

Apple Pty Ltd

Further submission in response to the Digital Platform Services Inquiry into App Marketplaces

1. The Commission identified in its *Digital Platform Services Inquiry - March 2021 Report on App Marketplaces Issues Paper* dated September 2020 (**ACCC Issues Paper**) potential concerns about the market power of "key suppliers" of app marketplaces.
2. The list of competition and consumer issues which the Commission identified in that paper included:
 - (a) substitutability between app marketplaces and the ability of app developers to bypass a particular app marketplace;
 - (b) terms, conditions and fees, including in-app purchases (**IAP**), imposed on businesses to place apps on app marketplaces and the effect of these on an app's commercial viability;
 - (c) the effect of app marketplace providers also competing with app developers for distribution of apps, such as whether this creates the ability and/or incentive for app marketplaces to preference their own apps; and
 - (d) the process for determining whether apps are allowed on an app marketplace and whether this is used to negatively affect developers' ability to reach consumers with their apps.
3. Many of the questions in the s 95ZK notice dated 7 December 2020 issued to Apple Pty Ltd (**Notice**) appear to proceed on an assumption that there is a relevant market failure arising from Apple's purported market power. Apple does not believe that, properly examined, that assumption is correct in the wider online context in which the app marketplace operates and is concerned that such an assumption means that the Commission's analysis may not be examining whether that assumption is well founded as a starting point. Indeed, the app marketplace, even the mobile segment alone, is characterised by higher output (including both the number of apps and app downloads) and decreasing prices (i.e., lower commissions). These characteristics are indicia of healthy, competitive markets. Accordingly, Apple is of the view that the starting point should be to examine mobile app marketplaces in their wider online context and rigorously explore whether the Commission's assumptions are correct.
4. The Chair has also publicly foreshadowed the introduction of new laws to address "*misconduct*" in the market for apps by "*tech giants*" such as Apple, as well as "*likely further legal action*" arising from the Commission's current investigations related to the advertising and app markets.¹ These comments were surprising, given Apple's understanding that the Commission's Inquiry is still ongoing and Apple had yet to provide any information pursuant to the 95ZK notice when the statements were made.
5. For the reasons set out in this paper, Apple does not:
 - (a) consider that it has a substantial degree of power in any market relevant to the issues that are the subject of the Commission's current inquiry; nor
 - (b) agree that there is a market failure that requires regulatory intervention or legal action to address.
6. Therefore, the purpose of this paper is to provide to the Commission additional materials in addition to those sought by the Notice which Apple believes should assist the Commission to

¹ See <https://www.afr.com/technology/accc-goes-into-battle-against-facebook-apple-and-google-20201221-p56pe6>.

put Apple's responses to the Notice into an appropriate context, which is essential in analysing the issues of potential concern identified by the Commission in the ACCC Issues Paper and advising the Government.

Relevant market includes distribution substitutes outside iOS

7. Apple perceives and treats other distributors of apps, for platforms other than iOS, as significant competitors whose pricing and policies constrain Apple's ability to exercise power over developers. For the reasons detailed below, Apple is not in a position to disregard the environment in which its app marketplace operates and does not accept the Commission's characterisation of the Apple App Store as "*the most dominant app marketplace by a large margin*".
8. Apple is of the view that a sound market definition approach should encompass:
 - (a) native and internet (including web app) distribution to iOS users;
 - (b) online mobile app platforms such as Google Play, Samsung Galaxy and Amazon app stores for Android OS based devices;
 - (c) personal computers; and
 - (d) specialist platforms for particular app genres such as games from Sony Playstation Plus, Microsoft X Box Games Store, Nintendo eShop, Valve's Steam and Epic Games; smart televisions and media streaming devices like Google Chromecast or Amazon Fire; wearables such as Fitbit, Garman, Samsung Watch; social media platforms; information and education services; and many other specialised genres.
9. All of these are sources of digital content and other goods and services that are available to consumers both on iOS devices and through other fixed and mobile hardware for consumers' attention.
10. As explained further below, Apple faces competitive constraints from distribution alternatives within the iOS ecosystem (including developer websites and other outlets through which consumers may obtain third party apps and use them on their iOS devices) and outside iOS. Apple's "reader" and "multiplatform" rules contemplate and permit precisely this because of the competitive importance of providing developers with flexibility in competition with other operating platforms.
11. Indeed, Apple competes vigorously to attract the best developers because a reduction in the quality of apps, or restricted availability of popular apps in the App Store, would diminish the user experience. Any action undermining the popularity of the App Store — including impeding developers from being successful on the App Store — would be economically irrational, as this would destroy the value of the ecosystem to the detriment of consumers, app developers and Apple itself.
12. With regard to concerns that Apple may be exploiting its alleged market power in its role as a distributor of apps, market definition turns on the question of what distribution alternatives developers see as reasonably interchangeable in the event of a small but significant increase in the price of distribution through the Apple App Store.
13. In conducting this analysis, it is relevant to look at both the reasonably interchangeable substitutes for developers seeking to distribute apps or app content to **iOS users** in any given geographic area, and whether distribution substitutes **outside iOS** are also reasonably interchangeable from the perspective of app developers seeking mobile business (that is, whether channels for the distribution of apps to users of non-iOS platforms are reasonably interchangeable with channels for iOS)

