

Apple Pty Limited

Submission in response to the Digital Platform Services Inquiry Discussion Paper

The Australian Competition and Consumer Commission (**ACCC**) has invited stakeholder views on the effectiveness of the existing competition and consumer law in Australia in relation to digital platform services.

Apple Pty Limited (**Apple**) welcomes the opportunity to provide written feedback in response to these and other matters raised in the ACCC's *Digital Platform Services Inquiry - Discussion Paper for Interim Report No. 5* dated February 2022 (**Discussion Paper**).

1. Executive summary

1. Apple has serious concerns about the implementation of regulatory reforms as proposed in the Discussion Paper in circumstances where:
 - (a) those reforms are directed at addressing hypothetical (rather than existing) problems insofar as conduct attributable to Apple is concerned;
 - (b) it is not clear why the existing competition and consumer law regulatory framework is insufficient to address the issues of concern identified in the Discussion Paper, insofar as those concerns are relevant to Apple and to the extent that those issues might in fact materialise in the future;
 - (c) the real-world market outcomes which will result from the proposed "reforms" relevant to Apple, if they are implemented in the form proposed, would reduce incentives for dynamic firms like Apple to innovate and develop new and differentiated products, and would force Apple to redesign the iPhone in a manner which would ultimately benefit only:
 - (i) a handful of powerful developers whose primary goal is to remove the protections for consumers Apple has built from its experience into its integrated platform; and
 - (ii) expose consumer, business and government users of Apple devices and services to the far less secure and private environment found on the web and to a lesser extent Android devices in which scams and malware proliferate daily,and likely result in significant consumer detriment, particularly in the form of a reduction in consumer choice as a result of the homogenisation of competing digital platform business models and product offerings, and a reduction in key protections consumers want in devices to which they entrust their personal and financial data.
2. Apple is puzzled that the competition and consumer protection agency would prioritise purported competition concerns which lack cogent evidence of harm, over clear and present severe damage to users that they experience every day. That is not what consumers want to see as outcomes of legislative reform - they want stronger, not weaker, protection - from the unlawful conduct which affects the hundreds of thousands of Australians every year whose information is stolen, scammed, traded and exploited to their detriment.
3. Apple has described in previous submissions to the Digital Platform Services Inquiry (**DPSI**) the reasons why Apple has designed its products as it has, and the benefits that this has delivered to consumers and developers.
4. Regrettably, the regulatory interventions proposed in the Discussion Paper would fundamentally change the iPhone and related Apple services (including iOS and the App

Store) in what is an already highly competitive market, and would have substantial implications for consumers, including in terms of Apple's industry-leading privacy and security standards, and would reallocate the distribution of benefits of the app economy from the broadest set of developers to a small set of successful incumbents.

5. The proposed "reforms", if made law so as to apply to Apple products and services as proposed, fail their key test: Australian consumers will be net worse off.
6. Much of the Discussion Paper appears to proceed on the assumption that there is a relevant market failure arising from Apple's purported market power. Apple does not believe that, properly examined, that assumption is correct in the wider online context in which (relevantly to Apple) app marketplaces operate. Indeed, app marketplaces, even the mobile segment alone, have over time since 2008 when the App Store launched in Australia been consistently characterised by higher output (including both the number of apps and app downloads) and decreasing prices (ie, lower commissions). These characteristics are indicia of healthy, competitive markets. Accordingly, Apple is of the view that the starting point should be to examine mobile app marketplaces in their wider online context and rigorously explore whether the ACCC's assumptions are correct.
7. For the reasons set out in this submission, Apple considers that the current regulatory regime in Australia is sufficient to address issues unique to digital platforms, particularly in circumstances where the ACCC has not sufficiently identified a relevant market failure arising from Apple's purported conduct. In relation to the proposals canvassed in the Discussion Paper, Apple submits that:

- (a) **a sweeping, "one size fits all" approach to regulation is inappropriate and poses a substantial risk of type I ('false positive') regulatory error** given the dynamic and rapidly advancing nature of the various markets in which digital platforms operate.

As the Discussion Paper acknowledges, the broad conduct attributed to "digital platforms" at each phase of the DPSI can take different forms and have different competitive and consumer welfare effects when conducted by different types of digital platforms. The ACCC also recognises that there are legitimate justifications and efficiency-enhancing effects for given conduct (eg, promoting efficiency or addressing security or privacy concerns) in different platform contexts. Any sector-wide regulation therefore poses a significant risk of chilling these procompetitive and welfare enhancing effects, and should be discounted;

- (b) there is a significant risk that **the proposals will be disproportionate and chill innovation** in the relevant markets. Clearly, the more intrusive the remedy being considered and the wider the effect that the remedy could have, the stronger the evidence base underpinning the need for the remedy must be.

