matchgroup

11 March 2021

Senator Andrew Bragg
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

By Email

Dear Senator Bragg

Senate Select Committee on FinTech and RegTech (*Committee*) – Match's 5 March 2021 hearing and questions on notice

Thank you again for the invitation to attend the Public Hearing of the Committee on 5 March 2021. In Match Group, Inc's (***Match***) testimony during that hearing I referred to a number of ongoing developments in respect of the issue of Apple's and Google's in-app purchase (***IAP***) requirements.

As requested by the Committee, Match sets out in **Figure 1** below supporting material regarding these developments.

Figure 1: IAP-related developments and supporting materials

Developments	Summary and supporting materials
Arizona IAP bill passes lower house **IAP bills in other US states**	On 3 March 2021, Arizona's House of Representatives passed the *HB 2005* legislation that would require Apple and Google to allow Arizona-based app developers and users to utilise alternative payment systems when purchasing applications through their app stores. The legislation will now be considered by the Arizona Senate. In summary, the Bill would prohibit a 'digital application distribution platform' (like Apple or Google) which has over 1 million cumulative downloads from Arizona users in a calendar year from: • requiring an Arizona-based app developer or user to use a specific in-app payment system as the sole method of accepting payments for either a software download or a digital or physical product; or • retaliating against an Arizona-based app developer or user for using an in-app payment system not associated with the provider. The following article summarises this development (**Attachment 1**): https://www.theverge.com/2021/3/3/22309284/arizona-app-store-bill-2005-apple-30-percent-cut-bypass-legislation. The draft bill and information regarding its history in the Arizona legislature are available on the following website (see **Attachments 2** and **3**): https://apps.azleg.gov/BillStatus/BillOverview/74279. Other IAP-related bills have also been introduced and are being considered by various US state legislatures, including: • Georgia – House Bill 229, Senate Bill 63; • Illinois – Senate Bill SB 2311;

Developments	Summary and supporting materials
	• Massachusetts – Senate Bill SB 2311; • Minnesota – House Bill HF 1184, Senate Bill SF 1327; • New York – Senate Bill 4822; and • Rhode Island – House Bill H 6055.
Epic Games' IAP litigations in the United States and Australia	Epic Games is the producer of the popular video game, Fortnite, and also runs the online video game app store, the 'Epic Games Store'. On 13 August 2020, Epic Games instituted separate proceedings against Apple and Google in the US alleging, among other things, that their IAP requirements infringed US antitrust law (see **Attachments 4** and **5** which are copies of the complaints lodged against Apple and Google respectively). A media report summarising Epic Games' filing against **Apple** is available here: https://www.theverge.com/2020/8/13/21367963/epic-fortnite-legal-complaint-apple-ios-app-store-removal-injunctive-relief (see **Attachment 6**). A media report summarising Epic Games' filing against **Google** is available here: https://www.theverge.com/2020/8/13/21368363/epic-google-fortnite-lawsuit-antitrust-app-play-store-apple-removal (see **Attachment 7**). On 16 November 2020, Epic Games also instituted similar proceedings in the Federal Court against Apple in Australia for alleged contraventions of Australia's competition laws (see **Attachment 8** which provides copies of the originating documents in those proceedings and **Attachment 9** which is an media article providing an overview of the proceedings). On 8 March 2021, Epic Games instituted proceedings in the Federal Court against Google in Australia for alleged contraventions of Australia's competition laws (see **Attachment 10** which provides a copy of the originating document in those proceedings). The above disputes remain ongoing.
Fitness app provider IAP concerns throughout COVID pandemic	Fitness class booking app, ClassPass, began offering virtual fitness classes because of the pandemic. As accommodation booking was heavily impacted by the pandemic, accommodation booking app, Airbnb, also updated its app to begin offering virtual experiences to consumers. Apple then claimed these apps must pay Apple the 30% IAP commission. A media report summarising this dispute is available at: https://www.nytimes.com/2020/07/28/technology/apple-app-store-airbnb-classpass.html (**Attachment 11**).
Spotify and e-book/audiobook distributor European Commission IAP complaints and resulting investigation	In June 2020, the European Commission announced it was opening a formal antitrust investigation after it received complaints by music streaming provider, Spotify, and an e-book/audiobook distributor. The European Commission stated that the scope of the investigation is: *to assess whether Apple's rules for app developers on the distribution of apps via the App Store violate EU competition rules. The investigations concern in particular the mandatory use of Apple's own proprietary in-app purchase system and restrictions on the ability of developers to inform iPhone and iPad users of alternative cheaper purchasing possibilities outside of apps.*

Developments	Summary and supporting materials
	The European Commission's press release is available here: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1073 (**Attachment 12**). Recent media reporting has suggested that the European Commission could be sending a statement of objections to Apple in respect of this case: https://www.reuters.com/article/us-eu-apple-antitrust-exclusive-idUSKBN2AW24K.
Netherlands ACM and UK CMA IAP investigations	In April 2019, the Netherlands Authority for Consumers and Markets (***ACM***) began an antitrust investigation into Apple: https://www.acm.nl/en/publications/acm-launches-investigation-abuse-dominance-apple-its-app-store (**Attachment 13**). It was recently reported that the ACM is close to releasing a draft decision in respect of this investigation: https://www.reuters.com/article/us-netherlands-apple-antitrust/dutch-competition-regulators-nearing-draft-decision-in-apple-investigation-idUSKBN2AP2YG. On 4 March 2021, the UK Competition and Markets Authority (***CMA***) announced it was launching an investigation into Apple's IAP-related conduct following complaints: https://www.gov.uk/government/news/cma-investigates-apple-over-suspected-anti-competitive-behaviour (**Attachment 14**).
Other public reports regarding IAP requirements	Concerns with Apple/Google's mandatory IAP and 30% commission requirements have been widely publicised, including for example: • June 2019: US antitrust developer class action filed against Apple: https://www.reuters.com/article/cbusiness-us-apple-antitrust-idCAKCN1T5249-OCABS; • August 2020: US antitrust filing by app developer, Peekya (which was also filed on behalf of a class of app developers), against Google: https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=3325&context=historical; • August 2020: US antitrust developer class action filed against Google: https://www.classaction.org/media/carr-v-google-llc-et-al.pdf; • September 2020: Coalition for App Fairness (***CAF***) was founded. The CAF's membership includes app developers from the US, Europe and Australia. Match is a member of the CAF, in addition to Epic Games and Spotify. Key issues of concern for the CAF include those relating to the IAP requirements that Match has raised with the Committee. See: https://appfairness.org/. • Reports that numerous US state attorneys general are investigating and potentially preparing to file a lawsuit in respect of Google's IAP requirements. Media report available at: https://www.reuters.com/article/us-tech-antitrust-google-idUSKBN29K2BD. • Public dispute between Basecamp (developer of premium email app 'Hey') and Apple, after Apple decided 'Hey' violated Apple's rules by not offering IAP subscriptions. Media report available at: https://www.theverge.com/2020/6/22/21298552/apple-hey-email-app-approval-rules-basecamp-launch; • Public dispute between yoga app developer Down Dog and Apple after Apple rejected an update to this app on the basis that the app did not automatically charge customers following the expiry of a free trial (see Down Dog tweet dated

Developments	Summary and supporting materials
	1 July 2020, available at: https://twitter.com/downdogapp). On 3 July 2020, Down Dog announced on Twitter that Apple had approved the update but expressed fears that '*there may have been a different result had we not made their rejection public. Other developers might have simply complied with Apple's initial decision*'; • Parental control apps, Kidslox and Qustodio complained to the European Commission that, since the introduction of Apple's own Screen Time app on all iOS 12 devices, which is activated by default and is non-removable from devices, Apple has '*arbitrarily blocked the leading parental control apps in the market from making app updates, hindering innovation and potential growth.*' (see https://qweb.cdn.prismic.io/qweb%2F10775684-3566-4a3a-a965-0763f55e37f9_2019-04-30-qustodio-and-kidslox-vs-apple.pdf); • In October 2019 and in around February 2021, **Blix**, the developer of the app 'BlueMail' filed two separate private lawsuits against Apple. In the first lawsuit Blix alleged that Apple copied a function in its email app that allowed users to sign in anonymously to websites. Apple allegedly removed Blix from the App Store when Apple rolled out its competing product, Sign in with Apple. Blix's second lawsuit alleges Apple is abusing its market power. See: https://www.forbes.com/sites/barrycollins/2021/02/13/apple-accused-of-bullying-app-developer-blix/?sh=1c2eaf0d1a87. • During hearings on Online Platforms and Market Power as part of the US House Committee on the Judiciary Subcommittee on Antitrust (***Antitrust Subcommittee***), Tile, which makes Bluetooth device tracking accessories, accused Apple of anticompetitive behaviour (see https://docs.house.gov/meetings/JU/JU05/20200117/110386/HHRG-116-JU05-20200117-QFR005.pdf). In January 2020, Tile was told that its products would no longer be sold in Apple's physical stores. Tile has said this timing '*coincided with reports that Apple was releasing a similar product of its own, in the form of an enhanced Find My iPhone app,*' (see https://www.barrons.com/articles/apple-app-store-developers-are-pushing-back-on-apples-power-51584700200) • Chairman of the US House Antitrust Committee, Rep. David Cicilline, has stated: *'Because of the market power that Apple has, it is charging exorbitant rents — highway robbery, basically — bullying people to pay 30 percent or denying access to their market,"* and *'It's crushing small developers who simply can't survive with those kinds of payments. If there were real competition in this marketplace, this wouldn't happen.*' (see: https://www.theverge.com/2020/6/18/21295778/apple-app-store-hey-email-fees-policies-antitrust-wwdc-2020).

There are a large number of app developers who hold considerable concern about the power of Apple and Google with respect to their app stores. These developers recently came together to form the CAF to urge law makers and regulators to recognise that every app developer, regardless of size or nature of business, is entitled to fair treatment by these apps stores and should be afforded a number of rights. These rights are outlined on the CAF's website (noted above), along with its extensive list of members.

Match encourages the Committee to take into account the IAP issues outlined by Match in the information and material it has provided the Committee to date. Since a large number of app developers are in the same

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situation as Match in having no choice in what IAP solution they use, the issues raised by Match and by developers, governments and regulators globally impact a large number of app developers, as well as FinTechs and ultimately the end consumer.

We thank the Committee for its consideration of this material and would welcome the opportunity to engage further in relation to these matters.

Yours sincerely,

Mark Buse
SVP and Head of Global Government Relations & Policy
Match Group, Inc

THE VERGE

APPLE \ APPS \ POLICY

174

Arizona advances bill forcing Apple and Google to allow Fortnite-style alternative payment options

The bill, HB2005, opens the door for alternative payment systems on iOS and Android

By Nick Statt | @nickstatt | Mar 3, 2021, 2:15pm EST

Photo by Becca Farsace / The Verge

The Arizona House of Representatives just passed landmark app store legislation in a 31-29 vote on Wednesday that could have far-reaching consequences for Apple and Google and their respective mobile operating systems.

The legislation, a sweeping amendment to Arizona's existing HB2005, prevents app store operators from forcing a developer based in the state to use a preferred payment system, putting up a significant roadblock to Apple and Google's ability to collect commissions on in-app purchases and app sales. It will now head to the state senate, where it must pass before its sent to Arizona Gov. Doug Ducey.

The amendment specifically prohibits stores exceeding 1 million downloads from requiring “a developer that is domiciled in this state to use a particular in-application payments system as the exclusive mode of accretive payments from a user.” It also covers users living in Arizona from having to pay for apps using exclusive payment systems, though it’s not immediately clear if that means developers outside Arizona can avoid paying commission to Apple and Google when they sell something to a state resident.

The bill specifically exempts game consoles “and other special-purpose devices that are connected to the internet,” and it also bars companies like Apple and Google from retaliating against developers who choose to use third-party payment systems.

THE BILL OPENS THE DOOR TO ALTERNATIVE PAYMENT SYSTEMS ON IOS

The amendment narrowly passed the Arizona House Appropriations Committee last week in a 7-6 vote, which sent it to the floor of the state’s House of Representatives for a full vote on Wednesday. Notable opponents of the bill have been Arizona Democrats, who’ve argued that state legislatures shouldn’t get involved in ongoing legal matters between companies, in reference to ongoing antitrust lawsuits between Apple and Google and companies like *Forntite* maker Epic Games. There was also concern the bill would interfere with interstate commerce and raise unconstitutionality claims.

The bill opens the door to developers using third-party payment systems, thereby allowing them to bypass the industry standard 30 percent cut Apple and Google have collected for years. It’s not clear how the tech companies will respond, as the bill could have significant effects on their businesses in the state of Arizona while also putting pressure on them to change the rules for all developers everywhere. Both Apple and Google declined to comment.

“Today, Arizona put a marker down and became the first state in the nation to advance a digital market that is free and fair,” said the Coalition for App Fairness (CAF), the industry group composed of Epic, Tinder parent company company Match Group, and Spotify that is responsible for helping draft the bill.

“The Coalition for App Fairness is pleased to see the House passage of HB 2005, which will encourage business innovation in Arizona and protect consumer choice. While this is cause for celebration, it is only a first step toward achieving a truly level

playing field for all," the statement goes on to say. "We look forward to working with the Arizona State Senate to move a solution forward that builds on this momentum to provide consumer freedom, lower costs, and increase developers' ability to thrive and innovate."

The bill has attracted intense lobbying from Apple and Google. According to a report from *Protocol* published earlier this week, Apple tapped lobbyist Rod Diridon and also hired Kirk Adams, the former chief of staff to Arizona's governor, to help make its case to the House of Representatives. Apple also joined the Arizona Chamber of Commerce and pushed the body to begin combating the bill, *Protocol* reported. "We went through a very difficult weekend where Apple and Google hired probably almost every lobbyist in town," Arizona State Rep. Regina Cobb, a Republican and the primary sponsor of the bill, told *Protocol*.

In testimony in front of the House, Apple's chief compliance officer, Kyle Andeer, made the case that the App Store provides value to developers that warrant its commission. "The commission has been described by some special interests as a 'payment processing fee'—as if Apple is just swiping a credit card. That's terribly misleading. Apple provides developers an enormous amount of value — both the store to distribute their apps around the world and the studio to create them. That is what the commission reflects," Andeer said in written testimony.

"Yet this bill tells Apple that it cannot use its own check-out lane (and collect a commission) in the store we built," he goes on. "This would allow billion-dollar developers to take all of the App Store's value for free — even if they're selling digital goods, even if they're making millions or even billions of dollars doing it. The bill is a government mandate that Apple give away the App Store."

"Apple and Google have a monopoly on how you download apps to your phone. Because of that, for any app that offers digital services like games or music, you have to pay through Apple or Google's monopolistic payment processing system," Cobb wrote in an op-ed for the *Arizona Capitol Times* last month. "You have to use their system and their payment processor, and then they tax you for it. Small app developers have to absorb the cost and struggle to survive or pass the tax onto their consumers."

"APPLE AND GOOGLE HAVE A MONOPOLY ON HOW YOU DOWNLOAD APPS TO YOUR PHONE."

The sentiment is one shared by vocal critics of Apple and Google, like Basecamp co-founder David Heinemeier Hansson. He has submitted testimony for two bills — this one in Arizona and another in North Dakota — in support of legislation to break up what he sees as monopolies on software distribution, and he's waged an impassioned campaign against Apple in particular since last summer, when the iPhone maker engaged in a dispute with Basecamp over its new Hey email application.

"Apple operates a tollbooth on the only road to distribution of mobile software for the dominant iPhone platform. And this doesn't just hurt app developers, but consumers as well. When Apple tried to shake down our company for the 30% cut of revenues, they explicitly encouraged us simply to pass on the cost to consumers. And that's exactly what other developers have done," Hansson wrote in testimony to the Arizona House Appropriations Committee last week. He added that the bill "would not only provide immediate relief to Arizona developers and consumers, it would instantly make the state the most desirable place on earth to start a new software company."

The bill is one of many — including ones in Georgia, Hawaii, and Minnesota, as well as one that already failed in the North Dakota state senate — making their way through local legislatures. The multistate push can be drawn back to a national lobbying effort from the CAF. The industry group consists of not only Epic, Match, and Spotify, but also dozens of other companies dissatisfied with the rules imposed by Apple's App Store and the Google Play Store. Epic is also engaged in an ongoing antitrust lawsuit against both Apple and Google over the removal of *Fortnite* last summer, a dispute that sits at the heart of the ongoing app store debate.

THE BILLS ARE PART OF A MULTISTATE LOBBYING EFFORT FROM THE COALITION FOR APP FAIRNESS

The CAF, which worked alongside Match to approach Cobb for HB2005, has been hiring lobbyists around the country to approach representatives with draft bills that would make it easier for developers to bypass rules thought to be ironclad within the mobile app world. Specifically for Apple, these bills are targeting rules dictating that iOS users and the platform's developers only buy, sell, and distribute software through the App Store. (Google allows alternative app stores on Android, though it does present security warnings and other obstacles to users who download and use them.)

Additionally, these bills are taking aim at rules saying app makers must use the preferred payment systems of Apple and Google, as a backup defense in the event alternative app stores remain off the table. It's those terms, written into developer

agreements the companies make app makers sign to distribute software through the stores, that allow both companies to take anywhere from 15 to 30 percent of all revenue generated from digital goods.

The Arizona bill follows a similar, though broader and potentially more disruptive bill in North Dakota that last month failed to pass the state's senate. The North Dakota bill would have forced Apple and Google to allow alternative app stores onto iOS and Android, in addition to allowing developers to use alternative payment systems. The North Dakota bill, which failed in an 11-36 vote, would have also barred companies from retaliating against developers that opted to use alternative app stores or payment systems.

Apple similarly lobbied hard against the North Dakota bill, with Apple's chief privacy engineer, Erik Neuenschwander, testifying that the bill "threatens to destroy iPhone as you know it." He further argued that it would "undermine the privacy, security, safety, and performance that's built into iPhone by design," according to *The Bismarck Tribune*. "Simply put, we work hard to keep bad apps out of the App Store; (the bill) could require us to let them in."

Central to all of these bills and the fierce lobbying efforts surrounding them from both sides is a debate threatening one of the most lucrative pillars of Apple's (and to a lesser extent Google's) business: Should app store owners be able to set the rules for what kind of software is allowed onto mobile phones, and should those rules also force developers into paying commissions for accessing the platform?

Just a few years ago, that Apple and other companies would take 30 percent of all revenue was considered a settled matter. While some companies, like Netflix and Spotify, complained vigorously about unfair treatment, Apple's iron grip on the App Store, and by extension the iPhone, felt inexorable. It was simply how mobile app distribution worked — unless you were a large company like Amazon, which cut special deals with Apple.

"APPLE ALREADY HAS AN INCREDIBLE ADVANTAGE OVER ANY COMPANY THAT DARES COMPETE WITH THEM."

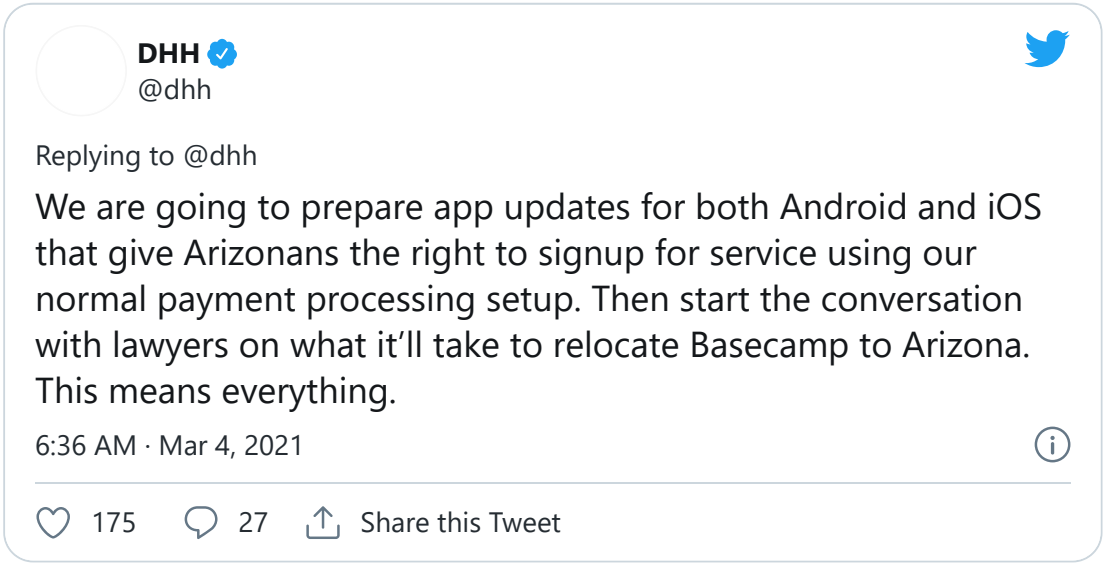
But growing resentment from developers large and small, an upswell in regulatory fervor in Washington, and growing consumer hostility toward Big Tech have created an unprecedented movement hoping to rein in Silicon Valley's most powerful

corporations. Square in the sights of all these parties is the App Store — specifically the 30 percent cut, or “Apple tax” as it has come to be known, and the payment system requirements that help enforce it.

Apple has already made some concessions in its relationship to developers in response to rising antitrust pressure. Most prominently, the company announced a new small business program late last year allowing developers making less than $1 million in annual revenue to lower the App Store cut they pay to Apple from 30 percent to 15 percent.

But those concessions are far from stopping Apple’s critics, nor the lobbying efforts of its most committed opponents, from pushing for more. “Apple already has an incredible advantage over any company that dares compete with them, and soon that might well be most of the economy,” Hansson wrote in the conclusion of his HB2005 testimony. “Giving us at least a fighting chance by enforcing a choice in payment processing is the right thing to do.”

Following the bill’s passing, Hansson said his company Basecamp was fully prepared to relocate to Arizona to take advantage of the perks. “This means everything,” he wrote on Twitter.



Update March 2nd, 2:44PM ET: *Added additional comment from David Heinemeier Hansson regarding his company’s response to the successful HB2005 vote.*

Update March 2nd, 3PM ET: *Noted that Apple declined to comment. Included public testimony from Apple’s chief compliance officer Kyle Andeer.*

Update March 2nd, 3:31PM ET: *Noted that Google declined to comment.*

ARIZONA HOUSE OF REPRESENTATIVES

Fifty-fifth Legislature
First Regular Session

House: APPROP DPA/SE 7-6-0-0

HB 2005: ~~education; federal funds; technical correction~~
NOW: prohibitions; digital application distribution platforms
Sponsor: Representative Cobb, LD 5
House Engrossed

Overview

Restricts the ability of certain *digital application distribution platforms* to require use of a specific *in-application payment system*.

History

There is no current law that addresses this subject. As a result, many digital application distribution platforms, which distribute software and other applications to mobile phones, tablets and personal computers via the Internet, operate under their own terms and conditions.

Provisions

1. Prohibits a provider of a *digital application distribution platform* whose cumulative downloads from Arizona users in a calendar year exceed 1,000,000 from:
   a) Requiring an Arizona-domiciled developer or Arizona user to use a specific *in-application payment system* as the sole method of accepting payments for either a software download or a digital or physical product; or
   b) Retaliating against an Arizona-domiciled developer or Arizona user for using an *in-application payment system* or *digital application distribution platform* not associated with the provider. (Sec. 1)
2. Exempts from the prohibitions *digital distribution platforms* that are:
   a) Established primarily for use by public safety agencies; or
   b) Used for specialized categories of applications that are provided to users of hardware intended for specific purposes (such as gaming consoles and music players). (Sec. 1)
3. Allows the Attorney General to receive complaints, investigate and bring an action on behalf of aggrieved parties to seek legal or equitable relief on their behalf. (Sec. 1)
4. Permits an aggrieved party to bring a civil action to seek legal or equitable relief if the Attorney General does not bring an action within 60 days after receiving notice from the aggrieved party. (Sec. 1)
5. Defines *Arizona user*, *developer*, *digital application distribution platform*, *domiciled in this state*, *in-application payment system*, *provider* and *special-purpose digital application distribution platform*. (Sec. 1)

☐ Prop 105 (45 votes) ☐ Prop 108 (40 votes) ☐ Emergency (40 votes) ☐ Fiscal Note

House Engrossed

~~education; federal funds; technical correction~~
(now: prohibitions; digital application distribution platforms)

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

HOUSE BILL 2005

AN ACT

AMENDING TITLE 18, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 7; RELATING TO DIGITAL APPLICATION DISTRIBUTION PLATFORMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 18, Arizona Revised Statutes, is amended by adding chapter 7, to read:

CHAPTER 7

DIGITAL APPLICATION DISTRIBUTION PLATFORMS

ARTICLE 1. GENERAL PROVISIONS

18-701. Digital application distribution platforms; prohibitions; exception; attorney general; definitions

A. A PROVIDER OF A DIGITAL APPLICATION DISTRIBUTION PLATFORM FOR WHICH CUMULATIVE DOWNLOADS OF SOFTWARE APPLICATIONS FROM THE DIGITAL APPLICATION DISTRIBUTION PLATFORM TO ARIZONA USERS EXCEED ONE MILLION DOWNLOADS IN THE PREVIOUS OR CURRENT CALENDAR YEAR MAY NOT DO ANY OF THE FOLLOWING:

1. REQUIRE A DEVELOPER THAT IS DOMICILED IN THIS STATE TO USE A PARTICULAR IN-APPLICATION PAYMENT SYSTEM AS THE EXCLUSIVE MODE OF ACCEPTING PAYMENTS FROM A USER TO DOWNLOAD A SOFTWARE APPLICATION OR PURCHASE A DIGITAL OR PHYSICAL PRODUCT OR SERVICE THROUGH A SOFTWARE APPLICATION.

2. REQUIRE EXCLUSIVE USE OF A PARTICULAR IN-APPLICATION PAYMENT SYSTEM AS THE EXCLUSIVE MODE OF ACCEPTING PAYMENTS FROM ARIZONA USERS TO DOWNLOAD A SOFTWARE APPLICATION OR PURCHASE A DIGITAL OR PHYSICAL PRODUCT OR SERVICE THROUGH A SOFTWARE APPLICATION.

3. RETALIATE AGAINST A DEVELOPER THAT IS DOMICILED IN THIS STATE OR AN ARIZONA USER FOR USING AN IN-APPLICATION PAYMENT SYSTEM OR DIGITAL APPLICATION DISTRIBUTION PLATFORM THAT IS NOT OWNED BY, OPERATED BY OR AFFILIATED WITH THE PROVIDER OR RETALIATE AGAINST A DEVELOPER FOR THAT USE TO DISTRIBUTE APPLICATIONS TO OR ACCEPT PAYMENTS FROM ARIZONA USERS.

B. THIS SECTION DOES NOT APPLY WITH RESPECT TO SPECIAL-PURPOSE DIGITAL APPLICATION DISTRIBUTION PLATFORMS.

C. THE ATTORNEY GENERAL MAY RECEIVE COMPLAINTS AND INVESTIGATE VIOLATIONS OF THIS SECTION AND MAY BRING AN ACTION IN ANY COURT OF COMPETENT JURISDICTION TO OBTAIN LEGAL OR EQUITABLE RELIEF ON BEHALF OF A PERSON AGGRIEVED BY THE VIOLATION.

D. ANY PERSON AGGRIEVED BY A VIOLATION OF THIS SECTION MAY COMMENCE A CIVIL ACTION ON THE PERSON'S OWN BEHALF IN ANY COURT OF COMPETENT JURISDICTION TO OBTAIN LEGAL OR EQUITABLE RELIEF, INCLUDING REASONABLE ATTORNEY FEES AND COSTS.

E. AN ACTION MAY NOT BE COMMENCED UNDER SUBSECTION D OF THIS SECTION UNTIL SIXTY DAYS AFTER THE PLAINTIFF HAS GIVEN NOTICE OF THE ALLEGED VIOLATION TO THE ATTORNEY GENERAL. AN ACTION MAY NOT BE COMMENCED UNDER SUBSECTION D OF THIS SECTION IF THE ATTORNEY GENERAL HAS COMMENCED AND IS DILIGENTLY PROSECUTING AN ACTION IN COURT ARISING FROM THE SAME ALLEGED VIOLATION.

F. FOR THE PURPOSES OF THIS SECTION:

1. "ARIZONA USER" MEANS A USER WHOSE MOST RECENT ADDRESS SHOWN IN THE RECORDS OF A PROVIDER IS LOCATED WITHIN THIS STATE.

2. "DEVELOPER" MEANS A CREATOR OF SOFTWARE APPLICATIONS THAT ARE MADE AVAILABLE FOR DOWNLOAD BY USERS THROUGH A DIGITAL APPLICATION DISTRIBUTION PLATFORM OR OTHER DIGITAL DISTRIBUTION PLATFORM.

3. "DIGITAL APPLICATION DISTRIBUTION PLATFORM":

(a) MEANS A DIGITAL DISTRIBUTION PLATFORM FOR APPLICATIONS AND SERVICES THAT ARE PROVIDED TO USERS ON GENERAL-PURPOSE HARDWARE, INCLUDING MOBILE PHONES, SMARTPHONES, TABLETS, PERSONAL COMPUTERS AND OTHER GENERAL-PURPOSE DEVICES THAT ARE CONNECTED TO THE INTERNET.

(b) INCLUDES A DIGITAL DISTRIBUTION PLATFORM THAT IS PROVIDED OR USED FOR ONLY CERTAIN TYPES OF DEVICES, SUCH AS CERTAIN GRADES OF COMPUTING DEVICE, DEVICES THAT ARE MADE BY ONLY A PARTICULAR MANUFACTURER OR DEVICES THAT RUN A PARTICULAR OPERATING SYSTEM.

4. "DOMICILED IN THIS STATE" MEANS A PERSON THAT CONDUCTS IN THIS STATE THE SUBSTANTIAL PORTION OF WORK TO CREATE OR TO MAINTAIN DIGITAL APPLICATIONS.

5. "IN-APPLICATION PAYMENT SYSTEM" MEANS AN APPLICATION, SERVICE OR USER INTERFACE THAT IS USED TO PROCESS PAYMENTS FROM USERS TO DEVELOPERS FOR SOFTWARE APPLICATIONS AND DIGITAL AND PHYSICAL PRODUCTS AND SERVICES DISTRIBUTED THROUGH SOFTWARE APPLICATIONS.

6. "PROVIDER" MEANS A PERSON THAT OWNS, OPERATES, IMPLEMENTS OR MAINTAINS A DIGITAL APPLICATION DISTRIBUTION PLATFORM OR AN IN-APPLICATION PAYMENT SYSTEM.

7. "SPECIAL-PURPOSE DIGITAL APPLICATION DISTRIBUTION PLATFORM" MEANS A DIGITAL DISTRIBUTION PLATFORM ESTABLISHED PRIMARILY FOR USE BY PUBLIC SAFETY AGENCIES OR FOR SINGLE OR SPECIALIZED CATEGORIES OF APPLICATIONS, SOFTWARE AND SERVICES THAT ARE PROVIDED TO USERS ON HARDWARE INTENDED PRIMARILY FOR SPECIFIC PURPOSES, INCLUDING GAMING CONSOLES, MUSIC PLAYERS AND OTHER SPECIAL-PURPOSE DEVICES THAT ARE CONNECTED TO THE INTERNET.

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

EPIC GAMES, INC.,

Plaintiff,

vs.

APPLE INC.,

Defendant.

Case No. _____

COMPLAINT FOR INJUNCTIVE RELIEF

TABLE OF CONTENTS

Plaintiff Epic Games, Inc. ("Epic"), by its undersigned counsel, alleges, with knowledge with respect to its own acts and on information and belief as to other matters, as follows:

NATURE OF THE ACTION

1. In 1984, the fledgling Apple computer company released the Macintosh—the first mass-market, consumer-friendly home computer. The product launch was announced with a breathtaking advertisement evoking George Orwell's *1984* that cast Apple as a beneficial, revolutionary force breaking IBM's monopoly over the computing technology market. Apple's founder Steve Jobs introduced the first showing of the 1984 advertisement by explaining, "it appears IBM wants it all. Apple is perceived to be the only hope to offer IBM a run for its money . . . . Will Big Blue dominate the entire computer industry? The entire information age? Was George Orwell right about 1984?"

2. Fast forward to 2020, and Apple has become what it once railed against: the behemoth seeking to control markets, block competition, and stifle innovation. Apple is bigger, more powerful, more entrenched, and more pernicious than the monopolists of yesteryear. At a market cap of nearly $2 trillion, Apple's size and reach far exceeds that of any technology monopolist in history.

3. This case concerns Apple's use of a series of anti-competitive restraints and monopolistic practices in markets for (i) the distribution of software applications ("apps") to users of mobile computing devices like smartphones and tablets, and (ii) the processing of consumers' payments for digital content used within iOS mobile apps ("in-app content"). Apple imposes unreasonable and unlawful restraints to completely monopolize both markets and prevent software developers from reaching the over one billion users of its mobile devices (*e.g.*, iPhone and iPad) unless they go through a single store controlled by Apple, the App Store, where Apple exacts an oppressive 30% tax on the sale of every app. Apple also requires software developers who wish to sell

digital in-app content to those consumers to use a single payment processing option offered by Apple, In-App Purchase, which likewise carries a 30% tax.

4. In contrast, software developers can make their products available to users of an Apple personal computer (*e.g.*, Mac or MacBook) in an open market, through a variety of stores or even through direct downloads from a developer's website, with a variety of payment options and competitive processing fees that average 3%, a full ***ten times*** lower than the exorbitant 30% fees Apple applies to its mobile device in-app purchases.

5. The anti-competitive consequences of Apple's conduct are pervasive. Mobile computing devices (like smartphones and tablets)—and the apps that run on those devices—have become an integral part of people's daily lives; as a primary source for news, a place for entertainment, a tool for business, a means to connect with friends and family, and more. For many consumers, mobile devices are their primary computers to stay connected to the digital world, as they may not even own a personal computer. When these devices are unfairly restricted and extortionately "taxed" by Apple, the consumers who rely on these mobile devices to stay connected in the digital age are directly harmed.

6. Epic brings this suit to end Apple's unfair and anti-competitive actions that Apple undertakes to unlawfully maintain its monopoly in two distinct, multibillion dollar markets: (i) the iOS App Distribution Market, and (ii) the iOS In-App Payment Processing Market (each as defined below). Epic is not seeking monetary compensation from this Court for the injuries it has suffered. Nor is Epic seeking favorable treatment for itself, a single company. Instead, Epic is seeking injunctive relief to allow fair competition in these two key markets that directly affect hundreds of millions of consumers and tens of thousands, if not more, of third-party app developers.

7. Apple imposes unreasonable restraints and unlawfully maintains a total monopoly in the iOS App Distribution Market. To live up to its promise to users that "there's an app for that", Apple, after a short initial attempt to go it alone, opened up

iOS and invited third-party app developers to develop a wide array of apps for the iOS ecosystem. Those apps contribute immense value to that ecosystem and are one of the primary marketing features for iPhones and iPads. But Apple completely bans innovation in a central part of this ecosystem, namely, any app that could compete with Apple for the distribution of apps in iOS. Through its control over iOS, and through a variety of unlawful contractual restrictions that it forces app developers to accept, Apple prevents iOS users from downloading any apps from any source other than Apple's own storefront, the App Store.

8. The result is that developers are prevented from selling or distributing iOS apps unless they use Apple's App Store, and accede to Apple's oppressive terms and conditions for doing so (some of which are discussed further below). For example, as the sole distributor of iOS apps, Apple collects the money from every iOS user's app purchase, remits only 70% of that payment to the app developer, and retains a 30% tax for itself. iOS developers are thus forced to increase the prices they charge consumers in order to pay Apple's app tax. There is no method app developers can use to avoid this tax, as Apple has foreclosed any alternative ways to reach the over one *billion* users of iOS devices. As Representative Hank Johnson aptly summed up at a recent Congressional hearing on technology monopolies: "developers have no choice but to go along with [Apple's policies] or they must leave the App Store. That's an enormous amount of power."

9. Apple's anti-competitive conduct with respect to iOS app distribution results in sweeping harms to (i) app distributors, who are foreclosed from competing with Apple and innovating new methods of distributing iOS apps to users outside the App Store (such as, for example, curated app stores targeting particular categories of apps, like gaming or travel); (ii) app developers, who are denied choice on how to distribute their apps, are forced to fork over more of their revenue on paid apps than they would if Apple faced competition, and on occasion have to abandon their apps altogether if they cannot earn a profit given Apple's 30% tax; and (iii) consumers, who are likewise denied choice

and innovation in app distribution channels and are forced to pay higher prices and suffer inferior customer service from Apple, the unwelcome middleman. (Part I.)

10. Apple also imposes unreasonable restraints and unlawfully maintains a total monopoly in the iOS In-App Payment Processing Market. Among the oppressive terms that app developers have to accept, Apple coerces all app developers who wish to use its App Store—the only means with which to distribute apps to iOS users—to use exclusively Apple's own payment processing platform for all in-app purchases of in-app content. Apple thus requires third-party app developers to agree they will not even offer iOS users the *choice* of additional payment processing options *alongside* Apple's. And Apple goes as far as to gag app developers, preventing them from even *mentioning* to users the option of buying the same content outside of the app—for example, by purchasing content directly from the app developer, or using a web browser. Because Apple has a monopoly over the distribution of iOS apps, app developers have no choice but to assent to this anti-competitive tie; it is Apple's way or the highway.

11. In this market too, Apple thus stands as the monopolist middleman, positioning itself between developers and consumers. As the sole payment processor, Apple is able to take an exorbitant 30% fee on all in-app purchases of in-app content.

12. Apple's anti-competitive conduct with respect to iOS in-app payment processing harms: (i) other payment processors, who are foreclosed from competing with Apple on price and innovating new methods of in-app payment processing (such as, for example, rewards points or payment through carrier billing); (ii) app developers, who are denied choice on how to process payments and the benefits of innovation in payment processing, and are forced to pay Apple's tax—set by fiat—rather than by competitive market forces; and (iii) consumers, who are also denied choice and innovation in payment processing and suffer higher prices and inferior service. (Part II.)

13. Apple's anti-competitive conduct in these markets is unchecked; Apple faces little, if any, constraint on its monopoly power in both the iOS App Distribution and iOS In-App Payment Processing Markets, as Apple has foreclosed all

direct competition in these markets. And Apple stands as the sole middleman between a vast and dispersed group of iOS users, and a vast and dispersed group of app developers, each with little power individually to constrain Apple.

14. Further, competition in the sale of mobile devices does not limit Apple's market power. The threat of users switching to non-iOS devices does not constrain Apple's anti-competitive conduct because Apple's mobile device customers face significant switching costs and lock-in to the Apple iOS ecosystem, which serves to perpetuate Apple's substantial market power. This power manifests itself in the data, as Apple is able to gobble up over *two thirds* of the total global smartphone operating profits. Furthermore, when making mobile device purchases, consumers are either unaware of, or cannot adequately account for, Apple's anti-competitive conduct in the downstream app distribution and payment processing markets. The cost of app downloads and in-app purchases will play an insignificant (if any) role in swaying a consumer's smartphone purchase decision. (Part III.)

15. Epic is one of the many app developers affected by Apple's anti-competitive conduct. Epic is a developer of entertainment software for personal computers, smart mobile devices and gaming consoles. The most popular game Epic currently makes is *Fortnite*, which has connected hundreds of millions of people in a colorful, virtual world where they meet, play, talk, compete, dance, and even attend concerts and other cultural events. *Fortnite* is beloved by its millions of users. In the first year after *Fortnite*'s release in 2017, the game attracted over 125 million players; in the years since, *Fortnite* has topped 350 million players and has become a global cultural phenomenon.

16. Epic—and *Fortnite*'s users—are directly harmed by Apple's anti-competitive conduct. But for Apple's illegal restraints, Epic would provide a competing app store on iOS devices, which would allow iOS users to download apps in an innovative, curated store and would provide users the choice to use Epic's or another third-party's in-app payment processing tool. Apple's anti-competitive conduct has also

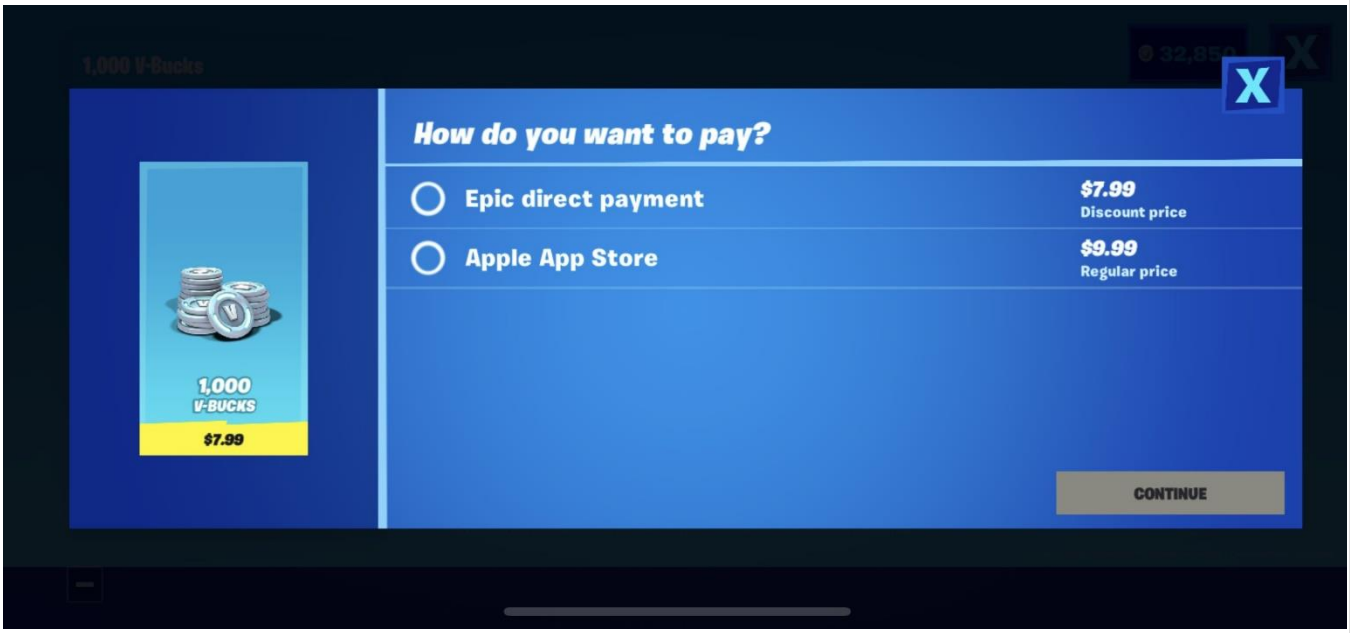
injured Epic in its capacity as an app developer by forcing Epic to distribute its app exclusively through the App Store and exclusively use Apple's payment processing services. As a result, Epic is forced, like so many other developers, to charge higher prices on its users' in-app purchases on *Fortnite* in order to pay Apple's 30% tax.

