

Court File No.

FEDERAL COURT PROPOSED CLASS PROCEEDING

B E T W E E N:

(Court Seal)

COURT FILE# T-589-22

PASS HERALD LTD.

Plaintiff

and

GOOGLE LLC, GOOGLE IRELAND LIMITED, GOOGLE CANADA CORPORATION, META PLATFORMS INC., FACEBOOK IRELAND LIMITED, and FACEBOOK CANADA LTD.

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you must prepare a Statement of Defence in Form 171B prescribed by the [Federal Court Rules](#), serve it on the plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court.

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the [Federal Court Rules](#).

Copies of the [Federal Court Rules](#), information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date	<u>16-MAR-2022</u>	Issued by	<u>YOGINDER GULIA</u>
			Local Registrar

Address of local office:	Federal Court 180 Queen St. W. Toronto ON M5V 1Z4
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TO: Google LLC
1600 Amphitheatre Parkway
Mountain View CA 94043
United States of America

AND TO: Google Ireland Limited
Gordon House
4 Barrow Street
Dublin, D04 E5W5
Ireland

AND TO: Google Canada Corporation
111 Richmond St. W
Toronto ON M5H 2G4

AND TO: Meta Platforms Inc.
1 Hacker Way
Menlo Park CA 94025
United States of America

AND TO: Facebook Ireland Limited
4 Grand Canal Quay
Dublin D02 X525
Ireland

AND TO: Facebook Canada Ltd.
661 University Avenue
Suite 1201, 12th Floor
Toronto, ON M5G 1M1

CLAIM

I. DEFINED TERMS

1. In this Statement of Claim, the following terms have the following meanings:
 - (a) “**Advertiser**” means any natural or corporate person in Canada who bought or bid on an Impression.
 - (b) “**Class**” means the Conspiracy Class and the Misrepresentation Class.
 - (c) “***Competition Act***” means the *Competition Act*, RSC 1985, c C-34.
 - (d) “**Conspiracy Class**” means Publishers and Advertisers who used Facebook Tools or Google Tools between September 27, 2018 and the date of certification of this action as a class proceeding, except the Excluded Companies.
 - (e) “**Excluded Companies**” means Facebook and Google.
 - (f) “**Facebook**” means Meta Platforms Inc., Facebook Ireland Limited, Facebook Canada Limited, and all affiliated corporations.
 - (g) “**Facebook Tools**” means any digital display advertising product or service offered by Facebook. This term includes, but is not limited to:
 - (i) Facebook Ads Manager;
 - (ii) Facebook Audience Network (“**FAN**”); and
 - (iii) Monetization Manager.

- (h) **“Google”** means Google LLC, Google Ireland Limited, Google Canada Corporation, and all of their affiliates.
- (i) **“Google Tools”** means any digital display advertising product or service offered by Google. This term includes, but is not limited to:
 - (i) Display & Video 360;
 - (ii) DoubleClick for Advertisers;
 - (iii) DoubleClick for Publishers;
 - (iv) Google AdMob;
 - (v) Google Ads;
 - (vi) Google AdSense;
 - (vii) Google Ad Exchange (**“AdX”**);
 - (viii) Google Ad Manager; and
 - (ix) Google Display Network.
- (j) **“Impression”** means the right to show one display advertisement in one slot on one website or application at one time.
- (k) **“Market”** means the market for digital display advertising other than Non-Intermediated Transactions. For greater certainty, the Market does not include the market for digital search advertising.

- (l) **“Misrepresentation Class”** means Publishers who used Google Tools between April 13, 2016 and the date of certification of this action as a class proceeding, except the Excluded Companies.
- (m) **“Non-Intermediated Transactions”** means transactions in which an Advertiser buys Impressions from a Publisher without any intermediaries.
- (n) **“Plaintiff”** means Pass Herald Ltd.
- (o) **“Publisher”** means any natural or corporate person in Canada who sold an Impression for display on a website or application. For greater certainty, this does not include intermediaries who only resold Impressions for others.
- (p) **“Take Rate”** means the difference between what an Advertiser pays for any given Impression or bundle of Impressions and what the Publisher receives for the Impression or bundle of Impressions.

II. RELIEF SOUGHT

2. The Plaintiff, on behalf of the Class, claims:

- (a) An order certifying this action as a class proceeding and appointing it as the representative plaintiff for the Class;
- (b) A declaration that Google and Facebook engaged in a conspiracy in breach of sections 45 and 46 of the *Competition Act*;
- (c) A declaration that Google and Facebook engaged in bid-rigging in breach of section 47 of the *Competition Act*;

- (d) Damages in the amount of \$1,000,000,000 against Google and Facebook, jointly and severally, for breach of sections 45-47 of the *Competition Act*, pursuant to section 36 of the *Competition Act*;
- (e) A declaration that Google made misrepresentations in breach of section 52 of the *Competition Act*;
- (f) Damages in the amount of \$1,000,000,000 against Google for breach of section 52 of the *Competition Act*, pursuant to section 36 of the *Competition Act*;
- (g) Investigative costs and the costs of this proceeding pursuant to section 36 of the *Competition Act*;
- (h) The costs of this proceeding on a substantial indemnity basis, plus applicable taxes;
- (i) Pre-judgment interest and post-judgment interest; and
- (j) Such further and other relief as this court may deem just.

