsterdam Court of Appeal, judgment of 18 June 2024, ECLI:NL:GHAMS:2024:1651

8.5.1. SBP engaged CCS for the registration process and the processing of those registrations for its collective action. Google's defences on this choice will be discussed in more detail later (from 8.9 onwards). With respect to RSM's report, Google has argued that it does not show how RSM carried out the checks and whether RSM itself was given access to CCS's database or if it relied on data provided by CCS. The district court holds that RSM wrote in its report that the work was performed in accordance with Dutch Standard 4400N, 'Contracts for the performance of agreed specific work', and that it complied with the relevant ethical regulations in the Code of Conduct and Professional Practice for Accountants Regulation (in Dutch: Verordening Gedragseen Beroepsregels Accountants (VGBA)) applicable to it. If Google takes the view that this does not provide sufficient guarantees regarding the manner in which RSM has performed its work for SBP, it is up to Google to explain this concretely and in detail. A generally phrased suspicion is not enough for that purpose. The same applies to Google's defence that it is not clear which data RSM has examined.

8.5.2. SMC engaged Daccs in Amsterdam to handle the registration process and the processing of those registrations for its collective action. In its report BDO has written that it conducted an on-site investigation at Daccs, and that on that occasion it was shown information regarding the data contained in the databases through searches conducted on those databases. Google's - otherwise unsubstantiated - defence that BDO carried out its inspection on "exports" therefore does not hold water.

8.5.3. Google has further argued that BDO also reported that it did not independently investigate the accuracy and completeness of the information provided. Without further substantiation, this defence by Google cannot lead to the conclusion that BDO has reported on a potentially incorrect set of data. BDO's comment about not checking the accuracy and completeness of the data provided concerns the content of the databases and does not refer to the result of a search it was shown of the number of registrations and cancellations and how registrations and cancellations are processed. BDO's report does not show that there is reason to doubt the accuracy and completeness of the search results from the databases presented to it. This is evident, for example, from its observation that no registrations appeared twice in the search results shown to it. In addition, BDO went through the process of registering and deregistering. It follows from all this that BDO's report provides sufficient certainty about the number of participants in SMC's collective action on 1 October 2024.

8.6. The court thus relies on the RSM and BDO reports and the numbers mentioned therein.

representativeness SBP

8.7. By means of a reference to the RSM report, SBP has mentioned that on 1 October 2024 a total of 150,428 people had signed up for this collective action by SBP. At the hearing, SBP argued that by that time (three weeks later), 160,237 Dutch consumers had registered. It should also be noted that SBP is supported by Consumentenbond and a number of other organisations (see 3.3.4). This shows that this collective action by SBP is supported by a broad group of interest organisations (both Dutch and European).

8.8. Google has argued that, for the purpose of determining the number of members, not all registrations can be included, because SBP has in fact come up with five different mass events, each time affecting different groups of people. This defence is no more or different than a repeat of the defence on the similarity of interests and will therefore not be addressed further.

8.9. Google has argued that SBP purchased its members from Consumentenbond, or from CCS in any case, and therefore does not have members of its own.

8.10. This defence cannot lead to SBP's action being declared inadmissible. There is no statutory duty for a legal entity (in this case: SBP) wishing to initiate a collective action to itself or under its own management announce that collective action and recruit its members. It is not in breach of any rules, under the WAMCA or otherwise, for that legal entity to outsource this to another company (in this case: CCS) whose business activities consist in recruiting participants in a collective action. On the contrary, the fact that Consumentenbond is a shareholder of this recruitment company (in this case: CCS) rather provides an additional guarantee that consumers' interests will be respected and represented in a reliable manner. This also follows from Google's own defence that Consumentenbond is *"a respected and well-known organisation "* and that *"Consumentenbond (...) is widely-known among the Dutch people and enjoys the reputation of a reliable, independent consumer organisation (...)"*.

8.11. Google has further argued that the misleading communications from a respected and well-known organisation such as the Consumentenbond may act, or may have acted, as a magnet on the number of aggrieved users who have joined SBP and that for that reason tens of thousands of participants were recruited in a relatively short period of time, showing that, without Consumentenbond, SBP would not have been able to gather support for its collective action, all this according to Google.

8.12. It is true that, through Consumentenbond's support, many consumers are indeed reached in media reports, and individuals may be more likely to sign up as participants in a collective action or otherwise support that action because of Consumentenbond. However, contrary to Google's argument, Consumentenbond's role in this is rather a sign that the representation of those individuals in this collective action can be entrusted to SBP, because Consumentenbond will also supervise SBP's proper representation of consumers.

8.13. Google's defence that CCS and Consumentenbond support more collective actions and in that way pursue a financial interest through collective actions, is rejected as irrelevant. The fact that they support a wide range of collective actions for the benefit of consumers, and that CCS has made this its commercial activity, is no reason to rule that they have no standing in a collective action due to their having entered into a partnership with Consumentenbond or CCS. The fact that Consumentenbond does not act as a claimant on behalf of consumers in collective actions is not a circumstance that can lead to, in this case, SBP's action being ruled inadmissible. Indeed, it is Consumentenbond's choice and decision as to how it wishes to commit itself to the interests of consumers. It says nothing about SBP's reliability as an advocate of users of Google services and Google products in these proceedings.

8.14. Google has further argued that Consumentenbond, CCS and SBP, in their media campaign prior to these proceedings, provided consumers with misleading information from which it can be inferred that Consumentenbond is commencing a collective action against Google and is claiming damages in that action. This is misleading, because, according to Google, Consumentenbond is not itself acting as a claimant.

8.14.1. This defence does not succeed. Without being contradicted, SBP has pointed to the text of the Participants' Agreement that an individual must enter into with SBP (on the CCS website),

which after all states: *"I hereby instruct STICHTING BESCHERMING PRIVACYBELANGEN ("Foundation") to represent my interests in the Google Action."*

8.14.2. As part of this remote instruction in the participants' agreements, the prospective participant must tick two boxes on the CCS website. These state: *"By ticking the box below and clicking submit, I enter into the agreement with the Foundation. Upon receipt of the confirmation of instruction, the Foundation shall be bound by the terms of this agreement."* The mandate to the Foundation is confirmed when the participant checks the box *"I agree to the terms and conditions and confirm the mandate provided to Stichting Berscherming Privacybelangen to represent my interests in the Google Action"*.

The application form for persons wishing to participate in this collective action nowadays states: *" Stichting Berscherming Privacybelangen is conducting the proceedings in cooperation with Consumentenbond."*

8.14.3. The above texts from the participants' agreements and the application form cannot reasonably be interpreted in any way other than as meaning that SBP will act as the litigant in a collective action against Google. An average and reasonably acting consumer will also give this interpretation to the text.

8.14.4. In addition, SBP has argued, without being contradicted, that it is frequently mentioned on Consumentenbond's website in connection with this collective action.

8.14.5. It will therefore be clear to the average consumer, acting reasonably, that SBP is acting as the claimant in the collective action against Google and that it is supported in this by Consumentenbond.

8.14.6. Google's argument about how certain news media have reported on this collective action - for example: the website of the television programme Radar states that Consumentenbond is acting as the claimant in this collective action - cannot lead to SBPs action being declared inadmissible. As SBP has rightly argued, it (Consumentenbond) cannot be blamed for producers of television programmes misrepresenting the litigants in a civil collective action.

8.14.7. Google also argued that Consumentenbond, in an advertisement in the daily newspaper Het Parool, suggests that Google *"collects data on a large scale of the online behaviour and physical locations of consumers"*, and that Google *"subsequently shares these data, including very sensitive personal data on, for example, health, ethnicity and political preferences, with hundreds of parties through its online advertising platform"*. These are firm and inaccurate statements for which Consumentenbond does not have to render account in these proceedings, because it is not a litigant, all this according to Google.

8.14.8. The significance of this defence regarding SBP's cause of action cannot be perceived. To the extent that Google takes the view that Consumentenbond should render account to Google for that publication, Google should to that end initiate different court proceedings of its own against Consumentenbond.

8.15. Google's defence that only 103,000 people have agreed to confirm their mandate to SBP is an issue that concerns the mandate requirement under the GDPR, on which a further debate between the parties will follow. For the requirement of representativeness under the WAMCA

regulations, the registration of individuals is sufficient, regardless of whether they thereby provide a mandate to SBP to represent their interests in a collective action for damages.