17. Contrast this anti-competitive harm with how similar markets operate on Apple's own Mac computers. Mac users can download virtually any software they like, from any source they like. Developers are free to offer their apps through the Mac computer App Store, a third-party store, through direct download from the developer's website, or any combination thereof. Indeed, on Macs, Epic distributes *Fortnite* through its own storefront, which competes with other third-party storefronts available to Mac users. App developers are free to use Apple's payment processing services, the payment processing services of third parties, or the developers' own payment processing service; users are offered their *choice* of different payment processing options (*e.g.*, PayPal, Amazon, and Apple). The result is that consumers and developers alike have choices, competition is thriving, prices drop, and innovation is enhanced. The process should be no different for Apple's mobile devices. But Apple has chosen to make it different by imposing contractual and technical restrictions that prevent any competition and increase consumer costs for every app and in-app content purchase—restrictions that it could never impose on Macs, where it does not enjoy the same dominance in the sale of devices. It doesn't have to be like this.

18. Epic has approached Apple and asked to negotiate relief that would stop Apple's unlawful and unreasonable restrictions. Epic also has publicly advocated that Apple cease the anti-competitive conduct addressed in this Complaint. Apple has refused to let go of its stranglehold on the iOS ecosystem.

19. On the morning of August 13, 2020, for the first time, Apple mobile device users were offered competitive choice. Epic added a direct payment option to *Fortnite*, giving players the *option* to continue making purchases using Apple's payment processor or to use Epic's direct payment system. *Fortnite* users on iOS, for the first

time, had a competitive alternative to Apple's payment solution, which in turn enabled Epic to pass along its cost savings by offering its users a 20% reduction in in-app prices as shown below:



20. Rather than tolerate this healthy competition and compete on the merits of its offering, Apple responded by removing *Fortnite* from sale on the App Store, which means that new users cannot download the app, and users who have already downloaded prior versions of the app from the App Store cannot update it to the latest version. This also means that *Fortnite* players who downloaded their app from the App Store will not receive updates to *Fortnite* through the App Store, either automatically or by searching the App Store for the update. Apple's removal of *Fortnite* is yet another example of Apple flexing its enormous power in order to impose unreasonable restraints and unlawfully maintain its 100% monopoly over the iOS In-App Payment Processing Market.

21. Accordingly, Epic seeks injunctive relief in court to end Apple's unreasonable and unlawful practices. Apple's conduct has caused and continues to cause Epic financial harm, but as noted above, Epic is not bringing this case to recover these damages; Epic is not seeking any monetary damages. Instead, Epic seeks to end Apple's

dominance over key technology markets, open up the space for progress and ingenuity, and ensure that Apple mobile devices are open to the same competition as Apple's personal computers. As such, Epic respectfully requests this Court to enjoin Apple from continuing to impose its anti-competitive restrictions on the iOS ecosystem and ensure 2020 is not like "1984".

PARTIES

22. Plaintiff Epic is a Maryland corporation with its principal place of business in Cary, North Carolina. Epic's mission is "to create fun games we want to play and to build the art and tools needed to bring those games to life".

23. Epic was founded in 1991 by a college student named Tim Sweeney who was studying mechanical engineering. Mr. Sweeney ran Epic out of his parents' garage and distributed by mail Epic's first commercial personal computer software, a game named *ZZT*. Since then, Epic has developed several popular entertainment software products that can be played on an array of platforms—such as personal computers, gaming consoles, and mobile devices.

24. Currently, Epic's most popular game is *Fortnite*, which has connected hundreds of millions of people in a colorful virtual world where they meet, play, talk, compete, dance, and even attend concerts and other cultural events.

25. Although some video games or other apps require users to pay before they download and use the software, *Fortnite* is free to download and play. Epic generates revenue by offering users various in-app purchases of in-app content. For example, players who wish to further express themselves within *Fortnite* through digital avatars, costumes, dances, or other cosmetic enhancements may purchase them within the *Fortnite* app. Through this model, Epic makes *Fortnite* widely accessible at no cost to consumers, while earning a return on its artistic and engineering investments through the sale of cosmetic enhancements.

26. *Fortnite* has become a global phenomenon. As noted, in the first year after *Fortnite* was released in 2017, the game attracted over 125 million players; in the years since, *Fortnite* has topped 350 million players and has become a global cultural phenomenon.

27. Epic also built and runs the Epic Games Store, a digital video game storefront through which gamers can download various games, some developed by Epic, and many offered by third-party game developers. The Epic Games Store is currently available on personal computers. Epic distributes *Fortnite* to users of personal computers—including users of Apple's own Mac computers—through the Epic Games Store. Epic also distributes other developers' games for a modest fee through the Epic Games Store. Worldwide, approximately 400 million users have signed up to play Epic's games, and each day 30 to 40 million individuals log into an Epic game.

28. Epic creates and distributes the *Unreal Engine*, a powerful software suite that allows users to create realistic three-dimensional content including video games, architectural recreations, television shows, and movies. An Epic subsidiary also develops and distributes the popular *Houseparty* app, which enables video chatting and social gaming on mobile devices and personal computers.

29. Defendant Apple is a California corporation with its principal place of business in Cupertino, California. Apple is the largest public company in the world, with a current market capitalization of close to $2 trillion. Apple designs, markets and sells smartphones (including the iPhone), personal computers (including Macs), tablets (including the iPad), wearables and accessories, and sells a variety of related services. Apple also owns and operates the Apple App Store (the "App Store"), including contracting with all app developers that distribute their apps through the App Store and is therefore a party to the anti-competitive contractual restrictions at issue in this Complaint.

JURISDICTION AND VENUE

30. This Court has subject matter jurisdiction over Epic's federal antitrust claims pursuant to the Clayton Antitrust Act, 15 U.S.C. § 26, and 28 U.S.C. §§ 1331

and 1337. The Court has supplemental jurisdiction over Epic's state law claims pursuant to 28 U.S.C. § 1367. The Court also has subject matter jurisdiction over the state law claims pursuant to 28 U.S.C. § 1332 based on the diversity of citizenship of Epic, on one hand, and of Apple, on the other. Although Epic does not seek monetary damages, the amount in controversy exceeds $75,000.

31. This Court has personal jurisdiction over Apple. Apple is headquartered in this District. Also, Apple has engaged in sufficient minimum contacts with the United States and has purposefully availed itself of the benefits and protections of both United States and California law such that the exercise of jurisdiction over Apple would comport with due process requirements.

32. Further, Apple has consented to the exercise of personal jurisdiction by this Court. Apple is party to an Apple Developer Program License Agreement (the "Developer Agreement") with Epic. Section 14.10 of the Developer Agreement provides that "[a]ny litigation or other dispute resolution" between the parties "arising out of or relating to this Agreement, the Apple Software, or Your relationship with Apple will take place in the Northern District of California", and that the parties "consent to the personal jurisdiction of and exclusive venue in the state and federal courts within" the Northern District of California. Section 14.10 further provides that the Developer Agreement "will be governed by and construed in accordance with the laws of the United States and the State of California". At least some of the claims raised in this Complaint "relate to" Epic's relationship with Apple.

33. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because Apple maintains its principal place of business in the State of California and in this District, and because a substantial part of the events or omissions giving rise to Epic's claims occurred in this District. In the alternative, personal jurisdiction and venue also may be deemed proper under Section 12 of the Clayton Antitrust Act, 15 U.S.C. § 22, because Apple may be found in or transacts business in this District.

INTRADISTRICT ASSIGNMENT

34. Pursuant to Civil Local Rule 3-2(c), this antitrust case shall not be assigned to a particular Division of this District, but shall be assigned on a District-wide basis.

RELEVANT FACTS

I. Apple Monopolizes the iOS App Distribution Market.

35. To understand how Apple maintains a complete monopoly over the iOS App Distribution Market, it will be helpful to provide a background on smart mobile devices and Apple's control over key aspects of the devices.

36. Apple designs, markets, and sells mobile computing devices including smartphones, which it brands as iPhones, and tablets, which it brands as iPads. Smartphones and tablets are portable electronic devices that can connect wirelessly to the internet and are capable of multipurpose computing functions, including, among other things, internet browsing, sending and receiving email, accessing workplace software, editing documents, using social media, streaming video, listening to music, or playing games.

37. Similar to laptop and desktop personal computers, mobile devices such as smartphones and tablets require an operating system or "OS" that enables multipurpose computing functionality. An OS for mobile devices (a "mobile OS"), just like the OS of any computer, is a piece of software that provides basic functionality to users of smartphones, such as button controls, touch commands, motion commands, and the basic "graphical user interface", which includes "icons" and other visual elements representing actions that the user can take. A mobile OS also facilitates the basic operations of a smartphone, such as GPS positioning, camera and video recording, speech recognition and other features. In addition, a mobile OS permits the installation and operation of apps that are compatible with the particular OS.

38. Just as personal computers are sold to users with an OS pre-installed (*e.g.*, Microsoft Windows or macOS), smartphones and tablets are sold to users with a

mobile OS pre-installed. Mobile device suppliers, commonly known in the industry as original equipment manufacturers ("OEMs"), such as Samsung or Motorola, will select and install an OS prior to shipping their respective devices for sale.

39. The vast majority of OEMs do not develop or own a proprietary mobile OS, and must instead license a mobile OS for installation on their devices. The overwhelming majority of mobile devices sold by these OEMs use the Android OS, which is licensed by Google. In contrast, Apple uses a proprietary operating system called iOS, which it installs on the iPhone.[1] All iPhones and iPads are shipped with iOS pre-installed. Apple does not license or install any other mobile OS onto the iPhone or iPad, nor does it license iOS to any other OEM for installation on devices other than Apple's.

40. Thus, for mobile device users, there are effectively only two mobile operating systems to choose from: Google's Android OS or Apple's iOS. As of July 2020, these two operating systems accounted for nearly 100% of the worldwide mobile OSs.[2]

41. Mobile device users, including iOS device users, desire and use a number of apps in connection with their devices. Apps—software programs designed to run on smartphones and tablets—facilitate and magnify the full range of the device's functionality. For example, apps support consumers' shopping, social networking, food ordering and delivery, personal email, newspaper subscriptions, video and music streaming, or playing mobile games like *Fortnite*. Smartphones and tablets are also a ubiquitous tool for conducting business, and many consumers consult work calendars,

[1] Historically, iOS was also the operating system used on iPads. In 2019, Apple announced that it would begin using the name iPadOS to refer to the operating system on iPads. For simplicity's sake, this Complaint refers to the operating system on both devices as "iOS". There are no differences between iOS and iPadOS that are relevant to the allegations herein.

[2] StatCounter, "Mobile Operating System Market Share Worldwide", available online at https://gs.statcounter.com/os-market-share/mobile/worldwide (last accessed Aug. 10, 2020); S. O'Dea "mobile operating systems' market share worldwide from January 2012 to December 2019", *Statista* (Feb. 28, 2020), available online at https://www.statista.com/statistics/272698/global-market-share-held-by-mobile-operating-systems-since-2009/.

draft work emails, edit work documents, and perform other work functions on their mobile device. The ability to access these smart functions "on the go" forms part of the distinct value-add of apps to many consumers and businesses. For instance, the portability of smartphones, in conjunction with certain apps, enable uses that could not be replicated by a desktop computer—*e.g.*, real-time GPS-based driving directions, entering meal orders tableside, processing payments at open-air markets and craft fairs, or taking photos and instantly posting them to social media. In short, apps permit the customization of a user's device to cater to the user's specific interests and needs.

42. When the iPhone was first launched in 2007, it supported only Apple's native designed apps, and did not offer users access to any apps developed by third parties. Apple quickly changed its policy, as just one year later, Apple released its new iPhone 3G model that opened up the iOS ecosystem to permit third-party developers to create new and innovative applications for iOS users.

43. Since opening up its iOS platform, and up to today, the vast majority of apps are developed and programmed by third-party developers, although Apple and Google, who control iOS and Android OS, respectively, also develop and distribute apps of their own. To reach iOS app consumers, and to make their investment into developing iOS apps profitable, app developers need to be able to distribute their iOS apps to users.

44. All software programs, such as apps, must be updated from time to time, either to add functions, to address technical issues, or to ensure compatibility with an OS that has been updated. App updates are important to the continued functionality and commercial viability of apps, as well as a means to make ongoing improvements to each app. Some updates resolve technical or programming issues—*e.g.*, a software fix to a bug that caused the app to crash or to ensure the app remains compatible with an OS update—while other updates are designed to introduce new functionality or content into an app to support continued interest in the app by its users—*e.g.*, an update to a bank app that adds the ability to deposit checks, a business suite that has added new functions for its customers' or employees, or an update to a game that introduces new challenges or

cosmetic features. Thus, in addition to a channel for initial distribution, app developers need a way to inform app users of updates to their apps, and a feasible means of disseminating those updates.

45. Apps are OS-specific; they must be programmed to function on the particular OS on which they will be downloaded and run. Thus, apps developed for Android OS cannot substitute for apps designed for iOS. Developers who wish to distribute an app to users of devices with different OSs must therefore code different versions of their app for distribution to the different sets of users. To reach iOS device users, developers must program an iOS-compatible version of their app.

46. The iOS userbase is enormous. There are nearly a billion iPhone users worldwide and over 1.5 billion active iOS devices, including both iPhones and iPads.[3] Typically, these users will use *only* iOS devices and will not also use mobile devices with a different OS. In addition to its size, the iOS user base is also uniquely valuable in that its user base spends twice as much money on apps as Android users.[4] This is consistent with Epic's experience, as the average iOS *Fortnite* user spends significantly more on in-app purchases than the average Android *Fortnite* user.

47. iOS users are therefore a "must have" market for app developers to compete in; an app developer that chooses to develop apps for Android but not iOS forgoes the opportunity to reach over one billion high-paying app users.

48. When Apple sells its iPhones and iPads, it chooses which apps to pre-install prior to the sale of the device to consumers, which Apple limits to its own apps, *i.e.*, third-party apps do not come pre-installed. However, Apple can neither anticipate

[3] Michael Potuck, "Apple hits 1.5 billion active devices with ~80% of recent iPhones and iPads running iOS 13", *9To5Mac* (Jan. 28, 2020), available online at https://9to5mac.com/2020/01/28/apple-hits-1-5-billion-active-devices-with-80-of-recent-iphones-and-ipads-running-ios-13/.

[4] Prachi Bhardwaj, "Despite Android's growing market share, Apple users continue to spend twice as much money on apps as Android users", *Business Insider* (Jul. 6, 2018), available online at https://www.businessinsider.com/apple-users-spend-twice-apps-vs-android-charts-2018-7#:~:text=Despite%20Android's%20growing%20market%20share,on%20apps%20as%20Android%20users&text=On%20top%20of%20that%2C%20Android,a%20distant%20second%20at%2014%25.

nor deliver the complete universe of apps that any particular iOS device purchaser may desire to use. Nor do consumers themselves know at the time they purchase a device the many different apps they will want to download. Some of the apps an iOS device user eventually installs may not even have been developed or released at the time the user purchased the device, as new apps are released daily. Thus, it would be impractical and imprudent for Apple to load its iOS device with a large number of pre-installed apps, many of which would be unwanted by consumers. Instead, consumers are able to customize their devices for their own needs and uses by choosing which apps to install.

49. Users therefore benefit from app distribution services, including services that allow users to find new apps they desire to download and that make new apps and app updates seamlessly available for download and update.

50. Part I.A below describes the market for distribution of apps on iOS devices. Part I.B explains Apple's monopoly power in the market, and Part I.C describes Apple's anti-competitive acts to maintain its monopoly in the market. Finally, Part I.D describes the harm to competition, including to would-be competing app distributors, app developers, and consumers.

A. The iOS App Distribution Market.

51. There is a relevant market for the distribution of apps compatible with iOS to users of iOS devices, the iOS App Distribution Market. This market is comprised of all of the channels through which apps may be distributed to iOS device users.

52. One channel for distributing apps is an app store. App stores allow consumers to easily browse, search for, access reviews on, purchase (if necessary), download, and install mobile apps using just the mobile device and an internet connection.

53. Non-iOS app stores are not part of the iOS App Distribution Market. Because app stores are OS-specific, they distribute only those apps compatible with the mobile OS on which the app store is used. iOS device users can use only an app store designed to run on iOS, and thus cannot substitute an app store designed to run on

Google's Android OS. Accordingly, app developers cannot distribute their apps to iOS users on a non-iOS app store—*i.e.*, non-iOS app stores do not substitute for iOS app stores from developers' or consumers' perspectives.

54. Stores distributing personal computer or gaming console software are also not part of the iOS App Distribution Market. Such stores are not compatible with iOS and do not offer iOS-compatible apps: for example, Steam is a popular outlet for distributing gaming software compatible with personal computers, but the software it distributes cannot run on an iOS device. A user cannot download mobile apps for use on an iOS device by using such non-iOS, non-mobile software distribution platforms.

55. The same is true even when an app or game, like *Fortnite*, is available for different types of platforms running different operating systems. Only the OS-compatible version of that software can run on a specific type of device or computer. Accordingly, as a commercial reality, an app developer that wishes to distribute mobile apps for iOS devices must develop an iOS-specific version of the app and avail itself of the iOS App Distribution Market.

56. In the alternative only, the iOS App Distribution Market is a relevant, economically distinct sub-market of a hypothetical broader antitrust market for the distribution of mobile apps to users of all mobile devices, whether Apple's iOS or Google's Android OS.

57. The geographic scope of the iOS App Distribution Market is worldwide, as consumers and developers can access iOS worldwide.

B. Apple's Monopoly Power in the iOS App Distribution Market.

58. Apple has a monopoly in the iOS App Distribution Market. This is because the App Store is the ***sole means*** by which apps may be distributed to consumers in that market.

59. Apple's anti-competitive conduct (discussed in Part I.C below) forecloses all potential competitors from entering the iOS App Distribution Market. Apple prevents iOS users from downloading app stores or apps directly from websites;

pre-installs its App Store on every iOS device it sells; disables iOS users' ability to remove the App Store from their devices; and conditions all app developers' access to iOS on the developers' agreement to distribute their apps solely through the App Store and not to distribute third-party app stores. Although Apple could permit developers to build and offer competing iOS app stores, it denies all developers any opportunity to do so. Apple's power in the iOS App Distribution Market is absolute.

60. As a result of Apple's conduct, app developers have no choice but to offer apps exclusively through the App Store to reach the enormous userbase of iOS devices and are foreclosed from distributing apps by any other means.

61. ***Apple faces no constraints on its power*** in the iOS App Distribution Market. Non-iOS app distribution platforms do not constrain Apple's monopoly power in the iOS App Distribution Market 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.

62. Nor can app developers constrain Apple's anti-competitive conduct in the iOS App Distribution Market by declining to develop apps for iOS. If a developer does not develop apps for iOS, the developer must forgo *all* of the over one billion or so iOS users. No developer alone has sufficient power to overcome the network effects and switching costs associated with iOS (*see* Part III below) to entice enough iOS users to leave iOS, such that developing apps solely for other platforms would be profitable. Thus, developers need to be on iOS.

63. Lastly, as described in Part III below, competition in the sale of mobile devices does not constrain Apple's power in the iOS App Distribution Market because iOS device users face substantial switching costs and lock-in to the iOS ecosystem. Further, regardless of the extent of competition in the sale of premium smartphones, competition at the smartphone level would not constrain Apple's power in the iOS App Distribution Market because consumers cannot adequately account for and

therefore constrain Apple's anti-competitive conduct through their purchasing behavior. The same is true for competition at the tablet level.

C. Apple's Anti-competitive Conduct in the iOS App Distribution Market.

64. Apple imposes unreasonable restraints and unlawfully maintains a monopoly in the iOS App Distribution Market through several anti-competitive acts, including technical restrictions (Part I.C.i below) and contractual restrictions. (Part I.C.ii below.) There is no procompetitive justification for these anti-competitive acts. (Part I.C.iii below.)

i. Technical Restrictions

65. Apple imposes several technical restrictions that foreclose competition in the iOS App Distribution Market.

66. *First*, Apple prevents iOS users from downloading app stores or apps directly from websites. Apple has done so by designing technical restrictions into iOS that prevent users from downloading app stores or apps directly from websites. As a result, iOS consumers must use Apple's App Store to download any apps to their devices, app developers must use Apple's App Store to distribute their apps to consumers, and would-be app distributors are unable to offer apps or competing app stores through their respective websites.

67. *Second*, Apple pre-installs its App Store on the home screen of every iOS device it sells. Apple does not pre-install (or even allow) any competing app stores anywhere on iOS devices. Apple also disables iOS users' ability to remove the App Store from their devices.

ii. Contractual Restrictions

68. Apple also imposes contractual restrictions that foreclose competition in the iOS App Distribution Market.

69. *First*, Apple conditions all app developers' access to iOS on the developers' agreement to distribute their apps solely through the App Store.

70. Apple effects this unlawful condition by requiring that all iOS developers enter into Apple's Developer Agreement, a contract of adhesion.

71. Section 3.2(g) of the Developer Agreement requires that developers distribute their apps only through the App Store. The Section provides that Applications "may be distributed only if selected by Apple (in its sole discretion) for distribution via the App Store, Custom App Distribution, for beta distribution through TestFlight, or through Ad Hoc distribution as contemplated in this Agreement".

72. The App Store is thus the only channel through which developers can distribute apps to the broad iOS userbase. Custom App Distribution, beta distribution through TestFlight, and Ad Hoc distribution are limited distribution channels that can only be used for specific types of commercial users.[5]

73. Custom App Distribution is available only in unique and specialized circumstances—namely, where a business or school needs to support the distribution and maintenance of apps on its devices. Custom App Distribution is the "store or storefront functionality that enables users to obtain Licensed Applications through the use of Apple Business Manager, Apple School Manager, or as otherwise permitted by Apple". (Developer Agreement § 1.2, Ex. A.) Organizations can use Apple Business Manager and Apple School Manager to organize their devices, apps, and accounts. These programs enable organizations to buy and distribute apps and content in bulk to their members or employees. Custom App Distribution does not allow developers to distribute apps to the broad iOS userbase; it is essentially a sanctioned extension of the App Store for narrow, specialized purposes, not a competing distribution channel.

74. Apple's beta testing program permits a developer to release non-final versions of apps through Apple's TestFlight Application to only a limited number of (i) the developer's own personnel and (ii) beta testers. (Developer Agreement § 7.4,

[5] Apple also allows certain Apple-approved large commercial organizations to participate in Apple's Developer Enterprise Program, which permits the approved organizations to develop and deploy proprietary, internal-use apps to their employees. This program does not permit developers to distribute apps to the broad iOS userbase.

Ex. A.) This program permits distribution only to a limited number of iOS devices (primarily owned and controlled by the developer) for the sole and specific purpose of facilitating the coding and testing of a developer's apps for use on the App Store; this program does not allow developers to distribute apps to the broad iOS userbase.

75. Ad Hoc distribution refers to the limited permission Apple gives a developer to distribute apps directly to the developer's own devices in connection with the developer's efforts to develop apps for iOS users. (Developer Agreement §§ 1.2, 7.3, Ex. A.) Because this permission is limited to a developer's devices and does not allow distribution to third parties, Ad Hoc distribution does not allow developers to distribute apps to the broad iOS userbase.

76. Therefore, by contractually conditioning developers' access to iOS on their agreement to distribute apps solely through the App Store, Apple further forecloses competition in the iOS App Distribution Market, as developers are contractually prevented from choosing to offer their iOS apps through third-party app stores.

77. *Second*, Apple conditions app developers' access to iOS on their agreement not to distribute third-party app stores.

78. Section 3.3.2(b) of the Developer Agreement prohibits "Application[s]" that "create a store or storefront for other code or applications".

79. Further, Apple's App Store Review Guidelines—which the Developer Agreement requires iOS developers to follow or risk removal from the App Store—make it "[u]nacceptable" to create "an interface for displaying third-party apps, extensions, or plug-ins similar to the App Store or as a general-interest collection". (App Store Review Guidelines § 3.2.2(i), Ex. B.)

80. In other words, to access the iOS userbase, app developers must agree not to distribute or create app stores that could compete with Apple's App Store—whether they intend to distribute their own app store through Apple's App Store or through the developer's own website.

81. Apple has enforced these restrictions against Epic. Epic approached Apple to request that Apple allow Epic to offer its Epic Games Store to Apple's iOS users through the App Store and direct installation. Apple's response was an unequivocal "no".

iii. Lack of Procompetitive Justification

82. There is no procompetitive justification for Apple's anti-competitive conduct in the iOS App Distribution Market.

83. Apple has asserted that blocking third-party app distribution platforms is necessary to enforce privacy and security safeguards. This is a pretext that Apple has used to foreclose *all* competition in the iOS App Distribution Market in which it has absolute monopoly power. A simple comparison to how Apple handles third-party software on its Mac personal computers illustrates how baseless its justifications are. Apple allows Mac users to access a number of different distribution channels to download software applications to their computers, including direct downloads from developer websites and the ability to purchase software applications from stores offered by third parties that compete with Apple's App Store. The consumer experience of acquiring software on Apple personal computers and Apple's smartphones is night and day. There is no legitimate reason why the same competitive structure for acquiring software on an Apple personal computer could not safely and securely exist on Apple's smart mobile devices.

84. There are a variety of mechanisms available to ensure the security of third-party applications that are less restrictive than prohibiting anyone other than Apple from distributing apps. If Apple believes it has a unique capability to screen apps for privacy and security issues, it could market those capabilities to competing app distributors, for a price. But if given the opportunity, competitors may be able to provide even *better* privacy and security safeguards. It is for users and the market to decide which store offers the best safeguards and at what price, not for Apple.

85. In describing the App Store for iOS, Apple claims to "believe competition makes everything better and results in the best apps for our customers".[6] Epic agrees. Competition in the iOS App Distribution Market would make everything better, and that includes better distribution services, better privacy and security safeguards, lower pricing, and access to apps that Apple currently and unfairly restricts.

86. Given the lack of any procompetitive justification, much less a sufficient one to justify the complete blocking of any competition, Apple's conduct imposes unreasonable restraints and unlawfully maintains its monopoly in the iOS App Distribution Market.

D. Anti-competitive Effects in the iOS App Distribution Market.

87. Apple's anti-competitive conduct forecloses competition in the iOS App Distribution Market, affects a substantial volume of commerce in this market, and causes anti-competitive harms to (i) would-be competing app distributors, (ii) developers, and (iii) consumers.

88. *First*, Apple's anti-competitive conduct harms all would-be app distributors by foreclosing them from competing in the iOS App Distribution Market.

89. But for Apple's restrictions, would-be competing app distributors, such as Epic, could develop and offer iOS-compatible app stores, thereby providing consumers and developers choice beyond Apple's own App Store and injecting healthy competition into the market. These stores could compete on the basis of (among other things) price, service and innovation. Competitors could innovate by (among other things) curating the apps available on a competing app store (such as offering selections of apps in particular categories of consumer interest, like gaming, travel, or health), providing more reliable reviews and other information about the apps, showing or advertising apps in different ways, or offering different pricing schemes.

[6] Apple, "App Store", https://www.apple.com/ios/app-store/principles-practices/ (last accessed Aug. 2, 2020).

90. For example, in the personal computer space (including Macs), software can be purchased through many different sellers, including special digital membership stores. In the gaming space, the leading store is Steam. To compete against Steam, Epic developed its own digital membership store to sell game software, the Epic Games Store. The Epic Games Store provides access to more than 250 games from more than 200 developers, and those numbers are growing rapidly. The Epic Games Store offers personalized features such as friends list management and game matchmaking services. Absent Apple's anti-competitive conduct, Epic would also create an app store for iOS.

91. Notable large technology companies have recently clashed with Apple and lost, demonstrating that Apple's monopoly power is not constrained by even large and well-capitalized market participants. As a result, iOS users are denied innovations. For example, on August 6, 2020, *The Verge* reported that a new and notable mobile gaming service, Microsoft's xCloud, would be launching its cloud-based online gaming system across a number of different platforms—but not on Apple's App Store.[7] Apple confirmed that it rejected xCloud for violating Apple's policies—the same policies described above that are designed to protect Apple's monopoly over the iOS App Distribution Market.[8] Microsoft expressed its discontent with the decision, stating that Apple is "stand[ing] alone as the only general purpose platform to deny consumers from cloud gaming and game subscription services like Xbox Game Pass".[9]

92. One day later, August 7, 2020, *The New York Times* reported that Facebook had unsuccessfully attempted for six months to obtain Apple's approval of a new Facebook Gaming app that would allow users to watch livestreams of online games

[7] Nick Statt, "Apple confirms cloud gaming services like xCloud and Stadia violate App Store guidelines" *The Verge* (Aug. 6, 2020), available online at https://www.theverge.com/2020/8/6/21357771/apple-cloud-gaming-microsoft-xcloud-google-stadia-ios-app-store-guidelines-violations.

[8] *Id.*

[9] *Id.*

and play simple games, like the popular Words With Friends.[10] Like it had with Microsoft, Apple unequivocally refused to allow Facebook to distribute its competing game store on the App Store.[11] Ultimately, Facebook caved under Apple's power and removed the ability for users to play games on its app, limiting it to a simple video streaming service.[12] As Facebook's vice president for gaming, Vivek Sharma, explained, Apple's conduct creates "shared pain across the games industry, which ultimately hurts players and developers and severely hamstrings innovation on mobile for other types of formats like cloud gaming".[13]

93. *Second*, Apple's anti-competitive conduct harms developers, including Epic.

94. Apple's conduct denies developers the choice of how best to distribute their apps. Developers are barred from reaching over one billion iOS users unless they go through Apple's App Store, and on Apple's terms. Developers cannot distribute their apps through competing app stores that could offer, for example, increased visibility or better or cheaper marketing. Nor can developers offer their apps directly though their own websites. Thus, developers are dependent on Apple's *noblesse oblige*, as Apple may deny access to the App Store, change the terms of access, or alter the tax it imposes on developers, all in its sole discretion and on the commercially devastating threat of the developer losing access to the entire iOS userbase.

95. Apple's total foreclosure of any competition in the iOS App Distribution Market reduces the competitive pressure for Apple to innovate and improve its own App Store, leaving developers with inferior distribution outlets compared to what

[10] Seth Schiesel, "Facebook Gaming Finally Clears Apple Hurdle, Arriving in App Store", *The New York Times* (Aug. 7, 2020), available online at https://www.nytimes.com/2020/08/07/technology/facebook-apple-gaming-app-store.html.

[11] *Id.*

[12] *Id.*

[13] *Id.*

would exist if competition were to drive further development and innovation in the market.

96. Apple's restrictions also prevent developers from experimenting with alternative app distribution models, such as providing apps directly to consumers, selling apps through curated app stores, selling app bundles, and more. By restricting developers in this way, Apple ensures that developers' apps will be distributed only on the App Store.

97. Additionally, Apple's conduct increases developers' costs. Apple is able to extract a supra-competitive 30% tax on purchases of paid apps. 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 its 30% tax, Apple necessarily forces developers to suffer lower profits, reduce the quantity or quality of their apps, raise prices to consumers, or some combination of the three.

98. Apple itself has recognized that its tax is prohibitive to many app developers, because the 30% surcharge makes the development of many apps unprofitable. For example, in an internal discussion among Apple's top executives regarding Apple's 30% charge, Steve Jobs acknowledged that a developer cannot "buy/rent/subscribe from iOS without paying us [Apple], which we *acknowledge is prohibitive for many things*".[14]

99. *Third*, Apple's anti-competitive conduct harms consumers.

100. Apple's conduct denies consumers choice, as they are forced to obtain apps solely through the App Store, and Apple alone dictates which apps are available.

101. As explained above, the lack of any competition in the iOS App Distribution Market prevents innovation by foreclosing potential competing app stores and alternative app distribution channels, as well as reduces the competitive pressure for Apple to innovate and improve its own App Store or reduce its supra-competitive 30%

[14] E-mail from T. Cook, CEO, Apple, to Eddy Cue, VP of Internet Software and Services, Apple (Feb. 6, 2011) (emphasis added) (House Committee On the Judiciary: Online Platforms and Market Power, Apple Documents at HJC-APPLE-014816).

tax. Customers therefore are denied the opportunity to find and access apps by way of new, innovative distribution methods, including specialized app stores catering to their specific interests.

102. Additionally, Apple's conduct increases consumers' costs. Apple's market power permits it to impose a supra-competitive 30% tax on the price of apps purchased through the App Store—a rate that is far higher than what could be sustained under competitive conditions. Consumers bear some or all of that tax in the form of higher prices or reduced quantity or quality of apps.

II. Apple Monopolizes the iOS In-App Payment Processing Market.

103. Many app developers generate revenue by enabling purchases through their apps.

104. Epic's *Fortnite* is one such example. In *Fortnite*, players may purchase digital outfits, dance moves, and other cosmetic enhancements within the game.

105. Developers selling digital content, such as Epic, require some way by which consumers may seamlessly and efficiently make purchases in their apps.

106. To address the need for in-app payment processing, an application programming interface ("API") is integrated into apps. When a customer makes an in-app purchase, the API sends the customer's payment method (for example, a credit card) to a payment processor for approval, similar to how a customer at a brick-and-mortar store presents a payment method to a cashier for processing at a register. The payment processor processes the transaction and, if approved, indicates through the API that the app can make the purchased content available to the user.

107. There are a number of third-party payment processors such as Braintree, PayPal, Square, and Stripe. Alternatively, some developers, like Epic, have developed their own payment processing solutions. An app developer can select the payment processor (or combination of payment processors) that best enhances the user experience and helps facilitate a seamless, cost-effective, and efficient payment processing API to work within their apps.

108. On iOS, however, Apple eliminates any choice of in-app payment processors for in-app content and coerces developers into using Apple's In-App Purchase. Apple effects this unlawful tie by requiring developers who want to enable in-app sales of in-app content to use Apple's payment processor, exclusively—which forecloses any alternative payment processing solutions.

A. The iOS In-App Payment Processing Market.

109. There is a relevant market for the processing of payments for the purchase of digital content, including in-game content, that is consumed within iOS apps, the iOS In-App Payment Processing Market. The iOS In-App Payment Processing Market comprises the payment processing solutions that (but for Apple's unlawful conduct) iOS developers could turn to and integrate into their iOS-compatible apps to process in-app purchases of in-app content.

110. Absent Apple's unlawful conduct, app developers could integrate compatible payment processors into their apps to facilitate the purchase of in-app content. Developers also would have the capability to develop their own in-app payment processing functionality. And developers could offer users a choice among multiple payment processors for each purchase, just like a website or brick-and-mortar store can offer a customer the option of using Visa, MasterCard, Amex, Apple Pay, and more.

111. Apple offers separate payment solutions for the purchase of digital content than it does for other types of purchases, even within mobile apps. In-App Purchase can be used for the purchase of digital content for use in an app, while Apple offers a separate tool, Apple Pay, to facilitate the in-app purchase of physical products and services.

112. APIs and payment processing tools available outside of the app—such as transaction processing through a developer's website or over the phone—cannot substitute for in-app payment processing. The ability to process in-app transactions seamlessly and nearly instantaneously within the app itself provides immense benefits for app users and developers. For users, the need to go outside the app to complete a

purchase would severely disrupt the use of the app, especially in game situations like *Fortnite*, and would require substantially more effort to effectuate any purchase.

113. It is particularly important that app developers who sell in-app digital content be able to offer in-app transactions that are seamless, engrossing, quick, and fun. For example, a gamer who encounters a desirable "skin" within *Fortnite*, such as a Marvel superhero, may purchase it nearly instantly for a small price without leaving the app. Although *Fortnite* does not offer content that extends gameplay or gives players competitive advantages, other game developers offer such products—for example, "boosts" and "extra lives"—that extend and enhance gameplay. It is critical that such purchases can be made during gameplay itself, rather than in another manner. If a player were required to purchase game-extending extra lives outside of the app, the player may simply stop playing instead.

114. As another example, if a user of a mobile dating app encounters a particularly desirable potential dating partner, he/she can do more than "swipe right" or "like" that person, but can also purchase a digital item that increases the likelihood that the potential partner will notice his/her profile. If the user could not make that purchase quickly and seamlessly, he/she would likely abandon the purchase and may even stop "swiping" in the app altogether.

115. It is therefore essential that developers who offer digital content be able to seamlessly integrate a payment processing solution into the app, rather than requiring a consumer to go elsewhere, such as to a separate website, to process a transaction. Indeed, if an app user were directed to process a purchase of digital content outside of a mobile app, the user might abandon the purchase or stop interacting with the mobile app altogether

116. Mobile game developers particularly value the ability to provide users with engaging gameplay without imposing any burdens or distractions on consumers who wish to make in-app purchases. Developers would be harmed if their app users were directed to process their purchases outside of the app, as such users would likely reduce

their number of purchases, abandon purchases outright, or stop interacting with the app altogether. For these reasons, and in the alternative only, there is a relevant antitrust sub-market for processing purchases of virtual gaming products within mobile iOS games (the "iOS Games Payment Processing Market").

117. By contrast, app developers who sell physical products have multiple ways to process transactions, and consumers are more willing to use methods other than in-app purchases. For example, a consumer who desires to purchase a physical product from Amazon could readily use either Amazon's mobile app or Amazon's website, or could make the same or similar purchase in a number of other ways, including through another online seller or at a brick-and-mortar store.

118. The geographic scope of the iOS In-App Payment Processing Market is worldwide, as consumers and developers can access iOS worldwide. Further, Apple's 30% tax does not vary by locality.

B. Apple's Monopoly Power in the iOS In-App Payment Processing Market.

119. Apple has a monopoly over the iOS In-App Payment Processing Market and, in the alternative, over the iOS Games Payment Processing Market, as it has a 100% market share.

120. As explained in Part I above, Apple has a complete monopoly in the iOS App Distribution Market. As the gatekeeper to the App Store, Apple is able to unlawfully condition access to the App Store on iOS app developers' use of Apple's In-App Purchase to process all in-app payments for in-app content.

121. Additionally, through its exclusionary tactics in the iOS In-App Payment Processing Market (Part II.C below), Apple is able to maintain its monopoly over that market.

122. Apple does not face any meaningful constraints to its monopoly power in the iOS In-App Payment Processing Market. As discussed above, APIs and

payment processing tools available outside of iOS cannot substitute for in-app payment processing because they severely disrupt the use of the app.

123. Competition in the iOS App Distribution Market cannot constrain Apple in the iOS In-App Payment Processing Market because there is no such competition, as explained in Part I.

124. Nor can app developers constrain Apple's anti-competitive conduct in the iOS In-App Payment Processing Market by declining to develop apps for iOS. If a developer does not develop apps for iOS, the developer must forgo *all* of the one billion plus iOS users. No developer has sufficiently important or attractive apps to overcome the network effects and switching costs (*see* Part III below) associated with iOS to entice enough iOS users to leave iOS, such that developing apps solely for other platforms would be profitable. Thus, developers need to be on iOS.

125. Apple charges a 30% fee for In-App Purchase. This rate reflects Apple's market power and the lack of competition, which allow Apple to charge supra-competitive prices for payment processing within the market.

126. The cost of alternative electronic payment processing tools, which Apple does not permit to be used for the purchase of in-app digital content, can be ***one tenth*** of the cost of In-App Purchase.

Electronic Payment Processing Tool	**Base U.S. Rate**
PayPal	2.9%
Stripe	2.9%
Square	2.6%-3.5%
Braintree	2.9%

127. Lastly, as described in Part III below, competition in the sale of mobile devices does not constrain Apple's power in the iOS In-App Payment Processing Market because iOS device users face substantial switching costs and lock-in to the iOS ecosystem. Further, regardless of competition in the sale of mobile devices, competition

at the smartphone level would not constrain Apple's power in the iOS App Distribution Market because consumers cannot adequately account for and therefore constrain Apple's anti-competitive conduct through their purchasing behavior. The same is true of competition at the tablet level.

C. Apple's Anti-competitive Conduct in the iOS In-App Payment Processing Market.

128. Apple imposes unreasonable restraints and unlawfully maintains its monopoly in the iOS In-App Payment Processing Market through several anti-competitive acts, including contractual and policy restrictions on app developers. (Part II.C.i below.) There is no procompetitive justification for these anti-competitive acts. (Part II.C.ii below.)

i. Contractual and Policy Restrictions

129. Through its unlawful policies and restrictions, Apple unlawfully ties In-App Purchase to the use of its App Store and forecloses any potential competition in the iOS App Payment Processing Market.

130. Developers seeking to distribute their apps on the App Store are required to follow Apple's App Store Review Guidelines or risk Apple rejecting or removing their app from the App Store. (Developer Agreement § 6.3, Ex. A.) Section 3.1.1 of these guidelines provide that "if you [the developer] want to unlock features or functionality within your app, (by way of example: subscriptions, in-game currencies, game levels, access to premium content, or unlocking a full version), you ***must use in-app purchase***. Apps ***may not use their own mechanisms to unlock content or functionality*** . . . . Apps and their metadata may not include buttons, external links, ***or other calls to action that direct customers to purchasing mechanisms other than in-app purchase***". (emphases added).

