COMPETITION TRIBUNAL
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COMPETITION TRIBUNAL

IN THE MATTER OF an application by the Samuel 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. 1985, c. C-34 (the "***Competition Act***"), granting leave to bring an application under sections 77 and 79 of the *Competition Act*;

B E T W E E N:

SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY AND PUBLIC INTEREST CLINIC

Applicant

and

APPLE CANADA INC. AND APPLE INC.

Respondents

REVISED MEMORANDUM OF FACT AND LAW
(Leave under section 103.1 of the *Competition Act*)

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PART I - OVERVIEW

1. The applicant applies pursuant to s. 103.1 of the *Competition Act* (the "**Act**") for leave to apply to the Tribunal for orders under s. 77 and s. 79 related to the respondents' (collectively, "**Apple**") administration of the Apple App Store (the "**App Store**") in Canada. As described below, the proposed application meets the test for leave in the public interest set out by the Tribunal in *Martin.*[1]

2. Apple is one of the world's largest corporations. It administers the App Store, a digital marketplace where Apple iPhone and iPad users ("**iOS users**") find and purchase applications ("**apps**") for their devices, and where app developers offer iOS apps to users, both free and paid. Apple charges a significant commission of up to 30% on all app sales. It also charges a 30% commission on in-app purchases ("**IAP**"). Apple enforces non-negotiable contractual restrictions, prohibiting developers from offering iOS apps outside the App Store, from using third-party payment processors for IAP that offer lower prices or better features, and from directing iOS users to alternative IAP options. Developers have no choice but to accept the App Store's one-sided terms, which maintain and entrench Apple's dominance. Apple's anti-competitive practices enable it to charge *supra*-competitive commissions to developers and, indirectly, to iOS users.

3. There are two relevant markets at issue: (i) the market for the distribution of apps on iPhones and iPads (the "**App Distribution Market**") and (ii) the market for payment processing services within apps (the "**In-App Payment Services Market**"). The proposed application alleges that Apple engaged in anti-competitive conduct in both markets, including:

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[1] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 (CACT).

(a) Exclusive dealing, contrary to s. 77 of the Act, by requiring all iOS apps to be distributed exclusively through the App Store and by requiring all developers to use IAP;

(b) Tied selling, contrary to s. 77 of the Act, by mandating developers' use of Apple's IAP for all iOS apps listed in the App Store;

(c) Market restrictions, contrary to s. 77 of the Act, by requiring iOS apps to only be distributed in the App Store and by requiring Apple's IAP to be the only in-app payment option;

(d) Anti-competitive acts contrary to s. 79 of the Act, including by:

(1) exclusive dealing;

(2) tied selling;

(3) market restrictions;

(4) prohibiting developers from informing users about alternative IAP options ("**anti-steering rules**");

(5) 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; and

(6) directly or indirectly imposing excessive and unfair prices through commissions.

4. The applicant's record includes copies of all relevant developer agreements, as well as first-hand evidence from a developer describing numerous other competitive IAP services available that would charge a much lower commission, with better functionality and service than Apple.

5. The applicant's record also includes tribunal and court decisions and government reports from other jurisdictions that have considered similar competition-related complaints about the App Store, including abuse of dominance, and have unanimously concluded that there are serious competitive concerns.

6. The proposed applicant is a reputable public interest organization that has a keen interest in the issues in the application, having previously made submissions on the same App Store issues raised by the proposed application in response to a consultation paper on the future of competition policy in Canada. The applicant has engaged industry experts, expert economists, a computer security expert and a forensic accountant to testify in the proposed application if leave is granted, some of whom have testified about similar issues in other jurisdictions. The applicant has also engaged experienced consultants to provide strategic assistance and has solicited bids from litigation funders for adverse costs protection and disbursement funding.

7. The proposed application meets the three-step test for leave set out in *Martin*.[2]

PART II - STATEMENT OF FACTS

A. Launch of the Apple iPhone and App Store

8. The respondents launched the Apple iPhone in the United States in 2007[3] and in Canada in 2008.[4]

9. On July 10, 2008, the App Store debuted worldwide, including in Canada.[5] The App Store is accessed via an app that is pre-installed on iPhones. The App Store is a two-sided platform

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[2] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 (CACT).
[3] Affidavit of Luca Bellisario, sworn December 18, 2025, ("**Bellisario Affidavit #1**"), Exhibit "M", Apple Press Release dated January 30, 2007.
[4] Bellisario Affidavit #1, Exhibit "O" (Apple Press Release dated June 9, 2008).
[5] Bellisario Affidavit #1, Exhibit "E" ("**CAT decision**"), para. 41. See also Bellisario Affidavit #1, Exhibit "Q" (Apple website post entitled "The App Store turns 10").

operated by the respondents that connects third-party app developers to iPhone users, enabling developers to offer apps to users, and users to find and download apps produced by developers.[6]

10. Apple's purpose was to create an integrated "ecosystem" that seamlessly weaved together Apple devices with Apple software.[7] 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," to "make [the] Apple ecosystem even more sticky."[8]

11. This integrated iOS ecosystem has been described as a "walled garden,"[9] in which "Apple controls and supervises access to any software which accesses the iOS device."[10] Apple claims that the walled garden furthers consumer privacy and security.[11]

B. Use of the Canadian App Store in Canada

12. The Canadian App Store is accessed by Canadian residents, *i.e.* persons who set Canada as their country or region when setting up their Apple ID. In addition, if users wish to make purchases on the Canadian App Store, they must provide Canadian billing information.[12]

13. 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**").[13] Both are contracts of adhesion that apply to every Developer who lists their app on the App Store in Canada.[14]

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[6] Bellisario Affidavit #1, Exhibit "Q"; CAT Decision, para. 32.
[7] CAT decision, para. 29.
[8] Bellisario Affidavit #1, Exhibit "X" (Steve Jobs e-mail dated October 24, 2010).
[9] CAT decision, para. 30 (quoting US District Court decision).
[10] CAT decision, para. 30 (quoting US District Court decision).
[11] *Epic Games, Inc v Apple Inc*, 559 F. Supp. 3d 898, 922 (N.D. Cal 2021), p. 2.
[12] Bellisario Affidavit #1, Exhibit "Z" (Apple webpage dated November 17, 2025); Exhibit "AA" (Apple's Media Services Terms and Conditions dated September 15, 2025).
[13] CAT decision, paras. 48-51.
[14] Bellisario Affidavit #1, Exhibit "V" (Apple Developer Program License Agreement dated October 8, 2025 ("**DPLA**"), Attachment 9 (referring to Apple Canada Inc.) (p. 111/187); DPLA, Exhibit "A" (appointing Apple Canada as agent) (p. 125/187); DPLA, Exhibit "A" (appointing Apple Canada as agent") (p. 167/187); DPLA, Exhibit "C", s. 3 (referring to Canadian tax requirements) (p. 174-176/187).

14. Pursuant to these agreements, developers are prohibited from distributing 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.[15]

15. The Canadian App Store offers both free and paid apps. When a payment is necessary to download an app, Apple collects the payment from a Canadian iOS user, deducts a commission and then remits the remaining balance to the Developer.[16]

C. The Commissions charged by Apple on App Store purchases

16. When the App Store was launched, Apple set a standard 30% commission on paid app downloads. Mr. Jobs stated during the launch event that Apple did not intend to make money from the App Store; the hope was that the 30% commission would cover the costs of running the App Store.[17] The 30% commission was not set by reference to any costs Apple expected to incur in creating and developing the App Store, or to the security, privacy, or value provided.[18]

17. From time to time, Apple reduced the commission in some circumstances (primarily due to litigation or regulatory action, rather than competition),[19] but has otherwise maintained the 30% commission since 2008. For example, since January 2021, developers who earn no more than USD$1 million in worldwide app revenue (after deduction of the commission) can qualify for the "App Store Small Business Program" ("**SBP**") and pay a reduced commission of 15%.[20]

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[15] DPLA, s. 7(6) (p. 69-70/187). These submissions do not address the uncommon situation in which an iOS user can carry out complex "jailbreaking" procedures to permit apps to be downloaded from third party sites.
[16] DPLA, s. 7.2 and Schedule 2, ss. 3.4(a)-(b) and 3.5 (p.66, 142-143, 144-145/187).
[17] CAT decision, para. 631(2).
[18] CAT decision, paras. 627(2) and 631.
[19] CAT decision, para. 80 (citing CMA's MEM Study, Appendix H, p. H2, a copy of which is attached as Exhibit "E" to the affidavit of Bellisario #1).
[20] Bellisario Affidavit #1, Exhibit "S" (Apple Press Release dated November 18, 2020); Affidavit of Kelli Fairbrother, affirmed December 17, 2025 ("**Fairbrother Affidavit**"), para. 10.

18. In addition to the commission charged to developers in respect of Canadian app purchases, a 30% commission is charged to developers on all IAP by Canadian iOS Users. Apple's App Review Guidelines require developers to exclusively use Apple's IAP,[21] prohibiting them from using third-party payment processors that compete with Apple's IAP, offering better terms, such as lower commission rates.[22]

19. Furthermore, by requiring developers to use Apple's IAP, Apple gains significant market intelligence on how developers' customers use apps. Apple uses this data to identify and seize revenue growth opportunities and compete with developers, whose customer information is vital to Apple's market insights.[23] Developers have no choice but to grant Apple access to their customer data.[24]

D. <u>International Regulatory Action and Litigation</u>

20. Over the last five years, the App Store has been the subject of reports and decisions by governments, tribunals and courts around the world. These reports and decisions describe numerous competitive concerns with Apple's management of the App Store that are applicable to Canada, and make clear that there is a substantial and genuine competition law dispute arising from Apple's conduct. For example:

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[21] Proposed Application, para. 19.
[22] Fairbrother Affidavit, para. 9.
[23] Affidavit of Kelli Fairbrother, para. 14 ("Apple's control of our transaction data, in circumstances where it is a direct competitor of ours via its Apple Books product"). See also Affidavit of Bellisario #1, Exhibit "G" (House Judiciary Committee report, p. 361: "Developers have alleged that Apple abuses its position as the provider of iOS and operator of the App Store to collect competitively sensitive information about popular apps and then build competing apps, or integrate the popular app's functionality into iOS. The practice is known as 'Sherlocking.' The antitrust laws do not protect app developers from competition, and platforms should continue to innovate and improve their products and services. However, Sherlocking can be anticompetitive in some instances."). See also Federal Court of Australia decision, para. 658.
[24] Fairbrother Affidavit, para. 15.

(a) In 2021, the Netherlands Authority for Consumers and Markets imposed an order on Apple, finding that Apple imposed unreasonable conditions on dating app developers to use Apple's payment systems. As a result, since February 2022, dating app developers in the Netherlands have been able to use payment service providers other than Apple.[25]

(b) In 2022, the U.K.'s Competition and Markets Authority published its final report of its market study into mobile ecosystems, finding 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 and their users' needs.[26]

(c) In 2022, the U.S. House of Representatives Judiciary 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 developers through misappropriation of competitively sensitive information and to charge 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."[27]

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[25] Bellisario Affidavit #1, Exhibit "A" (Netherlands Authority for Consumers and Markets August 24, 2021 decision, summary dated December 12, 2024); Affidavit "T" (Apple Press Release, dated January 14, 2022).
[26] Bellisario Affidavit #1, Exhibit "E" (CMA Report, dated June 10, 2022).
[27] Bellisario Affidavit #1, Exhibit "G" (US House of Representatives Judicial Committee Report, dated July 2022, pp. 11-12).

