

This is a translation. The original board report can be found on the Dutch website:
<https://nl.consumercompetitionclaims.com/documenten>

1. BOARD REPORT 2022

A. Introduction

- 1.1 Through this report, the board summarises and accounts for its activities for the year 2022. This report is made available on the website <https://nl.consumercompetitionclaims.com/>.

B. About the CCC Foundation

- 1.2 The Consumer Competition Claims Foundation (the "**CCC Foundation**") aims to represent the interests of injured parties who have suffered or will suffer damages as a result of fraudulent, misleading or unfair commercial practices that are unlawful under European or Dutch competition and consumer law.¹
- 1.3 The CCC Foundation was formally established on 10 March 2022. Informally, it had already been operating as a foundation in formation since 2021.
- 1.4 To achieve its goals, the CCC Foundation undertakes various activities. For example, it litigates against, and negotiates with, parties who act in breach of the law, runs information and awareness campaigns, acts as a mouthpiece in the media and liaises with other organisations and politicians to promote the interests of European consumers.
- 1.5 The CCC Foundation is independent and has no profit motive.

C. On the governance of the CCC Foundation

- 1.6 The CCC Foundation has a board and a Supervisory Board (the "**Supervisory Board**"). The members of these bodies have the specific expertise required to adequately represent the interests as defined in the CCC Foundation's objective and the 2019 Claims Code.² The CCC Foundation endorses the *best practice* provisions of the Claim Code 2019, and follows the principles therein, as also reflected in its *Claim Code Compliance Statement*.³

D. The board: composition and performance of duties

- 1.7 The Board consists of three members: Bert Heikens (chairman), Ariënné Gommers (secretary) and Wim Kraaijeveld (treasurer). The background of the board members is listed on the CCC Foundation website and in the European Apple Claim summons.⁴ The Board is responsible for adopting and implementing (financial) policies and strategy.

¹ See Article 2.1 Articles of association CCC. The Articles of Association can be downloaded from <https://www.consumercompetitionclaims.com/documents>.

² See the statutes of the CCC Foundation at: <https://do.occdn.net/p/88/f/statuten-stichting-engelswebsite-redacted.pdf>.

³ The most recent Claim Code Compliance Statement can be accessed at: <https://www.consumercompetitionclaims.com/documents>.

⁴ About the board: <https://www.consumercompetitionclaims.com/about-us>.
The European Apple Claim writ of summons is available at: <https://nl.consumercompetitionclaims.com/documenten>.

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- 1.8 During the year 2022, one board change took place. Karin Koppers, one of the founding directors, resigned due to personal reasons. She was the treasurer from 10 March 2022 to 1 July 2022. Ms Koppers was succeeded by Mr Wim Kraaijeveld.
- 1.9 Formal board meetings were held on 22 February 2022, 25 March 2022, 31 May 2022, 8 July 2022, 22 September 2022 and 9 December 2022. In addition to these formal board meetings, the board had frequent (informal) meetings to discuss ongoing matter and determine the strategy, through conference calls and through physical meetings. During board meetings, the Board discusses CCC Foundation's strategy, operational matters and concrete ongoing and possible further actions. During the board meetings, the Board receives advice from the experts it has engaged.
- 1.10 In accordance with Principle V of the 2019 Code of Claims, the board is additionally accountable to the Supervisory Board. Not only is the Supervisory Board informed about the activities of the Board and the CCC Foundation on a monthly basis, but also two joint meetings took place, on 22 September 2022 and on 9 December 2022.

E. Report on the activities of the CCC Foundation in 2022

- 1.11 From late 2021 to early 2022, the founders of the CCC Foundation investigated the desirability and the possibilities of establishing a new advocacy organization in the field of competition and consumer law. The unequivocal conclusion from this was that a strong advocate is necessary in light of the frequent and often large-scale violations of competition and consumer law in the Netherlands and Europe. In addition to the fact that public enforcement does not provide compensation to consumers, private enforcement also seems necessary to discipline offenders.
- 1.12 Following the formal establishment of the CCC Foundation, the year 2022 was particularly focused on:
- (i.) the investigation and the launching of the class action against Apple (aka: the European Apple Claim);
 - (ii.) the assessment of a collective action against Samsung; and
 - (iii.) other matters.

I. The European Apple Claim

- 1.13 The Board has concluded after investigation that Apple systematically abuses its economic dominance in the Apple App Store and imposes unfair conditions. European consumers who use the Apple App Store, and make app purchases or in app purchases, are suffering damages as a result. The board sought and obtained external legal and economic advice, and decided to initiate a collective action against Apple.
- 1.14 Before launching the action against Apple, the board also investigated the possibility of obtaining external funding. This was successful. Prior to the formal launch of the European Apple Claim, a funding agreement was reached with Hereford Litigation Finance 4 Limited. Due to the availability of external funding, the CCC Foundation does not need to request an upfront contribution from aggrieved European consumers.