131. Additionally, Section 3.1.3 of the guidelines provides that developers may not "directly or indirectly target iOS users to use a purchasing method ***other than [Apple's] in-app purchase***, and general communications [to users] about other

purchasing methods [must not be] ***designed to discourage use of [Apple's] in-app purchase***". (emphases added).

132. These guidelines enumerate Apple's anti-competitive tying policy: an app developer's access to the App Store—the only means to reach Apple's substantial iOS userbase—is conditioned on the developer's use of Apple's In-App Purchase to process payments for in-app content. But Apple's policies take it yet another step further, gagging developers from even *informing* users of other payment options outside the app or from discouraging its users from using Apple's payment system. These draconian policies serve to cement Apple's monopoly position in the iOS In-App Payment Processing Market.

133. Apple strictly enforces these contractual terms. For example, in an October 2016 letter from Apple's General Counsel to Spotify, Apple threatened to remove Spotify's app from the App Store for advertising free trials to its own customers.[15] Apple decreed: "What a developer cannot do is seek to use its iOS app as a marketing tool to redirect consumers outside of the app to avoid in-app purchase."[16]

134. Apple thus requires all developers to use its In-App Purchase to the exclusion of any third-party payment processing solution, foreclosing any would-be competing in-app payment processors from entering the iOS In-App Payment Processing Market. In other words, app developers are coerced into using In-App Purchase by virtue of wanting to use the App Store.

ii. Lack of Procompetitive Justification

135. Apple's foreclosure of the iOS In-App Payment Processing Market has no procompetitive justification.

136. There is no security justification for requiring the use of In-App Purchase for a user's in-app purchase of in-app content. The best illustration of this point

[15] Letter from Bruce Sewell, General Counsel, Apple, to Horacio Gutierrez, General Counsel, Spotify (Oct. 28, 2016) (House Committee On the Judiciary: Online Platforms and Market Power, Apple Documents at HJC-APPLE-013579).

[16] *Id.*

is Apple's own conduct. Apple does not require that its In-App Purchase be used for in-app purchases of physical goods and certain services that are consumed outside the app. There is no security-based distinction between purchases of such physical goods (*e.g.*, food, clothing) and services (*e.g.*, rideshares, lodging), on the one hand, and purchases of in-app content (*e.g.*, game content unlocks, character cosmetics), on the other. Apple permits app developers like Amazon, Uber and Airbnb to process payments from customers for the goods and services they sell; it can likewise permit Epic, Match, Pandora and others to process payments from customers for the digital goods and services they sell.

137. Moreover, the security of a payment processing system is an element on which payment processors can compete—and do compete in non-monopolized markets where alternatives are available. If Apple's payment processing is truly the most secure, Apple can make that case in a competitive market. Apple should not be permitted to shield itself from competition and simply declare itself the most secure; it is for consumers and the market, not Apple, to determine what payment processing service is best.

138. Apple has also asserted on occasion that it must force developers and consumers to use In-App Purchase so that Apple can monitor each transaction and ensure that Apple is paid. But this assertion is circular; it presupposes that Apple is entitled to take a cut of every in-app purchase of in-app content on an iOS device (though it does not make the same claim for its Mac personal computers or for other types of in-app purchases on iOS devices). Apple has no such entitlement. Apple can seek recompense for any services it provides without fencing out competition in in-app payment processing. It is market competition, not Apple's dictate, that should set the terms on which apps obtain in-app payment processing services.

D. Anti-competitive Effects in the iOS In-App Payment Processing Market.

139. Apple's anti-competitive conduct forecloses competition in the iOS In-App Payment Processing Market, affects a substantial volume of commerce in that

market, and causes anti-competitive harms to (i) would-be competing in-app payment processors, (ii) app developers, and (iii) consumers.

140. *First*, Apple's anti-competitive conduct forecloses all would-be in-app payment processors from competing in the iOS In-App Payment Processing Market.

141. But for Apple's restrictions, would-be competing in-app payment processors could offer alternative in-app payment processing tools, giving app developers and consumers choices beyond Apple's In-App Purchase, and spurring innovation, better service and lower prices. These innovations could include, for example, alternative means to pay for in-app purchases of in-app content—which Apple does not offer—such as billing to the customer's cellular carrier, using Bitcoin or other cryptocurrencies, offering rewards points to customers, or providing more than one in-app payment processor. Apple's anti-competitive conduct eliminates all of these innovations and alternative payment options.

142. For example, outside of the restricted iOS ecosystem, Epic has worked with a number of third-party payment companies that provide creative new forms of payment processing solutions for consumers. One such example is Skrill, which offers Epic's customers pre-paid "Paysafe" cards offered in convenience stores across Poland and Germany that can unlock in-game content. Absent Apple's anti-competitive conduct, developers could offer similar payment services on iOS.

143. *Second*, Apple's anti-competitive conduct harms developers, including Epic.

144. Apple's conduct denies developers innovation, which could be provided by would-be competing in-app payment processors, as explained above.

145. Apple's conduct also denies developers choice and coerces them to use Apple's In-App Purchase. Developers are contractually required to use Apple's in-App Purchase to facilitate in-app purchases of in-app content on their iOS apps—and no alternative third-party payment processor can be used.

146. But for Apple's restrictions, developers could choose other options. For example, Epic would offer its own payment processing service for *Fortnite*. Epic already does so on personal computers, including Macs.

147. Apple also harms app developers' relationship with their customers by inserting itself as a mandatory middleman in every in-app transaction. When Apple acts as payment processor, Epic is unable to provide users comprehensive customer service relating to in-app payments without Apple's involvement. Apple has little incentive to compete through improved customer service because Apple faces no competition and consumers often blame Epic for payment-related problems. In addition, Apple is able to obtain information concerning Epic's transactions with its own customers, even when Epic and its own customers would prefer not to share their information with Apple.

148. Additionally, Apple's conduct increases developers' costs. As noted, Apple extracts an exorbitant 30% tax on in-app purchases of in-app content. 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 its 30% tax, Apple necessarily forces developers to suffer lower profits, reduce the quantity or quality of their apps, raise prices to consumers, or some combination of the three.

149. Notably, Apple's 30% charge on in-app purchases is much higher than fees charged by analogous electronic payment processors in competitive contexts, such as PayPal, Stripe, Square or Braintree, which typically charge payment processing rates of around 3%, a 10-fold decrease from Apple's supra-competitive rates.[17] As another example, Google charges 2.9% or less for the use of Google Pay, an electronic payment processor that Google makes available to app developers for processing payments for physical products sold on Android apps. If developers were able to rely on their own solutions, or those of third-party payment processors, they could offer users lower prices for in-app purchases—as well as better customer service and alternative

[17] Yowana Wamala, "Amazon Payments Review: Should Your Business Use it?", *Value Panguin* (June 11, 2019), https://www.valuepenguin.com/credit-card-processing/amazon-payments-review.

payment options. Apple could not maintain its 30% tax if it did not unlawfully foreclose competition.

150. A glimpse of these anti-competitive effects recently manifested as a result of the ongoing global coronavirus pandemic. ClassPass, a company that developed an app to help consumers book exercise classes at gyms, has historically avoided having to pay any tax to Apple, as its services related to in-person workout classes. After the pandemic began, however, ClassPass adapted to its customers' needs and began offering virtual workout classes for the many who were stuck at home. On July 28, 2020, The *New York Times* reported that, in response to this shift to digital classes, Apple asserted that ClassPass was now offering in-app content and demanded that ClassPass pay Apple the 30% tax on in-app purchases of the virtual classes. As a result of Apple's demands, ClassPass stopped offering its virtual classes on its app, depriving consumers the benefit of innovative content specifically designed to address their needs during this unprecedented time.

151. *Third*, Apple's anti-competitive conduct harms consumers.

152. Apple's conduct denies consumers innovation, which could be provided by would-be competing in-app payment processors, as explained above.

153. Apple's conduct also denies consumers choice, as they are forced to make in-app purchases of in-app content solely through Apple's In-App Purchase.

154. Further, as noted above, Apple undermines the quality of services that consumers receive because Apple stands as a middleman in every in-app purchase of in-app content. Developers, therefore, are unable to resolve customer complaints arising from in-app purchases directly. For example, Apple does not have a formal mechanism through which developers can determine why a particular refund went through or was rejected, thereby impeding developers' efforts to offer high-quality customer service to consumers.

155. Finally, Apple's conduct increases consumers' costs. Apple's market power permits it to impose an exorbitant 30% tax on in-app purchases of in-app content.

Consumers must bear some or all of that tax in the form of higher in-app content prices and/or reduced quantity or quality of in-app content.

III. Competition in the Sale of Mobile Devices Cannot Discipline Apple's Conduct in the iOS App Distribution or iOS In-App Payment Processing Markets.

156. Competition in the sale of mobile devices cannot constrain Apple's anti-competitive conduct described in Parts I and II.

157. *First,* Apple's power in the relevant markets described above is not disciplined by competition in the sale of mobile devices because Apple mobile device customers face significant switching costs and customer lock-in to Apple's iOS ecosystem. (Part III.A.) These conditions manifest themselves in Apple's ability to maintain its substantial power in the sale of premium smartphones and tablets. (Part III.B.)

158. *Second*, Apple's power in the relevant markets described above is not disciplined by competition in the sale of mobile devices because consumers cannot adequately account for, and therefore constrain, Apple's anti-competitive conduct through their device purchasing behavior. The cost of app downloads and in-app purchases—unknowable by the consumer at the time of a smartphone or tablet purchase, but likely far less than the price of the device itself—will play an insignificant (if any) role in swaying a consumer's mobile device purchasing decision. (Part III.C.)

A. Apple's Mobile Device Customers Face Substantial Switching Costs and iOS Lock-In.

159. Apple's power in the iOS App Distribution Market and iOS In-App Payment Processing Markets is not constrained by competition in the sale of mobile devices because Apple's mobile device customers face high switching costs and are locked in to Apple's ecosystem for at least six reasons. These costs make it more difficult for users to purchase a mobile device from a competitor after having committed to Apple's mobile devices, thereby bolstering Apple's market power.

160. *First*, consumers are deterred from leaving the iOS ecosystem because of the difficulty and costs of learning a new mobile operating system. Mobile operating

systems have different designs, controls, and functions. Customers who use one (and often more than one) Apple product learn to operate efficiently on Apple's specific operating systems. For example, the iOS layout differs from Android OS in a wide range of functions, including key features such as searching and installing widgets on the phone to organize and search the phone's digital content, configuring control center settings, and organizing photos. Learning to use a new mobile operating system is thus time-consuming and burdensome for many consumers.

161. *Second*, switching from Apple's iOS devices may cause a significant loss of personal and financial investment that consumers put into the iOS ecosystem. Consumers choose a mobile device based in part on the OS that comes pre-installed on that device and the ecosystem in which the device participates. Once a consumer has chosen a mobile device, the consumer cannot replace the mobile OS that comes pre-installed on it with an alternative mobile OS. Rather, a consumer who wishes to change the OS must purchase a new device entirely. And because apps, in-app content and many other products are designed for compatibility with a particular mobile OS, switching to a new mobile OS may mean losing access to such products or to data saved by such products. Even if versions of such apps and products are available within the new ecosystem chosen by the consumer, the consumer would have to go through the process of downloading them again onto the new devices and (for paid apps or paid content) may have to purchase some or all of these apps anew. As a result, the consumer may be forced to abandon his or her investment in at least some of those apps, along with any purchased in-app content and consumer-generated data on those apps.

162. *Third*, the switching costs are compounded by the fact that consumers typically commit to the iOS ecosystem on a household or Apple device user group basis. Apple encourages lock-in across users and families. For example, Apple allows family members to access the songs, movies, TV shows, books, and apps purchased by other family members. Further, apps like FaceTime (which enables video and audio communication), Find My (which enables users to share their physical locations),

iMessage (which enables instant messaging), and AirDrop (a simple way to share content between Apple devices) work only between Apple device users. Customers who might consider switching from an iPhone or iPad would lose access to these services that connect friends and family. The loss of these integrated services raises the personal and financial costs for one member of a household or group to go it alone on a separate mobile operating system.

163. *Fourth*, consumers typically commit to Apple's ecosystem by purchasing more than one Apple device, which further increases their investment in iOS. Consumers are more likely to buy an iPhone, for example, if they already have an iPad or other Apple device because of the complementary services Apple provides for its device users. In 2017, CNBC conducted a survey of Americans' ownership of Apple devices and found that while 64% of Americans own an Apple product, the average American household owns an average of 2.6 Apple devices. Apple has developed a number of services that work exclusively on Apple devices to facilitate the interaction between Apple devices and encourage multiproduct ownership. For example, Apple developed a multifeatured product, Continuity, which "make[s] it seamless to move between your [Apple] devices". Continuity allows an Apple device customer to perform numerous cross-Apple device sharing functions, such as Handoff (beginning work on an app in one device and quickly switching to continue the work on another), Universal Clipboard (copying content including text, images, and photos on one device to paste on another), Instant Hotspot (making a personal hotspot on one device available to other Apple devices), and AirDrop (wirelessly sending documents, photos, videos, map locations, and websites across Apple devices). A customer choosing to purchase or switch to a non-Apple device loses access to these services, leading to increased costs a customer must face when choosing to leave Apple's ecosystem.

164. *Fifth*, Apple provides services to facilitate upgrading from one generation of Apple devices to the next. For example, Apple hosts its own "iPhone Upgrade Program", which allows customers to make recurring payments over the course

of a year and "get a new iPhone every year". Apple facilitates the transfer of a user's data like contacts and photos from an old iPhone to a new iPhone with a "migration feature that lets you move your data from an old device to a new one via wireless or wired transfer". Although there are now third-party apps and Android OEMs that attempt to make the switch from Apple to Android phones easier for consumers, "these all-in-one [data transfer] methods aren't available for every phone, and they don't always work flawlessly or across all of the areas relevant to your needs."

165. *Sixth*, Apple's mobile devices are protected from competition by their central place in Apple's developed ecosystem. An ecosystem is the network of products and services, including apps and smartphone accessories, designed to be inter-dependent and compatible with the specific operating system that runs on a given mobile device. The iOS ecosystem participants include an array of stakeholders, such as Apple, developers of iOS-compatible apps, iPhone and iPad owners, the makers of ancillary hardware to connect to the smartphone and iPad (*e.g.*, headphones or speakers), cellular carriers, and others. Being connected to these ecosystems greatly increases the value of the mobile devices to its users, as the more investments that are made by the various stakeholders, the more benefits accrue to the goods and services connected to the network. Apple's iPhone and iPad customers therefore benefit from substantial network effects of being plugged into the iOS ecosystem. For example, the more developers that design useful apps for iOS, the more consumers will be drawn to use the mobile devices for which those apps are designed, which then increases the benefits to developers to participate in the iOS, which encourages customers to purchase or retain their iOS mobile devices, and so on and so forth in a positive feedback loop. Therefore, any potential business looking to compete in the sale of mobile devices must make significant investments and coordinate a wide range of stakeholders to duplicate the benefits of a sprawling ecosystem, and iPhone and iPad customers must attempt to calculate the costs of losing their place in the iOS ecosystem.

166. As a result, Apple customers are often stuck with large price increases and locked into the iOS ecosystem, as switching out of the ecosystem is prohibitively difficult and expensive for consumers.

B. Apple's Sticky iOS Ecosystem Protects its Dominance in the Sales of Mobile Devices.

167. Apple's ability to raise customer switching costs and create customer lock-in to its iOS ecosystem is reflected in Apple's ability to maintain its dominance in the sale of premium smartphones as well as in the sale of tablets.

168. *First*, Apple's iPhone dominates sales of premium smartphones.

169. In 2019 alone, Apple's global iPhone sales generated more than $142 billion in revenues.[18] And in the first quarter of 2020, Apple was able to capture approximately 60% of global premium smartphone revenue.[19]

170. Furthermore, in the first quarter of 2020, 57% of premium smartphones sold globally were iPhones; Apple's nearest competitor sold only 19%.[20]

171. Apple's iPhone durably maintains substantial profit margins. For instance, from 2013 to 2017, Apple's share of smartphone operating profits among major smartphones companies ranged from 62% to 90%.[21] Similarly, in the third quarter of 2019, Apple was able to capture 66% of the operating profits across all mobile handsets. Apple's closet competitor had only 17%.[22] Analysts who follow Apple have also noted

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[18] Statista Research Department, "Apple's iPhone revenue from 3rd quarter 2007 to 3rd quarter 2020" (Aug. 7, 2020), *available online at* https://www.statista.com/statistics/263402/apples-iphone-revenue-since-3rd-quarter-2007/.

[19] IDC Data.

[20] Varun Mishra, "Four Out of Five Best Selling Models in the Premium Segment Were From Apple", *Counterpoint Research* (June 15, 2020), online at https://www.counterpointresearch.com/apple-captured-59-premium-smartphone-segment/ (last accessed on Aug. 2, 2020).

[21] Chuck Jones, "Apple Continues To Dominate The Smartphone Profit Pool", *Forbes* (Mar. 2, 2018), https://www.forbes.com/sites/chuckjones/2018/03/02/apple-continues-to-dominate-the-smartphone-profit-pool/#65fbdddf61bb.

[22] Karn Chauhan, "Apple Continues to Lead Global Handset Industry Profit Share", *Counterpoint Research* (Dec. 19, 2019), online at https://www.counterpointresearch.com/apple-continues-lead-global-handset-industry-profit-share/ (last accessed on Aug. 2, 2020).

that since its release in 2007, the iPhone has able to maintain substantial profit margins of between 60% to 74%.[23]

172. Apple has also been able to maintain its pricing power over many years. For example, the global average selling price of smartphones went from $332 in 2011[24] to $363 in the first quarter of 2018,[25] a slight 4.3% price increase. Meanwhile, the iPhone has consistently sold at an average selling price of around $300 dollars higher than the average smartphone, and its prices increased over that same period by 22%, from approximately $650 to $796.[26]

173. The high switching costs are also obvious from empirical evidence. According to a 2017 survey by Morgan Stanley, 92 percent of iPhone users intending to upgrade within the next year indicated they would stick to an iOS device.[27] Similarly, Consumer Intelligence Research Partners found that 91 percent of iOS users who activated a new or used phone in the final three months of 2018 upgraded to another iPhone.[28]

174. Apple's pricing conduct also evidences the high switching costs. For example, Apple released the top-of-the-line iPhone X in 2017 at a $300 higher price point

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[23] Alan Friedman, "Apple's profit margin on the iPhone has fallen from a peak of 74% to 60% over the years", *PhoneArena* (Nov. 15, 2018), online at https://www.phonearena.com/news/Profit-margins-on-the-iPhone-have-fallen-to-60_id111023.

[24] Statista Research Department, "Global Average Selling Price of Smartphones from 2010 to 2019", *Statista* (June 16, 2015), online at https://www.statista.com/statistics/484583/global-average-selling-price-smartphones/ (last accessed Aug. 2, 2020).

[25] Rani Molla, "Why people are buying more expensive smartphones than they have in years", *Vox* (Jan 23, 2018), https://www.vox.com/2018/1/23/16923832/global-smartphone-prices-grew-faster-iphone-quarter.

[26] Felix Richter, "iPhone ASP Edges Closer to $800", *Statista* (Nov. 2, 2018), https://www.statista.com/chart/15379/iphone-asp/ (last accessed Aug. 2, 2020).

[27] Martin Armstrong, "Most iPhone Users Never Look Back, *Statista* (May 22, 2017), online at https://www.statista.com/chart/9496/most-iphone-users-never-look-back/ (last accessed July 29, 2020).

[28] Joe Rossignol, "CIRP says iOS Loyalty 'Hit the Highest Levels We've Ever Measured' Last Quarter", *MacRumors* (Jan. 28, 2019), online at https://www.macrumors.com/2019/01/28/cirp-iphone-android-loyalty-4q18/ (last accessed July 29, 2020).

than the previous model. This was not followed by any major exodus to non-iOS systems; instead, consumers generally accepted the new price point, reflecting consumers' reluctance to switch even in the face of very significant increases in direct prices.

175. *Second*, Apple maintains significant power in the sale of tablets.

176. Apple's global iPad sales generated more than $19 billion in revenue in 2019 alone.[29] And Apple led all tablet vendors worldwide, accounting for 38% of the global tablet shipments in the second quarter of 2020.[30] The second leading tablet vendor, Samsung, accounted for only 18.7%.[31]

177. Apple has also been able to maintain its pricing power in the sale of tablets. Whereas the average global selling price of tablets in 2016 was $285, increasing to an average selling price of $357 by the end of the second quarter of 2020, Apple's iPads maintained an average selling price of over $200 higher, with an average selling price of $528 (in 2016) and $575 (end of the second quarter of 2020).[32]

C. Information Costs and Other Market Inefficiencies in the iOS App Distribution and iOS In-App Payment Processing Markets.

178. There is a further reason that competition at the mobile device level does not constrain Apple's power in the iOS App Distribution and iOS In-App Payment Processing Markets, which is that consumers cannot adequately account for Apple's downstream anti-competitive conduct through their mobile device purchasing behavior.

179. Consumers are rationally ignorant of Apple's anti-competitive conduct described above in Parts I and II. As a threshold matter, the vast majority of

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[29] Statista Research Department, "Revenue of Apple from iPad Sales Worldwide From 3rd Quarter 2010 to 3rd Quarter 2020", *Statista* (Aug. 7, 2020), online at https://www.statista.com/statistics/269914/apples-global-revenue-from-ipad-sales-by-quarter/#:~:text=Apple's%20global%20revenue%20from%20iPad%20sales%202010%2D2020&text=In%20the%20third%20quarter%20of,the%20third%20quarter%20of%202019 (last accessed Aug. 11, 2020).

[30] "Worldwide Tablet PC Market Q2 2020", *Canalys* (Aug. 3, 2020), online at https://www.canalys.com/newsroom/canalys-worldwide-tablet-pc-market-Q2-2020 (last accessed Aug. 11, 2020).

[31] *Id.*

[32] IDC, "IDC Quarterly Personal Computing Device Tracker" (Aug. 7, 2020).

mobile device consumers have no reason to inquire, and therefore do not know, about Apple's anti-competitive contractual restraints and policies; it would not even occur to them to research or ask about Apple's app distribution or in-app payment processing policies, which touch them only indirectly. Because many consumers do not know of Apple's anti-competitive conduct, they cannot take into it account when deciding which smartphone or tablet to purchase. It should also be noted that when purchasing iPhones and iPads, consumers do not contractually agree to permit Apple to engage in the anti-competitive conduct described above in Parts I and II.

180. More fundamentally, even those consumers that do know of Apple's anti-competitive conduct in the iOS App Distribution and iOS In-App Payment Processing Markets do not account for the costs of that conduct when deciding which mobile device to purchase for a number of reasons.

181. *First*, the complexity of device pricing obscures the impact of Apple's anti-competitive conduct. Consumers consider many features when deciding which smartphone or tablet to purchase, including design, brand, processing power, battery life, functionality, cellular plan and provider coverage, etc. These features are likely to play a substantially larger role in a consumer's decision as to which smartphone or tablet to purchase than Apple's anti-competitive conduct in the iOS App Distribution and iOS In-App Payment Processing Markets (if it plays a role at all), particularly given that each individual app and in-app purchase is a relatively small monetary cost when compared to the price of the device. For example, Apple's iPhone 11 currently retails starting at $699, while the two new flagship phones, iPhone 11 Pro and Pro Max, retail starting at $999 and $1,099, respectively.[33] In 2019, the median price of paid apps on the App Store

[33] Dami Lee, "The iPhone 11, Pro, and Pro Max will cost $699, $999, and $1,099, respectively", *The Verge* (Sep. 10, 2019), https://www.theverge.com/2019/9/10/20848182/new-iphone-11-price-cost-announcement-699-apple.

amounted to only $1.99,[34] and U.S. iPhone users spent an average $100 on apps (including in-app purchases) for the year.[35] Apple's 30% tax on this amount represents only 4.2% of the iPhone 11's retail price. Given the small cost of apps relative to the price of Apple's iPhones, Apple's tax is an effective means by which Apple may exercise its monopoly power in the iOS App Distribution and iOS In-App Payment Processing Markets without affecting mobile device purchases.

182. *Second*, consumers are unable to determine the "lifecycle price" of devices—*i.e.*, to accurately assess at the point of purchase how much they will end up spending in total (including on the device and all apps and in-app purchases) for the duration of their ownership of the device. Consumers cannot know in advance of purchasing a device all of the apps or in-app content that they may want to purchase during the usable lifetime of the device. Consumers' circumstances may change. Consumers may develop new interests. They may learn about new apps or in-app content that becomes available only after purchasing a device. According to Apple, "the App Store is the best place to discover new apps that let you pursue your passions in ways you never thought possible."[36] New apps and in-app content will continue to be developed and marketed after a consumer purchases a smartphone or tablet. All of these factors may influence the amount of consumers' app and in-app purchases. Because they cannot know or predict all such factors when purchasing mobile devices, consumers are unable to calculate the lifecycle prices of the devices. This prevents consumers from effectively taking Apple's anti-competitive conduct in the iOS App Distribution and iOS In-App Payment Processing Markets into account when making mobile device purchasing decisions.

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[34] J. Clement, "Average Price of Paid Android and iOS Apps 2018", *Statista* (Mar. 22, 2019), online at https://www.statista.com/statistics/262387/average-price-of-android-ipad-and-iphone-apps/ (last accessed Aug. 3, 2020).

[35] Randy Nelson, "U.S. iPhone Users Spent an Average of $100 on Apps in 2019, Up 27% From 2018", *Sensor Tower* (Mar. 25, 2020), online at https://sensortower.com/blog/revenue-per-iphone-2019.

[36] Apple, *App Store*, online at https://www.apple.com/ios/app-store/ (last accessed July 27, 2020).

183. *Third*, Apple's anti-competitive conduct in the iOS App Distribution and iOS In-App Payment Processing Markets does not incentivize consumers to purchase a non-iOS mobile device because Google engages in similar anti-competitive conduct. As noted, nearly 100% of all mobile devices run either Apple's iOS or Google's Android OS. Further, more than 90% of app downloads on Android OS devices occur through the Google Play Store—Google's app store. Like Apple, Google uses its market power over the Android operating system, and similar anti-competitive practices, to stifle competition for the distribution of apps on Android, to require that developers use its payment processing system for in-app purchases of in-app content, and to charge a similar exorbitant 30% tax. Thus, to the extent that consumers even attempt to lifecycle price when purchasing mobile devices, or want to look for an app store that doesn't charge exorbitant fees, Apple's anti-competitive conduct described herein would not cause consumers to favor Android devices.

COUNT 1: Sherman Act § 2

(Unlawful Monopoly Maintenance in the iOS App Distribution Market)

184. Epic restates, re-alleges, and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

185. Apple's conduct violates Section 2 of the Sherman Act, which prohibits the "monopoliz[ation of] any part of the trade or commerce among the several States, or with foreign nations". 15 U.S.C. § 2.

186. The iOS App Distribution Market is a valid antitrust market.

187. Apple holds monopoly power in the iOS App Distribution Market.

188. Apple unlawfully maintains its monopoly power in the iOS App Distribution Market through the anti-competitive acts described herein, including by imposing technical and contractual restrictions on iOS, which prevents the distribution of iOS apps through means other than the App Store and prevents developers from distributing competing app stores to iOS users.

189. Apple's conduct affects a substantial volume of interstate as well as foreign commerce.

190. Apple's conduct has substantial anti-competitive effects, including increased prices and costs, reduced innovation and quality of service, and lowered output.

191. As an app distributor and as an app developer, Epic has been harmed by Apple's anti-competitive conduct in a manner that the antitrust laws were intended to prevent. Epic has suffered and continues to suffer harm and irreparable injury, and such harm and injury will not abate until an injunction ending Apple's anti-competitive conduct issues.

192. To prevent these ongoing harms, the Court should enjoin the anti-competitive conduct complained of herein.

COUNT 2: Sherman Act § 2

(Denial of Essential Facility in the iOS App Distribution Market)

193. Epic restates, re-alleges, and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

194. Apple's conduct violates Section 2 of the Sherman Act, which prohibits the "monopoliz[ation of] any part of the trade or commerce among the several States, or with foreign nations". 15 U.S.C. § 2.

195. The iOS App Distribution Market is a valid antitrust market.

196. Apple holds monopoly power in the iOS App Distribution Market.

197. Apple unlawfully maintains its monopoly power in the iOS App Distribution Market through its unlawful denial to Epic and other app distributors of an essential facility—access to iOS—which prevents them from competing in the iOS App Distribution Market.

198. Apple controls iOS, which is essential to effective competition in the iOS App Distribution Market.

199. App distributors are unable to reasonably or practically duplicate Apple's iOS.

200. It is technically feasible for Apple to provide access to iOS to Epic and other app distributors, and it would not interfere with or significantly inhibit Apple's ability to conduct its business.

201. Apple's denial of access to iOS has no legitimate business purpose, and serves only to assist Apple in maintaining its unlawful monopoly position in the iOS App Distribution Market.

202. Through its denial of its essential facility, Apple maintains its monopoly power in the iOS App Distribution Market.

203. Apple's conduct affects a substantial volume of interstate as well as foreign commerce.

204. Apple's conduct has substantial anti-competitive effects, including increased prices and costs, reduced innovation and quality of service, and lowered output.

205. As an app distributor and as an app developer, Epic has been harmed by Apple's anti-competitive conduct in a manner that the antitrust laws were intended to prevent. Epic has suffered and continues to suffer harm and irreparable injury, and such harm and injury will not abate until an injunction ending Apple's anti-competitive conduct issues.

206. To prevent these ongoing harms, the Court should enjoin the anti-competitive conduct complained of herein.

COUNT 3: Sherman Act § 1

(Unreasonable Restraints of Trade in the iOS App Distribution Market)

207. Epic restates, re-alleges, and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

208. Apple's conduct violates Section 1 of the Sherman Act, which prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations". 15 U.S.C. § 1.

209. The iOS App Distribution Market is a valid antitrust market.

210. To reach iOS users, Apple forces developers to agree to Apple's unlawful terms contained in its Developer Agreement and to comply with Apple's App Store Review Guidelines, including the requirement iOS developers distribute their apps through the App Store. These contractual provision unlawfully foreclose the iOS App Distribution Market to competitors and maintain Apple's monopoly.

211. The challenged provisions of the Developer Agreement and the terms of Apple's App Store Review Guidelines unreasonably restrain competition in the iOS App Distribution Market and serve no legitimate or pro-competitive purpose that could justify their anti-competitive effects.

212. Apple's conduct and unlawful contractual restraints affect a substantial volume of interstate as well as foreign commerce.

213. Apple's conduct has substantial anti-competitive effects, including increased prices to users and increased costs to developers, reduced innovation, and reduced quality of service and lowered output.

214. Apple's conduct has caused Epic, as an app distributor, to suffer injury to its business by foreclosing Epic from competing in the iOS App Distribution Market. Epic is also harmed as an app developer because it has no choices for distributing its apps to iOS device users other than the App Store and therefore suffers the anti-competitive effects felt by all app developers that are described above. Epic has been and continues to be directly harmed by Apple's anti-competitive conduct in a manner that the antitrust laws were intended to prevent. Epic has suffered and continues to suffer harm and irreparable injury, and such harm and injury will not abate until an injunction ending Apple's anti-competitive conduct issues.

215. To prevent these ongoing harms, the Court should enjoin the anti-competitive conduct complained of herein.

COUNT 4: Sherman Act § 2

(Unlawful Monopoly Maintenance in the iOS In-App Payment Processing Market)

216. Epic restates, re-alleges, and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

217. Apple's conduct violates Section 2 of the Sherman Act, which prohibits the "monopoliz[ation of] any part of the trade or commerce among the several States, or with foreign nations". 15 U.S.C. § 2.

218. The iOS In-App Payment Processing Market is a valid antitrust market. In the alternative, the iOS Games Payment Processing Market is a valid antitrust market.

219. Apple has monopoly power in the iOS In-App Payment Processing Market and, in the alternative, in the iOS Games Payment Processing Market.

220. Apple has unlawfully maintained its monopoly in these markets through the anti-competitive acts alleged herein, including by forcing, through its contractual terms and unlawful policies, iOS app developers that sell in-app content to exclusively use Apple's In-App Purchase, and preventing and discouraging app developers from developing or integrating alternative payment processing solutions.

221. Apple's conduct affects a substantial volume of interstate as well as foreign commerce.

222. Apple's conduct has substantial anti-competitive effects, including increased prices and costs, reduced innovation, and quality of service and lowered output.

223. As an app developer and as the developer of a competing in-app payment processing tool, Epic has been harmed by Apple's anti-competitive conduct in a manner that the antitrust laws were intended to prevent. Epic has suffered and continues to suffer harm and irreparable injury, and such harm and injury will not abate until an injunction ending Apple's anti-competitive conduct issues.

224. To prevent these ongoing harms, the Court should enjoin the anti-competitive conduct complained of herein.

COUNT 5: Sherman Act § 1

(Unreasonable Restraints of Trade in the iOS In-App Payment Processing Market)

225. Epic restates, re-alleges, and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

226. Apple's conduct violates Section 1 of the Sherman Act, which prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations". 15 U.S.C. § 1.

227. To reach iOS app users, Apple forces developers to agree to Apple's unlawful terms contained in its Developer Agreement, including that they use Apple's In-App Purchase for in-app purchases of in-app content to the exclusion of any alternative solution or third-party payment processor. Further, Section 3.1.3 of Apple's App Store Review Guidelines unlawfully prohibits developers from "directly or indirectly target[ing] iOS users to use a purchasing method other than in-app purchase".

228. Apple's challenged contractual provisions and policy guidelines serve no legitimate or pro-competitive purpose and unreasonably restrain competition in the iOS In-App Payment Processing Market and, in the alternative, in the iOS Games Payment Processing Market.

229. Apple's conduct and unlawful contractual restraints affect a substantial volume of interstate as well as foreign commerce.

230. Apple's conduct has substantial anti-competitive effects, including increased prices to users and increased costs to developers, reduced innovation, and reduced quality of service and lowered output.

231. Apple's conduct has foreclosed Epic from participating in the iOS In-App Payment Processing Market and, in the alternative, in the iOS Games Payment Processing Market. Epic has also been harmed in its capacity as an app developer by being deprived of a choice of in-app payment processing tools, denied the benefits of innovation in in-app payment processing, and forced to pay a supra-competitive rate for

in-app payment processing. Epic has been harmed by Apple's anti-competitive conduct in a manner that the antitrust laws were intended to prevent. Epic has suffered and continues to suffer harm and irreparable injury, and such harm and injury will not abate until an injunction ending Apple's anti-competitive conduct issues.

232. To prevent these ongoing harms, the Court should enjoin the anti-competitive conduct complained of herein.

COUNT 6: Sherman Act § 1

(Tying the App Store in the iOS App Distribution Market to In-App Purchase in the iOS In-App Payment Processing Market)

233. Epic restates, re-alleges, and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

234. Apple's conduct violates Section 1 of the Sherman Act, which prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations". 15 U.S.C. § 1.

235. Through its Developer Agreement with app developers and its App Store Review Guidelines, Apple has unlawfully tied its in-app payment processor, In-App Purchase, to the use of its App Store.

236. Apple has sufficient economic power in the tying market, the iOS App Distribution Market, because the App Store is the sole means by which apps may be distributed to consumers in that market.

237. Apple is able to unlawfully condition access to the App Store on the developer's use of a second product—In-App Purchase—for in-app sales of in-app content. Through its Developer Agreement and unlawful policies, Apple expressly conditions the use of its App Store on the use of its In-App Purchase to the exclusion of alternative solutions in a *per se* unlawful tying arrangement.

238. The tying product, Apple's App Store, is distinct from the tied product, Apple's In-App Purchase, because app developers such as Epic have alternative

in-app payment processing options and would prefer to choose among them independently of how the developer's iOS apps are distributed. In other words, app developers are coerced into using In-App Purchase by virtue of wanting to use the App Store. Apple's unlawful tying arrangement thus ties two separate products that are in separate markets and coerces Epic and other developers to rely on both of Apple's products.

239. Apple's conduct has foreclosed, and continues to foreclose, competition in the iOS In-App Payment Processing Market and, in the alternative, in the iOS Games Payment Processing Market, affecting a substantial volume of commerce in these markets.

240. Apple has thus engaged in a *per se* illegal tying arrangement and the Court does not need to engage in a detailed assessment of the anti-competitive effects of Apple's conduct or its purported justifications.

241. In the alternative only, even if Apple's conduct does not constitute a *per se* illegal tie, an analysis of Apple's tying arrangement would demonstrate that this arrangement violates the rule of reason and is illegal by coercing developers into using its In-App Purchase product.

242. Apple's conduct harms Epic which, as a direct result of Apple's anti-competitive conduct, is paying supra-competitive fees on in-app purchases processed through Apple's payment processor and has forgone revenue it would be able to generate if its own in-app payment processor were not unreasonably restricted from the market.

243. As an app developer that consumes in-app payment processing services and as the developer of a competing in-app payment processing tool, Epic has a direct financial interest in the iOS In-App Payment Processing Market and, in the alternative, in the iOS Games Payment Processing Market, and has been foreclosed from competing with Apple directly as a result of Apple's unlawful tie.

244. Epic has been harmed by Apple's anti-competitive conduct in a manner that the antitrust laws were intended to prevent. Epic has suffered and continues

to suffer harm and irreparable injury, and such harm and injury will not abate until an injunction ending Apple's anti-competitive conduct issues.

245. To prevent these ongoing harms, the Court should enjoin the anti-competitive conduct complained of herein.

COUNT 7: California Cartwright Act

(Unreasonable Restraints of Trade in the iOS App Distribution Market)

246. Epic restates, re-alleges, and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

247. Apple's acts and practices detailed above violate the Cartwright Act, Cal. Bus. & Prof. Code § 16700 *et seq.*, which prohibits, *inter alia*, the combination of resources by two or more persons to restrain trade or commerce or to prevent market competition. *See* §§ 16720, 16726.

248. Under the Cartwright Act, a "combination" is formed when the anti-competitive conduct of a single firm coerces other market participants to involuntarily adhere to the anti-competitive scheme.

249. The iOS App Distribution Market is a valid antitrust market.

250. Apple has monopoly power in the iOS App Distribution Market.

251. Apple forces developers to agree to Apple's unlawful terms contained in its Developer Agreement, including that iOS developers distribute their apps through the App Store. Section 3.2(g) of the Developer Agreement contains the unlawful requirement that developers distribute their apps through the App Store. Apple also conditions app distributors' access to iOS on their agreement not to distribute third-party app stores. Section 3.3.2(b) of the Developer Agreement prohibits "Application[s]" that "create a store or storefront for other code or applications". These provisions unreasonably restrain competition in the iOS App Distribution Market.

252. These challenged provisions have no legitimate or pro-competitive purpose or effect, and unreasonably restrain competition in the iOS App Distribution Market.

253. Apple's conduct and practices have substantial anti-competitive effects, including increased prices and costs, reduced innovation, poorer quality of customer service, and lowered output.

254. Apple's conduct harms Epic which, as a direct result of Apple's anti-competitive conduct, has been unreasonably restricted in its ability to distribute its iOS applications, including *Fortnite*, and to market a competing app store to the App Store.

255. It is appropriate to bring this action under the Cartwright Act because many of the illegal agreements were made in California and purport to be governed by California law, many affected consumers and developers reside in California, Apple has its principal place of business in California, and overt acts in furtherance of Apple's anti-competitive scheme took place in California.

256. Epic has suffered and continues to suffer harm, and such harm will not abate until an injunction ending Apple's anti-competitive conduct issues. To prevent these ongoing harms, the Court should enjoin the anti-competitive conduct complained of herein.

COUNT 8: California Cartwright Act
(Unreasonable Restraints of Trade in the iOS In-App Payment Processing Market)

257. Epic restates, re-alleges, and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

258. Apple's acts and practices detailed above violate the Cartwright Act, Cal. Bus. & Prof. Code § 16700 *et seq.*, which prohibits, *inter alia*, the combination of resources by two or more persons to restrain trade or commerce or to prevent market competition. *See* §§ 16720, 16726.

259. Under the Cartwright Act, a "combination" is formed when the anti-competitive conduct of a single firm coerces other market participants to involuntarily adhere to the anti-competitive scheme.

260. The iOS In-App Payment Processing Market and, in the alternative, the iOS Games Payment Processing Market, are valid antitrust markets.

261. Apple has monopoly power in the iOS In-App Payment Processing Market and, in the alternative, in the iOS Games Payment Processing Market.

262. Apple conditions distribution through the App Store on entering into the Developer Agreement described above, including the contractual and policy restrictions contained therein and in the App Store Review Guidelines. Through certain provisions in these agreements, Apple forces app developers to submit to conditions that unreasonably restrain competition in the iOS In-App Payment Processing Market and, in the alternative, the iOS Games Payment Processing Market.

263. Section 3.1.1 of the App Store Review Guidelines provide that "if you [the developer] want to unlock features or functionality within your app, (by way of example: subscriptions, in-game currencies, game levels, access to premium content, or unlocking a full version), you *must use in-app purchase*. Apps *may not use their own mechanisms to unlock content or functionality* . . . ." (emphases added). Finally, Section 3.1.3 of the guidelines provides that developers may not "directly or indirectly target iOS users to use a purchasing method *other than [Apple's] in-app purchase*, and general communications [to users] about other purchasing methods [must not be] *designed to discourage use of [Apple's] in-app purchase*". (emphases added).

264. These provisions have no legitimate or pro-competitive purpose or effect, and unreasonably restrain competition in the iOS In-App Payment Processing Market and, in the alternative, in the iOS Games Payment Processing Market.

265. Apple's conduct and practices have substantial anti-competitive effects, including increased prices and costs, reduced innovation, poorer quality of customer service, and lowered output.

