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Microsoft

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Kate Reader and Morag Bond
Co-General Managers, Digital Platforms Unit
Australian Competition and Consumer Commission
175 Pitt St.
Sydney NSW 2000

Dear Ms Reader and Ms Bond,

We appreciate the opportunity to afforded to the public by the Australian Competition and Consumer Commission (**ACCC**) to comment on the Issues Paper informing the Digital Platform Services Inquiry March 2021 report on app marketplaces (**Report**).

At Microsoft, we strive to create local opportunity, growth, and impact in Australia, and every country in which we operate around the world. From our company's inception more than four decades ago, Microsoft has worked to democratize and personalize technology for every person and every organization. Microsoft's technology has contributed to the achievements of many individuals, small businesses, large enterprises, governments, hospitals, and schools in every corner of the world. Our platforms help to teach children, make people and businesses more productive, and enable others to create jobs.

Microsoft is a technology company with deep experience in Australia. It has operated and employed people directly in Australia since 1985, and today employs more than 1,800 Australians. Microsoft also has a network of over 10,000 "partner businesses" in Australia that are certified to supply Microsoft products and services; almost 70% of them are Australian small businesses. These businesses employ almost 300,000 Australians in highly skilled jobs, in every corner of the country – and they contribute over $20 billion of Microsoft-attributable revenue to the Australian economy annually. Microsoft's Australian partners invested $1.5 billion into building new and repeatable intellectual property in 2016.

Microsoft believes it is well positioned to provide insights to the ACCC relevant to its forthcoming Report. Microsoft is the developer of Windows 10, a popular general operating system, which serves as a platform for millions of products and services. And Microsoft operates a digital app store that developers may use to distribute apps for Windows 10: the Microsoft Store.

Microsoft is also a developer of applications for mobile platforms that are distributed through the leading mobile app stores, the Apple App Store on iOS and the Google Play Store on Android. These apps include productivity apps

(Outlook for iOS, Microsoft To-Do, etc.), communications apps (Skype, Teams), search (Microsoft Bing), social media (LinkedIn and Yammer), web browsing (Microsoft Edge), and others. Microsoft is also a developer of games that are offered on iOS and Android, including *Minecraft*, *Forza Street*, *Gears POP!*, *Solitaire*, *Wordament*, and others.

Because Microsoft is a platform owner and a software developer, we believe that we have a unique perspective on how to fairly balance their distinct interests. The issue is timely and vital. Apps play an important role in the daily lives of billions of consumers and enable the modern digital economy for millions of businesses. As the ACCC recognized in the Issues Paper, app stores have become a critical gateway for these apps to some of the world's most popular digital platforms. We have recently raised questions and expressed concerns about app stores on other digital platforms. In particular, and as detailed below, we have criticized Apple's App Store rules and policies that block game streaming apps such as our own Xbox Game Pass service with Cloud Gaming (formerly known as **Project xCloud**) from the iOS platform.

In addition to sharing our own experience, we also would like to offer constructive ideas and a path forward on how to operate app stores in a way that protects choice, ensures fairness, and promotes innovation. To that end, earlier this month, we articulated ten principles to govern Windows 10 and the Microsoft Store on Windows 10.[1] The principles accomplish two goals. First, they ensure that Windows 10 remains an open platform and developers can choose how to distribute their apps, whether through the Microsoft Store, a third-party app store, directly over the Internet or other means. Second, when developers choose the Microsoft Store, the principles provide them with the assurance that they will be treated fairly, e.g., they will be held to the same objective standards as others, will face reasonable, competitive fees that reflect the value they receive, and can be confident we will not use the Microsoft Store to tilt the playing field to our advantage. Principles such as these may provide the ACCC with a view on how to approach some of the concerns highlighted in its Issues Paper.

Microsoft Game Pass app and the Apple App Store

In September 2020, Microsoft began the rolling launch of its Xbox Game Pass service with Cloud Gaming (formerly known as Project xCloud). The service enables gamers to enjoy a "Netflix-like" streamed gaming experience. Rather than having to purchase and download individual games to their devices, gamers can download the Game Pass app (a lightweight app that connects to the Game Pass service) and use their Game Pass subscription to browse, select, and play games running in the cloud and streaming to their devices. The available rotating selection enables gamers to access hundreds of first- and third-party games that require more computing power, storage, and functionality than any mobile device can support on its own hardware (i.e., games that are today played using consoles and PCs). Xbox Game Pass with Cloud Gaming is also designed to support in-

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[1] https://blogs.microsoft.com/on-the-issues/2020/10/08/app-store-fairness-caf-interoperability-principles/.

app purchasing (**IAP**), enriching the experience for gamers and providing game developers with the opportunity to monetize or monetize further.

