

Our Reference: H Irvine / J Lurie Your Reference: 2021MAY0010
Direct Line: 083 288 0348 / 072 576 4724 Date: 18 November 2021
Email Address: heather.irvine@bowmanslaw.com / judd.lurie@bowmanslaw.com

The Competition Commission of South Africa

77 Meintjies Street
Sunnyside
Pretoria
By email: oipmi@compcom.co.za

Dear Sirs

COMPETITION COMMISSION INQUIRY INTO ONLINE INTERMEDIATION PLATFORMS: EXECUTIVE SUMMARY OF APPLE'S RESPONSES TO FURTHER STATEMENT OF ISSUES

1. We refer to the Commission's request for comments on its Further Statement of Issues (**FSOI**) dated 17 August 2021 and its subsequent request that Apple waive its claim of confidentiality over its responses contained in our letter of 7 October 2021.
2. Apple Inc. (**Apple**) has provided very extensive and detailed responses to the FSOI and the Commission's questions based on its knowledge and experience, as well as its current and future strategy and pricing philosophy. These responses are by their nature highly confidential and are not in the public domain. Accordingly, Apple maintains its claim that these submissions constitute "*confidential information*" as envisaged in the Act. We reserve our client's right to amplify its submissions on this, should the need arise.
3. However, the following summary information taken directly from Apple's responses may be shared with third parties:
 - 3.1 For reference, Apple's overall business model – as a device manufacturer – informs its incentives with respect to the App Store – a key feature of what makes Apple's products uniquely attractive to consumers. From the beginning, Apple has made clear that a central "purpose in the App Store is to add value to the iPhone."¹ Apple's business model depends on the availability of high-quality third-party apps that customers can integrate with Apple's products. Apple is therefore incentivised to create a robust app ecosystem with as many quality apps as possible. The health and diversity of this ecosystem is critical to Apple's success because it, in turn, drives the sale of our hardware products, which is Apple's core business. Apple therefore has a strong incentive to keep its ecosystem open and to deliver choice and quality to consumers.

¹ "The Mobile Industry's Never Seen Anything Like This": An Interview With Steve Jobs at the App Store's Launch", The Wall Street Journal (25 July 2018), <https://www.wsj.com/articles/the-mobile-industrys-never-seen-anything-like-this-an-interview-with-steve-jobs-at-the-app-stores-launch-1532527201>.

Bowman Gilfillan Inc. Reg. No. 1998/021409/21 **Attorneys Notaries Conveyancers**

Directors MEC Davids (Chairman & Senior Partner) | AJ Keep (Managing Partner) | AG Anderson | DP Anderson | LJ Anderson | JS Andropoulos | M Angumuthoo | J Augustyn | L Avivi | AM Barnes-Webb | TL Beira | JM Bellew | KJ Beretta | RM Carr | K Chisaka | CN Cunningham | L Dahms-Jansen | GH Damant | RA Davey | JM de Hutton | D de Klerk | TC Dini | CR Douglas | HD Duffey | L Dyer | S Ellary | L Fleiser | KA Fulton | BJ Garven | TM Gcabashe | DJ Geral | TJ Gordon-Grant | AR Graham | S Grimwood-Norley | A Hale | AS Harris | P Hart-Davies | VJ Herholdt | PA Hirsch | HPM Irvine | CS Jackson | JR Janks | JR Kaapu | M Keep | CP Kennedy | KM Kern | ID Kirkman | RDW Kitcat | JG Kruger | JP Kruger | MR Kyle | R la Grange | R Labuschagne | T Laubscher | DA Lotter | L Ludick | J Lurie | LT Mabidikane | KS Makapane | M Makola | HW Mandlana | HL Manson | TP McDougall | JM McKinnell | MC Mkiva | L Mongie | K Naicker | UEBU Naumann | X Nyali | NT Nzima | MAJ Oppenheim | DM Phillips | AJ Pike | P Pillay | JD Prain | DM Pretorius | JL Power | MA Purchase | LV Raphulu | CL Reidy | JB Ripley-Evans | CDS Rodrigues | MS Rusa | GI Rushton | S Saffy | JW Sahli | U Salasa-Khan | MY Sass | CG Schafer | RZ Shein | BT Sibiyi | CEC Smith | EC Steyn | LR Stockton | ML Swartland | L Thahane | BF Tibane | CFN Todd | CE Tucker | CL van Heerden | MR van Velden | RJ van Voore | MG Vermaak | DS Webb | DCJ Wessels | RS Wessels | JWL Westgate | EP Williams | HJ Wilsenach | KS Wright | DD Yuill