8.16. All of Google's defences about SBP's representativeness are dismissed. The court finds that SBP is sufficiently representative in this collective action with the more than 150,000 registrations found by RSM.

representativeness SMC

8.17. Citing the BDO report, SMC has stated that on 1 October 2024, a total of 96,324 Interested persons had joined SMC.

8.18. Google has furthermore argued that BDO's report included the number of persons who registered for this SMC collective action (sign-ups) and the number of persons who logged in to the action portal (sign-in), and that the number of unique IP addresses for sign-in was much lower than the number of unique IP addresses from which the registrations (sign-up) were made. The district court fails to see the relevance of this defence, because all it asked for was the number of persons who signed up for this collective action (or: representativeness), and so not for the number of persons who actually logged in to the portal.

8.19. Google's defences about the members at the time of the summons fail to have regard to the assessment of representativeness at the time this is at issue in proceedings (i.e. now, in this judgment).

8.20. All of Google's defences about SMC's representativeness are dismissed. The district court finds that, with the more than 95,000 registrations found by BDO, SMC is sufficiently representative.

interim conclusion representativeness SBP and SMC

8.21. The interim conclusion is that SBP and SMC are each representative as interest organisations in their actions, or collective actions, on behalf of groups of persons they have defined in their summonses.

9. Guaranteed interests (article 305a (2) (a-f) DCC)

9.1. Article 305a (2) of Book 3 DCC further sets out a number of requirements under a - f in the context of the guarantee requirement, aimed at transparency and good governance. These requirements are that the claimant/legal entity shall have:

- a) a supervisory body;
- b) appropriate and effective mechanisms to ensure that persons on behalf of whom the claimant/legal entity is acting may participate in, or are represented in, the decision-making in that legal entity;
- c) sufficient resources to conduct the proceedings and sufficient control over the legal actions;
- d) A publicly accessible website with information (items 1-9) on, among other things, the legal entity, the claim and how any contribution is calculated and how the collective action may be joined;
- e) sufficient experience and expertise to initiate and conduct the legal action;

- f) funding that does not come from a funder that is a competitor or is dependent on the other party - this only in the case of specific legal actions as listed in Annex 1 of the Representative Actions Directive¹².

9.2. Google has put forward specific defences on the following requirements for guaranteed interests:

- the provisions of article 305a (2) (c) of Book 3 DCC (SBP and SMC each do not have sufficient resources for these proceedings and control of the legal action),
- the provisions of article 305a (2) (d) of Book 3 DCC (SBP's and SMC's websites are incomplete or incorrect),
- the provisions of article 305a (2) (e) of Book 3 DCC (SBP does not have sufficient experience and expertise for this collective action) and
- the provisions of article 305a (2) (f) of Book 3 DCC (SBP's funder is dependent on Google).

9.3. Google has argued - put briefly - that SBP is conducting these proceedings in its own name, but that the financial resources, knowledge, know-how, experience and manpower required for this largely come from litigation funder LCHB or third parties engaged on behalf of LCHB (including Consumentenbond), who, moreover, in their turn are themselves also dependent on LCHB, or have their own financial and/or commercial interest in their activities in the context of this collective action.

This means that SBP's degree of control over the legal actions and the conduct of these proceedings is questioned. Moreover, according to Google SBP's website did not contain any information about the remuneration of its board.

9.4. Google has argued - put briefly - that the interests of SMC's members are insufficiently safeguarded due to SMC's lack of transparency about the litigation funder and G&E's involvement in these proceedings, or the preparation of these proceedings. Furthermore, SMC did not provide any general information on its website about the collective action at the time the summons was served, all this according to Google.

9.5. For each section of article 305a (2) of Book 3 DCC, it will be assessed, also in light of Google's defence, whether SBP and SMC provide sufficient safeguards for the interests of the persons on whose behalf they have brought this collective action.

Re a: supervisory body

9.6. SBP and SMC both have a supervisory board. No specific defence about SBP's supervisory body can be inferred from Google's defence about SBP's dependence on third parties.

9.7. It is found that both SBP and SMC meet the requirements of article 305a (2) (a) of Book 3 DCC.

Re b: participation or representation of members in the decision-making

¹² Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (OJ EU 2020, L 409)

9.8. Google has not put forward any specific defence against SMC or SBP on this matter, nor has it been shown that SBP's and SMC's members are prevented from participating or being represented in the decision-making. Both SBP and SMC have stated that they are structured in accordance with the Claimcode.

9.9. Both SBP and SMC meet the requirement of article 305a (2) (b) of Book 3 DCC.

Re c: sufficient resources (funding) and control over the legal action

9.10. Following Google's defence on this point, the court ordered SBP and SMC to produce their funding agreements. These were also discussed at the oral hearing. Google's defence was then changed on some points - notably towards SBP and LCHB's own interest in a settlement. Only the defences that continue to remain applicable after the hearing will be discussed below.

Resources and control over legal action SBP

9.11. Specifically with respect to control over the action in the context of the funding agreement between SBP and LCHB, Google has argued as follows:

- (i) Article 1.3 of that funding agreement limits SBP's free choice of counsel, because this effectively means that LCHB must agree to engaging a different lawyer.
- (ii) Article 1.5 of that funding agreement allows LCHB to engage third parties for the purpose of providing services to SBP.
- (iii) Article 1.6 of that funding agreement states that SBP complies with the 2019 Claimcode. This is not in line with reality, because LCHB also funds other foundations in other collective actions and those foundations engage the same law firms, as well as Consumentenbond and CCS for the publications about the collective action and the recruiting of participants. All this under the funding by LCHB. SBP's website does not mention anything about this, showing that SBP does not take the Claimcode seriously.
- (iv) Articles 3.3 and 3.5 of the funding agreement between SBP and LCHB provide that, if a settlement is reached (between SBP and Google), a payment to LCHB is mandatory, even if the settlement is not of a financial nature. This limits SBP's control over the legal action.
- (v) Article 6.2 of the funding agreement between SBP and LCHB states that SBP is obliged to provide information from these proceedings to LCHB. Article 4.2.1 states that LCHB may use this information - also confidentially - in "*any litigation related to the Claims*". This is not acceptable.

9.12. The funding agreement between SBP ("*the Foundation*") and LCHB ("*the Claim Funder*") reads as follows, to the extent relevant:

(...)

1. (...) The Foundation aims to defend the interests of the Aggrieved Parties [in short: the persons whose interests SBP is standing up for in these proceedings, district court] (...), who as present and former users and/or their legal guardians, not acting in the course of their profession or business, of any product or service capable of Processing Data (...) regarding the users who are, or at any time have been, subject to Privacy Intrusion (...). Among other objectives, the Foundation aims to investigate and establish, either directly or indirectly, any liability, for said Privacy Intrusions and all related consequences, and possibly pursue litigation or settlement talks with regard to such Privacy Intrusions with the aim of bringing about business practice changes as well as compensation for the Aggrieved Parties ("**Claims**").

(...)

1.3 The Claim Funder shall be responsible for funding the activities of the Foundation, including payment of reasonable invoices of Local Counsel and Privacy Counsel for services rendered by them (the "Funding").

(...)

1.5 The Claim Funder may hire additional third parties to assist with the Services to the Foundation, subject to approval by the Foundation not to be unreasonably withheld ("**Agents**"), (...) provided that neither the Foundation nor any Aggrieved Party shall be liable for any compensation payable to such Agents. (...).

(...)

1.7 The Parties acknowledge and accept that the Foundation must comply with the Claim Code and will operate independently of the Claim Funder at all times. Without prejudice to the principles of the Claim Code, the Foundation shall inform the Claim Funder of its intended litigation and/or settlement approach and may make use, if and when appropriate, of the Claim Funder's expertise. (...) the Claim Funder acknowledges and accepts that the Foundation will not take instructions from the Claim Funder, its Agents and/or other third parties on the litigation and/or settlement approach. (...).

(...)

2.1 The Foundation hereby accepts and agrees to the Funding by the Claim Funder of the Foundation for the benefit of and/or on behalf of the Aggrieved Parties, and in connection therewith all the Services set forth herein, and subject to Clause 3.1, the assumption by the Claim Funder of all the litigation tasks associated with the Claims, including (i) the assumption of all necessary and reasonable costs and expenses of Local Counsel, Privacy Counsel, and any other law firm(s) retained by the Foundation and consulting with the Claim Funder for that retention (...).

