



Case No: 1601/7/7/23

IN THE COMPETITION APPEAL TRIBUNAL

BETWEEN:

DR SEAN ENNIS

Class Representative

- v -

**(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 to commence collective proceedings dated 25 July 2023

AND UPON the Collective Proceedings Order made on 29 November 2024

AND UPON the Tribunal's order made on 5 June 2025 setting directions in these proceedings, including directions relating to the timetable for expert evidence and trial (the **June 2025 Order**)

AND UPON the case management conference held at the Tribunal on 6 May 2026 and the subsequent order of the Tribunal made on 15 June 2026 (the **June 2026 Order**)

AND UPON the Class Representative's application dated 20 August 2026 seeking permission to adduce expert evidence in the fields of (i) app security and privacy, and (ii) payment systems and digital banking

AND UPON the Defendants' applications dated 20 August 2026 seeking permission to adduce (i) valuation expert evidence, and (ii) survey evidence

AND UPON the Class Representative's application dated 3 September 2026 relating to the trial listing date

AND UPON the Defendants' application dated 3 September 2026 relating to the timetable for expert evidence and the trial listing date

AND UPON the case management conference held at the Tribunal on 17 September 2026 (the **September CMC**)

AND UPON hearing counsel for the Class Representative and the Defendants at the September CMC

IT IS ORDERED THAT:

Expert and Survey Evidence

1. The Class Representative has permission to adduce expert evidence: (i) in the field of app security and privacy on the issues set out in Annex A to this Order; ; and (ii) in the field of payment systems and digital banking on the issues set out in Annex B to this Order. Apple has liberty to apply to adduce expert evidence in these fields.
2. The Tribunal defers consideration of the Defendants' application to adduce valuation evidence until:
 - 2.1 the Defendants file a note of not more than four pages from their proposed valuation expert setting out details of his proposed methodology, within four weeks from the date of this order or such later date as, on the Defendants' application, the Tribunal may allow; and
 - 2.2 the Class Representative intimates, not later than three weeks thereafter, his position on the application, in light of that information.
3. The Defendants' application to adduce survey evidence is refused.

4. The Tribunal approves the List of Expert Issues in respect of the areas of expert evidence already approved attached as an Annex C to this Order.

Timetable for Expert Evidence and Trial Listing

5. The Defendants' application to change the trial listing is refused. The trial shall be listed to commence on 7 February 2028, with a time estimate of 8 weeks. The first week shall be a reading week for the Tribunal.
6. The directions set out in §13 of the Tribunal's June 2025 Order shall be amended as follows:
 - 6.1. The deadline at §13(a) for the parties to serve signed expert reports shall be extended to 4 pm on 23 July 2027.
 - 6.2. The deadline at §13(b) for the parties to serve signed expert reports in response shall be extended to 17 September 2027.
 - 6.3. The deadline at §13(c) for the parties' experts in each respective field to meet on a without prejudice basis to discuss their respective reports shall be extended to 4 pm on 15 October 2027.
 - 6.4. The deadline for the parties' experts in each respective field to produce a joint statement of matters agreed and not agreed shall be extended to 4 pm on 29 October 2027.
7. The parties are to liaise and file with the Tribunal, by no later than 4 pm on 13 November 2026, their proposals (to be agreed to the extent possible) regarding page limits to be applied to the expert reports and a timetable for the preparation and filing of trial expert reports.

Next Case Management Conference

8. The parties are to liaise and provide to the Tribunal, by no later than 13 November 2026, their proposed time frame for the next CMC in these proceedings.

9. The parties have liberty to apply, on cause shown, for amendment of these procedural directions.

REASONS:

Expert and survey evidence

1. At a CMC held on 6 May 2026 in these proceedings, the Tribunal considered a number of contested applications by the parties for permission to adduce expert evidence. The Tribunal directed (in the June 2026 Order) that in advance of the September CMC, the parties should each file applications in relation to each of the expert disciplines they wish to pursue, which should include information identifying the specific experts they propose to instruct for each discipline, the proposed expert's CV, the list of issues it is proposed that the expert should address, and the party's reasons for requiring expert evidence in the discipline in question. On 20 August 2026, Dr Ennis filed an application for permission to adduce expert evidence in the fields of (i) app security and digital privacy, and (ii) payment systems and digital banking. Apple filed an application for permission to adduce expert valuation evidence. Apple separately filed an application for permission to adduce survey evidence in accordance with the directions set out in relation to this in the June 2026 Order. We heard argument on these applications at the September CMC and reserved judgment. We now address these applications.

(a) App security and privacy expert evidence

2. Dr Ennis' position is that expert evidence on app security and privacy is reasonably required to resolve a contested issue which arises on the pleadings: specifically, to "resolve Apple's contention [...] that its price is justified by the reliability, security, quality and privacy of iOS devices and/or the iOS ecosystem", a position which Dr Ennis challenges in his Reply. During the September CMC, counsel for Dr Ennis clarified that Dr Ennis' case on Apple's pricing is "not purely a case that the raw price by itself is excessive and unfair [...] it is also that Apple's system of charging is unfair".
3. Dr Ennis observes that his proposed expert in this field – Professor Somayaji – is the same expert he proposes to appoint to adduce expert evidence in the agreed expert field of "software and technical aspects of app development". This, he argues, means that granting this application would not increase the number of experts in these proceedings,

and any cost increase would be modest. Dr Ennis further argues that there would be an equality of arms issue if his application for expert evidence in this field is refused. It is apparent from *Kent v Apple Inc. & Ors* [2025] CAT 67 that Apple has factual witnesses with expertise in this field, whereas Dr Ennis can only address the issues through an expert.