(d) On March 4, 2024, the European Commission released its *Spotify* decision, which concluded that Apple's anti-steering rules constituted an infringement of European abuse of dominance rules. The EC fined Apple over €1.8 billion and ordered it to revise its EC developer agreements.[28]

(e) On June 24, 2024, the EC informed Apple of its preliminary view that Apple was in breach of the EU's *Digital Markets 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 IAP 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.[29]

(g) In August 2025,[30] in an action brought by Epic Games and others against Apple, the Federal Court of Australia concluded that (i) the iOS app distribution market and the iOS in-app payment solution markets were relevant market definitions;[31]

[28] Bellisario Affidavit #1, Exhibit "H" (EC 2024 Decision).
[29] Bellisario Affidavit #1, Exhibit "D" (ACCC Report, dated March 2025, p. 117).
[30] Supplementary Affidavit of Luca Bellisario, sworn February 13, 2026 ("**Bellisario affidavit #2**"), Exhibit "A" ("**Federal Court of Australia decision**").
[31] Federal Court of Australia decision, para. 6341.

(ii) that Apple had a substantial degree of power in each market;[32] (iii) that by prohibiting direct downloading of apps and alternative payment systems for IAP, Apple engaged in conduct that had the purpose of, or was likely to have the effect of, substantially lessening competition in the relevant markets.[33] The question of relief and remedies was reserved for a further hearing.[34]

(h) On October 23, 2025, the U.K. Competition Appeal Tribunal ("**CAT**") found that Apple infringed EU and UK laws on abuse of dominance,[35] exclusive dealing[36] and tied selling[37] in relation to iOS app distribution services and iOS in-app payment services, and by charging an excessive headline 30% commission rate.[38] The CAT found that the overcharge in relation to iOS app distribution services was the difference between 17.5% and the commission actually charged by Apple,[39] and the overcharge in respect of Apple IAP was the difference between 10% and the commission actually charged.[40] On November 13, 2025, the CAT denied Apple permission to appeal this ruling.[41] Apple is seeking permission to appeal the decision to the Court of Appeal for England and Wales.

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[32] Federal Court of Australia decision, para. 6342.
[33] Federal Court of Australia decision, para. 6343.
[34] Federal Court of Australia decision, para. 6347.
[35] CAT decision, paras. 1082-1083.
[36] CAT decision, para. 501.
[37] CAT decision, para. 523.
[38] CAT decision, para. 1084.
[39] CAT decision, para. 1086.
[40] CAT decision, para. 1087.
[41] [2025] CAT 78.

E. The Proposed Application

21. The proposed Notice of Application states that "[t]he App Distribution Market and the In-App Payment Services Market are distinct markets"[42] and that "Apple holds a dominant position in both markets with effectively 100% market share,"[43] which it maintains through "significant barriers to entry, including technical and contractual restrictions that make the App Store the exclusive channel for distributing iOS apps."[44]

22. The proposed Application states that "Apple's market power allows it to unilaterally define and enforce non-negotiable terms,"[45] which "compel" developers to use the App Store to reach iOS users and to use Apple's IAP.[46] As a result, commission rates are set "arbitrarily,"[47] "excessive[ly] and *supra*-competitive[ly],"[48] and "independently of competitive constraints […]."[49]

23. The proposed Application alleges violations of s. 77 (exclusive dealing, tied selling, market restrictions) and s. 79 of the Act.

24. With respect to exclusive dealing, it is alleged that "Apple requires all iOS apps to be distributed exclusively through the App Store, prohibiting alternative distribution channels. […] Apple's exclusive dealing is likely to impede entry into or expansion into the App Distribution Market by any competitors."[50] The proposed Application also refers to "restrictions that require Developers in Canada to exclusively use IAP."[51]

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[42] Proposed Notice of Application, para. 21.
[43] Proposed Notice of Application, para. 21.
[44] Proposed Notice of Application, para. 21.
[45] Proposed Notice of Application, para. 23.
[46] Proposed Notice of Application, para. 22.
[47] Proposed Notice of Application, para. 23.
[48] Proposed Notice of Application, para. 23.
[49] Proposed Notice of Application, para. 26.
[50] Proposed Notice of Application, para. 28(a).
[51] Proposed Notice of Application, para. 2(a)(ii).

25. With respect to tied selling, the proposed Application states that "[…] 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."[52]

26. The proposed Application also alleges "market restrictions" contrary to s. 77 for market restrictions requiring iOS apps to only be distributed in the App Store and requiring only Apple's IAP to be used for in-app purchases.[53]

27. The proposed Application further alleges a practice of anti-competitive acts contrary to s. 78 and 79, which adversely affect competition, and which are likely to have the effect of preventing or lessening competition substantially in the App Distribution Market and the IAP Services Market.[54] These practices include prohibiting developers from listing iOS apps outside the App Store; prohibiting developers from using alternatives to Apple's IAP; and anti-steering rules.[55]

28. The proposed Application states that Apple's anti-competitive practices are not justified by any legitimate competitive justification or superior competitive performance, such as safety, security or privacy,[56] and alleges that 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.[57]

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[52] Proposed Notice of Application, para. 28(b).
[53] Proposed Notice of Application, paras. 2(a)(i) and (ii) (referring to "restrictions" on distributing Apps and in-app payments).
[54] Proposed Notice of Application, paras. 28, 26.
[55] Proposed Notice of Application, para. 28(c).
[56] Proposed Notice of Application, para. 29.
[57] Proposed Notice of Application, para. 30.

29. The proposed Application requests orders pursuant to s. 77(2), (3) and s. 79(1) of the *Competition Act*, prohibiting Apple from enforcing restrictions that require developers to distribute apps exclusively through the App Store and to exclusively use IAP, and prohibiting Apple from enforcing anti-steering provisions.[58] The proposed application also requests monetary orders pursuant to s. 77(3.1) and s. 79(4.1) of the Act,[59] requiring Apple to pay an amount "not greater than the benefit derived from its conduct" that is the subject of the requested orders.[60]

PART III - POINTS IN ISSUE

30. The issue is whether leave should be granted pursuant to s. 103.1 to bring an application against the respondents to allege they have violated (and are violating) s. 77 and s. 79 of the Act.

PART IV - SUBMISSIONS

A. The Test for Leave under s. 103.1

31. The relevant provisions of s. 103.1 are reproduced below:

> 103.1(1) Any person may apply to the Tribunal for leave to make an application under section 74.1, 75, 76, 77, 79 or 90.1. The application for leave must be accompanied by an affidavit setting out the facts in support of the person's application under that section.
>
> 103.1(7) The Tribunal may grant leave to make an application under section 75, 77, 79 or 90.1 if it has reason to believe that the applicant is directly and substantially affected in the whole or part of the applicant's business by any conduct referred to in one of those sections that could be subject to an order under that section or **if it is satisfied that it is in the public interest to do so.**[61]

> 103.1 (1) Toute personne peut demander au Tribunal la permission de présenter une demande en vertu des articles 74.1, 75, 76, 77, 79 ou 90.1. La demande doit être accompagnée d'une déclaration sous serment faisant état des faits sur lesquels elle se fonde.
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> 103.1 (7) Le Tribunal peut faire droit à une demande de permission de présenter une demande en vertu des articles 75, 77, 79 ou 90.1 s'il a des raisons de croire que l'auteur de la demande est directement et sensiblement gêné dans tout ou partie de son entreprise en raison de l'existence de l'un ou l'autre des comportements qui pourraient faire l'objet d'une ordonnance en vertu de l'un de ces articles ou **s'il est convaincu que cela servirait l'intérêt public.**

[58] Proposed Notice of Application, para. 2(a).
[59] Proposed Notice of Application, para. 2(b).
[60] Proposed Notice of Application, para. 2(b).
[61] *Competition Act*, RSC 1985, c C-34 ("**Act**"), ss. 103.1(1) and 103.1(7) (emphasis added).

32. In *Martin*, the Tribunal set out a three-step test for leave in the public interest under s. 103.1(7): (1) Is the proposed application a substantial and genuine competition law dispute that warrants resolution by the Tribunal under the provision for which leave is requested? (2) Does the applicant have a genuine interest in the proposed application? (3) Is the proposed proceeding a reasonable and effective means to determine the competition law issues raised?[62]

33. In the exercise of its discretion under s. 103.1(7), "the Tribunal will weigh these considerations cumulatively and assess each of them practically, pragmatically and purposively using its expertise in competition law matters,"[63] applying the criteria "flexibly" rather than a "checklist of mandatory requirements."[64] The threshold to obtain leave "should not be difficult to meet," provided the applicant adduces sufficient evidence related to the three questions.[65] The Tribunal "will not grant leave if the applicant has no realistic chance of success on the proposed application."[66]

34. The Tribunal's conclusion on whether it is "satisfied" that leave should be granted will be based on the Tribunal's "sophisticated understanding of one of its home statutes, including the nature of the competition problems that the provisions of the *Competition Act* have been enacted to address, the requirements of the provision for which leave is sought, and the evidence that will be needed to support an order under each section."[67]

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[62] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 163 (CACT).
[63] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 164 (CACT).
[64] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 164 (CACT).
[65] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 165 (CACT).
[66] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 122 (CACT).
[67] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 85 (CACT).

B. The *Martin* Test

35. In *Martin*, the Tribunal held that the first step to determine whether "there is a substantial and genuine competition law dispute"[68] requires considering "whether the applicant has provided a sufficient factual basis to support the proposed application, including one or more affidavits setting out the facts in support of the proposed application. The factual basis for the proposed application should be directed at the elements of relevant provision(s) […] for which leave is requested."[69]

36. In its assessment of whether there is a substantial competition law dispute, "the Tribunal will focus principally on the nature and scope of the filed evidence and the contents of the proposed notice of application."[70] The Tribunal "will not weigh competing evidence at the leave stage, nor will it seek to resolve complex or factually nuanced issues (for example, market definition or anti-competitive intention or purpose) that are better resolved with the benefit of full evidence available at a hearing of the merits."[71] One of the purposes is to "screen out unmeritorious litigation, including frivolous and vexatious proceedings."[72]

37. Recognizing that it may not be reasonable to expect a public interest applicant to have access to all relevant information at the leave stage, the applicant may seek to address the evidentiary record at the third stage of the *Martin* test by providing "[…] a concrete explanation

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[68] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 118 (CACT).
[69] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 120 (CACT).
[70] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 121 (CACT).
[71] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 122 (CACT).
[72] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 128 (CACT). The Tribunal described the test as "evidently unmeritorious" at paragraph 156 of *Martin*.

of how the applicant will adduce additional evidence for the merits hearing […]."[73] The Tribunal will consider "whether the proposed application will present a 'concrete and well-developed factual setting' to determine the issues […]."[74]

38. In *Martin*, the Tribunal held that "it is permissible for a leave application to rely on documents tendered by affidavit and obtained […] from sources such as publicly accessible court files, in order to provide some information in support of a proposed application of the *Competition Act*."[75] There, the Tribunal relied on "factual points" made in a U.S. court decision,[76] as distinct from allegations made[77] or opinion evidence filed[78] in the proceeding, which were not considered, and the Tribunal stated that it would "not consider the US court's legal determinations or findings that are significantly infused with US antitrust law."[79]

C. Application of the Test

(i) Step 1 of the Martin Test: There is a "substantial and genuine competition law dispute"

(a) Background facts and contractual documents

39. The applicant's factual record includes basic background facts about the release of the iPhone,[80] the launching of the App Store,[81] and copies of the key agreements between Apple and

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[73] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 126 (CACT).
[74] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 141 (CACT).
[75] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 174 (CACT).
[76] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 199 (CACT).
[77] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 184 (CACT).
[78] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 185 (CACT).
[79] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 197 (CACT).
[80] Bellisario Affidavit #1, para. 27.
[81] Bellisario Affidavit #1, para. 31.

developers.[82] The documents are sourced from Apple press releases or its website and are unlikely to be contentious. If leave is granted, counsel may serve requests to admit pursuant to the *Competition Tribunal Rules*.[83]

40. The critical contractual documents are the DA,[84] the DPLA[85] and the Guidelines.[86] These documents apply in Canada to the Canadian App Store.[87] Pursuant to these agreements, developers in Canada are prohibited from distributing native iOS apps other than through the App Store.[88] Consequently, if Canadian iOS users wish to obtain iOS apps, they must do so via the Canadian App Store.