(...)

3.3 The Foundation shall procure that any settlements agreement or compromise with any third party respecting a Recovery provides for payment of the Litigation Funding Fee, subject to Clause 3.5 of this Agreement. (...).

(...)

3.5 If any Recovery is obtained through a settlement agreement that has been declared binding (...), the Foundation will procure that settlement agreement will reference the Claim Funder's entitlement to the Litigation Funding Fee (...).

(...)

4.1 The Claim Funder hereby undertakes to hold in confidence any and all confidential information the Foundation may communicate to the Claim Funder in connection with the provision of the Funding and Services (hereafter referred to as the "**Confidential Information**"), (...).

4.2 Furthermore, the Claim Funder shall:

4.2.1 Only use the Confidential Information for the purpose of performing the Funding and Services, including in any litigation related to the Claims;

(...)

6.2 Upon request by the Claim Funder, the Foundation and/or the Law Firms, subject to approval by the Foundation, shall provide the Claim Funder with reports, information, and/or documents to inform the Claim Funder of any risks posed to the Claim Funder given material developments in any investigation, considerations or progress of the Claims, the litigation initiated by the Foundation or any settlement efforts thereto. These reports, information, and/or documents and all communications related thereto shall be designated confidential. They may include, but are not limited to, any court filings, (...) any order issued by the Court(s) overseeing any litigation initiated by the Foundation, or any relevant communications, unless barred by confidentiality obligations (...), or such further documents which the Claim Funder may reasonably request (...) to evaluate its risk with respect to any litigation or settlement. (...).

9.13. It cannot be inferred from Google's defences (as set out in 9.11) that SBP has no or insufficient control over the legal actions it brings, or that the interests of the persons on whose behalf SBP conducts this collective action are not, or insufficiently, safeguarded by SBP.

9.13.1. Google has pointed to a recent decision of this court¹³, in which it was held that the funding agreement in those proceedings had to be amended, because it provided that the funder had to agree to the choice of the lawyer in charge of the lawsuit. Contrary to Google's argument, this cannot be read, or reasonably interpreted as such, in article 1.3 and article 2.1 of the funding agreement between SBP and LCHB, which after all mention "*consult with the Claim Funder*". The case law cited (in which Google is the defendant as well) states that a change of counsel must be "*approved by the Funder*". Without any further substantiation, which is lacking, the reference to the recent ruling does not benefit Google. It has not been shown that SBP and LCHB intended that LCHB should consent to SBP's choice of counsel, or subsequent counsel. This is not altered by LCHB's cooperation with SBP's lawyers in other collective actions, at least it cannot be inferred from all this that the interests of the persons on whose behalf SBP is acting in these proceedings are insufficiently safe in the hands of SBP.

9.13.2. The fact that Google interprets article 1.5 of the funding agreement as meaning that that, in practical terms, LCHB has acquired control over these proceedings, because it may engage third parties to provide services to SBP (which interpretation is disputed by SBP), is not enough for the court to conclude that SBP has lost control over the conduct of these proceedings.

9.13.3. Why SBP should be under any obligation to provide full clarity on its website about the role of its funder in other collective actions or that some of its directors are also directors of other foundations that conduct collective actions, or that the funder in question also obtains paid services from Consumentenbond and CCS, has not been made clear by Google. In any case it cannot be inferred from this that SBP does not take the Claimcode seriously or that this lack of information on SBP's website - or even the alleged facts as such - means that the interests of the persons on whose behalf SBP is acting in this collective action are not sufficiently safeguarded.

9.13.4. Without further substantiation, which is lacking, it is difficult to see why SBP's obligation to pay LCHB in the event that a settlement is reached will cause SBP's control over the legal actions to be limited. It may lead to a situation where SBP has to look for a donor in the event that a settlement is reached without payment by Google, but this does not affect the interests of the persons on whose behalf SBP is acting in these proceedings. After all, it has been agreed between SBP and the participants in these proceedings that the participant is not liable to pay any compensation to SBP, regardless of the outcome of these proceedings.

9.13.5. From the fact that Google finds it unacceptable that LCHB will have access to information from these proceedings (article 6.2 of the funding agreement between SBP and LCHB) and that LCHB could use that information in other legal proceedings (article 4.2.1 of the same funding agreement) it cannot, without further substantiation, which is lacking, be inferred that SBP would have no control over its legal actions or, in a more general sense, that the interests of the persons on whose behalf SBP is acting in these proceedings are not in safe hands with SBP. After all, Google's defence focuses on its own interest, which is not a subject of the admissibility requirements that the WAMCA regime imposes on a claimant in a collective action (in this case: SBP).

¹³ Amsterdam District Court, 25 September 2024, ECLI:NL:RBAMS:2024:5972, grounds 3.9 and 3.10

9.14. SBP has furthermore argued at the hearing, without being contradicted, that article 1.7 of the funding agreement it has entered into with LCHB states that LCHB understands and accepts that it cannot give instructions to SBP on the conduct of the case and any settlement that might be reached. At this point too, it would have been up to Google to give substance to its defence about LCHB's role in decisions about the conduct of these proceedings.

9.15. Prior to the hearing, Google has argued that SBP possibly has no control over the legal actions, because the terms and conditions of the participants' agreement provide that SBP may terminate the mandate for this collective action if it no longer sees a realistic chance of obtaining damages from Google. Since LCHB has an interest in obtaining damages in these proceedings, SBP will make the realistic possibility of continuing the lawsuit dependent on LCHB's interest, all this according to Google.

9.15.1. In this regard, SBP has argued without being contradicted that termination of the participants' agreement for compelling reasons (as referred to in article 408 (2) of Book 7 DCC) was included to clarify that a participants' agreement may be terminated if the objective can no longer be achieved.

9.15.2. It is obvious and - contrary to Google's argument - says nothing about the legal relationship with the funder either, that in such a situation the participant can or need no longer be bound by SBP or these proceedings (and the related rights and obligations of that participant regarding the way in which Google collects and processes the personal data). It strengthens that participant's interest, because, by terminating the participants' agreement with SBP, he or she will have the opportunity, should he or she wish to do so, to bring proceedings on his or her own behalf against Google on the alleged breach of privacy.

9.15.3. SBP has further argued, without being contradicted, that that decision (i.e. on the termination of the participants' agreement) is for SBP to make and does not depend on the interest of the funder (LCHB) in obtaining damages in these proceedings. It would have been Google's duty to further detail its defence that SBP does not have sufficient financial resources. By failing to do so, this defence is dismissed as insufficiently reasoned.

9.16. It cannot be inferred from the facts and circumstances of this case that SBP has insufficient resources to conduct these proceedings or that it has insufficient control over them.

9.17. SBP therefore meets the guarantee requirement of article 305a (2) (c) of Book 3 DCC. This does not alter the fact that certain parts (e.g. about the remuneration to be paid LCHB) of the funding agreement between SBP and LCHB, may still be an item of discussion in the further proceedings.

control over legal action SMC

9.18. Google has argued that SMC should be ruled to have no cause of action for the following reasons - briefly put and in view of what has been held in 9.10 - mainly as argued by Google at the hearing:

- (i) SMC has not been transparent about the funder. In the summons, SMC has stated that a funding agreement was signed by SMC. This appears to be incorrect, as the funding agreement between SMC and Eaton Hall was not signed until 2024.

- (ii) SMC has mainly based the collective action on Android smartphones on a study by Professor Leith. This study appears to have been commissioned (and funded) by G&E, which subsequently looked for a foundation for the purpose of bringing an action in the Netherlands
- (iii) A shareholder, also managing director, of G&E is a director of Eaton Hall and G&E is the law firm of Eaton Hall.
- (iv) Eaton Hall is a special purpose vehicle, part of Foreign Funding Advisors LLC (hereinafter: FFA), a legal entity located at the same address as G&E and also Eaton Hall. Actually, FFA is paying the legal fees and litigation costs for these proceedings, but it is not a party to the funding agreement between SMC and Eaton Hall.
- (v) All these aspects are difficult to reconcile with each other, because SMC has also argued that it can use G&E's experience, but that role is much more prominent.
- (vi) The financing agreement in certain respects limits SMC's control over the legal actions brought by it.