4. Apple's opposition to Dr Ennis' application is based on the contention that no disputed issue arises on the pleadings which app security and privacy experts need to address. By contrast with the case advanced in *Kent*, Dr Ennis' case is confined to allegedly unfair and excessive pricing and does not allege any exclusionary abuse. Apple has accordingly not pled a justification defence. Apple accepts that the value to be attached to security and privacy benefits is an important issue. Counsel for Apple confirmed that Apple may well wish to adduce factual evidence (and valuation evidence) that speaks to the "value that developers receive on the App Store [in] the privacy and security that Apple guarantees". Apple contends that this would be fundamentally different to assessing "whether the restrictions on app distribution are required or what their underlying purpose is". Apple contends that the latter issue does not arise on the pleadings.
5. We have decided to grant permission for Dr Ennis to adduce expert evidence from Professor Somayaji on the specific issues which have been identified in the field of app security and privacy. Although Dr Ennis is not advancing a case of exclusionary abuse, we recognise that his challenge to Apple's pricing includes not only an allegation that the prices are excessive and unfair but that the system of charging is unfair and abusive. Further, Apple relies explicitly in its defence on the benefits which it contends that its systems provide in terms of app security and privacy. Whether there are such benefits and, if so, whether they justify (or form part of a justification) for the level and system of pricing is, on the face of it, at issue between the parties. That is, in our view, sufficient to justify permitting evidence to be led on these issues, even if there remains a dispute about the ultimate relevance and value of that evidence, which the Tribunal will require to resolve. As we understand it, issues concerning security and privacy were addressed in *Kent* by factual witnesses from within Apple's own organisation. Dr Ennis does not have equivalent evidence available to him without instructing an expert. In these circumstances, it would be consistent with the Tribunal's general principles to permit

Dr Ennis to instruct Dr Somayaji to address the proposed issues on app security and privacy as well as the other matters on which he is already to give evidence.

6. We did not understand Apple to seek permission to adduce independent expert evidence of its own on these issues. It would appear that Apple has evidence available in-house from factual witnesses. However, if Apple does wish to lead evidence from an independent expert or experts on these issues, it should file an application identifying its proposed expert and providing a CV.

(b) Payment systems and digital banking expert evidence

7. Dr Ennis applies for permission to adduce expert evidence from Mr Burelli in the field of payment systems and digital banking on the basis that such expert evidence is reasonably required in relation to his case on unfairness: namely his pleading that “by mandating use of its own payment systems, Apple makes payment of the Commission effectively inescapable and insulates Apple from competitive pressure”. He argues that this expert evidence is necessary in relation to two particular questions which arise on the pleadings: firstly, whether it is unfair for developers to be compelled to use Apple’s payment systems (e.g. on privacy and security grounds), and secondly, whether the price that Apple is charging reflects economic value. Dr Ennis had identified four issues which he proposes that Mr Burelli should address. As in relation to app security and privacy, Dr Ennis also advances an equality of arms argument in relation to this issue.
8. Apple’s opposition to this application is that this expert evidence is not reasonably necessary to deal with the pleaded issues. Its position is underpinned by four arguments: (i) by contrast with *Kent*, the present proceedings involve a narrow claim relating to excessive pricing only; there is no issue as to whether Apple should be compelled to facilitate alternative payment systems; (ii) the expert evidence on this issue given in *Kent* by Mr Burelli was of limited utility in *Kent*; (iii) it is unclear how Mr Burelli proposes to obtain the information needed to develop his analysis beyond that given in *Kent* given the likely commercial sensitivity of this information; and (iv) Mr Burelli’s proposed analysis contains internal inconsistencies.

9. We have decided to grant Dr Ennis’ application for permission to adduce expert evidence from Mr Burelli on the specific issues identified in relation to payment systems. Although presented as evidence in relation to “payment systems and digital banking”, it does not seem to us that the issues call for evidence about digital banking, as opposed to payment systems. As in relation to app security and privacy, although there may be a dispute about the ultimate relevance of such evidence which the Tribunal will need to resolve in due course, evidence in relation to payment systems has an anchor in the pleadings. It may be that the evidence of Mr Burelli is, to some extent, simply descriptive factual evidence about the market rather than opinion evidence. However, such evidence can usefully be provided to the Tribunal through an expert with an understanding of the market. We also recognise that Apple has factual witnesses available to it who can speak to its payment systems and that Dr Ennis would be hampered in dealing with that issue if he did not have access to an expert.
10. We did not understand Apple to seek permission to adduce independent expert evidence of its own on these issues. Again, it is likely to have in-house expertise. However, if Apple does wish to lead evidence from an independent expert or experts on these issues, it should file an application identifying the proposed expert and providing a CV.

(c) Valuation expert evidence

11. Apple seeks permission to adduce expert valuation evidence from Dr Mario Lopez. Dr Lopez is an economist, whose CV describes him, *inter alia*, as an expert in the application of rigorous economic methods to intellectual property and antitrust matters and an expert in the economic valuations of patents and other forms of intangible assets. The two issues to which it is proposed that Dr Lopez will speak are:

“1. What is the economic value of the tools, technologies and services that Apple provides to developers?

2. In opining on issue 1, please address the relevance, if any, of any benefits that Apple derives from developers making use of those tools, technologies and services.”

12. Apple states that this evidence will be relevant to two features of its defence: firstly its contention that “the price charged by Apple is justified in view of the extraordinary

economic value that Apple’s proprietary tools, technologies and services provide to developers”, and secondly its position on the counterfactual that “even if Apple had not been permitted to charge the Commission at the current (competitive) level, Apple would have been entitled to introduce other charges or increase existing charges to reflect the economic value of those tools, technologies and services”. Apple’s submissions emphasise the “highly specialised nature” of the valuation of such tools, technologies and services. Apple relies on the Tribunal’s comments at §623 and §673 of the *Kent* judgment to the effect that the Tribunal could not assess the value to developers of Apple’s tools and technologies *inter alia* because Apple had chosen not to advance a positive case as to value by leading a valuation of any of the intangible assets (even though Apple had permission to submit evidence from an IP valuation expert). Apple argues that, in light of those comments, it would be unfair to deny it the opportunity to adduce such evidence in these proceedings.