41. The Canadian App Store offers both free and paid apps. When an app is sold, Apple Canada collects the payment from a Canadian iOS user,[89] deducts a 30% commission,[90] and remits the remaining balance to a Developer in Canada.[91] Apple Canada implements Apple Inc.'s global policies in Canada.[92]

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[82] Bellisario Affidavit #1, paras. 35-39.
[83] Bellisario Affidavit #2, para. 35.
[84] Bellisario Affidavit #1, Exhibit "U" ("**DA**").
[85] Bellisario Affidavit #1, Exhibit "V" ("**DPLA**").
[86] Bellisario Affidavit #1, Exhibit "W" ("**Guidelines**").
[87] DPLA, Attachment 9 (referring to Apple Canada Inc.) (p. 111/187); DPLA, Exhibit "A" (appointing Apple Canada as agent) (p. 125/187); DPLA, Exhibit "A" (appointing Apple Canada as agent") (p. 167/187); DPLA, Exhibit "C", s. 3 (referring to Canadian tax requirements) (p. 174-176/187).
[88] DPLA, "Purpose" "Applications developed under this Agreement for iOS […] can be distributed: (1) through the App Store, if selected by Apple […]" (p. 1/187).
[89] DPLA, Exhibit A to Schedule 1, (p. 125/187) ("You appoint Apple Canada, Inc. ("Apple Canada") as Your agent for the marketing and end user download of the Licensed Applications by end users located in the following region: Canada").
[90] DPLA, Schedule 2, p. 137/187 ("Appointment of [Apple as] Agent and Commissionaire"). See also s. 3.4, p. 142/187 ("For sales of Licensed Applications to End-Users, Apple shall be entitled to a commission equal to thirty percent (30%) of all prices paid by each End-User."))
[91] DPLA, Schedule 2, s. 3.5 (p. 144/187).
[92] Bellisario affidavit #1, Exhibit "AA" (Apple Media Services Terms and Conditions, Section T ("Depending on your Home Country, "Apple" means […] Apple Canada Inc. […].")

42. In addition to the commission for App purchases, a 30% commission is charged by Apple on all Apple IAP by Canadian iOS Users.[93] Developers have no choice: they are required to use Apple's IAP for all iOS and in-app purchases.[94] The Guidelines further prohibit developers from "encourag[ing] users to use a purchasing method other than in-app purchase […]".[95]

(b) Affidavit of Kelli Fairbrother

43. The applicant has included an affidavit from Kelli Fairbrother, the CEO of xigxag, a U.K.-based audiobook app developer since 2019.[96] Ms. Fairbrother states that she is "familiar with Apple's practices globally, including in relation to Canada, and can speak to its effects on our company, as an app developer."[97] xigxag is listed on the Canadian App Store,[98] and Ms. Fairbrother states that "[…] xigxag's experience… applies globally, including to Canada."[99]

44. Ms. Fairbrother further explains that xigxag has "worked to build an innovative digital audiobook app"[100] and that it seeks to "challenge the incumbents' dominance of digital books, through innovation."[101] xigxag competes "directly with similar apps sold by Apple, like the Apple Books app […]."[102]

45. Similarly, a November 2022 ISED consultation paper on the future of competition policy in Canada refers to "a select few tech firms [who] substantially control a number of core digital

[93] Guidelines, s. 3.1.1 (p. 20/55).
[94] Guidelines, section 3.1.1, 3.1.3 (pp. 20 & 26/55).
[95] Guidelines, s. 3.1.3 (p. 26/55).
[96] Fairbrother Affidavit, para. 1.
[97] Fairbrother Affidavit, para. 2.
[98] Fairbrother Affidavit, para. 4.
[99] Fairbrother affidavit, para. 6. In contrast to *Martin*, in which the application materials did "not make any specific allegations related to Canada or any alleged effects on competition in Canada" (para. 205), Ms. Fairbrother's affidavit assists the Tribunal "in understanding how Apple's App Store policies and practices impact app developers, including xigxag, who have users in Canada" (Fairbrother affidavit, para. 17).
[100] Fairbrother Affidavit, para. 3.
[101] Fairbrother Affidavit, para. 3.
[102] Fairbrother Affidavit, para. 12.

markets […] and that these companies are de facto 'gatekeepers' […]."[103] The report states that "[…] a company that controls a platform may also compete on it, and may push users towards purchasing its own products and services, rather than those offered by rivals […]."[104]

46. Ms. Fairbrother states that xigxag has agreed to Apple's DPLA, which "applies with respect to xigxag's sales via the App Store to consumers anywhere in the world."[105] She states that Apple "requires us to distribute our apps to customers who are iPhone and iPad users solely via the App Store" and that Apple "forces us to use Apple's in-app payment services",[106] thereby preventing xigxag "from using alternative payment providers."[107]

47. Ms. Fairbrother's affidavit describes the negative impacts of being compelled to use Apple's IAP, as follows:

(a) Apple charges xigxag about five to ten times more than it would pay in a competitive marketplace (3%).[108]

(b) While xigxag qualified for Apple's Small Business Program and pays a reduced 15% commission, "this lower rate is a small consolation for any developer, like xigxag, that seeks to grow its business beyond this low threshold. The 15% commission is […] 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."[109]

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[103] *The Future of Competition Policy in Canada*, p. 31 (https://ised-isde.canada.ca/site/strategic-policy-sector/en/marketplace-framework-policy/competition-policy/future-competition-policy-canada) ("**ISED Consultation Paper**"). The ISED Consultation Paper was referred to by the Tribunal in *Martin*. See paras. 68-72.
[104] ISED Consultation Paper, p. 31.
[105] Fairbrother Affidavit, para. 5.
[106] Fairbrother Affidavit, para. 8.
[107] Fairbrother Affidavit, para. 9.
[108] Fairbrother Affidavit, para. 9.
[109] Fairbrother Affidavit, paras. 10-11.

(c) Apple pays xigxag revenue at least a month late, disrupting its cash flow. xigxag waits up to 69 days before Apple pays earned revenue. Alternative payment methods, such as Stripe, have a payment turnaround time of about 7 days. Apple's practices undermine xigxag's cash flow.[110]

(d) Apple does not respect xigxag's terms and conditions, while controlling the refund process (for example, a customer can finish an entire book and request a refund from Apple, which will grant it).[111]

(e) Apple controls xigxag's transaction data, in circumstances where it is a direct competitor of xigxag via its Apple Books product.[112]

(f) There are basic gaps in Apple's IAP functionality, including: (i) an inability for customers to add items to a basket, (ii) an inability to pay for multiple items at once, (iii) an inability to provide an itemized receipt (i.e. identifying the book that was purchased), and (iv) delays in issuing receipts to customers.[113] Apple's contracts prevent developers from engaging competitor IAP vendors.[114]

48. Ms. Fairbrother provides first-hand evidence confirming that Apple's practices are global in scope. Her testimony further supports the existence of a "substantial and genuine competition law dispute."

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[110] Fairbrother Affidavit, para. 13.
[111] Fairbrother Affidavit, para. 15.
[112] Fairbrother Affidavit, para. 15.
[113] Fairbrother Affidavit, para. 15.
[114] Fairbrother Affidavit, para. 16.

(c) The worldwide reports and decisions analyzing the App Store

49. The applicant's record includes decisions and reports from tribunals, regulators, and government bodies that considered competition law concerns regarding Apple's administration of the App Store in jurisdictions around the world. They are summarized at paragraph 20 above.

50. Counsel's second affidavit expands on this analysis, stating that the proposed application "takes guidance from two decisions that have considered similar issues to the ones raised in the proposed application: (1) the decision of the CAT in *Dr. Rachel Kent v. Apple Inc. [et al.]* and (2) the decision of the Federal Court of Australia […] in *Epic Games, Inc. v. Apple Inc.* […]."[115] While decided under the legal frameworks applicable to their respective jurisdictions, these cases considered similar factual contexts to that in this case.[116]

51. The determinations by the CAT and the Australian Court addressed similar statutory provisions to those at issue in this proceeding. For example, the CAT proceeding considered and applied s. 18 of the *Competition Act, 1998*, entitled "Abuse of dominant position."[117] Subsection 18(2) refers to "directly or indirectly imposing unfair purchase or selling prices." The CAT found that "Apple is abusing its dominant position by charging excessive and unfair prices in the form of the Commission, which it charges developers for iOS app distribution services and iOS in-app payment services."[118]

52. Similarly, the Australian Court considered s. 46 of the Australian *Competition and Consumer Act 2010*, which states in part that "[a] corporation that has a substantial degree of power in a market must not engage in conduct that has the purpose, or has or is likely to have the effect,

[115] Bellisario Affidavit #2, para. 4.
[116] Bellisario Affidavit #2, para. 4.
[117] Bellisario Affidavit #2, para. 7.
[118] Bellisario Affidavit #2, para. 10.

of substantially lessening competition in that market […].”[119] The Federal Court of Australia found that “Apple Inc. has engaged in conduct with the effect or likely effect, of substantially lessening competition in the [iOS app distribution market and iOS in-app payment solutions market.]”[120]

53. The decisions and reports confirm the “justiciability” of the proposed claims. In *Martin*, the Tribunal held that “[j]usticiability (or something closely analogous) in the competition law context concerns whether there is an appropriate role for the Tribunal as contemplated by Parts VII.1 or VIII of the *Competition Act*.”[121] By showing a common factual basis and common economic analyses around the world, these decisions show that the proposed claims are “justiciable.” Further, while there are differences between Canadian laws and laws in other jurisdictions, and the Tribunal’s decision cannot be expected to be a carbon copy of the CAT or the Federal Court of Australia, there may well be similarities of analysis and areas from which the Tribunal may derive insights.

54. It is not surprising that economic questions, such as market analyses, which are based on basic economic principles, are commonly seen across different jurisdictions. For example, the CAT referred to using the “hypothetical monopolist test” (“**HMT**”) to test interchangeability/substitution in the market definition analysis.[122] As described by the CAT, the HMT involves determining whether a hypothetical monopolist “could profitably impose a SSNIP [small but significant and non-transitory increase in price] across the relevant market in relation to those products.”[123]

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[119] Bellisario Affidavit #2, para. 9 (emphasis in original).
[120] Bellisario Affidavit #2, para. 10.
[121] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 117 (CACT)
[122] CAT decision, para. 173(3).
[123] CAT decision, para. 188.

55. Similarly, in *Visa and Mastercard*, the Tribunal held that "[t]he Tribunal generally applies the hypothetical monopolist test when defining relevant markets"[124] and that "a relevant product market is defined as the smallest group of products in which a sole profit-maximizing seller (the hypothetical monopolist) would impose and sustain a small but significant and non-transitory increase in price (the "SSNIP") above competitive levels."[125]

56. The proposed application alleges that Apple's commissions lead to excessive and unfair selling prices.[126] Similarly, in its decision, the CAT conducted a thorough analysis of "excessive and unfair pricing" under UK and EU laws.[127] In Canada, s. 78(k) of the Act was amended in 2023 to include "directly or indirectly imposing excessive and unfair selling prices" as an example of an anti-competitive act under s. 79. The annotated *Competition Act* states that "[g]iven that high pricing was previously never considered to be an anti-competitive act, it remains to be seen how this provision will be applied."[128] Similarly, the paper *The New Abuse of Dominance Regime in Canada*[129] states:

> No guidance has been provided on what constitutes "excessive and unfair selling prices" under the Act, and it is unclear how these terms will be interpreted by the Tribunal. It is also debatable whether Parliament intended to capture excessive or unfair selling prices (i.e., price gouging) only where the conduct negatively effects a competitor or competition, or all price gouging (more akin to the European approach described below). This ambiguity is a matter that is likely to be litigated. […].[130]

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[124] *The Commissioner of Competition v. Visa Canada Corporation and MasterCard International Incorporated*, 2013 CACT 10 at para 173

[125] *The Commissioner of Competition v. Visa Canada Corporation and MasterCard International Incorporated*, 2013 CACT 10 at para 173

[126] Proposed Notice of Application, para. 28(d).

