



COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

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CT- 2025-004

Sarah Sharp-Smith for / pour
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OTTAWA, ONT.

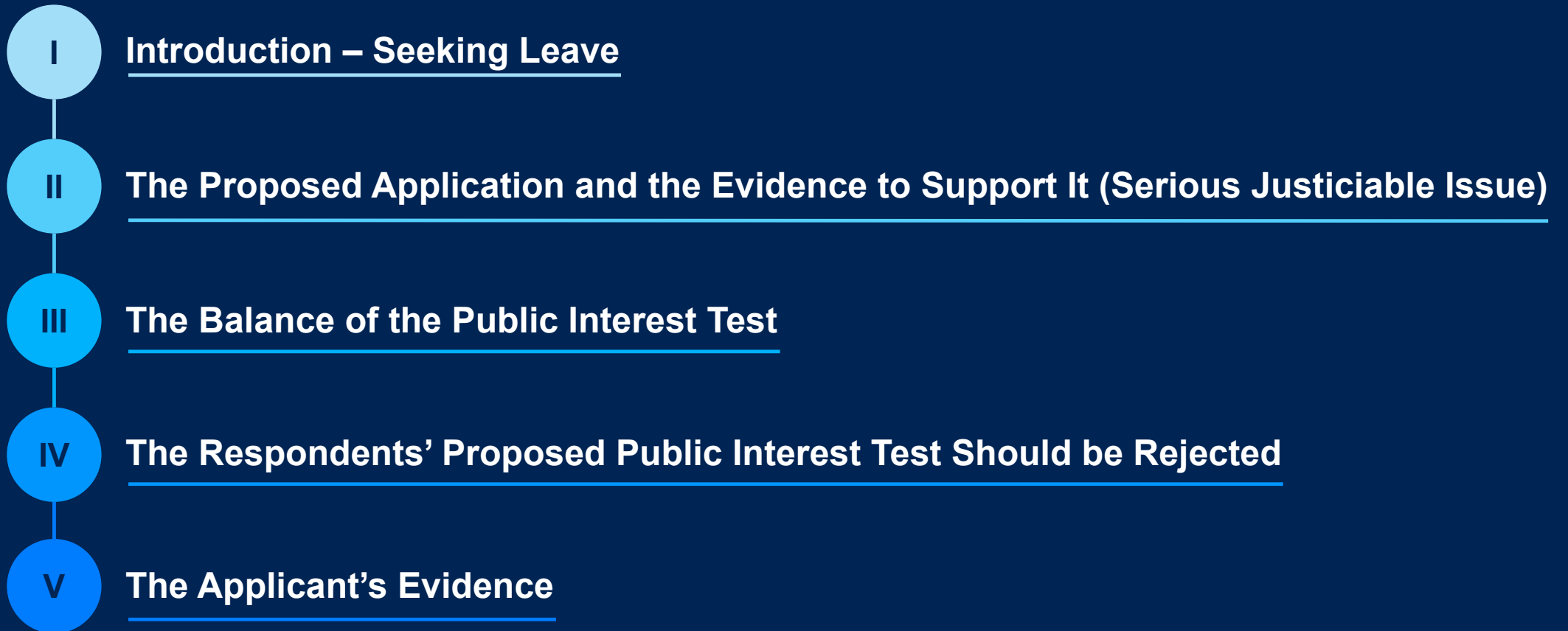
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Alexander Martin v. Google and Apple

CT-2025-004

Albert Pelletier
Ian Literovich
Edwina Mayama

ROADMAP



PART I

Leave to Proceed



■ Section 103.1 of the Competition Act

Leave to make application under section 74.1, 75, 76, 77, 79 or 90.1

103.1 (1) Any person may apply to the Tribunal for leave to make an application under section 74.1, 75, 76, 77, 79 or 90.1. The application for leave must be accompanied by an affidavit setting out the facts in support of the person's application under that section.

■ Granting leave — Sections 75, 77, 79 or 90.1

103.1 (7) The Tribunal may grant leave to make an application under section 75, 77, 79 or 90.1 ~~if it has reason to believe that the applicant is directly and substantially affected in the whole or part of the applicant's business by any conduct referred to in one of those sections that could be subject to an order under that section or~~ if it is satisfied that it is in the public interest to do so.

The background of the slide is a photograph of a courtroom. A judge in a black robe is seated at a bench on the left, looking down at a document. Several lawyers in suits are seated at a long wooden table in the foreground, with their hands resting on papers or pens. The scene is dimly lit, with light coming from a window in the background, creating a serious and professional atmosphere.

PART II

Serious Justiciable Issue

THE PROPOSED APPLICATION AND THE EVIDENCE TO SUPPORT IT

Section 79 claim (Google Respondents):

a **series of contracts** to obtain **exclusive default positioning** at major distribution points in exchange for revenue sharing payments.

Section 90.1 claim (Google Respondents and Apple Respondents):

a **single contract** — the Information Services Agreement (the “ISA”) between Google and Apple:

- Google will be the **exclusive default** search engine on Apple computers and mobile devices
- Restrictions on Apple's ability to offer search functionality
- Massive revenue share payments that disincentivize Apple from developing a competing search engine

