File No.

COMPETITION TRIBUNAL

IN THE MATTER OF an application by the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic ("**CIPPIC**") for an order pursuant to section 103.1 of the *Competition Act*, R.S.C. 1984, c. C-34 (the "***Competition Act*")** granting leave to bring an application under sections 77 and 79 of the *Competition Act*;

AND IN THE MATTER OF an application by CIPPIC for an order pursuant to sections 77 and 79 of the *Competition Act*;

B E T W E E N:

THE SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY AND PUBLIC INTEREST CLINIC

Applicant

and

APPLE CANADA INC. AND APPLE INC.

Respondents

NOTICE OF APPLICATION FOR LEAVE
(Pursuant to section 103.1 of the *Competition Act*)

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TAKE NOTICE THAT:

A. Definitions

1. In this Notice of Application, the following terms have the following meanings:

   (a) "Act" means the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

   (b) "Apps" are electronic applications developed to operate on iPhones and iPads using the iOS operating system;

   (c) "App Distribution Market" means the market for the distribution of Apps on iPhones and iPads;

   (d) "App Store" is the two-sided platform administered by Apple, which connects Developers and iOS users to each other;

   (e) "Apple" means Apple Canada Inc. and Apple Inc.;

   (f) "Apple Canada" means Apple Canada Inc., and is a wholly-owned subsidiary of Apple Inc.;

   (g) "Canadian App Store" mean the App Store accessed by iPhone and/or iPad users who designate Canada as their place of residence on their Apple ID;

   (h) "Canadian iOS Users" means persons who make or made purchases in the Canadian App Store;

   (i) "Developers" means iOS app developers who distribute their apps via the App Store;

(j) "Developers in Canada" means Developers, wherever domiciled, who distribute Apps to Canadian iOS Users;

(k) "In-App Payment Services Market" means the market for payment services for apps that are distributed on iPhones and iPads;

(l) "iOS" means the operating system for iOS devices, developed by Apple, and used exclusively on its proprietary devices, such as the iPhone and iPad. For the purposes of this proceeding, iOS includes iPadOS which, since 2019 has been the operating system for iPads; and

(m) "iOS Device" means an iPhone or iPad, which runs the iOS operating system.

B. Relief Sought

2. The applicant applies to the Competition Tribunal ("**Tribunal**") on a date and time to be set by the Tribunal at Toronto, Ontario, pursuant to section 103.1 of the Act, seeking leave to bring an application for:

(a) an order pursuant to s. 77(2), (3) and s. 79(1) of the Act:

(i) prohibiting Apple from enforcing restrictions that mandate Developers in Canada distribute Apps exclusively through the Canadian App Store;

(ii) prohibiting Apple from enforcing restrictions that mandate Developers in Canada exclusively use IAP;

(iii) prohibiting Apple from enforcing restrictions preventing Developers in Canada from informing Canadian iOS Users about alternative payment channels ("anti-steering provisions");

(iv) requiring Apple to inform Developers of the orders in paragraphs 2(a)(i)-(iii);

(b) an order pursuant to ss. 77(3.1) and 79(4.1) of the Act requiring Apple to pay an amount not greater than the benefit derived from its conduct that is the subject of the orders described in paragraph (a) above, or, in the alternative, such amounts that the Tribunal may order to be distributed among the Class;

(c) the costs of these proceedings; and

(d) such further and other orders as the applicant may request and the Tribunal deems just.

3. The persons against whom the order is sought are the respondents. Their addresses are set out below.

C. Background facts

(i) Launch of the iPhone and App Store

4. The respondents launched the Apple iPhone ("**iPhone**") worldwide, including in Canada, in 2007.

5. At the time of its launch, there were several well-established competitors, including BlackBerry, Motorola, Nokia and Samsung. However, the iPhone offered a product that was unique in North America at the time: it had a touchscreen interface, it provided easy access to the

Internet, and it supported application software, known as "Apps." No other device at the time had integrated a mobile phone, a music player, and an internet-connected device capable of running software.

6. iOS is the operating system for the iPhone and was released on the same day as the iPhone. At its launch, only Apple-developed native applications were available, with third-party native applications unavailable.

7. Several months after the launch of the iPhone, the App Store launched on July 10, 2008 in markets around the world, including in Canada, where it launched the Canadian App Store. The App Store is accessed via an app that comes pre-installed on iPhones. From the outset, the App Store was a self-contained, two-sided platform, which was the sole means by which Developers were able to distribute Apps to iPhone users, and users were able to find and download Apps produced by Developers. As defined, above, this App Store constitutes the App Distribution Market.

8. At the time it was launched, the App store offered approximately 500 applications.

(ii) Launch of the iPad

9. Apple launched the iPad in the spring of 2010. As is the case with the iPhone, the App Store (Canadian App Store in Canada) is the App Distribution Market in respect of iPad Apps.

