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**Rebecca Fenech**

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**From:** [REDACTED]@gracosway.com.au >  
**Sent:** Wednesday, 12 April 2023 3:03 PM  
**To:** Digital Monitoring  
**Cc:** [REDACTED] (GRACosway)  
**Subject:** Epic Games - Submission  
**Attachments:** Epic Games - ACCC DPSI Submission (September 2023 interim report).pdf

[REDACTED]

Good afternoon

Please find attached the submission for **Epic Games** in response to the Digital Platform Services Inquiry – September 2023 Report on the expanding ecosystems of digital platform service providers.

If you have any questions, please don't hesitate to contact me.

*I can confirm that GRACosway is registered under the Federal Lobbyist Register and lists Epic Games as a client.*

Kind regards

[REDACTED]

[REDACTED] [@gracosway.com.au](mailto:[REDACTED]@gracosway.com.au)

Level 21, 6 O'Connell Street, Sydney NSW 2000



[REDACTED]

For the public register



12 April 2023

Digital Platform Services Inquiry  
Australian Competition and Consumer Commission

Via email: [digitalmonitoring@acc.gov.au](mailto:digitalmonitoring@acc.gov.au)

Dear DPSI team

Epic provides this public submission to the Australian Competition and Consumer Commission (ACCC) to address a number of key issues raised by the Digital Platform Services Inquiry (DPSI) on the expansion of digital platform services and to provide its views on relevant matters for the purposes of the ACCC's interim report due to be released in September 2023.

### **Expansion of Apple and Google's ecosystems**

As the ACCC has identified, large providers of digital platform services have continued to expand into a vast array of interrelated products and services outside of their initial or core digital platform ecosystems<sup>1</sup>. Google has expanded from general search and search advertising services into developing and offering its own mobile operating system and also a cloud storage system, Google Drive. Google now offers an increasing range of desktop and mobile applications through its mobile app store, Google Play, and owns and operates an in-app payment processor for the purchase of in-app digital content. Similarly, Apple has expanded from a supplier of personal computing devices and operating systems to a key distributor of mobile apps through the Apple App Store and provider of alternative payment services.

The expansion of these platforms has enabled Apple and Google to leverage their market power across their services which has resulted in a number of competition harms as they have inhibited rivals from competing on their merits. Apple faces no constraints on its market power in relation to iOS app distribution or in-app payment processing because non-iOS app platforms do not constrain Apple's monopoly power because they are not compatible with iOS devices. While Android devices permit alternative app marketplaces, these are not viable alternatives for developers as the Google Play Store is the dominant store and the other smaller stores trail far behind in terms of user base. The Google Play Store is pre-installed and displayed on the home screen of most Android devices meaning that its dominance is further entrenched. Google also imposes challenges for consumers to directly download

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<sup>1</sup> Australian Competition and Consumer Commission, 'Digital Platform Services Inquiry – September 2023 Report on the expanding ecosystems of digital platform service providers – Issues Paper'. Available at [https://www.accc.gov.au/system/files/Digital%20platform%20services%20inquiry%20-%20September%202023%20report%20-%20Issues%20paper\\_0.pdf](https://www.accc.gov.au/system/files/Digital%20platform%20services%20inquiry%20-%20September%202023%20report%20-%20Issues%20paper_0.pdf)

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apps via an alternative method to the Play Store by imposing multiple steps and numerous security warnings.

Apple and Google impose contractual restrictions that limit app developers from choosing more competitively priced alternative in-app payment systems by mandating that developers exclusively utilise Apple and Google's proprietary in-app payment systems, and then forcing them to pay exorbitant rates for those services. In the case of iOS, these contractual restrictions impose an outright ban on the distribution of applications outside of the App Store. In the case of Android, Google imposes technical impediments, including multiple warning screens and requires settings adjustments, which discourage users from directly installing applications onto their mobile devices. These restrictions have prevented the establishment of otherwise viable in-app payment systems that could compete with each of the payment processors offered by Apple and Google.

### **Types of conduct that Apple and Google have engaged in to leverage their market power and limit competitive threats.**

As the ACCC has identified, there are a number of practices that can be harmful to competition and prevent or inhibit rivals' ability to effectively compete<sup>2</sup>. Apple's iOS and Google's Android OS do not compete in the same market on account of iOS being non-licensable to non-Apple devices, while Google relies on the license of its Android OS to third-party OEMs. As a result, Apple and Google have substantial market power in respect of the iOS and Android OS ecosystems, and do not meaningfully constrain one another. Consumers are also deterred from leaving an OS due to the difficulty and costs of switching.

The ACCC has identified a number of practices as potentially problematic conduct, specifically tying, self-preferencing and pre-installation<sup>3</sup>. Apple and Google both preference their respective app market places. Apple only permits the downloading of apps via the App Store, Google preferences the Play Store by requiring the pre-installation of the Play Store and positioning it on the default home screen of Android mobile devices. While consumers can directly download from a third-party website on the internet to Android devices, this has significant practical limitations. Direct downloading involves manually downloading an app from a third-party website on the internet, however, consumers are then subject to a number of steps and misleading and unnecessary security warnings imposed by Google, affecting the willingness and comfort of consumers to download apps via this alternate method to the Google Play Store.

