

COMPETITION TRIBUNAL
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FILED / PRODUIT

Date: December 18, 2025

CT- 2025-007

Grainne Gannon Dubroy for / pour
REGISTRAR / REGISTRAIRE

OTTAWA, ONT.

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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

AFFIDAVIT OF KELLI FAIRBROTHER (affirmed on December 17, 2025)

I, Kelli Fairbrother, of the City of London, in the United Kingdom, MAKE OATH AND
SAY:

1. I am the co-founder and CEO of xigxag. As such, I have personal knowledge of what I
depose to in this affidavit, except where stated to be on information and belief, in which case I
believe that evidence to be true.

About xigxag

2. xigxag is a UK-founded audiobook app developer making reading more accessible, engaging, and more sustainable. xigxag was founded in 2019. Its app is available to users in countries around the world, including Canada. To date, we have focused on building our business in the UK. Accordingly, the amount of commerce that xigxag has had in Canada has been small. However, because we have users globally, including in the UK, the US and Canada, I am familiar with Apple's practices globally, including in relation to Canada, and can speak to its effects on our company, as an app developer.

3. Our team has worked to build an innovative digital audiobook app, using a proprietary listen-and-read concept and market-first features for audiobooks. xigxag's goal is to challenge the incumbents' dominance of digital books, through innovation.

4. Our app, "xigxag: Audiobooks, but Better" is available on Apple's Store internationally, including in Canada, where we sell to end consumers using the App Store.

5. In order to make our app available to iPhone and iPad users, xigxag has entered into the Apple Developer Program License Agreement ("DPLA"). The DPLA applies with respect to xigxag's sales via the App Store to consumers anywhere in the world.

6. Therefore, xigxag's experience, which I describe below, applies globally, including to Canada.

The App Store Effect

7. The challenge that we face as a fast-growing, innovative business is that Apple uses its dominant position in the mobile device and mobile app ecosystem as a means of forcing itself into transactions between us and our customers. Apple does that in two ways.

8. First, it requires us to distribute our apps to customers who are iPhone and iPad users solely via the App Store. Apple further forces us to use Apple's in-app payment services (or "IAP") when

we want to enable our customers to purchase in-app, which is the most obvious way in which customers would expect to transact with xigxag. We are an app-led business. Transacting within our app provides the most seamless customer experience, which is what we compete for.

9. Second, Apple prevents us from using alternative payment providers. The main challenge is that, by forcing us to use its in-app payment systems, Apple charges us about five to ten times more than we would pay in the free and fair online payments ecosystem—where we would be paying about 3%.

10. Instead, for purchases made within the App Store, or through in-app payments, Apple takes as much as 30% of the purchase price. xigxag is a developer that earns under USD \$1 million in app revenue (calculated on all of each developer's apps in total in each of the previous and current calendar year, less Apple's commission), and therefore can qualify for Apple's Small Business Program and pay a reduced Apple commission of 15%. However, this lower rate is a small consolation for any developer, like xigxag, that seeks to grow its business beyond this low threshold.

11. The 15% commission is itself too high to allow us to be competitive, and if we succeed in growing our business, a 30% commission will represent another substantial portion of our revenue, severely restricting our ability to create a profitable business.

12. It is especially unfair when it is imposed on apps like ours competing directly with similar apps sold by Apple, like the Apple Books app in our case.

13. The problems do not end there. Not only are we confined to Apple's in-app payment service and high commissions, but Apple also pays us our own revenue at least a month late, disrupting our cash flow. xigxag and other developers are waiting as long as 69 days before being paid the revenue they earned from their customers' purchases. For example, if xigxag makes a sale on January 1, we receive the draft form from Apple by February 1, but we do not receive payment

until the following month (March). Alternative payment methods, such as Stripe, have payment times of about 7 days. Because of its monopoly, Apple does not compete with other payment processors, allowing it to maintain practices that undermine our cash flow.

14. As a young business, this hit to our margin and cash flow is especially damaging. It makes it difficult to access investment in a challenging fundraising environment.

15. There are additional challenges for our business arising from Apple's practices, including the following:

- a payment system failure rate for IAP that is six times that of Stripe, with no visibility into the reasons for failure (vs. Stripe, which offers helpful guidance);
- the inability to perform transaction-level reconciliations, making revenue earned via IAP basically incapable of being audited;
- the inability to control refunds and Apple's unwillingness to respect our terms & conditions in their refund process (for example, a customer can finish an entire book and request a refund from Apple and be granted it);
- Apple's control of our transaction data, in circumstances where it is a direct competitor of ours via its Apple Books product; and
- gaps in basic payments functionality, including: the inability for customers to add items to a basket, to pay for multiple items at once, or to receive itemised receipts (i.e., identifying the book that was purchased), as well as delays in issuing those receipts to customers.

16. A fair and balanced marketplace would mean that other software suppliers and vendors could compete for business on iOS without being constrained by terms and limitations that have

been crafted by Apple. xigxag's position has been that just as the web economy is open to competition, the app economy needs to be open to competition.

17. I am providing this affidavit for the purpose of assisting the Competition Tribunal in Canada in understanding how Apple's App Store policies and practices impact app developers, including xigxag, who have users in Canada.

AFFIRMED by Kelli Fairbrother of the City of London, in the United Kingdom, before me at the City of Toronto, in the Province of Ontario, on December 17, 2025 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*.



Commissioner for Taking Affidavits
(or as may be)

Louis Sokolov



KELLI FAIRBROTHER