[127] CAT decision, paras. 183-249.

[128] B. Facey and C. Brown, *Competition Act: Commentary and Annotation* (2026), p. 242. The Bureau has released enforcement guidelines that refer to the Bureau's enforcement of unfair pricing provisions. See https://competition-bureau.canada.ca/en/how-we-foster-competition/consultations/anti-competitive-conduct-and-agreements, paras. 263-267.

[129] Linda J. Visser, Charles M. Wright, and Georgia Hamilton, "The New Abuse of Dominance Regime in Canada: An Opportunity for Greater Enforcement and Access to Justice", 37 *Can Comp L Rev* 130 (2025)

[130] Visser et al., p. 145.

57. The CAT's decision may offer useful principles to assist the Tribunal in resolving "excessive and unfair" pricing issues under Canadian law.

58. In addition to showing that the underlying competition law issues in the case are "substantial and genuine," the Tribunal may find, on the hearing on the merits, that cases from other jurisdictions decided on similar facts and analogous legal schemes have persuasive value. For example, in *Parrish v. Heimbecker, Limited*,[131] the Tribunal reviewed the Commissioner's "value-added" approach to defining the product market, which the Commissioner argued was supported by the U.S. *Horizontal Merger Guidelines*.[132] The Tribunal further analyzed case law from Canada, the U.S., the E.U., and Australia,[133] and concluded that an Australian case "bears a number of striking similarities with the present case [...]."[134] It determined that "the reasoning in this Australian decision, while not binding, is persuasive and is generally consistent with the Tribunal's analysis in the present case."[135]

59. Where, as here, a case is transnational in nature, it makes good sense to have regard to what regulators and courts have done in other countries. Notably, the 2022 ISED consultation paper on *The Future of Competition Law Policy in Canada* refers to "a global trend [that has led to] numerous high-profile investigations [involving "Big Tech"]. Given the worldwide presence of the firms in question, and the borderlessness of their commercial activity, the Canadian marketplace is undoubtedly affected by each of these developments. The issues surfacing in the

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[131] *Parrish & Heimbecker, Limited - Reasons for Order and Order on the Application* (2022) (CACT).
[132] *Parrish & Heimbecker, Limited - Reasons for Order and Order on the Application* (2022) at paras 291-295 (CACT).
[133] *Parrish & Heimbecker, Limited - Reasons for Order and Order on the Application* (2022) at paras 296-318 (CACT).
[134] *Parrish & Heimbecker, Limited - Reasons for Order and Order on the Application* (2022) at para 318 (CACT).
[135] *Parrish & Heimbecker, Limited - Reasons for Order and Order on the Application* (2022) at para 318 (CACT).

interconnected, modern economy are global in scope, placing an emphasis on international coordination and convergence."[136] The proposed application is an example of this and consistent with "the desire for a more robust private enforcement regime."[137]

60. The worldwide decisions and reports are strong evidence that the proposed competition law issues are "justiciable" and "substantial and genuine." While a leave application is not the time and place to determine the merits of the case, the fact that anti-competitive findings were made in other jurisdictions is a further indication that the proposed application engages the broad purposes of the *Competition Act*. The foreign decisions and reports also illustrate potential frameworks that could be used in Canada to decide similar issues, based on facts applicable to Canada and Canadian law.

(d) The proposed application involves substantial and genuine competition law issues

61. The proposed claims in the Application are described at paragraphs 21 to 29 above. Unlike in *Martin,* where there were "few salient facts in support of the proposed application under sections 79 and 90.1,"[138] the allegations in the proposed Application in this case are well supported in the evidentiary record. An annotated Notice of Application is attached as Appendix "B" as an illustrative tool to assist the Tribunal in its analysis of the proposed Application. The annotated Notice of Application updates the proposed Notice of Application to include footnotes in red to link back to the source of the information in the applicant's record. The Notice of Application has only annotated the factual aspects of the claim, rather than questions of law, questions of mixed

[136] ISED Consultation Paper, pp. 11-12.
[137] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 99 (CACT)
[138] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 208 (CACT).

fact and law, or questions that are likely to be the subject of contentious expert evidence if leave is granted.

(1) The exclusive dealing issues are substantial and genuine

62. The proposed Application alleges that Apple requires all iOS apps to be distributed exclusively through the App Store, prohibiting alternative distribution channels. "Exclusive dealing" is defined in s. 77 as "any practice whereby a supplier of a product, as a condition of supplying the product to a customer, requires that customer to (i) deal only or primarily in products supplied by or designated by the supplier […] or (ii) refrain from dealing in a specified class or kind of product except as supplied by the supplier […]." Applied to the facts of this case, the proposed Application alleges that Apple has engaged in exclusive dealing by requiring app developers to list iOS apps in the Apple App Store only and to use only IAP.[139] Apple also prevents developers from informing users about alternative purchasing channels, reinforcing the exclusivity of Apple's IAP system.[140] This entrenches Apple's control over in-app transactions.

63. Exclusive dealing requires considering (i) whether there is an exclusionary effect resulting in a substantial lessening of competition and (ii) whether the practice of exclusive dealing was engaged in by a major supplier of a product or whether exclusive dealing is widespread in a market.[141] If the Tribunal accepts the applicant's proposed market definitions (which are consistent with those found by the CAT and the Australian Court), Apple will be found to have 100% market share and be a "major supplier."[142] Consistent with s. 77(2), the applicant alleges that Apple's exclusive dealing is likely to have an "exclusionary effect in a market, with the result that

[139] Proposed Notice of Application, para. 2(a)(ii).
[140] Proposed Notice of Application, paras. 2(a)(iii) & 24.
[141] Annotated *Competition Act*, p. 235. See also s. 77(2).
[142] *Canada (Director of Investigation and Research) v. NutraSweet Co.* (1990), 1990 CanLII 13729 at p 55 (CACT)

competition is or is likely to be lessened substantially." This results from Apple's prohibition on developers listing iOS apps on any other App Store and on using any other payment processing system for in-app purchases other than IAP, thereby eliminating competition altogether.

64. The proposed Application also refers to "market restrictions"[143] imposed by Apple that prohibit the use of alternative distribution channels. "Market restriction" is defined in s. 77 as "any practice whereby a supplier of a product, as a condition of supplying the product to a customer, requires that customer to supply any product only in a defined market, or exacts a penalty of any kind from the customer if he supplies any product outside a defined market." Applied to the facts of this case, Apple requires developers to supply iOS apps exclusively to the iOS App Store and to use IAP for all in-app purchases. The proposed Application states that "Apple's exclusive dealing is likely to impede entry into or expansion into the App Distribution Market by any competitors,"[144] and "impedes entry into or expansion by competitors in the In-App Payment Services Market […]."[145]

(2) The tied selling issues are substantial and genuine

65. The proposed Application alleges that Apple engages in tied selling by requiring developers who list their iOS apps on the App Store to use Apple's IAP for all in-app purchases, prohibiting alternative payment processors.[146]

66. Tied selling is defined in s. 77 of the Act as "any practice whereby a supplier of a product, as a condition of supplying the product (the "tying" product) to a customer, requires that customer to (i) acquire any other product from a supplier […] or (ii) refrain from using or distributing, in

[143] Proposed Notice of Application, para. 28(a).
[144] Proposed Notice of Application, para. 28(a).
[145] Proposed Notice of Application, para. 28(b).
[146] See paragraph 25 above for a concise summary of the tied selling allegation.

conjunction with the tying product, another product that is not of a brand of manufacture designated by the supplier […].” Applied to the facts of this case, the proposed Application alleges that, as a condition of allowing developer access to the App Store, developers must use Apple's IAP for all in-app purchases, eliminating competition altogether.

67. As described in *Tele-Direct*,[147] “the principal questions in the analysis of tied selling […] are: (a) whether there are two separate products; (b) whether the tie constitutes a “practice”; and (c) whether the tie results in anti-competitive effects.”[148] An allegation of tying must also be “founded on the basis that a supplier has some level of market power in the tying product market so as to be able to compel, by either a carrot or stick method, customers to buy the tied product.”[149]

68. The Canadian tests are similar to the tests described in the CAT proceeding, which stated that there are four requirements for tied selling: “(1) The tying and the tied products are separate products. (2) The undertaking is dominant in the market for the tying product. (3) The dominant undertaking does not give customers a choice to obtain the tying product without the tied product. (4) The tying forecloses competition.”[150] On the facts before it, the CAT concluded that the claim of tied selling had been made out.[151]

69. Evaluating anti-competitive effects involves assessing market power. Some indicators of market power include market share, financial strength, and a history of innovation, but these characteristics vary by industry.[152] The application alleges that Apple exercises substantial or complete control[153] over the iOS app distribution and iOS IAP markets within its “walled

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[147] *Director of Investigation and Research v. Tele-Direct Inc.* (1997), 1997 CanLII 11 (CACT)
[148] *Annotated Competition Act*, p. 228.
[149] *Annotated Competition Act*, p. 231.
[150] CAT decision, para. 502.
[151] CAT decision, para. 523.
[152] *Annotated Competition Act*, p. 231.
[153] Proposed Notice of Application, paras. 19, 26.

garden,"[154] with near absolute market power, buttressed by contractual restrictions that create high barriers to entry. Apple's share in both markets is effectively 100%, because there is no alternative lawful channel for native iOS apps or in-app payments for digital content/services. If the applicant's proposed market definitions are accepted, Apple will have 100% market share in both markets and would clearly have market power.

70. There are substantial and genuine issues regarding whether Apple has unlawfully tied the use of Apple's IAP to the App Store.

(3) Conclusions on s. 77 claims

71. The claims for exclusive dealing, market restrictions and tied selling meet the "substantial and genuine competition law dispute" criteria. Applying *Martin*, the proposed issues are a "substantial dispute that warrants a Tribunal proceeding"[155] The issues are justiciable and constitute a "genuine competition dispute"[156] that are "directed towards addressing competition in a market"[157] with questions of "market power and the alleged effect in the market."[158]

(4) There are substantial and genuine competition law issues involving abuse of dominance

72. The proposed Application alleges that Apple has abused its dominant position through contractual provisions with developers that mandate listing iOS apps in the App Store only, and that require developers to use Apple's IAP exclusively for in-app purchases.[159]

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[154] Proposed Notice of Application, paras. 11-12.
[155] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 (CACT)
[156] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 131 (CACT)
[157] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 131 (CACT)
[158] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 131 (CACT)
[159] Proposed Notice of Application, para. 27.

73. Section 79 states:

79 (1) On application by the Commissioner or a person granted leave under section 103.1, if the Tribunal finds that one or more persons substantially or completely control a class or species of business throughout Canada or any area of Canada, it may make an order prohibiting the person or persons from engaging in a practice or conduct if it finds that the person or persons have engaged in or are engaging in

(a) a practice of anti-competitive acts; or

(b) conduct

(i) that had, is having or is likely to have the effect of preventing or lessening competition substantially in a market in which the person or persons have a plausible competitive interest, and

(ii) the effect is not a result of superior competitive performance.[160]

79 (1) Lorsque, à la suite d'une demande du commissaire ou d'une personne autorisée en vertu de l'article 103.1, il conclut qu'une ou plusieurs personnes contrôlent sensiblement ou complètement une catégorie ou espèce d'entreprises à la grandeur du Canada ou d'une de ses régions et adoptent ou ont adopté une pratique ou un comportement ci-après, le Tribunal peut rendre une ordonnance leur interdisant d'adopter la pratique ou le comportement :

a) une pratique d'agissements anti-concurrentiels;

b) un comportement qui a, a eu ou aura vraisemblablement pour effet d'empêcher ou de diminuer sensiblement la concurrence dans un marché dans lequel la personne ou les personnes ont un intérêt concurrentiel valable, cet effet ne résultant pas d'un rendement concurrentiel supérieur.