266. Apple's conduct harms Epic which, as a direct result of Apple's anti-competitive conduct, has been unreasonably restricted in its ability to distribute and use its own in-app payment processor and forced to pay Apple's supra-competitive fees.

267. It is appropriate to bring this action under the Cartwright Act because many of the illegal agreements were made in California and purport to be governed by

California law, many affected consumers and developers reside in California, Apple has its principal place of business in California, and overt acts in furtherance of Apple's anti-competitive scheme took place in California.

268. Epic has suffered and continues to suffer harm and irreparable injury, and such harm and injury will not abate until an injunction ending Apple's anti-competitive conduct issues. To prevent these ongoing harms, the Court should enjoin the anti-competitive conduct complained of herein.

COUNT 9: California Cartwright Act

(Tying the App Store in the iOS App Distribution Market to In-App Purchase in the iOS In-App Payment Processing Market)

269. Epic restates, re-alleges, and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

270. Apple's acts and practices detailed above violate the Cartwright Act, Cal. Bus. & Prof. Code § 16700 *et seq.*, which prohibits, *inter alia*, the combination of resources by two or more persons to restrain trade or commerce, or to prevent market competition. *See* §§ 16720, 16726.

271. Under the Cartwright Act, a "combination" is formed when the anti-competitive conduct of a single firm coerces other market participants to involuntarily adhere to the anti-competitive scheme.

272. The Cartwright Act also makes it "unlawful for any person to lease or make a sale or contract for the sale of goods, merchandise, machinery, supplies, commodities for use within the State, or to fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, merchandise, machinery, supplies, commodities, or services of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of trade or commerce in any section of the State." § 16727.

273. As detailed above, Apple has unlawfully tied its in-app payment processor, In-App Purchase, to the App Store through its Developer Agreement and App Store Review Guidelines.

274. Apple has sufficient economic power in the tying market, the iOS App Distribution Market, to affect competition in the tied market, the iOS In-App Payment Processing Market and, in the alternative, the iOS Game Payment Processing Market. With Apple's unlawful conditions and policies, Apple ensures that the App Store is the only distribution channel for developers to reach iOS app users, giving Apple overwhelming monopoly power in the iOS App Distribution Market. Apple's power is further evidenced by its ability to extract supra-competitive taxes on the sale of apps through the App Store.

275. The availability of the App Store for app distribution is conditioned on the app developer accepting a second product, Apple's in-app payment processing services. Apple's foreclosure of alternative app distribution channels coerces developers like Epic to use Apple's in-app payment processing services, which Apple has expressly made a condition of reaching Apple iOS through its App Store. In other words, app developers are coerced into using In-App Purchase by virtue of wanting to use the App Store.

276. The tying product, iOS app distribution, is separate and distinct from the tied product, iOS in-app payment processing, because app developers such as Epic have alternative in-app payment processing options and would prefer to choose among them independently of how an iOS app is distributed. Apple's unlawful tying arrangement thus ties two separate products that are in separate markets.

277. Apple's conduct forecloses competition in the iOS In-App Payment Processing Market and, in the alternative, in the iOS Games Payment Processing Market, affecting a substantial volume of commerce in this market.

278. Apple has thus engaged in a *per se* illegal tying arrangement and the Court does not need to engage in a detailed assessment of the anti-competitive effects of Apple's conduct or its purported justifications.

279. Even if Apple's conduct does not form a *per se* illegal tie, an assessment of the tying arrangement would demonstrate that it is unreasonable under the Cartwright Act, and therefore, illegal.

280. Apple's acts and practices detailed above unreasonably restrain competition in the iOS In-App Payment Processing Market and, in the alternative, in the iOS Games Payment Processing Market.

281. Apple's conduct harms Epic which, as a direct result of Apple's anti-competitive conduct, is paying a supra-competitive commission rate on in-app purchases processed through Apple's payment processor and has forgone commission revenue it would be able to generate if its own in-app payment processor were not unreasonably restricted from the market.

282. As an app developer which consumes in-app payment processing services and as the developer of a competing in-app payment processing tool, Epic has been harmed by Apple's anti-competitive conduct in a manner that the antitrust laws were intended to prevent.

283. It is appropriate to bring this action under the Cartwright Act because many of the illegal agreements were made in California and purport to be governed by California law, many affected consumers and developers reside in California, Apple has its principal place of business in California, and overt acts in furtherance of Apple's anti-competitive scheme took place in California.

284. Epic has suffered and continues to suffer harm, and such harm will not abate until an injunction ending Apple's anti-competitive conduct issues. To prevent these ongoing harms, the Court should enjoin the anti-competitive conduct complained of herein.

COUNT 10: California Unfair Competition Law

285. Epic restates, re-alleges, and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

286. Apple's conduct, as described above, violates California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, which prohibits any unlawful, unfair, or fraudulent business act or practice.

287. Epic has standing to bring this claim because it has suffered injury in fact and lost money as a result of Apple's unfair competition. Specifically, it develops and distributes apps for iOS, has developed a payment processor for in-app purchases, and Apple's conduct has unreasonably restricted Epic's ability to fairly compete in the relevant markets with these products.

288. Apple's conduct violates the Sherman Act and the Cartwright Act, and thus constitutes unlawful conduct under § 17200.

289. Apple's conduct is also "unfair" within the meaning of the Unfair Competition Law.

290. Apple's conduct harms Epic which, as a direct result of Apple's anti-competitive conduct, is unreasonably prevented from freely distributing mobile apps or its in-app payment processing tool, and forfeits a higher commission rate on the in-app purchases than it would pay absent Apple's conduct.

291. Epic seeks injunctive relief under the Unfair Competition Law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Epic respectfully requests that the Court enter judgment in favor of Epic and against Defendant Apple:

A. Issuing an injunction prohibiting Apple's anti-competitive conduct and mandating that Apple take all necessary steps to cease unlawful conduct and to restore competition;

B. Awarding a declaration that the contractual and policy restraints complained of herein are unlawful and unenforceable;

C. Awarding any other equitable relief necessary to prevent and remedy Apple's anti-competitive conduct; and

D. Granting such other and further relief as the Court deems just and proper.

Dated: August 13, 2020

Respectfully submitted,

By: /s/ Paul J. Riehle

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

EPIC GAMES, INC., a Maryland Corporation, Plaintiff, v. GOOGLE LLC; GOOGLE IRELAND LIMITED; GOOGLE COMMERCE LIMITED; GOOGLE ASIA PACIFIC PTE. LIMITED; and GOOGLE PAYMENT CORP., Defendants.	Case No. _____ **COMPLAINT FOR INJUNCTIVE RELIEF**

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Plaintiff Epic Games, Inc. ("Epic"), by its undersigned counsel, alleges, with knowledge with respect to its own acts and on information and belief as to other matters, as follows:

PRELIMINARY STATEMENT

1. In 1998, Google was founded as an exciting young company with a unique motto: "Don't Be Evil". Google's Code of Conduct explained that this admonishment was about "how we serve our users" and "much more than that . . . it's also about doing the right thing more generally".[1] Twenty-two years later, Google has relegated its motto to nearly an afterthought, and is using its size to do evil upon competitors, innovators, customers, and users in a slew of markets it has grown to monopolize. This case is about doing the right thing in one important area, the Android mobile ecosystem, where Google unlawfully maintains monopolies in multiple related markets, denying consumers the freedom to enjoy their mobile devices—freedom that Google always promised Android users would have.

2. Google acquired the Android mobile operating system more than a decade ago, promising repeatedly over time that Android would be the basis for an "open" ecosystem in which industry participants could freely innovate and compete without unnecessary restrictions.[2] Google's CEO, Sundar Pichai, represented in 2014

[1] Kate Conger, *Google Removes 'Don't Be Evil' Clause from Its Code of Conduct*, Gizmodo (May 18, 2018), https://gizmodo.com/google-removes-nearly-all-mentions-of-dont-be-evil-from-1826153393.

[2] Google Blog, News and notes from Android team, *The Benefits & Importance of Compatibility*, (Sept. 14, 2012), https://android.googleblog.com/2012/09/the-benefits-importance-of-compatibility.html ("We built Android to be an open source mobile platform freely available to anyone wishing to use it . . . . This openness allows device manufacturers to customize Android and enable new user experiences, driving innovation and consumer choice."); Stuart Dredge, *Google's Sundar Pichai on wearable tech: 'We're just scratching the surface'*, The Guardian (Mar. 9, 2014), https://www.theguardian.com/technology/2014/mar/09/google-sundar-pichai-android-chrome-sxsw ("Android is one of the most open systems that I've ever seen"); Andy Rubin, *Andy Rubin's Email to Android Partners*, The Wall Street Journal (Mar. 13, 2013), *available at* https://blogs.wsj.com/digits/2013/03/13/andy-rubins-email-to-android-partners/?mod=WSJBlog ("At its core, Android has always been about openness").

that Android "is one of the most open systems that I've ever seen".[3] And Andy Rubin, an Android founder who is described by some as the "Father of Android", said when he departed Google in 2013 that "at its core, Android has always been about openness".[4] Since then, Google has deliberately and systematically closed the Android ecosystem to competition, breaking the promises it made. Google's anti-competitive conduct has now been condemned by regulators the world over.

3. Epic brings claims under Sections 1 and 2 of the Sherman Act and under California law to end Google's unlawful monopolization and anti-competitive restraints in two separate markets: (1) the market for the distribution of mobile apps to Android users and (2) the market for processing payments for digital content within Android mobile apps. Epic seeks to end Google's unfair, monopolistic and anti-competitive actions in each of these markets, which harm device makers, app developers, app distributors, payment processors, and consumers.

4. **Epic does not seek monetary compensation from this Court for the injuries it has suffered**. Epic likewise does not seek a side deal or favorable treatment from Google for itself. Instead, Epic seeks injunctive relief that would deliver Google's broken promise: an open, competitive Android ecosystem for all users and industry participants. Such injunctive relief is sorely needed.

5. Google has eliminated competition in the distribution of Android apps using myriad contractual and technical barriers. Google's actions force app developers and consumers into Google's own monopolized "app store"—the Google Play Store. Google has thus installed itself as an unavoidable middleman for app developers who wish to reach Android users and vice versa. Google uses this monopoly power to impose a tax that siphons monopoly profits for itself every time an app

[3] Stuart Dredge, *Google's Sundar Pichai on wearable tech: 'We're just scratching the surface'*, The Guardian (Mar. 9, 2014), https://www.theguardian.com/technology/2014/mar/09/google-sundar-pichai-android-chrome-sxsw.

[4] Andy Rubin, *Andy Rubin's Email to Android Partners*, The Wall Street Journal (Mar. 13, 2013), *available at* https://blogs.wsj.com/digits/2013/03/13/andy-rubins-email-to-android-partners/?mod=WSJBlog.

developer transacts with a consumer for the sale of an app or in-app digital content. And Google further siphons off all user data exchanged in such transactions, to benefit its own app designs and advertising business.

6. If not for Google's anti-competitive behavior, the Android ecosystem could live up to Google's promise of open competition, providing Android users and developers with competing app stores that offer more innovation, significantly lower prices and a choice of payment processors. Such an open system is not hard to imagine. Two decades ago, through the actions of courts and regulators, Microsoft was forced to open up the Windows for PC ecosystem. As a result, PC users have multiple options for downloading software unto their computers, either directly from developers' websites or from several competing stores. No single entity controls the ecosystem or imposes a tax on all transactions. And Google, as the developer of software such as the Chrome browser, is a direct beneficiary of this competitive landscape. Android users and developers likewise deserve free and fair competition.

* * *

7. In today's world, virtually all consumers and businesses stay connected, informed, and entertained through smart mobile computing devices such as smartphones and tablets. Mobile applications ("apps") are innovative software products that greatly contribute to those devices' value. Consumers the world over use smart mobile devices and mobile apps to video chat with friends, pay bills, stay current with the news, listen to music, watch videos, play games, and more.

8. Epic develops and distributes entertainment apps for personal computers, gaming consoles, and smart mobile devices. The most popular game Epic currently makes is *Fortnite*, which has connected hundreds of millions of people in a colorful virtual world where they meet, play, talk, compete, dance, and even attend concerts and other cultural events.

9. *Fortnite* is free for everyone to download and play. To generate revenue, Epic offers users various in-app purchases of content for use within the app, such as digital avatars, costumes, dances, or other cosmetic enhancements.

10. In the first year after *Fortnite* was released in 2017, the game attracted over 125 million players; in the years since, *Fortnite* has topped 350 million players and has become a global cultural phenomenon.

11. Similar to a PC or a Mac personal computer, smart mobile devices use an "operating system" or "OS" to provide core device functionality and to enable the operation of compatible programs. As with PCs, the commercial viability of an OS for mobile devices (a "mobile OS") depends on the availability of a large number of compatible apps that cater to the preferences and needs of users.

12. Google controls the most ubiquitous OS used in mobile devices, the Android OS. Android OS is used by billions of users the world over, and boasts nearly 3 million compatible apps.

13. Android is the only commercially viable OS that is widely available to license by companies that design and sell smart mobile devices, known as original equipment manufacturers ("OEMs"). Accordingly, when OEMs select a mobile OS to install on their devices, they have only one option: Google's Android OS. Google therefore has monopoly power in the market for mobile operating systems that are available for license by OEMs (the Merchant Market for Mobile Operating Systems (*infra* Part I)).

14. Google has not been satisfied with its control of the Android OS. Notwithstanding its promises to make Android devices open to competition, Google has erected contractual and technological barriers that foreclose competing ways of distributing apps to Android users, ensuring that the Google Play Store accounts for nearly all the downloads of apps from app stores on Android devices. Google thus maintains a monopoly over the market for distributing mobile apps to Android users, referred to herein as the "Android App Distribution Market" (*infra* Part II).

15. For example, Google bundles the Google Play Store with a set of other Google services that Android OEMs must have on their devices (such as Gmail, Google Search, Google Maps, and YouTube) and conditions the licensing of those services on an OEM's agreement to pre-install the Google Play Store and to prominently display it. Google then interferes with OEMs' ability to make third-party app stores or apps available on the devices they make. These restrictions effectively

foreclose competing app stores—and even single apps—from what could be a primary distribution channel.

16. Epic's experience with one OEM, OnePlus, is illustrative. Epic struck a deal with OnePlus to make Epic games available on its phones through an Epic Games app. The Epic Games app would have allowed users to seamlessly install and update Epic games, including *Fortnite*, without obstacles imposed by Google's Android OS. But Google forced OnePlus to renege on the deal, citing Google's "particular[] concern" about Epic having the ability to install and update mobile games while "bypassing the Google Play Store".

17. Another OEM, LG, told Epic that its contract with Google did not allow it to enable the direct distribution of apps, and that the OEM could not offer any functionality that would install and update Epic games except through the Google Play Store.

18. Google also enforces anti-competitive restrictions against app developers. Specifically, Google contractually prohibits app developers from offering on the Google Play Store any app that could be used to download other apps, *i.e.*, any app that could compete with the Google Play Store in app distribution. And Google further requires app developers to distribute their apps through the Google Play Store if they wish to advertise their apps through valuable advertising channels controlled by Google, such as ad placements on Google Search or on YouTube that are specially optimized to advertise mobile apps.

19. Finally, Google stifles or blocks consumers' ability to download app stores and apps directly from developers' websites. As anyone who has tried to download directly on an Android device knows, it is significantly different than the simple process available on a personal computer: directly downloading *Fortnite* on an Android device can involve a dozen steps, requiring the user to change default settings and bravely click through multiple dire warnings. And even if a persistent user manages to install a competing app store, Google prevents such stores from competing on equal

footing with the Google Play Store by blocking them from offering basic functions, such as automatic updating of apps in the background, which is available for apps downloaded from the Google Play Store.

20. Google engages in these anticompetitive acts to eliminate consumer choice and competition in mobile app distribution. Google has no legitimate justification for these restrictions. Google therefore has broken its promises that Android would be an "open" ecosystem in which other participants could participate fairly.

21. But Google does not stop at app distribution. Google also imposes anti-competitive restrictions in the separate Market for Android In-app Payment Processing (*infra* Part III).

22. App developers who sell digital content for consumption within the app itself require seamless payment processing tools to execute purchases. App developers, including Epic, may develop such payment processing tools internally or use a host of payment processing tools offered by multiple competing third parties.

23. Google, however, ties distribution through its Google Play Store with developers' exclusive use of Google's own payment processing tool, called Google Play Billing, to process in-app purchases of digital content. Indeed, app developers that distribute through the Google Play Store are even prohibited from offering Android users the *choice* of additional payment processing options alongside Google's for digital content. And because Google has a monopoly in the Android App Distribution Market, app developers cannot practically avoid this anti-competitive tie by electing app distribution through an alternative channel.

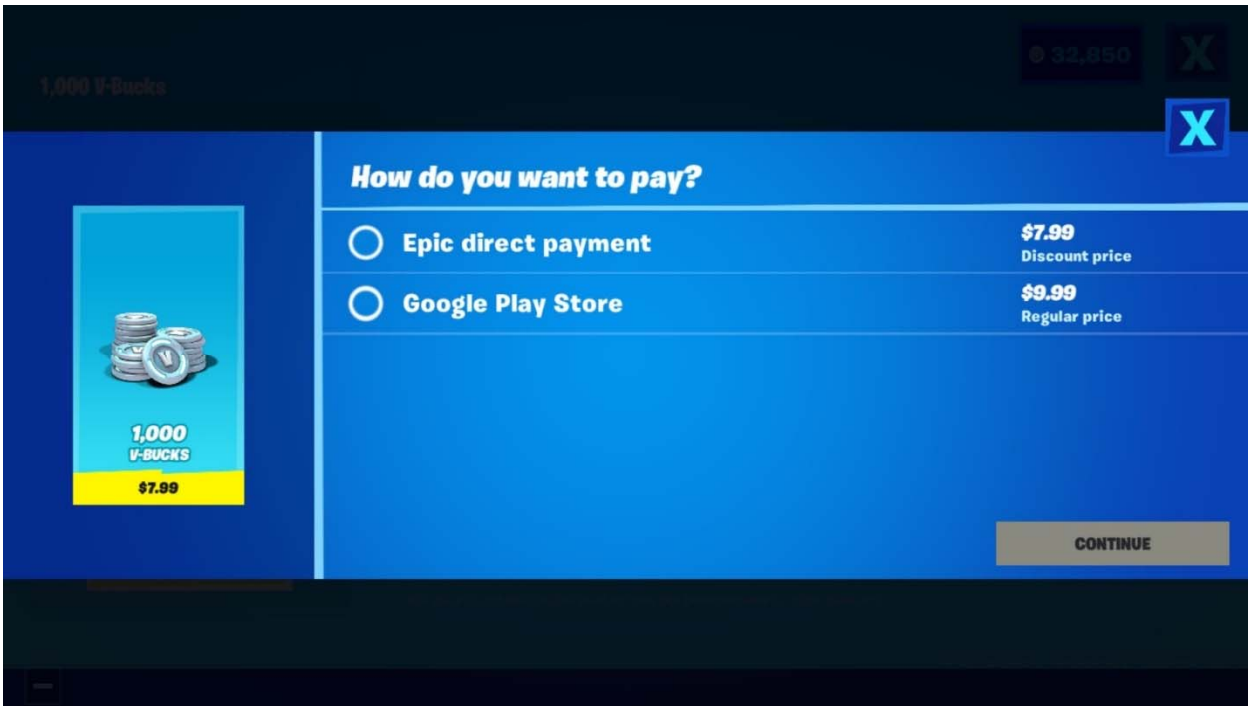
24. The result is that in every in-app transaction for digital content, it is Google, not the app developer, that collects the payment in the first instance. Google then taxes the transaction at an exorbitant 30% rate, remitting the remaining 70% to the developer who actually made the sale. This 30% commission is often ***ten times*** higher than the price typically paid for the use of other electronic payment solutions.

25. Moreover, through this tie, Google inserts itself as an intermediary between each seller and each buyer for every purchase of digital content within the Android ecosystem, collecting for itself the personal information of users, which Google then uses to give an anti-competitive edge to its own advertising services and mobile app development business.

26. But for Google's monopolistic conduct, competing stores could offer consumers and developers choice in distribution and payment processing. Indeed, Epic, which distributes gaming apps through its own store to users of personal computers, would open a store to compete with Google's and offer developers more innovation and more choice, including in payment processing. App developers would not have to pay Google's supra-competitive tax of 30%, as the price of distribution and payment processing alike would be set by market forces rather than by Google's fiat. Developers could address any payment-related issues (such as refunds) directly with their own customers rather than through Google. And users and developers, jointly, would get to decide whether users' data should be utilized for other purposes.

27. Google's anti-competitive conduct has injured Epic, both as an app developer and as a potential competitor in app distribution and payment processing. Epic has repeatedly approached Google and asked to negotiate relief that would stop Google's unlawful and anti-competitive restrictions on app developers and consumers. But Google would not budge.

28. Because of Google's refusal to stop its ongoing anti-competitive and unlawful conduct, on August 13, 2020, Epic began providing *Fortnite* players the choice of using Epic's own direct payment tool as an alternative to Google's overpriced Billing tool, sharing with players who chose to use Epic's payment tool the resulting savings.



29. In retribution, Google removed *Fortnite* from Google Play Store listings, preventing new players from obtaining the game. Google also prevented Android users who acquired *Fortnite* from the Google Play Store from obtaining app updates they will need to continue playing with their friends and family.

30. Epic has publicly advocated for years that Google cease the anti-competitive conduct addressed in this Complaint. Google refused to change its industry-impacting conduct. Instead, Google offered to placate Epic by offering it preferential terms on side deals, such as YouTube sponsorships and cloud services, if Epic agreed to distribute *Fortnite* in the Google Play Store and acceded to Google's 30% tax. Google has reached at least one preferential deal with another mobile game developer, Activision Blizzard, and Epic believes that Google is using similar deals with other companies to allow Google to keep its monopolistic behavior publicly unchallenged. But Epic is not interested in any side deals that might benefit Epic alone while leaving Google's anti-competitive restraints intact; instead, Epic is focused on opening up the Android ecosystem for the benefit of ***all*** developers and consumers.

31. Accordingly, Epic seeks injunctive relief in court. Google's conduct has caused and continues to cause Epic financial harm, but Epic is ***not*** bringing this case to recover these damages; Epic is not seeking any monetary relief, but rather only an order enjoining Google from continuing to impose its anti-competitive conduct on the Android ecosystem.

PARTIES

32. Plaintiff Epic Games, Inc. is a Maryland corporation with its principal place of business in Cary, North Carolina. Epic's mission is "to create fun games we want to play and to build the art and tools needed to bring those games to life". Epic was founded in 1991 by a college student named Tim Sweeney. Mr. Sweeney ran Epic out of his parents' basement and distributed, by mail, Epic's first commercial personal computer software, a game named *ZZT*. Since then, Epic has developed several popular entertainment software products that can be played on an array of platforms—such as personal computers, gaming consoles, and smart mobile devices. Epic also creates and distributes the *Unreal Engine*, a powerful software suite that allows competing game developers and others to create realistic three-dimensional content, including video games, architectural recreations, television shows, and movies. An Epic subsidiary also develops and distributes the popular *Houseparty* app, which enables video chatting and social gaming on smart mobile devices and personal computers. Worldwide, approximately 400 million users have signed up to play Epic games, and each day 30 to 40 million individuals log into an Epic game.

33. Defendant Google LLC is a Delaware limited liability company with its principal place of business in Mountain View, California. Google LLC is the primary operating subsidiary of the publicly traded holding company Alphabet Inc. The sole member of Google LLC is XXVI Holdings, Inc., a Delaware corporation with its principal place of business in Mountain View, California. Google LLC contracts with all app developers that distribute their apps through the Google Play Store and is

therefore a party to the anti-competitive contractual restrictions at issue in this Complaint.

34. Defendant Google Ireland Limited ("Google Ireland") is a limited company organized under the laws of Ireland with its principal place of business in Dublin, Ireland, and a subsidiary of Google LLC. Google Ireland contracts with all app developers that distribute their apps through the Google Play Store and is therefore a party to the anti-competitive contractual restrictions at issue in this Complaint.

35. Defendant Google Commerce Limited ("Google Commerce") is a limited company organized under the laws of Ireland with its principal place of business in Dublin, Ireland, and a subsidiary of Google LLC. Google Commerce contracts with all app developers that distribute their apps through the Google Play Store and is therefore a party to the anti-competitive contractual restrictions at issue in this Complaint.

36. Defendant Google Asia Pacific Pte. Limited ("Google Asia Pacific") is a private limited company organized under the laws of Singapore with its principal place of business in Mapletree Business City, Singapore, and a subsidiary of Google LLC. Google Asia Pacific contracts with all app developers that distribute their apps through the Google Play Store and is therefore a party to the anti-competitive contractual restrictions at issue in this Complaint.

37. Defendant Google Payment Corp. ("Google Payment") is a Delaware corporation with its principal place of business in Mountain View, California, and a subsidiary of Google LLC. Google Payment provides in-app payment processing services to Android app developers and Android users and collects a 30% commission on many types of processed payments, including payments for apps sold through the Google Play Store and in-app purchases made within such apps.

JURISDICTION AND VENUE

38. This Court has subject-matter jurisdiction over Epic's federal antitrust claims pursuant to the Clayton Antitrust Act, 15 U.S.C. § 26, and 28 U.S.C.

§§ 1331 and 1337. The Court has supplemental jurisdiction over Epic's state law claims pursuant to 28 U.S.C. § 1367. The Court also has subject-matter jurisdiction over the state-law claims pursuant to 28 U.S.C. § 1332 based on the diversity of citizenships of Plaintiff, on the one hand, and of Defendants, on the other, and the amount in controversy exceeding $75,000.

39. This Court has personal jurisdiction over the Defendants. Google LLC and Google Payment are headquartered in this District. All Defendants have engaged in sufficient minimum contacts with the United States and have purposefully availed themselves of the benefits and protections of United States and California law, such that the exercise of jurisdiction over them would comport with due process requirements. Further, the Defendants have consented to the exercise of personal jurisdiction by this Court.

40. Each of the Defendants except Google Payment is party to a Google Play Developer Distribution Agreement (the "DDA") with Epic. Section 16.8 of the DDA provides that the parties "agree to submit to the exclusive jurisdiction of the federal or state courts located within the county of Santa Clara, California, to resolve any legal matter arising from or relating to this Agreement". Section 16.8 further provides that "[a]ll claims arising out of or relating to this Agreement or Your relationship with Google under this Agreement will be governed by the laws of the State of California, excluding California's conflict of laws provisions." The claims addressed in this Complaint relate to the DDA or to Epic's relationship with Google under the DDA, or in the alternative such claims arise out of the same nucleus of operative facts as other claims as to which the Court may exercise personal jurisdiction over each Defendant, so that the exercise of pendent personal jurisdiction would be proper.

41. Google Payment is party to a Google Payments—Terms of Service—Seller Agreement with Epic. Section 11.3 of that Agreement provides that "[t]he exclusive venue for any dispute related to this Agreement will be the state or federal courts located in Santa Clara County, California, and each party consents to

personal jurisdiction in these courts." Section 11.3 further provides that "The laws of California, excluding California's choice of law rules, and applicable federal United States laws will govern this Agreement." The dispute between Google Payment and Epic relates to the parties' Agreement, or in the alternative Epic's claims arise out of the same nucleus of operative facts as other claims as to which the Court may exercise personal jurisdiction over Google Payment, so that the exercise of pendent personal jurisdiction would be proper.

42. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because Google LLC and Google Payment maintain their principal places of business in the State of California and in this District, because a substantial part of the events or omissions giving rise to Epic's claims occurred in this District, and because, pursuant to 28 U.S.C. § 1391(c)(3), any Defendants not resident in the United States may be sued in any judicial district and their joinder with others shall be disregarded in determining proper venue. In the alternative, personal jurisdiction and venue also may be deemed proper under Section 12 of the Clayton Antitrust Act, 15 U.S.C. § 22, because Defendants may be found in or transact business in this District.

INTRADISTRICT ASSIGNMENT

43. Pursuant to Civil Local Rule 3-2(c), this antitrust case shall not be assigned to a particular Division of this District, but shall be assigned on a District-wide basis.

RELEVANT FACTS

I. Google Dominates the Merchant Market for Mobile Operating Systems.

44. To understand how Google effectively monopolizes the Android App Distribution and Android In-App Payment Processing Markets, as described below in Parts II and III, it is helpful to understand the background of smart mobile devices and how Google effectively dominates the related Merchant Market for Mobile Operating Systems through its control over the Android operating system.

A. The Merchant Market for Mobile Operating Systems

i. Product Market Definition

45. Smart mobile devices are handheld, portable electronic devices that can connect wirelessly to the internet and are capable of multi-purpose computing functions, including, among other things, Internet browsing, using social media, streaming video, listening to music, or playing games. Smart mobile devices include smartphones and tablet computers. Many consumers may *only* have a smart mobile device and no other computer. Such consumers are particularly hard-hit by Google's unlawful conduct in mobile-related markets.

46. Like laptop and desktop personal computers, mobile devices require an operating system or "OS" that enables multi-purpose computing functionality. A mobile OS, just like the OS of any computer, is a piece of software that provides basic functionality to users of mobile devices such as button controls, touch commands, motion commands, and the basic "graphical user interface", which includes "icons" and other visual elements representing actions that the user can take. A mobile OS also manages the basic operations of a smart mobile device, such as cellular or WiFi connectivity, GPS positioning, camera and video recording, speech recognition, and other features. In addition, a mobile OS permits the installation and operation of mobile apps that are compatible with the particular OS and facilitates their use of the device's OS-managed core functionality.

47. To ensure that every user can access the basic functions of a mobile device "out of the box", that is at the time he/she purchases the device, an OEM must pre-install an OS on each device prior to its sale. This is similar to a personal computer that comes pre-installed with Microsoft Windows for PC or Apple's macOS for a Mac computer. OEMs design mobile devices to ensure the device's compatibility with a particular OS the OEM chooses for a particular model of mobile device, so that the device may utilize the capabilities of that OS. For OEMs, the process of implementing

a mobile OS requires significant time and investment, making switching to another mobile OS difficult, expensive, and time-consuming.

48. The vast majority of OEMs do not develop their own OS and must choose an OS that can be licensed for installation on smart mobile devices they design. There is therefore a relevant Merchant Market for Mobile OSs comprising mobile OSs that OEMs can license for installation on the smart mobile devices they manufacture. The market does not include proprietary OSs that are not available for licensing, such as Apple's mobile OS, called iOS. Historically, the Merchant Market for Mobile OSs has included the Android OS, developed by Google; the Tizen mobile OS, a partially open-source mobile OS that is developed by the Linux Foundation and Samsung; and the Windows Phone OS developed by Microsoft.

49. Some consumers continue to use cellular phones that do not have multi-purpose, computing functions. These simple phones resemble older "flip phones", for example; they are not part of the smart mobile device category. These phones do not support mobile apps such as *Fortnite* and are instead typically limited to basic cellular functionality like voice calls and texting. The simple operating systems on these phones, to the extent they exist, cannot support the wide array of features supplied by the OSs on smart mobile devices and are not part of the Merchant Market for Mobile OSs defined herein.

50. To the extent that electronic devices other than smart mobile devices use operating systems, those OSs are not compatible with mobile devices, and therefore are not included in the Merchant Market for Mobile OSs defined herein. For example, computing devices that are not handheld and portable, that are not capable of multi-purpose computing functions and/or that lack cellular connectivity—such as desktop computers, laptops, or gaming consoles—are not considered to be "smart mobile devices". Gaming devices like Sony's PlayStation 4 ("PS4") and Microsoft's Xbox are physically difficult to transport, require a stable WiFi or wired connection to operate smoothly, and require an external screen for the user to engage in game play. Thus,

even if a gamer owns, for example, a dedicated, non-portable gaming console such as a PS4, which connects to and enables gaming via his/her TV, he/she will not consider that PS4 a reasonable substitute for a mobile device like a smartphone, nor would he/she consider the version of any game created for his/her PS4 to substitute for the mobile app version of such a game. That is because the portability (and typically for smartphones the cellular connectivity) of the mobile devices enable the consumer to play mobile games away from home or anywhere in the home. Indeed, for this reason, game developers often distribute multiple versions of a game, each of which is programmed for compatibility with a particular type of device and its operating system.

ii. Geographic Market Definition

51. OEMs license mobile OSs for installation on mobile devices globally, excluding China. Google's operations in China are limited, and it does not make available many of its products for mobile devices sold within China. This is based in part on legal and regulatory barriers to the distribution of mobile OS-related software imposed by China. Further, while Google contractually requires OEMs licensing Android outside of China not to sell any devices with competing Android-compatible mobile OSs, it imposes no such restriction on devices sold within China. Because the OEMs that sell Android mobile devices both within and outside China have committed to this contractual restriction, such OEMs must sell, outside of China, devices with Google's Android OS. The geographic scope of the relevant Merchant Market for Mobile OSs is therefore worldwide, excluding China.

B. Google's Monopoly Power in the Merchant Market for Mobile OSs

52. Google has monopoly power in the Merchant Market for Mobile OSs through its Android OS. As determined by the European Commission during the course of its investigation of Android, the Android OS, licensed to OEMs in relevant respects by Google, is installed on over 95% of all mobile devices sold by OEMs utilizing a merchant mobile OS. Indeed, Android OS is installed on nearly 75% of all smart mobile devices sold by *all* OEMs, including even those OEMs that use a

proprietary mobile OS they developed exclusively for their own use (such as Apple's iOS).

53. A mobile ecosystem typically develops around one or more mobile OSs, such as the Android OS. The "Android ecosystem" is a system of mobile products (such as devices, apps and accessories) designed to be inter-dependent and compatible with each other and the Android OS. Ecosystem participants include an array of participating stakeholders, such as Google, OEMs that make Android-compatible devices, developers of Android-compatible apps, Android app distribution platforms, including app stores, the makers of ancillary hardware such as headphones or speakers, cellular carriers, and others.

54. Mobile ecosystems benefit from substantial network effects—that is, the more developers that design useful apps for a specific mobile OS, the more consumers will be drawn to use the relevant OS for which those apps are designed; the more consumers that use an OS, the more developers want to develop even more apps for that OS. As determined in *United States v. Microsoft, Inc.*, No. 98-1232 (D.D.C.), new entrants into an operating system market thus face an "applications barrier to entry". An applications barrier to entry arises because a new operating system will be desirable to consumers only if a broad array of software applications can run on it, but software developers will find it profitable to create applications that run on an operating system only if there is a large existing base of users.

55. To overcome this challenge and to attract app developers and users, Google has continuously represented that Android is an "open" ecosystem and that any ecosystem participant could create Android-compatible products without unnecessary restrictions. Indeed, Google LLC's CEO, Sundar Pichai, represented in 2014 that Android "is one of the most open systems that I've ever seen".[5] And Andy Rubin, an

[5] Stuart Dredge, *Google's Sundar Pichai on wearable tech: 'We're just scratching the surface'*, The Guardian (Mar. 9, 2014), https://www.theguardian.com/technology/2014/mar/09/google-sundar-pichai-android-chrome-sxsw.

Android founder who is described by some as the "Father of Android", said when he departed Google in 2013 that "at its core, Android has always been about openness".[6]

56. But the reality is quite different. Despite these claims of openness, Google has now effectively closed the Android ecosystem through its tight control of the Android OS. And, as the dominant OS licensor, Google now benefits from these substantial network effects which makes participation on its platform a "must-have" market for developers.

57. As further described below, Google uses the Android OS to restrict which apps and app stores OEMs are permitted to pre-install on the devices they make and to impose deterrents to the direct distribution of competing app stores and apps to Android users, all at the expense of competition in the Android ecosystem.

58. Because of Google's monopoly power in the Merchant Market for Mobile OSs, OEMs, developers and users cannot avoid such effects by choosing another mobile OS. OEMs such as ZTE and Nokia have stated that other non-proprietary OSs are poor substitutes for the Android OS and are not a reasonable alternative to licensing the Android OS. One important reason is that other mobile OSs presently do not support many high-quality and successful mobile apps, which consumers find essential or valuable when choosing a mobile device. These circumstances have biased consumers against the purchase of mobile devices with non-proprietary mobile OSs other than Android OS. OEMs thus have no choice but to agree to Google's demands because it is critical that they be able to offer a popular mobile OS and corresponding ecosystem to consumers who are choosing which mobile device to purchase.

[6] Andy Rubin, *Andy Rubin's Email to Android Partners*, The Wall Street Journal (Mar. 13, 2013), *available at* https://blogs.wsj.com/digits/2013/03/13/andy-rubins-email-to-android-partners/?mod=WSJBlog.

II. Google Unlawfully Maintains a Monopoly in the Android Mobile App Distribution Market.

59. Mobile apps make mobile devices more useful and valuable because they add functionality to the mobile device that caters to the specific interests of each mobile device user. For example, they facilitate video chats with friends and family, banking online, shopping, job hunting, photo editing, reading digital news sources, editing documents, or playing a game like *Fortnite*. Many workers use their smart mobile device to check work schedules, access company email, or use other employer software while outside the workplace. For many consumers, a smartphone or tablet is the only way to access these functions, because the consumer does not own a personal computer or because the consumer can only access the Internet using a cellular connection. But even when a consumer can perform the same or similar functions on a personal computer, the ability to access apps "on the go" using a handheld, portable device remains valuable and important.

60. Whereas some apps may be pre-installed by OEMs, OEMs cannot anticipate all the various apps a specific consumer may desire to use. Moreover, many consumers have different preferences as to which apps they want, and it would be undesirable for OEMs to load the devices they sell with unwanted apps that take up valuable space on the mobile device. And many apps that consumers may ultimately use on their device will be developed after they buy the device. Accordingly, consumers who seek to add new functionalities to a mobile device and customize the device for their own use need to obtain and install mobile apps themselves after purchasing their device. Currently, on Android devices, this is done most often through the Google Play Store, Google's own "app store". The Google Play Store is a digital portal set up by Google and through which mobile apps can be browsed, searched for, purchased (if necessary), and downloaded by a consumer. App stores such as the Google Play Store, alongside several other ways by which apps can be distributed to the hundreds of millions of consumers using Android-based mobile devices, comprise the Android App Distribution Market, defined below.

61. Through various anti-competitive acts and unlawful restraints on competition, Google has maintained a monopoly in the Android Mobile App Distribution market, causing ongoing harm to competition and injury to OEMs, app distributors, app developers, and consumers. Google's restraints of trade belie representations Google currently makes to developers that "as an open platform, Android is about choice" and that app developers "can distribute [their] Android apps to users in any way [they] want, using any distribution approach or combination of approaches that meets [their] needs", including by allowing users to directly download apps "from a website" or even by "emailing them directly to consumers".[7]

A. The Android App Distribution Market

i. Product Market Definition

62. There is a relevant market for the distribution of apps compatible with the Android OS to users of mobile devices (the "Android App Distribution Market"). This Market is comprised of all the channels by which mobile apps may be distributed to the hundreds of millions of users of mobile devices running the Android OS. The Market primarily includes Google's dominant Google Play Store, with smaller stores, such as Samsung's Galaxy Store and Aptoide, trailing far behind. Nominally only, the direct downloading of apps without using an app store (which Google pejoratively describes as "sideloading") is also within this market.

63. App stores allow consumers to easily browse, search for, access reviews on, purchase (if necessary), download, and install mobile apps, using the mobile device itself and an Internet connection. OEMs find it commercially unreasonable to ship a smart mobile device to a consumer without at least one app store installed, as a consumer's ability to obtain new mobile apps is an important part of the value provided by smart mobile devices.

[7] Google Play Developers Page, *Alternative distribution options*, https://developer.android.com/distribute/marketing-tools/alternative-distribution (last accessed June 7, 2020).

64. App stores are OS-specific, meaning they distribute only apps that are compatible with the specific mobile OS on which the app store is used. A consumer who has a mobile device running the Android OS cannot use apps created for a different mobile operating system. An owner of an Android OS device will use an Android compatible app store, and such app stores distribute only Android-compatible mobile apps. That consumer may not substitute an Android app store with, for example, Apple's App Store, as that app store is not available on Android devices, is not compatible with the Android OS, and does not offer apps that are compatible with the Android OS. Non-Android mobile app distribution platforms—such as the Windows Mobile Store used on Microsoft's Windows Mobile OS or the Apple App Store used on Apple iOS devices—cannot substitute for Android-specific app distribution platforms, and they are therefore not part of the Android App Distribution Market defined herein.

65. Likewise, stores distributing personal computer or gaming console software are not compatible with the Android OS and do not offer Android-compatible apps: the Epic Games Store distributes software compatible with personal computers, the Microsoft Store for Xbox distributes software compatible with the Xbox game consoles, and the PlayStation Store distributes software compatible with the PlayStation game consoles. A user cannot download mobile apps for use on his/her Android device by using such non-Android OS, non-mobile software distribution platforms. They therefore are not part of the Android App Distribution Market.

66. The same is true even when an app or game, like *Fortnite*, is available for different types of platforms running different operating systems, because only the OS-compatible version of that software can run on a specific type of device or computer. Accordingly, as a commercial reality, an app developer that wishes to distribute mobile apps for Android mobile devices must develop an Android-specific version of the app and avail itself of the Android App Distribution Market.

67. In the alternative only, the Android App Distribution Market is a relevant, economically distinct sub-market of a hypothetical broader antitrust market for

the distribution of mobile apps to users of all mobile devices, whether Android or Apple's iOS.

ii. Geographic Market Definition

68. The geographic scope of the Android App Distribution Market is worldwide, excluding China. Outside of China, app distribution channels, including app stores, are developed and distributed on a global basis; OEMs, in turn, make app stores, such as the Google Play Store, available on Android devices on a worldwide basis (except in China). China is excluded from the relevant market because legal and regulatory barriers prevent the operation of many global app stores, including the Google Play Store, within China. Additionally, app stores prevalent in China are not available, or have little presence, outside of China.