Senior Consultants CM Bouwer | IL Brink | PM Carter | RA Cohen | PM Maduna | A McAllister | JH Schlosberg | PE Whelan
Group COO RJ Smith | **Group CFO** HI Harding | **Company Secretary** NL van Vuuren

KENYA MAURITIUS **SOUTH AFRICA** TANZANIA UGANDA ZAMBIA

ALLIANCE FIRMS: ETHIOPIA | NIGERIA

- 3.2 To put the market position of the App Store into context, the US District Court of the Northern District of California in *Epic Games Inc.* recently held: "...Apple does not have market power in the smartphone market. Rather Apple only has 15 percent global market share in 2020".² This same conclusion applies even more so in South Africa where iPhones account for approximately [0-5]% of the South African market for smartphones (IDC data). There is therefore a low adoption of (iPhone) devices in South Africa. And consequently, a low market position for the App Store. Any potential concern around the App Store specifically and Apple's business model is obviated by Apple's small market position on the smartphone market in South Africa.
- 3.3 Apple disputes the notion that there is a "lack of app store competition." The App Store competes vigorously with multiple channels to distribute and sell digital content, including competing app stores like Google's Play Store, the Amazon Appstore, the Microsoft Store, video game digital marketplaces, such as Xbox, PlayStation, Nintendo, and Steam, developers' websites and web apps. As noted by the US District Court of the Northern District of California in *Epic Games Inc.*: "Epic Games has failed to prove that Apple is an illegal monopolist in control of the iOS platform".³
- 3.4 Apple is not a monopolist. So, contrary to what the Commission states, there is no "practice of app store monopolies".
- 3.5 Apple has referred the Commission to *Epic Games* and, in particular, that:⁴
- 3.5.1 The Court rejected *Epic Games'* interpretation of Apple documents between senior executives discussing product features that encouraged users to stay with the iPhone: "On balance, the Court reads the emails to suggest that Apple sought to compete by distinguishing their product, and in the process, making its platforms "stickier". That, however, is not necessarily nefarious. Every business seeks to decrease switching away from its products."⁵
- 3.5.2 The Court went on to criticise the "largely theoretical" testimony on switching costs provided by *Epic Games*.
- 3.5.3 The Court recognised: "Apple does not dictate to developers how or what to price an app or how to monetize their product"
- 3.6 Apple launches innovative services and applications to create a unique experience for its customers and to differentiate itself in an intensely competitive smartphone market. Apple's holistic approach to product development allows it to create unique services and applications for consumers that can demonstrate the creativity and uniqueness of Apple's technology. Be it the Camera, Messages, or Apple Music, these applications help make an iPhone an iPhone, and not just another product. The opportunity to pursue new services and applications is critical to Apple's ability to compete in the smartphone market (as well as in the tablet, and computing markets).
- 3.7 Apple depends on innovation by third-party developers to compete in these markets. Soon after the iPhone was launched, Apple recognised that consumers' enjoyment of the iPhone would be enhanced by unlocking the power of third-party developers. As mentioned, Apple has made clear since launching the first-of-its-kind App Store that its purpose "is to add value to the iPhone."
- 3.8 Apple's incentives are to give consumers choices, while ensuring that its consumers are not exploited. Today, the App Store plays an important role in Apple's ability to sell the iPhone (and iPad) to consumers and is a key feature of the iPhone (and iPad). There are now almost two

² *Epic Games Inc. v. Apple Inc. – US District Court, Northern District of California, Case No. 4:20-cv-05640-YGR, Order of 10 September 2021.*

³ Distribution can occur through web apps, by web access, and through other games stores. This doctrine does not require distribution in the manner preferred by the competitor, here native apps", see *Epic Games* cited above, p.158.

⁴ See *Epic Games* cited above, p. 33.

⁵ See *Epic Games* cited above, p. 48.

million apps on the App Store, very few of which of which were developed by Apple over the last ten years.