Distribution alternatives within the iOS ecosystem

14. Even if a user only owns iOS-based devices, distribution is far from limited to the Apple App Store because developers have multiple alternative channels to reach that user. The whole web is available to them, and iOS devices have unrestricted and uncontrolled access to it. One common approach is for users to purchase and consume digital content or services on a website.
15. Web browsers are used not only as a distribution portal, but also as platforms themselves, hosting “progressive web applications” (**PWAs**) that eliminate the need to download a developer’s app through the App Store (or other means) at all. PWAs are increasingly available for and through mobile-based browsers and devices, including on iOS. PWAs are apps that are built using common web technology like HTML 5, but have the look, feel and functionality of a native app. They can even have an app icon that resides on the device home screen. Web apps are becoming increasingly popular. Companies such as Amazon, Google, Starbucks, Pinterest, Uber and the FT use web apps. Amazon, for example, has just launched its Luna mobile gaming service as a web app.² Microsoft and Google are also launching gaming apps on iOS via web apps.³ The developer of the Telegram messaging app has also recently stated that it is working on a rich web app for iOS devices.⁴
16. Developers may provide iOS users access to digital media content within the iOS app that the user purchased from the developer outside the app, on a website. The developer has access to Apple’s technologies and features and it gets the advantage of the promotional and marketing opportunities of the App Store to attract users. Developers like Spotify and Netflix have their customers buy digital content subscriptions *only* outside the App Store, such as from Spotify’s or Netflix’s own websites. In these cases, developers receive all of the revenue they generate from bringing the customer to their app. Apple receives no commission from supporting, hosting and distributing these apps.
17. Thus, even within the iOS ecosystem, developers can and do utilise substitutes for distribution through the App Store. Their utilisation of such alternatives put them squarely within the relevant distribution market.

Distribution alternatives outside the iOS ecosystem

18. Consumers generally own multiple types of devices, including desktop PCs, laptops, smart TVs, gaming consoles, tablets and/or multiple smartphones, and often want to access the same apps on multiple devices.⁵
19. This means that the Apple App Store also competes directly with:
 - (a) software distribution on other smartphone platforms - including Google Play, Samsung Galaxy, and Amazon app stores - as well as across a range of devices that is growing larger and more diverse; and
 - (b) various web-based app stores such as Steam, Epic Games Store, PUBG, AppStream, Chrome Web Store, Setapp, or Microsoft Store, among others which the vast majority of iOS users have access to (and must use in connection with their other devices). Such users may be as likely to download or subscribe to such apps

² See <https://9to5mac.com/2020/09/24/amazons-new-luna-cloud-gaming-service-will-be-available-for-ios-users-as-web-apps/>.

³ See <https://www.theverge.com/2020/10/8/21508706/microsoft-xcloud-ios-web-browser-2021>.

⁴ See <https://gadgettendency.com/telegram-creator-urged-to-abandon-iphone-in-favor-of-android/>

⁵ For example, according to 2014 study, 12% of iPhone users own an Android tablet; 77% of iPhone users own a Windows PC; 18% of Android smartphone owners own an iPad; and 10% of Android smartphone owners own a Mac. See ‘Learning loyalty: Apple vs Android multi-device market,’ Verto Analytics, March 25, 2015, <https://vertoanalytics.com/learning-loyalty-apple-vs-android-multi-device-market/>.

on their non-iOS devices, and then sign into the apps on their iOS devices (as Apple expressly permits), as the other way around.

20. In denying Epic Games, Inc.'s request for a preliminary injunction to require Apple to reinstate Fortnite in the App Store (in the context of the antitrust lawsuit commenced by Epic against Apple), Judge Yvonne Gonzalez Rogers of the US District Court for the Northern District of California observed:

*“The multiplatform nature of Fortnite suggests that these other platforms and their digital distributions may be economic substitutes that should be considered in any relevant market definition because they are reasonably interchangeable when used for the same purposes”.*⁶

21. Thus, cross-platform competition also enhances intra-platform competition for distribution of apps within the platform. There is little **developer** lock-in, regardless of the portability of users from one platform to another. For all practical purposes, this means the Apple App Store competes for distribution, as well as for commissions associated with customer acquisition, subscriptions, memberships, or IAP, with the myriad platforms on which the other devices are based.

22. If Apple significantly changes its distribution pricing or terms, developers have – and importantly, actually use – many alternatives for getting their apps to users. These alternatives span both methods of distributing apps directly to users rather than through the App Store, and methods of distributing the subscriptions, memberships and paid services that drive app revenue into users' hands regardless of platform, thereby facilitating costless distribution of the app itself on iOS devices. The demonstrated real-world interchangeability of the available distribution alternatives strongly suggests that they all occupy a single relevant market. As an initial matter, therefore, there is strong evidence that the relevant market for app distribution is not iOS-specific. Instead, the relevant market includes other vehicles by which iOS users can and do make app, subscription, and in-app purchases, and use ad-supported app content, across a range of platforms.

Responsiveness of pricing and competitive decision making

23. Apple has continuously sought to make the iOS platform more attractive for users and developers alike by improving quality, innovation, security, privacy, user experience, as well as commission levels, all in active comparison to other platforms. The principle driving that innovation and improvement has been, and continues to be, competition to offer the best platform in competition with the alternatives available on iOS devices themselves (e.g. web-based apps) and with the alternative platforms on the other devices they own and use every day.

24. Updates to the functionality and services offered on the Apple App Store have often triggered, or resulted from, innovations on other platforms, and vice versa. For example:
- (a) in 2009, when Apple introduced IAP,⁷ providing developers a completely new monetisation vehicle for their apps, Google, Amazon and others soon followed with their own versions of IAP;⁸
 - (b) Apple's pricing and terms for distribution through the App Store have decreased a number of times (and have never increased) but, in doing so, have tracked changes in the prices charged by non-iOS platform providers, and vice versa. Most notably, in 2016, when Apple announced it was reducing the App Store commission to 15%

⁶ Epic Games v. Apple Inc., Case No. 4:20-cv-05640-YGR (N.D. Cal. Oct. 9, 2020) at p 18.