Developers who wish to distribute their apps via the App Store and Play Store are required to use the related in-app payment system. In addition to opening up alternative means of mobile app distribution, prohibiting the tying of proprietary in-app payment systems to app distribution would be an important complementary remedy. App developers should be able to choose which payment system providers process in-app payments for digital goods on their mobile devices – just as they are able to do now on their macs, Chromebooks and PCs. This is not available to developers who distribute their apps through the App Store and Google Play Store, because Apple and Google prohibit it by tying payment processing to distribution in their respective app stores. Without this choice – and the attendant competition for payment processing – there is no market discipline on Apple and Google's ability to unilaterally set rates for payment processing, nor is there any competitive pressure for Apple

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<sup>2</sup> Australian Competition and Consumer Commission, 'Digital Platform Services Inquiry – September 2023 Report on the expanding ecosystems of digital platform service providers – Issues Paper'. Available at [https://www.accc.gov.au/system/files/Digital%20platform%20services%20inquiry%20-%20September%202023%20report%20-%20issues%20paper\\_0.pdf](https://www.accc.gov.au/system/files/Digital%20platform%20services%20inquiry%20-%20September%202023%20report%20-%20issues%20paper_0.pdf)

<sup>3</sup> Ibid.

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or Google to innovate. Contrary to Apple and Google's claims, there is nothing illicit about sideloading or alternative app stores that justifies Apple or Google's conduct or attempts to limit competition. In fact, application "sideloading" is substantially similar to the application "downloading" that consumers safely perform every day on their macs, Chromebooks and PCs. The choice between competition and security is not binary.

### **a. Apple's ecosystem**

Typically, Apple iPhone and iPad users will use only iOS devices and will not also use mobile devices with a different OS. Apple's iOS is a proprietary ecosystem. All iPhone and iPads are shipped with iOS pre-installed. Unlike Google's Android OS, Apple does not licence iOS nor does it permit iOS to be used on other, non-Apple devices. In terms of app distribution, Apple expressly prohibits app distribution other than through the Apple App Store.

Apple created the App Store in 2008, shortly after it released the first iPhone, to provide a place for iPhone users to discover and download apps.

The vast majority of mobile apps are free to download but have built in optionality that often allow users to make purchases within an app for upgrades, premium features, subscriptions and further content. The ability to distribute and reach mobile device users is essential for all mobile app developers given the importance and value placed on apps by mobile device users. The ability to provide users with the option of purchasing in-app content is also often essential for mobile app developers to monetise their app.

Apple not only designs and manufactures the iPhone but also operates the proprietary iOS mobile operating system exclusively made for Apple mobile devices and limits app downloads exclusively to its Apple App Store. Apple faces no constraints on its market power in relation to iOS app distribution or in-app payment processing. Non-iOS app platforms do not constrain Apple's monopoly power because they are not compatible with iOS devices, they cannot provide iOS users with apps for their devices, and they do not contain iOS compatible apps. If a developer does not develop apps for iOS, the developer must forgo all of the over one billion or so iOS users.

### **b. Google's ecosystem**

A consumer who has an Android device cannot use apps created for a different mobile operating system. There are a number of different app stores designed for use on Android mobile devices apart from the Google Play Store (such as Amazon's Appstore and Samsung's Galaxy Store). However, these trail Google Play Store significantly in terms of users and content. Further, due to Google's contractual and technical restrictions, since 2011 the Google Play Store has been pre-installed on, and displayed on the home screen of, more than 90 per cent of Android devices globally (excluding China). Two alternate technical routes (direct downloading and alternative app stores) which are available have significant practical limitations and therefore do not impact Google's significant market power in the android app distribution market.

Because of Google's success in maintaining its dominance in Android app distribution, there is no viable substitute to distributing Android apps through the Google Play Store that reaches users at scale. As a result, the Google Play Store offers over 3 million apps, including all of the most popular Android apps, compared to just 700,000 apps offered by Aptoide, the Android app store with the next largest listing. The Google Play Store thereby benefits from ongoing network effects based on the large number of participating app developers and users. The large number of apps attracts large numbers of users, who value access to a broad range of apps, and the large number of users attract app

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developers who wish to access more Android users. Android OEMs too find it commercially unreasonable to make and sell phones without the Google Play Store, and they view other app stores as poor substitutes for the Google Play Store because of the lower number of apps they offer.

Google also owns and licences a range of proprietary apps (including the Google Play Store, Google Search, Google Chrome, Google Maps, Gmail and YouTube), known as Google Mobile Services, to OEMs; and owns and operates an in-app payment processor (Google Play Billing) for the purchase of in-app digital content that is consumed within the app.