13. Dr Ennis advances four arguments in opposition to Apple’s application. Firstly, he argues that the Tribunal in *Kent* decided as a matter of law that the value of “tools, technologies and services” (with which Apple proposes its valuation expert should engage) is not provided in consideration of the commission charged by Apple. Secondly, he contends that Apple has not adequately explained what exactly the expert would be valuing. Thirdly, he argues that Apple’s proposals would not provide for its valuation expert to fairly and adequately assess the contribution made by developers to Apple, a point which he argues is clearly in issue on the pleadings. Fourthly, he argues that a competition economist (from whom the parties already have permission to adduce expert evidence in accordance with the Tribunal’s June 2026 Order) is better qualified than a valuation expert to provide relevant evidence, on the basis that “economic value”, a recognised concept in competition economics, is different from “existing market value” (at which a valuation expert may be skilled at assessing). The former involves “entering a hypothetical world in which the economics are different” and assessing what the outcome might be – an exercise for which a competition economist is better equipped than a valuation expert.

14. The question of whether the prices charged by Apple to developers are justified by the value to developers of Apple’s tools, technologies and services is a central issue in this case. It is unsurprising that Apple should investigate whether there is expert evidence

available which could address the evidential gap explicitly referred to by the *Kent* Tribunal. Apple has identified a proposed expert witness and has provided the information required by the June 2026 Order in support of its application. However, the information provided does not adequately explain the methodology which Dr Lopez will apply in order to assess the economic value of Apple’s tools, technologies and services to developers. Without sufficient clarity as to precisely what is to be valued, and the valuation methodology to be applied, the Tribunal cannot assess the relevance and value of the proposed evidence to the issues which it must determine. Further, the nature of the evidence which Dr Ennis will require to prepare to meet is unclear. We accordingly direct Apple to file a note (of not more than four pages) from Dr Lopez setting out the expert methodology which he proposes to apply. His note should explain: (i) the extent to which Dr Lopez anticipates that his methodology would overlap with, or be different from, that which would be applied by a competition economist; and (ii) whether Dr Lopez’ work will include his own assessment of a fair and non-excessive price, or is intended to be an input into the work of the competition economist. Dr Ennis will have an opportunity to respond in writing before we issue a decision. At the September CMC, Mr Kennelly KC, on behalf of Apple, was understandably not in a position to commit to a particular time frame for producing that note since it will be a matter for Dr Lopez. We will make an order that it be provided within four weeks from the date of our order, but with liberty to apply should that prove impracticable.

(d) Survey evidence

15. Apple seeks permission for a survey to gather evidence about “the extent to which competition from non-iOS devices and non-iOS transaction channels acts as [a] competitive constraint on Apple’s Commission”. Apple envisages this survey gathering evidence from “users across a set of countries that account for a significant majority of consumer spend on apps and in-app content on the App Store”. Apple proposes to survey: (i) the extent to which consumers multi-home (i.e. use multiple platforms for their transactions); (ii) the extent to which consumers switch between App Store and other channels; (iii) the extent to which consumers are aware of other channels through which they could acquire apps or in-app content and whether they consider prices on those channels; and (iv) the extent to which there is heterogeneity across consumers, in

particular whether multi-homing, switching and awareness vary across groups of consumers, in particular between high-spending and low-spending consumers.

16. The argument, as it was put to us by Mr Kennelly, is that the ability of consumers, particularly high-spending consumers, to purchase in-app content through other channels, and thereby avoid paying the commission, imposes a “powerful” competitive constraint on Apple which is relevant to market definition and dominance. If those consumers are price-sensitive, and would be inclined to switch to other channels in the event of an increase in commission, that would give developers an incentive to encourage such switching. In *Kent*, Professor Hitt gave evidence along these lines. The Tribunal rejected this as “speculation” and commented that Apple had not produced any survey evidence or internal Apple analysis to support the proposition. Apple’s application is supported by a letter from its competition economist – Professor Gowrisankaran – stating that he considers Apple’s proposed survey evidence would provide “valuable insight”, amongst other things by helping him to assess whether consumers’ preferences and behaviours are consistent with Apple facing competitive constraints.
17. Dr Ennis opposes this application. His position is that the evidence that the proposed survey proposes to gather is “at best indirectly relevant” to the issues in dispute. It is directed at consumers, whereas the present case concerns prices charged to developers. Dr Ennis contends that the proposal does not satisfy the test for admission of survey evidence (that it is likely to be of “real value”) articulated by the Court of Appeal in *Marks and Spencer Plc v Interflora Inc* [2012] EWCA Civ 1501, [2013] 2 All ER 663 (*Interflora I*) and reinforced in *Marks and Spencer Plc v Interflora Inc* [2013] EWCA Civ 319, [2013] FSR 26 (*Interflora II*). He also argues that there are significant methodological flaws in the proposed survey, which would require additional time and cost to address. This goes to the requirement articulated in *Interflora I* and *Interflora II* that the likely utility of the survey evidence must justify its cost.
18. In *Interflora I*, Lewison LJ observed (at §144) that “even if the [survey] evidence is technically admissible, the judge should not let it in unless (a) satisfied that it would be valuable and (b) that the likely utility of the evidence justifies the costs involved”. At §150, he emphasised that: “Only if the court is satisfied that the evidence is likely to be

of real value should permission be given”. In *Interflora II*, he reinforced the message, at § 26: “... perhaps I did not make my message clear enough in *Interflora I*. Let me say it again, but more loudly. A judge should not let in evidence of this kind unless the party seeking to call that evidence satisfies him: (a) that it is likely to be of **REAL** value; and (b) that the likely value of the evidence justifies the cost”.