- 3.9 As mentioned, the availability of a wide variety of high-quality third-party apps on the App Store enhances the user experience and increases the desirability of Apple devices. As Apple introduces new features, new functionalities, and new products, it works hard to make those technologies available to third-party developers. At the same time, Apple remains scrupulously careful when providing access to these new technologies to ensure that the security and integrity of the user experience is not sacrificed.⁶
- 3.10 As Steve Jobs said when announcing the App Store in 2008: “The developer and us have the same exact interest, which is to get as many apps out in front of as many iPhone users as possible.”⁷
- 3.11 The App Store has created competition and launched an entire industry around app design and development. Apple’s decision to open iOS in 2008 created a completely new and unique technology environment that has resulted in an explosion in software development. Before Apple introduced the App Store, consumers bought applications from large software retailers and were limited to what those retailers had in stock. Installation was complicated and prices were steep. Over the last decade, the App Store has created competition and expanded app output a thousand-fold. There are now approximately 20 million app developers and many millions of apps worldwide. The App Store offers these developers—including small start-ups—the opportunity to reach millions of App Store customers in 175 countries, including South Africa. It has proven to be an engine of economic growth and opportunity. Developers were conservatively estimated to have generated \$519 billion in revenues through the App Store last year.⁸
- 3.12 This includes South African developers too. Some South African apps may compete with Apple developed apps. Those would include: Showmax, a locally built and operated online video on demand service (that would compete with Apple TV+), TelkomONE, a video and audio streaming service (that would compete with Apple TV+ and Apple Music); News24, a local news app (that would compete with Apple News – although Apple News is not available locally); SnapScan a mobile payment solution developed in South Africa (that would compete with Apple Pay – recently launched in South Africa). These apps come on top of all other apps developed in South Africa.
4. Apple has referred the Commission to a number of additional publicly available, non-confidential resources supporting Apple’s submissions, namely:
 - 4.1 A recent survey conducted by “Which?” (in the UK), consumers’ responses to which confirm that a deterioration of the app ecosystem induces consumers to switch to alternative smartphone producers: “two thirds of respondents wouldn’t buy what’s an otherwise perfect phone if it were missing their preferred banking, navigation or streaming apps”, see <https://www.which.co.uk/news/2021/03/huaweiphones-best-buys/>;
 - 4.2 In relation to the other app ecosystems of (compared to the offerings of Google and Apple): <https://www.theverge.com/2017/10/10/16452162/windows-phone-history-glorious-failure>; <https://www.zdnet.com/article/windows-10-mobile-microsoft-just-put-the-final-nail-in-the-coffin/>; <https://time.com/3536969/amazon-fire-phone-bust/>; and <https://edition.cnn.com/2019/06/21/tech/huawei-europe-smartphones/index.html>.
5. Finally, in relation to the Commission’s question about promotion of the participation of South African app developers on global app stores, especially HDP app developers, Apple notes that:

⁶ See Steve Jobs confirms native iPhone SDK by February, Apple Insider (Oct. 17, 2007), https://appleinsider.com/articles/07/10/17/steve_jobs_confirms_native_iphone_sdk_by_february (“It will take until February to release an SDK because we’re trying to do two diametrically opposed things at once, provide an advanced and open platform to developers while at the same time protect iPhone users from viruses, malware, privacy attacks, etc. This is no easy task.”).

⁷ Steve Jobs Introduces the App Store – iPhone SDK Keynote, YouTube.

⁸ 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 2, <https://www.apple.com/newsroom/pdfs/app-store-study-2019.pdf>.



- 5.1 Apple promotes the participation of all developers in the distribution of their apps through the App Store. This includes apps developed by South African developers available on the South Africa storefront or on foreign (including global) storefront(s).
- 5.2 Apple engages with developers in South Africa as it does in the 175 countries where the App Store is available. The SBP is a good example of how Apple helps to promote smaller developers, including South African developers (by reducing the commission to 15%). The SBP has been hugely successful. For reference, Apple estimates that globally, the SBP applies to more than [90-100]% of all eligible App Store developers. And Apple estimates this figure to be even larger for eligible South African developers.
6. If the Commission ultimately decides to place a copy of this letter on its website, Apple has no objection.

Yours faithfully

Bowman Gilfillan

per: Heather Irvine / Judd Lurie

Transmitted electronically without signature