III. FACTS

A. Overview

3. The market for digital display advertising is central to modern commerce. Millions of times every day, Publishers sell slots on their websites and mobile applications through automated tools. Advertisers purchase the right to advertise in those slots within a fraction of a second through other automated tools. These transactions are mediated by online marketplaces.

4. Google, as the most frequent intermediary of these transactions, does not simply take all bids and pick the best one. Rather, it runs a multi-step auction for digital display advertising that

frequently result in Advertisers with lower bids using Google Tools winning over Advertisers with higher bids not using Google Tools. This hurts Publishers by reducing their revenues. It also allows Google to charge higher commissions to Advertisers, who are forced to use Google Tools to win.

5. In 2014, the industry developed technologies called “Header Bidding” that required all bids to be considered at the same time. Publishers’ revenues increased dramatically.

6. Google saw Header Bidding as a serious threat. In a campaign it called “Jedi”, it took a variety of steps to “kill” Header Bidding.

7. In March 2017, Facebook announced that it would embrace Header Bidding, which would give Publishers a potent alternative to using Google Tools. This would have dramatically increased competition in the Market, benefitting both Publishers and Advertisers.

8. Google did not want the competition, especially from a significant competitor like Facebook. As a result, in September 2018, it entered into an agreement with Facebook, which it called “Jedi Blue”. This was part of a larger agreement or arrangement pursuant to which Facebook agreed to not use Header Bidding. In exchange, Google agreed to give Facebook a wide variety of advantages in digital display advertising auctions, allowing Facebook to benefit at the expense of other Publishers.

9. The larger agreement or arrangement is a conspiracy between Google and Facebook to rig auctions, allocate markets, and fix and maintain prices in the market for digital display advertising, contrary to the *Competition Act*.

10. As a result of this conspiracy, Publishers and Advertisers suffered significant damages.

11. Additionally, throughout the class period, Google represented that its tools “get the highest yield for every impression” for Publishers and made other similar representations. These were false, as Google implemented a program specifically designed to deprive Publishers of the highest yield for their Impressions and scoop the difference.

B. The Parties

(i) *The Representative Plaintiff & the Class*

12. The Plaintiff, Pass Herald Ltd., is a corporation incorporated under the laws of Alberta. The Plaintiff operates Crowsnest Pass Herald, founded in 1930 and the only locally-owned newspaper in Crowsnest Pass, Alberta. The newspaper is published online at www.passherald.ca.

13. The Plaintiff sells Impressions to be displayed on that website using a Google Tool: Google AdSense. The screenshot below shows the landing page for that website, displaying an Impression sold to Walmart at the bottom. The preview bar at the very bottom in grey shows that another Google Tool – Google Ads – was used to purchase the Impression.



14. The Plaintiff seeks to bring this action on behalf of the Class.

(ii) The Google Defendants

15. Google LLC is a corporation incorporated under the laws of Delaware. Its headquarters is in Mountain View, California.

16. Google Ireland Limited is a corporation incorporated under the laws of Ireland. Its headquarters is in Dublin, Ireland. It is part of the same corporate group as Google LLC.

17. Google Canada Corporation is a corporation incorporated under the laws of Nova Scotia. It has multiple offices in Ontario, including one in downtown Toronto. It is a second-level subsidiary of Google LLC.

18. The business of each of Google LLC, Google Ireland Limited, and Google Canada Corporation is inextricably interwoven with the business of the others. Each is an agent for the others with respect to the conduct described in this Statement of Claim. Collectively, these three companies directly or indirectly offered the services of Google Tools in Canada.

(iii) The Facebook Defendants

19. Meta Platforms Inc. is a corporation incorporated under the laws of Delaware. Its headquarters is in Menlo Park, California. It is the successor corporation of Facebook, Inc., which was also incorporated under the laws of Delaware and had the same headquarters. Meta Platforms Inc. has assumed all of the obligations and liabilities of Facebook, Inc.

20. Facebook Ireland Limited is a corporation incorporated under the laws of Ireland. Its headquarters is in Dublin, Ireland. It is part of the same corporate group as Meta Platforms Inc.

21. Facebook Canada Ltd. is a corporation incorporated under the laws of Canada. It has an office in downtown Toronto. It is part of the same corporate group as Facebook Inc. It is a second-level subsidiary of Meta Platforms Inc.

22. The business of each of Meta Platforms Inc., Facebook Ireland Limited, and Facebook Canada Ltd. is inextricably interwoven with the business of the other. Each is an agent for the other with respect to all of the conduct described in this Statement of Claim. Collectively, these three companies directly or indirectly competed in the Market in Canada.

C. The Market

(i) *Market Structure*

23. The Market is a two-sided market in which Publishers make spaces available on their websites and applications and Advertisers purchase the right to display advertisements in those spaces. The Market can be broken down further into three layers.