B. Google's Monopoly Power in the Android App Distribution Market

69. Google has monopoly power in the Android App Distribution Market.

70. Google's monopoly power can be demonstrated by, among other things, Google's massive market share in terms of apps downloaded. The European Commission determined that, within the Market, more than 90% of app downloads through app stores have been done through the Google Play Store. Indeed, although app stores for merchant mobile OSs other than Android are not included in the Android App Distribution Market, the European Commission found that the only such app store with any appreciable presence was the Windows Mobile Store, which was compatible with the Windows Mobile OS. The Commission determined that even if the Windows Mobile Store share was included in the market, the Google Play Store would still have had a market share greater than 90%.

71. Other existing Android mobile app stores do not discipline Google's exercise of monopoly power in the Android App Distribution Market. No other app store is able to reach nearly as many Android users as the Google Play Store. According to the European Commission, the Google Play Store is pre-installed by

OEMs on practically all Android mobile devices sold outside of China. As a result, no other Android app store comes close to that number of pre-installed users. With the exception of app stores designed for and installed only on mobile devices sold by those respective OEMs, such as Samsung Galaxy Apps and the LG Electronics App Store, no other Android app store is pre-installed on more than 10% of Android devices, and many have no appreciable market penetration at all. Aptoide, for example, is an Android app store that claims to be the largest "independent" app store outside of China, but it comes pre-installed on no more than 5% of Android mobile devices.

72. Because of Google's success in maintaining its monopoly in Android app distribution, there is no viable substitute to distributing Android apps through the Google Play Store. 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 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 and lesser quality of apps they offer.

73. As further proof of its monopoly power, Google imposes a supra-competitive commission of 30% on the price of apps purchased through the Google Play Store, which is a far higher commission than would exist under competitive conditions.

74. Furthermore, Google's monopoly power in app distribution is not constrained by competition at the smart mobile device level because Android device users face significant switching costs and lock-in to the Android ecosystems that serves to protect Google's monopoly power, and consumers are unable to account for Google's anticompetitive conduct when they purchase a smart mobile device.

75. *First*, consumers are deterred from leaving the Android ecosystem due to the difficulty and costs of switching. Consumers choose a smartphone based in part on the OS that comes pre-installed on that device and the ecosystem in which the device participates (in addition to a bundle of other features, such as price, battery life, design, storage space, and the range of available apps and accessories). Once a consumer has selected a smartphone, the consumer cannot replace the mobile OS that comes pre-installed on it with an alternative mobile OS. Rather, a consumer who wishes to change the OS must purchase a new smartphone entirely. In addition, mobile OSs have different designs, controls, and functions that consumers must learn to navigate. Over time, consumers who use Android devices learn to operate efficiently on the Android OS. For example, the Android OS layout differs from iOS in a wide range of functions, including key features such as searching and installing "widgets" on the phone, organizing and searching the phone's digital content, configuring control center settings, and organizing photos. The cost of learning to use a different mobile OS is part of consumers' switching costs.

76. *Second*, switching from Android devices may also result in a significant loss of personal and financial investment that consumers put into the Android ecosystem. Because apps, in-app content and many other products are designed for or are only compatible with a particular mobile OS, switching to a new mobile OS may mean losing access to such products or to data. Even if versions of such apps and products are available within the new ecosystem chosen by the consumer, the consumer would have to go through the process of downloading them again onto the new devices and may have to purchase them anew. As a result, the consumer may be forced to abandon his or her investment in at least some of those apps, along with any purchased in-app content and consumer-generated data on those apps.

77. *Third*, consumers are not able to avoid the switching costs and lock-in to the Android OS ecosystem by acquiring more information prior to the purchase of the Android device. The vast majority of mobile device consumers have no reason to

inquire, and therefore do not know about, Google's anticompetitive contractual restraints and policies. Furthermore, these consumers rationally do not give much weight to Google's anticompetitive conduct and anticompetitive fees when deciding whether to switch from an Android device. Consumers consider many features when deciding which smartphone or tablet to purchase, including design, brand, processing power, battery life, functionality and cellular plan. These features are likely to play a substantially larger role in a consumer's decision as to which smart mobile device to purchase than Google's anticompetitive conduct in the relevant markets, particularly given that a consumer may consider the direct monetary cost of Google's conduct to be small relative to the price of smart mobile devices, if the consumer is even aware of the conduct or assigns it such a cost at all. For example, over time a typical Android user may make multiple small purchases of paid apps and in-app digital content—accumulating to $100 or less annually—but may spend several hundreds of dollars at once to purchase an Android smart mobile device.

78. Consumers are also unable to determine the "lifecycle price" of devices—*i.e.*, to accurately assess at the point of purchase how much they will end up spending in total (including on the device and all apps and in-app purchases) for the duration of their ownership of the device. Consumers cannot know in advance of purchasing a device all of the apps or in-app content that they may want to purchase during the usable lifetime of the device. Consumers' circumstances may change. Consumers may develop new interests. They may learn about new apps or in-app content that becomes available only after purchasing a device. New apps and in-app content will continue to be developed and marketed after a consumer purchases a smartphone or tablet. All of these factors may influence the amount of consumers' app and in-app purchases. Because they cannot know or predict all such factors when purchasing mobile devices, consumers are unable to calculate the lifecycle prices of the devices. This prevents consumers from effectively taking Google's anticompetitive conduct into account when making mobile device purchasing decisions.

79. Because consumers face substantial switching costs and lock-in to the Android OS, developers can only gain access to these users by also participating in the Android ecosystem. Thus, developers face an even greater cost in not participating in the Android ecosystem—loss of access to hundreds of millions of Android OS users.

C. Google's Anti-Competitive Conduct Concerning the Android App Distribution Market

80. Google has willfully and unlawfully maintained its monopoly in the Android App Distribution Market through a series of related anti-competitive acts that have foreclosed competing ways of distributing apps to Android users.

i. Google's Conduct Toward OEMs

81. Google imposes anti-competitive constraints on Android OEMs based on their need for access to a viable Android app store and other important services provided by Google.

82. *First*, Google conditions OEMs' licensing of the Google Play Store, as well as other essential Google services and the Android trademark, on OEMs' agreements to provide the Google Play Store with preferential treatment compared to any other competing app store. Specifically, to access the Google Play Store, Android OEMs (which, as noted above, comprise virtually all OEMs that obtain an OS on the merchant market) have signed a Mobile Application Distribution Agreement ("MADA") with Google. A MADA confers a license to a bundle of products comprising proprietary Google apps, Google-supplied services necessary for functioning of mobile apps, and the Android trademark. Through its MADAs with Android OEMs, Google requires OEMs to locate the Google Play Store on the "home screen"[8] of each mobile device. Android OEMs must further pre-install up to 30 Google mandatory apps and must locate these apps on the home screen or on the next screen, occupying valuable space on each user's mobile device that otherwise could be occupied by competing app stores and other services. These requirements ensure that

[8] The default "home screen" is the default display, prior to any changes made by users, that appears without scrolling when the device is in active idle mode (*i.e.*, is not turned off or in sleep mode).

the Google Play Store is the most visible app store any user encounters and place any other app store at a significant disadvantage.

83. Absent this restraint, OEMs could pre-install and prominently display alternative app stores to the purchasers of some or all of their mobile devices, allowing competing app stores the ability to vie for prominent placement on Android devices, increased exposure to consumers and, as a result, increased ability to attract app developers to their store. As an app distributor, Epic could and would negotiate with OEMs to offer a prominently displayed app store containing *Fortnite* and other games, allowing Epic to reach more mobile users.

84. *Second*, Google interferes with OEMs' ability to distribute Android app stores and apps directly to consumers outside the Google Play Store. Some OEMs may choose to compete for buyers by offering mobile devices that provide easy access to additional mobile app stores and apps. For example, an OEM may pre-install an icon corresponding to an app store or app on the device before it is sold to consumers. Even when an OEM would want to make mobile apps available to consumers in this way, Google imposes unjustified and pretextual warnings about the security of installing the app, even though the consumer is choosing to install the app in full awareness of its source.

85. Epic recently reached an agreement with OnePlus, an OEM, to allow users of OnePlus mobile devices to seamlessly install *Fortnite* and other Epic games by touching an Epic Games app on their devices—without encountering any obstacles imposed by the Android OS. In conjunction with this agreement, Epic designed a version of *Fortnite* for certain OnePlus devices that delivers a state-of-the-art framerate (the frequency at which consecutive images appear on the device's screen), providing an even better gameplay experience for *Fortnite* players. Although the original agreement between Epic and OnePlus contemplated making this installation method available worldwide, Google demanded that OnePlus not implement its agreement with Epic with the limited exception of mobile devices sold in India. OnePlus informed Epic that

Google was "particularly concerned that the Epic Games app would have ability to potentially install and update multiple games with a silent install bypassing the Google Play Store".[9] Further, any waiver of Google's restriction "would be rejected due to the Epic Games app serving as a potential portfolio of games and game updates". As a result, OnePlus mobile device users in India can install Epic games seamlessly without using the Google Play Store, while users outside India cannot.

86. Another OEM, LG, also told Epic that it had a contract with Google "to block side downloading off Google Play Store this year", but that the OEM could "surely" make Epic games available to consumers if the Google Play Store were used. Google prevented LG from pre-installing the Epic Games app on LG devices.

87. In the absence of this conduct, Epic could and would negotiate with OEMs to make *Fortnite* and other Epic games directly available to consumers, free from Google's anti-competitive restraints. OEMs could then compete for the sale of mobile devices based in part on the set of apps offered on the OEMs' devices. But Google forecloses alternative ways of distributing Android apps other than through its own monopolized app store, harming competition among OEMs and among app developers, to the detriment of consumers.

ii. Google's Conduct Toward App Distributors and Developers

88. Google imposes anti-competitive restrictions on competing app distributors and developers that further entrench its monopoly in Android App Distribution.

89. *First*, Google prevents app distributors from providing Android users ready access to competing app stores. Specifically, even though competitive app stores themselves are mobile apps that could easily be distributed through the Google Play Store, Google prohibits the distribution of any competing app store through the Google Play Store, without any technological or other justification.

[9] A "silent install" is an installation process free of the dire security warnings that Google triggers when apps are directly downloaded, such as the "one touch" process on which Epic and OnePlus had agreed.

90. Google imposes this restraint through provisions of the Google Play Developer Distribution Agreement ("DDA"), which Google requires all app developers to sign before they can distribute their apps through the Google Play Store. Each of the Defendants, except Google Payment, is a party to the DDA.

91. Section 4.5 of the DDA provides that developers "may not use Google Play to distribute or make available any Product that has a purpose that facilitates the distribution of software applications and games for use on Android devices outside of Google Play." The DDA further reserves to Google the right to remove and disable any Android app that it determines violates this requirement. The DDA is non-negotiable, and developers that seek access to Android users through the Google Play Store must accept Google's standardized contract of adhesion.

92. In the absence of these unlawful restraints, competing app distributors could allow users to replace or supplement the Google Play Store on their devices with competing app stores, which users could easily download and install through the Google Play Store. App stores could compete and benefit consumers by offering lower prices and innovative app store models, such as app stores that are curated to specific consumers' interests—*e.g.*, an app store that specializes in games or an app store that only offers apps that increase productivity. Without Google's unlawful restraints, additional app stores would provide additional platforms on which more apps could be featured, and thereby, discovered by consumers. Epic has been damaged through its inability to provide a competing app store (as it does on personal computers) and by the loss of the opportunity to reach more Android users directly in the ways that personal computers allow developers to reach consumers without artificial constraints.

93. *Second*, Google conditions app developers' ability to effectively advertise their apps to Android users on being listed in the Google Play Store. Specifically, Google markets an App Campaigns program that, as Google says, allows app developers to "get your app into the hands of more paying users" by "streamlin[ing] the process for you, making it easy to promote your apps across Google's largest

properties". This includes certain ad placements on Google Search, YouTube, Discover on Google Search, and the Google Display Network, and with Google's "search partners", that are specially optimized for the advertising of mobile apps. However, in order to access this valuable advertising space through the App Campaigns program, Google requires that app developers list their app in either the Google Play Store (to reach Android users) or in the Apple App Store (to reach Apple iOS users). This conduct further entrenches Google's monopoly in Android App Distribution by coercing Android app developers to list their apps in the Google Play Store or risk losing access to a great many Android users they could otherwise advertise to but for Google's restrictions.

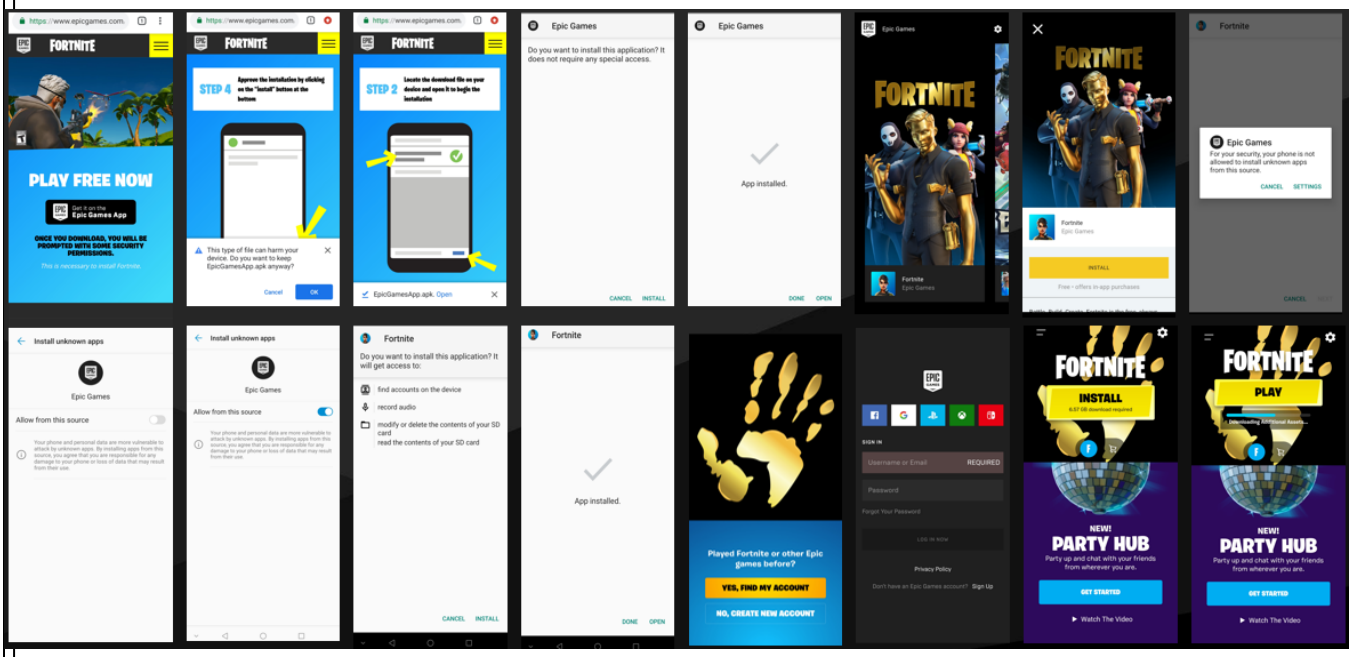
iii. Google's Conduct Toward Consumers

94. Google directly and anti-competitively restricts the manner in which consumers can discover, download and install mobile apps and app stores. Although Google nominally allows consumers to directly download and install Android apps and app stores—a process that Google pejoratively describes as "sideloading"—Google has ensured, through a series of technological impediments imposed by the Android OS, that direct downloading remains untenable for most consumers.

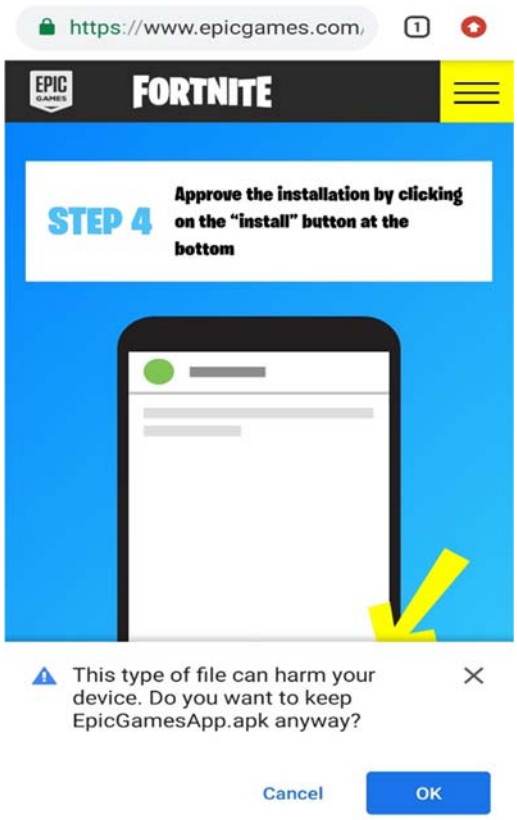
95. But for Google's anticompetitive acts, Android users could freely download apps from developers' websites, rather than through an app store, just as they might do on a personal computer. There is no reason that downloading and installing an app on a mobile device should differ from downloading and installing software on a personal computer. Millions of personal computer users download and install software directly every day, such as Google's own Chrome browser or Adobe's Acrobat Reader. Personal computer users do this easily and safely.

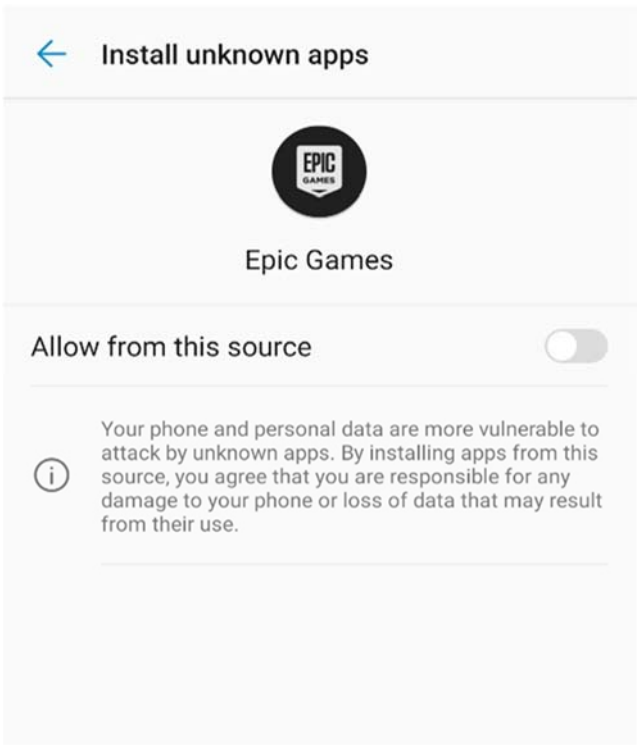
96. Direct downloading on Android mobile devices, however, differs dramatically. Google ensures that the Android process is technically complex, confusing and threatening, filled with dire warnings that scare most consumers into abandoning the lengthy process. For example, depending on the version of Android

running on a mobile device, downloading and installing *Fortnite* on an Android device could take as many as 16 steps or more, including requiring the user to make changes to the device's default settings and manually granting various permissions while being warned that doing so is dangerous. Below are the myriad steps an average Android user has to go through in order to download and install *Fortnite* directly from Epic's secure servers.



97. Below are two of the intimidating messages and warnings about the supposed danger of directly downloading and installing apps that consumers encounter during this process.





98. As if this slog through warnings and threats were not enough to ensure the inferiority of direct downloading as a distribution method for Android apps, Google denies downloaded apps the permissions necessary to be seamlessly updated in the background—instead allows such updates only for apps downloaded via Google Play Store. The result is that consumers must manually approve every update of a "sideloaded" app. In addition, depending on the OS version and selected settings, such updates may require users to go through many of the steps in the downloading process repeatedly, again triggering many of the same warnings. This imposes onerous obstacles on consumers who wish to keep the most current version of an app on their mobile device and further drives consumers away from direct downloading and toward Google's monopolized app store.

99. Further, under the guise of offering protection from malware, Google further restricts direct downloading. When Google deems an app "harmful", Google may prevent the installation of, prompt a consumer to uninstall, or forcibly remove the

app from a consumer's device. And direct downloading has been prevented entirely on the Android devices that are part of Google's so-called Advanced Protection Program ("APP"). Consumers who have enrolled in APP are unable to directly download apps; their Android device can only download apps distributed in the Google Play Store or in another pre-installed app store that Google has pre-approved for an OEM to offer on its devices. App developers therefore cannot reach APP users unless they first agree to distribute their apps through the Google Play Store or through a separate Google-approved, OEM-offered app store, where available. Google's invocation of security is an excuse to further strangle an app developer's ability to reach Android users, as shown by a comparison to personal computers, where users can securely purchase and download new software without being limited to a single software store owned or approved by the user's anti-virus software vendor.

100. Direct downloading is also nominally available to competing app distributors who seek to distribute competing Android app stores directly to consumers. However, the same restrictions Google imposes on the direct downloading of apps apply to the direct downloading of app stores. Indeed, Google Play Protect has flagged at least one competing Android app store, Aptoide, as "harmful", further hindering consumers' ability to access a competing app store.

101. And apps downloaded from "sideloaded" app stores, like apps directly downloaded from a developer's website, may not be automatically uploaded in the background. Thus, direct downloading is not a viable way for app stores to reach Android users, any more than it is a viable alternative for single apps; the only difference is that the former do not have *any* alternative, ensuring the latter are forced into the Google Play Store.

102. But for Google's restrictions on direct downloading, Epic and other app distributors and developers could try to directly distribute their stores and apps to those consumers who would be open to a process outside an established app store. But as explained above, Google makes direct downloading substantially and unnecessarily

difficult, and in some cases prevents it entirely, further narrowing this already narrow alternative distribution channel.

103. There is no legitimate reason for Google's conduct. Indeed, for decades the users of personal computers have been able to install software acquired from various sources without being deterred by anything like the obstacles erected by Google. Now, a user can navigate to the Internet webpage sponsored by the developer of software he/she desires, click once or twice to download and install an application, and be up and running, often in a matter of minutes. The operating systems used by personal computers efficiently facilitate this download and installation (unlike Android), and security screening is conducted by a neutral security software operating in the background, allowing users to download software from any source they choose (unlike Android).

104. Google's anti-competitive and unjustified restrictions on distributing apps through any means other than its own app store contradict its own claims that Android app developers can "us[e] any distribution approach or combination of approaches that meets your needs", and that developers can even provide consumers "apps from a website or [by] emailing them directly to users."[10] In reality, Google specifically prevents app developers from effectively availing themselves of alternative distribution channels that it touts today.

105. Through these anti-competitive acts, including contractual provisions and exclusionary obstacles, Google has willfully obtained a near-absolute monopoly over Android mobile app distribution. Google Play Store downloads have accounted for more than 90% of downloads through Android app stores, dwarfing other available distribution channels.

[10] Google Play Developers Page, *Alternative distribution options*, https://developer.android.com/distribute/marketing-tools/alternative-distribution (last accessed June 7, 2020).

D. Anti-Competitive Effects in the Android App Distribution Market

106. Google's anti-competitive conduct forecloses competition in the Android App Distribution Market, affects a substantial volume of commerce in this Market and causes anti-competitive harms to OEMs, competing mobile app distributors, mobile app developers, and consumers.

107. Google's conduct harms OEMs by forcing them to dedicate to the Google Play Store and other mandatory Google applications valuable space on their devices' "home screen", even if they would rather use that real estate for other purposes, including to offer alternative app stores. Individually and together, these requirements limit OEMs' ability to innovate and compete with each other by offering innovative and more appealing (in terms of price and quality) distribution platforms for mobile apps. Google's restrictions also interfere with OEMs' ability to compete with each other by offering Android devices with tailored combinations of pre-installed apps that would appeal to particular subsets of mobile device consumers.

108. Google's conduct harms would-be competitor app distributors, such as Epic, which could otherwise innovate new models of app distribution and provide OEMs, app developers, and consumers choice beyond Google's own app store.

109. Google's anti-competitive conduct harms app developers, such as Epic, which are forced to agree to Google's anti-competitive terms and conditions if they wish to reach many Android users, such as through advertising on Google's valuable advertising properties. Google's restrictions prevent developers from experimenting with alternative app distribution models, such as providing apps directly to consumers, selling apps through curated app stores, creating their own competing app stores, or forming business relationships with OEMs who can pre-install apps. By restricting developers in such a way, Google ensures that the developer's apps will be distributed on the Google Play Store, and that Google is then able to monitor and collect a variety of information on the apps' usage, which it can then use to develop and offer

its own competing apps that are, of course, not subject to Google's supra-competitive taxes.

110. Both developers and consumers are harmed by Google's supra-competitive taxes of 30% on the purchase price of apps distributed through the Google Play Store, which is a much higher transaction fee than would exist in a competitive market. Google's supra-competitive taxes raise prices for app developers and consumers and reduce the output of mobile apps and related content by depriving app developers incentive and capital to develop new apps and content.

111. Consumers are further harmed because Google's control of app distribution reduces developers' ability and incentive to distribute apps to consumers in different and innovative ways—for example, through genre-specific app stores. Google, by restraining the distribution market and eliminating the ability and incentive for competing app stores, also limits consumers' ability to discover new apps of interest to them. More competing app stores would permit additional platforms to feature diverse collections of apps. Instead, consumers are left to sift through millions of apps in one monopolized app store, where Google controls which apps are featured and which apps are identified or prioritized in user searches.

III. Google Unlawfully Acquired and Maintains a Monopoly in the Android In-App Payment Processing Market.

112. By selling digital content within a mobile app rather than (or in addition to) charging a price for the app itself, app developers can make an app widely accessible to all users, then charge users for additional digital content or features, thus still generating revenue from their investment in developing new apps and content. This is especially true for mobile game developers. By allowing users to play without up-front costs, developers permit more players try a game "risk free" and only pay for what they want to access. *Fortnite*, for example, is free to download and play, but makes additional content available for in-app purchasing on an à la carte basis or via a subscription-based Battle Pass. App developers who sell digital content rely on in-app

payment processing tools to process consumers' purchases in a seamless and efficient manner.

113. When selling digital content, Android app developers are unable to utilize the multitude of electronic payment processing solutions generally available on the market to process other types of transactions. Instead, through contractual restrictions and its monopoly in app distribution, Google coerces developers into using its own in-app payment processing by conditioning developers' use of Google's dominant Google Play Store on the use of Google's payment processor, Google Play Billing, for digital content, thereby acquiring and maintaining monopoly power in the Android In-App Payment Processing Market. Google thus ties its Google Play Store to its own proprietary payment processing tool.

A. The Android In-App Payment Processing Market

i. Product Market Definition

114. There is a relevant antitrust market for the processing of payments for the purchase of digital content, including virtual gaming products, that is consumed within Android apps (the "Android In-App Payment Processing Market"). The Android In-App Payment Processing Market is comprised of the payment processing solutions that Android developers could turn to and integrate into their Android apps to process the purchase of such in-app digital content.

115. Absent Google's unlawful conduct, app developers could integrate compatible payment processor into their apps to facilitate the purchase of in-app digital content. Developers also would have the capability to develop their own in-app payment processing functionality. And developers could offer users a choice among multiple payment processors for each purchase, just like a website or brick-and-mortar store can offer a customer the option of using Visa, MasterCard, Amex, Google Pay, and more.

116. Google offers separate payment solutions for the purchase of digital content than it does for other types of purchases, even within mobile apps. Google Play

Billing can be used for the purchase of digital content and virtual gaming products, while Google offers a separate tool, Google Pay, to facilitate the purchase of physical products and services within apps.

117. It is particularly important that app developers who sell in-app digital content be able to offer in-app transactions that are seamless, engrossing, quick, and fun. For example, a gamer who encounters a desirable "skin" within *Fortnite*, such as a Marvel superhero, may purchase it nearly instantly for a small price without leaving the app. Although *Fortnite* does not offer content that extends gameplay or gives players competitive advantages, other game developers offer such products—for example, "boosts" and "extra lives"—that extend and enhance gameplay. It is critical that such purchases can be made during gameplay itself, rather than in another manner. If a player were required to purchase game-extending extra lives outside of the app, the player may simply stop playing instead.

118. As another example, if a user of a mobile dating app encounters a particularly desirable potential dating partner, he/she can do more than "swipe right" or "like" that person, but can also purchase a digital item that increases the likelihood that the potential partner will notice his/her profile. If the user could not make that purchase quickly and seamlessly, he/she would likely abandon the purchase and may even stop "swiping" in the app altogether.

119. It is therefore essential that developers who offer digital content be able to seamlessly integrate a payment processing solution into the app, rather than requiring a consumer to go elsewhere, such as to a separate website, to process a transaction. Indeed, if an app user were directed to process a purchase of digital content outside of a mobile app, the user might abandon the purchase or stop interacting with the mobile app altogether.

120. Mobile game developers particularly value the ability to allow users to make purchases that extend or enhance gameplay without disrupting or delaying that gameplay or a gamer's engagement with the mobile app. For these reasons, and in the

alternative, there is a relevant antitrust sub-market for the processing of payments for the purchase of virtual gaming products within mobile Android games (the "Android Games Payment Processing Market").

ii. Geographic Market Definition

121. The geographic scope of the Android In-App Payment Processing Market is worldwide, excluding China. Outside China, in-app payment processing tools, such as Google Play Billing, are available on a worldwide basis. By contrast, in-app payment processing tools available in China are not available outside of China, including because Google prevents the use of non-Google payment processing tools for all apps distributed through the Google Play Store, which as noted above dominates distribution of apps outside of China.

B. Google's Monopoly Power in the Android In-App Payment Processing Market

122. Google has monopoly power in the Android In-App Payment Processing Market and, in the alternative, in the Android Games Payment Processing Market.

123. For apps distributed through the Google Play Store, Google requires that the apps use *only* its own in-app payment processor, Google Play Billing, to process in-app purchases of digital content and for all purchases within Android games. And because 90% or more of Android-compatible mobile app downloads conducted through an app stores have been done through the Google Play Store, Google has a monopoly in these Markets. .

124. Google charges a 30% commission for Google Play Billing. This rate reflects Google's market power, which allows it to charge supra-competitive prices for payment processing within the market. Indeed, the cost of alternative electronic payment processing tools, which Google does not permit to be used for the purchase of in-app digital content or within Android games, can be ***one tenth*** of the 30% cost of Google Play Billing.

Electronic Payment Processing Tool	**Base U.S. Rate**
PayPal	2.9%
Stripe	2.9%
Square	2.6%-3.5%
Braintree	2.9%

C. Google's Anti-Competitive Conduct Concerning the Android In-App Payment Processing Market

125. Through provisions of the DDA that Google imposes on all developers who seek to access Android users, Google unlawfully ties its Google Play Store, through which it has a monopoly in the Android App Distribution Market, to its own in-app payment processing tool, Google Play Billing. Section 3.2 of the DDA requires that Android app developers enter into a separate agreement with Google's payment processor, Defendant Google Payment, in order to receive payment for apps and in-app digital content.

126. Further, Google's Developer Program Policies, compliance with which Section 4.1 of the DDA makes obligatory, require in relevant part that:

- Developers offering products within a game downloaded on Google Play or providing access to game content must use Google Play In-app Billing as the method of payment.
- Developers offering products within another category of app downloaded on Google Play must use Google Play In-app Billing as the method of payment, except for the following cases:
    - Payment is solely for physical products,
    - Payment is for digital content that may be consumed outside of the app itself (*e.g.*, songs that can be played on other music players).

127. Google's unlawful restraints in the DDA prevent app developers from integrating alternative, even multiple, payment processing solutions into their

mobile apps, depriving app developers and consumers alike a choice of competing payment processors. For example, Epic offers its own in-app payment processing tool that it could integrate, alongside Google's and others, into Epic mobile games. Epic consumers could then choose to process their payment using Google's tool, Epic's tool, or another tool altogether.

128. In December of 2019, Epic submitted a build of *Fortnite* to Google Play that enabled users to make in-app purchases through Epic's own payment processor. Upon review of the submission, Google Play rejected the application, citing its violation of Google's Payments policy as well as an unrelated issue raised by Google. In January 2020, Epic again submitted a *Fortnite* build that resolved the unrelated issue but again enabled users to use Epic's own payment processor. Google again rejected Epic's submission.

129. Epic was prevented from offering *Fortnite* on the Google Play Store, and therefore unable to reach many Android users, until it submitted a new version of *Fortnite* that only offered Google Play Billing. Google has damaged Epic by foreclosing it from the Android in-app payment processing market.

130. Google has no legitimate justifications for its tie. If it were concerned, for example, about the security of its users' payment information, then it would not permit alternative payment processing for certain transactions made on Android phones for physical products or digital content consumed outside an app. But Google does allow alternative payment processing tools in that context, with no diminution in security.

D. Anti-Competitive Effects in the Android In-App Payment Processing Market

131. Google's conduct harms competition in the Android In-app Payment Processing Market (and, in the alternative, in the Android Games Payment Processing Market) and injures app developers, consumers, and competing in-app payment processors.

132. Google's conduct harms would-be competitor in-app payment processors, who would otherwise have the ability to innovate and offer consumers alternative payment processing tools that offer better functionality, lower prices, and better security. For example, in the absence of Google's Developer Program Policies, Epic could offer consumers a choice of in-app payment processor for each purchase made by the consumer, including a choice of Epic's own payment processor at a lower cost and with better customer service.

133. Google also harms app developers and consumers by inserting itself as a mandatory middleman in every in-app transaction. When Google acts as payment processor, Epic is unable to provide users comprehensive customer service relating to in-app payments without Google's involvement. Google has little incentive to compete through improved customer service because Google faces no competition and consumers often blame Epic for payment-related problems. In addition, Google is able to obtain information concerning Epic's transactions with its own customers, which it could use to give its ads and Search businesses an anti-competitive edge, even when Epic and its own customers would prefer not to share their information with Google. In these ways and in others, Google directly harms app developers' relationships with the users of their apps.

134. Finally, Google raises app developers' costs and consumer prices through its supra-competitive 30% tax on in-app purchases, a price it could not maintain if it had not foreclosed competition for such transactions. The resulting increase in prices for in-app content likely deters some consumers from making purchases and deprives app developers of resources they could use to develop new apps and content. The supra-competitive tax rate also reduces developers' incentive to invest in and create additional apps and related in-app content.

COUNT 1: Sherman Act § 2
(Unlawful Monopoly Maintenance in the Android App Distribution Market)
(against all Defendants except Google Payment)

135. Epic restates, re-alleges, and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

136. Google's conduct violates Section 2 of the Sherman Act, which prohibits the "monopoliz[ation of] any part of the trade or commerce among the several States, or with foreign nations". 15 U.S.C. § 2.

137. The Android App Distribution Market is a valid antitrust market.

138. Google holds monopoly power in the Android App Distribution Market.

139. Google has unlawfully maintained monopoly power in the Android App Distribution Market through the anti-competitive acts described herein, including conditioning the licensing of the Google Play Store, as well as other essential Google services and the Android trademark, on OEMs' agreement to provide the Google Play Store with preferential treatment, imposing technical restrictions and obstacles on both OEMs and developers, which prevent the distribution of Android apps through means other than the Google Play Store, and conditioning app developers' ability to effectively advertise their apps to Android users on being listed in the Google Play Store.

140. Google's conduct affects a substantial volume of interstate as well as foreign commerce.

141. Google's conduct has substantial anti-competitive effects, including increased prices and costs, reduced innovation and quality of service, and lowered output.

142. As a potential competing app distributor and as an app developer, Epic has been harmed by Defendants' anti-competitive conduct in a manner that the antitrust laws were intended to prevent. Epic has suffered and continues to suffer

damages and irreparable injury, and such damages and injury will not abate until an injunction ending Google's anti-competitive conduct issues.

COUNT 2: Sherman Act § 1
(Unreasonable restraints of trade concerning Android App Distribution Market: OEMs)
(against all Defendants except Google Payment)

143. Epic restates, re-alleges and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

144. Defendants' conduct violates Section 1 of the Sherman Act, which prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations". 15 U.S.C. § 1.

145. Google has entered into agreements with OEMs that unreasonably restrict competition in the Android App Distribution Market. These include MADAs with OEMs that condition their access to the Google Play Store and other "must have" Google services on the OEM offering the Google Play Store as the primary and often the only viable app store on Android mobile devices.

146. These agreements serve no legitimate or pro-competitive purpose that could justify their anti-competitive effects, and thus unreasonably restrain competition in the Android App Distribution Market.

147. Google's conduct affects a substantial volume of interstate as well as foreign commerce.

148. Google's conduct has substantial anti-competitive effects, including increased prices and costs, reduced innovation and quality of service, and lowered output.

149. As a potential competing app distributor and as an app developer that consumes app distribution services, Epic has been harmed by Defendants' anti-competitive conduct in a manner that the antitrust laws were intended to prevent. Epic has suffered and continues to suffer damages and irreparable injury, and such damages

and injury will not abate until an injunction ending Google's anti-competitive conduct issues.

COUNT 3: Sherman Act § 1
(Unreasonable restraints of trade concerning Android App Distribution Market: DDA)
(against all Defendants except Google Payment)

150. Epic restates, re-alleges, and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

151. Defendants' conduct violates Section 1 of the Sherman Act, which prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations". 15 U.S.C. § 1.

152. Google forces app developers to enter its standardized DDA, including Developer Program Policies integrated into that Agreement, as a condition of being distributed through Google's app store, the Google Play Store. The relevant provisions of these agreements unreasonably restrain competition in the Android App Distribution Market.

153. Section 4.5 of the DDA provides that developers "may not use Google Play to distribute or make available any Product that has a purpose that facilitates the distribution of software applications and games for use on Android devices outside of Google Play". Section 4.1 of the DDA requires that all developers "adhere" to Google's Developer Program Policies. Under the guise of its so-called "Malicious Behavior" Policy, Google prohibits developers from distributing apps that "download executable code [*i.e.*, code that would execute an app] from a source other than Google Play". The DDA further reserves to Google the right to remove and disable any Android app that it determines violates either the DDA or its Developer Program Policies and to terminate the DDA on these bases. (§§ 8.3, 10.3.) These provisions prevent app developers from offering competing app stores through the

Google Play Store, even though there is no legitimate technological or other impediment to distributing a competing app store through the Google Play Store.

154. These agreements serve no legitimate or pro-competitive purpose that could justify their anti-competitive effects, and thus unreasonably restrain competition in the Android App Distribution Market.

155. Google's conduct affects a substantial volume of interstate as well as foreign commerce.

156. Google's conduct has substantial anti-competitive effects, including increased prices and costs, reduced innovation and quality of service, and lowered output.

157. As a potential competing app distributor and as an app developer that consumes app distribution services, Epic has been harmed by Defendants' anti-competitive conduct in a manner that the antitrust laws were intended to prevent. Epic has suffered and continues to suffer damages and irreparable injury, and such damages and injury will not abate until an injunction ending Google's anti-competitive conduct issues.

COUNT 4: Sherman Act § 2
(Unlawful Monopolization and Monopoly Maintenance in the Android In-App Payment Processing Market)
(against all Defendants)

158. Epic restates, re-alleges, and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

159. Google's conduct violates Section 2 of the Sherman Act, which prohibits the "monopoliz[ation of] any part of the trade or commerce among the several States, or with foreign nations". 15 U.S.C. § 2.

160. The Android In-App Payment Processing Market is a valid antitrust market. In the alternative, the Android Games Payment Processing Market is a valid antitrust market.

161. Google holds monopoly power in the Android In-App Payment Processing Market and, in the alternative, in the Android Games Payment Processing Market.

162. Google has unlawfully acquired monopoly power in these Markets, including through the anti-competitive acts described herein. And however Google initially acquired its monopoly, it has unlawfully maintained its monopoly, including through the anti-competitive acts described herein.

163. Google's conduct affects a substantial volume of interstate as well as foreign commerce.

164. Google's conduct has substantial anti-competitive effects, including increased prices and costs, reduced innovation and quality of service, and lowered output.

165. As an app developer and as the developer of a competing in-app payment processing tool, Epic has been harmed by Defendants' anti-competitive conduct in a manner that the antitrust laws were intended to prevent. Epic has suffered and continues to suffer damages and irreparable injury, and such damages and injury will not abate until an injunction ending Google's anti-competitive conduct issues.

COUNT 5: Sherman Act § 1
(Unreasonable restraints of trade concerning Android In-App Payment Processing Market)
(against all Defendants)

166. Epic restates, re-alleges, and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

167. Defendants' conduct violates Section 1 of the Sherman Act, which prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations". 15 U.S.C. § 1.

168. Google, except Google Payment, forces app developers to enter its standardized DDA, including Developer Program Policies integrated into that

Agreement, as a condition of having their apps distributed through Google's monopolized app store, Google Play Store. The relevant provisions of these agreements unreasonably restrain competition in the Android In-App Payment Processing Market.

169. Section 3.2 of the DDA requires that Android app developers enter into a separate agreement with Google's payment processor, Defendant Google Payment, in order to receive payment for apps and content distributed through the Google Play Store. This includes payments related to in-app purchases of digital content. Further, Google's Developer Program Policies, compliance with which Section 4.1 of the DDA makes obligatory, require that apps distributed through the Google Play Store "must use Google Play In-app Billing [offered by Google Payment] as the method of payment" for such in-app purchases. While Google's Policies exclude certain types of transactions from this requirement, such as the purchase of "solely physical products" or of "digital content that may be consumed outside of the app itself", Google expressly applies its anti-competitive mandate to every "game downloaded on Google Play" and to all purchased "game content", such as purchases made within *Fortnite*.

170. The challenged provisions serve no sufficient legitimate or pro-competitive purpose and unreasonably restrain competition in the Android In-App Payment Processing Market and, in the alternative, the Android Games Payment Processing Market.