9.19. It cannot be inferred from these defences by Google that SMC has no or inadequate control over the legal actions brought by it or that the interests of the persons on whose behalf SMC acts in this collective action are not, or not adequately, safeguarded at SMC.

9.19.1. In grounds 6.7 to 6.7.3 the special situation in which SMC found itself after SBP had brought its collective action, has been addressed. It follows from SMC's submissions that it was in contact with G&E and with Eaton Hall about the collective action in the Netherlands and its funding. This was set out in the funding agreement between SMC and Eaton Hall in the first quarter of 2024, i.e. after SMC's summons. Although SMC's summons states that that agreement had already been signed, this in itself is insufficient reason to rule that SMC's action should be ruled inadmissible. Indeed, it follows from SMC's undisputed statements that it had reached agreement with Eaton on litigation funding for these proceedings before the writ was issued. There is nothing to show that this was different. There is no further evidence, nor has it been specifically argued by Google, that the interests of the persons whose interests SMC is defending in this collective action, are insufficiently safeguarded because of the conclusion of a funding agreement after the summons had been issued.

9.19.2. G&E's role is clear. It funded a study by Professor Leith - according to SMC in consultation with the latter, and shared this study with SMC in support of SMC's collective action on behalf of all Android smartphone users in the Netherlands. It is further established that G&E also has a decisive vote in Eaton Hall, SMC's ultimate litigation funder, and that Eaton Hall is part of a larger fund through which G&E funds other collective actions in more countries. Because of those different class actions, G&E has a lot of experience with large claims settlements, according to SMC. None of this has been disputed by Google. The experience of G&E can also be seen as an additional safeguard of the interests of the individuals SMC is standing up for in this collective action. In any case, Google has not stated in concrete terms why all this means that the interests of the persons for whom SMC is standing up in these proceedings are not safeguarded by SMC.

9.19.3. According to Google, G&E is a service provider engaged by SMC that is not independent or autonomous from the litigation funder (Eaton Hall). As a result, SMC is acting in violation of Principle III, Elaboration 4 of the 2019 Claimcode, according to Google. This defence does not hold. SMC has argued that it can make use of G&E's experience. This does not show that G&E is a service provider to SMC (or its lawyers). It would have been up to Google to give further

substance to its explanation of G&E's role. The same applies to G&E's role as Eaton 's lawyer. Without further substantiation, which is lacking, it cannot be ruled that, as a result, the interests of the persons on whose behalf SMC - funded by Eaton Hall - is conducting this collective action are not, or not sufficiently, safeguarded.

9.20. Google has furthermore put a number of provisions in the funding agreement between SMC and Eaton Hall up for discussion:

-
- In view of the above, article 3.2 is "*a mere formality*";
- It follows from article 6.1 that SMC must transfer all proceeds from these proceedings to an escrow account of G&E and that the latter will be responsible for the distribution of any amounts awarded. However, G&E is not a party to the funding agreement or these proceedings and has a conflicting interest (namely in the matter of the proceeds of those awarded amounts). This is unacceptable; Articles 7.1 - 7.3 restrict SMC's freedom and ability to independently reach a settlement.

9.21. These articles from the funding agreement between SMC ("*Foundation*") and Eaton Hall ("*Funder*") read as follows:

"(...)

Article 3 Role of the Foundation and no influence by the Funder

3.2 For the avoidance of doubt, the Funder shall not exercise control over the Claims [SMC's legal claims in these proceedings, district court] or the Proceedings, nor shall it seek to influence bureau Brandeis to cede such control.

(...)

Article 6 Recovery

6.1 The Foundation shall use its best efforts to direct all payments, regardless of whether in the form of cash, securities or any other form of property, by any Defendant [Google, district court] or adverse party to or for the benefit of the Foundation or any of the Group Members [the persons who have registered as participants with SMC, district court] to an escrow account designated by the Funder's counsel, who shall have the obligation to disburse funds as required by this , by law, by court order or by any agreements entered into with any Group Member.

(...)

Article 7 Settlement

7.1 The Foundation shall immediately inform the Funder (or cause bureau Brandeis or G&E to inform the Funder) of any proposed Settlement offers or proposals made by or on behalf of the Defendants.

7.2 The Foundation will actively consider and seek to initiate (subject to provisions of this section 7.2 and 7.3) offers of Settlement where appropriate to do so. If the Foundation wishes to make a Settlement offer or proposal of any kind in respect of the Claim and/or the Proceedings in whole or in part, or is required by the court to attempt to settle, before making such proposal it shall notify the Funder in writing together with written reasons and shall consult the Funder.

7.3 Notwithstanding the foregoing and subject to Section 3, the Funder may propose to the Foundation that it explore or pursue a Settlement, and that it seeks advice from its legal counsel to that end.

(...)

9.22. Google's specific views on the funding agreement between SMC and Eaton Hall (as set out in 9.20) are dismissed.

9.22.1. Google has not presented sufficient facts and circumstances from which it can be inferred that SMC cannot exercise control over the legal actions brought. The legal

relationships between G&E and Eaton Hall are insufficient for that purpose, as has also been held in 9.19 - 9.19.3 above.

9.22.2. It reasonably follows from article 6.1 of the funding agreement between SMC and Eaton Hall that SMC should transfer any amounts of money awarded in these proceedings (by judgment or as part of a settlement) to a bank account designated by G&E and that G&E should arrange for distribution to those entitled to such amounts. Under the circumstances, this is not an unacceptable construction, bearing in mind that G&E is a law firm and in that capacity, including in the U.S., will have to comply with certain duties of care regarding payments into its escrow account. However, a judgment or settlement agreement between SMC and Google will have to be included, specifying the distribution of the amount of money among those entitled to it (the "*Aggrieved Parties*" or "*Group Members* ") and Eaton Hall (i.e. G&E). This will subsequently be subject to a further debate and decision in due course. At this stage, it cannot result in the inadmissibility of SMC's action or the need to amend the funding agreement on this point.

9.22.3. It reasonably follows from articles 7.1 and 7.2 of the funding agreement between SMC and Eaton Hall that Eaton Hall must be informed by SMC about any attempts at reaching a settlement, as well as about any settlement proposal by Google. Eaton Hall's purpose in that respect is reasonable and customary: it wishes to be informed of any settlement in proceedings it is funding. It would have been up to Google to explain in more detail why such a duty of disclosure (of a funded legal entity towards the funder) means that this acts as a restriction on SMC's ability to independently arrive at a settlement. Without such further substantiation, which is lacking, this defence does not hold.

9.22.4. Article 7.3 of the same funding agreement states that Eaton Hall "*may propose to the Foundation that it explores or pursue a Settlement, and that it seeks advice from its legal counsel to that end*". SMC argued at the hearing, without being contradicted, that this refers to SMC's law firm, not to G&E. This explanation by SMC appears reasonable. Indeed, the words "*if*" and "*its*" in that phrase refer to SMC ("*the Foundation*"). In that sense, therefore, the control over attempting to reach a settlement remains entirely with SMC. SMC's law firm, incidentally, has since 1 November 2024 been Rubicon Impact & Litigation B.V., not Brandeis. However, SMC is still assisted by the same lawyers as at the time of the oral hearing.

9.22.5. Pursuant to article 7.3 of the funding agreement, Eaton Hall may submit a proposal to SMC to explore or agree a settlement. Contrary to Google's argument, this cannot reasonably be interpreted as directing in the sense that SMC would not have control over its legal claims.

9.23. Without further substantiation, which is lacking, it cannot be inferred from all of Google's defences about the roles of G&E and Eaton Hall or SMC's obligations under the funding agreement to Eaton Hall - even when viewed in relation to each other - that SMC has no or insufficient control over the legal claims it has brought. This does not alter the fact that certain aspects) of the funding agreement between SMC and Eaton Hall (e.g. on the transfer of any payments of awarded damages to an escrow account of G&E, and on the fee to be paid to Eaton Hall) may still be the subject of debate in the further proceedings.

Re d: publicly accessible website

Website SBP

9.24. Google has argued that, at the time of SBP's summons, no information was provided on that party's website about the remuneration of the board of directors. SBP has argued at the hearing, without being contradicted, that this information has since been posted on its website. Remedying such a defect during the proceedings should be possible and SBP has done so. The fact that at the time of the summons no information could be found on SBP's website about the directors' remuneration is therefore insufficient to declare SBP's action inadmissible pursuant to article 305a (2)(d) of Book 3 DCC.