(a) **Publisher-Facing Layer:** Publishers generally use publisher ad servers (also known as supply-side servers) or publisher interfaces to ad networks to coordinate selling their Impressions.

(b) **Advertiser-Facing Layer:** Advertisers generally use advertiser ad servers (also known as demand-side servers) or advertiser interfaces to ad networks to coordinate purchasing Impressions for them.

(c) **Middle Layer:** The middle layer conducts the transaction between publisher ad servers or interfaces and advertiser ad servers or interfaces. The tools in the middle layer are rarely directly seen by Advertisers or Publishers.

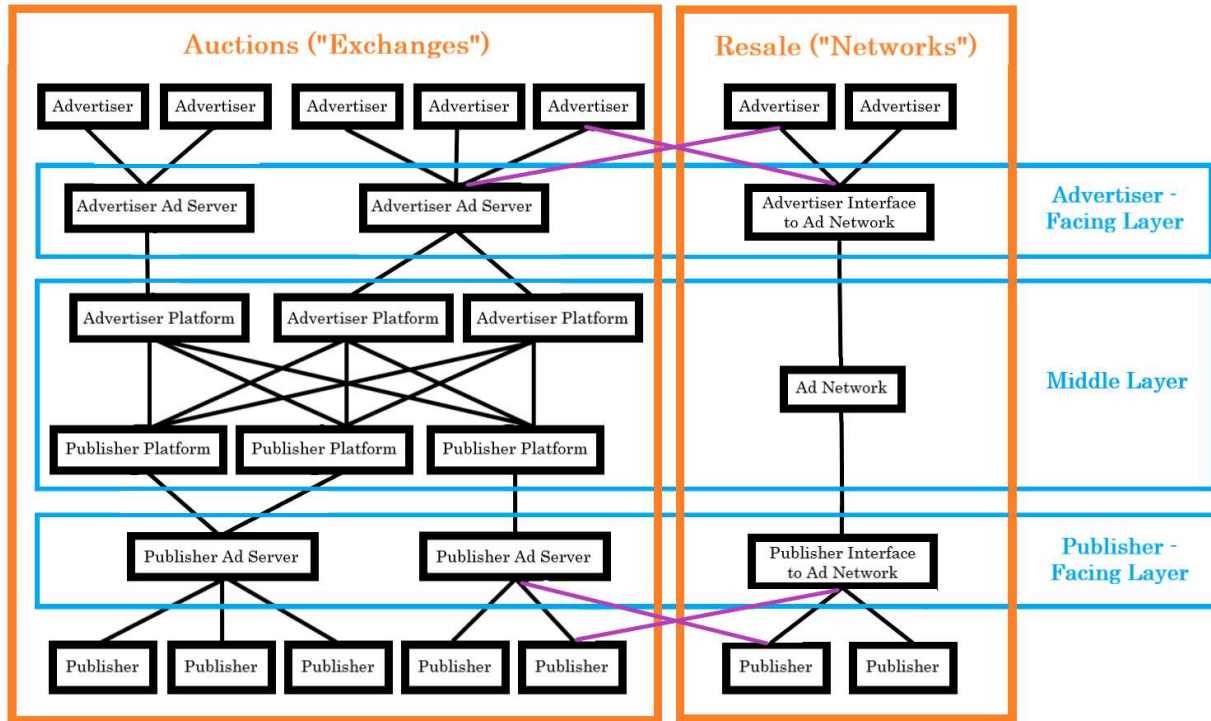
24. Transactions in the middle layer are conducted in different ways. For example, some platforms – usually called exchanges – run auctions in which all advertiser ad servers can bid. Other platforms – usually called networks – purchase from publisher interfaces and then resell to a small number of advertiser interfaces.

25. Inventory can also take different forms. For example, some platforms sell bundles of Impressions for mobile applications. Other platforms allow Advertisers to pay only for each click on their advertisement rather than for the right to display the advertisement.

26. Notwithstanding that both transactions and inventory can take different forms, this is all one market. From the perspective of Publishers and Advertisers, these forms are interchangeable.

27. The figure below is a summary of the structure of the Market. The three blue boxes represent the three layers of the Market, as described above. The orange boxes represent auctions and network transactions, as described above. The purple lines show that both Advertisers and Publishers can choose whether to transact Impressions or have their Impressions transacted through auctions or networks, as explained above.¹

¹ Note that sometimes the black boxes straddle different rows or columns. For instance, sometimes ad servers are just user interfaces of platforms. Sometimes tools have both auction-like and network-like features.



(ii) *Google and Facebook Compete in the Market*

28. Google Tools operate or have operated in every layer of the Market.

- (a) **Publisher-Facing Layer:** DoubleClick for Publishers, Google Ad Manager, and Google AdSense are examples of publisher ad servers. Approximately 90% of digital display advertising passes through these tools.
- (b) **Advertiser-Facing Layer:** DoubleClick for Advertisers, Display & Video 360, and Google Ads are examples of combinations of advertiser ad servers and advertiser platforms. Approximately 80% of digital display advertising passes through these tools.

