

Smooth app-erator: Apple's App Store dominance under competition law scrutiny

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App marketplaces are where you buy apps. On an Apple device, that's the App Store. On Android devices, it's the Google Play Store. For we consumers, they're a convenient one-stop shop. But if you're an app developer, Apple and Google are unavoidable partners. In Apple's case, there is no other app marketplace available for an iOS device. There's also no 'sideloading' (i.e. installing an app directly, outside the App Store). Payments can only be processed by Apple, and it will pocket a cool 30% of your app sales.

The ACCC has just launched an inquiry into the App Store and Google Play Store. It will consider the ability of Apple and Google to control the supply of apps via their gatekeeper role. This will involve looking at Apple and Google bundling or preferencing their own products where they supply apps themselves, imposing unreasonable supply terms and fee structures, the ability to exclude apps from marketplaces, ranking in the app stores, and the impact of their conduct on consumers.

In the EU and Netherlands, competition law regulators are also investigating Apple's dominance of app markets with the App Store. And in the USA, Apple is defending an antitrust action launched by Epic Games, the maker of Fortnite, after Apple booted Fortnite from the App Store when Epic added a direct pay function which circumvented Apple's 30% commission.

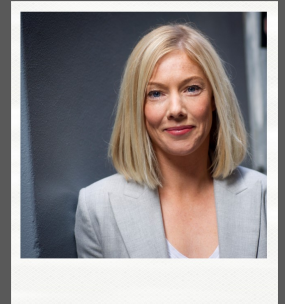
It's not a huge stretch of the imagination to see that Apple could be in some hot water over the App Store. Under our misuse of market power laws, it's likely that Apple would have substantial market power, if not monopoly power, given that it has absolute control over the sale of apps on iOS devices. In that position, any action that it takes is unlawful if it substantially lessens competition.

The strength of a case on misuse of market power would depend on the quality of the evidence about the effect of Apple's conduct on competition. We haven't seen yet what that might be in Australia. In the Fortnite example, Epic would be in a pretty good position under Australian law. But Epic is also big enough that it can afford to take the risk in standing up to Apple. Fortnite is the biggest video game in the world, with a reported 133 million installs and \$1.2 billion spent via the App Store alone.

Epic and other large app developers like Spotify have also formed the Coalition for App Fairness in the US, lobbying against Apple's dominance. There's definitely a building groundswell of opposition which might feed the regulators' investigations.

Whether there are app developers in Australia willing to take a stand against Apple remains to be seen. It's clear there is an issue. But an ACCC prosecution will require specific examples on which to ground its case on substantial lessening of competition. It will be looking for that in responses to its new inquiry. You'd forgive app developers if they're reluctant to come forward though. What's that they say about not biting the hand that feeds you?

Questions? Give us a call.



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