PART II — Serious Justiciable Issue

1

The Relevant Market is General Search Engines

2

Google Substantially Controls the General Search Engine Market in Canada

3

Google Has Engaged in a Practice of Anti-Competitive Acts

4

Google's Conduct Lessened Competition

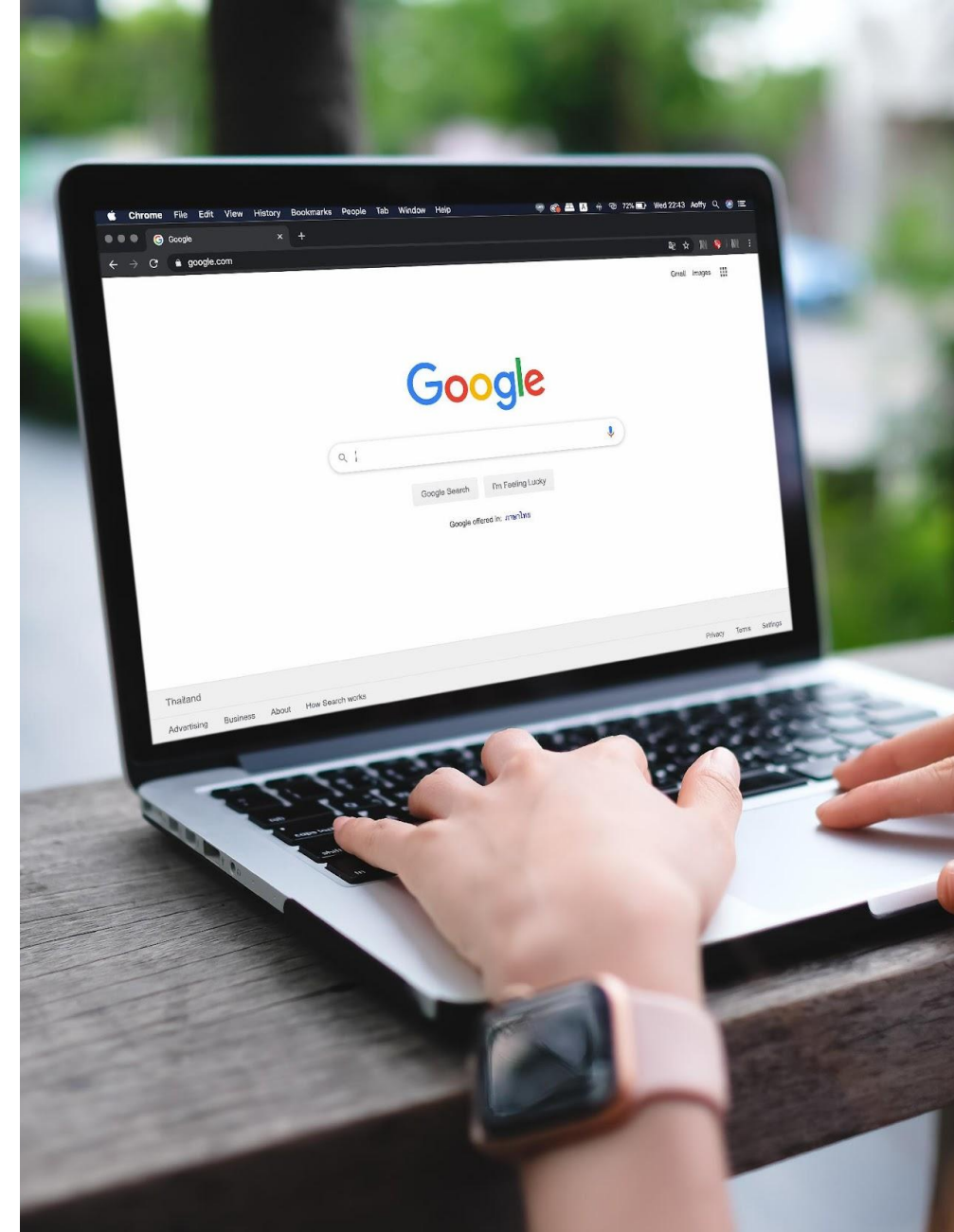
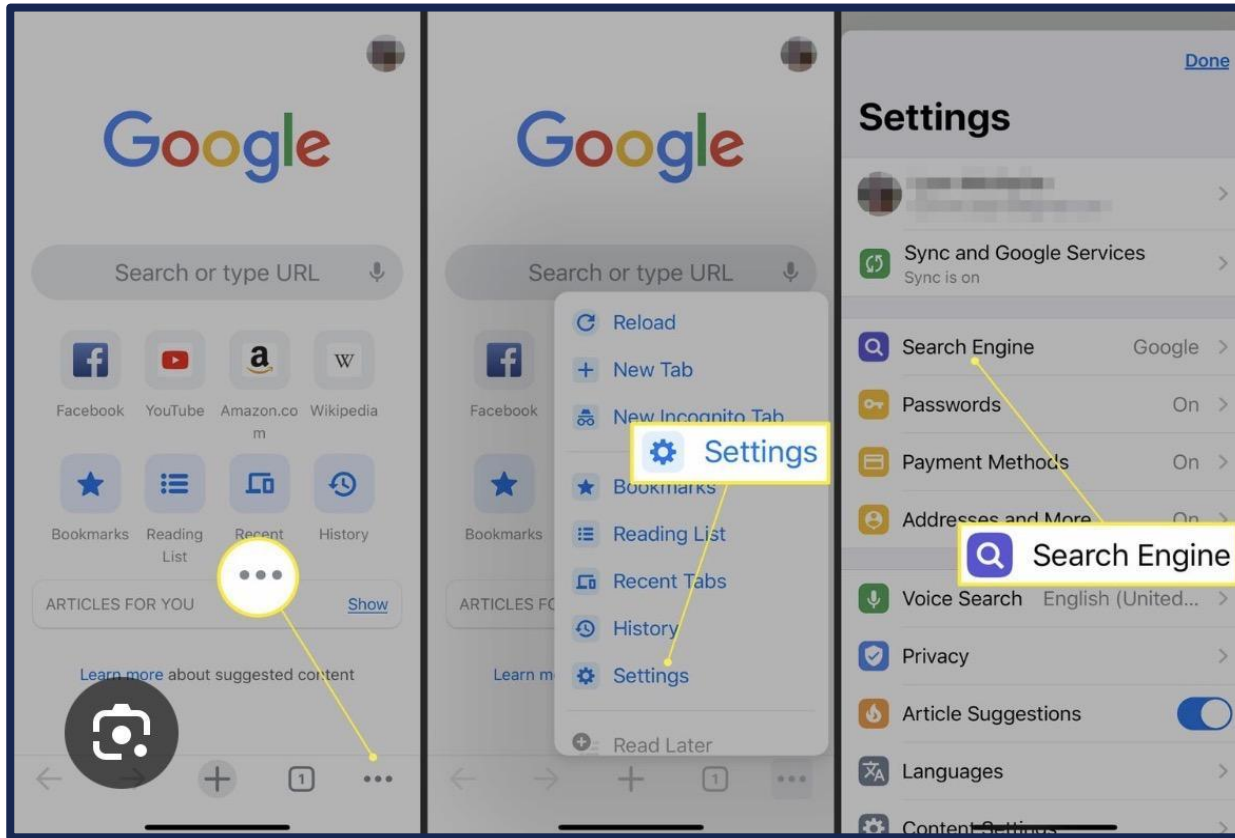
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Google's Dominance Is Not the Result of Superior Competitive Performance