- (c) **Middle Layer:** AdX is a publisher platform that runs auctions. Google AdMob, and Google Display Network are ad networks. Approximately 70% of digital display advertising passes through these tools.
29. Facebook Tools also operate in every layer of the Market.
- (a) **Publisher-Facing Layer:** Monetization Manager is a publisher interface to an ad network.
 - (b) **Advertiser-Facing Layer:** Facebook Ads Manager is an advertiser interface to an ad network.
 - (c) **Middle Layer:** FAN is an ad network. Until 2016, Facebook also had a publisher platform that ran auctions (Facebook Exchange). As described below, the threat of Facebook re-entering this part of the market led to the conspiracy.
30. Google has admitted that Facebook is one of its main competitors. On September 15, 2020, Donald Harrison, Google's President of Global Partnerships testified before the United States Senate that Facebook was a competitor in the market for "buying and selling ads online".

D. Background on Waterfalling & Header Bidding

(i) *Google Uses Waterfalling to Preference Its Own Exchange*

31. Throughout the class period, Google has run digital display advertising auctions in multiple steps. Google's auction process has gone by different names, including waterfalling, enhanced dynamic allocation (2014-present), open bidding (2018-present), and the so-called "unified auction" (2019-present). For simplicity, this Statement of Claim uses "**Waterfalling**" to mean any

auction structure that results in not all real-time bids being considered at the same time and in the same way.

32. Waterfalling results in Advertisers who use Google Tools sometimes winning digital display advertising auctions even if they bid less than Advertisers who do not use Google Tools.

This has two effects on the Market:

- (a) On average, Publishers receive a lower price for their Impressions; and
- (b) Advertisers are pressured into using Google Tools to win auctions, which allows Google to charge higher Take Rates. These higher Take Rates translate to higher profits for Google.

(ii) *The Industry Develops Header Bidding to Counter Waterfalling*

33. In 2014, the industry developed a way to avoid the negative economic effects of Waterfalling called “**Header Bidding**”.

34. By 2016, almost 70% of major publishers had adopted Header Bidding. The average price of Impressions sold with Header Bidding was 80% higher than the average price of Impressions sold with AdX. Google knew this. In his testimony before the United States Senate on September 15, 2020, Mr. Harrison conceded that Header Bidding “was better for publishers. Publishers were making more money.”

(iii) Google Tries to “Kill” Header Bidding

35. Google viewed Header Bidding as a serious threat to its market share in the Market.
- (a) At a meeting on October 13, 2016, Google employees discussed “options for mitigating growth of header bidding infrastructure”. One employee proposed predatory pricing – setting fees to zero – but another employee rejected the idea: “problem is that this doesn’t kill HB”.
 - (b) A slide listing one Google executive’s “top priorities” for 2017 stated, “Need to fight off the existential threat posed by Header Bidding and FAN. This is my personal #1 priority. If we do nothing else, this need[s] to [be] an all hand[s] on deck approach.”
 - (c) On October 5, 2016, in a presentation to senior executives, a Google employee expressed concern about Facebook enabling the growth of Header Bidding, stating, “to stop these guys from doing HB we probably need to consider something more aggressive”. That presentation stated that Google’s “goal/mandate” was to “[f]ore stall major industry investment in HB & HB wrapper infrastructure.”
36. Google took steps to attempt to stop Header Bidding, such as:
- (a) Charging Advertisers and Publishers who used Header Bidding higher prices for a wide variety of Google services, both inside and outside the Market;

- (b) Manipulating digital display advertising auctions so that Google Ad Manager would sometimes accept a lower bid from AdX than a higher bid using Header Bidding;
- (c) Directly re-routing bids from Header Bidding platforms to AdX;
- (d) Deprioritizing websites that use Header Bidding in search results;
- (e) Making all of the Google Tools less interoperable with Header Bidding;
- (f) Creating Accelerated Mobile Pages (“AMP”), which prevents Header Bidding;
- (g) Prioritizing websites that use AMP in search results;
- (h) Imposing a one second delay on non-AMP webpages, while blaming Header Bidding for slowing down websites; and
- (i) Redacting performance measurements provided to Publishers which compared the profits from AdX with the profits from Header Bidding, so as to prevent Publishers from discovering all of the above.

37. Google codenamed this campaign “Jedi”. According to internal Google documents, the purpose of Jedi was to “create a jedi mind trick plan that [gets] the ecosystem talking about why [advertising services] are willing to do things that are NOT in the publisher’s best interests”.