⁷ See <https://www.apple.com/newsroom/2009/03/17Apple-Previews-Developer-Beta-of-iPhone-OS-3-0/>; <https://www.apple.com/newsroom/2009/11/04Apple-Announces-Over-100-000-Apps-Now-Available-on-the-App-Store/>.

⁸ See <https://venturebeat.com/2011/03/29/google-launches-in-app-purchases-that-will-make-mobile-apps-more-money/>.

for subscriptions in their second year, Google responded by matching the policy and reducing their commission;⁹

- (c) in 2017, after Apple introduced a revamped App Store experience with a greater emphasis on editorial cues, like App of the Day or Game of the Day,¹⁰ Google responded by announcing expanded editorial features on the Google Play Store with the Android Excellence program, which allow Play Store editors to showcase high-quality apps and games;¹¹
- (d) in 2019, after Apple revised its app ratings feature to allow developers greater control over whether their user reviews re-set across different versions of their apps,¹² Google introduced a new feature to weight app ratings to favor more recent app releases;¹³
- (e) in 2019, after Google announced its redesigned Subscription Center,¹⁴ Apple improved subscription management features on the App Store;¹⁵
- (f) in 2019, when Apple Arcade was launched as feature of the App Store, Google responded by launching its Play Pass game subscription service;¹⁶
- (g) in 2020, Apple also introduced “offer codes” for app subscriptions,¹⁷ after Google launched promo codes;¹⁸ and
- (h) in 2020, Apple answered Google’s Instant Apps with App Clips, which allows users to try lightweight versions of apps without having to download the app to their device.¹⁹

25. These examples demonstrate the vigorous cross-platform competition that exists, and that Apple considers the potential for developer and user defection to, or prioritisation of, other platforms in formulating price and non-price terms for distribution of apps to iOS users and is in no position to disregard the context in which it offers an app marketplace.

⁹ See <https://www.theverge.com/2017/10/19/16502152/google-play-store-android-apple-app-store-subscription-revenue-cut>.

¹⁰ See https://techcrunch.com/2017/06/05/apple-introduces-a-completely-redesigned-appstore/?_ga=2.7496114.120357755.1607713937-1498076940.1607713937

¹¹ See <https://techcrunch.com/2017/06/13/google-play-introduces-android-excellence-collections-that-showcase-editorially-selected-top-apps-and-games/>

¹² See <https://techcrunch.com/2017/06/07/ios-app-developers-will-be-able-to-keep-app-store-ratings-when-releasing-an-update/>

¹³ See <https://techcrunch.com/2019/05/08/google-play-is-changing-how-app-ratings-work/>

¹⁴ See <https://9to5google.com/2018/06/20/google-play-subscription-center-update/>

¹⁵ See <https://www.macrumors.com/2019/02/13/app-store-manage-subscriptions-shortcut/>; <https://mashable.com/article/ios-13-cancel-app-store-subscriptions/>

¹⁶ See <https://www.cultofmac.com/654222/google-copies-apple-arcade-with-play-pass-subscription-service/>

¹⁷ See <https://appleinsider.com/articles/20/11/18/one-time-app-subscription-offer-codes-arrive-on-ios-14-and-ipados-14>

¹⁸ See <https://techcrunch.com/2016/01/15/google-play-adds-support-for-promo-codes-including-in-app-purchases/>

¹⁹ See <https://www.ubergizmo.com/2020/06/ios-14-app-clips/>.

Customer switching

26. Customer switching between devices with different operating systems (both between iOS and Android and between either of iOS or Android and other device operating systems including Samsung Smartphone) is a constant threat for Apple should it cease to compete effectively for customers through innovation.
27. This competitive dynamic is reflected in the significant efforts Apple makes to encourage Android users to switch to iPhone and to keep existing iPhone users on the platform. For example, Apple creates and releases new iPhones each year, it also releases a new version of the iOS operating system annually, and it invests in extensive marketing campaigns promoting iPhone and its features. Apple recently launched an effort that provides credits toward the purchase of a new iPhone when consumers trade in their old phone from another manufacturer.
28. Apple's efforts to attract customers from Android are routinely referenced by Apple CEO Tim Cook during investor calls, like when he discussed the iPhone SE, which was released last year:
- "I'd expect some fair number of people switching over to iOS. It's an unbelievable offer. It's the engine of our top phones, in a very affordable package, and it's faster than the fastest Android phones. It's an exceptional value."*²⁰
29. Likewise, there is no shortage of competitors actively working to convince iPhone users to switch devices. Samsung, Huawei, Motorola, Oppo, Vivo, Xiaomi, Google, LG, and others have advertising campaigns targeted at iPhone customers.²¹ In addition to their marketing campaigns targeting iPhone, these companies often offer hundreds of dollars in credits to convince customers to trade-in their iPhones for one of their devices.²² The data shows that these campaigns work more often than we would like. We also work hard to convince consumers to switch to the iPhone.