6

A Significant Purpose of the Google-Apple ISA is to Lessen Competition

Section 79: The Relevant Market Is General Search



Section 79: The Relevant Market Is General Search

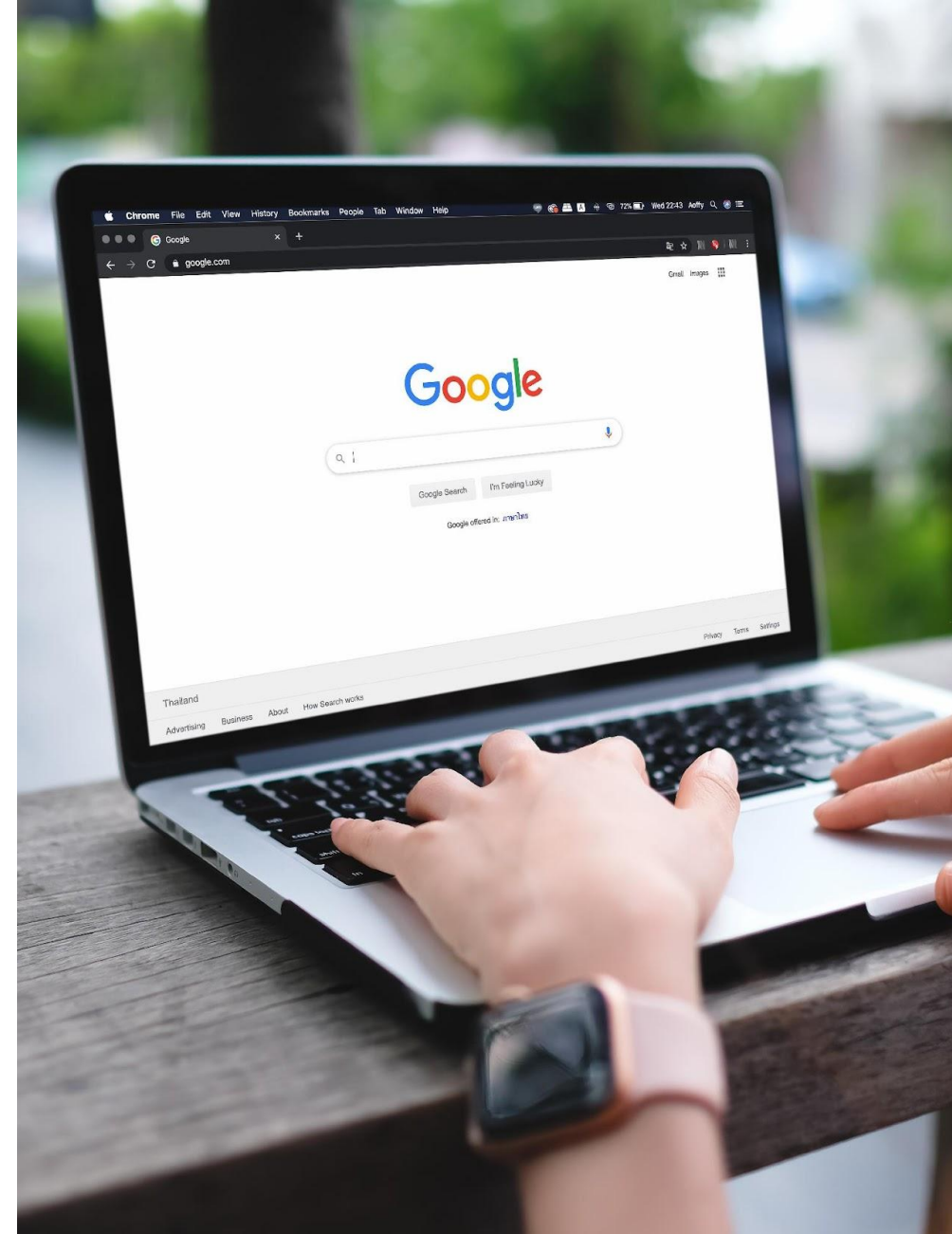
Search engine

These search engines are popular in your region

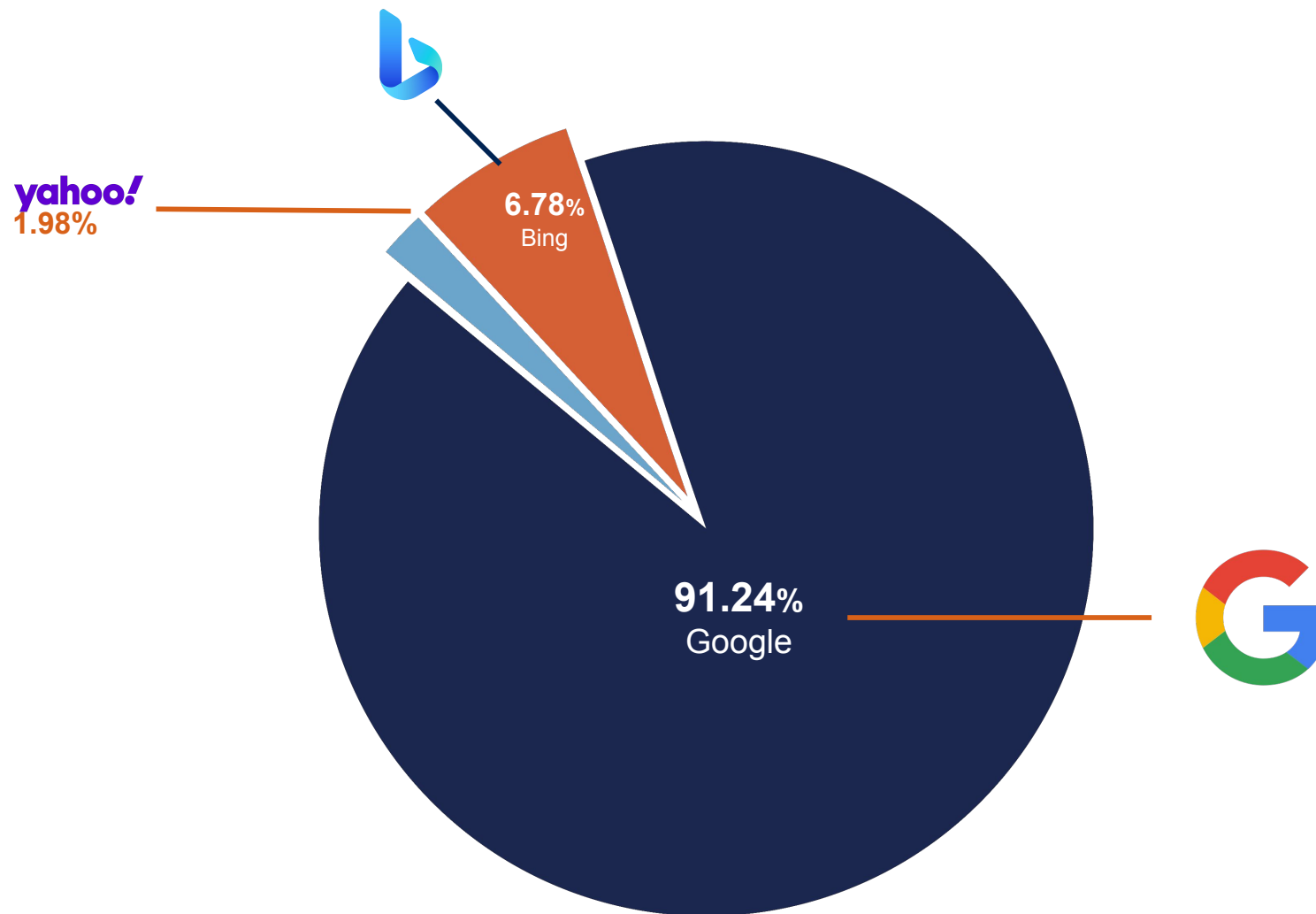
-  Google ☒
-  Microsoft Bing ☐
-  Yahoo! ☐
-  DuckDuckGo ☐
-  Yandex ☐

Cancel

Set as default



Section 79: Google Substantially Controls the General Search Engine Market in Canada