10. Between 2010 and 2019, the iPad was powered by iOS. In September 2019, Apple debuted iPadOS, which provided functionality unique to the iPad. However, since that time, there has been no material change in how Developers and iPad users use the App Store, nor in the App Distribution Market.

(iii) Apple's "Walled Garden" App Store

11. When it launched the iPhone in 2007 and the App Store in 2008, Apple's purpose was to create an integrated and self-contained "ecosystem" that seamlessly weaved together Apple devices with Apple software. In 2010, Apple's then CEO, Steve Jobs, stated that the strategy of the company was to "tie all of our products together, so we further lock customers into our ecosystem," so as to "make [the] Apple ecosystem even more sticky."

12. This integrated iOS ecosystem has been called a "walled garden," in which "Apple controls and supervises access to any software which accesses the iOS device." Apple claims that the walled garden is furthering consumer privacy, security, and the monetization of its intellectual property. However, several alternative, less restrictive privacy and security measures are feasible and effective that do not require a walled garden.

13. Apple's walled garden restrictions are enforced through the use of agreements with Developers who have no ability to negotiate their terms, and foreclose all competition in both the App Distribution Market and the In-App Payment Services Market. This results in maximizing, Apple's monetization, but it is not justified by the alleged benefits claimed.

(iv) Use of the Canadian App Store by Canadian iOS users

14. The Canadian App Store is accessed by persons who set Canada as their country or region when setting up their Apple ID. In addition, if persons wish to make purchases in the Canadian App Store, they must provide Canadian billing information.

(v) Use of the Canadian App Store by Canadian App Developers

15. In order to be eligible to list an app on the App Store, a Developer must enter into a Developer Agreement ("**DA**") and a Developer Program Licence Agreement ("**DPLA**"), both of them being contracts of adhesion drafted unilaterally by Apple.

16. Pursuant to these agreements, Developers in Canada are prohibited from distributing native iOS apps other than through the App Store. Consequently, if Canadian iOS users wish to obtain iOS apps, they must do so via the Canadian App Store.

17. The Canadian App Store offers both free and paid apps. When a payment is necessary to download an app, Apple Canada collects the payment from a Canadian iOS user, deducts a commission (the "**Commission**"), and then remits the remaining balance to a Developer in Canada.

(vi) The Commission charged by Apple on App Store purchases

18. When the App Store was launched, Apple set a standard 30% Commission on paid app downloads and in-app purchases. Steve Jobs stated during the March 6, 2008 launch event for the iOS Software Developer Kit and the App Store that Apple did not intend to make money from the App Store, and that they hoped that the 30% Commission would cover the costs of running the App Store. However, the 30% Commission was not set in 2008 by reference to any costs that Apple expected to incur in the creation and development of the App Store. Nor was the 30% Commission set by reference to security, privacy or value provided.

19. Although Apple has maintained the headline Commission rate of 30% since 2008, it has reduced the Commission from time to time in limited circumstances. For example, since January 2021, Developers who earn no more than USD$1 million in app revenue (after deduction of the Commission) and new Developers to the App Store can qualify for the "App Store Small Business

Program" ("**SBP**") and pay a reduced Commission of 15%. The SBP resulted from a settlement in a class-action lawsuit against Apple in the U.S., rather than from competitive pressure.

(vii) The Commission charged by Apple on in-app purchases

20. In addition to the Commission charged to Developers in Canada in respect of App purchases, a 30% Commission is payable on all in-app purchases by Canadian iOS Users. Apple's App Review Guidelines requires Developers in Canada to use Apple's IAP for all iOS and in-app purchases. Developers in Canada are therefore prohibited from using third-party payment processors (offering numerous better terms, including lower prices, than the Commission payable to Apple). Thus, Apple controls the entirety of the In-App Payment Services Market, permitting it to charge *supra*-competitive prices while preserving its dominant share.

21. By requiring Developers to use Apple's IAP in respect of IAP in Canada, Apple further gains significant market intelligence on the use of Apps by Canadian iOS Users, which it does not share with Developers in Canada. Apple uses this information to identify revenue growth opportunities, competing with Developers in Canada whose data plays an instrumental role in Apple's ability to do so. Apple's power over Developers in Canada means that many Developers in Canada have no choice but to grant Apple access to their data, which they would never agree to in an otherwise competitive marketplace.

22. In April 2025, the U.S. District Court for the Northern District of California ordered that Apple was prohibited from charging Developers any Commission, in the U.S., on purely external (i.e. web) payments. Therefore, today, these transactions attract 0% Commission to Apple in the U.S., compared to Canada, which continues to charge a 30% Commission (or 15% under programs like SBP described above) to Developers in Canada.