### **Consumer and competition harm resulting from Apple and Google's expanding ecosystems**

The ACCC has expressed a view in its previous DPSI reports suggesting that closed digital platform ecosystems may reinforce barriers to competition and restrict interoperability between services outside of their ecosystem<sup>4</sup>. Apple and Google's control of and conduct in iOS and Android markets, mobile app distribution, in-app payment processing and cloud sharing services create and reinforce significant barriers to entry. Consumers are also deterred from leaving either OS system due to the difficulty and costs of switching. In addition, this is further enhanced by the substantial switching costs imposed by Apple and Google on users, including that a customer wishing to switch between operating systems would need to purchase a new phone.

Apple and Google's digital platforms services face few, if any, competitive constraints in mobile app distribution. Consequently, mobile app developers have few, if any, viable alternatives for app distribution. This enables Apple and Google to unilaterally impose "take it or leave it" fees and terms as a condition of mobile app distribution. This includes opaque in-app payment systems commission rates for the purchase of digital in-app content.

The expansion of Apple and Google's ecosystems has led to a number of consumer and competition harms including:

- Deny app developers the opportunity to innovate and/or choose how best to distribute their apps. For Apple, developers cannot effectively distribute their apps through competing app marketplaces that could offer increased visibility or better or cheaper marketing. Also in Apple's case, app developers can also not offer apps directly through their own websites or use cheaper or more innovative payment systems which could be provided by would-be competing in-app payment processors. For Google, there is no real viable alternative for app developers that has the same user reach as the Google Play Store. The Google Play Store benefits from the larger participating app developers and users and Android OEMs too find it commercially unreasonable to make and sell phones without the Google Play Store.
- Lock consumers into their respective ecosystem through the high cost of switching operating systems. If a user switched from iOS to Android they would lose:
  - Certain functionality with other devices (e.g. AirPods and smart watches).
  - Ability to share data seamlessly and sync between devices (e.g. iCloud can't be accessed on Android devices).
  - Communicate easily with other people who use Apple devices (e.g. iMessage).
  - Access to any apple-exclusive content they purchased, including access to iOS paid apps, which consumers would need to repurchase on their Android device.

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<sup>4</sup> Australian Competition and Consumer Commission, 'Digital Platform Services Inquiry – September 2023 Interim Report – regulatory reform (11 November 2022). Available at <https://www.accc.gov.au/system/files/Digital%20platform%20services%20inquiry%20-%20September%202022%20interim%20report.pdf>

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- Foreclose competition in respect of app distribution reducing the competitive pressure for Apple and Google to innovate and improve their own app marketplaces. This results in app developers being left with inferior distribution outlets compared to what would exist if competition were to drive further development and innovation in the market.
- Deny app developers choice and coerce them to use the Apple or Google's in-app payment processing. Developers are contractually required to use Apple's in-app payment processing to facilitate in-app purchases of digital in-app content on their iOS apps—and no alternative third-party payment processor can be used.
- Increased app developer costs. Apple and Google extract an exorbitant commission on in-app purchases of in-app content. As previously identified by the ACCC in the March 2021 Interim Report, "it is highlight likely that the commission rates charged by Apple and Google are inflated by the market power they have in their dealing with app developers. It is also highly likely that this market power enables Apple and Google to unilaterally set and enforce the rules that app developers must satisfy."<sup>5</sup> Developers require a reasonable return on their investment in order to dedicate the substantial time and financial resources it takes to develop an app. By imposing an exorbitant commission, Apple and Google necessarily (i) force developers to suffer lower profits (rendering some apps financially unviable altogether), (ii) reduce the quantity or quality of their apps, (iii) raise prices for consumers, or some combination of the three.

## Remedies to address Apple and Google's expanding ecosystems

Epic supports enshrining obligations under an ex-ante regime to address anticompetitive conduct related to the practices of tying, self-preferencing and pre-installation. Epic also encourages the ACCC to prioritise remedies that would generate competition within existing and between ecosystems to alleviate the most severe impacts that consumers and developers currently suffer. Opening mobile devices to alternative app distribution would have a meaningful and expeditious impact on opening the mobile ecosystem to competition. Prohibiting the tying of proprietary in-app payment systems to app distribution would be a significant complementary remedy. Implemented together, these solutions would open-up existing mobile app distribution ecosystems, unlocking competition and innovation benefits.

Opening mobile devices to effective, alternate means of downloading applications and software is foundational to the creation of a more open ecosystem, whether it be alternative app stores or direct downloading of applications from the web. These solutions already exist and are regularly and safely used by consumers every day when they use their laptop or desktop computers. It is only when consumers shift from the computer to phone or tablet that they are forced to install software through the App Store on iOS devices and through the Google Play Store for Android devices due to the Play Store's entrenched position.

Apple and Google's restrictions present clear competition and consumer harms that can be addressed through legislative and regulatory intervention. In order to bring about effective outcomes for Australian businesses and consumers, any regulatory solution will need to unbundle developer access to app marketplaces from a developer's exclusive use of in-app payment systems, which would allow other businesses to offer consumers and developers alternative payment processing options.

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<sup>5</sup> Australian Competition and Consumer Commission, 'Digital Platform Services Inquiry – March 2021 Interim Report No.2 – app marketplaces' (28 April 2021) available at <https://www.accc.gov.au/system/files/Digital%20platform%20services%20inquiry%20-%20March%202021%20interim%20report.pdf>, page 63