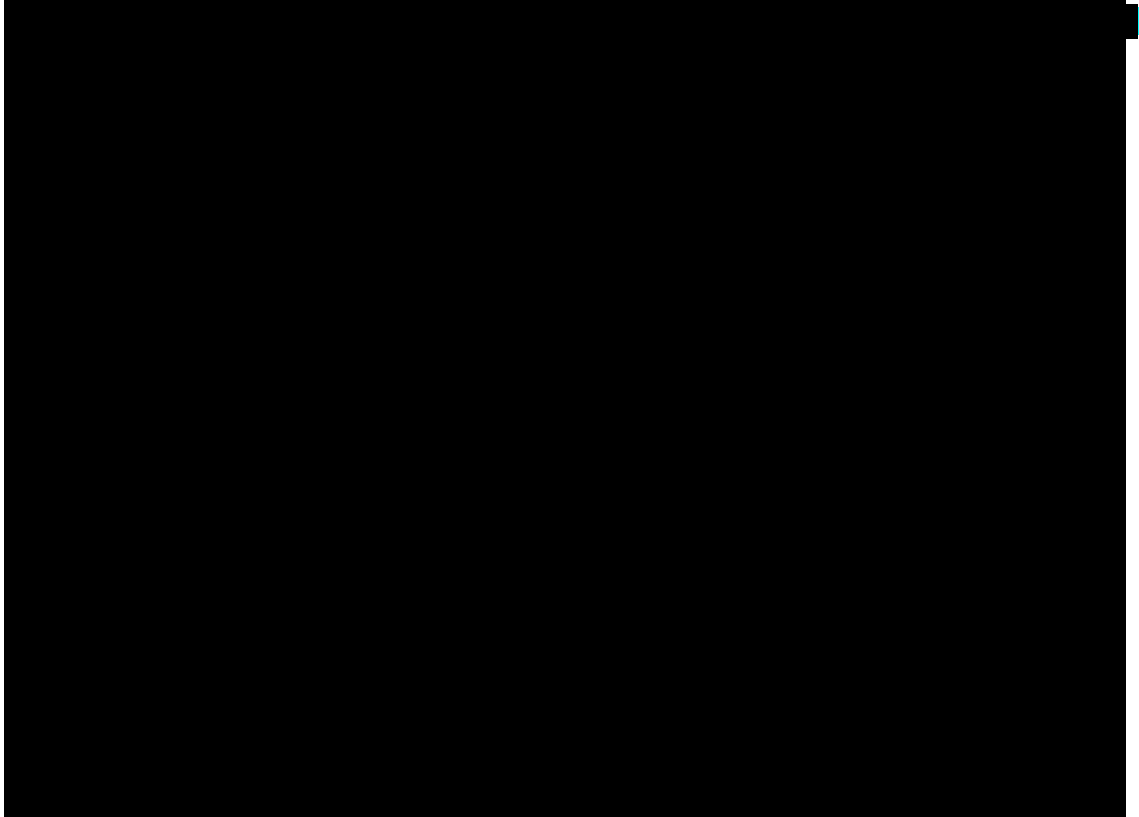
30.



²⁰ See <https://9to5mac.com/2020/04/30/tim-cook-iphone-se-android-switchers/>

²¹ Samsung, in particular, has been known to engage in aggressive direct comparison advertising against iPhone. See <https://medium.com/@anshulseli/marketing-strategy-apple-vs-samsung-3d4a710e139c>

²² For example, Samsung is one of many competitors that uses aggressive trade-in prices for iPhones to convince Apple customers to buy one of their devices. Samsung offers up to a \$700 credit towards the purchase of a new Galaxy phone for used iPhones. See Alex Ngo, *Samsung now accepting \$700 trade-ins for your Galaxy S10 or iPhone 11 Pro towards a new Galaxy S20*, Notebook Check (Feb. 2, 2020), <https://www.net-now-accepting-700-trade-ins-for-your-Galaxy-S10-or-iPhone-11-Pro-towards-a-new-Galaxy-S20.453713.0.html>.



31. It is also important to acknowledge that, for the purpose of defining a relevant market in order to assess market power, while the existing level of switching can be informative, the switching that would occur if Apple increased its prices or reduced service by comparison with alternatives is the relevant one.
32. Further, in durable goods marketplaces, such as smartphones and, in particular, where many end users are contractually committed for a reasonable time period (generally two years) with telecommunications carriers, opportunities for consumer decisions about choosing a new smartphone occur on a regular basis which coincide with the smartphone product cycles promoted by carriers. This market feature has motivated strong competition between smartphone operating systems and brands.

Market power

33. If the relevant market encompasses the distribution of both iOS and non-iOS apps, it is difficult to accept the Commission's characterisation of the Apple App Store as a "dominant app marketplace or as one of *"the two major app marketplaces"*.²³
34. In Apple's view, there is no evidence which suggests that Apple has market power in that it has an ability to act persistently in a manner materially different from the behaviour that would be observed for a firm in a "workably competitive" market. For example, Apple has no ability to restrict entry or significant expansion by rivals nor insulate itself from constraints from competition from rivals. On the contrary, Apple must engage in constant rapid innovation to remain a relevant choice for consumers or be left behind in hardware, software and services.

Apple faces significant competitive constraints

35. Apple submits that it specifically faces significant competitive constraints from other app marketplaces as developers have the ability to select among alternative app stores and walk

²³ See, for example, ACCC Issues Paper, p 10-11.

away from - in whole or in part - those marketplaces which impose rules detrimental to developers' interests.

36. Most notably, App Store prices (i.e., the App Store commission) continue to decrease. Apple has never had the market power to increase or even maintain its commission. Over the years, Apple commission has decreased, or Apple has increased options for developers to avoid its commission (like the Reader Rule and Multiplatform Rule) in order to remain competitive and differentiate itself against other app marketplaces.
37. There is substantial evidence that developers frequently choose one platform over another, either exclusively (single-homing) or in terms of development prioritisation (multi-homing, but devoting more resources to the platform appearing to provide a larger return). Based on 2012 data, only between 1.7% and 3.2% of the overall number of apps in the Apple App Store, Google Play, and the Windows Phone Store, multi-homed (depending on the calculation methodology used). Critically, the study also concluded that there is competition between marketplaces for the developers that generate the majority of app downloads ("nucleus developers").²⁴ Single-homing shows direct competition and substitution between platforms for developers.
38. Expectations of future profits are based in part on the stability of the rules governing the developer's business on the platform. Hence, the threat of new developers walking away constrains Apple's behaviour.