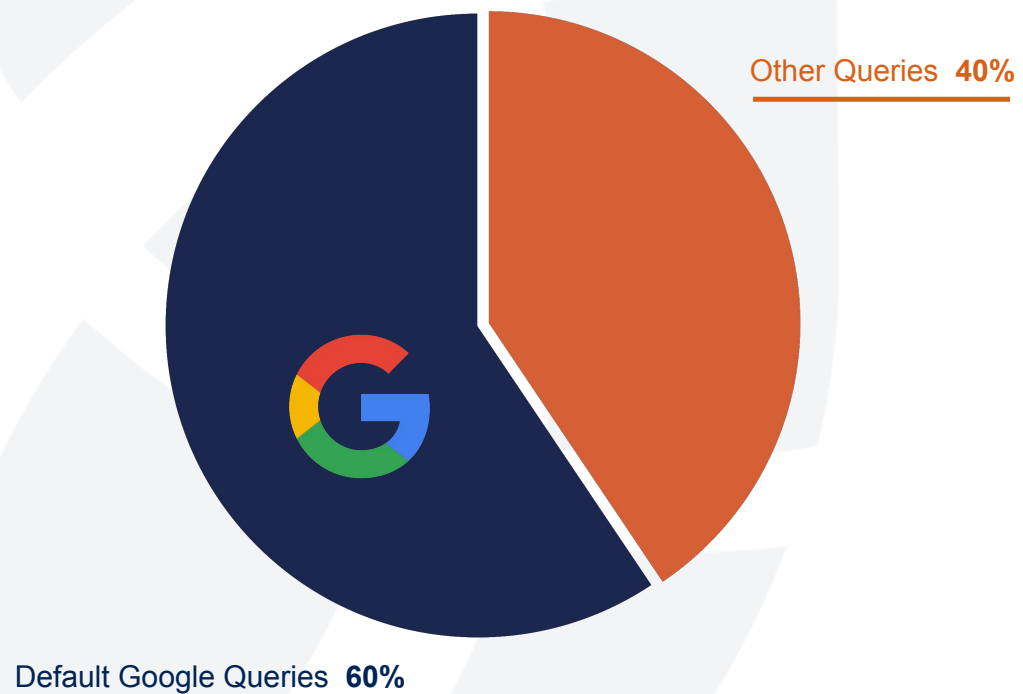
Section 79: Google's Conduct Lessened Competition

Google's contracts:

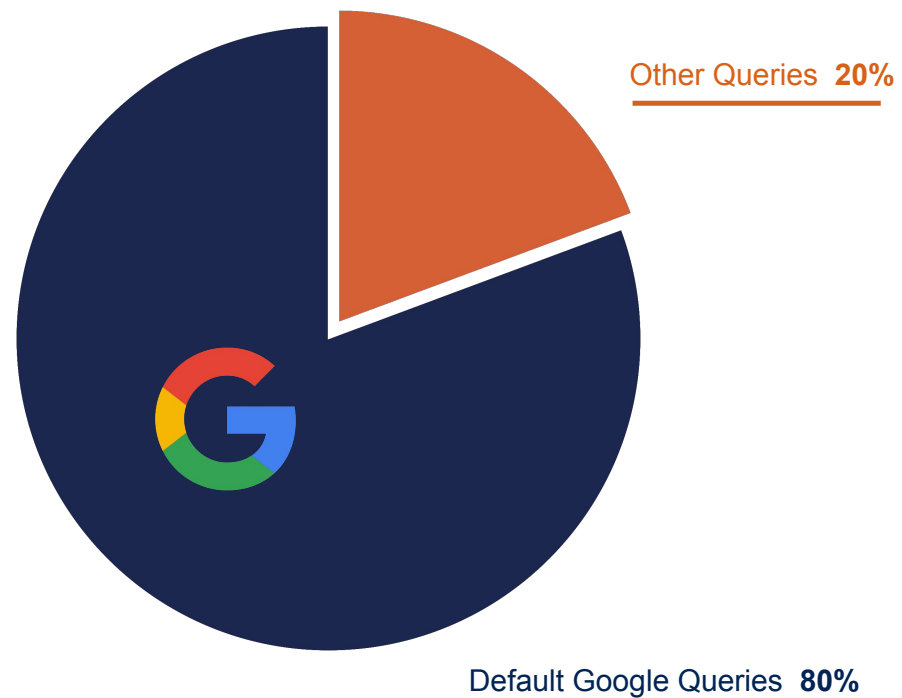
- Exclusive default positioning
- Long-term and difficult to terminate
- Massive revenue share payments

Share of Google Queries via Default Search Settings (By Platform)

