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Our File No.: 323645
Date: February 27, 2026

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Competition Tribunal
17th Floor
333 Laurier Avenue West
Ottawa, Ontario K1A 0G7

Dear Registry Officer

Re: *The Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic v. Apple Canada Inc et al.* – Competition Tribunal File No.: CT-2025-007

We write on behalf of Apple Canada Inc. and Apple Inc. ("**Apple**") in the above captioned proceeding.

Apple submits that the request of The Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic ("**CIPPIC**") dated February 13, 2026 to file additional affidavit evidence in support of its application for leave under section 103.1 of the *Competition Act* (the "**Leave Application**") should be denied in whole, since it includes no fact that is either new or newly relevant.

The Additional Evidence Requested

In addition to the three affidavits and voluminous accompanying materials it filed on December 18, 2025 with the Leave Application,[1] CIPPIC now requests to file two additional affidavits with extensive further documentary materials:

- Supplemental Affidavit of Luca Bellisario, affirmed February 13, 2026 (the "**Second Bellisario Affidavit**"); and
- Supplemental Affidavit of David Fewer, affirmed February 13, 2026 (the "**Second Fewer Affidavit**").

[1] CIPPIC originally filed three affidavits in support of the Leave Application: (1) Affidavit of David Fewer, affirmed December 12, 2025 (the "**First Fewer Affidavit**"), (2) Affidavit of Kelli Fairbrother, affirmed December 17, 2025, and (3) Affidavit of Luca Bellisario, affirmed December 18, 2025 (the "**First Bellisario Affidavit**").

CIPPIC explains that the two proposed additional affidavits are "intended to address certain aspects of the test for public interest standing that was recently decided for the first time by the Tribunal in *Martin.*"[2] CIPPIC suggests that, before the Tribunal released its decision in *Martin*[3] on January 13, 2026, it could not have known that the additional evidence might be relevant for the Leave Application. Apple disagrees.

Respectfully, none of the proposed additional evidence addresses issues raised for the first time in the *Martin* decision. It was readily apparent when CIPPIC first filed the Leave Application on December 18, 2025 that the issues addressed in CIPPIC's new affidavits could be relevant to the Tribunal's consideration of the "public interest" test. As described below, these issues are already largely addressed in CIPPIC's original affidavit evidence and submissions. CIPPIC was under no time pressure to file the Leave Application. It was CIPPIC's choice not to include the evidence that it now seeks to add.

CIPPIC acknowledges that the *Competition Tribunal Rules*[4] do not contemplate that an applicant may add further evidence once it has filed its application for leave. Rather, section 103.1(1) of the *Competition Act* and rule 115(1) of the *Rules* provide that an application needs to include "*an affidavit setting out the facts in support of the proposed application*". In Apple's submission, this is a powerful indication that the evidence that the applicant is already aware of and considers relevant must be filed together with the leave application. This is consistent with the Federal Court of Appeal's decision in *Ab Hassle v. Canada (Minister of National Health and Welfare) ("**Hassle**"),* which held in a patent dispute that the intent of a regulatory provision that similarly does not contemplate later addition of evidence was to require "that the entire factual basis be set forth in the statement rather than be revealed piecemeal when some need happens to arise."[5]

The reasoning in *Hassle* was endorsed in *Commissioner of Competition v. Sears ("**Sears**"),* where the Tribunal held that the intent of the *Rules* was to allow evidence to be amended only "where new information that is relevant to the issues" has arisen. [6] The Tribunal also noted that it was incumbent on the party moving to file the supplementary evidence "to establish that this was new information which was not known or could not have been ascertained by reasonable diligence."[7] The FCA's and the Tribunal's treatment of these procedural rules is meant to prevent parties from trying to gain advantages by filing evidence in multiple waves, which may disrupt the opposite party from being able to efficiently understand and respond to the matters in issue. Allowing additional evidence would also be

[2] CIPPIC's letter of February 13, 2026, p. 1.
[3] *Martin v. Alphabet Inc. et al*, 2026 Comp Trib 3 ("**Martin**").
[4] SOR/2008-141, as amended.
[5] *Ab Hassle v. Canada (Minister of National Health and Welfare)*, 2000 CanLII 15586 (FCA) at para 23.
[6] *Commissioner of Competition v. Sears Canada Inc.*, 2003 Comp Trib 25 at para 23.
[7] *Commissioner of Competition v. Sears Canada Inc.*, 2003 Comp Trib 25 at para 23. It is important to note that, in this *Sears* case, the Tribunal was applying the specific language that existed in the *Rules* at the time that allowed an amendment or supplement if there is new information. In our case, there are no applicable *Rules* allowing supplemental information; however, the principle remains the same.

inconsistent with the Tribunal's mandate as set out in the *Competition Tribunal Act* to conduct proceedings expeditiously and in accordance with principles of fairness.[8] Permitting CIPPIC in this case to adduce additional evidence that is neither new or newly relevant, "which with reasonable diligence was previously available",[9] would be contrary to the *Rules,* inefficient, unfair, and would set a precedent that applicants can re-plead their cases.