No demonstrated market failure

39. In light of the issues raised above, Apple's strong view is that no market failure arises from the Apple App Store or Apple's conduct.

Impact on downstream competition

40. Large market share alone is not sufficient to establish the existence of substantial market power (or the possibility of obtaining it) without sufficient barriers to entry (or expansion) so as to protect that market share (and supracompetitive prices) from being significantly eroded by industry entrants and/or expansion by other incumbents.
41. There is no evidence that the Apple App Store has adversely affected the rate or effectiveness of entry in the downstream market for provision of apps to consumers.
42. For example, since the introduction of Apple Music, some of the largest and most well-resourced companies in the world have entered and remained in the fray, including Spotify, Google, Amazon, and Tencent.²⁵ Between 2015 (when Apple Music was launched) and 2020, concentration among suppliers of paid music subscriptions has decreased,²⁶ with Spotify marginally losing share despite remaining the clear leader. The majority of the decrease in Spotify's share between 2015 and 2020 is accounted for by Amazon Music, YouTube Music, and Tencent Music (Spotify's Chinese Joint Venture) which have grown.

²⁴ Sami Hyrnsalmi, Arho Suominen and Matti Mäntymäki, "The influence of developer multi-homing on competition between software ecosystems," *Journal of Systems and Software*, Vol. 111, January 2016, pages 119-127, <https://www.sciencedirect.com/science/article/pii/S0164121215002010>. The study was based on 2012 data on 1,295,320 applications from 263,009 developers in three ecosystems: Apple's App Store (654,759 applications / 149,032 developers), Google Play (542,955 applications / 88,144 developers), and Windows Phone Store (94,606 applications / 25,833 developers). The lower bound percentage was calculated by comparing applications bearing exactly the same name across platforms; the upper bound involved comparing applications with identical *and* similar names (e.g., Facebook / Facebook Inc.) across platforms. *Id.*, pp. 122-123.

²⁵ MIDiA Research, Music Subscriber Market Shares Q1 2020 (June 23, 2020), reported in <https://musicindustryblog.wordpress.com/2020/06/23/music-subscriber-market-shares-q1-2020/>.

²⁶ See <https://www.goldmansachs.com/insights/pages/infographics/music-streaming/stairway-to-heaven.pdf> (2015); <https://musicindustryblog.wordpress.com/2020/06/23/music-subscriber-market-shares-q1-2020/> (2020).

43. By contrast, despite Apple's significant investment in the launch of Apple Music in 2015, Apple Music's share of global paid music streaming has stayed in the mid-to-high teens for the last few years and has never exceeded 20%: soon after entry in 2015 it was 15%,²⁷ and it remains virtually unchanged at 18% in 2020.²⁸ Apple Music's share in the Australian market is [REDACTED]
44. One feature of the choice of music available to consumers over the past 5 years is they have also benefitted by paying less for more.²⁹ On average, consumers of streaming services pay under US\$120 per year in subscription fees to get access to a library of tens of millions of songs, all of which they can continue access as long as they continue to subscribe.³⁰ Apple's presence in the music streaming marketplace has not only coincided with this decline in prices paid by consumers, but has often directly caused price drops. For example, Apple Music launched in 2015 with a free three-month trial period for consumers and a Family Plan option at a reduced rate. In response, Spotify increased its free trial period from one month to three months and lowered its own Family Plan rates to match Apple Music's. Similarly, Spotify reduced its prices to match Apple Music's student pricing.
45. The other downstream markets where Apple competes with its services has similar characteristics as the music market. Apple is not the leader in any segment. Apple's services, such as Apple Books, Apple TV+, Arcade, are small relative to other competitors in their respective markets.
46. The digital marketplace in which Apple operates and the methods of distributing software to consumers are rapidly expanding. Every desktop computer, notebook, television, phone, camera, car, game console, tablet, speaker, smart home accessory, eBook reader, wearable, is a method for distributing software to consumers. This list will continue to grow in the cellular mobile device and IOT arena with the emergence of 5G. These are all options for developers, and this competitive dynamic drives Apple to innovate and create new features and technologies to convince developers to create great apps for iOS.

Ability and/or incentive to preference first party apps

47. One of the issues raised in the ACCC Issues Paper is the ability and/or incentive for operators of app marketplaces, such as Apple, to preference their own first party apps or otherwise affect competition in the provision of apps. This is not consistent with the commercial reality of the Apple App Store.
48. Apple is incapable of meaningfully excluding downstream competition regardless of whether markets are defined as cross-platform or platform-specific:
- (a) First, to the extent downstream app markets are properly defined as cross-platform, Apple is unable to significantly skew distribution opportunities or the costs associated with distribution because the App Store represents only a small minority of distribution of mobile apps, and because Apple faces competitive pressure to ensure that popular and diverse apps are ported to and work optimally on iOS at the most favourable prices and other terms.
 - (b) Second, within the iOS platform, Apple is unable, by both design and necessity, to control the distribution of apps. As mentioned above, distribution options include developer websites and a wide variety of other platforms, including gaming

²⁷ See <https://www.goldmansachs.com/insights/pages/infographics/music-streaming/stairway-to-heaven.pdf> (page 7).

²⁸ See <https://musicindustryblog.wordpress.com/2020/06/23/music-subscriber-market-shares-q1-2020/>.

²⁹ See <https://data.bls.gov/PDQWeb/cu> (U.S. Bureau of Labor Statistics U.S. city average data, recorded music and music subscriptions; shows significant drop in price between 1997 and 2019).