(iv) Facebook Embraces Header Bidding

38. Facebook began exploring the adoption of Header Bidding. It publicly announced those plans over the next two years.

- (a) In August 2016, Facebook started testing Header Bidding for FAN.
- (b) In March 2017, Facebook partnered with six Header Bidding platforms to allow the web version of FAN to use Header Bidding. Technology commentators at *Business Insider* called this a “huge, unprecedented attack on Google”. Facebook announced that Publishers using Header Bidding saw their revenues increase 10% to 30%.
- (c) In August 2017, in an article in *AdExchanger*, a Facebook executive extolled the virtues of Header Bidding and proposed developing Header Bidding technology for applications:

The truth is that for the first time in a long time, publishers can control what happens next. They can refuse to work with waterfalls and grant access to their inventory only to the players who meet their business and technology criteria. Rest assured, the market will correct and the ecosystem will build to the publisher's wishes.

- (d) In June 2018, Facebook expanded this program to allow the mobile version of FAN to use Header Bidding.

E. The Conspiracy

39. Shortly after Facebook announced its intention to actively embrace Header Bidding, Google made overtures to Facebook, hoping to strike a deal to prevent Facebook from working on Header Bidding. Both parties understood that this was Google’s primary motivation:

- (a) An internal Facebook document dated February 2, 2017 explained “What Google wants: To kill header bidding (us baptizing their product will help significantly)”;

- (b) An email dated October 30, 2017 from a senior Facebook executive to another Facebook executive explained that Google “want[s] this deal to kill header bidding”;
- (c) An internal Google document in 2017 stated that Google’s goal was to “collaborate when necessary to maintain the status quo”; and
- (d) A presentation by a Google employee on August 9, 2018 explained that Google wanted to “avoid competing with FAN”, but if it could not, then Google would instead collaborate with Facebook to “build a moat”.

40. In or about 2018, Google and Facebook entered into a conspiracy, agreement, or arrangement pursuant to which Facebook agreed to abandon Header Bidding in exchange for obtaining bidding advantages using AdX that would allow Facebook to profit at the expense of other Publishers and Advertisers. All aspects of this conspiracy, agreement, or arrangement are collectively referred to herein as the “**Arrangement**”, including Jedi Blue discussed below.

(i) Jedi Blue

41. On September 27, 2018, Google LLC, Google Ireland Limited, Facebook, Inc. (now Meta Platforms Inc.), and Facebook Ireland Limited entered into an agreement, which Google internally codenamed “**Jedi Blue**”. The word “Jedi” indicated that it was a continuation of Google’s Jedi campaign to kill Header Bidding. The word “Blue” referred to the colour of Facebook’s logo.

42. Jedi Blue set out the terms under which FAN could purchase Impressions from AdX. The program was created for this agreement and no other companies were allowed to participate. Jedi Blue gave Facebook the following exclusive bidding advantages over other intermediaries:

- (a) **Lower Fees:** FAN was subject to lower fees than other networks. This meant that it could bid up to 15% less than other networks but still win the digital display advertising auction.
- (b) **Identifying End Users:** Google knows the user ID of the person viewing each Impression exchanged through AdX. This information allows Google to predict the value of Impressions. It allows Google to identify worthless Impressions, such as those shown to non-human bots. It also allows Google to identify the highest value Impressions: those being viewed by humans who have shown a tendency to buy products after seeing an Impression. Google refuses to provide that information to other intermediaries. However, Jedi Blue extends those benefits to Facebook, ensuring that Facebook can steer clear of the worthless Impressions and focus on the highest value Impressions. This benefit is conferred in the following sections of Jedi Blue:

1(a) “Match Rate” means the number of Bid Requests sent where Facebook recognizes the End User (*e.g.* via the encrypted blob on mobile app or hosted match data from cookie matching on web) divided by the number of Bid Requests sent by Google to Facebook, multiplied by 100.

3 Match Rate. Google will use commercially reasonable efforts to ensure that the Match Rate is at least 80% for mobile app and at least 60% for web (excluding Safari). ...

- (c) **No Right of First Refusal:** For non-Facebook bidders, Google Tools can wait until all other intermediaries have submitted their bids, identify the highest bid, and then

bid 1¢ more and win the auction. Google uses this to take the most valuable Impressions (“**Cream-Skimming**”) at the lowest possible cost. The following sections of Jedi Blue prevent Google from Cream-Skimming Facebook’s bids:

2.1(b) ... Google will use Facebook’s Bid Response Data in accordance with Section 6.5 (for example, it will not use Facebook’s Bid Response Data to, in Real-Time, adjust Google’s or a third party’s bid in the auction for Ad Inventory made available via the Program).

6.5 ... Google will not use Bid Response Data to (a) transfer or otherwise disclose in Real-Time such Bid Response Data to any Google system other than the system conducting the auction for the applicable Ad Inventory; (b) adjust or otherwise influence in Real-Time the bid response of another bidder (including Google) in the auction for the applicable Ad Inventory; [or] (c) adjust or otherwise influence in Real-Time the computation of any price floor, price reserve, or other pricing parameter for the applicable Ad Inventory ...

- (d) **Direct Billing Relationship:** Google requires users of Google Tools, including those bidding into AdX auctions, to agree to “gag orders” preventing them from discussing pricing with Publishers directly. However, section 2.2(a) of Jedi Blue allows Facebook to pay certain Publishers directly, allowing Facebook to negotiate prices directly with them.