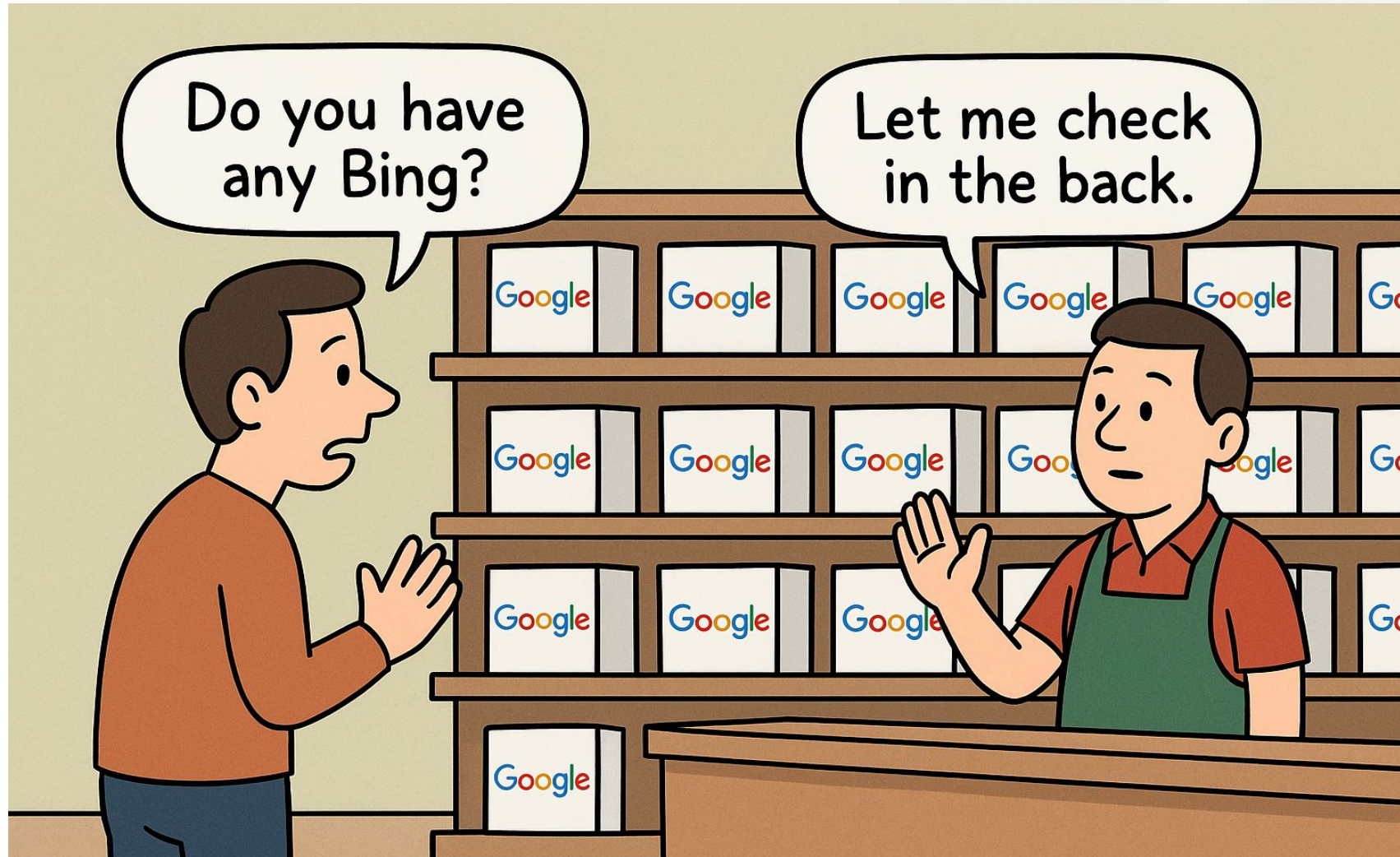
Google Queries on iPhones



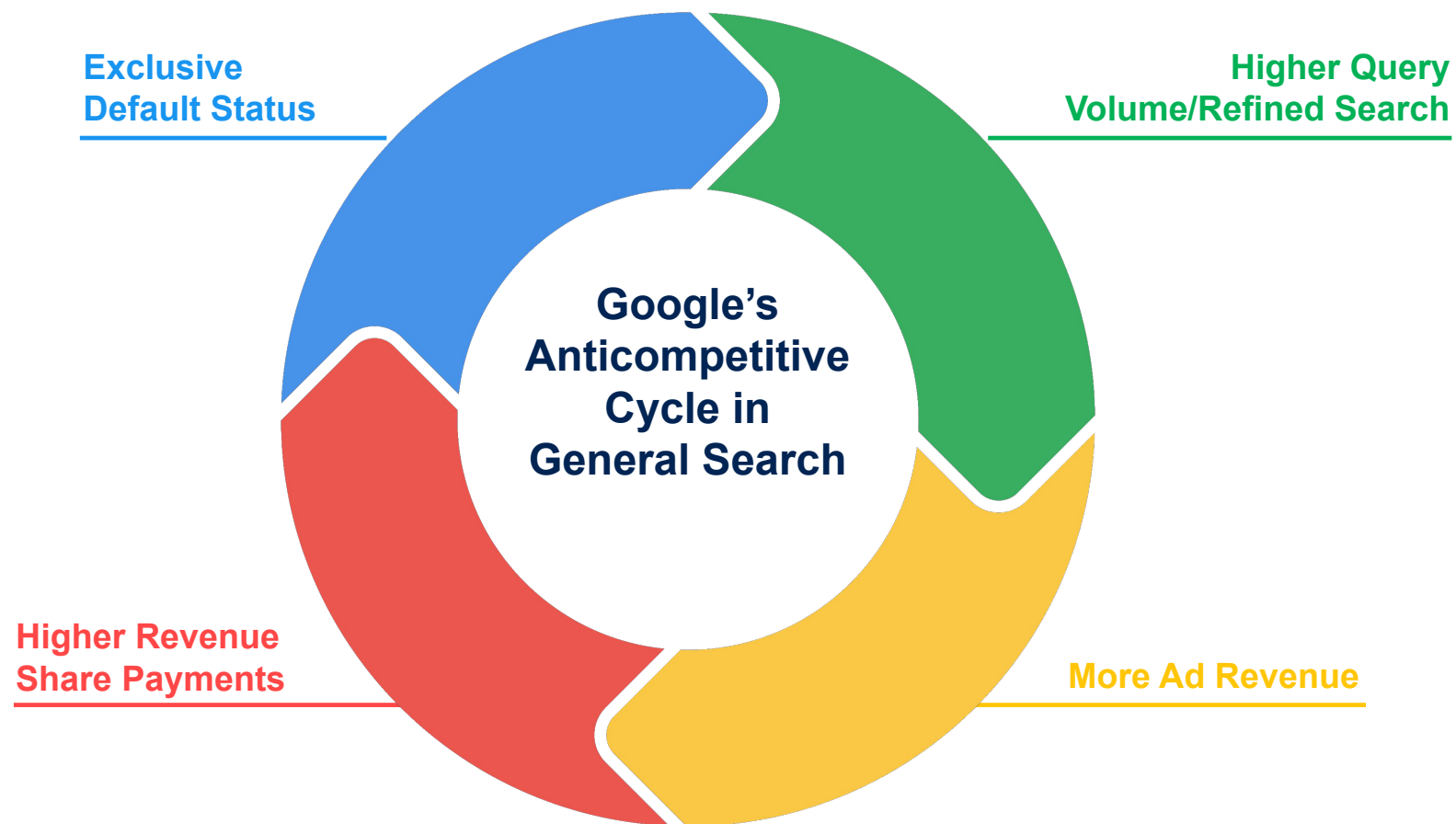
Google Queries on Android



Section 79: Google's Conduct Lessened Competition – Controlling Distribution Points



Section 79: Google's Conduct Lessened Competition – Denying Competitors the Opportunity to Gain Scale, Lack of Innovation, Lack of Consumer Choice