19. We recognise that the *Kent* Tribunal rejected Professor Hitt’s evidence and commented adversely on the absence of any survey evidence or other analysis. Nevertheless, we are not satisfied that the proposed survey is likely to be of real value; and, in any event, have formed a clear view that its likely utility does not justify the costs which would be entailed in admitting it. What is proposed is a survey of consumers, not of developers, seeking to establish the price-sensitivity of consumers who have not, in fact, experienced a price increase. The Tribunal has not seen evidence which persuades it that the proposed survey would provide useful evidence on likely consumer responses to counterfactual hypotheses about pricing across different channels. Even with the most careful survey design, the robustness of the results is liable to be open to challenge and debate. The more fundamental objection in the present case is that any counterfactual investigation of the price-sensitivity of consumers has to proceed on assumptions about how developers would respond to an increase in the commission charged to them. Would they increase their own prices? Would they increase their prices only in the App Store or also in other channels? At present, Apple does not plead pass-on, although Mr Kennelly intimated that pass-on is one of the issues which Apple wishes to investigate through class member disclosure. Even if there were to be a basis for pleading pass-on in relation to the historic claim for damages, the value and relevance of the questions to which the survey is directed (i.e. consumer responses to price changes) would still depend on assumptions about the response of developers to counterfactual commission increases.

20. Whilst no doubt any reliable new information about the behaviour of consumers would be of some assistance in informing the expert economist’s understanding of the market, it seems to us that the information which the proposed survey would glean (assuming methodological reliability) is, for these reasons, likely to be only of indirect relevance to the question of whether Apple charges excessive or unfair prices to developers. The robustness, relevance and value of any conclusions which the survey might reach are

likely to remain controversial. The utility which the proposed survey may have is not, in our view, justified by the additional costs which would be entailed in admitting it. Apple has not furnished us with the direct costs which would be incurred in carrying out the proposed survey, but quite apart from those direct costs, admitting this evidence would be likely to generate significant work for the parties, and for the Tribunal, in assessing and resolving the methodological and design questions which Dr Ennis has raised (and those which the Tribunal raised during the September CMC), and, at trial, in leading and testing the evidence. We are not satisfied that this work and additional cost would be justified by the potential utility of the exercise.

21. We accordingly reject Apple's application.

(e) List of issues for agreed experts

22. In accordance with the directions set in the June 2026 Order, the parties have been engaged in discussions regarding the preparation of a list of expert issues relating to experts for which the Tribunal has already given permission: namely in the fields of (i) competition economics; (ii) accounting; (iii) the app industry; and (iv) software and technical elements of app development (the **List of Expert Issues**). Whilst progress has been made in agreeing this list, a number of issues and sub-issues remain unagreed. The parties referred these unagreed matters to the Tribunal for determination at the September CMC. We take each in turn, as they apply to each of the agreed experts.

Issues for competition economists

23. Whilst the parties have agreed that the competition economists should address the issue of "excessiveness", they have been unable to reach agreement on the wording of sub-issues (4) and (5). The parties' alternative proposed wording of these sub-issues is as follows:

"(4) Alternative 1 (suggested by Apple): whether the Accounting Experts' analyses are consistent with an economic interpretation under the *United Brands* test

Alternative 2 (suggested by [Dr] Ennis): the Accounting Experts' analyses, including their economic interpretation and significance and the usefulness and limitations of the accounting measures adopted;

(5) Alternative 1 (suggested by [Dr] Ennis with Apple's addition): the identification and application of appropriate profitability benchmarks (Apple's view is that this is an accounting expert issue); and

Alternative 2 (suggested by Apple): implications of accounting profitability benchmarks, if any, for economic analysis of excessive pricing”.

24. During his submissions at the September CMC, counsel for Dr Ennis explained that the driver behind the parties’ disagreement on these sub-issues was the appropriate division of responsibilities between the parties’ competition economists and accounting experts. Both parties recognised that it is for accountants to deal with issues like profitability benchmarks, but for the economists to consider the relevance of particular benchmarks and their implications from an economic perspective.

25. It seems to us that an appropriate wording for the point to which sub-head (4) is directed would be: “the economic implications of the Accounting Experts’ analyses”. As regards sub-head (5), we consider that Apple’s wording (Alternative 2) is to be preferred.

26. In relation to the issue of “unfairness”, Apple disagreed with the inclusion of sub-issues (1), (2), (3) and (7) proposed by Dr Ennis:

- “(1) the economic value provided by Apple to iOS Device users, how any such value should be quantified, and the relevance of this value;
- (2) the economic value provided by Apple to Third-Party App Developers and how any such value should be quantified;
- (3) the economic value provided by Third-Party App Developers to Apple and how any such value should be assessed;
- [...]
- (7) which goods/services should be considered as relevant comparators for the goods/services provided by Apple”.

27. Whilst Dr Ennis considers that these sub-issues are suitable for competition economists, Apple is of the view that these matters will be more appropriately addressed by valuation experts (and the Tribunal has before it Apple’s contested application to adduce valuation expert evidence). In the event that Apple’s application in respect of valuation expert evidence is granted, Dr Ennis proposes that the parties’ competition economists should also opine on these issues.

28. It seems to us that the issues identified should be included in the list of issues which are to be addressed by the competition economists. Experts from that discipline may well be able to provide relevant evidence about economic value as a concept, and the appropriate methodology or methodologies for determining, quantifying or assessing

economic value. Our provisional view is that this conclusion would not be affected if we were, pursuant to Apple’s application for approval of a valuation expert, to approve further evidence on these matters from a different disciplinary standpoint. The Tribunal cannot at this stage prejudge any dispute between the parties as to the correct disciplinary standpoint from which to consider the issue of valuation: that would be a matter for trial.

29. The parties further disagree on the inclusion of sub-issue (1) in relation to the issue of “interest”:

“(1) the relevant framework for considering the appropriate approach to interest”.

