



Insight

Do App Stores Need Antitrust Intervention?

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Executive Summary

- Some policymakers claim that Google and Apple’s control of their app stores creates an anticompetitive dynamic that harms consumers and developers.
- The market for apps extends well beyond the app stores of Google and Apple, and any definition of the relevant market should reflect the consumer and developer experience.
- Arguments that app stores hurt consumers and developers, either by charging exorbitant fees or by restricting downloads to only those apps found in the store, fail to demonstrate any true harm, as the fees are in line with industry standards and restrictions on external downloads may be a choice to promote security.
- State-level regulations of app stores have the potential to create a patchwork of regulations that disrupts the flow of services across state lines or results in restrictive de facto national regulations.

Introduction

On April 21, the Senate Judiciary Committee Antitrust Subcommittee will hold a hearing titled “[Antitrust Applied: Examining Competition in App Stores](#).” This hearing comes as some allege Apple and Google are monopolies and abusing their dominance in the app market. In addition to this scrutiny at a federal level, some states including Arizona and Rhode Island have considered their own regulations of app stores. These platforms also face legal battles with Epic Games, the creator of the popular app Fortnite, over claims that their app store practices are anticompetitive.

But does the app store market need antitrust intervention to best serve consumers and developers? Policymakers should follow a principled approach to answer this question rather than rush to presume big is bad. This means carefully considering and identifying what the relevant market is as it is experienced by both end-user consumers and app developers. It also means analyzing whether the alleged anti-competitive behaviors are harming consumers. Finally, it means considering the impact that intervention into an innovative and competitive market could have, particularly if that intervention is inconsistent across the country.

What Is the Relevant Market?

A key point of contention in determining whether big tech companies' behavior requires antitrust intervention is how the relevant market is defined. Those who believe that large players such as Apple and Google are abusing their dominance will typically seek to employ a very narrow definition of the market. For example, they argue that in the current system the market is limited due to actions that make apps available via the platform's native app store (the store that comes pre-installed), or such advocates of regulation focus on a very narrow segment of the market such as payment processing. But do these narrow definitions of the market actually represent what consumers and developers experience?

The market for app stores is complicated and multi-faceted. This market includes the experience of both the end-consumer and the app developer. It also interacts with other competitive markets such as those for operating systems or devices. There are many options competing with each other on these different dimensions.

When consumers select a new product such as a smart phone or tablet, the availability and accessibility of certain apps may be one element of their decision. Numerous [app stores](#) exist including those directly on mobile devices and those accessible in other ways. Consumers have a wide range of choices beyond Apple's App Store and Google Play, including Samsung's Galaxy Store (that also comes preloaded on to its popular devices) and other popular services such as the PlayStation Store or Amazon's Appstore. The narrow definition of the market proposed by some policymakers, including in this House Judiciary [report](#), ignores these many options and instead limits competition to only that which exists on the selected mobile device. But consumers are not locked into a single device and may switch between products for many reasons including the availability of apps or app stores. In many cases, consumers even choose a collection of different operating systems and devices, which creates an even greater choice of app stores and apps. For example, a consumer who has an iPhone, a Kindle Fire tablet, and a Samsung smart TV would have a range of options both among the app stores preloaded onto the devices as well as the apps and other programs available in a variety of formats.

Developers also benefit from the range of options for how to best reach consumers, as the options generate competition for their work. As a report from ACT the App Association [notes](#), "Google benefits a great deal from attracting the next great app and so does Apple and the investments these platforms make to attract developers reflect this. Moreover, Google and Apple have a history of trying to outdo one another with respect to the offerings they provide for developers." Platforms want to attract the best developers to offer products through their app stores to attract more customers, and they realize that developers have many options. For example, the growing social media platform Clubhouse is currently only available on Apple's iOS system, but the Tile service for using Radio Frequency Identification (RFID) to find various devices or items was initially only available via Google Play. In addition to app stores, developers can also distribute or allow consumer access through mobile web or direct downloads. For some products, there are even more options including non-mobile platforms and app stores such as the Roku store or the PlayStation store.

Developers and consumers benefit from the ease of access that app stores provide, but they are far from a monopoly or duopoly. In defining the relevant market, it is important to avoid so narrowly defining app stores that the definition fails to reflect relevant consumer and developer experience. Doing so could miss the many players and different dimension that go into the selection by consumers and developers.

Is There Evidence of Anti-Competitive Behavior in the App Store Market that Harm Consumers?