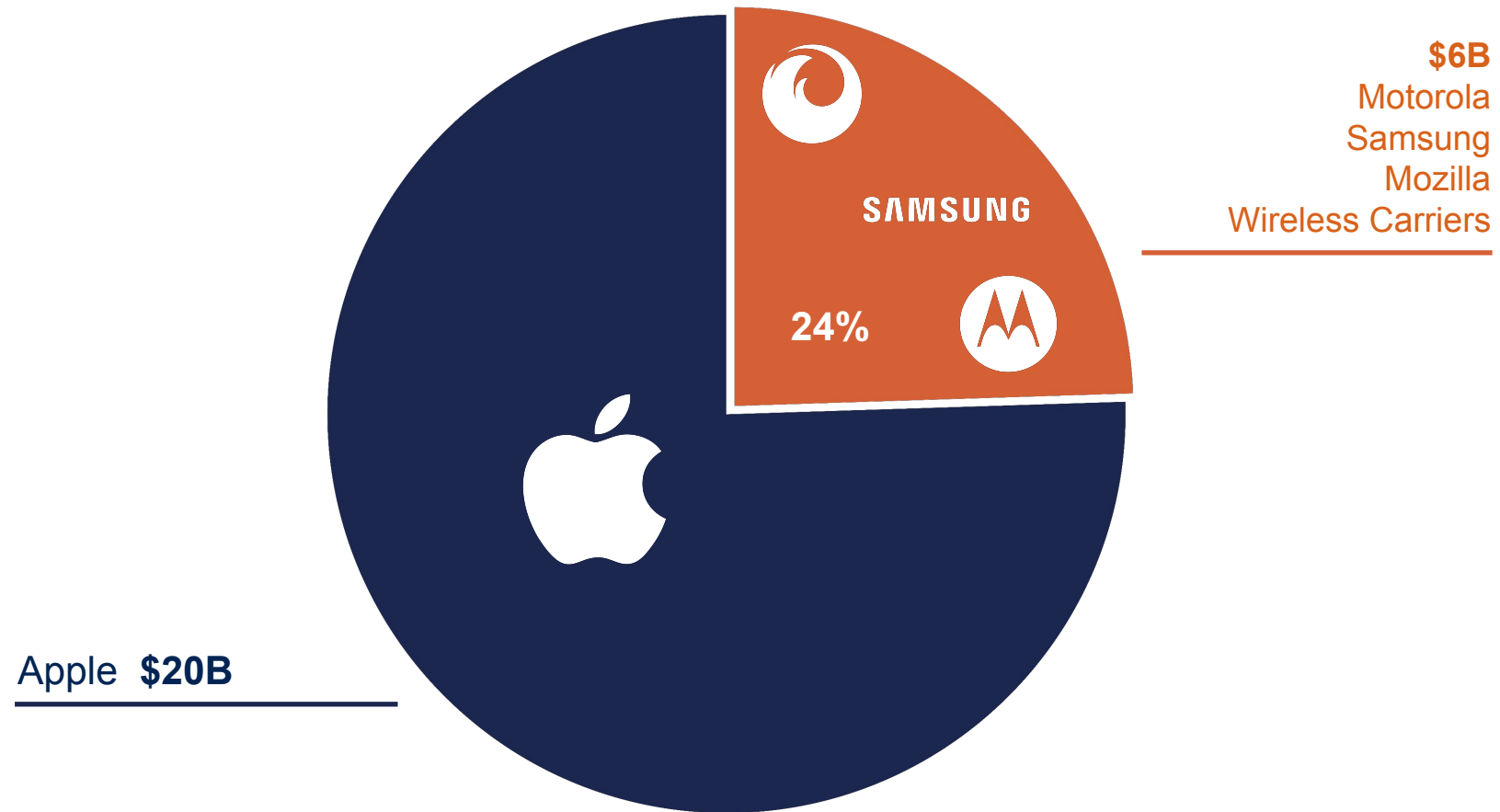


Section 79: Google's Dominance Is Not the Result of Superior Competitive Performance

In 2021, Google paid \$26.3 billion USD for default status.

Why would Google pay \$26.3 billion USD to be the exclusive default if it could achieve the same result based on superior performance?

Section 90.1: A Significant Purpose of the Google-Apple ISA is to Lessen Competition



Google's \$26.3B Revenue Share Payments (2021)



The Google-Apple ISA Restricts Apple from:

- **Offering** (i) a choice screen to select a default search engine; (ii) a different default in Safari's private browsing mode; (iii) different defaults by device
- **Adjusting** the implementation of Google's default status on the Safari browser
- **Enhancing** its own search functions, like Suggestions and Spotlight

Section 90.1: A Significant Purpose of the Google-Apple ISA is to Lessen Competition

17.5% of Apple's operating income is derived from Google's annual revenue share payments.

Apple's Eddy Cue during the U.S. remedies trial:

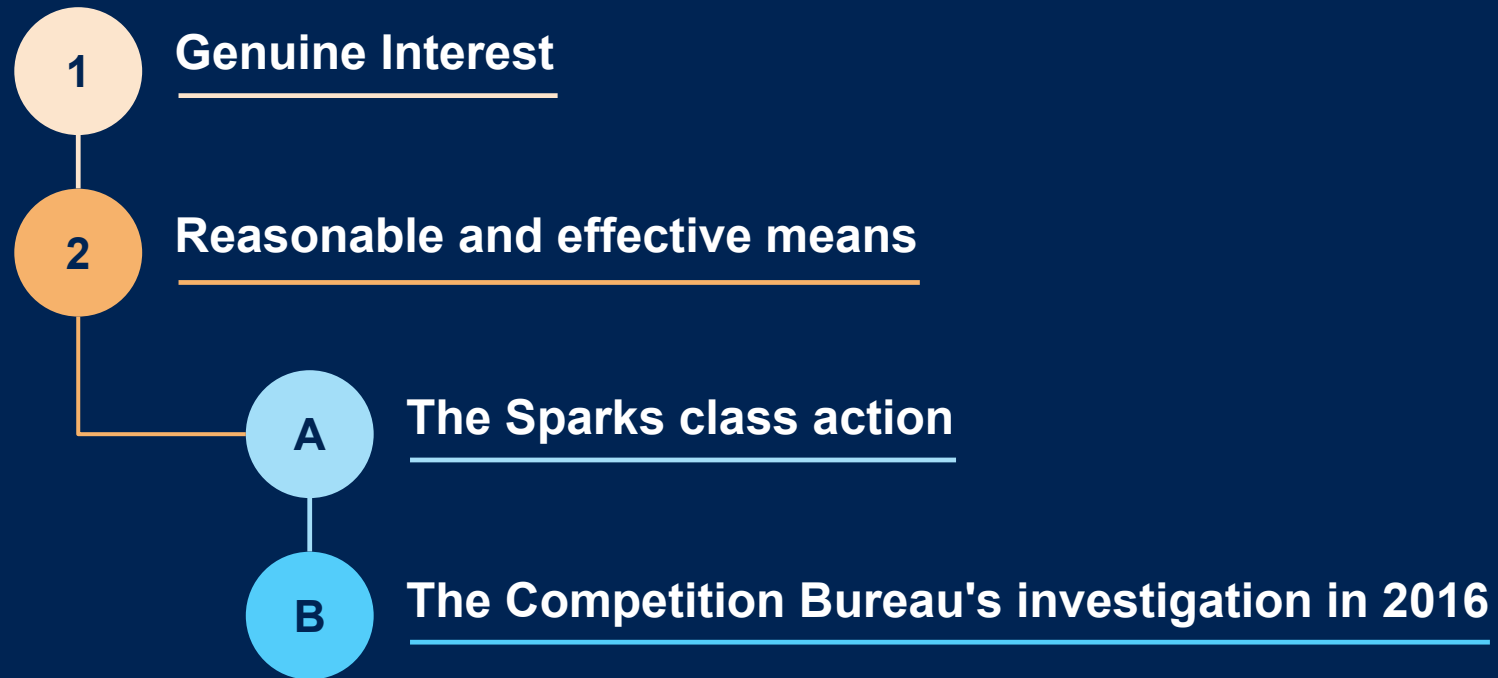
"I can't say I would disagree with [the court's] statement" that "it was a disincentive for [Apple] to do a search engine based on the payments that [it] w[as] receiving from Google."



PART III

THE BALANCE OF THE PUBLIC INTEREST

■ PART III - The Balance of the Public Interest





***British Columbia (Attorney General) v.
Council of Canadians with Disabilities, 2022 SCC 27***

The Applicant's Public Interest Test

1. The application raises a **serious justiciable issue**
2. The applicant has a **genuine interest** in the application
3. The Tribunal is a **reasonable and effective means** for the issues raised in the application

The Applicant Has a Genuine Interest in this Application



Mr. Martin's Genuine Interest is Well-Connected to the Act

“As a Canadian who routinely uses the internet for personal affairs in addition to my business as outlined above, I am concerned with being faced with an online ecosystem whereby only one player dominates the method available and utilized by similarly situated consumers to obtain information.”

Affidavit of Alexander Martin
in support of the Notice of Application
under s. 103.1 sworn June 20, 2025, para 7.