30. Mr Carrall-Green explained at the hearing that the purpose of this sub-head was to lead evidence which would assist the Tribunal in how to address an award of interest on an aggregate basis, in circumstances where the class is made up of businesses of disparate size. Apple resists this on the footing that the legal framework for an award of compound interest is well-established, and the issue which economists may debate, if such a claim is pleaded and proved, is the appropriate rate. Ultimately, there did not appear to be any real difference of principle between the parties. Mr Carrall-Green accepted that the issue was too broadly framed and that the addition of the words “on an aggregate basis” at the end would better capture the intention. We approve this sub-issue as so amended.

Issues for app industry experts

31. Both parties agree that the app industry experts should address the “operation of the iOS ecosystem”. There is disagreement on whether this should extend to addressing sub-issues (4) and (6) proposed by Dr Ennis, which read as follows:

“(4) whether and to what extent the products/services provided by Apple are the product of a “creative spark” or “innovation”.

[...]

(6) the significance of the restrictions placed on the distribution of iOS apps (and in respect of in-app payments) and associated content by the DPLA and/or Guidelines, including:

- a. whether these render the Commission effectively inescapable;
- b. the significance of the possibility of alternative means of monetising apps/content (including through Apple’s Program Exemptions);

- c. whether the relevant restrictions are pro-competitive (because it increases choice/competition in the market for mobile devices);
- d. whether the relevant restrictions stifle innovation;
- e. the significance of the introduction of exceptions to the usual rules on app/content distribution and in-app payments which exist in relation to certain territories (e.g., the EU, the Netherlands, and South Korea); and
- f. what, if any, differences one would expect to see in the iOS app industry in the absence of the relevant restrictions”.

32. Dr Ennis argues: (i) sub-issue (4) is relevant to Apple’s argument in its Defence that whilst the cost of a “creative spark” is often low, when it results in something very innovative, the price can reflect that; and (ii) the app industry experts are well placed to provide evidence on what is (and was) available in the market, which is a means of assessing the creativity and innovation of Apple’s products. Apple’s position is that this sub-issue is duplicative of others and falls outside the remit of app industry experts, so should be deleted in its entirety.

33. We are content to allow the proposed app industry expert to give evidence on this issue. The innovativeness of Apple’s tools, technologies and services may be relevant to the price which Apple charges to developers. Apple will have in-house factual evidence which it can lead on this issue, and it would be fair to include this on the list of issues which Dr Ennis’ app industry expert may address.

34. Apple objects to the inclusion of sub-issue (6) essentially on the basis that it is directed to an allegation of exclusive dealing (and potential objective justification) which forms no part of Dr Ennis’ pleaded case. Apple further argues that in any event, this sub-issue is an economic one which app industry experts are not well placed to address. Dr Ennis rejects these objections. He states that (i) this sub-issue is relevant to the unfairness of the prices charged and to Apple’s monopoly position more generally, and he points us to the pleadings where Apple avers that its approach is pro-competitive and increases consumer choice, and to pleadings about what has happened in other territories; and that (ii) evidence from an app industry expert on this issue would be useful because the most direct way of addressing this point is “to ask what options industry participants do (or do not) have or use for distribution”.

35. We propose to allow the app industry expert to speak to sub-issue (6) but to exclude sub-paragraph c. Whilst we acknowledge the force of Apple’s general point that this is a case about unfair and excessive pricing and there is no pleaded case of exclusionary abuse, the proposed evidence does, in our view, go to matters which are raised in the pleadings and we do not consider that we should foreclose its relevance to Dr Ennis’ case. As framed, sub-paragraph c appears to be a question for a competition economist and/or factual evidence, and we exclude that sub-paragraph. We recognise that in addressing sub-paragraph f, the expert may potentially comment on the question of whether removal of the restrictions would be likely to result in changes in the market in ways which would increase or reduce consumer choice.

Issues for software / technical aspects of app development experts

36. Under the issue “products / services provided by Apple to class members in exchange for the Commission”, Apple objects to the inclusion of sub-issue (4) proposed by Dr Ennis:

“(4) whether and to what extent the products/services provided by Apple are the product of a “creative spark” or “innovation”.”

37. We have explained above Dr Ennis’ reasons for proposing to produce evidence on this question. We are content that the expert instructed by Dr Ennis to address software/technical aspects of app development should also address this issue.

38. Secondly, Apple objects to the parties’ experts in this field addressing Dr Ennis’ proposed issue of “Apple’s security and privacy restrictions” in its entirety:

“Apple’s security and privacy restrictions, including *inter alia* discussion of:

- (1) whether the restrictions are required and/or designed to safeguard the reliability, security, quality, and privacy of iOS Devices and/or the iOS ecosystem; and
- (2) whether allowing iOS apps to be distributed through means other than the App Store, or allowing alternative methods for in-app payments, would have the following effects (and whether those effects have materialised in markets where the usual restrictions on iOS app distribution/iOS in-app payment no longer apply):
- (3) the improvement or jeopardization of iOS Device user experience or the broader iOS ecosystem; or
- (4) a higher or lower-quality iOS platform”.

39. Apple's reasons for objecting to the inclusion of this issue mirror those discussed above; it contends that these issues relate to exclusive dealing and this does not form part of Dr Ennis' pleaded case. Dr Ennis argues that this criticism is misconceived, for the same reasons explained above. We are content to approve these issues, for the reasons which we have already explained in addressing that issue between the parties.

(f) Page limits for expert reports

40. The Tribunal will wish to specify page limits for the expert reports. It recognises that the parties may wish to consult with their proposed experts, with a view to proposing page limits, and the Tribunal proposes to direct the parties to liaise and revert to the Tribunal with proposals. In making those proposals, the Tribunal expects the parties (and their experts) to be mindful of §19 of Practice Direction 3/2025.