³⁰ The best music streaming service you can subscribe to, Business Insider, Aug. 31 2020, <https://www.businessinsider.com/best-music-streaming-service-subscription?r=AU&IR=T>.

consoles, web-based gaming platforms, smart-TVs, and e-book readers. Because of Apple's reader and multiplatform services rules, users obtained through those alternative channels can use developers' apps on their iOS device free of any Apple commission and without Apple being involved in their relationship with the app developer.

49. In respect of incentive, and as raised in Apple's previous submissions to the Commission, far from being incentivised to preference our own apps, Apple is in fact incentivised to provide as many high-quality third party apps as possible for consumers in order to drive the sale of hardware products (our core business).
50. A key motivation for Apple's decision to create its own apps and services is to provide an even broader (and better) range of options to enhance the desirability of its devices and differentiate itself in an increasingly commoditised landscape – it is not to replace other apps. Rather, Apple's proprietary apps and services are designed to further enhance the attractiveness of Apple's devices to consumers.
51. As the Commission is aware, Apple's business model is focused on the sale of devices, which accounts for a significant majority (77%) of its global revenue.³¹ Apple has strong incentives to make the App Store as attractive as possible to third party developers, as a strong App Store ecosystem makes Apple's devices more attractive. Apple has no incentive to foreclose third party apps from the App Store even in circumstances where those apps compete with Apple's own apps. This is because availability of high quality apps on the App Store enhances the functionality of Apple devices and, by providing a superior user experience, increases their desirability for consumers. This in turn increases consumers' willingness to pay for iPhones and iPads.
52. In fact, as the table below shows, none of the most downloaded free and paid apps on Apple App Store in 2020 were Apple first party apps:³²

Table 1: Most downloaded free and paid apps on the Apple App Store in 2020.

	Free	Paid
1	Zoom	TouchRetouch
2	TikTok	Procreate Pocket
3	Disney Plus	Facetune
4	YouTube	HotSchedules
5	Instagram	AutoSleep Track Sleep
6	Facebook	The Wonder Weeks
7	Snapchat	SkyView
8	Facebook Messenger	Shadowrocket
9	Gmail	SkyGuide
10	Cash App	Forest - Stay Focused

Source: <https://www.fastcompany.com/90581745/these-were-the-most-downloaded-apps-of-2020-on-apples-app-store>

³¹ Apple Pty Limited Submission to the Digital Platform Services Inquiry App Marketplace Issues Paper dated 2 October 2020.

³² See <https://www.fastcompany.com/90581745/these-were-the-most-downloaded-apps-of-2020-on-apples-app-store>

53. Apple does not have separate App Store or IAP rules for apps in downstream markets in which it competes. Nor is there evidence or indications that Apple applies its uniform rules less favorably or less leniently depending on whether Apple competes downstream.
54. As the Commission will also see from Apple's response to the Notice, Apple does not bias App Store search results to favour specific apps or its own apps. Apple App Store search results are designed to give consumers the best experience to ensure the most relevant results are displayed. The pre-installation of certain apps on Apple devices is to ensure functionality of the device out of the box to maximise customer experience and all apps which Apple considers to be "default apps" are able to be changed by the user.

Apple App Store fee structures and anti-circumvention rules

55. The ACCC Issues Paper suggests that the fee structures of app marketplaces, such as the commissions collected on IAP, impacts app developers' cost structures and disadvantages their ability to compete. The ACCC Issues Paper also cites a complaint made by Spotify to European regulators regarding Apple's IAP requirements and fees. This is specifically addressed in the case study below.
56. None of Apple's App Store and IAP policies reflect market power or manifest exclusionary intent or any other factor or characteristic unique to Apple. Those policies are not unique to Apple. Indeed, all of the App Store rules – including both its commission levels³³ and its policies regarding use of Apple's IAP system and free-riding (anti-circumvention) – are commonplace in the industry across other digital platforms, regardless of the size or importance of the operator. These policies are implemented to protect platforms' business models and their ability to earn a return on investment.
57. The requirement to use IAP for sales of digital content through the App Store does not mean that developers are paying Apple to "use" IAP. Rather, developers pay for the use of the App Store when they sell **digital content** within iOS apps, and Apple collects its commission through IAP.
58. IAP is the technical implementation of Apple's monetisation strategy and commission model for the App Store – the mechanism that Apple uses to facilitate developer sales within iOS apps and to collect its commission on those sales. The functioning of IAP is dictated by the structure of Apple's commission, not *vice versa*. A decision to exempt IAP from Apple's commission would have undermined the entire business model of the App Store. Removing the obligation to use IAP would in turn make it practically impossible for Apple to collect its commission. This is why the requirement on developers to use IAP is coextensive with their obligation to pay Apple's commission – i.e., when selling digital goods and services through their iOS apps, but not when selling physical goods and services. Thus criticism of IAP is little more than a disguised complaint about Apple's commission itself.
59. It has been suggested by some that IAP is "payment processing" and that the 30% commission is Apple's fee for processing payments. This is a deliberate mischaracterisation of IAP. IAP is not a payment processor. Third-party payment processors, such as PayPal and Stripe, do not drive business to developers or provide tools, services and intellectual property to help them create apps. Payment Processors also provide no benefits to iOS users that rely on the use of a single, centralised payments feature. Likewise, Apple does not charge a 30% commission for payment processing. The 30% commission reflects Apple's business judgment as how to obtain a return on its significant investments in its third-party technology platform and the value of its distribution platform. This was acknowledged by Judge Gonzalez

³³ Numerous examples, recently substantiated by an analysis of publicly-available information conducted for Apple by the Analysis Group, confirm that a commission rate of 30% on in-app purchases is at ordinary market levels. The study conducted by the Analysis Group can be found here: https://www.analysisgroup.com/globalassets/insights/publishing/apples_app_store_and_other_digital_marketplaces_a_comparison_of_commission_rates.pdf.