■ Section 79(4) of the Competition Act – Factors to be considered

79(4) In determining, for the purposes of subsections (1) and (2), whether conduct has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market, the Tribunal may consider

- a) the effect of the conduct on barriers to entry in the market, including **network effects**;
- b) the effect of the conduct on price or non-price competition, including **quality, choice or consumer privacy**;
- c) the **nature and extent of change and innovation** in a relevant market; and
- d) **any other factor that is relevant to competition in the market** that is or would be affected by the conduct.

Mr. Martin is Not Seeking to Advance His Private Interests

“The online search market therefore directly affects me”

Alexander Martin,
para 3 of of his affidavit
sworn June 20, 2025

“In an environment with true alternatives, I would be far less reliant on Google”

Alexander Martin,
para 6 of his affidavit
sworn June 20, 2025

■ The Tribunal Is a Reasonable and Effective Means for These Issues


The Tribunal should weigh these factors in a flexible and generous manner that takes into account:

- 1** complements public enforcement;
- 2** increases the deterrent effect of the Act;
- 3** may lead to faster dispute resolution; and,
- 4** may contribute jurisprudence that clarifies the law.

Spark Event Rentals Ltd. v. Apple Inc. – Class Action in British Columbia

	APPLICATION	SPARK
Relevant Market	General search engine	SearchAds
Claims at Issue	Section 79 Section 90.1	Section 45 Civil conspiracy Unjust enrichment
Time Period	June 2022-June 2025	2005 to the present
Relief Sought	Value of the benefit derived from the conduct	Recovery of overcharges for overpayment for SearchAds

The Competition Bureau's 2016 Investigation Does Not Foreclose this Proposed Application

 Government of Canada / Gouvernement du Canada

Français

Enter keywords

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[Canada.ca](#) > [Competition Bureau Canada](#) > [How we foster competition](#)
> [Education and outreach](#)

Investigation into alleged anti-competitive conduct by Google

Position Statement

See the [news release](#) that corresponds to this position statement.

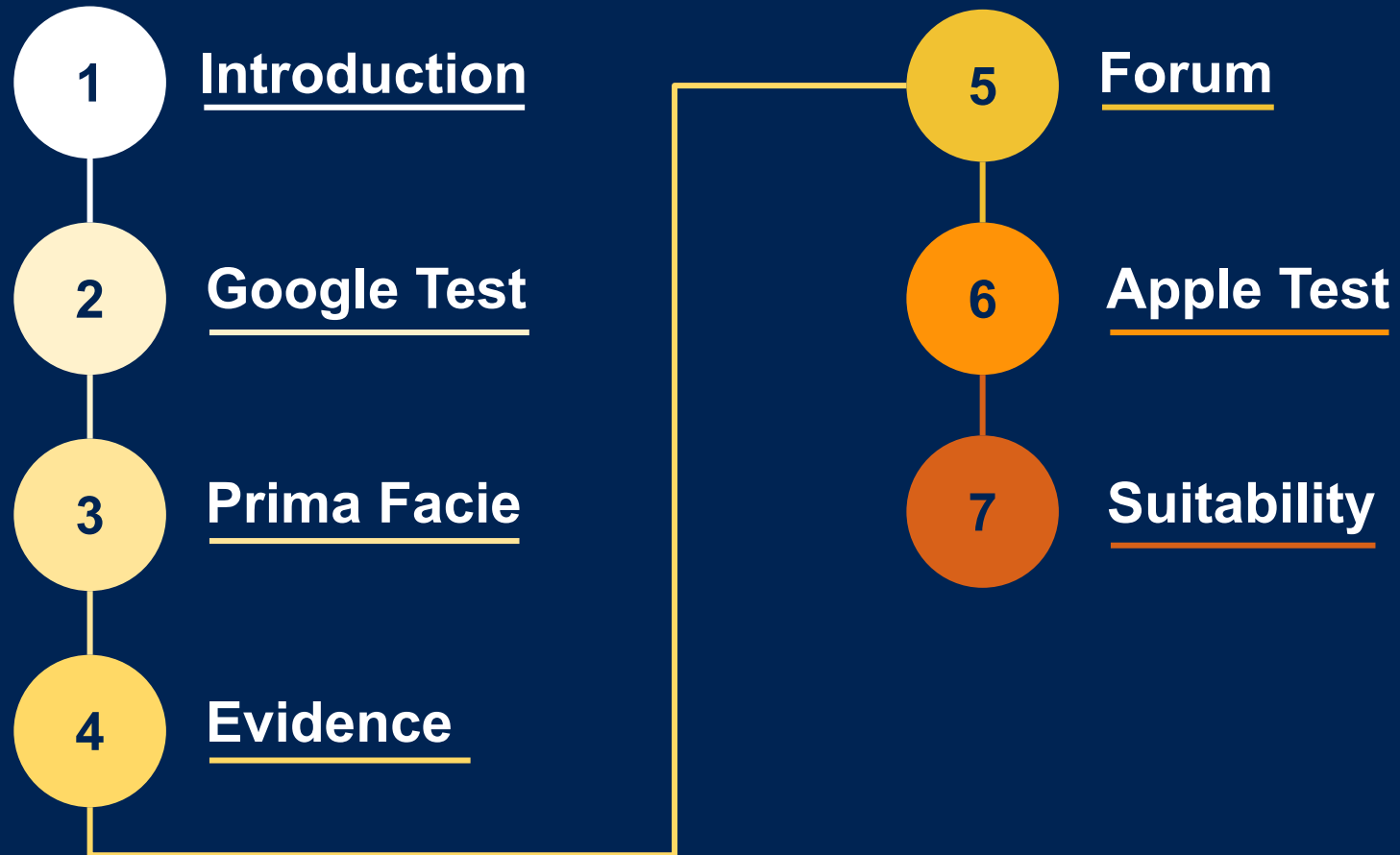
OTTAWA, April 19, 2016 — Today, the Commissioner of Competition (Commissioner) announced that he has discontinued an investigation into allegations that Google Inc. (Google) engaged in conduct contrary to the abuse of dominance provisions of the *Competition Act* (Act). This statement summarizes the extensive investigation conducted by the Competition Bureau (Bureau) in its review of allegations that Google engaged in anti-competitive business practices related to online search, search advertising and display advertising services in Canada.

PART IV

THE RESPONDENTS' PROPOSED
PUBLIC INTEREST TESTS SHOULD BE REJECTED



■ PART IV - The Respondents' Proposed Public Interest Tests Should be Rejected



The Respondents' Tests Must Follow the Purpose of the Act:

Purpose of Act

1.1 The purpose of this Act is to maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy, in order to expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada, in order to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and in order to provide consumers with competitive prices and product choices.

The Respondents' Tests Must Follow the Purpose of the Amendments:

Parliament's Intent

“[to] facilitat[e] private actions against a broader range of anti-competitive or harmful practices and empower those affected to seek financial compensation in many cases. This improvement would complement the [Competition] Bureau's work in protecting the marketplace.

House of Commons Debates, Volume 151, Hansard No. 274 (Feb. 2, 2024) at 20574, Ms. Patricia Lattanzio (Saint-Léonard—Saint-Michel, Lib.)