Website SMC

9.25. Google has argued that no information about this collective action was available on SMC's website at the time of the summons, which, according to Google, is in breach of the provisions of article 305a (2) (d) (7) of Book 3 DCC.

9.25.1. First and foremost, it is noted that further information on this collective action can now be viewed on SMC's website and that SMC has set up a special website for that purpose. In that sense SMC therefore meets the requirement of article 305a (2) (d) (7) of Book 3 DCC. This point 7 does not stipulate that the foundation's website must already contain specific or explicit information about the collective action at the time the summons is served, nor does such follow from the legislative history. Article 305a (2) (d) (7) of Book 3 DCC does however require that an overview is provided of the state of affairs in pending actions and the results thereof. SMC's website satisfies this requirement.

9.25.2. The other requirements stipulated in article 305a (2) (d) of Book 3 DCC regarding a claimant's website have also been met by SMC.

Re e: sufficient experience and expertise

In the case of SBP

9.26. Google has extensively argued that SBP does not have sufficient experience and expertise to conduct these proceedings. To that end, Google has argued that:

- (i) LCHB itself has gained experience in proceedings against Google, and that, for that reason, the appearance exists that SBP's legal team and LCHB share information with each other.
- (ii) LCHB may engage third parties to provide services to SBP without opposition from SBP.
- (iii) SBP is acting in violation of the Claimcode 2019, because two of its directors are also directors of other foundations that have initiated collective actions and are funded by LCHB.

9.27. It cannot be inferred from these defences by Google that SBP has no or insufficient experience and expertise to conduct these proceedings or that the interests of the persons on whose behalf SBP is acting in this collective action are not, or not sufficiently, safe in the hands of SBP.

9.27.1. Google was also a party to the U.S. proceedings in which LCHB acted as counsel. Google should have provided specific examples for its defence that information from those U.S.

proceedings may have been shared with SBP or SBP's lawyers, for example by pointing out a document from the U.S. proceedings that was subject to confidentiality, and that was nevertheless submitted by SBP. In the matter of documents from those U.S. proceedings to which confidentiality does not apply, it cannot be perceived - without substantiation, which is lacking - why SBP should not have access to these. Google's apparent suspicion that information, or confidential information, is shared by LCHB with SBP's legal team is insufficient for the conclusion that SBP has insufficient experience and expertise to conduct these proceedings.

9.27.2. In addition, it is not in breach of any regulations for SBP to have acquired knowledge and expertise from third parties about the way in which Google collects and processes personal data, as well as other relevant information about Google for these proceedings. All Google's defences on that point are irrelevant and are therefore dismissed.

9.27.3. The role Consumentenbond and CCS in these proceedings has already been dealt with in 8.10 - 8.13. LCHB providing funding to CCS and Consumentenbond is irrelevant for the purpose of this collective action.

9.27.4. Google has failed to indicate which passage of the 2019 Claimcode SBP is supposed to have breached by the different functions of its directors. SBP has argued without being contradicted that the Claimcode does not stipulate anything about a combination of functions of directors of claim organisations, nor is the court aware of any regulations prohibiting such a combination of directorships. It cannot be inferred from all this that the interests of the persons on whose behalf SBP is acting are not safeguarded by SBP.

9.28. It is also noted that SBP was incorporated on 30 December 2021 and that its founders have also been active in the past in other ways regarding the protection of the privacy of natural persons. Furthermore, SBP is assisted in these proceedings by two law firms that also act in other collective actions and one of which specialises in privacy law. These circumstances support SBP's argument that it has the experience and expertise to conduct this collective action on behalf of the individuals mentioned by it.

9.29. The case file also gives no rise to the conclusion that SBP has no or insufficient experience and expertise to conduct these proceedings. SBP therefore satisfies the guarantee requirement of article 305a (2)(e) of Book 3 DCC.

In the case of SMC

9.30. Google has raised no substantive defence based on WAMCA law from which it can be inferred that SMC would have no, or not enough, experience and expertise to conduct these proceedings. The dependence on G&E as alleged by Google regarding the expertise on the processing of personal data on Android smartphones does not yet mean that SMC is lacking sufficient experience and expertise to bring a collective action and act in court. Moreover, the same applies to SMC as to SBP, namely that it is not in breach of any regulations to have acquired third-party knowledge and expertise on how Google collects and processes personal data, and other relevant information about Google for these proceedings. All Google's defences on that point are irrelevant and are therefore dismissed.

9.31. The case file likewise does not justify the conclusion that SMC has no or insufficient experience and expertise to conduct these proceedings. SMC therefore meets the guarantee requirement as stipulated in article 305a (2) (e) of Book 3 DCC.

Re f: the funder must not be a competitor of, or be dependent on, the counterparty

9.32. This section was included in the law following the transposition of the Representative Actions Directive into national law. The legislative changes entered into force on 1 July 2023, and apply to writs of summons initiating collective actions after 25 June 2023¹⁴. Article 305a (2) (f) of Book 3 DCC applies only in collective actions in which the legal claims concern the protection of an interest of persons, as listed in Annex I to the Representative Actions Directive.

9.33. The legal actions brought by SBP and SMC are based on the GDPR, unfair commercial practices and consumer law. These schemes are listed in Annex I to the Representative Actions Directive. SBP's and SMC's were issued after 25 June 2023, so that in this case the requirement of article 305a (2) (f) of Book 3 DCC has to be assessed.

9.34. Google has argued that SBP's funder is financially dependent on LCHB, and that SBP's funder is therefore dependent Google - or in any case on Alphabet Inc. and Google LLC, for LCHB has conducted several class actions in the U.S. against Alphabet Inc. and Google LLC. Recently, Alphabet Inc. and Google LLC on the one hand and a claimant on the other reached a settlement in a class action, part of which will benefit the class action lawyers. The amount in compensation payable for the litigation fees in that settlement amounts to well over 19 million. LCHB may be dependent on Google as a result, something that runs contrary to the 2019 Claimcode. Combined with all the other circumstances mentioned, this should lead to SBP's action being declared inadmissible, all this according to Google.

9.35. This defence by Google is dismissed. The fact that Alphabet Inc. and Google LLC reimbursed the legal costs of an opposing party assisted by a lawyer does not yet make that lawyer (SBP's funder in these proceedings) dependent on Alphabet Inc. and Google LLC as referred to in article 305a (2) (f) of Book 3 DCC.

9.36. It follows from the above that SBP and SMC both meet the guarantee requirements as stipulated in article 305a (2) (a-f) of Book 3 DCC.

Interim conclusion admissibility requirements of article 305a (1) and (2) of Book 3 DCC

9.37. SBP and SMC both meet the guarantee requirements of article 305a (2) of Book 3 DCC (see 8.21 on representativeness and 9.36 for the cumulative other guarantee requirements). Consequently, the provisions of article 305a (1) of Book 3 DCC are also satisfied.

10. Admissibility requirements from article 305a (3) of Book 3 DCC

10.1. Article 305a (3) of Book 3 DCC stipulates that the directors (founders and current directors) of the claimant legal entities must not have a profit motive, that the collective action

¹⁴ The amendments to the law (both Article 305a of Book 3 DCC and Book III, Title 14A DCCP) further to the provisions of the above-mentioned Representative Actions Directive apply to collective actions instituted after 25 June 2023 (see Bulletin of Acts and Decrees 2022, 459 article V).

must have a close connection with the Dutch legal sphere, and that the claimant legal entity has entered into consultations with the defendant before the collective action was started.

10.2. There is no evidence whatsoever that the founders or directors of SBP and SMC had or have a profit motive in incorporating those foundations, nor has it been shown that the directors of both SBP and SMC are involved in the economic (or trading) activities of the foundations' litigation funders. Both foundations therefore meet the requirement of article 305a (3) (a) of Book 3 DCC.

10.3. The close connection with the Dutch legal sphere has not been questioned by Google, while, moreover, this is abundantly clear from the definitions of the persons for whom SBP and SMC are acting in this collective action. For both SBP and SMC, the court finds that the provisions of article 305a (3) (b) of Book 3 DCC are met.