The service is currently available in 22 countries, including the United States, and will be available in Australia in 2021. It includes games from Australian game developers such as Krome Studios and Tantalus Media. However, the service is only available on Android devices, Windows PCs, and Xbox consoles; it is currently blocked by Apple from its App Store and unavailable on the iOS platform.

For consumers using Apple iOS devices, the Apple App Store is the only way to download and install apps, and Apple decides in its sole discretion what apps to allow or prohibit on its platform. For years, iOS has been the most popular mobile operating system in Australia with greater than 50% market share.[2] Thus, to reach their Australian customers on mobile devices, app developers such as Microsoft must be able to distribute their apps through the Apple App Store on fair and reasonable terms.

Observations regarding the importance of games to Apple

Games are the single largest source of Apple App Store revenues. In 2018, approximately 71% of spend in the Apple App Store was generated in connection with games ($33.2 billion).[3] The percentage of total spend reduced slightly to approximately 68% in 2019 but increased in value to $37 billion.[4]

Global Consumer Spending in Mobile Games for 2019
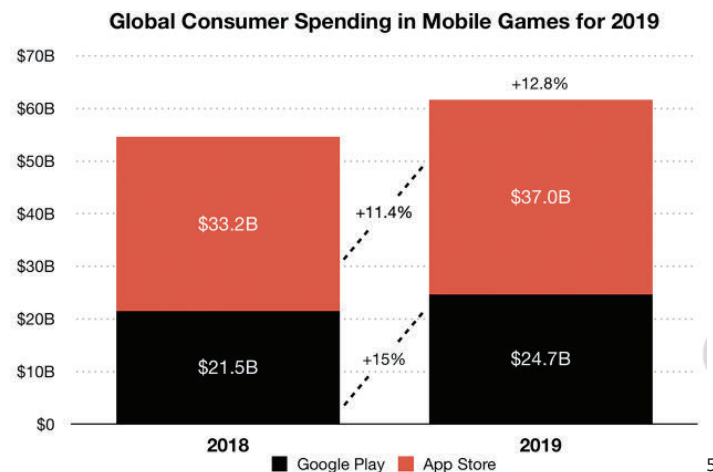
In addition, gaming revenues via the App Store contribute significantly to Apple's "services" business. Although Apple's hardware business is well known to the public, as growth in device sales slowed, Apple has focused investors on the potential of its services business. Indeed, in 2017, Apple CEO Tim Cook

[2] https://www.statista.com/statistics/861532/australia-mobile-os-share/, https://gs.statcounter.com/os-market-share/mobile/australia.

[3] https://sensortower.com/blog/app-revenue-and-downloads-2019.

[4] *Id.*

[5] *Id.*

pledged to double Apple services revenue to $46 billion by 2020.[6] As a result, Apple's services accounted for 16.1% of its revenue in the fiscal Q2 2018 and nearly 20% of its revenue in fiscal Q2 2019. Apple CFO Luca Maestri says services now account for "one-third" of the company's gross profits.[7] Apple attributes this recent increase in services sales in large part to higher net sales in the App Store.[8]

In Australia, mobile gaming this year has significantly increased, with surveys finding that "57 percent of Australians now play games daily on their mobiles, up from 43 percent prior to the COVID-19 outbreak."[9] Since the pandemic began, there has been a 40% increase in new Australian customers introduced to mobile gaming.[10]

Apple has its own mobile gaming subscription service: Apple Arcade. Launched in 2019, the service offers gamers access to more than 100 games. Apple provides the service with prime placement in the App Store, prominently displaying it on the App Store's front page as a unique "store within a store" that need not be searched for or otherwise "discovered" by consumers:

App Store Home Screen   Arcade Home Screen   Arcade Home Screen
(scroll down)
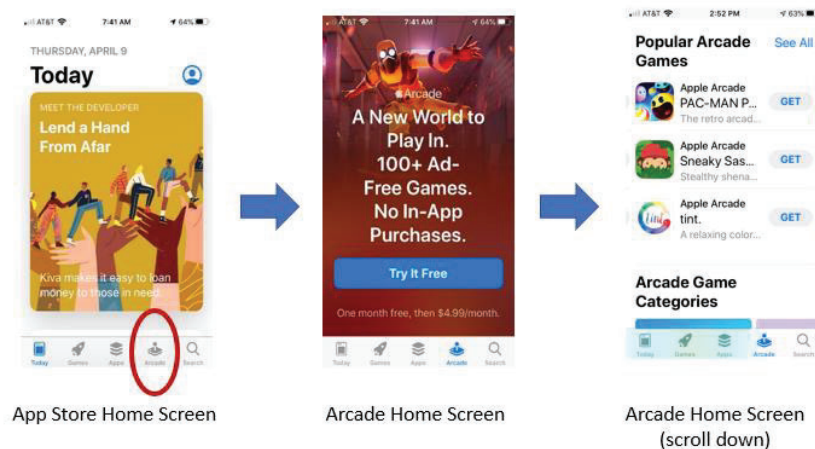
No other third-party game or gaming subscription service benefits from similar preferential and advantageous treatment in the App Store.