74. *Martin* described the test for abuse of dominance as involving "activities by a person who has substantial market power in a market. Subsection 79(1) first requires substantial or complete 'control' of a 'class or species of business', which has been interpreted to mean substantial market power in a defined product market."[161]

75. As described above at paragraph 69, if the applicant's proposed market definitions are accepted, Apple will be found to have 100% market share.

76. *Martin* further stated that once control is established, the respondent must then have engaged in "a practice of anti-competitive acts […]" or "conduct that had, is having, or is likely to

[160] *Competition Act*, RSC 1985, c C-34, ss. 79(1).
[161] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 5 (CACT)

cause a substantial lessening or prevention of competition […] in a market in which the respondent has a plausible competitive interest."[162]

77. The test for assessing a substantial lessening of competition[163] typically uses a "but for" test to construct a hypothetical market free of restraints and conduct alleged to be anticompetitive.[164] As described in greater detail in the analysis of the third factor, the applicant has engaged economists and other experts to prepare reports on the "but for" and related economic analyses.

78. The proposed Application alleges the following anti-competitive acts pursuant to s. 78:

(a) Exclusive Dealing (s. 78(1)(h)): see paragraph 62 to 64 above.

(b) Tied Selling (s. 78(1)(g)): see paragraph 65 to 70 above.

(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.

(e) Selective and discriminatory responses to actual or potential competitors (s. 78(1)(j)): Requiring developers to enter into non-negotiable, standard-form contracts of adhesion with terms that reinforce Apple's dominance.

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[162] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 5 (CACT)
[163] *Canada (Commissioner of Competition) v. Canada Pipe* (2005), 2005 CanLII 94635 at para 272 (CACT)
[164] *Canada (Commissioner of Competition) v. Canada Pipe Co. (F.C.A.), 2006 FCA 233 (CanLII)*, 2006 FCA 233 at para 40.

79. Pursuant to s. 79(4), in determining whether there is a substantial lessening or prevention of competition ("**SLPC**"), "the Tribunal shall consider whether the practice is a result of superior competitive performance and may consider […] (a) the effect of the conduct on barriers to entry, including network effects, […] (b) the effect of the conduct on price or non-price competition, including quality, choice or consumer privacy; (c) the nature and extent of change and innovation in a relevant market; and (d) any other factor that is relevant to competition in the market […]." Paragraphs 79(4)(a) to (d) are new provisions, first added to the Act in 2022.[165]

80. Similar issues were debated at the CAT in the context of Apple's "justification" for its conduct. In this regard, the CAT considered Apple's assertions of "safety, security and privacy"; "enhanced performance"; "differentiating iOS devices and services and promoting competition on the merits"; "operating a system for the efficient collection of commission"; and "measuring efficiencies."[166] Similar "safety, security and privacy" issues were also debated before the Federal Court of Australia.[167]

81. The proposed Application states that Apple "maintains its dominance through significant barriers to entry,"[168] using "technological and contractual barriers,"[169] which had the effect of excluding competitors.[170] It states that "[t]he markets exhibit strong network effects, where the App Store benefits from attracting both developers and iOS users, making it difficult for any new

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[165] *Budget Implementation Act, 2022, No. 1, SC 2022*, c 10, s. 261.
[166] CAT decision, p. 6.
[167] See Federal Court of Australia decision, para. 5553: "For these reasons, it was Professor Somayaji's opinion that the data security maintained by Stripe, Square, Braintree, Adyen, and similar services is comparable to the data security maintained by IAP." See also Federal Court of Australia decision, para. 4776: "Third, Professor Somayaji was of the view that the human review component of app review [that Apple uses], when compared against existing standards for conducting manual code audits for security purposes, is not sufficiently comprehensive to deliver meaningful security benefits." Dr. Somayaji has been hired by the applicant in this proceeding. See Bellisario Affidavit #2, paras. 30-31.
[168] Proposed Notice of Application, para. 21.
[169] Proposed Notice of Application, para. 25.
[170] Proposed Notice of Application, para. 25.

entrant to gain critical mass."[171] The Application states that Apple's conduct "forecloses competition and innovation, raises costs, and limits consumer choice."[172]

82. Applying the justiciability criteria from *Martin*, the applicant has provided a "sufficient factual basis"[173] to demonstrate that there is an appropriate role for the Tribunal, as contemplated by Parts VII.1 or VIII of the Act.[174] There is a role for the Tribunal to assess whether Apple's conduct in the App Distribution Market and the IAP Market meets the statutory threshold for intervention in the markets pursuant to s. 77 and 79.[175] Similarly, the proposed application is a "genuine" competition law dispute because the "essential character of the proposed proceeding is […] directed towards addressing competition in a market through the enforcement of"[176] s. 77 and 79. The proposed application "truly concerns competition,"[177] involving questions of "market power, and its alleged impact on competition"[178] in markets. As the Tribunal held, "market power and the alleged effect in a market are two important concepts in applications under Part VIII for which leave is granted."[179]

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[171] Proposed Notice of Application, para. 22.
[172] Proposed Notice of Application, para. 24.
[173] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 120 (CACT).
[174] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 117 (CACT).
[175] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 117 (CACT).
[176] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 131 (CACT).
[177] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 132 (CACT).
[178] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 132 (CACT).
[179] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 132 (CACT).

83. The competition law dispute in this case is "substantial and genuine." Unlike in *Martin,* the allegations are well supported by the evidence. It is respectfully submitted that step 1 of the test strongly weighs in favour of granting leave in this case.

(ii) Step 2 of the Martin test: CIPPIC has a "genuine interest in the proposed application"

84. In *Martin*, the Tribunal held that "the 'genuine interest' question focuses on the evidence of the applicant's 'real stake' in the proposed proceeding, 'engagement' with the issues, reputation, and 'real and continuing interest' in the matter at issue."[180] The applicant in *Martin* failed because his evidence "did not address these issues in any depth,"[181] and he did "not show any history of engagement in the competition or technology issues raised in the proposed application."[182]

85. Unlike in *Martin,* there is considerable evidence to show that CIPPIC has a genuine interest in this case. CIPPIC is a legal clinic at the University of Ottawa, Faculty of Law.[183] It was established in September 2003 with funding from the Ontario Research Network on Electronic Commerce and an Amazon.com *Cy-Pres* fund.[184] The applicant's record contains two affidavits sworn by David Fewer, the Director and General Counsel of CIPPIC.

86. CIPPIC's purpose includes advancing technology law issues and providing legal assistance on issues involving "the intersection of law and technology."[185] CIPPIC has extensive involvement in competition law, copyright and privacy issues through court interventions, government

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[180] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 223 (CACT)
[181] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 224 (CACT)
[182] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 227 (CACT)
[183] Affidavit of David Fewer, affirmed December 12, 2025 ("**Fewer Affidavit #1**"), para. 4.
[184] Fewer Affidavit #1, para. 6.
[185] Fewer Affidavit #1, para. 6.

consultations, and involvement in various tribunal proceedings.[186] CIPPIC is an "experienced litigant that will be actively engaged in the litigation."[187]

87. CIPPIC has demonstrated interest in the specific issues in the proposed Application. Indeed, in its submission to the Government of Canada in 2023, CIPPIC addressed the very concerns about anti-competitive conduct in the App Store that form the basis of this application. CIPPIC's submission stated in part as follows:

> […] App store operators have significant power in regulating the type of apps published on their platform. […] [T]he dominant control over the app market also allows the dominant app store operators to reduce competition by limiting the payment options available to consumers, charging exorbitant fees to developers, and in extreme circumstances, removing apps from third parties that are offering a similar service to the app that the operator launched. Many critics have expressed concern about the monopolistic nature of Apple's App Store and Google's Play Store, where app developers have no other marketplace in which they can publish their apps and they are forced to accept the terms of these two dominant platforms.[188]

88. CIPPIC's submission was made in response to the Government of Canada's November 2022 discussion paper, entitled *The Future of Competition Policy in Canada*,[189] which the Tribunal cited in *Martin*.[190]

89. CIPPIC's submission also commented on numerous "big tech" issues in addition to the App Store, including: "addressing challenges of dealing with big data companies that have achieved 'digital dominance' in their respective markets; engaging in 'discriminatory or self-preferencing activities' by Google and Amazon; the importance of data portability in digital

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[186] Fewer Affidavit #1, paras. 12-22.
[187] Affidavit of David Fewer, affirmed February 13, 2026 ("**Fewer Affidavit #2**"), para. 10.
[188] Fewer Affidavit #2, Exhibit "B".
[189] Fewer Affidavit #2, para. 3.
[190] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at paras 40, 69 (CACT)

services characterized by strong network effects and high switching costs; and the need to address strong switching costs when switching between Android or Apple phones."[191]

90. In short, "in its submission to the Government of Canada, CIPPIC raised several concerns with the rise of 'Big Tech' and the impact on competition in Canada, including Apple's role as administrator of the App Store."[192] For CIPPIC, "[q]uestions about Apple's alleged dominance of a digital marketplace raise important questions of competition, technology, and rights of public participation 'in the public interest'."[193]

91. Prior to commencing the proposed Application, CIPPIC "conducted an internal review and discussions with the Dean of the University of Ottawa's Common Law section and the office of the President of the University about the proposed application. All confirmed support of CIPPIC's public interest advocacy in this mandate."[194]

92. CIPPIC's interest in the issues has "continued" following the filing of the litigation. CIPPIC updated its website in January[195] and gave an interview to the media. Mr. Fewer is quoted as stating: "This has been an issue that CIPPIC has been concerned with for years. […] As soon as the government changed the legislation to allow for public interest claims to come forward on abuse of dominance, as soon as this was something that became available to us, we decided to go forward on it."[196]

93. The evidence shows strong "engagement" that is "real" and "continuing" for the purposes of the "genuine interest" question.

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[191] Fewer Affidavit #2, para. 6.
[192] Fewer Affidavit #2, para. 7.
[193] Fewer Affidavit #2, para. 8.
[194] Fewer Affidavit #2, para. 9.
[195] Fewer Affidavit #2, para. 18.
[196] Fewer Affidavit #2, Exhibit "D".

94. In summary, CIPPIC has participated in numerous court and tribunal interventions and has made numerous submissions to government on technology and Internet-related issues, including on the specific issues engaged in this case. The applicant's evidence establishes CIPPIC's "genuine interest" in the proposed application.

95. CIPPIC is precisely the type of applicant that is contemplated under the public interest test. Indeed, Apple submitted in *Martin* "that the Public Interest Test was aimed at granting leave to organizations "with a mission"."[197] Step 2 of the test strongly weighs in favour of granting leave.

(iii) Step 3 of the Martin test: the proposed application is a "reasonable and effective means of bringing the case to court"

(a) The *Martin* criteria for "reasonable and effective means"

96. Under the "reasonable and effective means" criteria in *Martin*, the Tribunal will consider "the plaintiff's capacity to bring forward a claim,"[198] including the plaintiff's "resources, expertise and whether the issue will be presented in a sufficiently concrete and well-developed factual setting."[199] The Tribunal held that competition law issues, compared with constitutional matters, may require a more "concrete and well-developed factual setting."[200] Given that a public interest applicant may not have access to all of the underlying evidence at the first step of the test, the Tribunal "may consider during the third step whether the applicant's evidence and representations have shown a realistic or tangible prospect of obtaining the necessary additional evidence for an

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[197] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 60 (CACT)("Apple argued, however, that the Public Interest Test was aimed at granting leave to organizations 'with a mission'").

