

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

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02

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 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
(Pursuant to section 77 and 79 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.;
 - (g) “Canadian App Store” means the App Store accessed by iOS 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) “Class” consists of all Developers in Canada who paid commissions to Apple and all Canadian iOS Users who made purchases in the Canadian App Store;

- (j) “Developers” means iOS app developers who distribute their apps via the App Store;
- (k) “Developers in Canada” means Developers, wherever domiciled, who distribute Apps to Canadian iOS Users;
- (l) “IAP” means in-app payment services;
- (m) “In-App Payment Services Market” means the market for payment services for apps that are distributed on iPhones and iPads;
- (n) “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
- (o) “iOS Device” means an iPhone or iPad which runs iOS.

B. Relief Sought

- 2. The applicant applies to the Competition Tribunal (“**Tribunal**”) for:
 - (a) an order pursuant to s. 77(2), (3) and s. 79(1) of the Act:
 - (i) prohibiting Apple from enforcing restrictions that require Developers in Canada to distribute Apps exclusively through the Canadian App Store;
 - (ii) prohibiting Apple from enforcing restrictions that require Developers in Canada to 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**”) in the U.S. in 2007 and in Canada in 2008.

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.

(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’s walled garden restrictions are enforced through the use of agreements with Developers that foreclose all competition in both the App Distribution Market and the In-App Payment Services Market. Apple claims that the walled garden furthers 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. Apple’s rejection of reasonable alternative methods for distribution of apps and in-app payment services maximizes Apple’s monetization, but it is not justified by the alleged benefits claimed.

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

13. 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

14. 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

which are unilateral contracts of adhesion that are subject to Apple's discretion to terminate a Developer from the App Store at any time.

15. 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.

16. 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. Apple Canada implements Apple Inc.'s global policies in Canada.

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

17. 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 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.

18. 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%. 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

19. In addition to the Commission charged to Developers in Canada in respect of App purchases, a headline 30% Commission is charged by Apple to Developers in Canada on all Apple IAP 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, among other things, 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.

20. By requiring Developers to use Apple’s IAP, Apple gains significant competitive advantages over Developers by obtaining purchase data by Canadian iOS Users, which it does not share with Developers. Apple uses this information to identify revenue growth opportunities, competing with Developers whose data plays an instrumental role in Apple’s ability to do so. Apple’s market power means that Developers have no choice but to grant Apple access to their data and to provide Apple with a competitive advantage.

D. Concise statement of economic theory

21. The App Distribution Market and the In-App Payment Services Market are distinct markets. The App Distribution Market includes services that facilitate the purchase and distribution of iOS apps to iOS users, among other things, while the In-App Payment Services Market includes services covering checkout, payment processing, and currency conversion, among other things. Apple holds a dominant position in both markets with effectively 100% market share.

Apple maintains its dominance through significant barriers to entry, including technical and contractual restrictions that make the App Store the exclusive channel for distributing iOS apps.

22. Developers are compelled to use the App Store to reach iOS users, and to use Apple's IAP, with no viable alternative distribution or payment options. This creates a "lock-in" effect for iOS users due to high monetary and non-monetary switching costs, and for Developers who must access the App Store to reach this user base. The markets exhibit strong network effects, where the App Store benefits from attracting both Developers and iOS users, making it difficult for any new entrant to gain critical mass.

23. Apple's market power allows it to unilaterally define and enforce non-negotiable terms. This includes setting Commission rates, which are set arbitrarily, rather than by cost or value. The Commission rates charged by Apple are excessive and *supra*-competitive, resulting in persistent high margins and operating profits for Apple.

24. Apple's conduct, including anti-steering provisions that prevent Developers from informing users about alternative payment options, forecloses competition and innovation, raises costs, and limits consumer choice.

25. The primary purpose of these technological and contractual barriers is to have exclusionary or negative effects on competitors or to have an adverse effect on competition. Apple's alleged justifications for these barriers (including privacy and security) are not objectively necessary or proportionate, with less restrictive alternative that are feasible. Apple's barriers excluded competitors from the App Distribution Market and the In-App Payment Services Market.

26. Apple's control over the App Distribution Market and in the In-App Payment Services Market enables it to act independently of competitive constraints, extract *supra*-competitive

revenues, and exclude or disadvantage competitors, thereby solidifying its dominant position. Apple's practices of anti-competitive acts amount to conduct that has the effect of preventing or lessening competition substantially.

E. Legal Claims

(i) Abuse of dominant position, exclusive dealing and tied selling

27. Developers in Canada are forced by contractual provisions in the DA and DPLA to distribute through the Canadian App Store to have access to Canadian iOS Users. Developers in Canada are forced to accept Apple's onerous terms and conditions, including Apple's wide discretion to deny a Developer access to the App Store. Even large Developers have been unable to negotiate different materially different terms.

28. Apple engaged in a practice of anti-competitive acts that were intended to have a predatory, exclusionary or disciplinary negative effect on competitors, or to have an adverse effect on competition, and engaged in conduct that had, is having or is likely to have 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: Apple requires all iOS apps to be distributed exclusively through the App Store, prohibiting alternative distribution channels. This is required by market restrictions in the DPLA, which is a one-sided contract of adhesion. Apple has foreclosed competition in the App Distribution Market by requiring this exclusivity. Apple's exclusive dealing is likely to impede entry into or expansion into the App Distribution Market by any competitors.

(b) Tied Selling: For Developers who list their iOS apps on the App Store, Apple requires Developers to use Apple's IAP for all in-app purchases of digital content/services, prohibiting alternative payment processors. Apple infringed s. 77 by tying its payment services to the App Store. This restriction impedes entry into or expansion by competitors in the In-App Payment Services Market and impedes the introduction of alternative payment service providers in the In-App Payment Services Market.

(c) Section 78(e), (g), (h) and (j): Prohibiting Developers from listing iOS apps outside the App Store; prohibiting Developers from using alternatives to Apple's IAP; prohibiting Developers from informing iOS users about alternative purchasing options outside the App Store ("anti-steering rules"); and using one-sided, non-negotiable contracts of adhesion to enforce these anti-competitive acts, reserving broad rights to Apple to suspend or terminate Developer access for any reason.

(d) Excessive and Unfair Selling Prices: Apple's Commission rates charged in the App Distribution Market and In-App Payment Services Market are excessive and unfair compared to comparator markets. The rates are not determined by cost or value, but rather arbitrarily, as a result of Apple's dominance and anti-competitive practices that substantially harm competition.

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

30. In the absence of competition, Apple's abuse of dominance results in harm to competition in Canada, including by reducing quality and innovation among Developers, and by increasing prices and reducing choices for consumers. Furthermore, Apple's policies and practices prevented the entry of competing marketplaces and competitors for the distribution of Apps, and competing in-app payment services, which, in turn, would result in lower commissions and competitive options.

F. Materials

31. The applicant relies on:

- (a) The affidavit of David Fewer, to be affirmed;
- (b) Such further or other material as counsel may advise and the Tribunal may permit.

G. Logistics

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

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

Dated at Toronto this **18th** day of December
2025

A handwritten signature in black ink, appearing to read "E. S." or a similar initials, is placed over a horizontal line.

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