For the reasons above, Apple opposes in whole CIPPIC's request to add the additional affidavits to the record for the Leave Application. We set out below specific examples of evidence from each of the CIPPIC additional affidavits to which Apple objects.

The Second Bellisario Affidavit

(a) Paragraphs 12-41 of the Second Bellisario Affidavit describe the witnesses and consultants engaged by CIPPIC and summarize the witnesses' anticipated evidence; the CVs of the witnesses and consultants are attached as Exhibits B through H.

The First Bellisario Affidavit already discusses the interactions that CIPPIC's counsel had with industry experts about giving evidence.[10] This shows that CIPPIC and its counsel had already recognized that identification of witnesses might be a relevant consideration, consistent with the public interest standing jurisprudence referenced in its Leave Application.[11] The additional details that CIPPIC now seeks to add should have been included in the original Leave Application.

(b) Paragraphs 42-43 explain CIPPIC's effort to secure litigation funding proposals.

The First Bellisario Affidavit already addresses the discussions that CIPPIC's counsel had with third-party litigation funders.[12] Again, this shows that CIPPIC and its counsel had already recognized that access to resources to advance the litigation, whether through litigation funding or otherwise, might also be a relevant consideration, consistent with the public interest standing jurisprudence referenced in its Leave Application.[13] The additional details that CIPPIC now seeks to add should have been included in the original Leave Application.

The Second Fewer Affidavit

(a) Paragraphs 3-7 of the Second Fewer Affidavit discuss CIPPIC's prior engagement with "Big Tech issues" and specifically attach the Canadian government's consultation on

[8] *Competition Tribunal Act,* RSC 1985, c 19 (2nd Supp), s. 9(2)
[9] *Commissioner of Competition v. Sears Canada Inc.*, 2003 Comp Trib 25 at paras 23-25.
[10] First Bellisario Affidavit, at para 6-7.
[11] *British Columbia (Attorney General) v Council of Canadians with Disabilities*, 2022 SCC 27 at paras. 28 and 72 ("**CCD**"). See CIPPIC's Memorandum of Fact and Law in support of the Notice of Application under s. 103.1, dated December 18, 2025 ("**MOFL**"), at para 52.
[12] First Bellisario Affidavit, at paras 8-9.
[13] CCD, at para 105. See MOFL, at para 52.

competition law reform and CIPPIC's submission in response to that consultation as Exhibits A and B.

The First Fewer Affidavit already references CIPPIC's submission to the Canadian government consultation on competition law reform.[14] This shows that CIPPIC had already recognized that this might be a relevant consideration, consistent with the public interest standing jurisprudence referenced in its Leave Application.[15] The additional details that CIPPIC now seeks to add should have been included in the original Leave Application.

(b) Paragraph 8 discusses that CIPPIC considers the issues raised in this proceeding to be central to its mandate to advocate on matters of law and technology.

This is essentially a re-statement of CIPPIC's interest in this case, which is already set out in the First Fewer Affidavit.[16] Any details that CIPPIC now seeks to add should have been included in the original Leave Application.

(c) Paragraphs 9-17 describe CIPPIC's anticipated role in the litigation, which addresses the "reasonable and effective means" factor in the "public interest" leave test discussed in *Martin*.

CIPPIC identifies "reasonable and effective means" as a relevant factor in the "public interest" leave test in its original MOFL.[17] Any evidence in support of this factor should have been included in the original Leave Application.

(d) Paragraphs 18-19 discuss CIPPIC's public communications regarding this proceeding and attach its web post and interview as Exhibits C and D.

This evidence does not address any of the issues raised in the *Martin* decision.

Conclusion

The legislation and the *Rules* do not contemplate an applicant supplementing its evidence in support of a leave application. The additional evidence for which leave is sought is not "new" since December 18, 2025, and its relevance to the Leave Application was not affected by the *Martin* decision. CIPPIC chose not to include this evidence as part of its initial Leave Application. In the context of this application, it would be improper, and inconsistent with the legal framework and jurisprudence, to allow CIPPIC to file additional evidence that is related to factors that were well known prior to the *Martin* decision.

[14] First Fewer Affidavit, at para 12(a).
[15] CCD, at para 101. See MOFL, at paras 52-53.
[16] First Fewer Affidavit, at paras 23-26.
[17] MOFL, at para 52.

Accordingly, Apple opposes all of CIPPIC's proposed additional affidavits and accompanying materials. For the same reasons, Apple opposes CIPPIC's companion request to file an amended Memorandum of Fact and Law in support of the Leave Application.

Yours truly,

William Wu

cc. Louis Sokolov, Jean-Marc Leclerc, Mohsen Seddigh, and Maria Arabella Robles, Sotos LLP
Éric Vallières, Neil Campbell, Samantha Gordon, and Hannah Johnson, McMillan LLP