10.4. Google has acknowledged at the hearing that it was invited to have consultations by SMC prior to the issuing of the summons. Google's defence that SMC did not "*attempt to pursue its claims by having consultations with the defendant*" therefore fails. SMC made this request on 23 November 2023, i.e. 19 days before its summons in this collective action was due. Contrary to Google's argument, it cannot be inferred from that short deadline that SMC did not have the interests of its alleged members in mind. SMC has thus complied with the consultation requirement. The fact that SMC did not yet have any identifiable members at that time does not automatically alter all this, for at a later point in time, when SMC did have members, consultations were held after all.

10.5. SBP and Google had consultations prior to the summons, which did not result in a settlement.

10.6. All the requirements of article 305a (3) of Book 3 DCC have therefore been met by both SBP and SMC.

11. Interim conclusion article 1018c (5) (a) DCCP

11.1. It follows from the above that SBP and SMC meet the admissibility requirements of Article 3:305a (1-3) of Book 3 DCC. Thus, they also comply with the provisions of article 1018c (5) (a) DCCP.

12. A collective action is more effective and efficient (article 1018c (5) (b) DCCP)

12.1. Article 1018c (5) opening words and (b) DCCP stipulate that the collective action is not discussed on the merits until and after the court has ruled that the claimant has made it sufficiently plausible that pursuing this collective action is more efficient and effective than bringing an individual action, due to the legal questions of fact and law that are to be answered being sufficiently common, the number of persons whose interests the action seeks to protect being sufficient and, if the claim seeks payment of compensation, those individuals either individually or collectively having a sufficiently large financial interest.

12.2. Google has argued that for the individuals on whose behalf both SBP and SMC are acting, there are no common questions of fact. To that end, Google has argued in accordance with its defence on the similarity of interests (as set forth in 7.4 - 7.4.3). In addition,

Google takes the view that there are no common questions of law concerning the events alleged by SBP and by SMC.

12.3. These defences by Google do not stand up. The questions of law are the same for all persons on whose behalf both SBP and SMC are acting: is Google's data processing in violation of the various applicable or alleged statutory provisions.

12.4. The factual questions being diverse for groups of users yet to be defined (and possibly also for categories of Google services and products used, such as the Android smartphone with Google Play Services), does not yet cause those factual questions to be insufficiently common for the persons thus categorised. After all, it may be assumed for the persons in categorised groups of users that they are affected in a more or less similar manner, while it can be assessed whether the alleged infringement actually took place for that group of persons.

12.5. Also in view of what has been considered and decided above about similar interests (chapter 7), the foundations have made it sufficiently plausible that pursuing their collective actions is more efficient and effective than individual actions by each of the users of a Google service or product. With regard to the circumstances designated as relevant by article 1018c (5) (b) DCCP, an affirmative ruling has in all cases been given above. It has neither become apparent nor shown that there is reason for a different view when applying article 1018c (5) (b) DCCP.

12.6. The interim conclusion is that under the circumstances of this case, bringing a collective action is more effective and efficient than individual proceedings.

13. The claims are not *prima facie* unfounded (article 1018c (5) (c) DCCP)

13.1. Article 1018c (5) (c) DCCP provides that hearing the collective claim on the merits will take place only if and after the court has ruled that it has not been shown that the collective claim is *prima facie* unfounded at the time the lawsuit is initiated.

13.2. The purpose of this provision is to put an end to a collective claim in exceptional cases even before the substantive hearing, due to its being unfounded. This must then be apparent automatically - so without any further substantive examination - from the claimant's claims and the parties' submissions on them at this stage of the proceedings. It follows from this that, when answering this question, the court shall confine itself to an opinion at first sight (a *prima facie* view).

13.3. Google has argued that it has been shown that SBP's claims are *prima facie* unfounded due to these having become time-barred, since they relate to events that occurred more than five years ago.

13.4. A reliance on claims becoming time-barred cannot cause these to become *prima facie* unfounded as referred to in article 1018c (5) (c) DCCP. A further investigation is required into the statute of limitations regarding claims. This is inconsistent with the nature of a decision on the standing of a foundation in a collective action that must be decided on without any further investigation of the substance of the case.

13.5. This does not alter when the defence of the statute of limitations is considered in conjunction with Google's objection to the ambiguity of SBP's contentions about the events alleged against Google (which have already been addressed above under 5.4 - 5.10 with regard to what right of action applies to SBP's claims).

13.6. Finally, Google has argued at the hearing that SBP has grouped together a large number of separate, essentially unrelated, allegations into one large aggregate claim. That is not what the WAMCA is intended for, which is why SBP's claims are *prima facie* unfounded, according to Google. This defence ignores the required further debate on the substance between the parties, so as to determine whether SBP did indeed set up a collective action based on unrelated allegations against Google. That alone shows that it cannot be ruled that SBP's claims are *prima facie* unfounded.

13.7. Google's defence on the *prima facie* unfoundedness of SBP's therefore does not hold up.

13.8. There is nothing further to show that SBP's or SMC's claims are *prima facie* unfounded.

14. Final observations and the continuation of the proceedings

14.1. It follows from the above that SBP and SMC meet the statutory admissibility requirements of article 1018c (5) DCCP.

14.2. Google has also argued that SBP and SMC have no cause of action under the GDPR because the mandate requirement of article 80 AVG has not been met. This issue was expressly not yet raised at the oral hearing on 22 October 2024. It is obvious that the admissibility requirements under the GDPR will be dealt with first, before any further discussion of the WAMCA regulations in articles 1018d et seq. DCCP. For that reason, SBP and SMC will be given the opportunity to comment on this first, in response to Google's defence in its statement of defence on the standing of SBP and SMC.

14.3. On the subject of article 80 GDPR in WAMCA proceedings, the Rotterdam District Court has expressed its intention¹⁵ to submit a number of questions to the European Court of Justice for a preliminary ruling. This may also be relevant to these proceedings. The parties are therefore given the opportunity to comment in writing on their preferred continuation of these proceedings, in the event that the Rotterdam District Court should indeed decide to make a request for a preliminary ruling.

14.4. Thereafter, a decision will be made on the continuation of these proceedings.

14.5. All further decisions are stayed.

15. The decision

The district court

15.1. schedules the case for **Wednesday 26 February 2025**

¹⁵ Rotterdam District Court, 13 November 2024, ECLI:NL:RBROT:2024:11322

- for SBP and SMC to file a motion on the continuation of these proceedings in response to the proposed request for a preliminary ruling that the Rotterdam District Court is going to submit to the European Court of Justice on article 80 GDPR, after which Google may respond in writing within a period of 4 weeks; and
- for SBP and SMC to file a motion in response to Google's defence concerning article 80 GDPR,

15.2. defers any further decisions.

This decision was given by H.J. Schaberg, M. Singeling, A.J. Wolfs, judges, assisted by R.E.R. Verloo, clerk, and was pronounced in open court on 15 January 2025.

Annex I: claims SBP

“The Foundation requests the district court, by provisionally enforceable judgment to the extent applicable and possible in law:

Exclusive representative

1. to designate the Foundation as the exclusive representative as referred to in article 1018e (1) DCCP.

Possibility to opt in and opt out

2. to rule that, in accordance with article 1018f (1) DCCP, any Member residing or domiciled in the Netherlands may give written notice to the registry of the court, within a period to be determined by the court of at least one month after the announcement (pursuant to article 1018f (3) DCCP) of the decision whereby the Foundation is appointed as the exclusive representative of the Members, that he or she wishes to be released from having his or her interests represented in this collective action.
3. to rule that, in accordance with article 1018f (5) DCCP, any Member who is not residing or domiciled in the Netherlands may give written notice to the registry of the court, within a period to be determined by the court of at least one month after the announcement (pursuant to article 1018f (3) DCCP) of the decision whereby the Foundation is appointed as the exclusive representative of the Members, that he or she consents to having his or her interests represented in this collective action.