171. Defendants' conduct affects a substantial volume of interstate as well as foreign commerce.

172. Defendants' conduct has substantial anti-competitive effects, including increased prices and costs, reduced innovation and quality of service, and lowered output.

173. As an app developer and as the developer of a competing in-app payment processing tool, Epic has been harmed by Defendants' anti-competitive conduct in a manner that the antitrust laws were intended to prevent. Epic has suffered

and continues to suffer damages and irreparable injury, and such damages and injury will not abate until an injunction ending Google's anti-competitive conduct issues.

COUNT 6: Sherman Act § 1
(Tying Google Play Store to Google Play Billing)
(against all Defendants)

174. Epic restates, re-alleges and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

175. Defendants' conduct violates Section 1 of the Sherman Act, which prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations." 15 U.S.C. § 1.

176. Google has unlawfully tied the Google Play Store to its in-app payment processor, Google Play Billing, through its DDAs with app developers and its Developer Program Policies.

177. Google has sufficient economic power in the tying market, the Android App Distribution Market. With Google Play Store installed on nearly all Android OS devices and over 90% of downloads on Android OS devices being performed by the Google Play Store, Google has overwhelming market power. Google's market power is further evidenced by its ability to extract supra-competitive taxes on the sale of apps through the Google Play Store.

178. The availability of the Google Play Store for app distribution is conditioned on the app developer accepting a second product, Google's in-app payment processing services. Google's foreclosure of alternative app distribution channels forces developers like Epic to use Google's in-app payment processing services, which Google has expressly made a condition of reaching Android users through its dominant Google Play Store.

179. The tying product, Android app distribution, is distinct from the tied product, Android in-app payment processing, because app developers such as Epic have alternative in-app payment processing options and would prefer to choose among them

independently of how an Android app is distributed. Google's unlawful tying arrangement thus ties two separate products that are in separate markets.

180. Google's conduct forecloses competition in the Android In-App Payment Processing Market, and, in the alternative, in the Android Games Payment Processing Market, affecting a substantial volume of commerce in these Markets.

181. Google has thus engaged in a *per se* illegal tying arrangement and the Court does not need to engage in a detailed assessment of the anti-competitive effects of Google's conduct or its purported justifications.

182. In the alternative only, even if Google's conduct does not constitute a *per se* illegal tie, a detailed analysis of Google's tying arrangement would demonstrate that this arrangement violates the rule of reason and is illegal.

183. As an app developer which consumes in-app payment processing services and as the developer of a competing in-app payment processing tool, Epic has been harmed by Defendants' anti-competitive conduct in a manner that the antitrust laws were intended to prevent. Epic has suffered and continues to suffer damages and irreparable injury, and such damages and injury will not abate until an injunction ending Google's anti-competitive conduct issues.

COUNT 7: California Cartwright Act
(Unreasonable restraints of trade in Android App Distribution Market)
(against all Defendants except Google Payment)

184. Epic restates, re-alleges and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

185. Google's acts and practices detailed above violate the Cartwright Act, Cal. Bus. & Prof. Code § 16700 *et seq.*, which prohibits, *inter alia*, the combination of resources by two or more persons to restrain trade or commerce or to prevent market competition. *See* §§ 16720, 16726.

186. Under the Cartwright Act, a "combination" is formed when the anti-competitive conduct of a single firm coerces other market participants to involuntarily adhere to the anti-competitive scheme.

187. The Android App Distribution Market is a valid antitrust market.

188. Google has executed agreements with OEMs that unreasonably restrict competition in the Android App Distribution Market. Namely, Google has entered into MADAs with OEMs that require OEMs to offer the Google Play Store as the primary—and practically the only—app store on Android mobile devices. These agreements further prevent OEMs from offering alternative app stores on Android mobile devices in any prominent visual positioning.

189. Google's conduct and practices have substantial anti-competitive effects, including increased prices and costs, reduced innovation, poorer quality of customer service and lowered output.

190. Google's conduct harms Epic which, as a direct result of Google's anti-competitive conduct, has been unreasonably restricted in its ability to distribute its Android applications, including *Fortnite*, and to market a competing app store to the Google Play Store.

191. It is appropriate to bring this action under the Cartwright Act because many of the illegal agreements were made in California and purport to be governed by California law, many affected consumers reside in California, Google has its principal place of business in California and overt acts in furtherance of Google's anti-competitive scheme took place in California.

192. Epic has suffered and continues to suffer damages and irreparable injury, and such damages and injury will not abate until an injunction ending Google's anti-competitive conduct issues.

COUNT 8: California Cartwright Act
(Unreasonable restraints of trade in Android App Distribution Market)
(against all Defendants except Google Payment)

193. Epic restates, re-alleges and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

194. Google's acts and practices detailed above violate the Cartwright Act, Cal. Bus. & Prof. Code § 16700 *et seq.*, which prohibits, *inter alia*, the

combination of resources by two or more persons to restrain trade or commerce or to prevent market competition. *See* §§ 16720, 16726.

195. Under the Cartwright Act, a "combination" is formed when the anti-competitive conduct of a single firm coerces other market participants to involuntarily adhere to the anti-competitive scheme.

196. The Android App Distribution Market is a valid antitrust market.

197. Google conditions distribution through the Google Play Store on entering into the standardized DDA described above, including the Developer Program Policies integrated therein. Through certain provisions in these agreements, Google forces app developers to submit to conditions that unreasonably restrain competition in the Android App Distribution Market.

198. Section 4.5 of the DDA provides that developers "may not use Google Play to distribute or make available any Product that has a purpose that facilitates the distribution of software applications and games for use on Android devices outside of Google Play." Section 4.1 of the DDA requires that all developers "adhere" to Google's Developer Program Policies. Under the guise of its so-called "Malicious Behavior" Policy, Google prohibits developers from distributing apps that "download executable code [*i.e.*, code that would execute an app] from a source other than Google Play." The DDA further reserves to Google the right to remove and disable any Android app that it determines violates either the DDA or its Developer Program Policies and to terminate the DDA on these bases. (§§ 8.3, 10.3.) These provisions prevent app developers from offering competing app stores through the Google Play Store, even though there is no legitimate technological or other impediment to distributing a competing app store through the Google Play Store.

199. These provisions have no legitimate or pro-competitive purpose or effect, and unreasonably restrain competition in the Android App Distribution Market.

200. Google's conduct and practices have substantial anti-competitive effects, including increased prices and costs, reduced innovation, poorer quality of customer service, and lowered output.

201. Google's conduct harms Epic which, as a direct result of Google's anti-competitive conduct, has been unreasonably restricted in its ability to distribute its Android applications, including *Fortnite*, and to market a competing app store to the Google Play Store.

202. It is appropriate to bring this action under the Cartwright Act because many of the illegal agreements were made in California and purport to be governed by California law, many affected consumers reside in California, Google has its principal place of business in California, and overt acts in furtherance of Google's anti-competitive scheme took place in California.

203. Epic has suffered and continues to suffer damages and irreparable injury, and such damages and injury will not abate until an injunction ending Google's anti-competitive conduct issues.

COUNT 9: California Cartwright Act
(Unreasonable restraints of trade in Android In-App Payment Processing Market)
(against all Defendants)

204. Epic restates, re-alleges and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

205. Google's acts and practices detailed above violate the Cartwright Act, Cal. Bus. & Prof. Code § 16700 *et seq.*, which prohibits, *inter alia*, the combination of resources by two or more persons to restrain trade or commerce or to prevent market competition. *See* §§ 16720, 16726.

206. Under the Cartwright Act, a "combination" is formed when the anti-competitive conduct of a single firm coerces other market participants to involuntarily adhere to the anti-competitive scheme.

207. The Android App Distribution Market and Android In-App Payment Processing Market, and, in the alternative, the Android Games Payment Processing Market, are valid antitrust markets.

208. Google has monopoly power in the Android In-App Payment Processing Market and, in the alternative, in the Android Games Payment Processing Market.

209. Google conditions distribution through the Google Play Store on entering into the standardized DDA described above, including the Developer Program Policies integrated therein. Through certain provisions in these agreements, Google forces app developers to submit to conditions that unreasonably restrain competition in the Android In-App Payment Processing Market.

210. Section 3.2 of the DDA requires that Android app developers enter into a separate agreement with Google's payment processor, Defendant Google Payment, in order to receive payment for apps and content distributed through the Google Play Store. This includes payments related to in-app purchases. Further, Google's Developer Program Policies, compliance with which Section 4.1 of the DDA makes obligatory, require that apps distributed through the Google Play Store "must use Google Play In-app Billing [offered by Google Payment] as the method of payment" for in-app purchases. While Google's Policies exclude certain types of transactions from this requirement, such as the purchase of "solely physical products" or of "digital content that may be consumed outside of the app itself", Google expressly and discriminatorily applies its anti-competitive mandate to every "game downloaded on Google Play" and to all purchased "game content", such as purchases made within *Fortnite*.

211. These provisions have no legitimate or pro-competitive purpose or effect, and unreasonably restrain competition in the Android In-App Payment Processing Market, and, in the alternative, in the Android Games Payment Processing Market.

212. Google's conduct and practices have substantial anti-competitive effects, including increased prices and costs, reduced innovation, poorer quality of customer service and lowered output.

213. Google's conduct harms Epic which, as a direct result of Google's anti-competitive conduct, has been unreasonably restricted in its ability to distribute and use its own in-app payment processor.

214. It is appropriate to bring this action under the Cartwright Act because many of the illegal agreements were made in California and purport to be governed by California law, many affected consumers reside in California, Google has its principal place of business in California and overt acts in furtherance of Google's anti-competitive scheme took place in California.

215. Epic has suffered and continues to suffer damages and irreparable injury, and such damages and injury will not abate until an injunction ending Google's anti-competitive conduct issues.

COUNT 10: California Cartwright Act
(Tying Google Play Store to Google Play Billing)
(against all Defendants)

216. Epic restates, re-alleges and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

217. Google's acts and practices detailed above violate the Cartwright Act, Cal. Bus. & Prof. Code § 16700 *et seq.*, which prohibits, *inter alia*, the combination of resources by two or more persons to restrain trade or commerce, or to prevent market competition. *See* §§ 16720, 16726.

218. Under the Cartwright Act, a "combination" is formed when the anti-competitive conduct of a single firm coerces other market participants to involuntarily adhere to the anti-competitive scheme.

219. The Cartwright Act also makes it "unlawful for any person to lease or make a sale or contract for the sale of goods, merchandise, machinery, supplies, commodities for use within the State, or to fix a price charged therefor, or discount

from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, merchandise, machinery, supplies, commodities, or services of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of trade or commerce in any section of the State." § 16727.

220. As detailed above, Google has unlawfully tied its in-app payment processor, Google Play Billing, to the Google Play Store through its DDAs with app developers and its Developer Program Policies.

221. Google has sufficient economic power in the tying market, the Android App Distribution Market, to affect competition in the tied market, the Android In-App Payment Distribution Market. With Google Play Store installed on nearly all Android OS devices and over 90% of downloads on Android OS devices being performed by the Google Play Store, Google has overwhelming market power. Google's market power is further evidenced by its ability to extract supra-competitive taxes on the sale of apps through the Google Play Store.

222. The availability of the Google Play Store for app distribution is conditioned on the app developer accepting a second product, Google's in-app payment processing services. Google's foreclosure of alternative app distribution channels forces developers like Epic to use Google's in-app payment processing services, which Google has expressly made a condition of reaching Android users through its dominant Google Play Store.

223. The tying product, Android app distribution, is separate and distinct from the tied product, Android in-app payment processing, because app developers such as Epic have alternative in-app payment processing options and would prefer to choose among them independently of how an Android app is distributed. Google's unlawful tying arrangement thus ties two separate products that are in separate markets.

224. Google's conduct forecloses competition in the Android In-App Payment Processing Market and, in the alternative, in the Android Games Payment Processing Market, affecting a substantial volume of commerce in these Markets.

225. Google has thus engaged in a *per se* illegal tying arrangement and the Court does not need to engage in a detailed assessment of the anti-competitive effects of Google's conduct or its purported justifications.

226. Even if Google's conduct does not form a *per se* illegal tie, an assessment of the tying arrangement would demonstrate that it is unreasonable under the Cartwright Act, and therefore, illegal.

227. Google's acts and practices detailed above unreasonably restrain competition in the Android In-App Payment Processing Market and, in the alternative, in the Android Games Payment Processing Market.

228. Google's conduct harms Epic which, as a direct result of Google's anti-competitive conduct, is paying a supra-competitive commission rate on in-app purchases processed through Google's payment processor and has forgone commission revenue it would be able to generate if its own in-app payment processor were not unreasonably restricted from the market.

229. As an app developer which consumes in-app payment processing services and as the developer of a competing in-app payment processing tool, Epic has been harmed by Defendants' anti-competitive conduct in a manner that the antitrust laws were intended to prevent.

230. It is appropriate to bring this action under the Cartwright Act because many of the illegal agreements were made in California and purport to be governed by California law, many affected consumers reside in California, Google has its principal place of business in California, and overt acts in furtherance of Google's anti-competitive scheme took place in California.

231. Epic has suffered and continues to suffer damages and irreparable injury, and such damages and injury will not abate until an injunction ending Google's anti-competitive conduct issues.

COUNT 11: California Unfair Competition Law
(against all Defendants)

232. Epic restates, re-alleges and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

233. Google's conduct, as described above, violates California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, which prohibits any unlawful, unfair or fraudulent business act or practice.

234. Epic has standing to bring this claim because it has suffered injury in fact and lost money as a result of Google's unfair competition. Specifically, it develops and distributes apps for the Android mobile platform, and has developed and distributes a processor for in-app purchases, and Google's conduct has unreasonably restricted Epic's ability to fairly compete in the relevant markets with these products.

235. Google's conduct violates the Sherman Act and the Cartwright Act, and thus constitutes unlawful conduct under § 17200.

236. Google's conduct is also "unfair" within the meaning of the Unfair Competition Law.

237. Google's conduct harms Epic which, as a direct result of Google's anti-competitive conduct, is unreasonably prevented from freely distributing mobile apps or its in-app payment processing tool, and forfeits a higher commission rate on the in-app purchases than it would pay absent Google's conduct.

238. Epic seeks injunctive relief under the Unfair Competition Law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in favor of Epic and against Defendants:

A. Issuing an injunction prohibiting Google's anti-competitive and unfair conduct and mandating that Google take all necessary steps to cease such conduct and to restore competition;

B. Awarding a declaration that the contractual restraints complained of herein are unlawful and unenforceable;

C. Awarding any other equitable relief necessary to prevent and remedy Google's anti-competitive conduct; and

D. Granting such other and further relief as the Court deems just and proper.

Dated: August 13, 2020

Respectfully submitted,

By: /s/ Paul J. Riehle

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THE VERGE

APPLE GAMING POLICY

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Epic Games is suing Apple

Epic has filed a civil antitrust lawsuit following Apple's removal of Fortnite from the App Store

By Nick Statt | @nickstatt | Aug 13, 2020, 3:46pm EDT

Photo by Vjeran Pavic / The Verge

Game developer and publisher Epic Games has filed a lawsuit against Apple following the removal of the iOS version of its battle royale game *Fortnite* from the App Store earlier today.

The legal complaint, filed in the US District Court for the Northern District of California, seeks to establish Apple's App Store as a monopoly, and the civil suit is seeking injunctive relief to "allow fair competition" in mobile app distribution. Epic effectively provoked Apple's removal of *Fortnite* earlier today when it implemented its own payment processing system into the iOS version of the battle royale hit, an apparent violation of Apple's App Store guidelines.

"Epic brings this suit to end Apple's unfair and anti-competitive actions that Apple undertakes to unlawfully maintain its monopoly in two distinct, multibillion dollar

markets: (i) the iOS App Distribution Market, and (ii) the iOS In-App Payment Processing Market(each as defined below)," the complaint reads.

"Epic is not seeking monetary compensation from this Court for the injuries it has suffered. Nor is Epic seeking favorable treatment for itself, a single company. Instead, Epic is seeking injunctive relief to allow fair competition in these two key markets that directly affect hundreds of millions of consumers and tens of thousands, if not more, of third-party app developers."

Here are Epic's primary claims in support of the argument Apple has violated US antitrust law:

> Apple unlawfully maintains its monopoly power in the iOS App Distribution Market through the anti-competitive acts described herein, including by imposing technical and contractual restrictions on iOS, which prevents the distribution of iOS apps through means other than the App Store and prevents developers from distributing competing app stores to iOS users.
>
> Apple unlawfully maintains its monopoly power in the iOS App Distribution Market through its unlawful denial to Epic and other app distributors of an essential facility—access to iOS—which prevents them from competing in the iOS App Distribution Market.
>
> To reach iOS users, Apple forces developers to agree to Apple's unlawful terms contained in its Developer Agreement and to comply with Apple's App Store Review Guidelines, including the requirement iOS developers distribute their apps through the App Store. These contractual provision unlawfully foreclose the iOS App Distribution Market to competitors and maintain Apple's monopoly.
>
> Apple has unlawfully maintained its monopoly in these markets through the anti-competitive acts alleged herein, including by forcing, through its contractual terms and unlawful policies, iOS app developers that sell in-app content to exclusively use Apple's In-

> App Purchase, and preventing and discouraging app developers from developing or integrating alternative payment processing solutions.
>
> To reach iOS app users, Apple forces developers to agree to Apple's unlawful terms contained in its Developer Agreement, including that they use Apple's InApp Purchase for in-app purchases of in-app content to the exclusion of any alternative solution or third-party payment processor. Further, Section 3.1.3 of Apple's App Store Review Guidelines unlawfully prohibits developers from "directly or indirectly target[ing] iOS users to use a purchasing method other than in-app purchase".
>
> Apple is able to unlawfully condition access to the App Store on the developer's use of a second product—In-App Purchase—for in-app sales of in-app content. Through its Developer Agreement and unlawful policies, Apple expressly conditions the use of its App Store on the use of its In-App Purchase to the exclusion of alternative solutions in a per se unlawful tying arrangement.

Epic is alleging Apple has a monopoly in the form of the iPhone, the iOS ecosystem, and the App Store that binds them together, and that Apple places unreasonable restrictions on the distribution of iOS apps — again, the only way to get software onto the iPhone (or iPad). The complaint is also alleging Apple places unreasonable restrictions on payment processing within iOS apps.

Epic doesn't take issue with the fact that Apple requires developers to use the App Store. Rather, the game studio thinks it's unfair Apple requires you to use its payment methods, which thereby gives Apple 30 percent of all in-app revenue on the digital goods that make up the entirety of *Fortnite*'s business model.

EPIC IS TRYING TO BREAK UP WHAT IT SEES AS APPLE'S MONOPOLY ON IOS

"Apple is able to unlawfully condition access to the App Store on the developer's use of a second product—In-App Purchase—for in-app sales of in-app content," the complaint reads. "Through its Developer Agreement and unlawful policies, Apple expressly conditions the use of its App Store on the use of its In-App Purchase to the exclusion of alternative solutions in a per se unlawful tying arrangement."

Epic in its complaint leans heavily on the Sherman Antitrust Act of 1890, a monumental piece of antitrust legislation in the US used to break up monopolies during the turn of the 20th century. It remains the pillar of US antitrust law, and Epic claims Apple has violated six separate accounts of the Sherman Antitrust Act: an "unlawful monopoly" in the form of the App Store; "denial of essential facility" in iOS

app distribution; “unreasonable restraints of trade” in iOS app distribution; and then similar counts for in-app payment processing on iOS.

RELATED

How Fortnite's epic battle with Apple could reshape the antitrust fight

The final count referencing the Sherman Act is over Apple “tying the App Store in the iOS App Distribution Market to In-App Purchase in the iOS In-App Payment Processing Market” — effectively creating what Epic sees as a monopoly harming competition and causing harm to consumers through inflated pricing. (The complaint also accuses Apple of three counts of violating the California Cartwright Act, a state antitrust law prohibiting price-fixing and trade restraint agreements, and one count of violating California Unfair Competition Law.) Epic is able to make the pricing argument because it specifically lowered prices on its in-game *Fortnite* currency when it implemented its own payment processing system, saying it was passing the savings onto consumers in what is now a clear ploy to paint Apple’s decision as anti-consumer.

“In other words, app developers are coerced into using In-App Purchase by virtue of wanting to use the App Store. Apple’s unlawful tying arrangement thus ties two separate products that are in separate markets and coerces Epic and other developers to rely on both of Apple’s products,” the complaint explains. “Epic has been harmed by Apple’s anti-competitive conduct in a manner that the antitrust laws were intended to prevent. Epic has suffered and continues to suffer harm and irreparable injury, and such harm and injury will not abate until an injunction ending Apple’s anti-competitive conduct issues.”

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

THE VERGE

GOOGLE GAMING POLICY

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Epic is suing Google over Fortnite's removal from the Google Play Store

Just like Apple

By Russell Brandom | Aug 13, 2020, 8:53pm EDT

Illustration by Alex Castro / The Verge

Epic Games has filed suit against Google over alleged antitrust violations, just hours after seeing *Fortnite* dropped from the both the Google Play Store and iOS App store and filing a similar lawsuit against Apple. Epic's complaint alleges that Google's payment restrictions on the Play Store constitute a monopoly, and thus a violation of both the Sherman Act and California's Cartwright Act.

Epic's hit game *Fortnite* was removed from the Google Play Store earlier today.

"TWENTY-TWO YEARS LATER, GOOGLE HAS RELEGATED ITS MOTTO TO NEARLY AN AFTERTHOUGHT"

Where the Apple complaint opened with a description of the company's iconic 1984 ad, Epic's complaint against Google focuses on that company's now-infamous "Don't

Be Evil" mantra. "Twenty-two years later, Google has relegated its motto to nearly an afterthought," the complaint alleges, "and is using its size to do evil upon competitors, innovators, customers, and users in a slew of markets it has grown to monopolize."

Outside of the colorful opening, the two primary charges are identical to Epic's suit against Apple: monopoly control over the distribution of software to phones, and monopoly control over payment systems within that software. In Google's case, Epic is specifically concerned about the Google Play Store's powerful role as a distributor of Android apps, and the Play Store's requirement that hosted apps use Play Store Billing for any in-app purchases.

That case is more difficult to level against Google, which controls Android software less strictly than Apple does for iOS. Android has long allowed for the installation of third party app stores, including Epic's own Epic Games App. Apps can also be sideloaded through direct links, without the involvement of an app store.

For years, *Fortnite* for Android was primarily available through this kind of sideloading. The app finally arrived on the Google Play Store in April, overcoming longstanding concerns over the Play Store policy of taking 30 percent of all in-app purchases. "After 18 months of operating *Fortnite* on Android outside of the Google Play Store, we've come to a basic realization," the company said at the time, "Google puts software downloadable outside of Google Play at a disadvantage."

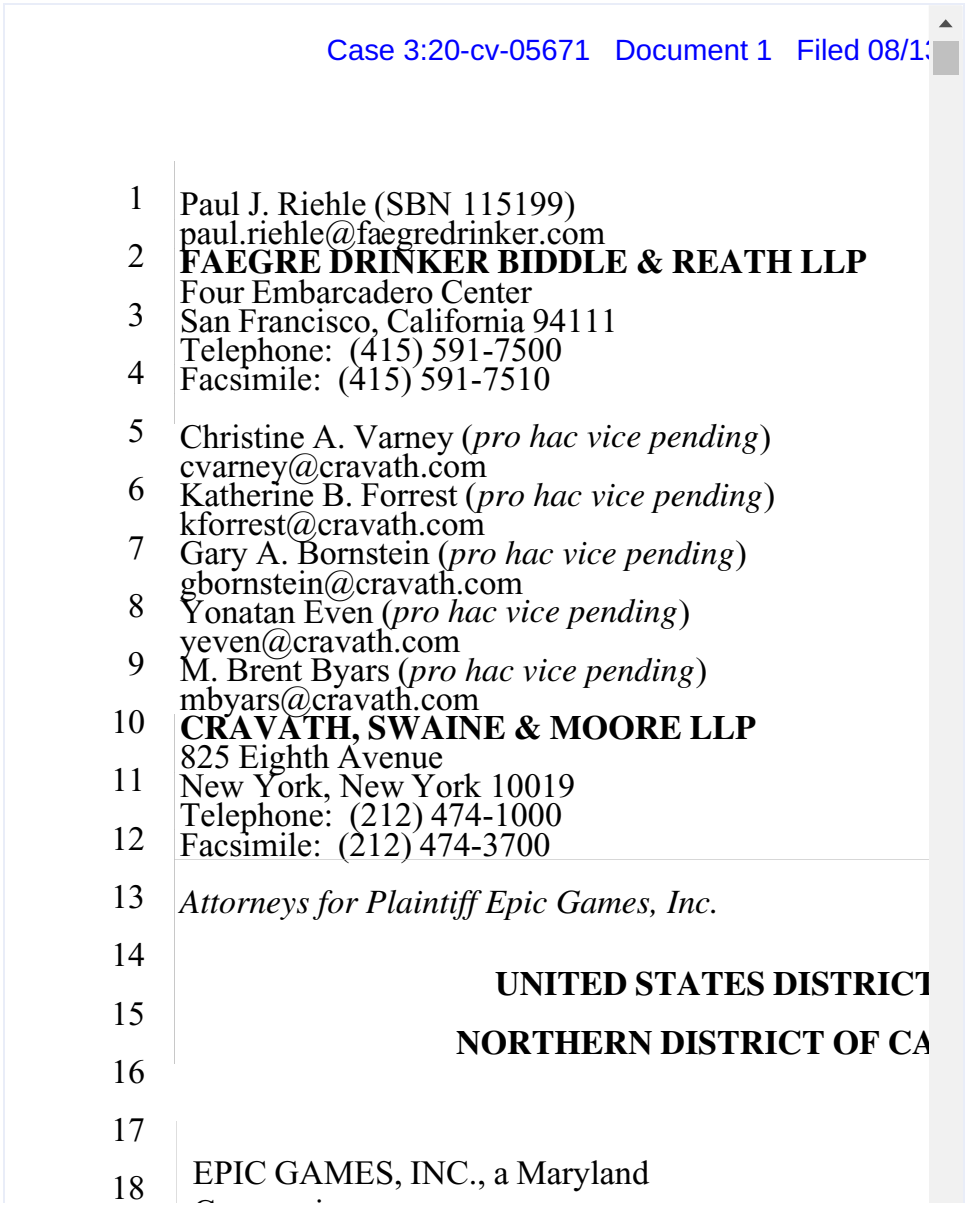
RELATED

How Fortnite's epic battle with Apple could reshape the antitrust fight

Thursday's lawsuit makes a similar case, arguing that Google has established the Play Store as the only viable distribution method for Android apps. "Notwithstanding its promises to make Android devices open to competition, Google has erected contractual and technological barriers that foreclose competing ways of distributing apps to Android users, ensuring that the Google Play Store accounts for nearly all the downloads of apps from app stores on Android devices."

Reached for comment, Google emphasized that *Fortnite* had been removed from the Play Store for violating clear and pre-established rules. "For game developers who choose to use the Play Store, we have consistent policies that are fair to developers and keep the store safe for users," a representative said. "While *Fortnite* remains available on Android, we can no longer make it available on Play because it violates

our policies. However, we welcome the opportunity to continue our discussions with Epic and bring *Fortnite* back to Google Play."



Case 3:20-cv-05671 Document 1 Filed 08/1

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UNITED STATES DISTRICT

NORTHERN DISTRICT OF CA

EPIC GAMES, INC., a Maryland

Update August 13th, 9:51PM ET: *Updated with statement from Google.*

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 16/11/2020 2:47:50 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged:	Concise Statement
File Number:	NSD1236/2020
File Title:	EPIC GAMES, INC & ANOR v APPLE INC & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

Dated: 17/11/2020 5:03:09 PM AEDT Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

Form NCF1

Concise Statement

No. of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

Epic Games, Inc and another named in the schedule

Applicants

Apple Inc and another named in the schedule

Respondents

IMPORTANT FACTS GIVING RISE TO THE CLAIM

1. This case concerns conduct of the Respondents (**Apple**) in contravention of ss 46(1) and/or 47(2) (or 45) of the *Competition and Consumer Act 2010* (Cth) (**CCA**) and/or s 21 of the Australian Consumer Law (**ACL**) in Schedule 2 of the CCA.

2. The Applicants (**Epic**) develop entertainment software for personal computers, smart mobile devices and gaming consoles. The most popular game that Epic currently makes is *Fortnite*. Epic has produced a version of *Fortnite* compatible with Apple iPads and iPhones (**iOS devices**). In the first year after *Fortnite*'s release in 2017, the game attracted over 125 million players; in the years since, *Fortnite* has topped 350 million players. Epic also offers a software suite, *Unreal Engine*, which is used by third party developers to create 3-D digital content for a wide variety of products including games, films, biomedical research and virtual reality.

3. Apple iOS devices are supplied pre-installed with Apple's iOS or iPadOS operating system software (for simplicity, the operating system on both devices is referred to as **iOS**). Apple's iOS, just like the operating system of any computer (e.g. Microsoft Windows or Apple's macOS), is a piece of software that provides basic functionality to users of iOS devices (**iOS device users**).

4. Apple's contravening conduct forces Epic (and other app developers) to only use Apple's App Store to distribute its software applications (**apps**) to the broad base of iOS device users, and to only use Apple's payment platform for purchases of their in-app content by iOS device users. The conduct prevents Epic (and other app developers) from providing or using competing app

Filed on behalf of (name & role of party) Epic Games, Inc and Epic Games International S.à r.l. (Applicants)
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stores to distribute apps to iOS device users and/or from providing or using competing payment processing systems. It also allows Apple to impose a 30% commission on the sale of every paid app and on every purchase of in-app content: a monopoly price. The conduct in turn results in harms including a reduction in choice for app distribution and higher prices for in-app content for iOS device users in Australia.

5. Apple's contravening conduct has not been undertaken by Apple with respect to Apple personal computers (**Macs**), where Apple does not enjoy the same market power. In contrast to Apple iOS devices, software developers such as Epic are not forced to distribute their products through the App Store or to obtain payment processing from Apple with respect to Macs. Rather, in an open market on Macs, software developers can (i) distribute their products through a variety of sources (including via direct downloads from their website) and (ii) can themselves facilitate payment processing, or use a third party for a commission of approximately 3%, being ten times less than the commission (30%) charged by Apple.

6. On 13 August 2020, for the first time, Epic added a direct payment processing option for in-app purchases made by users of *Fortnite* on iOS devices. By providing its own payment processing option as an alternative and competing option to Apple's In-App Purchase (**IAP**) system, Epic was able to offer iOS device users a 20% reduction on the prices of in-app purchases (through **Epic Direct Payment**).

7. Apple responded by removing *Fortnite* from the App Store, which meant that new users cannot download the *Fortnite* app and existing users cannot update it to the latest version. Shortly thereafter, Apple terminated Epic's Apple Developer Program account identified with Apple "Team ID" ending in the numbers "84" (**Team ID '84 account**), removed *Fortnite* and other apps associated with the Team ID '84 account – *Battle Breakers*, *Spyjinx*, and *Infinity Blade Stickers* from the App Store, and *Shadow Complex Remastered* from the Mac App Store – and threatened to terminate Epic's access to the Apple development tools necessary for Epic to keep offering *Unreal Engine* for use on iOS and otherwise updating its iOS-compatible apps. The various other Apple accounts held by Epic and its affiliates – not yet terminated by Apple – are outlined in **Annexure A**.

Apple

8. The First Respondent (Apple Inc) is a company incorporated in the United States with a market capitalisation of approximately US$2 trillion. It manufactures iOS devices and personal computers (Mac and MacBook).

9. The Second Respondent (Apple Pty Limited) is a subsidiary of Apple Inc. It relevantly imports, distributes and supplies Apple-branded mobile devices and personal computers in Australia, as well as related software, services and third-party digital products.

10. It is estimated that there are over 1 billion iOS device users globally, and that iPhones comprise over 55% of mobile devices used in Australia.

iOS App Distribution Market

11. Smart mobile device users, including iOS device users, use apps in connection with their devices. Apps enhance the functionality of the device, for example, with respect to banking, health and fitness, social interactions, gaming such as *Fortnite*, productivity, video chatting and movie/TV streaming.

12. The demand for apps from smart mobile device users is met by app developers. Apps are specific to an operating system: they must be programmed to function on the particular operating system on which they will be downloaded and run. To reach iOS device users, app developers must program an iOS-compatible version of their app, as Epic has done with *Fortnite*. In order to create iOS-compatible versions of their apps, app developers need to access and licence a suite of Apple proprietary software.

13. In addition to iOS, Apple iOS devices are supplied with certain Apple apps pre-installed (such as Apple's App Store). However, the vast majority of iOS-compatible apps are developed by third parties. Unlike Apple apps, third party iOS-compatible apps do not come pre-installed on iOS devices. Those iOS-compatible apps must be distributed to iOS device users for their selection and installation.

14. Apps must be updated from time to time, either to add functions, to address technical issues, or to ensure compatibility with an operating system that has been updated. App updates are important to the continued functionality and commercial viability of apps, including as a means to make ongoing improvements to the app.

15. There is a market for the distribution of iOS-compatible apps to iOS device users (**iOS App Distribution Market**). The geographic dimension of the iOS App Distribution Market is global, and includes Australia. In the alternative, the iOS App Distribution Market is an economically distinct sub-market of a wider market (including Australia) for the distribution of apps to users of smart mobile devices.

16. Apple exercises monopoly power in the iOS App Distribution Market. Apple's App Store is the sole means by which iOS-compatible apps can be distributed to the broad base of iOS device users.[1] Apple pre-installs the App Store on all iOS devices. It cannot be removed by iOS device

[1] The Apple Developer Program License Agreement provides that apps may be distributed only if selected by Apple for distribution via the App Store, Custom App Distribution, for beta distribution through TestFlight, or through Ad Hoc distribution. Custom App Distribution, beta distribution through TestFlight, and Ad Hoc distribution are limited distribution channels that can only be used for specific types of commercial users, meaning that the App Store is the only channel through which developers can distribute apps to the broad base of iOS device users. Apple also allows certain Apple-approved large commercial organisations to participate in Apple's Developer Enterprise Program, which permits the approved organisations to develop and deploy proprietary, internal-use apps to their employees. This program does not permit developers to distribute apps to the broad base of iOS device users.

users. Apple also prevents iOS device users from downloading apps directly from websites (known as "sideloading"). As explained below, Apple forecloses all potential competitors from entering the iOS App Distribution Market, and contractually prohibits app developers such as Epic from distributing iOS-compatible apps to the broad base of iOS device users, including in Australia, other than through the App Store.

17. Apple does not face any, or any material, competitive constraint in the iOS App Distribution Market since channels for the distribution of Android apps and/or software for personal computers and gaming consoles are not compatible with iOS devices and therefore do not constrain Apple; app developers have no material bargaining power with Apple and no app developer can realistically afford to forgo access to 1 billion iOS device users; and consumers are unaware of or cannot adequately account for Apple's conduct, face high switching costs between iOS and Android devices, and the other duopolist for mobile operating systems – Google – engages in similar anti-competitive practices with Android devices.

iOS In-App Payment Processing Market

18. Many app developers generate revenue by making in-app digital content, including in-game content, available to users for a fee. Epic's *Fortnite* – which is available to players for free – is an example of an app that offers in-app content for a fee. In *Fortnite*, players may purchase digital outfits, dance moves and other cosmetic enhancements within the game.

19. App developers selling in-app content, such as Epic, require an in-app payment processing system that enables users to complete the purchase within the app itself. The demand for in-app payment processing for personal computers (such as Macs) is met by a number of payment processors (e.g. Braintree, PayPal, Square and Stripe). Some developers, like Epic, have developed their own payment processing systems (in this case Epic Direct Payment, which permitted iOS device users of *Fortnite* to save 20% on the prices of in-app purchases). App developers can select the payment processor to incorporate into the design of their app.

20. Mobile game developers like Epic place particular value on the ability to provide users with in-app content purchases in a seamless way without distracting from game play. For some developers, in-app content purchases represent their sole or major source of revenue.

21. There is a market for the processing of payments for the purchase of in-app content within iOS-compatible apps used in iOS devices (**iOS In-App Payment Processing Market**). The geographic dimension of the iOS In-App Payment Processing Market is global, and includes Australia. Alternatively, the product dimension of the iOS In-App Payment Processing Market is limited to processing of payments for in-app content for *virtual gaming products* within iOS-compatible apps.

22. Apple exercises monopoly power in the iOS In-App Payment Processing Market. Apple's IAP system is the sole means by which app developers such as Epic can obtain in-app payment

processing on iOS devices. As explained below, Apple compels app developers to use Apple's IAP exclusively if they want to distribute their iOS-compatible apps to iOS device users, including in Australia.

23. Apple does not face any, or any material, competitive constraint in the iOS In-App Payment Processing Market because: the availability of payment processing solutions outside of iOS-compatible apps does not constrain Apple's behaviour as these are not a viable alternative for app developers; app developers have no material bargaining power in the iOS In-App Payment Processing Market; and consumers cannot constrain Apple's conduct.

Apple restraints

24. In order to develop and offer iOS-compatible apps in the App Store, app developers must enter into a number of standard, non-negotiable agreements as demanded by Apple, including the Apple Developer Agreement and the Apple Developer Program License Agreement (**PLA**). The PLA also requires compliance with the App Store Review Guidelines (**App Store Guidelines**). In addition, the PLA requires app developers like Epic to enter into a separate agreement with Apple in the form of Schedule 2 if they want iOS device users to be able to purchase in-app content (**Schedule 2**).

25. By the terms of the PLA, App Store Guidelines and Schedule 2 in **Annexure B**, Apple imposes the following restraints on app developers such as Epic:

    (a) they must agree to distribute their apps to iOS device users only through the App Store, and not distribute them to iOS device users through any other channel;[2]

    (b) they must agree to appoint Apple Inc and its subsidiaries, including Apple Pty Limited, to distribute their apps via the App Store;[3]

    (c) they must agree to only use Apple's IAP for the processing of payments for in-app content purchased by iOS device users; and

    (d) they must agree that Apple Inc and its subsidiaries, including Apple Pty Limited, will deduct a 30% commission from the price paid by users for purchasing apps or in-app content (other than in relation to certain long-term subscription users) (**30% commission**).

26. Apple also imposes technical restrictions that prevent the broad base of iOS device users from downloading apps other than through the App Store. The result is that the only viable distribution channel for the broad base of iOS device users is the pre-installed App Store.

[2] Subject to the narrow exceptions specified at footnote [1] above.
[3] Subject to the narrow exceptions specified at footnote [1] above.

PRIMARY GROUNDS FOR THE RELIEF SOUGHT

Misuse of market power (s 46)

27. By reason of the matters referred to in paragraphs 8 to 17 above, Apple has a substantial degree of power in the iOS App Distribution Market. Further, Apple has engaged, and continues to engage, in conduct that has the purpose, effect or likely effect of substantially lessening competition in the iOS App Distribution Market, including by the following means:

    (a) (paragraph 16 above) Apple:

        i. pre-installs the App Store on iOS devices, including in Australia;

        ii. prevents the broad base of iOS device users, including in Australia, from deleting the App Store;

        iii. prevents the broad base of iOS device users, including in Australia, from downloading apps on iOS devices from any source other than the App Store – including sideloading apps from internet sources – and from downloading any app that distributes apps;

    (b) Apple prevents app developers from creating or distributing to iOS device users any store or storefront for other apps, or any interface for displaying third party apps similar to the App Store;

    (c) (paragraph 24 above) Apple requires app developers to enter into and be bound by the PLA (including at times Schedule 2) and the App Store Guidelines if they want to develop and offer iOS-compatible apps in the App Store;

    (d) (paragraph 25(a) above) Apple restrains app developers such as Epic from distributing their apps to the broad base of iOS device users, including in Australia, other than through the App Store; and/or

    (e) (paragraph 7 above) Apple responded to Epic's conduct referred to in paragraph 6 above by removing *Fortnite* and certain other Epic apps from the App Store including in Australia, by terminating Epic's Team ID '84 account, and by threatening to terminate Epic's other Apple Developer Program accounts (including those of Epic's affiliates).

28. The purpose, effect or likely effect of Apple's conduct (as described in paragraph 27 above) is to foreclose competition in the iOS App Distribution Market. But for Apple's conduct the App Store would (or would likely) face vigorous and effective competition in the iOS App Distribution Market from other app stores to distribute iOS-compatible apps to iOS devices users including in Australia, leading to pro-competitive benefits including increased quality, innovation and choice, as occurs with Apple personal computers.

29. Further, by reason of the matters referred to in paragraphs 8 to 10 and 18 to 23 above, Apple has a substantial degree of power in the iOS In-App Payment Processing Market. Further, Apple has engaged, and continues to engage, in conduct that has the purpose, effect or likely effect of substantially lessening competition in the iOS In-App Payment Processing Market, including by the following means:

    (a) (paragraph 24 above) Apple requires app developers to enter into and be bound by the PLA, Schedule 2 and the App Store Guidelines if they want iOS device users to be able to purchase in-app content;

    (b) (paragraph 25(c) above) Apple restrains app developers such as Epic from using any in-app payment processing system other than Apple's IAP in order to distribute in-app content for their iOS-compatible apps to iOS device users, including in Australia;

    (c) (paragraph 7 above) Apple responded to Epic's conduct referred to in paragraph 6 above by removing *Fortnite* and certain other Epic apps from the App Store including in Australia and threatening to terminate its Apple Developer Program accounts (including those of its affiliates); and/or

    (d) (paragraph 25(d) above) the 30% commission charged by Apple and deducted from the price for in-app content represents monopoly rents.

30. The purpose, effect or likely effect of Apple's conduct in paragraph 29 above is to foreclose competition in the iOS In-App Payment Processing Market. But for Apple's conduct, like on Apple personal computers, Apple's IAP system would (or would likely) face competition in the iOS In-App Payment Processing Market from other payment processors for in-app content purchases including in Australia, leading to pro-competitive benefits including lower prices and increased quality, innovation and choice.