Arcade, however, has no streaming functionality and unlike cloud game streaming, games available in Arcade have limited quality and sophistication due to the hardware limitations of mobile devices. The individual games are

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[6] https://www.cnbc.com/2020/08/19/apples-2-trillion-value-proof-that-tim-cooks-services-plan-worked.html.

[7] https://techcrunch.com/2019/04/30/services-really-are-becoming-a-bigger-part-of-apples-business/

[8] https://investor.apple.com/sec-filings/sec-filings-details/default.aspx?FilingId=14298796

[9] Lance Traore, "Mobile gaming is Australia's fastest growing entertainment channel," MARKETING MAGAZINE, 13 July 2020 (citing data from AdColony), *available at* https://www.marketingmag.com.au/hubs-c/opinion-mobile-gaming-is-australias-fastest-growing-entertainment-channel/.

[10] *Id.*

downloadable by subscribers (such that they can also be played offline on more limited iOS device hardware).

Microsoft's experience with Apple App Store Restrictions

The rules and policies of Apple's App Store have blocked Microsoft and other cloud game streaming providers from offering game streaming apps to consumers on iOS devices. Prior to 11 September 2020, Apple prohibited game streaming apps from its App Store entirely.[11] Following public criticism regarding these restrictions, Apple made changes to its App Store policies on 11 September 2020 to nominally "permit" game streaming apps.[12] But they do not solve the problem. Apple's policies, both new and old, continue to restrict providers from offering game streaming to Australian consumers, including by restricting apps like Microsoft's Xbox Game Pass:[13]

- Individual download: Games offered in a streaming game service must be listed and downloaded separately and directly from the Apple App Store.[14] Any app that provides a catalogue of games in a subscription service must link users to the Apple App Store listing for each game.

- Individual review: Each game offered in a streaming game service must be individually reviewed and approved by Apple to be listed in the Apple App Store.[15]

- IAP: All apps must use Apple's payment system to transact the sale of digital goods and services (through which it takes 30% of the value of such transactions).[16] Apps are prohibited from including buttons, external links or other calls to action that direct consumers to purchasing mechanisms other than in-app purchase.[17]

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[11] Prior Apple App Store policies included a prohibition against subscriptions offering access to third-party apps, services, or games (Policy 3.1.2(a)). Games offered in a subscription were required to be owned or exclusively licensed by the app developer (Policy 3.1.2(a)). Each game in a subscription must be a separate download from the iOS App Store (Policy 3.1.2(a)). "Thin clients for cloud-based apps" were not permitted (Policy 4.2.7). Any app that acted as a "mirror of specific software or services" could only connect to a user-owned host device connected to the iOS device on the same local, LAN-based network (Policy 4.2.7). *See* https://web.archive.org/web/20200901190956if_/https://developer.apple.com/app-store/review/guidelines/.

[12] https://arstechnica.com/gaming/2020/09/apple-allows-streaming-games-on-ios-but-theres-a-catch/.

[13] https://developer.apple.com/app-store/review/guidelines/.

[14] Policy 3.1.2(a).

[15] Policy 4.9.

[16] Policy 3.1.3(a) allows users to consumer content in the app that was not purchased in-app, provided that the user is not directed away from Apple's payment systems. The exception does not apply to games. Policy 3.1.3(b) creates an exception for multiplatform services (content consumable within an app which is acquired elsewhere, as long as the content is also available for purchase in-app (using Apple's payment systems)).

[17] Policy 3.1.1.

- Access to content purchased outside the app: Apps that operate across multiple platforms that allow users to access content, subscriptions, or features that they have purchased outside of iOS, including consumable items in multi-platform games, must also make those items available as IAPs using Apple's payment system.[18]

- Sideloading: The iOS operating system prevents apps being sideloaded onto devices running iOS.[19]

The Apple App Store policy restrictions prevent game streaming apps like Microsoft's Xbox Game Pass app and other, similar apps from offering an alternative to the App Store's traditional "download to play" model. These restrictions prevent the core innovations that make cloud game streaming attractive to customers - they prohibit the offering of a game catalogue that enables gamers to access and stream multiple games.

