



IN THE COMPETITION APPEAL TRIBUNAL

Case No: 1601/7/7/23

B E T W E E N:

DR SEAN ENNIS

Class Representative

– and –

- (1) APPLE INC.**
- (2) APPLE DISTRIBUTION INTERNATIONAL LIMITED**
- (3) APPLE CANADA INC.**
- (4) APPLE PTY LIMITED**
- (5) APPLE SERVICES LATAM LLC**
- (6) ITUNES K.K.**
- (7) APPLE (UK) LIMITED**
- (8) APPLE EUROPE LIMITED**

Defendants

REASONED ORDER

UPON the Class Representative's application dated 2 July 2026 for directions under rule 53(1) of the Competition Appeal Tribunal Rules 2015 (the "**Application**")

AND UPON reading the correspondence between the parties in respect of the Defendants' intention to seek disclosure from class members

AND UPON the Class Representative contending, for the reasons set out in the Application, that it would be in the interests of justice for the Tribunal to issue directions regulating any process of communication between the Defendants and members of the class

AND UPON the Class Representative contending that privilege has been waived in respect of the relevant communications and/or materials

IT IS ORDERED THAT:

1. Pending the determination of the Application, the Defendants shall not make any communication seeking disclosure from class member(s) or otherwise communicate with them. This prohibition does not operate to prevent the Defendants communicating with class members in the ordinary course of business operations.
2. The Defendants have liberty to apply to discharge or vary this direction.
3. Any order for the costs of the Application is reserved pending the determination of the Application.

REASONS:

1. The Class Representative (“**CR**”) has applied to the Tribunal, in a letter from Scott + Scott UK LLP (“**SSUK**”) dated 2 July 2026, for directions under rule 53(1) of the Competition Appeal Tribunal Rules 2015 to regulate communication between the Defendants and class members. The CR has applied for an urgent direction that the Defendants not contact class members seeking disclosure until the balance of his application has been determined. I have decided to make that direction for the following reasons.
2. The Defendants have stated their intention to communicate with class members with a view to seeking disclosure from them in the event that the Tribunal should dismiss their application to decertify the class. That intention was communicated by letter dated 17 April 2026, and reiterated at a CMC on 6 May 2026. I have been shown subsequent exchanges between the parties, in which the Defendants have reiterated their intention to seek disclosure from class members. The Tribunal issued its decision dismissing the Defendants’ decertification application on 25 June 2026.
3. On behalf of the CR, SSUK contend that case management measures in respect of the conduct of any disclosure process are essential. They contend that individual disclosure is not the norm in opt-out proceedings, and that the proposed disclosure requests are disproportionate and not related to the pleaded issues. They express a concern that the receipt of such requests is likely to cause alarm among the class members to which they

are directed, and may encourage class members to opt out of the collective proceedings. They articulate the CR's concern that this may be the Defendants' purpose.

4. SSUK's primary position in support of Dr Ennis' application is that the Defendants have waived litigation privilege, and they advance their primary application for directions on that basis. They advance an alternative application which proceeds on the footing that the Defendants are still entitled to maintain privilege in communications with class members.
5. I express no view as to the merits of any of these contentions. They will require to be addressed at an oral hearing. I have directed that such a hearing be fixed for the earliest reasonably practicable date. The only question which I require to address at this stage is the CR's application for an urgent order to preserve the position pending that hearing. I have concluded that I should make such an order. The CR advances a case, putting it generally, to the effect that it would be in the interests of justice for any communication between the Defendants and class members to be regulated by case management directions. His primary position is that the Defendants have waived litigation privilege in the disclosure requests. His fallback position is that, if the Defendants have not waived litigation privilege, then the Tribunal can and should in any event issue certain case management directions to regulate the process of communication with class members.
6. The CR advances a case to the effect that communication with class members, if unregulated by case management directions, would have what he characterises as "serious and irreversible ramifications". That case may or may not be correct, but at this stage all I require to decide is whether the position should be preserved entirely until the CR's application has been determined by the Tribunal. On the basis that the application will be determined by the Tribunal in early course, it seems to me that a direction to hold the ring and preserve the position in the meantime is justified. If the Defendants had no intention of communicating pending the Tribunal's determination of the application, no harm will have been done; equally, if they did have such an intention, the direction will have been justified.

7. I have considered whether an urgent direction such as that which the CR seeks would itself be incompatible with the Defendants' litigation privilege. I have reached the preliminary conclusion that it is not, on the footing that it is of the nature of an interim direction which simply preserves the position until the Tribunal has determined the CR's application (including the question of whether the Defendants have waived privilege), one way or the other. However, I have not heard argument on the point, and I accordingly grant liberty to the Defendants to apply to discharge or vary the direction on that ground or any other ground which they might ultimately wish to advance.

James Wolffe KC

Made: 3 July 2026

Chair of the Competition Appeal Tribunal

Drawn: 3 July 2026