31. By reason of paragraphs 27 and/or 29 above, Apple has contravened, and continues to contravene, s 46(1) of the CCA.

Exclusive dealing (s 47)

32. By reason of the matters referred to in paragraphs 24 to 25 above, Apple has engaged, and continues to engage, in the practice of exclusive dealing pursuant to s 47(2) of the CCA in that:

    (a) Apple supplies (or offers to supply) services to app developers such as Epic, being the distribution of their apps to iOS device users, including in Australia,

    on the condition that:

    (b) they will not acquire services of a particular kind or description from a competitor of Apple (having regard to s 47(13(b)), including in Australia, being payment processing for in-app content purchased by iOS device users from other payment processors that, but for Apple's conduct, compete, or would or would likely compete, with Apple's IAP.

33. By reason of the matters referred to in paragraphs 27 to 30 above, Apple's conduct in paragraph 32 above has the purpose, effect or likely effect of substantially lessening competition in the iOS App Distribution Market and/or the iOS In-App Payment Processing Market.

34. By reason of paragraphs 32 and 33 above, Apple has contravened, and continues to contravene, s 47(1) of the CCA.

Contracts, arrangements and understandings (s 45)

35. Further or alternatively, by reason of the matters referred to in paragraphs 24 to 25 above, Apple has made, and continues to make, contracts, arrangements or understandings with app developers such as Epic containing provisions (**Apple Provisions**) that individually and/or cumulatively have the effect that:

    (a) (paragraph 25(a) above) Apple restrains app developers such as Epic from distributing their apps to the broad base of iOS device users, including in Australia, other than through the App Store;

    (b) (paragraph 25(c) above) Apple restrains app developers such as Epic from using any in-app payment processing system other than Apple's IAP in order to distribute their iOS-compatible apps to iOS device users, including in Australia.

36. By reason of the matters referred to in paragraphs 27 to 30 above, the Apple Provisions have the purpose, effect or likely effect of substantially lessening competition in the iOS App Distribution Market and/or the iOS In-App Payment Processing Market. In addition, by Apple's conduct in paragraph 7 above, Apple has given effect to the Apple Provisions.

37. By reason of paragraphs 35 and/or 36 above, Apple has contravened, and continues to contravene, s 45(1) of the CCA.

Unconscionable conduct (s 21)

38. In the circumstances referred to above, Apple has engaged, and continues to engage, in unconscionable conduct in trade or commerce in connection with:

    (a) the supply of services to app developers such as Epic, namely distribution of their apps to iOS device users in Australia and/or associated payment processing services; and/or

    (b) the supply of iOS devices to iOS device users in Australia.

39. Epic relies on, inter alia, the matters in s 21(4)(b) and (c) and s 22(1)(a), (b) and (e) of the ACL. App developers such as Epic cannot avoid the Apple restraints referred to in paragraph 25 in order to distribute their apps to iOS device users, which restraints are not reasonably necessary for the protection of Apple's legitimate interests. Likewise, app developers and iOS device users cannot avoid payment of the 30% commission if they wish to download third party fee-based

iOS-compatible apps or in-app content on their iOS device, including for the purpose of taking advantage of and/or enhancing the functionality of their iOS device.

40. By reason of paragraphs 38 and 39 above, Apple has contravened, and continues to contravene, s 21(1) of the ACL.

RELIEF SOUGHT FROM THE COURT

41. Epic seeks the relief in the accompanying Originating Application.

ALLEGED HARM

42. Apple's conduct has hindered or prevented, and continues to hinder or prevent, Epic and other app developers and in-app content payment providers from competing or effectively competing in the iOS App Distribution Market and the iOS In-App Payment Processing Market.

43. Among other things, Apple's conduct has forced Epic and other app developers to pay Apple monopoly prices (the 30% commission) in connection with all in-app purchases of their in-app content on iOS devices. This has led to harms including increased prices for in-app content by iOS device users in Australia and lost profits for Epic. When Epic introduced Epic Direct Payment, *Fortnite* users on iOS for the first time had a competitive alternative to Apple's IAP payment system, which in turn enabled Epic to pass along its cost savings by offering its users a 20% reduction in in-app prices.

44. Apple's conduct has also denied app developers (such as Epic) and iOS device users their choice of in-app content payment providers and denied app developers and iOS device users the choice of app stores for distribution of apps on iOS devices.

45. Further, Apple's conduct referred to in paragraph 7 above has harmed Epic through, inter alia, loss of goodwill in respect of both *Fortnite*, other Epic games on iOS devices, and Epic more broadly. This loss and damage to Epic's ongoing business and to its reputation and trust with customers is permanent and irreparable.

46. But for Apple's conduct, like on Apple personal computers, app developers such as Epic would (or would be likely to) distribute its software through other channels. These other channels would cause competition on the basis of (among other things) price, service, and innovation, including by Apple. Epic would also offer users of its software a range of payment processing options. Absent Apple's conduct, these competing in-app payment processors would cause Apple to compete on the basis of price, service, and innovation. The state of competition should be no different for Apple's iOS devices.

Certificate of lawyer

I, Dave Poddar, certify to the Court that, in relation to the concise statement filed on behalf of the Applicants, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 16 November 2020

Signed by Dave Poddar

Lawyer for the Applicants

Annexure A

	Team name	"Team ID" / Account	Applications in App Store	Status of account
Apple Developer Program accounts				
1	Epic Games, Inc	84	n/a - removed (formerly Fortnite up until 13 August 2020 and Battle Breakers, Infinity Blade Stickers, Spyjinx up until 28 August 2020)	Terminated on 28 August 2020
2	Epic Games International S.a.r.l.	3Y	Unreal Remote, Unreal Remote 2, Unreal Match 3, Action RPG Game Sample, Live Link Face	Active
3	Life on Air, Inc	RG	Houseparty	Active
4	Life on Air, Inc	TS	n/a	Active
5	KA-RA SARL	JU	n/a	Active
6	Psyonix LLC	TY	n/a	Active
7	Quixel AB	T4	n/a	Active
Apple Developer Enterprise Program accounts				
8	Epic Games, Inc	RR	n/a	Active
9	YEVVO entertainment Inc	Y8	n/a	Active

Annexure B

Restraints imposed by Apple on app developers		
PLA	**App Store Guidelines**	**Schedule 2**
Clause 1.1	Clause 2.4.5	*The entirety of Schedule 2, but in particular:*
Clause 2.8	Clause 2.4.5(iv)	Clause 1.1
Clause 3.2(e)	Clause 2.5.1	Clause 3.4(a)
Clause 3.2(f)	Clause 2.5.2	Clause 3.5
Clause 3.2(g)	Clause 3.1.1	Clause 3.11
Clause 3.3.1	Clause 3.2.2(i)	
Clause 3.3.2	Clause 3.2.2(ii)	
Clause 3.3.3		
Clause 3.3.25		
Clause 7.2		

Schedule

No. of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

Applicants

Second Applicant	Epic Games International S.à r.l.

Respondents

Second Respondent	Apple Pty Limited (ACN 002 510 054)

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 16/11/2020 2:47:50 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged**:**	Originating Application - Form 15 - Rule 8.01(1)
File Number:	NSD1236/2020
File Title:	EPIC GAMES, INC & ANOR v APPLE INC & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised

Dated**:** 17/11/2020 5:03:03 PM AEDT Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

Form 15
Rules 8.01(1); 8.04(1)

Originating application

No. of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

Epic Games, Inc and another named in the schedule

Applicants

Apple Inc and another named in the schedule

Respondents

To the Respondents

The Applicants apply for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: Federal Court of Australia
184 Phillip Street, Sydney NSW 2000

The Court ordered that the time for serving this application be abridged to

Filed on behalf of (name & role of party) Epic Games, Inc and Epic Games International S.à r.l. (Applicants)
Prepared by (name of person/lawyer) Dave Poddar
Law firm (if applicable) Clifford Chance LLP
Tel (02) 8922 8000 Fax (02) 8922 8088
Email dave.poddar@cliffordchance.com
Address for service (include state and postcode) Level 16, 1 O'Connell Street, Sydney NSW 2000

Date:

Signed by an officer acting with the authority
of the District Registrar

Details of claim

This is an application for:

(a) declaratory relief pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA**);

(b) injunctive relief pursuant to s 80 of the *Competition and Consumer Act 2010* (Cth) (**CCA**) and s 232 of the Australian Consumer Law (**ACL**) in Schedule 2 to the CCA;

(c) orders pursuant to s 87 of the CCA and s 237 of the ACL in relation to the provisions of the contracts referred to in Annexure B to the Concise Statement; and

(d) such further or other orders as the Court considers appropriate.

The Court has jurisdiction to hear this case under s 138 of the CCA and s 39B of the *Judiciary Act 1903* (Cth).

On the grounds stated in the Concise Statement, the Applicants (**Epic**) claim:

Declarations

1. A declaration that the Respondents (**Apple**) have engaged, and continue to engage, in conduct in contravention of s 46(1) of the CCA in that:

    (a) Apple has a substantial degree of power in the iOS App Distribution Market; and

    (b) Apple has engaged in conduct that has the purpose, or has or is likely to have the effect, of substantially lessening competition in the iOS App Distribution Market, including by the following means:

        (i) Apple:

            (A) pre-installs the App Store on iOS devices, including in Australia;

            (B) prevents the broad base of iOS device users, including in Australia, from deleting the App Store;

            (C) prevents the broad base of iOS device users, including in Australia, from downloading apps on iOS devices from any source other than the App Store – including sideloading apps from internet sources – and downloading any app that distributes apps;

        (ii) Apple prevents app developers from creating or distributing to iOS device users any store or storefront for other apps, or any interface for displaying third party apps similar to the App Store;

        (iii) Apple requires app developers to enter into and be bound by the PLA, (including at times Schedule 2) and the App Store Guidelines if they want to distribute their iOS-compatible apps to iOS device users;

(iv) By the terms of the PLA, App Store Guidelines and Schedule 2 in Annexure B to the Concise Statement, Apple restrains app developers such as Epic from distributing their apps to the broad base of iOS device users, including in Australia, other than through the App Store; and/or

(v) Apple responded to Epic's conduct in adding a direct payment processing option for in-app purchases to users of *Fortnite* on iOS devices (offering iOS device users a 20% reduction on the prices of in-app purchases) by removing *Fortnite* and certain other Epic apps from the App Store including in Australia, by terminating Epic's Team ID '84 account, and by threatening to terminate Epic's other Apple Developer Program accounts (including those of Epic's affiliates).

2. A declaration that Apple has engaged, and continues to engage, in conduct in contravention of s 46(1) of the CCA in that:

(a) Apple has a substantial degree of power in the iOS In-App Payment Processing Market; and

(b) Apple has engaged in conduct that has the purpose, or has or is likely to have the effect, of substantially lessening competition in the iOS In-App Payment Processing Market, including by the following means:

(i) Apple requires app developers to enter into and be bound by the PLA, Schedule 2 and the App Store Guidelines if they want iOS device users to be able to purchase in-app content;

(ii) By the terms of the PLA, App Store Guidelines and Schedule 2 in Annexure B to the Concise Statement, Apple restrains app developers such as Epic from using any in-app payment processing system other than Apple's IAP if they wish to sell in-app content on iOS devices; and/or

(iii) Apple responded to Epic's conduct in adding a direct payment processing option for in-app purchases to users of *Fortnite* on iOS devices (offering iOS device users a 20% reduction on the prices of in-app purchases) by removing *Fortnite* and certain other Epic apps from the App Store including in Australia, by terminating Epic's Team ID '84 account, and by threatening to terminate Epic's other Apple Developer Program accounts (including those of Epic's affiliates).

3. A declaration that Apple has engaged, and continues to engage, in the practice of exclusive dealing in contravention of s 47(2) of the CCA, in that:

(a) Apple supplies (or offers to supply) services to app developers such as Epic, being the distribution of app developers' iOS-compatible apps to iOS device users, including in Australia,

on the condition that:

(b) they will not acquire services of a particular kind or description from a competitor of Apple (having regard to s 47(13(b)), including in Australia, being payment processing for in-app content purchased by iOS device users from other payment processors that, but for Apple's conduct, compete, or would or would likely compete, with Apple's IAP,

where the engaging in that conduct by Apple had, and continues to have, the purpose, or has or is likely to have the effect, of substantially lessening competition in the iOS App Distribution Market and/or the iOS In-App Payment Processing Market.

4. Further or in the alternative to paragraph 3, a declaration that Apple has engaged in conduct, and continues to engage in conduct, in contravention of s 45 of the CCA in that Apple has made, and continues to make, contracts, arrangements or understandings with app developers such as Epic containing provisions that individually and/or cumulatively have the effect that:

(a) Apple restrains app developers such as Epic from distributing their apps to the broad base of iOS device users, including in Australia, other than through the App Store;

(b) Apple restrains app developers such as Epic from using any in-app payment processing system other than Apple's IAP in order to distribute their iOS-compatible apps to iOS device users, including in Australia,

where the engaging in that conduct by Apple had, and continues to have, the purpose, effect or likely effect of substantially lessening competition in the iOS App Distribution Market and/or the iOS In-App Payment Processing Market.

5. Further or in the alternative to paragraph 3, a declaration that Apple has engaged in conduct in contravention of s 45 of the CCA, by giving effect to the provisions referred to in paragraph 4 above by responding to Epic's conduct in adding a direct payment processing option for in-app purchases to users of *Fortnite* on iOS devices (offering iOS device users a 20% reduction on the prices of in-app purchases) by conduct including removing *Fortnite* and certain other Epic apps from the App Store including in Australia.

6. A declaration that Apple has engaged in conduct, and continues to engage in conduct, in trade or commerce in connection with:

(a) the supply of services to app developers such as Epic, namely distribution of their apps to iOS device users in Australia and/or associated payment processing services; and/or

(b) the supply of iOS devices to iOS device users in Australia,

that was, in all the circumstances, unconscionable in contravention of s 21 of the ACL.

Injunctions

7. An order restraining Apple, whether by itself, its officers, employees, agents or otherwise, for a period of five years from the date of this order from engaging in the conduct referred to in paragraphs 1 to 6 above in such terms as the Court determines appropriate having regard to the outcome of the proceeding on liability.

8. An order that Apple immediately reinstate Epic's apps, including *Fortnite* and any other app removed from the App Store, including any update of such app.

Orders in relation to the contractual provisions in Annexure B to the Concise Statement

9. Orders pursuant to s 87 of the CCA and s 237 of the ACL:

(a) declaring the provisions of the contracts referred to in Annexure B to the Concise Statement (**Provisions**), and any collateral arrangement relating to the Provisions to have been void *ab initio* or at all times on and after such date as may be specified in the order;

(b) varying the contracts referred to in Annexure B to the Concise Statement by excising the Provisions from those contracts and declaring the contracts to have had effect as so varied on and after such date as may be specified by the Court; or

(c) refusing to enforce all or any of the Provisions.

Other orders

10. Such further or other orders as this Honourable Court sees fit.

Applicants' address

The Applicants' address for service is:

Place: Level 16, 1 O'Connell Street, Sydney, NSW 2000

Email: dave.poddar@cliffordchance.com

The Applicants' address is Level 16, 1 O'Connell Street, Sydney NSW 2000

Service on the Respondent

It is intended to serve this application on all Respondents.

Date: 16 November 2020

Signed by Dave Poddar
Lawyer for the Applicants

Schedule

No. of 2020

Federal Court of Australia
District Registry: New South Wales
Division: General

Applicants

Second Applicant	Epic Games International S.à r.l.

Respondents

Second Respondent	Apple Pty Limited (ACN 002 510 054)

Date: 16 November 2020

ABC NEWS

Epic Games tries to stop Apple from removing Fortnite from its app store

Posted Tue 18 Aug 2020 at 12:16pm, updated Tue 18 Aug 2020 at 12:51pm

Fortnite's creator is fighting Apple in court over claims players are locked out of crucial updates. *(Epic Games)*

Fortnite's creators are trying to stop Apple from removing their game from its app store, saying the tech giant has locked out millions of players across the globe.

Apple removed Fortnite from its app store last week, saying Epic Games had violated in-app payment guidelines.

Epic responded by rolling out a social media campaign with the hashtag #FreeFortnite.

It urged players to seek refunds from Apple if they lost access to the game, and also created a parody of Apple's famous "1984" television ad.

Key points:

- Epic Games says many Fortnite players can't get crucial updates to play the "Battle Royale" mode
- The game maker has sought US federal court intervention
- It claims other popular games, like PUBG, will also be affected

YOUTUBE: Epic Games creates parody of 1984 Apple ad.

The feud has now escalated, with Epic seeking US federal court intervention to block Apple's move and prevent any retaliatory action against its other games in the store.

Epic's chief executive Timothy Sweeney said Fortnite players were not getting crucial updates needed to play the game's most popular mode — a "Battle Royale" match of up to 100 players, where the last survivor wins.

"Apple's actions will 'break' Fortnite for millions of existing players," Mr Sweeney wrote in court documents.

"Because iOS users can no longer update the game, they will be unable to play Fortnite with most other players, who will have the then-current version available on other platforms (like PCs)."

Fortnite had 350 million registered users as of June 2020, and Epic updates the game every few weeks.

The videogame maker also said Apple would terminate all of Epic Games' developer accounts, and cut it off from its development tools from August 28.

Epic alleges that if this happens, it will be unable to keep providing tools like Unreal Engine — which helps other game developers create 3D graphics — for Mac and iPhone operating systems.

This would affect hundreds of other game titles, including another popular online multiplayer battle game, PUBG, which also has hundreds of millions of players.

Medical imaging companies and car designers also rely on Unreal Engine.

"The ensuing impact on the Unreal Engine's viability, and the trust and confidence developers have in that engine, cannot be repaired with a monetary award," Epic said in court documents as it asked a judge to issue an order blocking Apple's move.

Apple has in the past worked closely with Epic to make Unreal Engine work more effectively on its devices.

In 2018, Apple demonstrated how Unreal Engine worked with its latest augmented reality tools at its annual developer conference.

Reuters

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 8/03/2021 8:08:35 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged:	Concise Statement
File Number:	NSD190/2021
File Title:	EPIC GAMES, INC & ANOR v GOOGLE LLC & ORS
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

Dated: 10/03/2021 9:05:12 AM AEDT Registrar

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Form NCF1

Concise Statement

No. of 2021

Federal Court of Australia

District Registry: New South Wales

Division: General

Epic Games, Inc and another named in the schedule

Applicants

Google LLC and others named in the schedule

Respondents

IMPORTANT FACTS GIVING RISE TO THE CLAIM

Introduction

1. This case concerns conduct of the Respondents (**Google**) which contravenes ss 46(1), 47(2) and 45 of the *Competition and Consumer Act 2010* (Cth) (**CCA**) and s 21 of the Australian Consumer Law (**ACL**) in Schedule 2 of the CCA.

2. The Applicants (**Epic**) develop entertainment software for smartphones and tablets (**smart mobile devices**), personal computers and gaming consoles. The most popular game that Epic currently makes is *Fortnite*. Epic has produced a version of *Fortnite* compatible with smart mobile devices using the Android operating system (**Android OS**) (**Android devices**). In the first year after *Fortnite*'s release in 2017, the game attracted over 125 million players; in the years since, *Fortnite* has exceeded 350 million players globally. In October 2018, the Android OS version of *Fortnite* was launched. As at February 2021, there were over 470,000 *Fortnite* players on Android devices in Australia.

3. Android OS is controlled by Google LLC. As an operating system, it provides basic functionality for the Android devices on which it is installed. It is the most ubiquitous operating system used in smart mobile devices: there are around 2.5 billion active Android devices globally and in 2019 around 1.4 billion new Android devices were sold around the world. Almost 50% of the approximately 20 million smartphones used in Australia operate Android OS.

4. Google's contravening conduct hinders or prevents the ability of Epic (and other app developers) from distributing its software applications (**apps**) to Android devices in Australia in

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any way other than through Google's own app store – the **Google Play Store** (which is, itself, an app). Google achieves this by imposing various contractual and technical restrictions. These restrictions stifle or block consumers' ability to download app stores and apps directly from developers' websites (as outlined below at [19]-[28]) and prevent any meaningful competition in the distribution of apps to Android devices. These restrictions have provided Google – through its control of the Google Play Store – with a near-monopoly in the market for the distribution of apps compatible with Android OS to Android devices (**Android App Distribution Market**).

5. For apps distributed through the Google Play Store (including in Australia), Google also forces Epic (and other app developers) to use Google's in-app payment processor (**Google Play Billing**) for the in-app purchase of digital content consumed within the app. This restriction has provided Google with a near-monopoly share in the market for the processing of payments for the purchase of such in-app content (**Android In-App Payment Processing Market**), including in Australia. Google typically charges a 30% commission on all in-app purchases of digital content consumed within the app in this market: a supra-competitive price.

6. On 13 August 2020, Epic added a direct payment processing option for users of *Fortnite* on Android devices. Epic's direct payment processing option enabled Android device users, including users in Australia, to save 20% on the price of in-app content compared to the price charged if the consumer selected Google Play Billing as the payment processor. It is clear that consumers valued this option as many immediately availed themselves of it.

7. Google responded by removing *Fortnite* from the Google Play Store, which means that new users, including users in Australia, are unable to easily download *Fortnite* onto their Android device, and existing users (including more than 470,000 existing Australian players) are unable to satisfactorily obtain updated versions of *Fortnite* on their Android device (for reasons including at least those set out below at paragraphs [27]-[28]).

8. Google's contravening conduct harms app developers and consumers in Australia. It restricts competition and innovation and precludes app developers and consumers from having a choice for app distribution and in-app payment processing on Android devices. Google's conduct inflates the price for apps and in-app content for millions of Android device users in Australia.

Google

9. The First Respondent (**Google LLC**) is a company incorporated in the United States with a market capitalisation of about US$1 trillion. Google LLC controls Android OS. Google LLC enters into contracts with companies that design and sell smart mobile devices, referred to as original equipment manufacturers (**OEMs**), to licence a range of proprietary apps including the Google Play Store, Google Search, Google Chrome, Google Maps, Gmail and YouTube. Google LLC also owns and operates Google Play Billing. Well known OEMs include Samsung, Huawei, Oppo and Nokia.

10. The Second Respondent (**Google Asia Pacific**) is a subsidiary of Google LLC. Together with Google LLC, Google Asia Pacific is a contracting entity with app developers in relation to apps made available through the Google Play Store in Australia.

11. The Third Respondent (**Google Australia**) is a subsidiary of Google LLC. It enters into contracts with app developers for the processing of Google's payment transactions in Australia, including purchases through Google Play Billing.

Android apps and their distribution

12. Apps provide key functionality for smart mobile device users, including Android device users. Apps provide a host of capabilities including with respect to banking, health and fitness, social interactions, gaming such as *Fortnite*, video chatting and movie/television streaming.

13. The demand for apps from smart mobile device users is met by app developers. Apps are specific to an operating system: they must be programmed to function on the particular operating system on which they will be downloaded and run. To reach Android device users, app developers must develop an Android OS app, as Epic has done with *Fortnite*.

14. Some apps are pre-installed on Android devices by OEMs. In particular, Android devices are generally supplied in Australia with Google Mobile Services pre-installed. Google Mobile Services is a set of Google proprietary apps, including the Google Play Store, Google Search, Google Chrome, Google Maps and YouTube. If an OEM wishes to pre-install any one of the proprietary apps onto an Android device, Google LLC requires that the OEM must pre-install all of them. Most consumers expect access to at least some of these well-known apps and, for that reason, in practice OEMs are required to (and do) pre-install them. In addition to bundling the Google proprietary apps together, Google LLC requires that the Google Play Store be given prominence by being displayed on the Android device's default home screen, occupying valuable space on the device that otherwise would be available for alternative apps and app stores (see further below at [21]).

15. The above conduct has created a situation where the Google Play Store is pre-installed on more than 90% of Android devices globally (excluding China), and where more than 90% of app downloads through app stores on Android devices occur through the Google Play Store. The Google Play Store is accordingly a must-have distribution channel for Android OS app developers.

16. The vast majority of Android OS apps (and app stores) are developed by third parties and are not pre-installed on Android devices. Third-party app developers must distribute their apps in another way for selection and installation by Android device users. Other than pre-installation and the Google Play Store, there are two technical routes for the distribution of Android OS apps to Android devices:

(a) direct downloading, which involves manually downloading an app from a third-party website on the internet. However, Google LLC imposes numerous technical barriers to direct downloading, and posts security warnings to consumers attempting to do so. The warnings include statements that the app may harm their device and the security of their data. These warnings affect the *willingness* of consumers to download apps in this way and the technical barriers affect their *ability* to do so (see further below at paragraph [27]). Direct downloading is therefore an unsatisfactory distribution channel.

(b) app stores, that are compatible with Android OS, other than the Google Play Store. These include app stores developed by OEMs (eg, Samsung's Galaxy Store) and app stores developed by third parties (eg, the Amazon Appstore) (**alternative app stores**). However, because of Google's technical and contractual restrictions, alternative app stores do not provide an effective distribution channel for Android OS apps to Android devices. They have far less market penetration and have far fewer apps than the Google Play Store (eg, Aptoide, the largest "independent" app store outside of China, has around 700,000 apps compared to more than 3 million on the Google Play Store, and is pre-installed on no more than 5% of Android devices). For app developers, no app store other than the Google Play Store provides the same reach for the distribution of apps to Android devices, and for Android device users no other app store offers an equivalent range of apps from which to choose. In the absence of Google's competitive constraints, a robust market in app stores would develop and thrive.

17. Google LLC (together with Google Asia Pacific) also restrains the distribution of app stores on Android devices. Any product which facilitates the distribution of apps to Android devices (including an app store) cannot be downloaded through the Google Play Store. Therefore, the only way a consumer can download an alternative app store is to try to download it directly from a third-party website. But, for the reasons set out above at paragraph [16(a)], this is not a viable means of downloading an alternative app store.

18. Once an app (including an app store) is installed on an Android device, third-party app developers also require a means of distributing updates to their apps, either to add functions, to address technical issues or to ensure compatibility with any updates to the operating system. App updates are important to the continued functionality and commercial viability of apps, including as a means of making ongoing improvements to the app. If an app (including an app store) has been downloaded directly, updates can only be obtained in the same way, causing updates to be unreasonably difficult.

Google's restraints

19. As explained below, Google imposes a series of contractual and technical barriers that render any method for distributing apps, other than through the Google Play Store, commercially and

practically unviable. By these restrictions, Google reserves for itself a near-monopoly position in the Android App Distribution Market, including in Australia.

20. In order to obtain Google Mobile Services, Google requires OEMs to enter into a Mobile Application Distribution Agreement (**MADA**). The MADA is a standard form, non-negotiable contract. OEMs have no choice but to enter in to the MADA if they are to meet consumer demand to offer access to at least some of the apps which form part of Google Mobile Services.

21. Under the MADA, Google requires that:

    (a) if an OEM pre-installs one or more of the proprietary Google apps (referred to above at [14]) on its devices, it must pre-install all of up to 30 proprietary Google apps, including the Google Play Store;

    (b) OEMs must place the icon which gives access to the Google Play Store on the Android device's home screen (that is, it must be prominently placed on the Android device).

22. As a result, the Google Play Store is often the first (or only) app store consumers see when they start to use their Android device. This is commercially valuable to Google as many consumers are unlikely to look for, or use, an alternative app store.

23. In order to distribute their Android OS apps through the Google Play Store, developers must enter into the Google Play Developer Distribution Agreement (**DDA**). The DDA is a standard form, non-negotiable contract. It requires developers to submit every app that they wish to be distributed through the Google Play Store to Google for review and approval, and permits Google to disable and remove apps that violate the DDA. For apps distributed in Australia, Google Asia Pacific is a contracting entity with app developers under the DDA.

24. By the terms of the DDA, including those listed in Annexure B, Google also imposes the following restraints on Epic and other app developers:

    (a) they must agree not to use the Google Play Store to distribute or make available any product that "*has a purpose that facilitates the distribution of software applications and games for use on Android devices outside of the Google Play Store*";

    (b) they must agree, in respect of apps distributed through the Google Play Store, to exclusively use Google Play Billing for the processing of payments by Android device users for in-app purchases of digital content consumed within the app; and

    (c) they must agree that Google Australia will deduct a commission of typically 30% from the price paid by users for in-app purchases of digital content consumed within the app (other than in relation to certain subscription users in Australia).

25. The DDA requires app developers to enter into the Google Payments – Terms of Service – Seller Agreement (**Payments Agreement**) with Google Australia in order to receive payment

for apps distributed through the Google Play Store in Australia and for in-app purchases in Australia of digital content consumed within those apps.

26. Further, the DDA requires compliance with the Google Developer Program Policies (**Google Policies**) which, among other things, requires that app developers offering products within an app downloaded from the Google Play Store or providing access to in-app content must use Google Play Billing as the method of payment (except for the payment of physical products such as food, or payment for digital content that may be consumed outside of the app itself).

27. Google LLC also imposes technical restrictions which may inhibit Android device users from downloading apps other than through the Google Play Store. For example, in order to directly download the Epic Games app from Epic's website on to an Android device, an Android device user in Australia would be required to take numerous steps, including:

    (a) Navigating to the relevant page of the Epic website and selecting the Epic Games app. On making that selection, consumers are confronted with a warning that reads: "*This type of file can harm your device. Do you want to keep EpicGamesApp.apk anyway?*"

    (b) If the consumer indicates that they do wish to keep the app, after several additional steps, they are confronted with the statement: "*For your own security, your phone is not allowed to install unknown apps from this source.*"

    (c) The consumer is then given the option to cancel the installation or to alter their device settings.

    (d) If the consumer attempts to proceed with the download, they must go to their device settings and manually alter them to allow the installation of "*unknown apps*" from Epic Games.

    (e) On indicating that they want to allow the installation, the consumer is confronted with the following message: "*Your phone and personal data are more vulnerable to attack by unknown apps. By installing apps from this source, you agree that you are responsible for any damage to your phone or loss of data that may result from their use".*

    (f) Consumers must then make the change in the face of this warning, before taking additional steps to complete the installation.

    Screenshots of these steps are contained at Annexure A.

28. In addition, Google LLC has configured Android OS to deny directly downloaded apps the permissions necessary to be seamlessly updated in the background. As a result, the consumer must manually approve every update of the directly downloaded app. On some versions of Android OS, consumers are required to repeat some or all of the steps of the initial download and are again confronted with the numerous security warnings. This impacts the continued

functionality and commercial viability of directly downloaded apps and affects users' experiences.

Android App Distribution Market

29. As alleged at [4] above, there is a market for the distribution of Android OS apps to Android devices (Android App Distribution Market). It is comprised of all the channels by which apps may be distributed to Android devices. The primary and dominant channel through which this occurs is the Google Play Store. In the alternative, the Android App Distribution Market is an economically distinct sub-market of a wider market (including Australia) for the distribution of apps to users of smart mobile devices.

30. The geographic dimension of the Android App Distribution Market is global, excluding China. In the alternative, the Android App Distribution Market is a distinct sub-market in Australia.

31. The Android App Distribution Market is distinct from the markets for the distribution of apps for other mobile operating systems, including Apple's iOS.

32. Google does not face any, or any material, competitive constraints in the Android App Distribution Market since channels for the distribution of non-Android OS apps and/or software for personal computers, gaming consoles and other smart mobile operating systems are not compatible with Android devices and therefore do not constrain Google; app developers have no material bargaining power with Google and no app developer can realistically afford to forgo access to Android device users; and consumers are unaware of, or cannot adequately account for, Google's conduct and face high switching costs between Android OS and other smart mobile devices.

33. The contractual and technical barriers imposed by Google (see above) eliminate, or at least significantly restrict, the ability of other app developers, such as Epic, to compete in the Android App Distribution Market on the merits of their alternative product offerings. This is demonstrated by the fact that Google is able to charge a commission of typically 30% for the sale of all paid-for apps through the Google Play Store and for in-app purchases of digital content consumed within such apps, even though alternative app stores offer app developers better revenue distribution arrangements.

Android In-App Payment Processing Market

34. Many app developers generate revenue by making in-app digital content, including in-game content, available to users for a fee. Epic's *Fortnite* – which is available to players for free – is an example of an app that offers in-app content for a fee. Such content is not, however, necessary for gameplay. In *Fortnite*, in-app purchase opportunities include digital outfits, dance moves and other cosmetic enhancements within the game.

35. App developers selling in-app content require an in-app payment processing system that enables users to complete the purchase within the app itself. The demand for in-app payment processing by app developers is met by a number of payment processors (eg Braintree, PayPal, Square and Stripe). Some developers, like Epic, have developed their own payment processing systems. Except for as prescribed by Google's restrictions, app developers can select the payment processor to incorporate into the design of their app.

36. Mobile game developers like Epic place particular value on the ability to provide users with in-app content purchases in a seamless way without distracting from game play. To facilitate the purchase of in-app content, where purchases can extend, enhance and continue play, consumers must be able to make payments quickly and without leaving the app. If a consumer is required to leave an app to make the payment, they are less likely to make the purchase or use the app. For some developers, in-app content purchases represent their sole or major source of revenue.

37. As alleged at [5] above, there is a market for the processing of payments for the purchase of in-app content within apps compatible with Android OS (Android In-App Payment Processing Market). Alternatively, the product dimension of the Android In-App Payment Processing Market is limited to processing of payments for *virtual gaming products* within gaming apps compatible with Android OS.

38. The geographic dimension of the Android In-App Payment Processing Market is global, excluding China. In the alternative, the Android In-App Payment Processing Market is a distinct sub-market in Australia.

39. The Android In-App Payment Processing Market is distinct from the markets for the in-app payment processing for apps developed for other mobile operating systems, including Apple's iOS.

40. Google ties Google Play Billing to the Google Play Store so that, for apps distributed through the Google Play Store, app developers and Android device users must use Google Play Billing for the purchase of digital content within apps. App developers have no real alternative but to distribute their apps using the Google Play Store and, because 90% or more of Android OS app downloads conducted through app stores have been done through the Google Play Store, these further restrictions mean that Google retains for itself a near-monopoly share of the market for the processing of payments for the purchase of in-app content on Android devices, including in Australia.

41. Google does not face any, or any material, competitive constraint in the Android In-App Payment Processing Market since the availability of alternative payment processing solutions are not viable alternatives in light of the terms of the DDA; app developers and consumers have no

material bargaining power in the Android In-App Payment Processing Market; and consumers cannot constrain Google's conduct.

PRIMARY GROUNDS FOR THE RELIEF SOUGHT

Misuse of market power (s 46)

42. By reason of the matters referred to in paragraphs [9]-[11] and [29]-[33] above, Google has a substantial degree of power in the Android App Distribution Market, including in Australia. Further, Google LLC and Google Asia Pacific have engaged, and continue to engage, in conduct that has the purpose, effect or likely effect of substantially lessening competition in the Android App Distribution Market, including in Australia by the following means:

    (a) (paragraphs [20]-[22] above) Google requires OEMs, as a condition to pre-install on an Android device any of the apps which form part of Google Mobile Services, to enter into and be bound by the MADA. Under the MADA, Google requires OEMs, who wish to pre-install one or more Google proprietary apps on its Android devices, to pre-install all proprietary apps including the Google Play Store. Further, the terms of the MADA require OEMs to prominently display the icon which gives access to the Google Play Store on the Android device's home screen;

    (b) (paragraphs [23]-[26] above) Google LLC and Google Asia Pacific require app developers to enter into and be bound by the DDA, including the Google Policies, as a condition to distribute apps through the Google Play Store. By the terms of the DDA, Google LLC and Google Asia Pacific prohibit app developers from using the Google Play Store to distribute or make available any product that facilitates the distribution of apps for use on Android devices outside of the Google Play Store. In order for app developers to distribute their apps through the Google Play Store they must submit their apps to Google for review for compliance with the terms of the DDA;

    (c) (paragraphs [27]-[28] above) Google LLC imposes technical barriers to directly downloading apps (and app stores) which limits the functionality and commercial viability of these apps.

43. The purpose, effect or likely effect of the conduct described in paragraph [42] above is to foreclose competition in the Android App Distribution Market, including in Australia. But for the conduct, the Google Play Store would (or would likely) face vigorous and effective competition in the Android App Distribution Market from other app stores to distribute Android OS apps to Android devices users, including in Australia, leading to pro-competitive benefits including increased quality, innovation and choice and lower prices.

44. Further, by reason of the matters referred to in paragraphs [9]-[10] and [34]-[41] above, Google has a substantial degree of power in the Android In-App Payment Processing Market, including in Australia. Further, Google has engaged, and continues to engage, in conduct that has the

purpose, effect or likely effect of substantially lessening competition in the Android In-App Payment Processing Market, including in Australia, by the following means:

(a) (paragraphs [23]-[26] above) Google LLC and Google Asia Pacific require app developers to enter into and be bound by the DDA, including the Google Policies, as a condition to distribute apps through Google's app store, the Google Play Store;

(b) (paragraph [25] above) Google LLC and Google Asia Pacific require, through the DDA, app developers to enter into the Payments Agreement with Google Australia in order to receive payment for apps distributed through the Google Play Store and for the in-app purchase of digital content consumed within such apps in Australia;

(c) Google requires, through Google Policies, that apps distributed through the Google Play Store "*must use Google Play's billing system*" for in-app purchases of digital content consumed within the app;

(d) (paragraph [7] above) Google responded to Epic's conduct referred to in paragraph [6] above by removing *Fortnite* from the Google Play Store, including in Australia*;* and/or

(e) (paragraph [24(c)] above) the commission of typically 30% charged by Google and deducted from the price for in-app content represents a monopoly rent.

45. The purpose, effect or likely effect of the conduct described in paragraph [44] above is to foreclose competition in the Android In-App Payment Processing Market, including in Australia. But for the conduct, Google Play Billing would (or would likely) face competition in the Android In-App Payment Processing Market from other payment processors for in-app content purchases, including in Australia, leading to pro-competitive benefits including lower prices and increased quality, innovation and choice.

46. By reason of paragraphs [42] and/or [44] above, Google has by its conduct in Australia and/or in relation to Android device users in Australia, contravened, and continues to contravene, s 46(1) of the CCA.

Exclusive dealing (s 47)

47. By reason of the matters referred to in paragraphs [19]-[28] and [34]-[41] above, Google LLC and Google Asia Pacific have engaged, and continues to engage, in the practice of exclusive dealing in Australia and/or in relation to Android device users in Australia, contrary to s 47(2) of the CCA in that:

(a) Google LLC and Google Asia Pacific supply (or offer to supply) services to app developers such as Epic, being the distribution of their apps to Android device users, including in Australia;

(b) Google LLC and Google Asia Pacific supply these services to Epic and other app developers on the condition that they will not acquire services of a particular kind or

description from a competitor of Google (having regard to s 47(13)(b)), including in Australia, being, payment processing services from other payment processors for in-app content purchased by Android device users, with respect to apps downloaded through the Google Play Store where, but for the conduct, those other payment processors would or would likely compete, with Google Play Billing.

48. By reason of the matters referred to in paragraphs [42]-[45] above, the conduct in paragraph [47] above has the purpose, effect or likely effect of substantially lessening competition in Australia in the Android In-App Payment Processing Market.

49. By reason of paragraphs [47]-[48] above, Google LLC and Google Asia Pacific have contravened, and continue to contravene, s 47(1) of the CCA.

Contracts, arrangements and understandings (s 45)

50. Further or alternatively, by reason of the matters referred to in paragraphs [19]-[22] above, Google has made, and continues to make, contracts or arrangements, or has arrived at, or continues to arrive at, understandings with OEMs, containing provisions that require OEMs to agree that, as conditions applying to their pre-installation on an Android device any of the apps which form part of Google Mobile Services, they will:

    (a) pre-install all Google proprietary apps, including the Google Play Store, on the Android device; and

    (b) prominently display the icon which gives access to the Google Play Store on the Android device's home screen.

51. Further or alternatively, by reason of the matters referred to in paragraphs [23]-[27] above, Google has made, and continues to make, contracts or arrangements, or has arrived at or continues to arrive at, understandings with app developers through the DDA, and/or through the Google Policies, which contain provisions that:

    (a) restrain app developers from using any in-app payment processing system, other than Google Play Billing, for the purchase of digital in-app content by Android device users, including in Australia;

    (b) restrain app developers from distributing their apps to Android device users, including in Australia, other than through the Google Play Store;

    (c) permit Google to remove from the Google Play Store apps that violate the DDA.

52. By reason of the matters referred to in paragraphs [42]-[45] above, the provisions referred to at paragraphs [50] and [51] above have, individually and/or cumulatively, the purpose, effect or likely effect of substantially lessening competition in the Android App Distribution Market and/or the Android In-App Payment Processing Market, including in Australia. In addition:

(a) by Google's conduct in paragraph [7] above, Google has given effect to the provisions referred to at paragraph [51] above, including in Australia or in relation to Australian users of Android devices; and

(b) by Google Australia's conduct at paragraphs [11] and [44] above, Google Australia has given effect to the provisions referred to at paragraph [51] above, including in Australia or in relation to Australian users of Android devices.

53. By reason of paragraphs [50]-[52] above, Google has contravened, and continues to contravene, s 45(1) of the CCA, including by reason of s 45(4).

Unconscionable conduct (s 21)

54. By reason of the matters referred to in paragraphs [29]-[41] above, Google has engaged, and continues to engage, in unconscionable conduct in trade or commerce by the following means:

(a) (paragraphs [29]-[33] above) Google LLC and Google Asia Pacific have in all the circumstances acted unconscionably in connection with the supply of services to Epic, namely in the distribution of Epic's apps to Android device users in Australia; and/or

(b) (paragraphs [34]-[41] above) Google has in all the circumstances acted unconscionably in connection with the supply of payment processing services to Epic, namely in the processing of in-app purchases of digital content within Epic's apps in Australia.