[198] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 138 (CACT)

[199] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 138 (CACT)

[200] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 141 (CACT)

eventual hearing on the merits of the proposed application."[201] Providing "actual evidence to support a proposed application, or a list of potential witnesses and the evidence they seek to provide, is a clear and compelling way to show an applicant's capacity to litigate the proposed application at the leave stage."[202] This includes affidavit evidence identifying "witnesses who have provided first-hand evidence about competition in the market and the effects of the impugned conduct […],"[203] and may include "evidence that one or more experts have been retained and [an explanation of] how the factual basis for the expert evidence will be developed."[204] In other words, the applicant must either have relevant evidence, or explain how they plan to obtain it. In *Martin*, there was no evidence of "fact witnesses who might provide evidence at a hearing"[205] and there were no submissions made that "any expert had been retained for the purposes of the proposed application."[206] Accordingly, the Tribunal held that the "overall assessment of the third step weighs heavily against granting leave on this application for leave in the public interest."[207]

(b) Witnesses and experts engaged by counsel for the applicant

97. Unlike in *Martin,* the applicant's evidence in this case describes factual and expert witnesses engaged for the purposes of the proposed Application. In this case, "[c]ounsel expect

[201] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 143 (CACT)
[202] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 234 (CACT)
[203] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 143 (CACT).
[204] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 143 (CACT).
[205] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 234 (CACT)
[206] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 234 (CACT)
[207] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 245 (CACT).

that most of the witness evidence in the proposed application will consist of expert evidence […]."[208]

98. Counsel for the applicant has engaged two expert economists (Dr. Singer & Mr. Holt),[209] one security expert (Dr. Somayaji),[210] and one forensic accountant (Mr. Lobo).[211] It is expected that the economists will address issues of dominance, anti-competitive acts and substantial lessening of competition. Their testimony will also address overcharges, pass-on rates, excessive and unfair selling prices, and alleged legitimate business justifications for the "walled garden" App Store model.[212] Both economists testified before the CAT. The CAT stated that Dr. Singer "was an impressive witness who had a very good grasp of the wide range of complex issues covered in his report."[213] The CAT also commented favourably on Mr. Holt's evidence, stating that he "was careful and considered in his evidence."[214] As there may be some overlap in the evidence of Dr. Singer and Mr. Holt, counsel will decide the best manner in which to present the evidence without duplication.[215]

99. The economic evidence is expected to be substantial. The CAT noted that "written economic expert evidence alone amounted to well over two thousand pages."[216] The CAT's 400-page decision and the nearly 1000-page decision of the Federal Court of Australia are replete with detailed economic analysis. Here, counsel have the benefit of these earlier decisions in distilling the economic evidence in its presentation to the Tribunal.

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[208] Bellisario Affidavit #2, para. 12.
[209] Bellisario Affidavit #2, paras. 21-29.
[210] Bellisario Affidavit #2, paras. 30-31.
[211] Bellisario Affidavit #2, para. 32.
[212] Bellisario Affidavit #2, para. 23.
[213] Bellisario Affidavit #2, para. 22.
[214] Bellisario Affidavit #2, para. 25.
[215] Bellisario Affidavit #2, para. 27.
[216] Bellisario Affidavit #2, para. 37.

100. Dr. Somayaji is a Carleton University professor at the School of Computer Science. Counsel anticipates Dr. Somayaji will address the justifications that Apple has previously advanced for its "walled garden" App Store,[217] and is expected to advance in this case pursuant to s. 79(4) of the Act. Dr. Somayaji testified on similar issues in the Australian proceeding, which found him to be technically proficient and reliable.[218]

101. Counsel has also engaged Prem Lobo, a forensic accountant, who is expected to testify about the profitability of the App Store, including App Store revenues and costs, among other things.[219] The proposed Application requests orders for monetary relief, which the Act states cannot "exceed the value of the benefit derived from the conduct that is the subject of [an] order, to be distributed among the applicant and any other person affected by the conduct, in any manner the Tribunal considers appropriate."

102. The Tribunal has not yet considered the scope of the expanded monetary remedies for private parties. Law firm commentary states as follows:

> […] a private party may seek an order from the Tribunal for the payment of "an amount, not exceeding the value of the benefit derived from the conduct […] to be distributed among the applicant and any other person affected by the conduct, in any manner that the Tribunal considers appropriate". **On the face of this statutory provision, there is no express language that appears to tie the remedy to actual loss or compensatory damages. There is a live debate as to whether this remedy should be limited to actual damages, restitutionary damages, actual disgorgement, or some other amount to ensure compliance with the Act**.[220]
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> …

[217] Bellisario Affidavit #2, para. 31.
[218] Bellisario Affidavit #2, para. 30.
[219] Bellisario Affidavit #2, para. 32.
[220] Christopher Naudie, Adam Hirsh, and Zach Rudge, "Private right of access for relief from anti-competitive harm now in force in Canada" (24 June 2025), p. 3, online (Osler): https://www.osler.com/en/insights/updates/private-right-of-access-for-relief-from-anti-competitive-harm-now-in-force-in-canada/?pdf=1

> In the case of successful applications under these sections of the Act, the Tribunal can order that the person against whom the order is made pay "an amount, not exceeding the value of the benefit derived from the conduct that is the subject of the order, to be distributed among the applicant and any other person affected by the conduct, the manner that the Tribunal considers appropriate". **With this choice of language, the monetary amount that an applicant may seek is not damages. However, it seems to resemble a form of disgorgement, the quantification of which can be significant in many circumstances.**[221]
>
> …
>
> This remedy is not a traditional damages remedy, where proof of the applicant's loss as a result of the dominant firm's conduct is necessary. Rather, this is more akin to an accounting of profit remedy, whereby it is the dominant firm's gains as a result of the conduct that is the focus of the analysis. In addition, this remedy not only allows the applicant to receive a payment, but also other people affected by the conduct.[222]

103. There were extensive debates at the CAT[223] and the Federal Court of Australia[224] about the App Store's profitability.

104. In summary, the applicant has engaged experts who will carry out the economic and competitive analyses under s. 77 and s. 79. These experts will also address overcharge, pass-on and profitability analyses in accordance with s. 77(3.1) and s. 79(4.1).

105. The applicant has also engaged three factual witnesses to give industry evidence: (i) David Howell, a former senior engineering manager at Apple, who testified before the CAT; (ii) Patrick Weekes, a Canadian app developer who has operated within the App Store in Canada since 2009; and (iii) Kelli Fairbrother (described above at paragraphs 43 to 48).

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[221] Antonio Di Domenico, Chris Margison and Henry Gray, "New Private Rights of Action Have Come into Force" (20 June 2025), online (Fasken): https://www.fasken.com/en/knowledge/2025/06/new-private-rights-of-action-have-come-into-force

[222] James Musgrove, William Wu, and Mishail Adeel, "Canadians Behaving Dominantly: The Recent Transformation of Abuse of Dominance Under the Canadian Competition Act", (February 2025), p. 9, online (McMillan): http://mcmillan.ca/wp content/uploads/2025/03/Vol24_Issue4_Feb2025_01_Musgrove_COPYRIGHT.pdf (emphasis added).

[223] See e.g. CAT decision, paras. 561-676, in particular the evidence of Mr. Dudney for the class representative.

[224] Federal Court of Australia decision, paras. 4175-4485.

106. The issues that these witnesses are expected to address include "Apple's iOS ecosystem," "iOS competitors," "terms of relevant Developer Agreements," and "Developer use of technical tools created by Apple."[225]

107. The applicant has listed 27 issues that it expects the factual and expert witnesses to address in the proposed Application.[226]

108. This proceeding is at a very early stage, and more evidence will be developed as the case proceeds. For example, if additional developer perspectives are required, the applicant may benefit from counsel's consulting arrangement with Eugene Burrus, the global policy counsel and spokesperson for the Coalition for App Fairness.[227] The Coalition is "an independent non-profit organization founded by app developers to advocate for freedom of choice and fair competition among the app ecosystem."[228] As described in counsel's affidavit, "[t]hrough the consulting arrangement, the Applicant will aim to utilize Mr. Burrus's extensive knowledge of the app developer concerns with the App Store, to pursue the application in a manner that is efficient and helpful […] Mr. Burrus has detailed knowledge of Apple's global practices, App Developer concerns with App Store practices, insight into disputes over the App Store that are ongoing worldwide, as well as contacts with numerous industry experts, if additional expertise or witnesses are needed."[229]

109. The factual and expert witnesses engaged by counsel are "clear and compelling"[230] evidence of the applicant's capacity to litigate the proposed Application.

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[225] Bellisario Affidavit #2, para. 36.
[226] Bellisario Affidavit #2, para. 36.
[227] Bellisario Affidavit #2, para. 39.
[228] Bellisario Affidavit #2, para. 39.
[229] Bellisario Affidavit #2, para. 41.
[230] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 234 (CACT)

(c) CIPPIC's contribution to the proposed Application

110. In *Martin*, the applicant "provided no evidence to show his own expertise to contribute to the proposed application."[231] The Tribunal was "unable to find that the applicant personally will provide any material evidence at the hearing on the merits, or a particularly useful or distinctive perspective that could assist the resolution of those issues in the proposed application."[232]

111. By contrast, as deposed to by Mr. Fewer, "the University's professors have expertise in business, competition law, economics, sciences, social sciences and engineering, among other fields," "CIPPIC could draw on the University of Ottawa's faculty to critically review draft materials and advise counsel."[233] In addition, CIPPIC can "seek help from the broader University of Ottawa community" to locate relevant consumer or developer evidence.[234]

112. Unlike *Martin*, where the "applicant did not offer any realistic prospect or tangible means to obtain fact evidence in support of the proposed application," the applicant has shown that it has already, at this early stage, amassed fact and expert witnesses to support this case. That, combined with the resources CIPPIC may draw on from the broader University of Ottawa community, demonstrates the capacity to litigate the proposed application.

(d) The Applicant's resources

113. In *Martin*, the applicant "provided no evidence to show the resources he will have for the proposed application."[235] In particular, there was no relevant information about the experience of

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[231] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 233 (CACT)
[232] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 233 (CACT)
[233] Fewer Affidavit #2, para. 17.
[234] Fewer Affidavit #2, paras. 14, 16.
[235] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 232 (CACT)

the law firm representing the applicant, or about how the law firm planned to advance the proposed application on the merits.[236]

114. By contrast, the applicant's evidence in this case explains the credentials of counsel for the applicant, who have extensive experience litigating *Competition Act* class action claims.[237] This experience, gained in the price-fixing and bid-rigging context, is useful and relevant to abuse of dominance proceedings. For example, expert reports in price-fixing cases commonly consider market definition questions involving issues like barriers to entry, substitutes and market power,[238] which are also factors in abuse of dominance. Similarly, the SLPC analysis involves carrying out a hypothetical "but for" analysis[239] that is not unlike the "but for" methodology used in price-fixing cases to estimate overcharge.[240]

115. Counsel have also entered a consulting arrangement with a U.K. law firm, Hausfeld & Co. LLP ("**Hausfeld**") to participate in strategy and consulting sessions, as required by counsel.[241] Hausfeld were the instructing solicitors in the CAT matter on behalf of the Class Representative.[242] The goal of the consulting arrangement is for counsel to leverage Hausfeld's extensive knowledge of the CAT matter to pursue the application as efficiently as possible.[243] Hausfeld's input is subject to compliance with all of the relevant procedural restrictions in the U.K. proceedings.[244]

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[236] *Martin - Order and Reasons (Application for leave under section 103.1)* (2026), 2026 CanLII 1111 at para 232 (CACT)
[237] Bellisario Affidavit #2, paras. 44-61.
[238] *Shah v LG Chem, Ltd.*, 2016 ONSC 4670 at para 22
[239] *The Commissioner of Competition v Vancouver Airport Authority*, 2019 CACT 6 at para 633.
[240] *Pioneer Corp. v. Godfrey, 2019 SCC 42 (CanLII)*, 2019 SCC 42 at para 97.
[241] Bellisario Affidavit #2, para. 37.
[242] Bellisario Affidavit #2, para. 37.
[243] Bellisario Affidavit #2, para. 38.
[244] Bellisario Affidavit #2, para. 38.