By way of comparison, part of the customer value proposition of subscription entertainment streaming services (whether movies, TV, music, or games) is the prospect of being able to quickly and easily "snack" on a huge variety of content accessible from a central catalogue and included as part of a single subscription price. Netflix users might click on a TV show from the Netflix catalogue, watch a few minutes, and then go back to the catalogue to watch something different. Spotify users might select a song from the Spotify catalogue, listen to part of it, then go back to the catalogue to continue browsing. Under the Apple App Store policies, a customer cannot have this experience for games. For game streaming services, customers would need to open the catalogue app, sign in, browse for a game, select it, then be redirected to the Apple App Store, download a separate app from the Apple App Store, launch that app, sign in to the service again, and only then can they play the game. If the customer decides to play a different game, the process must be repeated. If content is removed from Game Pass, customers may find that they have broken or "dead" apps on their devices with no explanation. If software updates are required, customers may face the prospect of having to update hundreds of individual apps at the same time. Such a process would be unthinkable for the way consumers use other entertainment streaming services.

From the perspective of iOS and the App Store, there is no engineering difference between game streaming and the largely unrestricted streaming of other content (e.g., Netflix). Apple has not set forth any technical reason that games should be treated differently than other types of streamed content, stating only that it wants to review each game individually.[20] And Apple would have the same ability to review and remove a game streaming app from the App Store as it does any other app if it contains content that violates Apple's content policies. In any event, all

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[18] Policy 3.1.3(b).

[19] While the Apple Enterprise Developer Program enables enterprises to install "trust certificates" on iOS devices that allow employees to sideload trusted enterprise apps, the program is specifically designed only for that use case and requires approval from Apple (see https://developer.apple.com/programs/enterprise/).

[20] https://www.windowscentral.com/apple-responds-xbox-project-xcloud-ios-roadblock-citing-store-policies

games available in the Xbox Game Pass catalog are rated for content by independent industry ratings bodies such as the ESRB and regional equivalents.

The Apple App Store policies also create difficulties for game streaming providers and their third-party developer partners. Under these policies, streaming service providers need to obtain permission from each third-party publisher to publish a standalone app for that publisher's game to the App Store. Publishers might not want to take this step because of the resources required to separately test and verify the standalone apps for flaws and bugs, the risk of poor ratings and reviews that they can't address, and the poor customer experience described above. Further publishers may worry about customer confusion and dissatisfaction arising in situations where the publisher itself has already listed other similar mobile versions of their game in the App Store,[21] or if multiple game streaming services (such as Xbox Game Pass and Google Stadia) were to follow Apple's policies and both make the same "streamed game app" available in the App Store.[22]

In addition, Apple's IAP restrictions continue to be an issue, as every game developer that wants to enable IAP in its Game Pass games on iOS would have to go back and recode every game to incorporate Apple's IAP payment system. Game developers would not be able to redirect or even inform customers about other ways to make IAPs outside iOS. There is no technical need for IAP to use Apple's payment system. Indeed, Apple allows apps to use its payment system of choice for the in-app purchase of non-digital goods and services, e.g., books, transportation, food, vacation rentals. Further, Apple recently permitted Amazon to begin using its own payment system for the delivery of digital content through the iOS Amazon Prime app.[23]

Apple's IAP restrictions raise costs and creates engineering difficulties for app developers that make cloud game streaming services more difficult and costly on iOS, even though IAPs are separate and distinct transactions from the initial download of the relevant app and could otherwise be made using any the other devices on which gamers can access the service. They also preclude gamers from being able to multi-home across devices to play games through game streaming services like Game Pass. Apple could work out alternative payment arrangements with competing gaming app providers for IAPs on iOS. Offering consumers fewer payment options, not to mention just a single payment option, does not benefit consumers.

The Apple App Store policies make no practical or technical sense and unnecessarily create home screen clutter, time-consuming extra steps, and

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[21] For example, Microsoft distributes a console version of its popular game Minecraft that is available in Game Pass, but also distributes a mobile version with the same name. The two games are similar but not identical, and the mobile version is purchased separately from the console version.

[22] For example, third-party developer Bungie's popular game *Destiny 2* is available on both Xbox Game Pass and Google Stadia.

[23] https://www.theverge.com/2020/4/3/21206400/apple-tax-amazon-tv-prime-30-percent-developers.

engineering difficulties. These policies exclude game streaming services from the App Store by making them unattractive to gamers and unworkable for providers.

Conclusion

Microsoft recognizes that app stores add value to a platform, are costly to develop and maintain, and must have policies in place that ensure user security and privacy as well as protection and value for developers. But certain app stores, such as Apple App Store, have become critical gateways to the world's most popular digital platforms. Because of this, Microsoft believes that such app stores must operate fairly in a way that promotes competition, innovation, and choice.

Please let us know if you have any questions regarding our observations and comments or if you need any additional detail or information for the Report.