



September 21, 2020

The Honorable Jerrold Nadler, Chairman
The Honorable Jim Jordan, Ranking Member
Committee on the Judiciary
The Honorable David N. Cicilline, Chairman
The Honorable F. James Sensenbrenner, Jr., Ranking Member
Subcommittee on Antitrust, Commercial and Administrative Law
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515-6216

Dear Chairman Nadler, Ranking Member Jordan, Chairman Cicilline, and Ranking Member Sensenbrenner:

I write to provide additional information that I trust will be helpful to the Committee as it prepares to conclude its ongoing review and assessment of online platforms and market power. As was clear from our engagement over the last year, Apple is in a very different position from the other companies in this investigation. While we believe the record clearly bears that out, I offer further context below.

The suggestion that Apple has dominant market power, much less monopoly power, does not reflect the reality Apple confronts each and every day in our business. Apple is humbled by its financial and commercial success. We recognize with that success comes scrutiny. That said, the simple fact is that Apple is not a monopoly and does not hold a monopoly share in any market. Market or monopoly power is not defined by market capitalization, stock price, brand, or popularity, but instead by an absence of competition. And Apple faces aggressive competition across all markets in which we offer products or services.

The iPhone's share of the global smartphone market stands at 13%. This figure reflects our competitive reality. There has nonetheless been a suggestion that Apple has dominant market power because our customers are somehow "locked in" to their iPhones.¹ This assertion is simply not true. There is no shortage of competitors actively working to convince iPhone users to switch devices. Samsung, Huawei, Motorola, Oppo, Google, LG, and others have advertising campaigns targeted at iPhone customers. These companies often offer hundreds of dollars in credits to convince customers to trade-in their iPhones for one of their devices.² And the data shows that

¹ Some have also suggested that consumers may be reluctant to switch to a new device if they spent \$1,000 on an iPhone. This suggestion ignores the factual reality of the market, including the fact that Apple offers iPhones to consumers at a range of price points. For instance, iPhone SE sells for as low as \$229 with a trade-in.

² 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 Allen Ngo, *Samsung now accepting \$700 trade-ins for your Galaxy S10 or iPhone 11 Pro towards a new Galaxy S20*, Notebook Check (Feb. 12, 2020), <https://www.notebookcheck.net/Samsung-now-accepting-700-trade-ins-for-your-Galaxy-S10-or-iPhone-11-Pro-towards-a-new-Galaxy-S20.453713.0.html>.

these campaigns are successful.³ We also work hard to convince consumers to switch to iPhones. Apple has its own trade-in program that allows customers to trade in third-party devices for money towards the purchase of a new iPhone. Indeed, iPhone SE, released earlier this year, saw a significant number of switchers from Android to iPhone.⁴ Apple focuses on the consumer experience and continually innovates to improve our products, including our iPhone. And we have launched new services, features, and technologies in an effort to surprise and delight our customers and compete with our many rivals. The competition to convince customers to switch to another device is intense, and we expect it to grow even fiercer in the coming months and years as we move to 5G.

We do have many loyal and satisfied customers. As is borne out in survey after survey, customers love their iPhones, and Apple leads the market in terms of customer satisfaction. This reflects our focus on consumer privacy and security, as well as on the user experience and relentless innovation. The American system has never sought to punish a company for having a superior product and happy customers.

The App Store is no mere marketplace. It is a technology platform that has created opportunities for millions of developers. The suggestion that the App Store is simply a marketplace is wrong. Rather, it is an integral feature of the iPhone and critical to what allows Apple to provide our customers, and third-party developers, with the security and privacy Apple is known for.

