

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

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Date: August 26, 2025

CT- 2025-004

Grainne Gannon Dubroy for / pour
REGISTRAR / REGISTRAIRE

OTTAWA, ONT.

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Reply to the Attention of: **Éric Vallières**
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Date: **August 26, 2025**

VIA EMAIL

Competition Tribunal
Thomas D'Arcy McGee Building
90 Sparks Street, Suite 600
Ottawa, ON K1P 5B4

Dear Registry,

Re: *Alexander Martin v Alphabet Inc., Google LLC, Google Canada Corporation, Apple Inc. and Apple Canada Inc.* – File No. 2025-004 – Informal Motion Seeking Temporary Confidentiality Order

1. This letter serves as Apple Inc.'s and Apple Canada Inc.'s (the "**Apple Respondents**") motion under Rule 81 and Rule 66 of the *Competition Tribunal Rules*¹ for the issuance of a confidentiality order to cover the affidavit evidence that the Apple Respondents were granted leave to file under the Tribunal's order of August 12, 2025 and which is required to be filed by September 2, 2025.²
2. A draft Confidentiality Order is attached as Appendix "A" hereto. All of the comments of counsel to the Applicant, Alphabet Inc., Google LLC, Google Canada Corporation (the "**Google Respondents**") and the Commissioner of Competition have been incorporated into the preparation of this draft Confidentiality Order. The Applicant and the Google Respondents consent to the issuance of the draft Confidentiality Order. In support of this motion, please see (i) the grounds for the motion set out in this letter below and (ii) the affidavit of Aaron T. Chiu sworn on August 25, 2025 in support of this motion (the "**Chiu Affidavit**").

A. Legal Test for Confidentiality Order

3. Rule 66(1)(b) of the *Competition Tribunal Rules* provides that the Tribunal may order a document or information in a document be treated as confidential upon a motion of a party who has filed or will file the document. The required contents of a motion under Rule 66(1)(b) are set out in Rule 67. In addition, Rule 81 provides that a motion for a

¹ [SOR/2008-141](#).

² *Alexander Martin v Alphabet Inc., Google LLC, Google Canada Corporation, Apple Inc., and Apple Canada Inc.*, [2025 Comp Trib 12](#).

confidentiality order may be brought through an informal request by sending a letter to the registry and serving same on the other parties.

4. In *P&H*,³ the Tribunal adapted and modified the so-called *Sierra Club* test⁴ for a confidentiality order for proceedings before the Tribunal. Accordingly, a confidentiality order should be granted if the Tribunal is satisfied that:
 1. the order is necessary to prevent, in the context of proceedings before the Tribunal, a specific and direct harm that would allegedly result from disclosing the information in question in a proceeding open to the public;
 2. there are no reasonable alternative measures to prevent the harm; and
 3. the salutary effects of the order, including the effects on the right of the parties to a fair hearing, outweigh its deleterious effects, including the effects on the right to free expression, which includes the public interest in open and accessible proceedings before the Tribunal.⁵

B. The Draft Confidentiality Order

5. The Tribunal's order dated August 12, 2025 granted the Apple Respondents leave to file a copy of the transcript of Mr. Eddy Cue's May 7, 2025 testimony in the remedies hearing before Judge Amit P. Mehta of the United States District Court of the District of Columbia in *United States of America et al. vs Google LLC*, No. 20-cv-3010-APM (D.D.C.) (the "**U.S. Search Case**"), subject to certain redactions as required by the Tribunal, by September 2, 2025 as part of the Apple Respondents' response to the Applicant's pending application for leave under section 103.1 of the *Competition Act* (the "**Leave Application**").⁶
6. When seeking leave to file this evidence, the Apple Respondents understood that the transcript of Mr. Cue's May 7, 2025 testimony would be available for public distribution 90 days after the date of the testimony and therefore would be available to be filed in this proceeding by September 2, 2025.⁷
7. As clarified in the Chiu Affidavit, U.S. court rules as set out in the Guide to Judiciary Policy limit the public dissemination of transcripts for a 90-day period (unless extended by the court) after a court reporter files the certified transcript with the clerk of court.⁸

³ *Canada (Commissioner of Competition) v. Parrish & Heimbecker, Limited*, [2021 Comp Trib 2](#) ["**P&H**"].

⁴ *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#) ["**Sierra Club**"].

⁵ *P&H* at para 79.

⁶ *Alexander Martin v Alphabet Inc., Google LLC, Google Canada Corporation, Apple Inc., and Apple Canada Inc.*, [2025 Comp Trib 12](#), paras 46-47.

⁷ Informal motion of Apple Inc. and Apple Canada Inc. requesting leave to file responding affidavit evidence in an application for leave, July 23, 2025, [CT-2025-004 #27](#), para 12.

⁸ Chiu Affidavit, para 5.