116. Counsel have sought and received proposals and expressions of interest from third-party litigation funders for funding disbursements and indemnity against adverse costs.[245] The funding proposals are contingent on the finalization of agreements and obtaining Tribunal approval.[246] Counsel will continue discussions and negotiations with the prospective third-party funders to ensure that the funding agreement to be presented to the Tribunal for approval is in the best interests of the Applicant and any persons who may receive an award if the application is successful.[247]

117. The applicant's record demonstrates that it has the necessary capacity to pursue the proposed Application.

(e) No realistic alternative means

118. There are no other cases in Canada involving allegations of anti-competitive acts in the App Store. Only the Tribunal can hear s. 77 and s. 79 applications.

(f) Conclusion on "reasonable and effective means"

119. The applicant has shown a "reasonable and effective means" to determine the competition issues raised, and the proposed application will be presented in a "concrete and well-developed factual setting."[248] The applicant has engaged experienced counsel, industry witnesses and experts to establish the underlying factual record and economic analyses to resolve the proposed issues pursuant to s. 77 and s. 79 of the Act. The applicant has laid the groundwork to secure funding for the proposed application. The applicant's record satisfies the third step in *Martin* and strongly weighs in favour of granting leave.

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[245] Bellisario Affidavit #2, para. 43.
[246] Bellisario Affidavit #2, para. 43.
[247] Bellisario Affidavit #2, para. 43.
[248] *Martin - Reasons for Order and Order under Rule 119(3)* (2025), 2025 CanLII 79244 at para 141 (CACT).

D. <u>Conclusion</u>

120. The App Store operates in Canada the same way that it does in other countries. For many years, Apple has imposed arbitrary restrictions and commissions that have stifled competition and innovation, but which have generated billions of dollars for Apple. Regulators, courts, and tribunals in other countries have examined Apple's conduct and provided remedies. Canadian iOS users and Canadian App Developers should similarly be entitled to their "day in court" here. The applicant has met the *Martin* test for leave to bring an application in the public interest. This case should proceed to a hearing on the merits.

PART V - ORDER REQUESTED

121. The applicant respectfully requests an order pursuant to s. 103.1, granting leave to make an application pursuant to s. 77 and s. 79 of the Act in the form requested.

122. The applicant requests costs.[249]

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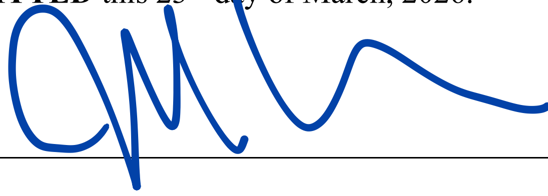
[249] *JAMP Pharma - Order and Reasons on Costs* (2024), 2024 CanLII 124306 (CACT).

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of March, 2026.



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PART VI - LIST OF AUTHORITIES

Tab	Title
1.	*Canada (Commissioner of Competition) v Canada Pipe*, 2005 CanLII 94635 (Comp Trib)
2.	*Canada (Commissioner of Competition) v Canada Pipe Co (FCA)*, 2006 FCA 233
3.	*Canada (Commissioner of Competition) v Parrish & Heimbecker Limited*, 2022 Comp Trib 18
4.	*Canada (Director of Investigation and Research) v NutraSweet Co*, 1990 CanLII 13729 (Comp Trib)
5.	*Director of Investigation and Research v Tele-Direct Inc* (1997), 73 CPR 1 (Can CT)
6.	*JAMP Pharma Corporation v Janssen Inc*, 2024 Comp Trib 8
7.	*JAMP Pharma Corporation v Janssen Inc*, 2024 Comp Trib 10
8.	*Martin v Alphabet Inc et al*, 2025 Comp Trib 12
9.	*Martin v Alphabet Inc et al*, 2026 Comp Trib 3
10.	*Pioneer Corp v Godfrey*, 2019 SCC 42
11.	*Shah v LG Chem Ltd*, 2016 ONSC 4670
12.	*The Commissioner of Competition v Vancouver Airport Authority*, 2019 Comp Trib 6
13.	*The Commissioner of Competition v Visa Canada Corporation and MasterCard International Incorporated*, 2013 Comp Trib 10

APPENDIX "A"
STATUTES AND REGULATIONS RELIED UPON

Competition Act, RSC 1985, c C-34

Purpose of Act

1.1 The purpose of this Act is to maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy, in order to expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada, in order to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and in order to provide consumers with competitive prices and product choices.

Definitions

77(1) For the purposes of this section,

exclusive dealing means

(a) any practice whereby a supplier of a product, as a condition of supplying the product to a customer, requires that customer to

(i) deal only or primarily in products supplied by or designated by the supplier or the supplier's nominee, or

(ii) refrain from dealing in a specified class or kind of product except as supplied by the supplier or the nominee, and

(b) any practice whereby a supplier of a product induces a customer to meet a condition set out in subparagraph (a)(i) or (ii) by offering to supply the product to the customer on more favourable terms or conditions if the customer agrees to meet the condition set out in either of those subparagraphs;

market restriction means any practice whereby a supplier of a product, as a condition of supplying the product to a customer, requires that customer to supply any product only in a defined market, or exacts a penalty of any kind from the customer if he supplies any product outside a defined market;

tied selling means

(a) any practice whereby a supplier of a product, as a condition of supplying the product (the "tying" product) to a customer, requires that customer to

(i) acquire any other product from the supplier or the supplier's nominee, or

(ii) refrain from using or distributing, in conjunction with the tying product, another product that is not of a brand or manufacture designated by the supplier or the nominee, and

(b) any practice whereby a supplier of a product induces a customer to meet a condition set out in subparagraph (a)(i) or (ii) by offering to supply the tying product to the customer on more favourable terms or conditions if the customer agrees to meet the condition set out in either of those subparagraphs.

Exclusive dealing and tied selling

77(2) Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that exclusive dealing or tied selling, because it is engaged in by a major supplier of a product in a market or because it is widespread in a market, is likely to

- **(a)** impede entry into or expansion of a firm in a market,
- **(b)** impede introduction of a product into or expansion of sales of a product in a market, or
- **(c)** have any other exclusionary effect in a market,

with the result that competition is or is likely to be lessened substantially, the Tribunal may make an order directed to all or any of the suppliers against whom an order is sought prohibiting them from continuing to engage in that exclusive dealing or tied selling and containing any other requirement that, in its opinion, is necessary to overcome the effects thereof in the market or to restore or stimulate competition in the market.

Additional order — person granted leave

77(3.1) If the Tribunal makes an order under subsection (2) or (3) as the result of an application by a person granted leave under section 103.1, it may also order any supplier in respect of whom the order applies to pay an amount, not exceeding the value of the benefit derived from the conduct that is the subject of the order, to be distributed among the applicant and any other person affected by the conduct, in any manner that the Tribunal considers appropriate.

Implementation of the order

77(3.2) The Tribunal may specify in an order made under subsection (3.1) any term that it considers necessary for the order's implementation, including any term referred to in any of paragraphs 75(1.3)(a) to (g).

Definition of anti-competitive act

78 (1) For the purposes of section 79, anti-competitive act means any act intended to have a predatory, exclusionary or disciplinary negative effect on a competitor, or to have an adverse effect on competition, and includes any of the following acts:

- **(a)** squeezing, by a vertically integrated supplier, of the margin available to an unintegrated customer who competes with the supplier, for the purpose of impeding or preventing the customer's entry into, or expansion in, a market;
- **(b)** acquisition by a supplier of a customer who would otherwise be available to a competitor of the supplier, or acquisition by a customer of a supplier who would otherwise be available to a competitor of the customer, for the purpose of impeding or preventing the competitor's entry into, or eliminating the competitor from, a market;
- **(c)** freight equalization on the plant of a competitor for the purpose of impeding or preventing the competitor's entry into, or eliminating the competitor from, a market;

(d) use of fighting brands introduced selectively on a temporary basis to discipline or eliminate a competitor;

(e) pre-emption of scarce facilities or resources required by a competitor for the operation of a business, with the object of withholding the facilities or resources from a market;

(f) buying up of products to prevent the erosion of existing price levels;

(g) adoption of product specifications that are incompatible with products produced by any other person and are designed to prevent his entry into, or to eliminate him from, a market;

(h) requiring or inducing a supplier to sell only or primarily to certain customers, or to refrain from selling to a competitor, with the object of preventing a competitor's entry into, or expansion in, a market;

(i) selling articles at a price lower than the acquisition cost for the purpose of disciplining or eliminating a competitor;

(j) a selective or discriminatory response to an actual or potential competitor for the purpose of impeding or preventing the competitor's entry into, or expansion in, a market or eliminating the competitor from a market; and

(k) directly or indirectly imposing excessive and unfair selling prices.

Prohibition if abuse of dominant position

79 (1) On application by the Commissioner or a person granted leave under section 103.1, if the Tribunal finds that one or more persons substantially or completely control a class or species of business throughout Canada or any area of Canada, it may make an order prohibiting the person or persons from engaging in a practice or conduct if it finds that the person or persons have engaged in or are engaging in

(a) a practice of anti-competitive acts; or

(b) conduct

(i) that had, is having or is likely to have the effect of preventing or lessening competition substantially in a market in which the person or persons have a plausible competitive interest, and

(ii) the effect is not a result of superior competitive performance.

Additional or alternative order

79(2) If, on an application under subsection (1), the Tribunal finds that a practice of anti-competitive acts amounts to conduct that has had or is having the effect of preventing or lessening competition substantially in a market in which the person or persons have a plausible competitive interest and that an order under subsection (1) is not likely to restore competition in that market, the Tribunal may, in addition to or in lieu of making an order under subsection (1), make an order directing any or all persons against whom an order is sought to take actions, including the divestiture of assets or shares, that are reasonable and necessary to overcome the effects of the practice in that market.

Limitation

79(3) In making an order under subsection (2), the Tribunal shall make the order in such terms as will in its opinion interfere with the rights of any person to whom the order is

directed or any other person affected by it only to the extent necessary to achieve the purpose of the order.

Factors to be considered

79(4) In determining, for the purposes of subsections (1) and (2), whether conduct has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market, the Tribunal may consider

(a) the effect of the conduct on barriers to entry in the market, including network effects;

(b) the effect of the conduct on price or non-price competition, including quality, choice or consumer privacy;

(c) the nature and extent of change and innovation in a relevant market; and

(d) any other factor that is relevant to competition in the market that is or would be affected by the conduct.

Additional order — person granted leave

79(4.1) If, as the result of an application by a person granted leave under section 103.1, the Tribunal makes an order under subsection (1) or (2), it may also order the person against whom the order is made to pay an amount, not exceeding the value of the benefit derived from the practice that is the subject of the order, to be distributed among the applicant and any other person affected by the practice, in any manner that the Tribunal considers appropriate.

Implementation of the order

79(4.2) The Tribunal may specify in an order made under subsection (4.1) any term that it considers necessary for the order's implementation, including any term referred to in any of paragraphs 75(1.3)(a) to (g).