Timetable for Expert Evidence and Trial Listing

41. The Tribunal's June 2025 Order directed that trial in these proceedings is to be listed on the first available date on or after 7 February 2028 with a time estimate of 8 weeks. By its letter to the parties dated 13 August 2026, the Tribunal indicated to the parties that it could accommodate an 8-week trial in these proceedings commencing between 7 and 21 February 2028. The Tribunal and the parties have been working on the assumption that a trial in these proceedings will be listed to commence during that listing window.

42. The Defendants' application filed ahead of the September CMC invites the Tribunal to adjust the timetable for expert evidence in these proceedings to allow the experts' evidence to reflect both the outcome of the Court of Appeal judgment in *Kent* and the output of the parties' ongoing disclosure exercise, and consequentially to defer the proposed trial date. Apple contends that disclosure has been more involved than anticipated. Furthermore, Apple's intention to seek disclosure from class members is yet to progress in light of the Tribunal's order dated 8 September 2026 and the stay imposed at §2 of that order. Apple's position is that setting a practical timetable which would allow both the outcome of the *Kent* appeal and the fruits of disclosure to be considered by the experts would indicate an extension to the deadline for the first round of expert reports to late February 2028, for second round reports to late April 2028 and

for the joint statement to early September 2028, and a trial date not earlier than September 2028.

43. Apple’s position is that the judgment from the Court of Appeal in the *Kent* proceedings, which is listed to be heard in the Court of Appeal in May 2027, would be liable to address points of legal principle which would affect the content and scope of evidence given by the experts in these proceedings. These include: (i) “the role (if any) of demand-side value in justifying prices, and whether and when a cost-plus analysis can be appropriate in circumstances where there is a material demand-side value”; (ii) “the legal principles on excessive pricing, and the burden of proof in identifying comparators”; (iii) “the legal principles on causation and quantum”; and (iv) “the admissibility of factual findings made by other decision-makers”. Apple argues that if the timetable for expert evidence is not adjusted, the parties’ expert evidence may well have to be revisited follow the *Kent* appeal. This could de-rail the trial timetable at a late stage and risk a last-minute trial adjournment. The consequence would be significant cost, disruption and further delay. Apple argues that the timetable adjustments it proposes would allow these risks to be mitigated and that this is a sensible course of action in circumstances where a trial is yet to be formally listed.
44. Dr Ennis opposes Apple’s application. He argues that the reality of Apple’s proposed timetable adjustment is to push any trial out to 2029, which would result in “simply too much delay” to proceedings which commenced in 2023. Dr Ennis contends that this application is the latest in what he characterises as a pattern of ongoing attempts by Apple to delay these proceedings. He refers to extensions sought by Apple in relation to its disclosure obligations and its delay in bringing the issue of class disclosure before the Tribunal despite this being in Apple’s contemplation for almost a year prior. Dr Ennis also challenges Apple’s suggestion that these proceedings should await the outcome of the appeal in *Kent*. He argues that Apple has not identified any points of legal principle that *Kent* is likely to resolve which would have a significant bearing on the way the parties prepare their evidence in this case. He observes that Apple does not currently have permission to appeal on any ground in *Kent* (the hearing listed before the Court of Appeal in May 2027 being a rolled-up hearing to address both permission to appeal and the appeal itself) and draws upon preliminary comments made by the Court of Appeal expressing doubt over its jurisdiction to hear certain of the grounds of

appeal being advanced. This, Dr Ennis suggests, raises real doubts about whether the Court of Appeal will even grant Apple permission to appeal the Tribunal's *Kent* judgment. At the September CMC, counsel for Dr Ennis also challenged the assumption that an extension to the timetable for expert evidence simply to account for a delay in the disclosure process would require postponement of the trial itself. On the contrary, he submitted that there is scope for adjusting the expert timetable to account for disclosure delays whilst still maintaining a February 2028 trial start date.

45. These proceedings were initiated in 2023. A trial starting in or soon after February 2028 has long been the date to which the parties and the Tribunal have been working. At previous CMCs, parties have stated that the various steps which they proposed would not derail that trial date. We are now faced with an application to defer the trial until a date in or after September 2028. Whilst Apple also relies on the outstanding disclosure issues, it put at the heart of its argument for deferring the trial the desirability of awaiting the decision of the Court of Appeal in *Kent* so that this may be taken into account by the experts. We are not persuaded by that submission. One of the exigencies of litigation, particularly before the Tribunal, is the possible effect of a supervening appellate judgment in another case. As a general rule, parties have to prepare their cases on the basis of their own analysis of the legal position, taking into account any uncertainties as to the legal position of which they may be aware, and to deal with any supervening legal developments as they may arise.
46. We recognise that there is a particularly intimate nexus between *Kent* and this case. Nevertheless, we are not convinced that this justifies a different approach. These are separate cases and the Tribunal declined an application to join them. The Court of Appeal has ordered a rolled-up hearing in *Kent* and has, accordingly, not at today's date granted permission to appeal any of the points which are to be argued before it. Whilst a hearing has been fixed for May 2027, the date of the Court of Appeal's judgment thereafter is unknown. For aught yet seen, the Court of Appeal may refuse permission to appeal. Equally, insofar as the Court does grant permission to appeal and provides authoritative guidance, there is no doubt a possibility of an application for permission to appeal to the UK Supreme Court. We recognise that, depending on the outcome of the *Kent* appeal, some additional work may arise, either because work already undertaken turns out to have been unnecessary in light of the Court of Appeal's decision

or because work already done has to be revisited and further work carried out in light of that decision. Nevertheless, the fate of the *Kent* appeal proceedings and the implications for this case are too uncertain to justify deferring the trial in the present case.

