



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1601/7/7/23

BETWEEN:

DR. SEAN ENNIS

Applicant/ Class Representative

– v –

(1) APPLE INC

(2) APPLE DISTRIBUTION INTERNATIONAL LTD

(3) APPLE CANADA INC

(4) APPLE PTY LTD

(5) APPLE SERVICES LATAM LLC

(6) ITUNES KK

(7) APPLE (UK) LTD

(8) APPLE EUROPE LTD

Respondents/ Defendants

COLLECTIVE PROCEEDINGS ORDER

UPON the Class Representative’s application for a collective proceedings order pursuant to section 47B of the Competition Act 1998 (the “**Act**”) and Rule 75 of the Competition Appeal Tribunal Rules 2015 (the “**2015 Rules**”) (the “**CPO Application**”) filed on 25 July 2023

AND UPON reading the documents recorded on the Tribunal file as having been read

AND UPON hearing leading counsel for the Class Representative, and leading counsel for the Defendants, at the hearing of the CPO Application on 16 September 2024

AND UPON the Defendants consenting to the Class Representative's proposed amendments to the Collective Proceedings Claim Form

IT IS ORDERED THAT:

Forum

1. Pursuant to Rules 18, 52 and 74 of the 2015 Rules, the present collective proceedings are to be treated as proceedings in England and Wales.

Authorisation of the Class Representative and certification of the claims as eligible for inclusion in collective proceedings

2. Pursuant to section 47B of the Act and Rules 77 and 80 of the 2015 Rules, Dr Sean Ennis shall be authorised to act as Class Representative to continue the present collective proceedings on an opt-out basis.

3. The Applicant's address for service is:

- a. Geradin Partners, Copthall House, 14-18 Copthall Avenue, London EC2R 7DJ, United Kingdom (Attention: Damien Geradin, David Gallagher, and Stijn Huijts) (hard copy); or

- b. all four of:

- a. dgeradin@geradinpartners.com;

- b. shuijts@geradinpartners.com;

- c. dgallagher@geradinpartners.com; and

d. sjaiswal@geradinpartners.com
(email).

4. The claims certified as eligible for inclusion in the present collective proceedings pursuant to section 47B of the Act and Rules 79 and 80 are claims for damages for loss suffered by the Class (as defined below) as a result of the Defendants' breaches of statutory duty in infringing: (i) section 18 of the Act; and (ii) until 31 December 2020, article 102 of the Treaty on the Functioning of the European Union.

Class Definition

5. The class is defined as follows (hereafter the "**Class**" and the "**Class Definition**"):

"All UK-domiciled Third-Party App Developers who, during the Relevant Period, made one or more Relevant Sales".

6. For the purposes of the Class Definition:

- a. "**app**" means a software application.
- b. "**App Store**" means Apple's proprietary app store as pre-installed on all iOS Devices.
- c. "**Apple**" means the Apple undertaking of which the Defendants form part.
- d. "**Commission**" means any commission charged by Apple in connection with any sale made (i) *via* the App Store and/or (ii) within an app.
- e. "**Domicile Date**" means the Domicile Date given at paragraph 7 below.
- f. "**iOS**" means Apple's proprietary mobile operating system.
- g. "**iOS app**" means a "*native*" app programmed to be installed on an iOS Device

(and so does not refer to a “*web*” app, which does not need to be installed and instead functions *via* an internet browser).

- h. “**iOS Device**” means an iPhone, iPad, iPod Touch, and any other device supplied by Apple that uses iOS as its operating system.
- i. “**Third-Party App**” means an iOS app developed by a Third-Party App Developer, but does not include any iOS app that is or functions as an iOS app store, iOS app marketplace, or iOS app distribution service.
- j. “**Third-Party App Developer**” means third-party developers (i.e., not Apple) of iOS apps, but does not include developers that, as at the Domicile Date:
 - a. in the case of natural persons, are deceased; or
 - b. in the case of legal persons, have been dissolved and/or struck off the register and/or otherwise ceased to exist.
- k. “**Relevant Period**” means the period starting six years before the date of the Collective Proceedings Claim Form and ending on the date of the Amended Collective Proceedings Claim Form.
- l. “**Relevant Sale**” means:
 - a. any sale of a Third-Party App *via* the App Store and any sale to an iOS Device user within a Third-Party App; and
 - b. any sale to an iOS Device user within a Third-Party App

on which the Commission is charged, and includes:

- i. any sale of a Third-Party App *via* the App Store in connection with

which an iOS Device user pays a fee to download;

- ii. any one-time sale to an iOS Device user within a Third-Party App for which the iOS Device user pays a fee; and
- iii. any recurring sale to an iOS Device user within a Third-Party App for which the iOS Device user pays a fee.

Domicile Date and opt-out

- 7. The Domicile Date is 29 November 2024.
- 8. Persons satisfying the Class Definition may opt out of these collective proceedings by posting a letter to or emailing Angeion, the claims administrators appointed on behalf of the Class Representative, by 1 March 2025, at the address or email address specified online at www.appleappdeveloperclaim.co.uk .

Publication

- 9. The Class Representative shall publicise this Collective Proceedings Order in accordance with the draft Rule 81 Notice filed with the Collective Proceedings Claim Form and the proposal set out in the communications plan in the notice and administration plan which is annexed to the First Witness Statement of Dr Sean Ennis (subject to any modifications ordered in this Collective Proceedings Order).

Directions

- 10. The Defendants shall file and serve their Defence by 4pm on 12 February 2025.
- 11. The Class Representative shall file and serve a Reply, if so advised, by 4pm on 26 March 2025.

12. A second case management conference shall be listed at 10:30 on a convenient date in the week commencing 14 April 2025 before Andrew Lenon KC (Chairman), Tim Frazer and Professor Anthony Neuberger.

General

13. The Defendants shall pay (and shall be jointly and severally liable to pay) the Class Representative's costs of and incidental to meeting the Defendants' opposition to the CPO Application on the standard basis, to be the subject of detailed assessment if not agreed.

14. Save insofar as provided for under paragraph 13 above, costs of the CPO Application shall be costs in the case.

15. The parties have liberty to apply.

Andrew Lenon KC
Chair of the Competition Appeal Tribunal

Made: 29 November 2024
Drawn: 29 November 2024