55. In the circumstances referred to at paragraph [54] above, Google has engaged, and continues to engage, in trade or commerce in a system of conduct, or a pattern of behaviour, that is in all the circumstances unconscionable in connection with its supply of services to Epic and other app developers generally, namely in the distribution of their apps to Android device users in Australia and/or in the provision of associated payment processing services to Android device users in Australia.

56. Epic relies on, inter alia, the matters in s 21(4)(b) and (c) and s 22(1)(a), (b), (e) and (j) of the ACL. Epic, and app developers such as Epic, cannot avoid the Google restraints referred to in paragraphs [19]-[28] in order to distribute their apps to Android device users, including in Australia, which restraints are not reasonably necessary for the protection of Google's legitimate interests. Likewise, Epic, app developers such as Epic, and Android device users in Australia and elsewhere, cannot avoid payment of the commission of typically 30% if they wish to purchase third-party fee-based Android OS apps or in-app content on their Android device, including for the purpose of taking advantage of and/or enhancing the functionality of their Android device.

57. By reason of paragraphs [54]-[56] above, Google has contravened, and continues to contravene, s 21(1) of the ACL.

RELIEF SOUGHT FROM THE COURT

58. Epic seeks the relief set out in the accompanying Originating Application.

ALLEGED HARM

59. Google's conduct has hindered or prevented, and continues to hinder and prevent, Epic and other app developers and in-app content payment providers from competing or effectively competing in the Android App Distribution Market and the Android In-App Payment Processing Market, including in Australia. This has resulted in reduced innovation, lower quality apps, reduced consumer choice and higher prices for both developers and consumers.

60. Google's conduct has forced Epic and other app developers, in the case of apps downloaded through the Google Play Store, to pay Google monopoly prices (the commission of typically 30%) in connection with all in-app purchases of their in-app content on Android devices. This has led to harms including increased prices for in-app content by Android device users in Australia and lost profits for Epic.

61. Further, Google's conduct referred to in paragraph [7] above has harmed Epic through loss of goodwill in respect of *Fortnite* and Epic more broadly. This loss and damage to Epic's ongoing business and to its reputation and trust with customers, including its business and customers in Australia, is permanent and irreparable.

62. But for Google's conduct, app developers such as Epic and other app developers would (or would be likely to) distribute alternative app-stores to Android device users directly from their websites without undue friction and/or through the Google Play Store, including users in Australia. This would cause competition on the basis of (among other things) price, service and innovation, including by Google in the Android App Distribution Market. Epic and other app developers would also offer users of its software, including users in Australia, a range of payment processing options (eg PayPal or Amazon Pay). Absent Google's conduct, these competing in-app payment processors would cause Google to compete on the basis of price, service and innovation.

Certificate of lawyer

I, Dave Poddar, certify to the Court that, in relation to the concise statement filed on behalf of the Applicants, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 8 March 2021

Signed by Dave Poddar

Lawyer for the Applicants

Schedule

No. of 2021

Federal Court of Australia
District Registry: New South Wales
Division: General

Applicants

Second Applicant: Epic Games International S.à r.l.

Respondents

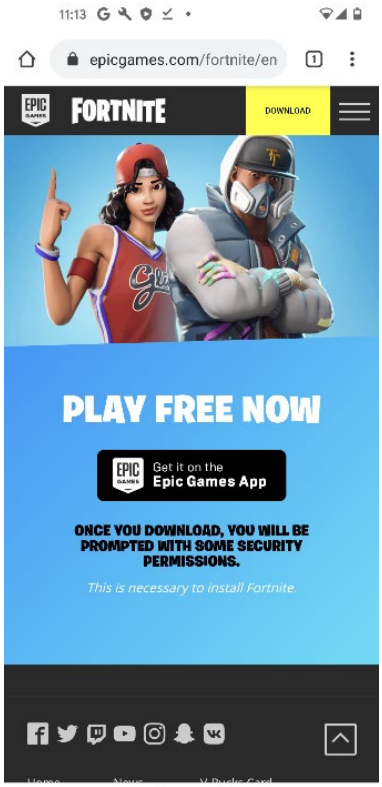
Second Respondent: Google Asia Pacific Pte. Ltd. (200817984R)

Third Respondent: Google Payment Australia Pty Ltd (ACN 122 560 123)

Date: 8 March 2021

Annexure A

Step 1



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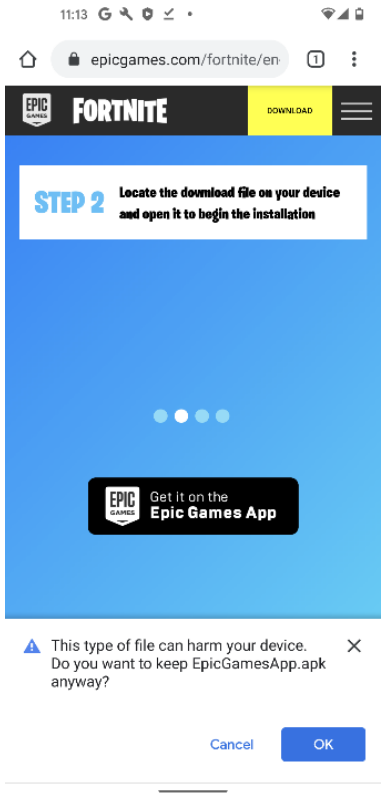
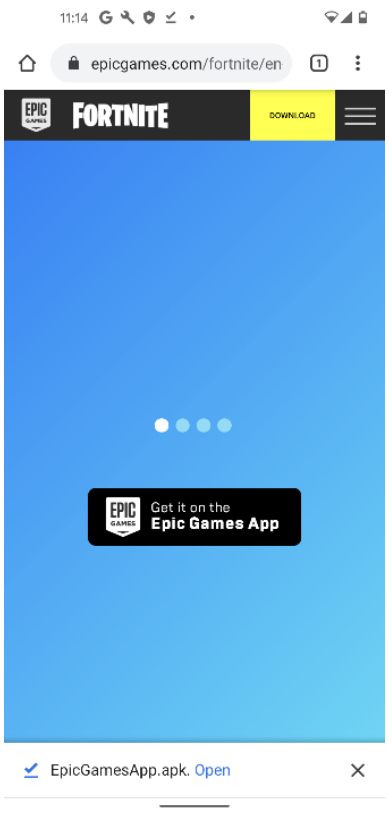


Step 3



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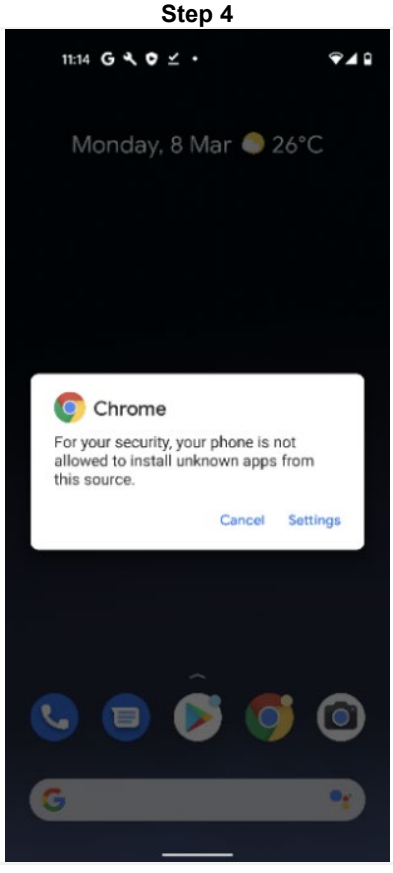

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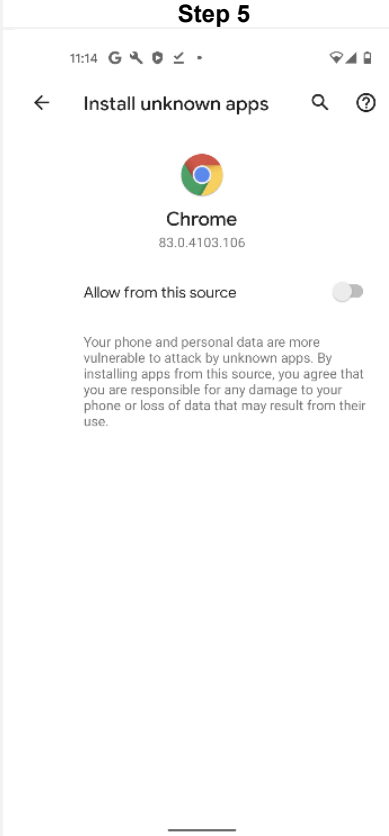

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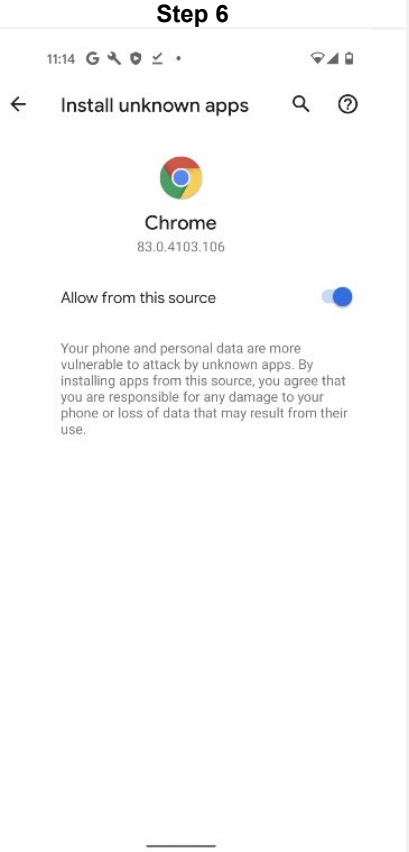

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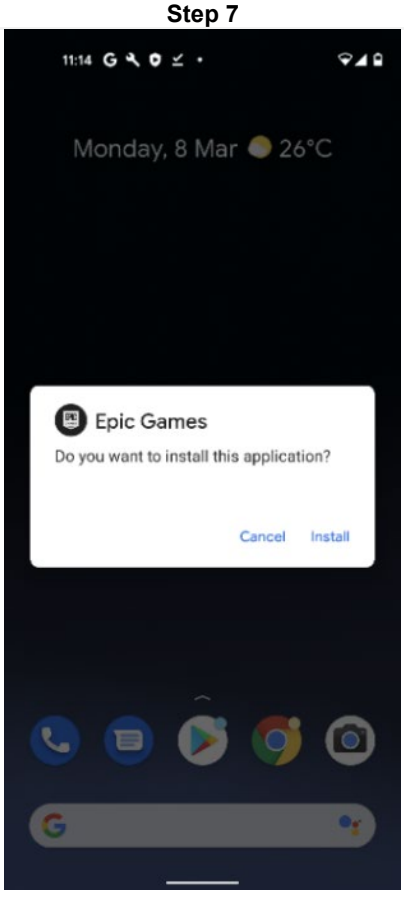

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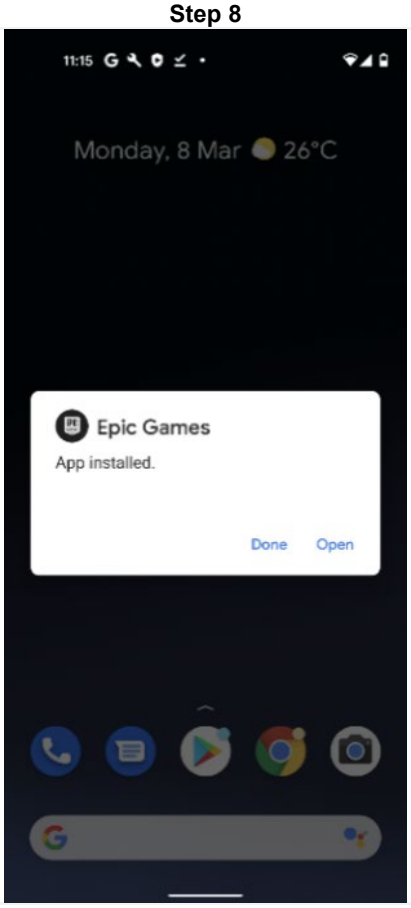

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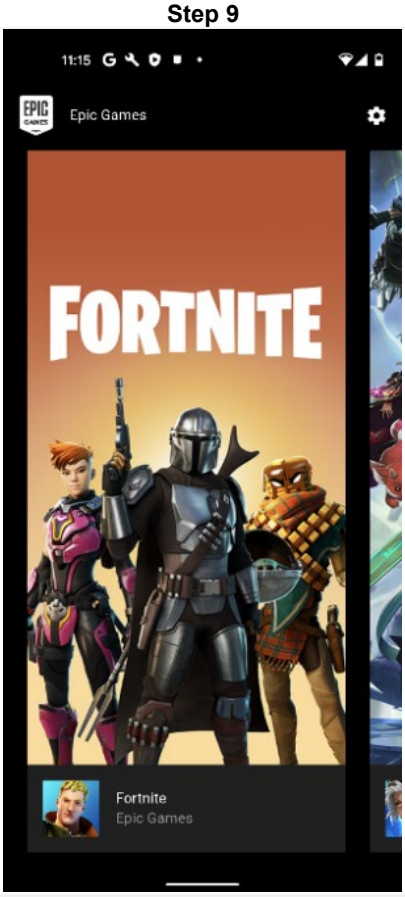	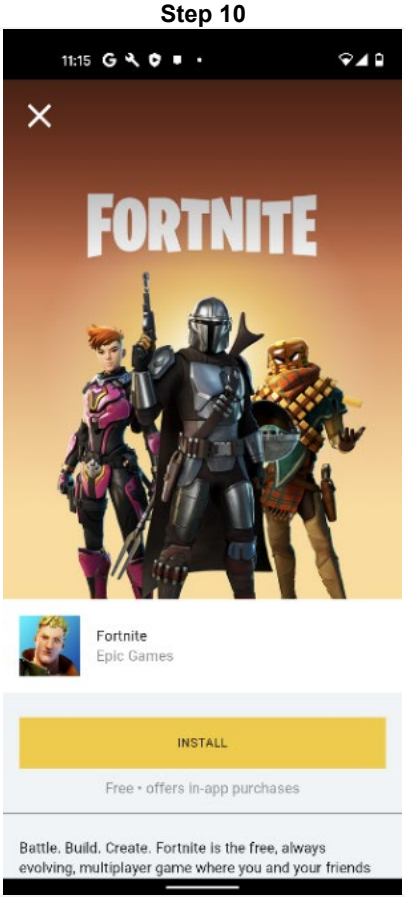
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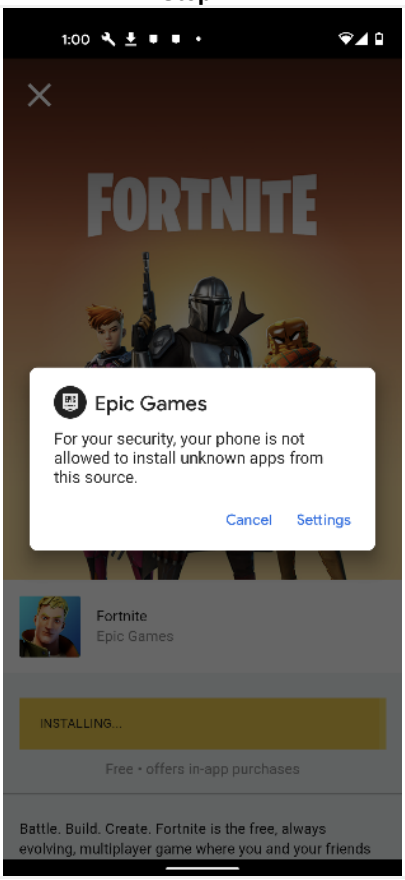	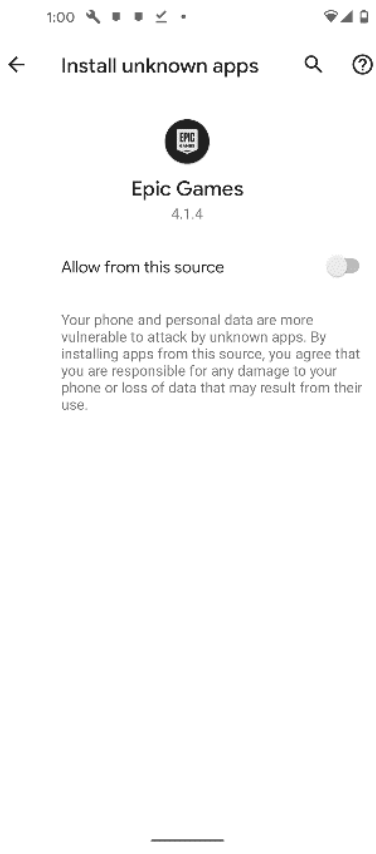

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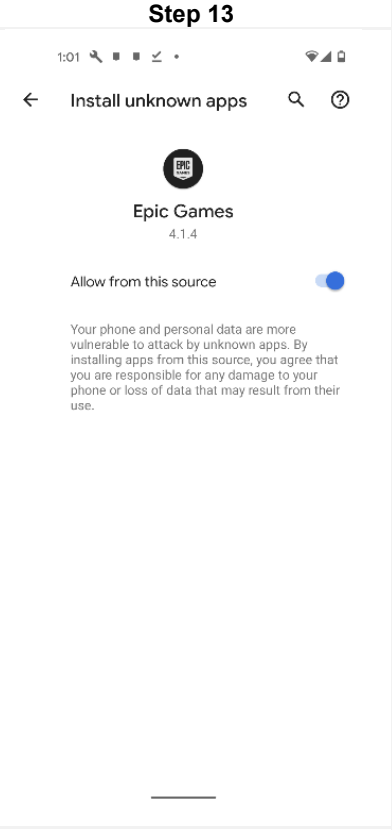

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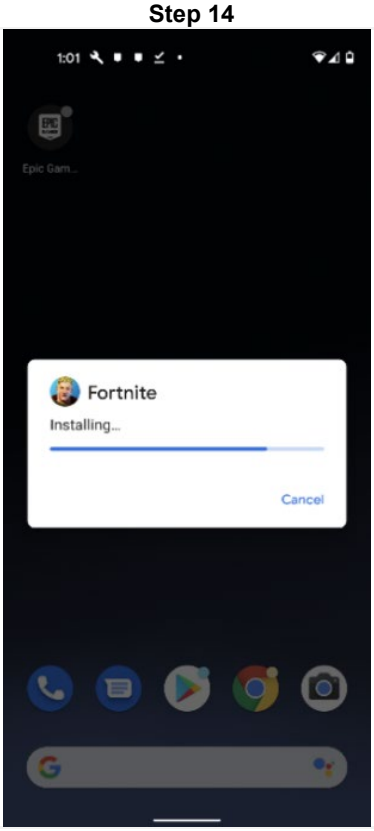

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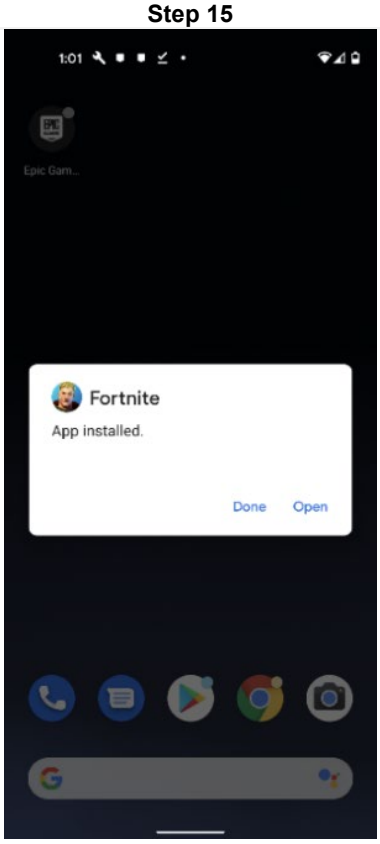

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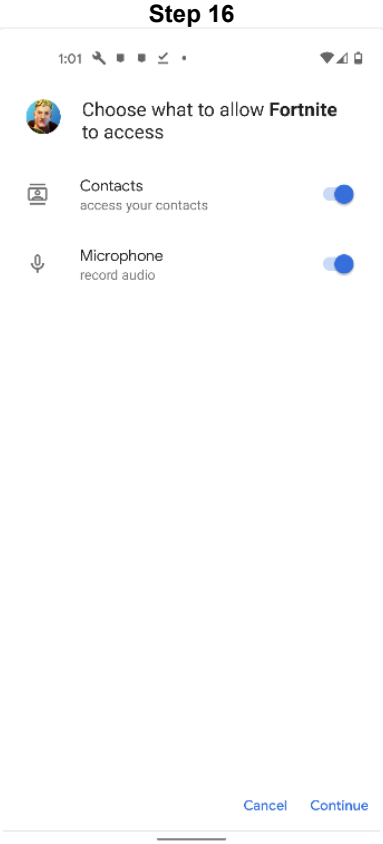

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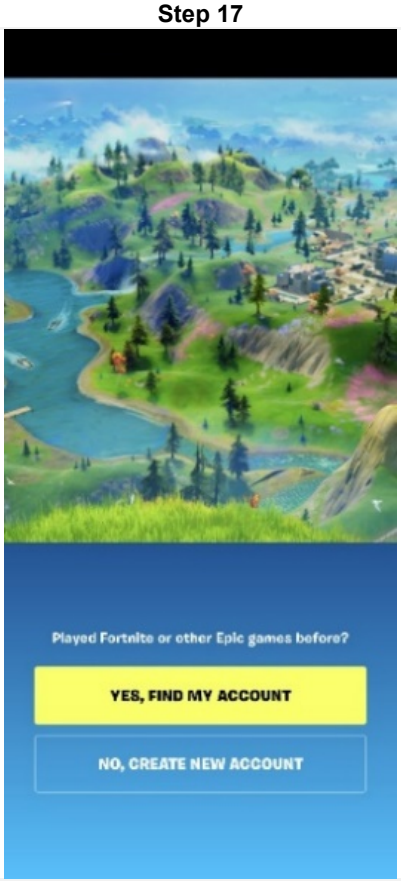
 Played Fortnite or other Epic games before? YES, FIND MY ACCOUNT NO, CREATE NEW ACCOUNT	

Annexure B

Restraints imposed by Google on app developers
DDA
Clause 3.2
Clause 3.4
Clause 4.1
Clause 4.5
Clause 8.3
Clause 10.3
Google Policies
Monetisation and ads; Payments; clause 1
Monetisation and ads; Payments; clause 2
Monetisation and ads; Payments; clause 3
Monetisation and ads; Payments; clause 4
Privacy, deception and device abuse; Devise and network abuse

The New York Times

Their Businesses Went Virtual. Then Apple Wanted a Cut.

After Airbnb and ClassPass began selling virtual classes because of the pandemic, Apple tried to collect its commission on the sales.

By Jack Nicas and David McCabe

July 28, 2020

ClassPass built its business on helping people book exercise classes at local gyms. So when the pandemic forced gyms across the United States to close, the company shifted to virtual classes.

Then ClassPass received a concerning message from Apple. Because the classes it sold on its iPhone app were now virtual, Apple said it was entitled to 30 percent of the sales, up from no fee previously, according to a person close to ClassPass who spoke on the condition of anonymity for fear of upsetting Apple. The iPhone maker said it was merely enforcing a decade-old rule.

Airbnb experienced similar demands from Apple after it began an "online experiences" business that offered virtual cooking classes, meditation sessions and drag-queen shows, augmenting the in-person experiences it started selling in 2016, according to two people familiar with the issues.

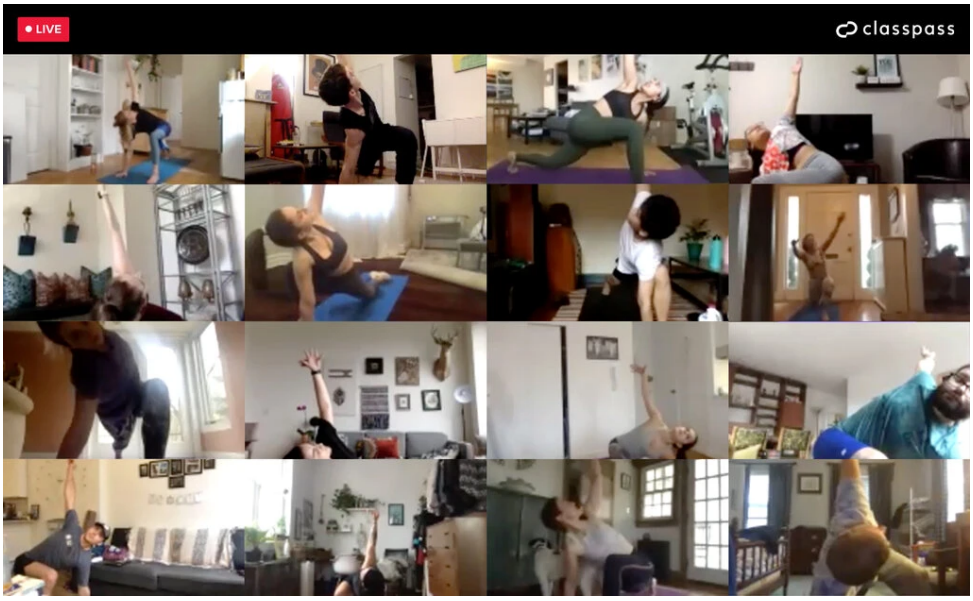
Airbnb discussed Apple's demands with House lawmakers' offices that are investigating how Apple controls its App Store, according to three people who spoke on the condition of anonymity to discuss private conversations. Those lawmakers are now considering Apple's efforts to collect a commission from Airbnb and ClassPass as part of their yearlong antitrust inquiry into the biggest tech companies, according to a person with knowledge of their investigation.

Those lawmakers are set to grill Tim Cook, Apple's chief executive, and the chief executives of Amazon, Facebook and Google in a high-profile hearing on Wednesday.

Apple's disputes with the smaller companies point to the control the world's largest tech companies have had over the shift to online life brought on by the pandemic. While much of the rest of the economy is struggling, the pandemic has further entrenched their businesses.

With millions more employees working from home, Amazon and Google are selling more online cloud space, with revenue for Amazon Web Services and Google Cloud soaring in the first quarter of the year, which included the start of the pandemic. Facebook and YouTube, which is part of Google, some of the internet's largest gathering places, had traffic surge as people couldn't socialize in person.

Apple has also brought in more revenue from its online-services business, mostly on the back of its App Store, and its Macs, iPads and iPhones have become even more important tools.



A ClassPass livestream group workout. ClassPass

With gyms shut down, ClassPass dropped its typical commission on virtual classes, passing along 100 percent of sales to gyms, the person close to the company said. That meant Apple would have taken its cut from hundreds of struggling independent fitness centers, yoga studios and boxing gyms.

Apple said that with Airbnb and ClassPass, it was not trying to generate revenue — though that is a side effect — but instead was trying to enforce a rule that has been in place since it first published its app guidelines in 2010.

Apple said waiving the commission in these cases would not be fair to the many other app developers that have paid the fee for similar businesses for years. Because of the pandemic, Apple said that it gave ClassPass until the end of the year to comply and that it was continuing to negotiate with Airbnb.

“To ensure every developer can create and grow a successful business, Apple maintains a clear, consistent set of guidelines that apply equally to everyone,” the company said in a statement.

ClassPass was told it must comply with the rule this month, according to the person close to the company. Instead, it stopped offering virtual classes in its iPhone app, since those classes were subject to Apple’s commission, according to Apple. As a result, fewer potential customers now see the classes advertised by its gym partners.

In 2016, Airbnb started a business offering in-person “experiences” to travelers, such as guided tours, bar crawls and cooking classes with locals in their vacation destinations. In early April, as the pandemic gutted travel plans and the company’s bottom line, Airbnb began selling virtual versions of similar experiences, though it quickly expanded that business to more prominent offerings, like cooking classes with famous chefs and training sessions with Olympic athletes.

Later that month, Apple reached out to say that when the online experiences were sold in Airbnb’s iPhone app, the company would have to pay Apple’s fees, said a person familiar with their exchanges.

Apple said it believed that Airbnb had long intended to offer virtual experiences — not that the business was created simply because of the pandemic — and that it would continue to do so once the world has resumed to normal. Apple also pointed out that Airbnb had never paid Apple any money despite the fact that it built its multibillion-dollar business with the help of its iPhone app.

Airbnb is still negotiating with Apple. In June, Brian Chesky, Airbnb’s chief executive, said that the online experiences offering was the company’s “fastest growing product ever” and had earned $1 million in revenue. Apple said that if the two companies could not come to terms, it could remove Airbnb’s app from the App Store.

Tim Cook at an Apple Store event in Manhattan last year. Mr. Cook is set to testify at an antitrust hearing on Wednesday. James Estrin/The New York Times

Many companies and app developers complain that Apple forces them to pay its commission to be included in the App Store, which is crucial to reaching the roughly 900 million people with iPhones. Apple said the App Store had 500 million visitors from 175 countries each week.

For months, economists and lawyers at the Justice Department have held meetings with companies and app developers about the App Store as part of its antitrust investigation into Apple. The music service Spotify and another large company that declined to be named also said they have had recent conversations with attorneys general from several states about the issue.

Unlike Spotify, Airbnb and ClassPass do not offer services that directly compete with one of Apple's digital products.

Many companies complain that they are also subject to what they call Apple's capricious enforcement of its rules, which can lead to their apps' removal from the App Store, killing some of their business. If Apple removes an app from the App Store, the developer couldn't gain new app users and couldn't update the apps already on people's phones, eventually rendering them broken.

Apple said a small fraction of iPhone apps were subject to its commission, which is in line with the fees other platforms charge, according to a study released by Apple last Wednesday. Airbnb, for instance, charges a 20 percent commission on experiences.

"If you're not in the App Store today, you're not online. Your business cannot function. So they're the gatekeepers of something that every single company wants," said Andy Yen, the chief executive of ProtonMail, an encrypted email service based in Switzerland that effectively competes with Apple's own email service. "If you want to pass through their gates, they're going to charge you 30 percent of your revenue."

Mr. Yen said his company had been battling with Apple since 2017 over its commission, with Apple sometimes restricting the ProtonMail app on iPhones. To account for Apple's fee, ProtonMail began charging 30 percent more for subscriptions bought on its iPhone app versus those bought on its website, which aren't subject to Apple's fee. "The only way that we could support this fee was actually by passing on the cost to the customer," he said.

But when ProtonMail told iPhone users about the lower price on its website, Apple restricted its app. Then, when the company instead tried to make clear that 30 percent of the subscription price went to Apple, Apple restricted its app again. "You only hide something like this if it's wrong," Mr. Yen said.

Asked about ProtonMail's experience, Apple said its rules require certain apps to use its payment system and ban them from directing people to buy their products or services elsewhere.

European Commission - Press release

Antitrust: Commission opens investigations into Apple's App Store rules

Brussels, 16 June 2020

The European Commission has opened formal antitrust investigations to assess whether Apple's rules for app developers on the distribution of apps via the App Store violate EU competition rules. The investigations concern in particular the mandatory use of Apple's own proprietary in-app purchase system and restrictions on the ability of developers to inform iPhone and iPad users of alternative cheaper purchasing possibilities outside of apps.

The investigations concern the application of these rules to all apps, which compete with Apple's own apps and services in the European Economic Area (EEA). The investigations follow-up on separate complaints by Spotify and by an e-book/audiobook distributor on the impact of the App Store rules on competition in **music streaming** and **e-books/audiobooks**.

Executive Vice-President Margrethe **Vestager**, in charge of competition policy, said: *"Mobile applications have fundamentally changed the way we access content. Apple sets the rules for the distribution of apps to users of iPhones and iPads. It appears that Apple obtained a "gatekeeper" role when it comes to the distribution of apps and content to users of Apple's popular devices. We need to ensure that Apple's rules do not distort competition in markets where Apple is competing with other app developers, for example with its music streaming service Apple Music or with Apple Books. I have therefore decided to take a close look at Apple's App Store rules and their compliance with EU competition rules."*

iPhone and iPad users can only download native (non web-based) apps via the App Store.

The Commission will investigate in particular two restrictions imposed by Apple in its agreements with companies that wish to distribute apps to users of Apple devices:

(i) The mandatory use of Apple's own proprietary **in-app purchase system "IAP"** for the distribution of paid digital content. Apple charges app developers a 30% commission on all subscription fees through IAP.

(ii) Restrictions on the ability of developers to inform users of **alternative purchasing possibilities** outside of apps. While Apple allows users to consume content such as music, e-books and audiobooks purchased elsewhere (e.g. on the website of the app developer) also in the app, its rules prevent developers from informing users about such purchasing possibilities, which are usually cheaper.

The complaints

On 11 March 2019, music streaming provider and competitor of Apple Music, Spotify, filed a complaint about the two rules in Apple's license agreements with developers and the associated App Store Review Guidelines, and their impact on competition for music streaming services.

Following a preliminary investigation the Commission has concerns that Apple's restrictions may distort competition for music streaming services on Apple's devices. Apple's competitors have either decided to disable the in-app subscription possibility altogether or have raised their subscription prices in the app and passed on Apple's fee to consumers. In both cases, they were not allowed to inform users about alternative subscription possibilities outside of the app. The IAP obligation also appears to give Apple full control over the relationship with customers of its competitors subscribing in the app, thus dis-intermediating its competitors from important customer data while Apple may obtain valuable data about the activities and offers of its competitors.

On 5 March 2020**, an e-book and audiobook distributor**, also filed a complaint against Apple, which competes with the complainant through its Apple Books app. This complaint raises similar concerns to those under investigation in the Spotify case but with regard to the distribution of e-books and audiobooks.

In parallel, today the European Commission has opened a formal antitrust investigation to assess whether Apple's conduct in connection with Apple Pay violates EU competition rules.

Next steps

The Commission will investigate the possible impact of Apple's App Store practices in particular on competition in music streaming and e-books/audiobooks. These practices may ultimately harm consumers by preventing them from benefiting from greater choice and lower prices.

If proven, the practices under investigation may breach EU competition rules on anticompetitive agreements between companies (Article 101 of the Treaty on the Functioning of the European Union (TFEU)) and/or on the abuse of a dominant position (Articles 102 TFEU).

The Commission will carry out its in-depth investigations as a matter of priority. The opening of a formal investigation does not prejudge its outcome.

Background on antitrust investigations

Article 101 of the TFEU prohibits anticompetitive agreements and decisions of associations of undertakings that prevent, restrict or distort competition within the EU's Single Market. Article 102 of the TFEU prohibits the abuse of a dominant position. The implementation of these provisions is defined in the Antitrust Regulation (Council Regulation No 1/2003), which can also be applied by the national competition authorities.

Article 11(6) of the Antitrust Regulation provides that the opening of proceedings by the Commission relieves the competition authorities of the Member States of their competence to apply EU competition rules to the practices concerned. Article 16(1) further provides that national courts must avoid adopting decisions that would conflict with a decision contemplated by the Commission in proceedings it has initiated.

The Commission has informed Apple and the competition authorities of the Member States that it has opened proceedings in these cases.

There is no legal deadline for bringing an antitrust investigation to an end. The duration of an antitrust investigation depends on a number of factors, including the complexity of the case, the extent to which the companies concerned cooperate with the Commission and the exercise of the rights of defence.

More information on the investigations will be available on the Commission's competition website, in the public case register under case numbers AT.40437 (Apple – App Store Practices - music streaming) and AT.40652 (Apple – App Store Practices – e-books/audiobooks).

IP/20/1073

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Authority for Consumers & Markets

ACM launches investigation into abuse of dominance by Apple in its App Store

The Netherlands Authority for Consumers and Markets (ACM) will investigate whether Apple abuses the position it has attained with its App Store. ACM will do so following indications that ACM has received from other app providers over the course of its market study into app stores. That market study has been published today.

Henk Don, Member of the Board of ACM, explains: 'To a large degree, app providers depend on Apple and Google for offering apps to users. In the market study, ACM has received indications from app providers, which seem to indicate that Apple abuses its position in the App Store. That is why ACM sees sufficient reason for launching a follow-up investigation, on the basis of competition law.'

Investigation

Apps have increasingly become important parts of our daily lives. Businesses that provide apps depend on the app stores of Apple and Google for offering their apps to users. Given the significant importance of these app stores to app providers, ACM expects Apple and Google to exhibit fair and transparent behavior. ACM will investigate, among other aspects, whether Apple acted in violation of the prohibition of abuse of dominance, for example, by giving preferential treatment to its own apps. At first, the investigation will focus on Apple because, at the moment, the most detailed reports have been received about Apple's App Store. ACM believes that these reports may indicate conduct that is at odds with competition law.

ACM is calling on app providers to come forward if they experience any problems with Apple's App Store, but also if they experience similar problems with Google's Play Store. ACM will use that information in its investigation. The investigation initially focuses on Dutch apps for news media that offer their apps in Apple's App Store. ACM has received many indications about such apps. However, this does not mean that a conclusion has already been drawn that a violation has indeed occurred. In the upcoming investigation, ACM will be looking into that question. One possible outcome of the investigation is that no violation is established.

Market study

ACM launched the market study into app stores for mobile phones in order to gain more insight into how app providers get their apps in app stores, and what influence the app stores have on the selection of apps for users. The digital economy is one of ACM's key priorities. The market study was launched within that context.

The market study reveals that app providers depend on the app store in order to reach users on their mobile phones. For numerous apps, no realistic alternatives to the App Store and Play Store exist. That gives, at least in theory, Apple and Google the opportunity to set unfair conditions. On the one hand, Apple and Google have an interest in offering many different apps from app providers in their app stores. On the other hand, however, Apple and Google

are app providers in their own right, too. So their apps compete with those of other market participants. These competing interests may pose antitrust problems.

App providers say they do not always have a fair chance against Apple's own apps or against apps that Google has pre-installed on phones. In addition, providers of digital products and services are required to use Apple's and Google's payment systems for in-app purchases, and they are also required to pay a 30% commission in the first year. Furthermore, they are not always able to use all functionalities of an iPhone. And finally, they say they have difficulties when communicating with Apple and Google about the application of their conditions. These problems, together with the indications submitted by app providers, are sufficient reason for ACM to launch an investigation into Apple's behavior.

If you are an app provider with information that might be relevant to the investigation, please contact ACM. You can also contact us anonymously.

- Send us your tip off or indication
- Read the report in English

Publication date

11-04-2019

Publication type

News

Spokesperson

Jasmijn Dielesen (/en/contact/press-room)

Keywords

- Mobile telephony
- Market analyses
- Media

Subjects

- Competition
- Telecommunication

GOV.UK

Press release

CMA investigates Apple over suspected anti-competitive behaviour

The CMA has launched an investigation into Apple following complaints that its terms and conditions for app developers are unfair and anti-competitive.

From:

Competition and Markets Authority (https://www.gov.uk/government/organisations/competition-and-markets-authority)

Published:

4 March 2021

In addition to designing, manufacturing and marketing electronic devices such as smartphones and tablets, Apple also operates the App Store. This is the only way for developers to distribute third-party apps on Apple's iPhones and iPads, and the only way for Apple customers to access them.

The probe has been prompted by the Competition and Markets Authority's (CMA) own work in the digital sector, as well as several developers reporting that Apple's terms and conditions are unfair and could break competition law.

All apps available through the App Store have to be approved by Apple, with this approval hinging on developers agreeing to certain terms. The complaints from developers focus on the terms that mean they can only distribute their apps to iPhones and iPads via the App Store. These complaints also highlight that certain developers who offer 'in-app' features, add-ons or upgrades are required to use Apple's payment system, rather than an alternative system. Apple charges a commission of up to 30% to developers on the value of these transactions or any time a consumer buys their app.

The CMA's investigation will consider whether Apple has a dominant position in connection with the distribution of apps on Apple devices in the UK – and, if so, whether Apple imposes unfair or anti-competitive terms on developers using the App Store, ultimately resulting in users having less choice or paying higher prices for apps and add-ons.

This is only the beginning of the investigation and no decision has yet been made on whether Apple is breaking the law.

Andrea Coscelli, Chief Executive of the CMA said:

> Millions of us use apps every day to check the weather, play a game or order a takeaway. So, complaints that Apple is using its market position to set terms which are unfair or may restrict competition and choice – potentially causing customers to lose out when buying and using apps – warrant careful scrutiny.
>
> Our ongoing examination into digital markets has already uncovered some worrying trends. We know that businesses, as well as consumers, may suffer real harm if anti-competitive practices by big tech go unchecked. That's why we're pressing on with setting up the new Digital Markets Unit and launching new investigations wherever we have grounds to do so.

Today's announcement follows the CMA's July 2020 report on its market study into online platforms and digital advertising, and the CMA's advice to the Government (https://www.gov.uk/government/news/cma-advises-government-on-new-regulatory-regime-for-tech-giants) in December 2020 on the shape of a new pro-competition regulatory regime for digital markets. As the CMA works with the Government on these proposals – which will complement its current enforcement powers – the CMA will continue to use its existing powers to their fullest extent in order to protect competition in these areas.

The European Commission (EC) currently has four open antitrust probes into Apple, which were launched prior to the end of the UK's Transition Period. These include three open investigations into Apple's App Store. The CMA continues to coordinate closely with the EC, as well as other agencies, to tackle these global concerns.

More information can be found on the Investigation into Apple App Store casepage (https://www.gov.uk/cma-cases/investigation-into-apple-appstore).

Notes to editor

1. The competition legislation relevant to the CMA's investigation is the Competition Act 1998. The Chapter II prohibition in the Competition Act 1998 prohibits any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market, and which may affect trade within the United Kingdom.
2. The CMA may launch an investigation under the Competition Act 1998 if it has reasonable grounds to believe that there has been an infringement of competition law.
3. 'Apple' refers to the corporate group in its entirety, including Apple (UK) Limited, Apple Europe Limited and Apple Inc (US parent company).
4. Media queries should be directed to: press@cma.gov.uk or 020 3738 6460.

Published 4 March 2021

Brexit

- Check
- Change
- Go

Check what you need to do

(https://www.gov.uk/transition)

Explore the topic

- Business and industry (https://www.gov.uk/business-and-industry)