47. We do, however, accept Apple’s proposal that elements of the timetable for expert evidence should be extended to allow for the disclosure process to be further advanced before expert reports require to be filed. The current timetable for expert evidence is set out at §13 of the Tribunal’s June 2025 Order, which reads as follows:

“13. Subject to further order:

- a. By 4pm on 28 May 2027, the parties shall serve signed expert reports.
- b. By 4pm on 23 July 2027, the parties shall serve signed expert reports in response.
- c. By 4pm on 17 September 2027, the parties’ experts in each respective field shall meet on a without prejudice basis to discuss their respective reports.
- d. By 4pm on 1 October 2027, the parties’ experts in each respective field shall produce a joint statement of matters agreed and not agreed”.

48. We consider it sensible to adjust this timetable in accordance with the directions set out at §6 above. Although we have provided for exchange of reports and reports in response, as well as a meeting of experts, it will be helpful to the Tribunal to have a single report from each expert for use at trial. We expect the experts to bear this in mind. The parties are invited to produce proposals for the timing and page limits to be applied to those reports.

James Wolffe KC
Chair

Tim Frazer

Anthony Neuberger

Made: 15 October 2026
Drawn: 15 October 2026

ANNEX A – List of Expert Issues for App Security and Privacy Expert Evidence

	Expertise/topic	Issues to be addressed
1.	App security and privacy	App security and privacy restrictions, <i>inter alia</i> discussion of: (1) whether the restrictions are required and/or designed to safeguard the reliability, security, quality, and privacy of iOS Devices and/or the iOS ecosystem; and (2) whether allowing iOS apps to be distributed through means other than the App Store, or allowing alternative methods for in-app payments, would have the following effects (and whether those effects have materialised in markets where the usual restrictions on iOS app distribution/iOS in-app payment no longer apply): a. the improvement or jeopardization of the reliability, security, quality, privacy and user experience of iOS Devices or the broader iOS ecosystem; and/or b. a higher or lower-quality iOS platform.

ANNEX B - List of Expert Issues for Payment Systems and Digital Banking Expert Evidence

	Expertise/topic	Issues to be addressed
1.	Payment systems and digital banking	The payment systems and digital banking industry, <i>inter alia</i> discussion of: (1) The costs to app developers associated with providing alternative payment systems, including the commission structures offered by third-party payment providers; (2) the security and privacy standards of alternative payment systems and payment service providers, as distinct from the wider security and privacy of iOS Devices and the iOS ecosystem; (3) the nature of the services rendered by alternative payment systems providers; and (4) the introduction, operation and commercial significance of alternative payment methods in jurisdictions where Apple permits app developers to offer them.

ANNEX C - List of Expert Issues for Agreed Experts

	Expertise/topic	Issues to be addressed
1.	Competition economics	Market definition, including <i>inter alia</i> discussion of: (1) the appropriate economic framework, the relevant evidence to assess economic substitution in the context of market definition, and how to weigh that evidence; (2) the identification of the focal product; (3) whether there is a single market that includes iOS app/content distribution and in-app payment services, or separate markets for (i) iOS app/content distribution services and (ii) iOS in-app payment services; (4) the multi-sidedness (if any) of the relevant market(s) and the relevance of any such multi-sidedness on the market definition exercise; (5) whether the relevant market(s) is/are segregated by the “type” or “genre” of the app/digital content concerned; (6) whether Apple competes with and/or is otherwise constrained by the offering (either on or outside iOS) of: (i) web-based apps, (ii) cloud-based streaming services, (iii) content via websites, (iv) apps or content via other platforms or channels, or (v) alternative in-app payment services; (7) the extent to which Apple’s conduct on the relevant market(s) is constrained by competition in the sale of mobile devices (i.e. extent to which Apple is constrained by “system market” considerations); (8) the availability and relevance of alternative means by which Third-Party App Developers can monetise their products; (9) the extent of multi-homing by device users and developers and whether this creates a competitive constraint on Apple; and (10) the geographic scope of the relevant market(s).