(ii) Other Benefits for Facebook

43. The manner in which FAN would purchase Impressions from AdX, which were also terms of the Arrangement, further tilted digital display advertising auctions in Facebook’s favour, as follows:

- (a) **Longer Timeout:** Other bidders can only bid for 160 milliseconds. By contrast, FAN can bid for 300 milliseconds. Facebook can use this extra time to calculate more precise valuations of Impressions and calibrate their bids accordingly.

- (b) **Circumventing Privacy Restrictions:** Google's software for identifying the value of Impressions can circumvent certain privacy restrictions, such as cookie blocking on certain web browsers. It does not share this feature with other intermediaries. However, according to internal Facebook documents, Google was ready to "initiate a detailed discussion with Product and Legal to allow FB to collect signals on the client (using a JavaScript) and G passing it to the bid request".
- (c) **Merging Cookie Matching:** Google and Facebook merged the tools (called software development kits) they each use to determine the value of Impressions (called cookie matching). Facebook is the only intermediary other than Google who gets this information. This allows Google and Facebook to create joint predictions of the value of each Impressions, which in turn allows Facebook to bid exactly what they both believe the Impression is worth, and no more.

(iii) *The Primary Benefit for Google*

- 44. In exchange for all of these benefits, Facebook agreed not to pursue Header Bidding.
- 45. Google and Facebook were careful not to explicitly put that term into Jedi Blue. However, sections 2.4(e) and 6.6-6.9 of Jedi Blue prevent Facebook from using "Google Data" on platforms other than Google Tools or to build competing platforms. In other words, if Facebook tried to pursue Header Bidding and start competing with AdX in the segment for publisher platforms running auctions, it would have to give up the benefit of using Google's vast stores of data.
- 46. After signing Jedi Blue, Facebook abandoned Header Bidding.

(iv) *The Antitrust Collaboration Clause*

47. Google and Facebook understood that the Arrangement, if discovered, would likely be challenged as breaching competition, a.k.a. antitrust laws. In preparation for that, Jedi Blue requires Google and Facebook to alert each other and tailor their responses to regulators:

7. Regulatory Cooperation.

7.1 To the extent permitted by applicable law, and subject to Section 7.2 below, each of Google and Facebook agrees to use its reasonable best efforts to:

(a) cooperate and assist each other in responding to any Antitrust Action, Data Protection Action, or any inquiry or investigation relating to the Agreement by any Governmental Authority, and in defending the Agreement against any Antitrust Action, Data Protection Action, or any inquiry or investigation relating to the Agreement by any Governmental Authority;

(b) promptly and fully inform the other Party of any Governmental Communication relating to the Agreement (provided that, to the extent appropriate, any Party may designate such information as attorneys' or outside counsel only);

(c) allow the other Party a reasonable time to review and consider in good faith the views of the other with respect to any Governmental Communication (provided that, to the extent appropriate, any Party may designate such information as attorneys' or outside counsel only);

(d) not advance arguments in connection with any Antitrust Action, Data Protection Action, or any inquiry or investigation relating to the Agreement by any Governmental Authority (other than litigation between the Parties) over the objection of the other Party that would reasonably be likely to have a substantial adverse effect on that other Party; and

(e) consult with the other Party in advance, to the extent practicable, and give the other Party and its counsel reasonable notice and, to the extent not prohibited by law or the relevant Governmental Authority, an opportunity to attend and participate in any meeting or discussion with any Governmental Authority relating to any Antitrust Action, Data Protection Action, or any inquiry or investigation relating to the Agreement by any Governmental Authority.

48. The intent of this section was to thwart investigations and enforce a pact of silence on each other, in furtherance of the Arrangement.

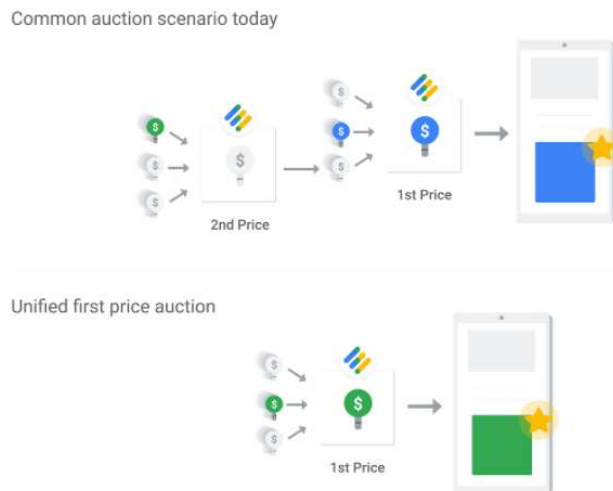
F. Google Made Misrepresentations

49. Google represented that Google Tools maximized Publishers' revenues.

- (a) On April 13, 2016, Google represented to the public that it is "continuing to help publishers get the highest yield for every impression".
- (b) On November 14, 2016, Google represented to the public that DoubleClick has "consistently delivered server-side solutions that create the most revenue possible across all of a publisher's inventory without sacrificing speed."
- (c) On May 10, 2017, Google represented to the public: "At DoubleClick, we're committed to helping our partners deliver great advertising experiences while earning the most from every impression."
- (d) On June 8, 2017, Google represented to the public that it would "foster a sustainable advertising ecosystem. That means creating solutions that deliver the most revenue possible for publishers".
- (e) Also on June 8, 2017, Google represented to the public: "At DoubleClick, we've always had a single mission—to help you grow revenue and build sustainable businesses with advertising. That means ensuring we're helping you make the most revenue from every impression".
- (f) On April 4, 2018, Google represented to the public that, since 1995, "DoubleClick mission has remained the same: to help publishers maximize revenue and create sustainable businesses."