(viii) The App Store has been the subject of numerous government investigations and reports, and court proceedings around the world

23. The App Store has been the subject of several government reports and court decisions that have been critical of Apple's dominance:

(a) In 2021, the Netherlands Authority for Consumers and Markets imposed an order on Apple, subjecting it to periodic penalty payments for abusing its dominance, finding that Apple imposed unreasonable conditions on dating app developers to use Apple's payment systems. Since February 2022, dating app developers in the Netherlands have been able to use payment service providers other than Apple.

(b) In 2022, the U.K.'s Competition and Markets Authority ("**CMA**") published the final report of its market study into mobile ecosystems. The CMA found that the lack of competition faced by the App Store allows Apple to charge a commission above a competitive rate. It also found that, in the absence of the requirement to use Apple's IAP, developers would be able to choose other, bespoke payment solutions that better met their needs and users' needs. The CMA found that almost all developers would not use Apple's payment system if they were not required to.

(c) In 2022, the U.S. House of Representatives Judicial Committee released its report on *Investigation of Competition in Digital Markets*. It concluded that "Apple leverages its control of iOS and the App Store to create and enforce barriers to competition and discriminate against and exclude rivals while preferencing its own offerings. Apple also uses its power to exploit app developers through misappropriation of competitively sensitive information and to charge app developers *supra*-competitive prices within the App Store. Apple has maintained

its dominance due to the presence of network effects, high barriers to entry, and high switching costs in the mobile operating system market."

(d) On March 4, 2024, the European Commission ("**EC**") released its Spotify decision, which concluded that Apple's rules, which prevented Developers from informing users about alternative subscription possibilities outside iOS apps constituted an infringement of European abuse of dominance rules. The EC fined Apple over €1.8 billion, and ordered Apple to remove the relevant rules in its guidelines and the DPLA applicable in the European Union.

(e) On June 24, 2024, the EC informed Apple of its preliminary view that Apple was in breach of the EU's *Digital Market's Act*. On April 22, 2025, the EC found that Apple failed to comply with its obligation to permit Developers to inform customers of alternative distribution channels outside the App Store. The EC fined Apple €500 million.

(f) In March 2025, the Australian Competition and Consumer Commission ("**ACCC**") released its final report on digital platforms, concluding that Apple's market power in mobile app distribution was likely significant, the commission rates charged on payments made through apps were "highly likely to be inflated" by Apple's market power, and that there was a lack of effective competition in app marketplaces. Despite certain changes to in-app payments by Apple, the ACCC found that restrictive payment terms practices continued to hinder competition and informed choice, and that third-party app marketplaces could bring competition benefits.

(g) On October 23, 2025, the U.K. Competition Appeal Tribunal ("**CAT**") found that Apple infringed EU rules on abuse of dominance, exclusive dealing and tied selling on app developers in relation to iOS app distribution services and iOS in-app payment services, and by charging developers a headline 30% commission rate. The CAT found that the overcharge suffered by developers in relation to iOS app distribution services was the difference between 17.5% and the commission actually charged by Apple, and the overcharge suffered by developers in respect of iOS in-app payment services was the difference between 10% and the commission actually charged. Apple was ordered to pay £1.5 billion in damages to UK consumers in respect of unfair commission fees collected between October 2015 to the end of 2020. On November 13, 2025, the CAT denied Apple permission to appeal this ruling.

D. Economic Theory

24. The App Distribution Market is limited to the distribution of apps on iOS Devices. Distribution of apps on other devices is not a substitute because consumers who use iOS Devices rarely possess non-iOS smartphones or tablets, and switching costs are high due to the cost of each device, integration with other devices, and network effects. Thus, the only way for Developers to reach consumers with iOS Devices is by engaging in the App Distribution Market. Such consumers represent such a large fraction of the total addressable market for apps that Developers would lose economies of scale if they only distributed to consumers on non-iOS smartphones or tablets.

25. The In-App Payment Services Market is limited to payments in apps on iOS Devices. Payment services on other devices is not a substitute. As described in the previous paragraph,

Developers have no practical choice but to distribute on iOS Devices, and so are forced to engage in the In-App Payment Services Market.

26. Apple is a monopolist in both of these markets. It imposes technological and contractual barriers – described above under Sections C(iii)-(vi) and below under "Legal Claims" – to make it impossible to use competitor tools in either market.

27. The primary purpose of these technological and contractual barriers is to increase barriers to entry to infinity, maintaining Apple's monopolist position. Apple's alleged alternative reasons for these barriers – privacy, cybersecurity, and simplicity of integration – do not justify excluding all competitor tools. There are many well-established competitor tools that do not have any privacy, cybersecurity, or simplicity of integration concerns.

28. These technological and contractual barriers excluded competitor tools from the App Distribution Market and the In-App Payment Services Market, which constitutes a substantial lessening or prevention of competition.