		Dominance and market power, including <i>inter alia</i> discussion of: (1) the consequences of the conclusions on market definition for the assessment of Apple’s market power; (2) Apple’s ability to act independently in the relevant market(s); (3) whether Apple competes with and/or is otherwise constrained by the offering (either in or outside of iOS) of (i) web-based apps, (ii) cloud- based streaming services, (iii) content via websites, (iv) apps or content via other platforms or channels, or (v) alternative in-app payment services; (4) the extent to which Apple’s conduct in the relevant market(s) is constrained by competition in the market for mobile devices; (5) the extent of multi-homing by device users and developers, and whether it indicates substitution or complementarity; (6) the availability and relevance of alternative means by which Third-Party App Developers can monetise their products; (7) countervailing buyer power; (8) barriers to entry and expansion; (9) whether market outcomes are consistent with Apple being dominant; and (10) whether heterogeneity in developers and/or end-users has constrained Apple’s conduct in the relevant market(s). Excessiveness (limb 1 of <i>United Brands</i> test), including <i>inter alia</i> discussion of: (1) the relevant economic framework, including the relationship between accounting and economic measures of profit; (2) the business activities and services by reference to which Apple’s profitability should be assessed (Apple’s view is that this is an accounting expert issue);
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		(3) the evidence relevant to the assessment of excessiveness (Apple’s view is that this is an accounting expert issue); (4) the economic implications of the Accounting Experts’ analyses (5) implications of accounting profitability benchmarks, if any, for economic analysis of excessive pricing; and (6) generally, whether the level of the Commission is excessive from an economic perspective. Unfairness (limb 2 of <i>United Brands</i> test), including <i>inter alia</i> discussion of: (1) the economic value provided by Apple to iOS Device users, how any such value should be quantified, and the relevance of this value; (2) the economic value provided by Apple to Third-Party App Developers and how any such value should be quantified; (3) the economic value provided by Third-Party App Developers to Apple and how any such value should be assessed; (4) the introduction and significance of the exceptions to the usual rules on app/content distribution which exist in relation to certain territories (e.g., the EU, the Netherlands, and South Korea); (5) the uptake and significance of the various programs under which Apple charges a reduced Commission (e.g., the App Store Small Business Program, etc.); (6) generally, whether the level of commission is unfair in itself (Limb 2a); (7) which goods/services should be considered as relevant comparators for the goods/services provided by Apple; (8) the significance (if any) of Apple not charging Commission to certain Third-Party App Developers or on certain App Store transactions; and
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		(9) generally, whether the level of commission is unfair when compared to relevant comparators (Limb 2b). Overcharge, including <i>inter alia</i> discussion of: (1) if and insofar as the Commission is (or was) excessive and unfair, the level of (lawful) Commission that Apple would have charged in the absence of the abuse; (2) whether, in the non-abusive counterfactual(s), different levels of Commission would have applied, including (i) depending on the nature and extent of the precise services provided by Apple, and/or (ii) whether there would have been different prices for iOS app/content distribution services and iOS in-app payment services; (3) whether in the non-abusive counterfactual(s), Apple would have: (i) introduced other charges; and/or (ii) changed the level of other existing charges; and (4) in light of the answers to the above questions, what counterfactual charges the class would have incurred and what choices they would have to make as to business models and payment services under that counterfactual. Volume/value of commerce, including <i>inter alia</i> discussion of: (1) the value of sales made by the class and the Commission paid thereon (by territory to reflect the parties' differing positions on applicable law); and (2) the aggregate principal loss to the class. Interest, including <i>inter alia</i> discussion of: (1) the relevant economic framework for considering the appropriate approach to interest on an aggregate basis; (2) the appropriate rate of compound interest (if interest is to be awarded on a compound basis); and (3) the appropriate rate of simple interest.
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2.	Accounting	Apple's costs in providing the relevant products/services, including <i>inter alia</i> discussion of: (1) what costs and investments are attributable to the relevant products/services; (2) how to allocate common costs and investments; and (3) to the extent relevant, how to construct an App Store balance sheet, income statement and cash flow analysis. Apple's revenues from providing the relevant products/services, including <i>inter alia</i> discussion of: (1) the revenues generated by the Commission; (2) the revenues generated by the App Store (including via the developer program fees and search advertising); (3) the revenues generated from iOS Devices; and (4) the revenues generated from products/services relating to iOS Devices more generally. Apple's profitability ratios, including <i>inter alia</i> discussion of how to calculate and assess the ROR, ROA, and ROCE or other metrics that the experts consider relevant.
3.	App industry	The products/services provided by Apple to class members in exchange for the Commission, including <i>inter alia</i> discussion of: (1) whether Third-Party App Developers require access to Apple's tools/technologies in order to make iOS-compliant apps, and in turn, for their apps to be made available on iOS Devices; (2) whether and if so, to what extent, the tools/technologies provided by Apple are materially different from the kind of tools/technologies that any platform would offer developers to facilitate development of software for use on the platform;

		(3) what other tools/technologies that perform similar functions are offered by third parties, what they cost, and how they differ in terms of quality; (4) the differences between the goods and services on which Apple does and does not levy the Commission; (5) the distinction between services provided by Apple in respect of transactions effected via in-app payment systems and those provided in respect of transactions effected via the App Store (including in respect of the different business models adopted by Third-Party App Developers). Operation of the iOS ecosystem, including <i>inter alia</i> discussion of: (1) the historical development of iOS Devices, the App Store, in-app payments, Cydia, etc; (2) developer pricing behaviour and business models, including the extent to which Third-Party App Developers are free to price their apps and content as they wish generally, and the extent to which they vary prices from territory to territory; (3) whether Apple competes with and/or is otherwise constrained by the offering of (i) web-based apps, (ii) cloud-based streaming services, (iii) content <i>via</i> websites, (iv) apps or content <i>via</i> other platforms or channels, or (v) alternative in-app payment services; (4) whether and to what extent the products/services provided by Apple are the product of a “creative spark” or “innovation”. (5) the extent to which Apple’s advertising services on the App Store (<i>via</i> Apple Search Ads or Apple Ads) are optional; and (6) the significance of the restrictions placed on the distribution of iOS apps (and in respect of in-app payments) and associated content by the DPLA and/or Guidelines, including: a. whether these render the Commission effectively inescapable; b. the significance of the possibility of alternative means of monetising apps/content (including through Apple’s Program Exemptions);
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		c. whether the relevant restrictions stifle innovation d. the significance of the introduction of exceptions to the usual rules on app/content distribution and in-app payments which exist in relation to certain territories (e.g., the EU, the Netherlands, and South Korea); and e. what, if any, differences one would expect to see in the iOS app industry in the absence of the relevant restrictions.
4.	Software and technical aspects of app development	The products/services provided by Apple to class members in exchange for the Commission, including <i>inter alia</i> discussion of: (1) the technical differences between native iOS apps and offerings available through web-based apps, cloud-based streaming services, websites, or other platforms or channels; (2) the technical work required to adapt an app developed for one operating system for use on another operating system; (3) the technical distinctions between transactions effected through in-app payment systems and transactions effected when an iOS Device user purchases an app through the App Store; and (4) whether and to what extent the products/services provided by Apple are the product of a “creative spark” or “innovation”. Apple’s security and privacy restrictions, including <i>inter alia</i> discussion of: (1) whether the restrictions are required and/or designed to safeguard the reliability, security, quality, and privacy of iOS Devices and/or the iOS ecosystem; and (2) whether allowing iOS apps to be distributed through means other than the App Store, or allowing alternative methods for in-app payments, would have the following effects (and whether those effects have materialised in markets where the usual restrictions on iOS app distribution/iOS in-app payment no longer apply):

		(3) the improvement or jeopardization of iOS Device user experience or the broader iOS ecosystem; or (4) a higher or lower-quality iOS platform.
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