Rogers of the US District Court for the Northern District of California who, in denying the preliminary injunction sought by Epic Games, Inc., noted:

"[t]he IAP system does not appear to be a payment processor in the same way that VISA, Mastercard, or PayPal is a payment processor; it is more akin to a link back to the App Store whereby the transaction must occur within the digital confines of the App Store".³⁴

60. Apple's practice of charging a commission on certain types of transactions is not unique. Many platforms charge commission rates comparable to or in excess of Apple's standard 30% or 15% commission. Many platforms also charge users a service fee for payments on top of their commissions, while Apple does not. Equally, anti-circumvention provisions are necessary to protect consumers and partners alike and reduce free-riding by requiring transactions to take place on their secure platforms and to safeguard the business model adopted.
61. Each of Amazon, Google, Samsung, and Microsoft have digital application stores that charge commissions similar to those charged by Apple, and each of these platforms have rules requiring certain transactions to occur within their proprietary in-app or in-store mechanisms (additional discussion regarding Spotify appears in the case study below):
- (a) Amazon requires developers to exclusively use Amazon's In-App Purchasing API or other methods Amazon makes available to developers and developers cannot direct or facilitate customer use of any other type of payment. The commissions charged depend on type of application:
 - (i) **30%:** Mobile apps and Mobile App In-App Products (excluding subscription In-App products and Amazon Underground apps);
 - (ii) **30%:** In-Skill Products;
 - (iii) **the lesser of 30% of retail price or 80% of the list price:** PC Games and PC Game In-App Products;
 - (iv) **20%:** Movies and TV subscription In-App Products sold in Mobile Apps;³⁵
 - (b) Google Play requires that developers offering products within an app "must use Google Play In-app Billing as the method of payment," other than for certain excepted offerings.³⁶ There is a **30%** commission for apps and in-app products offered through Google Play and a **15%** commission for any subscribers retained after 12 paid months;³⁷
 - (c) Samsung's Galaxy Store terms of service require that developers "shall not use customer information obtained from the Services to sell or distribute the Application without using the Services or STORE." There is a **30%** commission for any revenue generated and recovered by Samsung that arises from the distribution of

³⁴ Epic Games v. Apple Inc., Case No. 4:20-cv-05640-YGR (N.D. Cal. Oct. 9, 2020) at p 24.

³⁵ Amazon Developer Services Agreement, <https://developer.amazon.com/support/legal/da> (last updated 1 Jan. 2020).

³⁶ Google Play Developer Policy Center, Payments, <https://support.google.com/googleplay/androiddeveloper/answer/112622?hl=en>.

³⁷ Google Play, Service Fees, <https://support.google.com/googleplay/android-developer/answer/112622?hl=en>; Google Play Developer Policy Center, Payments, <https://support.google.com/googleplay/android-developer/answer/112622?hl=en>.

the developer's app using Samsung services and 20% commission if the developer is a Galaxy Store partner;³⁸ and

- (d) the Microsoft Store App Developer Agreement states that "New App and In-App Product submissions to the Store are required to use Microsoft's commerce engine to support purchase of any In-App Product(s) that are or can be consumed or used within your App." There is a 30% for non-subscription apps and games acquired in the Microsoft store and 15% for subscription apps in the Microsoft Store.³⁹
62. As raised in Apple's previous submissions, Apple does not realise any revenue from the vast majority of apps on the Apple App Store (84%), as the majority of activity on the Apple App Store does not result in a commission to Apple and is therefore not subject to IAP. This includes apps with advertising (e.g. BuzzFeed, Instagram); apps that sign-up customers themselves on their own websites (e.g. Amazon, Netflix, Spotify); apps that sell physical goods and services (e.g., Airbnb, Lyft), and free apps (e.g. Wikipedia) and apps with other business models (e.g., Chase).
63. Moreover, as outlined above, there are multiple ways for app developers to reach iOS users that do not involve the Apple App Store and therefore provide avenues for developers to avoid paying commissions to Apple.

Case study: Spotify

Spotify is one of the most popular music services in the world and competes with Apple Music.

Spotify's own commissions and anti-circumvention rules

Spotify's own platforms collect higher commissions and apply more restrictive anti-circumvention rules than Apple's policies. Spotify owns a leading podcasting platform, Anchor,⁴⁰ and charges podcasters a 30% commission for any sponsor advertisements conducted through the Anchor platform, in addition to charging a **processing fee** on top of the commission. If Anchor users elect to monetise their podcasts via the platform, they pay a 30% commission to Anchor. This is described by Spotify as allowing the company to "build a sustainable business model that benefits everyone".⁴¹ Spotify's complaint is disingenuous when it argues that it is entitled to directly monetise its music streaming app through Apple's platform without paying a commission, while at the same time running a platform that acknowledges the enormous platform-wide benefits when some (but not all) commercial activities of those available on the platform are subject to a commission.

Spotify also operates a platform with a non-circumvention policy that is significantly more expansive than the App Store rules. SoundBetter by Spotify for Artists is Spotify's platform for connecting music services providers and customers. SoundBetter takes a commission from transactions made on the platform, and also implements an anti-circumvention policy that prohibits users that have initiated a project from avoiding the SoundBetter platform and fees, including an **outright ban** on any transactions that occur outside the platform if the users met through the platform. In the event of a breach of Spotify's SoundBetter anti-circumvention terms, Spotify is entitled to the **greater** of US\$1000 or the fees it would have otherwise collected.

