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COMPETITION TRIBUNAL CLARIFIES “PUBLIC INTEREST” PRIVATE ACCESS FRAMEWORK: KEY IMPLICATIONS FROM MARTIN V ALPHABET AND THE APPLE APP STORE CHALLENGE

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Overview

The Competition Tribunal has released its first decision interpreting the expanded public interest litigant regime under the *Competition Act*. In doing so, the Tribunal laid out a clear framework for public-interest litigants seeking leave to bring competition claims.

While the applicant in *Martin v Alphabet* was unsuccessful, the decision provides a roadmap for future proceedings and, in particular, sets the stage for an upcoming public interest claim against Apple, one of the world’s largest companies.

A public-interest legal clinic is following an international trend of challenging Apple’s control over the distribution of apps on iPhones and iPads. If leave is granted, it will mark the first time Canada’s Competition Tribunal considers whether Apple is anti-competitive.

Together, these proceedings mark a pivotal moment for public interest competition litigation in Canada.

***Martin v Alphabet*: The Tribunal Builds a Gatekeeping Framework**

On January 13, 2026, the Competition Tribunal released its decision in *Martin v Alphabet Inc., Google LLC, Google Canada Corporation, Apple Inc., and Apple Canada Inc.* (“*Martin*”), its first decision outlining the test to obtain leave to bring a private *Competition Act* complaint as a public interest litigant. Although the Tribunal ultimately declined to grant leave, the decision represents the first judicial interpretation of the expanded private-access regime under section 103.1 of the *Competition Act*.

Between 2022 and 2024, Parliament enacted significant amendments to the *Competition Act* designed to modernize Canadian competition law and strengthen private enforcement. These reforms allow “any person” — including consumers, academics, and public-interest

organizations — to seek leave to pursue remedies under key civil provisions such as abuse of dominance (section 79) and anticompetitive agreements (section 90.1). Successful applicants may also seek monetary compensation, a remedy previously unavailable in most private applications.

Section 103.1 now provides two distinct pathways to leave:

- the affected business branch, which asks whether the applicant's business is directly and substantially affected by the alleged conduct; and
- the public-interest branch, under which leave may be granted where doing so is in the public interest.

The *Martin* decision concerns this new public-interest pathway.

The Tribunal's Interpretation of the Public-Interest Test

In interpreting the new provision, the Tribunal adopted a modified version of the Supreme Court of Canada's public-interest standing framework, adapted to the statutory context and institutional role of the Tribunal.

The Tribunal emphasized its screening function and limited resources, noting that leave applications must distinguish genuine competition disputes from speculative or strategic claims. It therefore articulated three cumulative questions:

1. Is the proposed application a substantial and genuine competition law dispute?

The Tribunal assesses whether the essential character of the case concerns competition in a market rather than a private commercial dispute. While competing evidence is not weighed at this stage, applicants must provide sufficient factual material demonstrating Canadian market effects.

2. Does the applicant have a genuine interest in the matter?

Public-interest standing requires more than curiosity. Applicants must demonstrate a real and continuing interest, engagement with the issues, and credibility connected to the competition concerns raised.

3. Is the proceeding a reasonable and effective means of addressing the competition issues?

The Tribunal considers whether the applicant has a realistic litigation plan and a tangible prospect of developing the evidentiary record required for a hearing on the merits.

In *Martin*, the Tribunal accepted that the proposed application raised genuine competition issues but found significant deficiencies in the evidentiary record. Most notably, the application lacked sufficient Canada-specific evidence. The applicant relied heavily on materials from U.S. proceedings, which the Tribunal held could not substitute for admissible factual evidence supporting a Canadian claim.

Despite this outcome, the decision provides a clear roadmap for future applicants. The Tribunal confirmed that the public-interest pathway is intended to encourage private enforcement that complements the Commissioner of Competition's work — but applicants must meet a real evidentiary burden.

Apple and the App Store: The International Backdrop

Before turning to the pending public interest case against Apple, it is useful to understand the global enforcement landscape that surrounds it. Courts and regulators across major jurisdictions have already scrutinized Apple's App Store practices:

- **Netherlands:** In August 2021, the District Court of Rotterdam upheld a decision of the Netherlands Authority for Consumers and Markets finding that Apple abused its dominant position by imposing unreasonable payment restrictions on dating app providers, including mandatory use of Apple's payment system and limitations on alternative payment options.
- **European Union:** In March 2024, the European Commission fined Apple €1.8 billion for abusing its dominant position in music streaming by preventing apps such as Spotify from informing users about cheaper subscription options outside the App Store. The Commission found these restrictions unlawful under EU competition law and ordered Apple to remove them.
- **United Kingdom:** On October 24, 2025, the UK Competition Appeal Tribunal issued a landmark ruling in *Kent v Apple*, finding that Apple abused its dominant position through exclusionary App Store practices that resulted in consumer overcharges.
- **United States:** *Epic Games v Apple* began in 2020 after Epic challenged Apple's requirement that developers use its in-app payment system and pay a 30 percent commission. Courts ultimately rejected most antitrust claims but held Apple's anti-steering rules unlawful. Following appeals and enforcement rulings completed in 2025, Apple was required to permit developers to direct users to external payment options without commission restrictions.

Canada, by contrast, has seen no comparable enforcement action from the Competition Bureau. This is notable given the Bureau's stated interest in digital-market conduct.

The CIPPIC Application: Canada's First App Store Challenge

Against this international backdrop, the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (“**CIPPIC**”) has filed Canada's first competition challenge to Apple's App Store rules. The CIPPIC claim follows the framework of the *Kent v. Apple* ruling described above, which found that Apple had engaged in abuse of dominance by charging application developers excessively high commissions on in-app payments made on iOS devices.

Filed in December 2025, the CIPPIC application alleges that Apple's App Store rules constitute an abuse of dominance in Canada's mobile app distribution market. Unlike traditional competition cases, the proceeding is brought by a public-interest legal clinic rather than a competitor or regulator.

The allegations mirror concerns raised globally about Apple's "walled garden" ecosystem, including:

- mandatory distribution of iOS apps exclusively through Apple's App Store;
- compulsory use of Apple's in-app payment system and associated commissions;
- anti-steering provisions preventing developers from informing users of cheaper purchasing options; and
- commission rates alleged to be supra-competitive due to a lack of platform competition.

Rather than damages for itself, CIPPIC seeks structural remedies aimed at opening the Apple iOS ecosystem, including allowing alternative app stores, third-party payment systems, and freer communication between developers and users.

The case now awaits a leave determination, where the Tribunal will apply the *Martin* framework to a sophisticated institutional public-interest applicant for the first time. The outcome will help determine whether Canada's expanded private enforcement regime can meaningfully address complex digital-market conduct.

What This Means

For public-interest organizations and advocacy groups, *Martin* provides the clearest guidance yet on what a leave application must contain. The key lesson is evidentiary: a compelling narrative is not enough. Applicants must build a Canada-specific factual record from the outset. Foreign proceedings will not carry the evidentiary load at the leave stage. Organizations considering a public-interest application should treat record-building as a pre-filing priority, not a post-leave exercise.

For businesses affected by platform conduct, the CIPPIC proceeding signals that the private-access regime may now offer a viable route to structural relief where a public-

interest clinic or similar organization can be aligned with the affected community's interests. If CIPPIC succeeds at the leave stage, it will confirm that the 2022–2024 amendments have meaningfully expanded the competitive enforcement landscape.