The Respondents' Tests Must Follow the Purpose of the Tribunal:

Matters before the Tribunal are usually of national interest and large in scope and complexity, and can involve significant financial stakes and directly impact on the competitiveness of private enterprises and industry.

“Welcome to the Competition Tribunal”, <https://www.ct-tc.gc.ca/en/home.html>

The Parties' Proposed Tests Compared

Applicant's Proposed Test

- 1 the application raises a serious justiciable issue;
- 2 the applicant has a genuine interest in the application; and
- 3 the Tribunal is a reasonable and effective means for the issues.

Google's Proposed Test

- 1 is there sufficient credible, cogent and objective evidence to establish each element of the reviewable practice(s) at issue on a prima facie basis;
- 2 is the applicant a suitable representative to prosecute the proposed Application in the public interest;
- 3 is there a more suitable forum for adjudicating the claims and allegations the applicant proposes to advance?
- 4 is the proposed application in the public interest having regard to the purposes and scope of the Act, as well as the statutory provisions at issue;

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Google's Proposed Test

- 1 A non-governmental or environmental organization;

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- 1 A non-governmental or environmental organization;
- 2 with specialized expertise in the individual subject matter, class actions litigation, foreign law, claims administration, and litigation of public interest matters

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- 1 A non-governmental or environmental organization;
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- 3 which has (despite being a non-governmental or environmental organization) a business relationship with the respondent

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- 4 which, in referencing no facts that have come up in parallel litigation in other jurisdictions without expert evidence on those jurisdictions, has commenced an application on behalf of a public with no internal divisions

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- 3 which has (despite being a non-governmental or environmental organization) a business relationship with the respondent
- 4 which, in referencing no facts that have come up in parallel litigation in other jurisdictions without expert evidence on those jurisdictions, has commenced an application on behalf of a public with no internal divisions
- 5 claiming anti-competitive conduct that has, paradoxically, been neither investigated nor considered for investigation by the Commissioner, but somehow also has been investigated and is only not being proceeded on by the Commissioner due to resource limitations (how an applicant is to assess this is left vague)



Requiring a Prima Facie case is inappropriate

- Parliament intended to expand enforcement
- Standard is “satisfied in the public interest”
- Prima facie case is too high a burden at leave

Credible, cogent, and objective evidence requirement is inappropriate

- a s. 103.1's requirement for an affidavit does not set out the evidentiary requirement
103.1(7) The Tribunal may grant leave to make an application under section 75, 77, 79 or 90.1 if it has reason to believe that the applicant is directly and substantially affected in the whole or part of the applicant's business by any conduct referred to in one of those sections that could be subject to an order under that section **or if it is satisfied that it is in the public interest to do so**
- b Respondents require leave to adduce evidence and have an oral hearing
- c Commissioner's standard is appropriate in the context

More suitable forum not required

- a** Parliament did not make the Tribunal a proceeding of last resort
- b** Applicants do not need to show that they made efforts to avoid the Tribunal
- c** Parliament did not legislate that another forum be sought out, only that the claims relate to competition law in Canada.

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Apple's Proposed Requirements

- 1 whether the proposed private proceeding is suitable for addressing the issues that it raises and
- 2 whether the applicant is suitable for taking on the role of litigating the proposed application

This two part analysis is buttressed by an additional four considerations.

- 3 whether the applicant has adduced sufficient evidence of the alleged reviewable practice to warrant a proceeding on the merits
- 4 whether the applicant seeks to advance a public interest related to the purpose of the Act;
- 5 whether the issues raised by the proposed application may be better addressed through other means, including through proceedings in other forums; and
- 6 whether the proposed application would revisit work previously undertaken by the Commissioner in the public interest.

Apple's Proposed Test

Applicant's Public Interest Test

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Apple's Proposed Test

- 1 evidence of its retainer agreement with its counsel

Apple's Proposed Test

Applicant's Public Interest Test

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- 1 evidence of its retainer agreement with its counsel
- 2 any relationship with litigation funders

Apple's Proposed Test

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- 2 any relationship with litigation funders
- 3 evidence of having personally purchased a search-related product

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- 4 evidence of having paid higher prices.

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- 5 evidence of anticompetitive intent when the ISA was entered into

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- 6 evidence that Apple would keep on as it is even without being paid over \$20,000,000,000.00 per year as relates to (among other things) developing its own general search engine, apparently rendering the payment an act of kindness from Google to Apple

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- 6 evidence that Apple would keep on as it is even without being paid over \$20,000,000,000.00 per year as relates to (among other things) developing its own general search engine, apparently rendering the payment an act of kindness from Google to Apple
- 7 evidence that, counter to the above, the Applicant in fact does not stand in any way to benefit from the outcome of the Application.

Suitability of Proceeding

- 1 No requirement in the legislation to take over role of Competition Bureau
- 2 No requirement to show that a class action is not available
- 3 No requirement to show that this is a “preferable procedure” to borrow language from class actions
- 4 Proposed list of class action elements to put forward is inappropriate and not in the legislation

A background image showing a person in a brown suit holding a golden scale of justice. In the foreground, another person's hand is holding a pen over a document on a desk. The document has the words "Criminal Record" visible. The scene is dimly lit, with a blue overlay on the left side.

PART V

RELEVANCE AND RELIABILITY OF EVIDENCE



Evidence on Application Is Relevant and Reliable

- 1 Geographic Relevance — Google's contracts often covered Canada and the U.S.
- 2 The evidence from the U.S. proceedings met high evidentiary standards

F PROFILE

Alexander Martin

Founder, Droqen

F From the Editor

Known to most of his fans as "droqen," Alexander Martin is the designer of Starseed Pilgrim, a smart PC game that forces players to figure out what it is and how it works. Atmospheric, poetic and surprisingly thoughtful, it was nominated for an Excellence in Design award at the Independent Game Festival, and was a finalist at IndieCade.

Forbes Lists

30 Under 30 - Games (2014)





Evidence on Application Is Relevant

Geographic Relevance — Google's contracts often covered Canada *and* the U.S.

Applicant's Reliance on U.S. Proceedings

U.S. Material	Reliance	Reasoning
Relevant Trial Testimony and Exhibits	Yes	Respondents engaged in the same conduct in Canada and in the U.S.
Judge Mehta's Factual Analysis	Sometimes	When underlying evidence is redacted or sealed
Judge Mehta's Legal Analysis and Conclusions	No	Different legal standards under Section 2 of the <i>Sherman Act</i> vs. ss. 79 and 90.1 of the <i>Competition Act</i>

Reliability

1. Apple Respondents: Mr. Eddy Cue's testimony, May 7, 2025, U.S. remedies proceedings
2. Google Respondents: Extracts of U.S. remedy decision

Relevance

3. Careful curation of evidence pursuant to ss. 79 and 90.1
4. No intent of importing foreign findings or foreign legal conclusions

Reliability

- 1 Apple Respondents: Cue's testimony, May 7, 2025, U.S. remedies proceedings
- 2 Google Respondents: Extracts of U.S. remedy decision

Relevance

- 3 Careful curation of evidence pursuant to ss. 79 and 90.1
- 4 No intent of importing foreign findings or rulings