Declaratory decisions

4. to rule that Alphabet, Google LLC, Google Ireland and Google Netherlands, both jointly and/or each of them individually, has and/or have during the Relevant Period, or at least during a period to be determined by your court in the proper administration of justice, acted unlawfully toward the Foundation's Members, and are liable for this, by:
 - a. in violation of section 10 Wbp and/or article 5 GDPR and/or article 25 GDPR, failing to have limited the processing of the Members' personal data to what is strictly necessary and/or to have taken appropriate technical and organisational measures for the purpose of effectively implementing the principles of data protection and by not having built in insufficient safeguards in compliance with the provisions of the Wbp and/or the GDPR and/or to protect the rights of the Members;
 - b. in violation of sections 33 and 34 Wbp and/or articles 12 - 14 GDPR and/or section 11.7a (1) (a) Tw, not having informed the Members, or at least not in accordance with their statutory duty, and/or by having misled the Aggrieved Users about:
 - (i) the nature and extent of Google's data processing practices;
 - (ii) the processing of their location data;

- (iii) the tracking of their internet activities, among other things through the use of cookies and other technologies;
 - (iv) the tracking of their internet activities, among other things through the use of cookies and other technologies, even when the Incognito mode is switched on;
 - (v) sharing their personal data with third parties in the context of the RTB process
 - c. in violation of article 6 (1) GDPR and/or section 8 (1) Wbp and/or section 11.7a (1) (b) Tw, having processed personal data of the Members without a valid ground for processing, by;
 - (i) combining the personal data of the Members, obtained through the use of various Google products and services, without the Members having consented thereto and without any other valid ground for processing;
 - (ii) processing the Members' location data, without the Aggrieved Users having consented thereto and without any other valid ground for processing;
 - (iii) tracking the internet activities of the Members with the use of cookies and similar technologies, without the Members having consented thereto;
 - (iv) sharing personal data of the Members with third parties in the context of the RTB process, without the Members having consented thereto and without any other valid ground for processing.
 - d. in violation of the prohibition on processing of section 16 Wbp and/or article 9 GDPR, having processed special categories of personal data of the Members without their express consent and without being in a position to make use of any other valid ground for exception;
 - e. in violation of the transfer prohibition of article 44 GDPR and section 76 Wbp, having transferred personal data of the Members to the U.S.; and
 - f. having engaged in commercial practices towards the Members that are unfair within the meaning of article 193b (1) of Book 6 DCC and/or misleading within the meaning of 193c of Book 6 DCC and/or aggressive within the meaning of article 193h of Book 6 DCC.
- 5. to rule that Alphabet, Google LLC, Google Ireland and/or Google Netherlands collectively and/or each of them individually has been and/or have been unjustly enriched at the expense of the Members during the Relevant Period, or in any case for a period to be determined by this court in the proper administration of justice.
- 6. To rule that Alphabet, Google LLC, Google Ireland and Google Netherlands, jointly and/or individually, during the Relevant Period, or in any case during a period to be determined by the court in the proper administration of justice, is and/or are jointly and severally liable towards the Foundation's Members on the grounds of the unlawful conduct and/or unjust enrichment described in this summons, for the damage suffered and yet to be suffered by the Members as a result thereof.

Damages

7. to order Alphabet, Google LLC, Google Ireland and/or Google Netherlands jointly and/or severally to compensate the Members for the damage suffered by the Aggrieved Users and:

the immaterial damage

- principally, to assess and set the immaterial damage at an amount of EUR 750, or in any case at an amount to be determined by the court in the proper administration of justice;
- in the alternative, to assess and set the immaterial damage at an amount of EUR 62.50 for each year during the Relevant Period in which a Member made use one of Google's products and services at any moment, or in any case at an amount to be determined by the court in the proper administration of justice;
- as a second alternative, to rule that the immaterial damage will be assessed in separate follow-up proceedings and be settled in accordance with the provisions of article 612 DCCP and to refer the case to the aforementioned follow-up proceedings;

the material damage

- principally, to assess and set the material damage at the profits, or a part of the profits, enjoyed by Google (pursuant to article 104 of Book 6 DCC), or in any case at an amount to be determined by the court in the proper administration of justice;
- in the alternative, to rule that the material damage will be assessed in separate follow-up proceedings and settled in accordance with the provisions of article 612 DCCP and to refer the case to the aforementioned follow-up proceedings;

all this to be increased by statutory interest from 1 March 2012, being the start of the Relevant Period, until the day full payment is made, or in any case to be increased by the statutory interest from 1 March of each year since 2013 on the amount of the damages due for the previous year, until the day full payment is made (*in such a way that statutory interest is due on amount X for the period 1 March 2012 up to the last day in February in 2013 from 1 March 2013 to the day full payment is made on amount X for the period 1 March 2013 up to the last day in February in 2014 from 1 March 2014 up to the day of full payment is made on amount X for the period 1 March 2014 up to the last day in February 2015 from 1 March 2015 up to the day full payment is made, etc.*).

Orders, injunctions, reporting obligation and penalty payments

8. to require Alphabet, Google LLC, Google Ireland and Google Netherlands jointly and/or individually to comply with their legal obligations, in particular by imposing the following orders and injunctions:

- (i) to order Alphabet, Google LLC, Google Ireland and/or Google Netherlands, both jointly and/or individually, to comply with the principle of data minimization obligation and the PbD&D obligation;
- (ii) to prohibit Alphabet, Google LLC, Google Ireland and Google Netherlands, both jointly and/or individually, from applying the default setting that personal data obtained from the Members for one service, can be processed for the benefit of another service, unless valid consent to do so has been obtained from the Members;
- (iii) to prohibit Alphabet, Google LLC, Google Ireland and Google Netherlands, both jointly and/or individually, from causing (a) the 'Web and App activity', the 'YouTube history' and/or the 'Ad personalization' settings to be on by default, as well as (b) all other settings that involve the processing of personal data of the Members for the purpose of providing personalized ads, personalizing search results, and/or other Google products and services;
- (iv) to prohibit Alphabet, Google LLC, Google Ireland and Google Netherlands, both jointly and/or individually, from tracking the Members' online behaviour by using third-party cookies;
- (v) to prohibit Alphabet, Google LLC, Google Ireland and Google Netherlands, both jointly and/or individually, from processing the location data of the Members, unless such processing of location data is strictly necessary for the provision of the service for which the location data is processed;
- (vi) to prohibit Alphabet, Google LLC, Google Ireland and/or Google Netherlands, both jointly and/or individually, from processing the location data of the Members for advertising purposes, unless a Member has given valid consent to do so;
- (vii) to prohibit Alphabet, Google LLC, Google Ireland and Google Netherlands, both jointly and/or individually, from sharing personal data of the Members with third parties in the context of RTB auctions, unless a Member has given valid consent to do so;
- (viii) to order Alphabet, Google LLC, Google Ireland and Google Netherlands, both jointly and/or individually, to comply with the general principles governing the international transfer of data (Chapter V GDPR), more in particular by:
 - (a) taking additional measures, so as to ensure that the personal data of the Members that Google transfers to the U.S. enjoy a level of protection that is broadly in line with the level of protection granted in the EU; or
 - (b) ceasing the transfer of the personal data of the Members outside to the U.S.; and
 - (c) returning the personal data of the Members that were transferred to the U.S. during the Relevant Period without adequate, additional measures having been taken, to Google Ireland and/or Google Netherlands, or by deleting the Members' personal data.
- (ix) to order Alphabet, Google LLC, Google Ireland and Google Netherlands, both jointly and/or individually, to comply with the orders and injunctions listed in

(i) - (viii) within a period of six months from the date of the judgment to be given by the court in these proceedings, and to make this order subject to the obligation to report on the matter to the Foundation, by submitting a thorough written substantiation within one week after the expiry of the above-mentioned period, showing that and how Google complies with the orders and injunctions, with concrete evidence thereof.

9. to order Alphabet, Google LLC, Google Ireland and/or Google Netherlands, both jointly and individually, to pay a penalty of EUR 5,000,000 for each individual violation of the relief claimed in 8 (i) - (ix), plus EUR 1,000.000 for each day that a violation continues, with a maximum of 4% of the worldwide annual sales of Alphabet, Google LLC, Google Ireland and/or Google Netherlands in the financial year preceding the judgment in these proceedings, and for a violation of the relief claimed in 8 (i) with a maximum of 2% of the worldwide annual sales of Alphabet, Google LLC, Google Ireland and/or Google Netherlands in the financial year preceding the judgment in these proceedings.