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- 1.15 After extensive preparation, the CCC Foundation sent a claim letter to Apple on 14 March 2022. The letter also included an invitation to Apple to enter into discussions on an out-of-court resolution. Apple did not take up that offer.
- 1.16 On 31 March 2022, the CCC Foundation therefore launched a lawsuit against Apple at the Amsterdam District Court.⁵ The lawsuit is a class action based on the the Act of Collective Damages Claims (*Wet afwikkeling massaschade in collectieve actie* or WAMCA), which came into force on 1 January 2020.
- 1.17 The CCC Foundation has requested the court for permission to act on behalf of European consumers. These are consumers who (i.) are domiciled in the European Union, (ii.) use or have used an iPhone or iPad and (iii.) have purchased an app or made a in-app purchase at least once since 1 September 2009. The summons has been published on the website of the judiciary and on the CCC Foundation's website.⁶
- 1.18 The CCC Foundation's action against Apple has wide support. By 2022, tens of thousands of European consumers have already signed up. The number of sign-ups continues to grow steadily.

II. Claim against Samsung

- 1.19 In September 2021, the Consumer & Market Authority (the "**ACM**") imposed a fine on Samsung for vertical price maintenance (also known as *Resale Price Maintenance*) in relation to its sales of televisions in the Netherlands in the period 2013 to 2018.⁷ As a result, televisions were sold at unfairly high prices. Dutch consumers suffered damages as a result.
- 1.20 The CCC Foundation asked its legal advisers and economic experts in mid-2022 to investigate Samsung's conduct, calculate consumers' damages and estimate the feasibility of a class action. The results from the investigations prompted the CCC Foundation to send a claim letter on 21 December 2022 and invite Samsung to engage in settlement discussions. Samsung has not accepted this invitation.
- 1.21 The CCC Foundation is currently preparing to file a lawsuit against Samsung. This second class action is expected to start in 2023.

III. Other matters

- 1.22 As a newly established legal entity, the 2022 CCC Foundation has also put a lot of effort into setting up the foundation. In 2022 the board's activities included:
- (i) designing and adopting several documents, including the Articles of Association and the *Claims Code Compliance Statement*;
 - (ii) designing and putting online a website;

⁵ Defendants are: Apple Inc, Apple Operations International Ltd, Apple Distribution International Ltd, Apple Holding B.V., Apple Retail Netherlands and Apple Benelux B.V.

⁶ See: <https://www.consumercompetitionclaims.com/documents> and <https://www.rechtspraak.nl/Registers/centraal-register-voor-collectieve-vorderingen> (in Dutch only)

⁷ See: <https://www.acm.nl/en/publications/acm-fines-samsung-over-39-million-euros-influencing-online-prices-television-sets>

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- (iii) entering into several agreements, including with the legal and economic experts, the accountant and a public relations agency;
- (iv) taking out insurances; and
- (v) adopting a remuneration policy for board members and Supervisory Board members;

1.23 The CCC Foundation remains in continuous contact with its supporters. In 2022, the foundation posted more than 20 news items and updates in four languages (French, German, English and Dutch). The CCC Foundation also posts updates on social media (Facebook and LinkedIn). In addition, the CCC Foundation periodically sends newsletters in four languages to its participants and other interested parties. The CCC Foundation also maintains contacts with various consumer organisations in the context of the European Apple Claim.

F. Financials 2022

- 1.24 The CCC Foundation has no profit motive. All costs, including the costs for the European Apple Claim, are borne by the CCC Foundation.
- 1.25 Regarding the European Apple Claim, the board has secured external funding from Hereford Litigation Finance 4 Limited, based in Guernsey. The funding is on a *no cure, no pay basis*. This means the funder will only receive compensation if the European Apple Claim succeeds. If a fee is awarded, the funder is entitled to 24% of the proceeds, as well as compensation for the costs incurred, with the understanding that the funder can never receive more than 24% of the total proceeds. As the action becomes more successful, and the compensation is greater in absolute terms, the rewards of the funder decreases in steps (from 24, to 20, to 15 and finally 10% of the compensation).
- 1.26 The board confirms that the financial position of the CCC Foundation is healthy, with sufficient funds available.
- 1.27 The board has instructed the accountant to prepare the financial statements. These financial statements will be published on the website after adoption and approval by the Supervisory Board.

G. Conclusion

- 1.28 2022 was an important year. The CCC Foundation was established and the European Apple Claim was successfully launched. In addition, the CCC Foundation is working on a second case against Samsung. The CCC Foundation has managed to gather great support from many European consumers, and that support is still growing.
- 1.29 The CCC Foundation is striving for a fair market for the benefit of consumers. The board urges consumers to contact it if they believe there have been violations of competition or consumer law.

Amsterdam, 28 February 2023,

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Bert Heikens	(chairman)
Ariënné Gommers	(secretary)
Wim Kraaijeveld	(treasurer)