To be sure, the App Store gives consumers access to millions of innovative, high-quality apps, and, by connecting entrepreneurial app developers to app users, the App Store has proven to be an economic miracle over the last dozen years. Last year alone, it created more than \$138 billion in economic activity in the United States.⁵

But the App Store's success is made possible by the tools, education, and support services that Apple makes available to all developers, our dedication to customer security and privacy, and our business model. Apple has invested billions of dollars in building an ever-increasing suite of tools and software to enable developers big and small to create amazing applications. Apple provides the fundamental building blocks that developers need to innovate. Apple's investment in these tools started before it launched the App Store and continues to this day. To ensure that these tools are used appropriately and securely, Apple reviews each and every iOS app. This review is critical to delivering on the promise that the App Store is a safe and trusted place for

³ For example, a 2019 study from BankMyCell found that 26% of iPhone X users who traded in their phone switched to another smartphone brand. See Corinne Reichert, *More people are trading their iPhones in for Androids, study says*, CNET (July 18, 2019), <https://www.cnet.com/news/more-people-are-trading-their-iphones-in-for-androids-study-says/>. And our competitors build tools to make switching easy. See *Transfer content from an iOS device with Samsung Smart Switch*, Samsung, <https://www.samsung.com/us/support/answer/ANS00061001/>.

⁴ See Yoni Heisler, *iPhone SE is convincing some longtime Android users to switch*, BGR (July 21, 2020), <https://bgr.com/2020/07/21/iphone-se-2020-sales-android-switchers-popular/>.

⁵ See Jonathan Borck, Juliette Caminade & Markus von Wartburg, *How Large Is the Apple App Store Ecosystem? A Global Perspective for 2019*, Analysis Group (June 15, 2020), at 4, <https://www.apple.com/newsroom/pdfs/app-store-study-2019.pdf>.

customers to find great apps, and it enables Apple to continue to make iOS the most secure operating system available.

When Apple first opened iOS to third-party development in 2008, it made 10,000 APIs available to developers, each of which allows developers to design apps that can easily take advantage of unique features and functionality we have built into iOS. And each year since, Apple has opened more and more APIs to developers. As a result, there will be more than 250,000 APIs available to developers in iOS 14. By offering these tools, Apple helps developers reduce the engineering time and resources required to create apps. As a result, Apple has reduced the barrier to entry to software development in a way that was not imaginable 15 years ago—and that allows the student tinkering in her basement the ability to create something new and reach millions of users with the push of a button. As a result, there are now more than 1.8 million apps available on the App Store, and a thriving community of more than 27 million iOS developers. By almost every metric, the App Store has exceeded our wildest dreams.

Apple made a decision a dozen years ago to adopt a business model by which Apple would invest in and provide developers with the tools they needed to create great apps and ensure that consumers could access as much content as possible at the lowest possible prices. Developers are able to distribute free apps without having to pay Apple *anything* from their billions of dollars in advertising revenues. This is because Apple only collects commission from apps selling digital goods or services. As a result, 84% of apps are charged nothing more than a yearly \$99 program fee.

Apple's commission on digital goods or services was revolutionary when it was introduced because it was *substantially less* than the industry-standard revenue share of 50% to 70% at the time.⁶ As such, for the small fraction of apps (16%) that pay a commission, at least 70% of revenues *go to the developer*—a dramatic improvement over the revenues developers earned from software distribution before the advent of the App Store. And, Apple's 30% commission has not increased since the inception of the App Store; rather, it has *decreased* in certain circumstances.

There are those who misleadingly label Apple's commission as a "payment-processing fee." This is wrong. This commission offers Apple a fair return on its investments in the technology, tools, and software Apple provides to all developers, as described above. The commission also reflects Apple's investment in the App Store, the value of Apple's intellectual property, and the App Store's value in connecting developers to users.

There are also those who want to change the App Store business model. However, it is not anticompetitive for a provider of products and services to require payment, and further, nothing about the way that Apple has structured its compensation system raises antitrust concerns. Even still, it is not at all clear that the alternatives would benefit competition, innovation, or entrepreneurship. They would, however, favor large, well-financed developers. Indeed, alternatives such as requiring all apps to pay a fee (including free apps), would tend to favor larger developers, and would be stacked against smaller developers—as it would make it harder for small developers with innovative but untested ideas to be successful.

⁶HJC-APPLE-016112.

The App Store is a safe and trusted marketplace for consumers and developers alike. Apple applies the same standards to itself that it applies to developers for protecting intellectual property: Apple does not steal intellectual property, and does not allow others on the App Store to do so. Apple is a company built on innovation. Protecting both Apple and App Store developers against those who would steal intellectual property allows us to compete for developers and provide the best user experience possible for our customers. Safeguarding intellectual property on the App Store is the right thing to do, for both Apple's values and Apple's business.