The certified transcript of Mr. Cue's May 7, 2025 testimony was not filed by the court reporter until July 9, 2025. Therefore, even though the Apple Respondents have purchased a copy of the transcript of the May 7, 2025 testimony, it cannot be publicly disseminated until October 7, 2025 (subject to any extension by the court in the U.S. Search Case).⁹

8. The draft Confidentiality Order attached as Appendix "A" would enable the Apple Respondents to file the transcript of Mr. Cue's May 7, 2025 testimony by the September 2, 2025 deadline as a Protected Record on a temporary basis. The Tribunal and its staff, outside counsel to the Applicant and the Google Respondents, as well as the Commissioner and his counsel would be provided immediate access to the transcript pursuant to the terms of the Confidentiality Order.¹⁰ The transcript would not be posted to the Tribunal's public docket until the Apple Respondents re-designate the transcript as a Public Record, which the Apple Respondents would do forthwith after becoming aware that the transcript has become publicly available under U.S. court rules.¹¹
9. Given the narrow scope and temporary nature of the proposed confidentiality protection to be accorded to the transcript of Mr. Cue's May 7, 2025 testimony, the draft Confidentiality Order generally follows the confidentiality orders in recent Tribunal proceedings and the Tribunal's 2008 and 2018 practice directions,¹² except that it was simplified in the following ways:
 - The draft Confidentiality Order contemplates that it would apply only to the Applicant's pending leave application under section 103.1 of the *Competition Act*;
 - The draft Confidentiality Order identifies the transcript of Mr. Cue's May 7, 2025 testimony, and any references to such evidence in other submissions to the Tribunal, as the only Protected Records;
 - The draft Confidentiality Order limits access to the transcript of Mr. Cue's May 7, 2025 testimony to the Tribunal and its staff, outside counsel to the Applicant and the Google Respondents, as well as the Commissioner and his counsel and does not contemplate multiple levels of confidentiality designations;
 - The draft Confidentiality Order does not address inadvertent failures to designate a record as a Protected Record, challenges to confidentiality claims or confidentiality determinations by the Tribunal as these issues are not expected to arise; and

⁹ Chiu Affidavit, paras 5-6.

¹⁰ Draft Confidentiality Order, para 5.

¹¹ Draft Confidentiality Order, para 6.

¹² [Practice Direction Regarding the Filing of Confidential Documents](#) (August 2008); [Practice Direction Regarding the Filing of Confidential and Public Documents with the Tribunal](#) (March 2018).

- The draft Confidentiality Order does not contemplate designated representatives of any parties be given access after executing any confidentiality undertaking.

C. Application of the Legal Test for Confidentiality Order

10. The draft Confidentiality Order satisfies the modified *Sierra Club* test as set out in *P&H*.

(a) Necessary to Prevent Specific and Direct Harm

11. The specific and direct harm that would result from the unrestricted disclosure of the transcript of Mr. Cue's May 7, 2025 testimony is that it could potentially be contrary to U.S. court rules if the transcript were made publicly available in Canada before October 7, 2025.
12. By granting the Apple Respondents leave to file this evidence, the Tribunal has determined that this evidence may potentially be relevant to its determination of the Applicant's pending leave application.
13. Without the draft Confidentiality Order, the Apple Respondents would not be able to file this evidence by the September 2, 2025 deadline, thereby depriving the Tribunal of potentially relevant evidence and the Apple Respondents the opportunity to make references to that evidence in their written representations in response to the Leave Application. Therefore, the draft Confidentiality Order is a necessary measure to allow the Tribunal to have the benefit of this potentially relevant evidence on a timely basis.

(b) No Reasonable Alternatives

14. There are no reasonable alternatives to the Draft Confidentiality Order under the current schedule established for the Leave Application. It is effectively the only way to permit the Apple Respondents to file the transcript of Mr. Cue's May 7, 2025 testimony and incorporate references to this evidence in their written representations by September 2, 2025.

(c) Balancing Salutory and Deleterious Effects

15. As set out above, the salutary effect of granting the draft Confidentiality Order is that it enables the Tribunal to have the benefit of the potentially relevant evidence contained in Mr. Cue's May 7, 2025 testimony as well as the written representations of the Apple Respondents related to such evidence.
16. The deleterious effect of the draft Confidentiality Order is negligible due to its narrow scope and temporary nature.
- (i) It only applies to the transcript of Mr. Cue's May 7, 2025 testimony and its confidentiality protection is expected to last for only about five weeks

until October 7, 2025 (unless extended by the U.S. court). The confidentiality protection is expected to expire before the October 22, 2025 tentative date set aside for a possible oral hearing of the Applicant's pending leave application and before the Tribunal's reasons for decision on the Leave Application would be issued.

- (ii) Counsel for the Applicant, as well the Google respondents and the Commissioner, will have access to the Protected Record and will not be constrained in any way from making submissions on the Protected Record during the time period while the transcript remains confidential under US court rules.
 - (iii) After the transcript becomes public on the U.S. court docket, all the temporary Protected Records in the Tribunal proceeding will become part of the public record.
17. Therefore, the ability of the public to engage with this proceeding before the Tribunal and to understand any decisions of the Tribunal flowing from this proceeding will not be impacted in any significant way. The core purpose and values associated with the "open court principle" will not be offended.
- D. Order Requested**
18. For the reasons above, the Apple Respondents respectfully submit that the application of the modified *Sierra Club* test favours the granting of the draft Confidentiality Order.
19. Accordingly, the Apple Respondents respectfully request that an order be issued pursuant to Rule 66 of the *Competition Tribunal Rules* granting a confidentiality order in the form attached as Appendix "A".

Yours very truly,



Éric Vallières

cc. Albert Pelletier, Ian Literovich and Edwina Mayama, *Berger Montague (Canada) PC*
Kent Thomson, Elisa Kearney, Derek Ricci, Steven Frankel, and Anisha Visvanatha, *Davies Ward Phillips & Vineberg LLP*
Paul Klippenstein and Kevin Hong, *Competition Bureau Legal Services*
Neil Campbell and William Wu, *McMillan LLP*