E. Legal Claims

(i) Abuse of dominant position

29. Developers in Canada are forced, by contractual provisions in the DA and DPLA, to distribute through the Canadian App Store in order to have access to Canadian iOS Users and Developers in Canada are forced to accept Apple's onerous terms and conditions and to be subject to Apple's discretion for determining access conditions, which could change at any time. Even large Developers have been unable to influence the terms Apple sets for access to the App Store.

30. Apple engaged in a practice of anti-competitive acts, and engaged in conduct that is likely having the effect of preventing or lessening competition substantially in the App Distribution Market and the In-App Payment Services Markets including as follows:

(a) Exclusive Dealing (s. 78(1)(h)): Apple requires all iOS apps to be distributed exclusively through the App Store, prohibiting alternative distribution channels. This is imposed through the DPLA, which is a contract of adhesion. Apple has foreclosed competition in iOS app distribution services by requiring this exclusivity.

(b) Tied Selling (s. 78(1)(g)): Apple mandates the use of its in-app payment system (IAP) for all in-app purchases of digital content/services, prohibiting alternative payment processors. Apple infringed by tying its payment services to the App Store. This obligation limits competition and innovation among payment service providers.

(c) Anti-Steering Rules(s. 78(1)(e),(g) and (h)) : Apple's guidelines prohibit developers from informing users about alternative purchasing options outside the App Store, such as through in-app links or other mechanisms.

(d) Excessive and Unfair Selling Prices (s. 78(1)(k)): Apple's 30% commission rate is excessive and unfair. The rate was set for commercial reasons rather than in response to market competition.

31. Apple's anti-competitive practices are not justified by any legitimate competitive justification such as safety, security or privacy. The anti-competitive practices are not necessary to provide benefits to users and are not proportionate to the objective of delivering these benefits.

32. Apple charged *supra*-competitive Commissions, without regard to the costs of providing iOS app distribution services and IAP services. The Commissions charged by the respondents are unreasonable compared to comparator markets.

33. In the absence of competition, Apple's abuse of dominance resulted in harm to competition in Canada, reducing quality and innovation among Developers, and increasing prices and reducing choices to consumers. Furthermore, Apple's policies and practices have prevented the entry of competing venues for the distribution of Apps, and competing in-app processing platforms, which, in turn, would result in lower commissions being paid by Developers.

(ii) Leave Should Be Granted Under Section 103.1

(a) It is in the public interest to grant leave

34. It is in the public interest to grant leave to apply under s. 77 and s. 79 of the Act. The application raises serious and justiciable issues. Apple's administration of the App Store, as described in this application, is likely to lessen competition in the App Distribution Market and the In-App Payment Services Markets iOS App Market. Apple's anti-competitive acts are intended to have an exclusionary effect on competitors, and to have an adverse effect on competition in the App Distribution Market and the In-App Payment Services Markets. The proposed application is a reasonable and effective means of determining the issues.

35. Apple is one of the largest companies in the world. Apple has sought to discipline Developers who seek to challenge Apple's dominance in the App Distribution Market and the In-App Payment Services Markets. Consumers have little incentive to litigate Commissions against a corporate behemoth. Permitting the application to proceed in the public interest would result in access to justice.

(b) CIPPIC is an Appropriate Applicant

36. CIPPIC's mandate is to advocate in the public interest in debates arising at the intersection of law and technology, such as the issues in this application. CIPPIC has the additional mandate of providing legal assistance to under-represented organizations and individuals on law and technology issues, and a tertiary education-based mandate that includes a teaching and public outreach component.

37. In pursuit of these mandates, CIPPIC's activities regularly extend to provision of expert testimony to parliamentary committees, participation in regulatory and quasi-judicial proceedings, and strategic interventions before the courts. CIPPIC has been particularly active in competition law in matters where consumer rights are impacted by the practices of technology companies.

38. CIPPIC has a long history of advocating for the public interest at the intersection of law and technology. At the core of its work has been consumer advocacy aimed at providing reasonable checks and safeguards to counterbalance the immense power of giant technology corporations. As such, CIPPIC's historical public-interest concern places this application squarely within its core mandate of advocating for the public interest in respect of a private technology company such as Apple and the impact of Apple's conduct on Canadian consumers and Developers in Canada.

F. Materials

39. The applicant relies on:

(a) The affidavit of Luca Bellisario, sworn December 18, 2025;

(b) The affidavit of David Fewer, affirmed December 12, 2025;

(c) The affidavit of Kelli Fairbrother, affirmed December 17, 2025;

(d) Such further or other material as counsel may advise and the Tribunal may permit.

G. Logistics

40. The applicant intends to use English in the proceedings.

41. The applicant requests that the documents in this application be filed electronically.

Dated at Toronto this 18th day of December 2025

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