



COMPETITION APPEAL TRIBUNAL

**NOTICE OF AN APPLICATION UNDER
SECTION 179 OF THE ENTERPRISE ACT 2002**

CASE NO. 1576/6/12/23

Pursuant to rules 14 and 26 of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (“the Rules”), the Registrar gives notice of the receipt on 18 January 2023 of an application for review (“NoA”) under section 179 of the Enterprise Act 2002 (the “Act”) by (1) Apple Inc., (2) Apple Distribution International Limited, (3) Apple Europe Limited, and (4) Apple (UK) Limited (together “Apple”).

Apple applies for review of the decision of the Competition and Markets Authority (“CMA”) dated 22 November 2022 to make a market investigation reference under section 131 of the Act into the supply of browsers and browser engines, and the distribution of cloud gaming services through app stores on mobile devices in the UK (“the MIR Decision”). Apple is represented by Gibson, Dunn & Crutcher LLP of 2-4 Temple Avenue, London, EC4Y 0HB (reference: Deirdre Taylor).

On 15 June 2021, the CMA launched a market study in relation to the supply of mobile ecosystems in the UK. The market study sought to consider the extent to which a matter in relation to (i) the supply of mobile devices and operating systems; (ii) the distribution of mobile apps; and (iii) the supply of mobile browsers and browser engines – has or may have effects adverse to the interests of consumers. It also sought to assess the role of Apple and Google in competition between app developers. The CMA invited comments from interested parties on these issues. On 14 December 2021, the CMA issued a decision entitled “Notice of decision not to make a market investigation reference under section 131 of the Enterprise Act 2002”. On the same day the CMA published a detailed Interim Report (IR) in which it also stated that the CMA had decided not to make a market investigation reference.

On 10 June 2022, the CMA published its Final Report (“FR”) of its market study into mobile ecosystems, taking account of representations made to it after the IR and after the CMA itself having conducted further analysis. The FR further announced the launch of a public consultation as to whether a market investigation reference should be made in respect of Apple and Google LLC.

The NoA further states that on 22 November 2022, the CMA then formally decided to make a market investigation reference under section 131 of the Act and to appoint an inquiry group to conduct the market investigation.

In summary, Apple advances one ground of review in respect of the MIR Decision, namely that it is *ultra vires*. Apple contends that in circumstances where the CMA has published a Market Study Notice (“MSN”), sections 131A and 131B of the Act require that (i) any proposal for a market investigation reference must be made, and consultation on that proposal must begin, within six months of the date of the publication of the MSN; (ii) the CMA is required to issue its final report on the market study within 12 months of the MSN; (iii) the final report must state any decision to make a market investigation reference pursuant to section 131 of the Act, the reasons for that decision, and such information as considered necessary to facilitate an understanding of that decision; and (iv) where a market study report contains a decision to make a market investigation reference, the reference must be made at the same time as the publication of the final report.

Apple submits that none of these four statutory requirements have been met in the MIR Decision.

As regards the relief sought, Apple seeks:

1. An Order that the MIR Decision is quashed.
2. A declaration that the MIR Decision and market investigation purportedly launched by reference to it are invalid and of no legal effect.

In its NoA, Apple also seeks interim relief in the form of a stay of the market investigation pending determination of the application.

Any person who considers that they have sufficient interest in the outcome of the proceedings may make a request for permission to intervene in the proceedings in accordance with rule 16 of the Rules.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively, the Tribunal Registry can be contacted by post at Salisbury Square House, 8 Salisbury Square, London EC4Y 8AP, or by telephone (020 7979 7979) or email (registry@catribunal.org.uk). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, KC (Hon)

Registrar

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