50. Additionally, Google made representations about the structure of their digital display advertising auctions in a manner that suggested that they were structured to maximize Publishers' revenues.

- (a) Until 2019, Google represented that AdX ran second-price auctions. This type of auction ensures that bids are set to the bidders' maximum willingness to pay.
- (b) After 2019, Google represented that it was running a "unified auction" which took all bids at the same time – the opposite of Waterfalling. For example, on March 6, 2019, Google published to its website the following image, explaining that it was moving from the graphic at the top to the graphic on the bottom:



51. Each of these representations (collectively the "**Misrepresentations**") were published on Google's website and visible to the public, and were intended to be viewed by Publishers.

52. Google made the Misrepresentations to convince Publishers that the structure of digital display advertising auctions run by Google Tools maximized Publishers' revenues. The purpose of the Misrepresentations was to promote the use of Google Tools by Publishers.

53. The Misrepresentations were knowingly or recklessly false or misleading in a material respect. The structure of the auction did not maximize Publishers' revenues. In fact, it materially reduced Publishers' revenues.

- (a) From 2013 through 2019, Google used a secret program initially called "**Bernanke**". Whenever there were more than two bids above the reserve price on AdX, Bernanke withdrew the second-highest bid, paid the Publisher the amount of the third-highest bid, and kept the difference between the second-highest bid and the third-highest bid to inflate bids on Google Tools in other transactions. For example, suppose that the highest bid was \$10, the second highest bid was \$8, and the third-highest bid was \$5. In a true second-price auction, the first bidder would win and pay \$8 and the Publisher would receive \$8, less Google's commission. By contrast, with Bernanke, the first bidder would still win and pay \$8, but Google would keep \$3 and only pay the Publisher \$5 – the amount of the third-highest bid – less Google's commission. In effect, Bernanke changed the auction to a third-price auction, rather than a second-price auction, at least as far as the Publisher was concerned. According to an internal Google study, Bernanke decreased Publishers' revenues by upwards of 40%.
- (b) From 2019 onwards, the "unified auction" was still a form of Waterfalling, as defined above at paragraph 31. It still reduced Publishers' revenues relative to an auction in which all bids were considered at the same time and in the same way.

CAUSES OF ACTION

A. Conspiracy

54. Google and Facebook are competitors in the Market.

- (a) They are direct competitors for the reasons described above at paragraphs 28 to 30.
- (b) They are competitors within the meaning of section 45(8) of the *Competition Act* because, had the defendants not entered into the Arrangement, Facebook would have started using Header Bidding, which would operate in the segment of the market that AdX is in: publisher platforms that run digital display advertising auctions.

55. Through the Arrangement, the defendants conspired, agreed, or arranged to fix, maintain, increase, or control the price for the Exchange of Impressions contrary to section 45(1)(a) of the *Competition Act*. Google and Facebook agreed that Facebook would abandon Header Bidding. In the absence of the Arrangement, Header Bidding would have increased competition in the Market, decreasing the fees that Google can charge.

56. Through the Arrangement, Google and Facebook conspired, agreed, or arranged to allocate sales or markets for the supply of Impressions, contrary to section 45(1)(b) of the *Competition Act*.

- (a) **Header Bidding:** Google and Facebook agreed that Facebook would abandon Header Bidding, and therefore stay out of the segment of the market that AdX is in: publisher platforms that run digital display advertising auctions. Facebook agreed to cede that entire segment to Google.

- (b) **Highest Value Impressions:** Various features of the Arrangement help Facebook to identify the highest value Impressions (identifying end users, circumventing privacy restrictions, and merging cookie matching) and to win bids for those Impressions (lower fees, no right of first refusal, and longer timeout). This allocates the segment of highest value Impressions to Google and Facebook, leaving other intermediaries with only lower value or worthless Impressions.

57. Through the Arrangement, Google and Facebook conspired, agreed, or arranged to fix, maintain, control, prevent, lessen, or eliminate the supply of services to exchange Impressions, contrary to section 45(1)(c) of the *Competition Act*. Google and Facebook agreed that Facebook would abandon Header Bidding, and therefore to not increase the supply of services to exchange Impressions. In the absence of the Arrangement, Header Bidding would have increased competition in the Market, decreasing the fees that Google can charge.