Advocates for stronger regulation of app stores claim that the current status quo harms consumers (whether end-users or developers) through [prohibitive payment processing fees](#) and [lack of competition](#). While there are critiques for both major platforms, Apple receives the most criticism due to its "walled garden" approach, which severely limits the installation of third-party software accessed outside of its app store. The platform's critics

often claim its 30 percent processing fee, deemed as an “Apple Tax,” severely impacts developers, and constitutes an [anticompetitive measure](#) given the refusal to allow the installation of competing app stores.

Claims that Apple’s processing fee is anticompetitive ignore the intricacies both of Apple’s payment scheme and the industry standard. To start, 30 percent is in line with [industry standards](#) for the sale of digital and physical goods. Additionally, Apple’s 30 percent fee is only active in a very particular scenario: for paid apps and in-app purchases for developers who exceed \$1 million in yearly revenue. After the introduction of the Apple Store Business Program in late 2020, developers who do not reach this revenue threshold are charged a 15 percent fee instead. On the other side, subscription-based services pay the 30 percent fee for the first year and 15 percent after.

These fees are only applicable to transactions for digital goods or subscriptions in the platform, with advertisement revenues not subjected to any type of fee. As Progressive Policy Institute’s Michael Mandel highlights, by considering the exemption for ad revenue and the vetting and distribution services provided by Apple for paid and free apps equally, [Apple’s fee revenue](#) is in the range of 4-7 percent of the overall value generated in the platform.

The other common critique of the current app store practices is that some such as Apple place restrictions on installing third-party software outside of proprietary app stores pre-installed on devices, a process known as [sideloading](#), prevents competition. Restricting sideloading locks consumers out of alternative app stores, according to this argument, creating an app store monopoly in their respective operative systems and hurting consumers in the process. This critique ignores, however, that current restrictions on sideloading respond to. Consumers have the choice to select a platform more lenient on sideloading, such as Android, if they feel comfortable doing so. Prohibiting sideloading restrictions could expose consumers to a risk level they might not be comfortable with, making them more vulnerable to fraud, spyware, and malware.

There is not clear evidence that the criticized behaviors are resulting in consumer harm or harm to developers. In fact, developers and consumers benefit from the ease of access that app stores have provided, allowing the explosion of economic and innovative growth in mobile programming. Many proposed regulations could discourage companies from providing app stores by making them cost prohibitive to the service that host them or requiring that they compromise the security of their system. The result would not benefit consumers and could potentially create new harms.

Emerging Patchwork Problems?

Several states have introduced legislation that aims to impact platforms’ current guidelines regarding payment processing or sideloading. North Dakota was the first state to consider such legislation with a failed proposal that would have prohibited Apple and Google from [requiring developers to use their payment processing service](#). Similar bills have also been considered in Arizona, Rhode Island, Massachusetts, Hawaii, and Illinois. The Georgia House introduced a bill that would mandate platforms [allow developers to distribute their apps independently](#), effectively enacting a sideloading mandate. Additionally, New York isis aiming to reform its antitrust standards in order to reduce the requirements to pursue antitrust action, with the [explicit intention to target tech companies](#) over, among other things, concerns around app store behaviors.

While states can serve as laboratories to test policies before changes are made at the federal level, the interstate

nature of the internet means that varied state policies could create a disruptive patchwork. As with state [net neutrality](#) and [data privacy](#) laws, the restrictions such policies place on app stores, operating systems, and devices would mean it would be difficult to offer the same product in every state. The result would be that some app stores might choose not to operate in certain states, further limiting consumer choice. In other cases, some companies, [particularly large players](#), may find it safest to comply with the most restrictive policies, meaning that consumers and developers in other states may face the more limited choices or higher prices that particularly restrictive policies yield. As a result, not only do such proposals face the same concerns as calls for federal antitrust action or regulation, they could be even more disruptive by creating a patchwork that disrupts the seamless distribution of products across the country.

Conclusion

Some policymakers are advocating for advancing antitrust action for app stores to mitigate what they perceive as a market dominated by two giants. But these claims are often based on an overly narrow definition of the market that neglects the intricacies behind competition in this sphere and the reality of the consumer experience. Such policies may have the unintended outcome of limiting, rather than expanding, consumer and developer choice. A light-handed regulatory approach guided at the federal level seems to be the best guarantee for the protection of consumers in the United States and around the globe.