



**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No: 1468/7/7/22

BETWEEN:

**JUSTIN GUTMANN**

Applicant / Proposed Class Representative

- v -

**(1) APPLE INC**

**(2) APPLE DISTRIBUTION INTERNATIONAL LTD**

**(3) APPLE RETAIL UK LIMITED**

Respondents / Proposed Defendants

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**ORDER**

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**UPON** reading the application by the Proposed Class Representative (the “**PCR**”) for a Collective Proceedings Order pursuant to section 47B of the Competition Act 1998 and Rule 75 of the Competition Appeal Tribunal Rules 2015 (the “**Tribunal Rules**”) filed on 17 June 2022 (the “**CPO Application**”)

**AND UPON** reading the application by the PCR pursuant to Rules 74 and 53(2)(1) of the Tribunal Rules for disclosure of the report of the French General Directorate for Competition Policy, Consumer Affairs and Fraud Control (the “**DGCCRF Report**”) referred to in a press release of 7 February 2020

**AND UPON** reading the written submissions of the parties filed in advance of a case management conference (“**CMC**”)

**AND UPON** a confidentiality ring having been established by consent by Order of the Tribunal of 15 November 2022 (the “**Interim Confidentiality Ring**”), and the PCR having disclosed to members of that Interim Confidentiality Ring and provided to the Tribunal the Litigation Funding Agreement and the After-the-Event Insurance Policy, including an endorsement (“**the Funding Documents**”) in unredacted form, save for information over which strategic sensitivity is asserted

or which is asserted to be personal information, but highlighting any information for which confidential treatment is requested

**AND UPON** hearing Ms Anneli Howard KC leading Counsel for the PCR and Mr Brian Kennelly KC leading Counsel for the Proposed Defendants at a CMC held on 22 November 2022

**IT IS ORDERED THAT:**

**FORUM**

1. Pursuant to Rules 18, 52 and 74 of the Tribunal Rules, these collective proceedings be treated as proceedings in England and Wales.

**CONFIDENTIALITY**

2. The PCR's request in accordance with Rule 101 of the Tribunal Rules for the confidential treatment of information highlighted as such in the Funding Documents be granted.
3. The Parties are to liaise and agree terms of a confidentiality ring (the "**Confidentiality Ring**") and shall file an agreed draft order with the Tribunal by 4 pm on 16 December 2022. In the event that the parties cannot reach agreement, they shall file a composite draft showing the areas of agreement and disagreement for the Tribunal to determine on the papers.

**DISCLOSURE**

4. Following the establishment of the Confidentiality Ring, the Proposed Defendants shall disclose the original French language version and an English translation (if held) of the DGCCRF Report to the relevant members of the Confidentiality Ring within 3 working days of receipt by the Proposed Defendants of copies of signed undertakings by those members in the terms required by the Confidentiality Ring.

**PUBLICITY**

5. The Applicant shall publicise the CPO Application by 4pm on 12 December 2022, according to the proposal set out in paragraph 6 and Appendix C of the Notice and

Administration Plan, that is annexed to the Litigation Plan exhibited to the First Witness Statement of Justin Gutmann as Document 23.

6. The Applicant shall publicise by 4pm on 12 December 2022, in accordance with paragraphs 5 and 11 of this Order, the right under Rule 76(10)(c) of persons with an interest to object to the CPO Application or the authorisation of the Proposed Class Representative.
7. The Applicant shall publicise by 4pm on 12 December 2022, in accordance with paragraphs 5, 11 and 12 of this Order, the right under Rule 79(5) of members of the proposed class to make an application to the Tribunal for permission to make oral submissions at the hearing of the CPO Application.

#### **RESPONSE AND REPLIES TO THE CPO APPLICATION**

8. The Respondents are to file and serve any factual evidence relied on in support of their response to the CPO Application and/or any application made pursuant to Rule 79(4) of the Tribunal Rules by 4pm on 3 February 2023.
9. The Respondents are to file and serve their response to the CPO Application and any application made pursuant to Rule 79(4) of the Tribunal Rules, together with any expert evidence relied on in support, by 4pm on 10 February 2023.
10. The Applicant is to file and serve any reply to the Respondents' response to the CPO Application, any response to any application made pursuant to Rule 79(4) of the Tribunal Rule, together with any factual and expert evidence relied on in reply or response, by 4pm on 6 April 2022.

#### **OBJECTIONS TO THE CPO APPLICATION AND APPLICATIONS FOR PERMISSION TO MAKE OBSERVATIONS**

11. Any person with an interest (including any member of the proposed class) may object to the CPO Application or the authorisation of the Proposed Class Representative by writing to the Tribunal stating their reasons for objecting by 4pm on 20 January 2023. Any member of the proposed class may also seek permission to make oral observations

at the CPO Application hearing, by making an application for such permission, with reasons, as part of his/her written objections.

12. Any third party with a legitimate interest (who is not a member of the proposed class) who seeks permission to make written and/or oral observations at the CPO Application hearing is to make such application, supported by reasons, to the Tribunal by 4pm on 20 January 2023.

## **HEARING**

13. Any strike-out/summary judgment application shall be case managed alongside, listed and heard at the same hearing as the CPO Application.
14. The hearing of the CPO Application and/or strike-out/summary judgment application shall take place on 2 May 2023, with a time estimate of 3 days, with one day in reserve (**“Certification Hearing”**).
15. The parties are to file and exchange skeleton arguments in respect of the Certification Hearing by 4pm on 25 April 2023. The parties shall liaise as to the length of skeleton arguments and, if necessary, apply to vary the page limit in paragraph 2 of the Tribunal’s Practice Direction 1/2021 by 4pm on 11 April 2023.
16. A pre-hearing review (**“PTR”**) is listed for up to half a day on 18 April 2023.
17. The parties are to file and exchange skeleton arguments (if so advised) in respect of the PTR, along with an agreed list of principal issues to be determined at the Certification Hearing, by 10 am on 17 April 2023. In the event that the parties cannot reach agreement regarding the list of issues, they shall file a composite draft showing the areas of agreement and disagreement.
18. The same hearing bundle shall be used for both the Certification Hearing and the PTR. The parties shall seek to agree such bundle in accordance with the Tribunal’s Guide and Practice Direction of 25 February 2021. The PCR shall file an electronic version and five hard copies of the agreed hearing bundle by 4pm on 14 April 2023.

19. The PCR shall file an electronic version and five hard copies of an agreed authorities bundle by 4pm on 25 April 2023 and a supplemental bundle (if needed) by 4pm on 28 April 2023.

**GENERAL**

20. Costs reserved to the Certification Hearing.
21. There shall be liberty to apply.

**Justin Turner KC**  
Chair of the Competition Appeal Tribunal

Made: 22 November 2022  
Drawn: 19 December 2022