58. The Canadian defendants, Google Canada Corporation and Facebook Canada Ltd., implemented directives, instructions, intimations of policy, or other communications from the other four defendants, which communications were for the purpose of giving effect to a conspiracy, combination, agreement, or arrangement entered into outside of Canada that, if entered into in Canada, would have been in contravention of section 45 of the *Competition Act*. The defendants therefore breached section 46(1) of the *Competition Act*.

59. Accordingly, the plaintiffs and the Class are entitled to remedies against Google and Facebook pursuant to section 36 of the *Competition Act*.

B. Bid-Rigging

60. Publishers call for or request bids when they offer Impressions for sale. The Arrangement constitutes bid-rigging in breach of section 47 of the *Competition Act*.

61. The Arrangement was an agreement or arrangement between Google and Facebook to enable Facebook to withdraw bids on low value Impressions and offer bids arrived at by agreement or arrangement on high value Impressions, contrary to section 47 of the *Competition Act*.

- (a) **Low Value Impressions:** Various features of the Arrangement help Facebook to identify the highest value Impressions (identifying end users, circumventing privacy restrictions, and merging cookie matching) and win bids for those Impressions (lower fees, no right of first refusal, and longer timeout). The purpose was to enable Facebook to withdraw bids on lower value Impressions.
- (b) **Longer Timeout:** Google agreed to give FAN 300 milliseconds to bid, while other intermediaries only get 160 milliseconds. This allows Facebook to withdraw all bids by intermediaries other than Google and Facebook after 160 milliseconds.
- (c) **Common Pricing Algorithm:** Various features of the Arrangement allow Facebook to develop predictions of the value of Impressions that are closer to Google's valuations (identifying end users, longer timeout, circumventing privacy restrictions, and merging cookie matching). This allows Facebook to bid in a manner consistent with Google's pricing algorithm, submitting bids at roughly the same level as Google.

62. Neither Google nor Facebook made Publishers aware of the Arrangement at or before the time when bids were submitted or withdrawn.

63. Accordingly, the plaintiffs and the Class are entitled to remedies against Google and Facebook pursuant to section 36 of the *Competition Act*.

C. Misrepresentations

64. As described above at paragraphs 49 to 53, Google made the Misrepresentations for the purpose of promoting the use of the Google Tools. It knew that these statements were false or misleading in a material respect, or they were reckless. These misrepresentations breached section 52 of the *Competition Act*.

65. Accordingly, the plaintiffs and the Class are entitled to remedies against Google pursuant to section 36 of the *Competition Act*.

D. Damages

66. As a result of Google's and Facebook's breaches of Part VI of the *Competition Act*, the Class suffered losses and damages. In particular:

- (a) Advertisers paid more for Impressions;
- (b) Publishers received less for Impressions, meaning that they paid a higher implied price to sell their Impressions; and
- (c) Both Advertisers and Publishers paid more fees, spreads, and other commissions.

67. Full particulars of the losses and damages will be provided before trial.

E. Discoverability & Fraudulent Concealment

68. The Market is opaque and complex. Advertisers and Publishers cannot determine the particulars of how their Impressions are being transacted, and are not aware of the Take Rate.

(a) In general, Advertisers do not see information on the middle and publisher-facing layers of the Market, including what fees are charged in those layers.

(b) In general, Publishers do not see information on the middle and advertiser-facing layers of the Market, including what fees are charged in those layers.

69. Additionally, the defendants actively, intentionally, and fraudulently concealed the existence of the conspiracy, the bid-rigging, and the Arrangement from the public, including the Class. Google actively, unilaterally, and fraudulently concealed the falsity of the Misrepresentations from the public, including the Class. The affirmative acts of the defendants alleged herein, including acts in furtherance of the conspiracy, were fraudulently concealed and carried out in a manner that precluded detection. The defendants took active, deliberate, and wrongful steps to conceal their participation in the Arrangement.

(a) They prevented the public from discovering the Arrangement and Bernanke. Both of those were only discovered by the Attorney General of Texas in an investigation into other anticompetitive practices by Google. On December 16, 2020, the Attorney General of Texas filed a complaint that mentioned the agreement. The Class could not have discovered the facts underlying the claim before that date.

(b) They obfuscated the size of the Take Rate so that neither Advertisers nor Publishers could discover increases in its magnitude. On September 15, 2020, Mr. Harrison

testified before the United States Senate that Google does not tell Publishers what Advertisers paid for Impressions, or tell Advertisers the amount that Publishers received from their bids, or tell either side Google's Take Rate in any given transaction, even when it acts for both the Advertiser and the Publisher in that transaction.

- (c) They have redacted data from auction records provided to Publishers who use Google Tools to prevent them from quantifying the impact of Header Bidding.

70. In the circumstances, a reasonable Advertiser or Publisher would not have been alerted to investigate the conduct alleged herein before December 16, 2020.

V. OTHER

71. The plaintiff pleads and relies on sections 36, 45-47, and 52 of the *Competition Act*.

72. The plaintiff proposes that this action be tried in Toronto.

March 15, 2022

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Court File No.

FEDERAL COURT

PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

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