Apple does not tolerate those who might abuse the App Store, and the many tools Apple provides developers, to steal intellectual property. For this reason, the Apple Developer Agreement states: "Copyright and other intellectual property laws protect the Site and Content provided to you, and you agree to abide by and maintain all notices, license information, and restrictions contained therein." Thus, to participate in the App Store, a developer must agree not to "modify, publish, network, rent, lease, loan, transmit, sell, participate in the transfer or sale of, reproduce, create derivative works based on, redistribute, perform, display, or in any way exploit any of the Site, Content or Services" in a manner that would violate the intellectual property rights of others. Apple holds itself to the same standard.

Apple respects the innovation and creativity of others. Apple does not use the intellectual property of App Store developers to develop competing apps.⁷ The Apple Developer Agreement does not allow Apple to use information from developers in a way that would violate the developers' intellectual property rights. Any suggestion that Apple applies a different standard regarding intellectual property rights to itself compared to developers is untrue.

Out of the entire universe of 1.8 million apps on the App Store, fewer than 65 are offered by Apple itself. Of those Apple apps, the vast majority are free and unlikely to raise concerns for the Committee or anyone else (for example, the Apple Test Flight App⁷ for developers). The very few for which Apple charges anything—such as Apple Music and Apple TV+—are in intensely competitive markets. And, of course, Apple did not copy the concept of a music or video streaming app from anyone.

⁷ The suggestion that Apple removed parental control apps from the App Store because they competed with iOS's Screen Time feature is also wrong. Screen Time is built into iOS and offered to users for free as a means to set and monitor limits on usage. Screen Time does not use the intrusive technology that led Apple to remove the parental control apps referenced by the Subcommittee. This technology, mobile-device-management ("MDM"), gives third parties almost unfettered access to a device. Apple became increasingly concerned that such use of MDM endangered the safety and privacy of children. This is because MDM gave the app developers access to children's most sensitive information, like their locations, app use data, email accounts, device permissions, and browsing history. To address the threat, we notified the developers that their apps' use of MDM for an unintended purpose violated Apple's App Store Guidelines ("Guidelines") and gave them 30 days to update their apps to comply with the Guidelines. Several developers updated their apps, and the apps of developers that chose not to make updates were removed from the App Store. We then worked with developers to find a way to allow parental control apps to use MDM without sacrificing the safety of children. We amended the Guidelines to permit parental control apps to use MDM, subject to a strict set of conditions—including an MDM-capability entitlement program designed to protect our users' privacy and security—and to set new rules for apps developed for children under the age of 13. As a result, there are over 30 third-party parental control apps available on the App Store that use MDM. There was a suggestion at the July 29, 2020 hearing that Apple allowed the Absher app to remain in the App Store even though it also used MDM. Absher, however, did not, and does not, use MDM.

Finally, to the extent that Apple has access to information through its operation of the App Store, such information generally is used to manage the App Store and improve the functioning of the iPhone. To be sure, Apple has access to data, like number of downloads, that is also broadly available through public sources to all developers. But such data (which Apple itself provides in rankings within the App Store) does not drive Apple's decision to develop the very few apps that Apple provides.

Apple will continue to innovate. We will create new applications, new features, and new functionality. And we will continue to compete and compete hard. There are those who believe that laws should be changed to prevent Apple from entering new markets, from bringing new products to market, and from offering consumers new choices or lower prices. However, America's laws and policies should be focused on encouraging the competition and innovation Apple has become known for over the last forty years.

Thank you, again, for the opportunity to submit further information for the record.

Respectfully,



Kyle Andeer
Vice President, Corporate Law &
Chief Compliance Officer
Apple Inc.

⁸ The Test Flight App is beta testing software that helps ensure apps work properly before they are launched on the App Store. See *Distributing Your App for Beta Testing and Releases*, Apple, https://developer.apple.com/documentation/xcode/distributing_your_app_for_beta_testing_and_releases.