

Competition Tribunal



Tribunal de la concurrence

Citation: *The Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic v Apple Canada Inc. and Apple Inc.*, 2026 Comp Trib 13

File No.: CT-2025-007

Registry Document No.: 35

IN THE MATTER OF an application for an order granting leave under section 103.1 of the *Competition Act*, RSC 1985, c C-34, to commence an application under sections 77 and 79 of the *Competition Act*;

BETWEEN:

**The Samuelson-Glushko Canadian
Internet Policy and Public Interest
Clinic**

(applicant)

and

Apple Canada Inc. and Apple Inc.

(respondents)



Decided on the basis of the written record.

Before: Justice Andrew D. Little (Chairperson)

Date of order: March 13, 2026

ORDER

(Informal motion by the applicant to file supplementary affidavits)

[1] **UPON INFORMAL MOTION** by the applicant under Rule 81 of the *Competition Tribunal Rules* dated February 13, 2026, requesting permission to file supplementary affidavits in relation to its application for leave to apply to the Tribunal under section 103.1 of the *Competition Act* dated December 18, 2025, and to file a revised memorandum of fact and law within 10 days of an order granting permission to file the supplementary affidavits;

[2] **AND CONSIDERING** that the supplementary affidavits are those of Luca Bellisario affirmed on February 13, 2026, and of David Fewer affirmed on February 13, 2026, (together, the “Supplementary Affidavits”), and that the applicant filed affidavits from both witnesses to support its application for leave when it was filed with the Tribunal;

[3] **AND CONSIDERING** that on January 13, 2026, the Tribunal issued a decision in an application for leave to file an application to the Tribunal under section 103.1 in another proceeding: *Martin v Alphabet Inc., Google LLC, Google Canada Corporation, Apple Inc., and Apple Canada Inc.*, 2026 Comp Trib 3, 2026 CanLII 1111 [“*Martin v Google and Apple*”];

[4] **AND CONSIDERING** that *Martin v Google and Apple* was the first decision in which the Tribunal addressed the criteria in the newly-enacted test for leave to apply to the Tribunal “in the public interest” under subsection 103.1(7) of the *Competition Act*, and that *Martin v Google and Apple* was issued less than a month after the present application for leave was filed;

[5] **AND CONSIDERING** that during a case management conference (“CMC”) on January 16, 2026, the applicant advised the Tribunal that it would be requesting permission to file supplementary evidence in light of the Tribunal’s reasons in *Martin v Google and Apple*;

[6] **AND CONSIDERING** that at the same CMC, the parties and the Tribunal discussed a timetable for the filing of materials in the present motion and for the filing of the respondents’ representations in response, if any, which was memorialized in a Direction dated January 16, 2026;

[7] **AND CONSIDERING** that the Tribunal received and read the submissions in the applicant’s letter dated February 13, 2026 including the Supplementary Affidavits provided with that letter, and the respondents’ submissions opposing the request provided by letter dated February 27, 2026;

[8] **AND CONSIDERING** the respondents’ submissions, including that the Tribunal should not permit the Supplementary Affidavits to be filed because they include no fact that is either new or newly relevant, citing *Commissioner of Competition v Sears Canada Inc.*, 2003 Comp Trib 25, 2003 CACT 25, and *Ab Hassle v Canada (Minister of National Health and Welfare)*, 2000 CanLII 15586 (FCA);

[9] **AND FINDING** that the Supplementary Affidavits contain information relevant to the criteria for leave to apply to the Tribunal “in the public interest”, as described in *Martin v Google and Apple*;

[10] **AND CONSIDERING** that the applicant promptly advised the respondents and the Tribunal of its intent to request permission to file supplemental evidence in support of its leave application, within days of the release of *Martin v Google and Apple*;

[11] **AND RECOGNIZING** that the present application for leave under section 103.1 of the *Competition Act* is at a very early stage, and that the respondents have not yet filed written representations to respond to the application for leave under section 103.1, or a motion for permission to file responding evidence under Rule 119;

[12] **AND FINDING** that the cases cited by the respondents are distinguishable; in particular, the Tribunal in *Sears Canada* rendered its decision on the first day of the hearing of an application on the merits, and granted the respondent's motion for leave to amend the will-say statements of three of five witnesses for the hearing of the application, while finding that two new will-says should not be permitted as contrary to the rules that applied to the service of disclosure statements at that time in 2003. See *Sears Canada*, at paras 1-2, 9, 19-23; *Commissioner of Competition v Sears Canada Inc.*, 2005 Comp Trib 2, 2005 CACT 2, at p. 1 (showing hearing dates). The legal and factual context for the present application for leave, as well as its very early stage, are also quite different from those in *Ab Hassle*;

[13] **AND FINDING** that having received copies of the Supplementary Affidavits in mid-February 2026, and copies of the applicant's initial affidavits in December 2025, the respondents have sufficient time to understand and respond to all of the applicant's evidence filed in support of its leave application and to file their representations on the application for leave under section 103.1, as contemplated by the *Competition Act* and the *Competition Tribunal Rules*;

[14] **AND RECOGNIZING** that the respondents also have an opportunity to file a motion for leave to file responding evidence under Rule 119 and to have input into the dates for filing their written representations and, if applicable, any responding evidence for which leave may be granted under Rule 119;

[15] **AND FINDING** that the present leave application is at a much earlier stage and the circumstances are different from those mentioned in *Martin v Google and Apple*, at paragraph 237;

[16] **AND FINDING** that the respondents have not shown that they will suffer any prejudice by the filing of additional evidence from the applicant in the Supplementary Affidavits; that the filing of the Supplementary Affidavits would not be unfair, or enable the applicant to gain a procedural advantage by filing evidence in multiple waves, at this early stage of the leave application; and that there is no evidence that the respondents have been disrupted from efficiently understanding and responding to the matters alleged, as they claimed;

[17] **AND FINDING** that in the circumstances, the respondents will have a full and fair opportunity to respond to the application for leave under section 103.1, as contemplated by the *Competition Act* and the *Competition Tribunal Rules*;

[18] **AND DETERMINING** that, for these reasons, it is in the interests of justice for the Tribunal to exercise its discretion to permit the applicant to file the Supplementary Affidavits;

THE TRIBUNAL ORDERS THAT:

[19] The applicant is granted permission file the Supplementary Affidavits (as defined above) for use on its pending application for leave under section 103.1 of the *Competition Act*.

[20] The Supplementary Affidavits are deemed to be filed on the date of this order.

[21] The applicant may file a revised memorandum of fact and law within 10 days of this order.

[22] The deadlines for the additional steps towards a decision on the application for leave under section 103.1 shall be determined by future Direction(s), to be issued by the Tribunal following receipt of the participants' proposed schedule as contemplated by the Direction dated March 6, 2026.

DATED at Ottawa, this 13th day of March 2026.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Andrew D. Little

COUNSEL OF RECORD:

For the applicant:

**The Samuelson-Glushko Canadian Internet
Policy and Public Interest Clinic**

Louis Sokolov
Jean-Marc Leclerc
Mohsen Seddigh
Maria Arabella Robles

For the respondents:

Apple Canada Inc. and Apple Inc.

Éric Vallières
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