Reimbursement of the costs of the proceedings and other costs

10. to order Alphabet, Google LLC, Google Ireland and Google Netherlands, both jointly and/or individually, to reimburse the Foundation for:
 - a. the reasonable and proportionate legal costs and other costs of these proceedings, pursuant to article 1018I (2) DCCP, consisting in the full legal costs incurred by the Foundation, or in any case the legal costs incurred pursuant to article 237 DCCP, plus the statutory interest as from the date of the summons, until the date payment is made in full;
 - b. the full (extrajudicial) costs incurred by the Foundation pursuant to article 96 of Book 6 DCC, to be increased by the statutory interest as from the date of the summons, until the date payment is made in full;
 - c. the full amount of the agreed fee that is to be paid by the Foundation to the litigation funder, pursuant to article 96 of Book 6 DCC and article 1018I (2) DCCP;
 - d. the full costs to be incurred by the Foundation for the settlement of damage, in an amount further to be assessed, which amount, if exceeded, shall be supplemented by Alphabet, Google LLC, Google Ireland and Google Netherlands jointly and/or individually, with the remaining amount to be repaid to Alphabet, Google LLC, Google Ireland and Google Netherlands after settlement.

plus the subsequent costs in the amount of EUR 173 without service, or EUR 271 in the event that service has to be effected, all this to be paid within fourteen days after the date of the judgment, and - in the event that the (additional) costs are not paid within the period stipulated - to be increased by the statutory interest on the (additional) costs, to be calculated from the aforementioned term for payment, until the day payment is made in full.”

Annex II: claims SMC

“The Foundation (requests) the district court (...) to rule as follows, by provisionally enforceable judgment to the extent possible (...), noting that, whenever” Google” is mentioned, this shall in each case also include each of the parties Alphabet Inc., Google LLC, Google Ireland Limited and Google Netherlands B.V. individually:

Claim I: exclusive representative

- I. To designate the Foundation as the exclusive representative as referred to in article 1018e (1) DCCP.

Claim II: definition Narrowly-Defined Group

- II. To rule that the present collective action concerns the following group of natural persons within the meaning of article 1018d DCCP:
The group of individuals harmed by Google and consisting of:
 - i. all natural persons;
 - ii. who habitually reside in the Netherlands;
 - iii. who have used an Android smartphone;
 - iv. after 25 May 2018.

Claim III: Possibility to opt in and opt out

- III. To rule that:
 - a. Each member of the Narrowly-Defined Group (or his or her legal representative) residing or domiciled in the Netherlands shall, for a period of three months after the announcement within the meaning of article 1018f (3) DCCP of the decision whereby the exclusive representative is appointed, have the opportunity, by written notice addressed to the registry of the court, to withdraw from the representation of his or her interests in this collective action; and
 - b. Each member of the Narrowly-Defined Group (or his or her legal representative) residing or domiciled in the Netherlands shall, for a period of three months after the announcement within the meaning of article 1018f (3) DCCP of the decision whereby the exclusive representative is appointed, have the opportunity, by written notice addressed to the registry of the court, to consent to the representation of his or her interests in this collective action.

Claims IV and V: Declaratory decisions

- IV. To rule that Google, for reasons stated in the body of this summons, is acting in breach of the fundamental rights referred to in the body of this summons and/or the GDPR and/or the Telecommunications Act (Tw) and/or mandatory provisions of consumer law and has acted unlawfully, or in any case is acting in breach of its statutory duty or duties and/or the generally accepted level of care that may be expected of it;

- V. To rule that each of Alphabet Inc., Google LLC, Google Ireland Limited and Google Netherlands B.V. shall be jointly and severally liable to each member of the Narrowly-Defined Group pursuant to article 82 GDPR and/or article 193j (2) of Book 6 DCC and/or article 162 of Book 6 DCC, or in any case article 212 of Book 6 DCC, for the damage suffered and yet to be suffered by each of those members;

Claims VI and VII:

- VI. To prohibit Google from processing personal data and/or being guilty of acting in violation of the legal orders and injunctions as referred to in claim IV;
- VII. And to order that Google shall provide the Foundation with an opinion from a chartered accountant registered in the Netherlands, confirming that the injunction referred to in VI has been complied with and, if such is not the case, to explain in respect of how many users said injunction has not been complied with and in which period after the judgment to be rendered in this matter;

Claims VIII and IX: penalty payment

- VIII. To rule that the above injunction as referred to in VII be imposed subject to the forfeiture of a penalty of EUR 10,000, or at least an amount to be determined by this court in the proper administration of justice, for each day that such violation continues, with a maximum of EUR 10,000,000, or at least an amount to be determined by this court in the proper administration of justice;
- IX. To rule that (i) the above injunction as referred to in VI be imposed subject to the forfeiture of a penalty of EUR 500, or at least an amount to be determined by this court in the proper administration of justice, for each violation of said injunction and of EUR 250, or at least an amount to be determined by this court in the proper administration of justice, for each day that such violation continues, with a maximum of EUR per violation per user, or at least an amount to be determined by this court in the proper administration of justice, (ii) ordering that Google shall cooperate in the process of identifying the users to whom the forfeited periodic penalty payments are due;

Claim X: order for compensation of damage

- X. To order each of Alphabet Inc., Google LLC, Google Ireland Limited and Google Netherlands B.V., jointly and severally, such that payment by one party shall discharge the other, to pay compensation for the damage, both material and immaterial) to the members of the Narrowly-Defined Group, to be assessed according to category as explained in the body of the summons, and if necessary to be assessed later during separate follow-up proceedings and settled according to the law;

Claim XI: manner of settling collective claims

- XI. To rule that:
- a. Google shall pay to the Foundation:
 - v. all amounts to be paid to the Foundation and to the Narrowly-Defined Group pursuant to this claim for relief, and to order that any portion remaining 24 months after payment by Google, or at least a period to be determined by this court in the proper administration of justice, may be distributed by the Foundation to one or more unaffiliated not-for-profit organisations to be designated by the Foundation that are active in the field of consumer protection and/or privacy protection,
 - vi. to be increased by an additional amount, further to be assessed, or in any case to be determined by the court in the proper administration of justice, which will serve to pay for the costs to be incurred by the Foundation of distributing the damages among the members of the Narrowly-Defined Group (hereinafter: "Additional Amount"), stipulating that if and to the extent that any portion shall remain of the Additional Amount after the distribution among the members of Narrowly-Defined Group will be completed and all related costs of the Foundation will have been discharged, shall be refunded to Google within 30 days; and
 - b. The Foundation shall engage the services of a reputable professional claims handler and shall instruct that party to take care of the proper distribution of the amount in damages to be paid by Google to the members of the Narrowly-Defined Group; and
 - c. That the members of the Narrowly-Defined Group who wish to be eligible for payment must agree to a binding advice procedure, whereby a binding advisor will be appointed by the court after consultations with the parties, further to be determined by the Foundation and to be approved by this court;

Claim XII: litigation costs and fees

- XII. To order each of Alphabet Inc., Google LLC, Google Ireland Limited and Google Netherlands B.V., jointly and severally, such that payment by one party shall discharge the other, to pay to the Foundation:
- a. The full legal costs of the Foundation pursuant article 1081 (2) DCCP, or in any case the legal costs actually incurred pursuant to article 237 DCCP, all of these to be increased by the statutory interest from the date that these respective legal costs were incurred, or in any case from a date to be determined by this court in the proper administration of justice, until the date full payment is made, if necessary to be assessed during separate follow-up proceedings; and
 - b. The full costs, or extrajudicial costs, incurred by the Foundation pursuant to article 96 of Book 6 DCC, all of these to be increased by the statutory interest from the date that these respective legal costs were incurred, or in any case from a date to be determined by this court in the proper

- administration of justice, until the date full payment is made, if necessary to be assessed during separate follow-up proceedings;
Which amounts a. and b. jointly still need to be assessed in greater detail; and
- c. The full agreed fee to be paid by the Foundation to the Funder, pursuant to article 96 of Book 6 DCC and article 1018 (2) DCCP, as further to be assessed on the basis of information further to be submitted by the Foundation, all this to be increased by the statutory interest from the date of the judgment to be rendered in this matter until the date full payment is made, if necessary to be assessed during separate follow-up proceedings;
- Or in any case
- d. to structure the collective settlement of the damage in a manner deemed appropriate by this court on the basis of the proposals for a collective settlement of the damage, to be submitted by the Foundation and Google pursuant to article 1018i DCCP."