Leave to make application under section 74.1, 75, 76, 77, 79 or 90.1

103.1(1) Any person may apply to the Tribunal for leave to make an application under section 74.1, 75, 76, 77, 79 or 90.1. The application for leave must be accompanied by an affidavit setting out the facts in support of the person's application under that section.

Granting leave — sections 75, 77, 79 or 90.1

103.1(7) The Tribunal may grant leave to make an application under section 75, 77, 79 or 90.1 if it has reason to believe that the applicant is directly and substantially affected in the whole or part of the applicant's business by any conduct referred to in one of those sections that could be subject to an order under that section or if it is satisfied that it is in the public interest to do so.

Competition Tribunal Rules, SOR/2008-141

Affidavit evidence

119(3) Representations in writing shall not contain affidavit evidence, except with leave of the Tribunal.

Decision without oral hearing

121 The Tribunal may render its decision on the basis of the written record without a formal oral hearing.

Power of Tribunal

122 The Tribunal may grant the application for leave to make an application, with or without conditions, or refuse the application.

APPENDIX "B"
ANNOTATED NOTICE OF APPLICATION

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. <u>Definitions</u>

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[1] and in Canada in 2008.[2]

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[1] Affidavit of Luca Bellisario, affirmed December 18, 2025, ("Bellisario Affidavit #1"), Exhibit "M", Apple Press Release dated January 30, 2007.
[2] Bellisario Affidavit #1, Exhibit "O", Apple Press Release dated June 9, 2008.

5. At the time of its launch, there were several well-established competitors, including BlackBerry, Motorola, Nokia and Samsung.[3] 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."[4] 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.[5] At its launch, only Apple-developed native applications were available, with third-party native applications unavailable.[6]

7. Several months after the launch of the iPhone, the App Store launched on July 10, 2008 in markets around the world,[7] including in Canada, where it launched the Canadian App Store. The App Store is accessed via an app that comes pre-installed on iPhones.[8] From the outset, the App Store was a self-contained, two-sided platform,[9] 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.[10]

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[3] UK CMA Report, p. C24 (citing Apple's submissions on alternative competitive benchmark) (Exhibit "F" to Bellisario affidavit #1).
[4] Bellisario Affidavit #1, Exhibit "E" ("CAT decision"), para. 28. See also Exhibit "M" to Bellisario Affidavit #1, attaching Apple's January 30, 2007 press release, stating "Apple Reinvents the Phone with iPhone").
[5] CAT decision, para. 28.
[6] CAT decision, para. 35.
[7] CAT decision, para. 41. Bellisario Affidavit #1, Exhibit "Q" (Apple website post entitled "The App Store turns 10")
[8] CAT decision, para. 32.
[9] CAT decision, para. 32.
[10] Market definition issue which is not to be resolved by the Tribunal at leave (*Martin*, para. 122).

8. At the time it was launched, the App store offered approximately 500 applications.[11]

(ii) Launch of the iPad

9. Apple launched the iPad in the spring of 2010.[12] 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.[13]

10. Between 2010 and 2019, the iPad was powered by iOS. In September 2019, Apple debuted iPadOS, which provided functionality unique to the iPad.[14]

(iii) Apple's "Walled Garden"[15] 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.[16] 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."[17]

12. This integrated iOS ecosystem has been called a "walled garden,"[18] in which "Apple controls and supervises access to any software which accesses the iOS device."[19] 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.[20]

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[11] CAT decision, para. 41.
[12] Bellisario Affidavit #1, Exhibit "P" (Apple Press Release).
[13] Market definition issue.
[14] Bellisario Affidavit #1, Exhibit "R" (Apple Press Release).
[15] CAT decision, para. 30 (quoting US District Court decision).
[16] CAT decision, para. 29.
[17] Supplementary Affidavit of Luca Bellisario, sworn February 13, 2026 ("Bellisario Affidavit #2"), Exhibit "A" ("Federal Court of Australia decision"), para. 3508. See also CAT decision, para. 31 and Bellisario Affidavit #1, Exhibit "X".
[18] CAT decision, para. 30.
[19] CAT decision, para. 30 (quoting US District Court decision).
[20] Market definition issue.

Apple claims that the walled garden furthers consumer privacy, security, and the monetization of its intellectual property.[21] However, several alternative, less restrictive privacy and security measures are feasible and effective that do not require a walled garden.[22] 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.[23] 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**")[24] and a Developer Program Licence Agreement ("**DPLA**"),[25] both

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[21] CAT decision, para. 30.

[22] These issues were debated at length before the CAT and the Federal Court of Australia. See *e.g.* CAT decision, para. 732: "Apple's arguments as to objective justification are primarily advanced on the basis of its objective of securing increased privacy, safety and security for iOS device users. […]." The Class Representative, by contrast, developed a number of alternative counterfactuals, for example, one "where the restrictions are removed and Apple does not conduct a full App Review for iOS apps" (CAT decision, para. 734). See also Federal Court of Australia decision, para. 5553: "For these reasons, it was Professor Somayaji's opinion that the data security maintained by Stripe, Square, Braintree, Adyen, and similar services is comparable to the data security maintained by IAP." See also Federal Court of Australia decision, para. 4776: "Third, Professor Somayaji was of the view that the human review component of app review [that Apple uses], when compared against existing standards for conducting manual code audits for security purposes, is not sufficiently comprehensive to deliver meaningful security benefits." Dr. Somayaji has been hired by the applicant in this proceeding. See Bellisario Affidavit #2, paras. 30-31.

[23] Exhibit "AA" to the affidavit of Bellisario #1, "Apple Media Services Terms and Conditions" which refer to "Canada, English" as "country/region", which defines Apps as included within "Services" and that "Services are available for your use in your country or territory of residence ("Home Country")".

[24] Bellisario Affidavit #1, Exhibit "U".

[25] Bellisario Affidavit #1, Exhibit "V".

of which are unilateral contracts of adhesion[26] that are subject to Apple's discretion to terminate a Developer from the App Store at any time.[27]

15. Pursuant to these agreements, Developers in Canada are prohibited from distributing native iOS apps other than through the App Store.[28] 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,[29] deducts a commission (the "**Commission**"),[30] and then remits the remaining balance to a Developer in Canada.[31] Apple Canada implements Apple Inc.'s global policies in Canada.[32]

(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[33] and in-app purchases.[34] 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

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[26] Federal Court of Australia decision, para. 402 ("Apple does not permit app developers to negotiate any of the terms of the developer agreement, DPLA or the App Store review guidelines."). See also Federal Court of Australia decision, para. 431. See also CAT decision, para. 344 (citing EC decision in Spotify): "[…] even large developers have no meaningful negotiation power in relation to app distribution.")
[27] Federal Court of Australia decision, para. 600. See also Bellisario affidavit #1, Exhibit "U" (DA, section 10).
[28] Bellisario Affidavit #1, Exhibit "V" (DPLA, "Purpose" "Applications developed under this Agreement for iOS […] can be distributed: (1) through the App Store, if selected by Apple […]"
[29] Bellisario Affidavit #1, Exhibit "V" (DPLA, Exhibit A to Schedule 1, p. 125/187 ("You appoint Apple Canada, Inc. ("Apple Canada") as Your agent for the marketing and end user download of the Licensed Applications by end users located in the following region: Canada").
[30] Bellisario Affidavit #1, Exhibit "V" (DPLA, Schedule 2, p. 137/187 "Appointment of [Apple as] Agent and Commissionaire". See also s. 3.4, p. 142/187 "For sales of Licensed Applications to End-Users, Apple shall be entitled to a commission equal to thirty percent (30%) of all prices paid by each End-User.")
[31] Bellisario Affidavit #1, Exhibit "V" (DPLA, Schedule 2, p. 144/187, s. 3.5).
[32] Bellisario Affidavit #1, Exhibit "AA" (Apple Media Services Terms and Conditions, section T ("Depending on your Home Country, "Apple" means […] Apple Canada Inc. […].")
[33] Federal Court of Australia decision, para. 334. See also CAT decision, para. 106.
[34] The reference to in-app purchases is incorrect because in-app purchases were not available at the time the App store was launched. IAP was only made available in September 2009. See CAT decision, paras. 42-43.

App Store, and that they hoped that the 30% Commission would cover the costs of running the App Store.[35] 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.[36] Nor was the 30% Commission set by reference to security, privacy or value provided.[37]

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%.[38] SBP resulted from a settlement in a class-action lawsuit against Apple in the U.S., rather than from competitive pressure.[39]

(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.[40] Apple's App Review Guidelines requires Developers in Canada to use Apple's IAP for all iOS and in-app purchases.[41] 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).[42] Thus, Apple controls the

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[35] CAT decision, para. 631(2).
[36] CAT decision, para. 631(1).
[37] CAT decision, paras. 631(1)(2) & (3). See also Federal Court of Australia decision, paras. 3123, 3986,
[38] Bellisario Affidavit #1, Exhibit "V" (DPLA, s. 3.4, p. 142/187 "App Store Small Business Program").
[39] CAT decision, para. 80 (citing CMA's MEM Study, Appendix H, p. H2, a copy of which is attached as Exhibit "E" to the affidavit of Bellisario #1).
[40] Bellisario Affidavit #1, Exhibit "W" (Guidelines, s. 3.1.1).
[41] Bellisario Affidavit #1, Exhibit "W" (Guidelines, section 3.1.1, 3.1.3). See also CAT decision, para. 88 and Federal Court of Australia decision, para. 717 & 720.
[42] Affidavit of Kelli Fairbrother, affirmed December 17, 2025 ("**Fairbrother Affidavit**") paras. 9, 13, 14, 15, 16.

entirety of the In-App Payment Services Market, permitting it to charge *supra*-competitive prices, while preserving its dominant share.[43]

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.[44] 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.[45]

D. <u>Concise statement of economic theory</u>

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,[46] among other things, while the In-App Payment Services Market includes services covering checkout, payment processing, and currency conversion, among other things.[47] 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.

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[43] Market definition issue.
[44] Fairbrother Affidavit, para. 14 ("Apple's control of our transaction data, in circumstances where it is a direct competitor of ours via its Apple Books product"). See also Affidavit of Bellisario #1, Exhibit "G" (House Judiciary Committee report, p. 361: "Developers have alleged that Apple abuses its position as the provider of iOS and operator of the App Store to collect competitively sensitive information about popular apps and then build competing apps, or integrate the popular app's functionality into iOS.The practice is known as 'Sherlocking.' The antitrust laws do not protect app developers from competition, and platforms should continue to innovate and improve their products and services. However, Sherlocking can be anticompetitive in some instances."). See also Federal Court of Australia decision, para. 658.
[45] Market power issue.
[46] CAT decision, para. 57.
[47] CAT decision, para. 61.

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,[48] and for Developers who must access the App Store to reach this user base. The markets exhibit strong network effects,[49] 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

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[48] Bellisario Affidavit #1, Exhibit "H" (EC decision – Case AT.40437 – Apple – App Store Practices (music streaming), p. 148-149 "The Commission preliminarily considers these arguments unfounded […]. "Even after the lifetime of their smart mobile device has come to an end, the majority of iOS users are local to their current smart mobile device/OS and are unlikely to switch, also because of their lock-in through monetary and non-monetary switching costs") (emphasis added).

[49] Bellisario Affidavit #1, Exhibit "H" (EC decision – Case AT.40437 – Apple – App Store Practices (music streaming), p. 154 "App distribution on iOS devices not only exhibits indirect network effects, but also extremely high barriers to entry.")

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.[50]

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:

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[50] CAT decision, para. 344 (citing conclusions of EC in Spotify decision – "Even large developers like Spotify have been unable to influence the terms Apple sets for access to the App Store.")

(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 ***th*** day of December 2025

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