³⁸ Samsung Galaxy Store Portal, Terms and Conditions, <https://seller.samsungapps.com/help/termsAndConditions.as>.

³⁹ Microsoft Store App Developer Agreement, Version 8.5 (Effective date 14 Jan. 2020), <https://query.prod.cms.rt.microsoft.com/cms/api/am/binary/RE4o4bH>.

⁴⁰ Anchor is joining Spotify, Anchor, <https://medium.com/anchor/anchor-is-joining-spotify-70356e3ac23f>.

⁴¹ Introducing Anchor Sponsorships, the podcast advertising platform for everyone, Anchor, <https://medium.com/anchor/introducing-anchor-sponsorships-the-podcast-advertising-platform-for-everyone512870baa32b>.

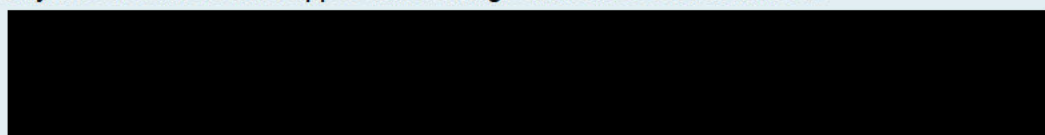
Compared to Apple's App Store Review Guidelines, this is a much more restrictive policy. Apple's guidelines allow developers like Spotify to market and sell digital content outside their apps without Apple collecting any commission (see below).

Ability to reach customers outside of Apple App Store

Spotify sells its Premium subscriptions through distribution deals with mobile phone carriers and the manufacturers of internet-enabled smart speakers and game consoles, as well as on its website. Another route for Spotify to develop its Premium (i.e. paying) user base is through online marketing. Paid online search advertising and marketing on social media are particularly powerful as they allow advertisers to directly target specific customer groups in a short period of time.

Spotify can target iOS users when marketing its Premium service on Google, Facebook, Twitter, Instagram, YouTube and LinkedIn. Spotify is also able to advertise its Premium service through its own iOS app, even without offering IAP in its app.

Spotify has used its reader app to build a huge and successful business:



Therefore, to suggest that Apple App Store fee structures are capable of stifling the way app developers compete ignores the reality that developers have chosen and can freely bypass the App Store, or if they do use the Store, to avoid paying those commissions.

Security and privacy

64. The ACCC Issues Paper raises a potential concern that the processes for vetting apps before they are released onto app marketplaces "can affect app providers' ability to reach consumers with their apps."⁴²
65. The reason for Apple's rigorous App Store Review Process is focused on ensuring Apple delivers on its promise that apps are held to a high standard for privacy and security - and has nothing to do with impacting providers' ability to reach consumers with their apps. iOS is widely acknowledged as the most secure operating system in the market. Our users trust Apple and that trust is also critical to how we operate a fair, competitive store for developer app distribution. The more users trust their mobile device and the App Store, the more they are open to downloading and discovering apps, and the more that app developers benefit.
66. The App Store Review Process is designed to protect users and developers alike from fraud, malware, and unwarranted intrusion into their privacy. This is critical, as the iPhone operates in a different environment than a computer. Products like the iPhone could offer access to a trove of users' personal data — data that unscrupulous actors could seek to collect or exploit. Apple expended significant effort to put various controls in place, allowing us to "turn off the spigots" when harmful third-party apps are detected.⁴³ As Steve Jobs explained in 2007, "[y]ou don't want your phone to be like a PC. The last thing you want is to have loaded three apps on your phone and then you go to make a call and it doesn't work anymore."⁴⁴ Therefore, many apps are rejected simply because they have software glitches or bugs, and/or would compromise users' data privacy or security.

⁴² ACCC Issues Paper, p 14.

⁴³ Steve Jobs Introduces the App Store – iPhone Software Roadmap Event, YouTube (Mar. 6, 2008).

⁴⁴ John Markoff, *Steve Jobs Walks the Tightrope Again*, N.Y. Times (Jan. 12, 2007), <https://www.nytimes.com/2007/01/12/technology/12apple.html>.

67. Apple's focus on privacy and security means there is a significantly smaller number of malicious iOS apps than those available on Android.⁴⁵ In 2018, the iPhone platform accounted for just 0.85% of malware infections. By contrast, Android accounted for 47.15% and Windows/PC accounted for 35.82%.⁴⁶ Among app stores, Android app stores have significantly higher numbers of malicious apps than the App Store.⁴⁷ Incorporating third-party app stores into iOS would undermine Apple's carefully created privacy and security safeguards, and would seriously degrade the consumer experience and put Apple's reputation and business at risk. Apple would have no reliable way of delivering on its commitment to consumers that every app available for download meets Apple's rigorous standards for security and privacy.
68. Apple would be happy to meet and discuss these issues further with Commission staff if this would assist in the further work of the Commission in properly examining the full context in which the Apple App Store marketplace operates in the much larger online world in which it competes.

⁴⁵ *Internet Security Threat Report*, Symantec, at 11 (Apr. 2016) ("Apple is well-known for its stringent screening processes, which is why the number of malicious iOS apps is so much smaller than for Android."), <https://docs.broadcom.com/doc/istr-21-2016-en>.

⁴⁶ See *Nokia Threat Intelligence Report – 2019*, Nokia, <https://pages.nokia.com/T003B6-Threat-Intelligence-Report-2019.html>.

⁴⁷ See Jordan Herman, *2019 Mobile App Threat Landscape Report*, RiskIQ (2019), <https://www.riskiq.com/research/2019-mobile-threat-landscape-report/>.