The evidence base set out in the Discussion Paper is weak. Further, Apple's ecosystem operates on a centrally-run, worldwide basis. Unique regulation imposed in Australia would require that Apple restrict its product and service offering as available to Australian consumers, with the result that Australian consumers would receive a lower quality offering relative to other markets. Again, the potential for remedies to have such wide-ranging effects indicates that a particularly strong evidence of market failure is required - which to-date has been wanting; and

- (c) **the ACCC's proposals run the risk of sacrificing user security and privacy, leading to net consumer welfare detriments.** As the ACCC is aware, it is a key driver for Apple - and always has been - to ensure that users' data and information is private and secure and that consumers only share what they want to share when they wish to share it. It is essential to Apple's business that users are confident when using Apple's products that they are not being subject to poor data practices. Apple has serious concerns that some of the measures proposed in the Discussion Paper - in particular, mandatory access for third-parties to Apple hardware and

software - will significantly undermine users' privacy and security, and Apple's integrated and carefully-designed efforts to protect these. Moreover, as the conclusions of the ACCC's app marketplaces report demonstrates,¹ immediate and severe consumer harm is occurring by reason of scams directed at consumers, yet the ACCC's proposals run the risks of increasing this risk. This is not what consumers want.

8. Apple submits that the ACCC's fifth DPSI interim report to the Treasurer cannot rely on hypothetical considerations to the exclusion of positive evidence submitted by Apple, app developers and other interested parties. Apple urges the ACCC to undertake a more fulsome analysis of the benefits that Apple's ecosystem brings to both consumers and developers, and to consider objectively the ramifications of any proposed interventions on consumers and competition in the various markets that would be affected by the regulatory proposals in the Discussion Paper.
9. This submission does not exhaustively address each of the consultation questions, or concerns raised by the ACCC, in the Discussion Paper. For the avoidance of doubt, where Apple has not addressed a specific question or topic in the Discussion Paper, Apple should not be taken to agree with or acquiesce to the proposals canvassed or views expressed in the Discussion Paper.

2. Existing competition in app marketplaces is sufficient to constrain any purported exercise of market power by Apple

2.1 Apple faces strong competition on both sides of the app marketplace, and has strong incentives maximise third-party apps on iOS

10. The Discussion Paper restates the ACCC's previous conclusions that "*certain large digital platforms, such as Google, Meta and Apple, have significant market power in relation to a number of digital platform services*" (relevantly, in the case of Apple, "*in the supply of mobile operating services and likely significant market power in relation to mobile app distribution*"). This conclusion is based on the ACCC's assessment that "*app developers can only offer apps through the Apple App Store*", and that "*[a]ny competitive constraint provided by other app marketplaces (such as the Google Play Store) is limited once a user is within the Apple ecosystem*".
11. These conclusions are unfounded. The launch of the iPhone in 2007 has been described as "*kickstarting a mobile revolution that has transformed the modern world*". One of the keys to the iPhone's success is the seamless user-experience that makes it easy to set up and use, with minimal hassle from interoperability issues and security threats. This user experience was not accidental, but rather stems from Apple's decision to develop an integrated solution, including the operating system (**iOS**) which was - and remains - about guaranteeing a high-quality, safe and trusted mobile experience for consumers through its devices.
12. Apple's fully integrated devices face strong competition from multiple Android original equipment manufacturers, both in relation to price and device features. In recent years, new entrants to the premium smartphone market have increasingly challenged Apple. Besides Samsung and Huawei, other Android smartphone manufacturers including Motorola, Oppo, Vivo, Xiaomi, Google, LG and others have rapidly penetrated the Australian and global smartphone markets, including with high-end devices.
13. To compete successfully with Samsung, Google, Huawei and others, Apple differentiates itself on the basis of its continuing commitment to policies that protect the value that consumers clearly recognise and the benefit that developers clearly derive. This has, from the outset, been at the heart of Apple's vision and proposition to consumers and has significant benefits in relation to consumer protection, privacy, device and data security, and child safety. It also

¹ ACCC, DPSI Interim Report No. 3 - App Marketplaces (March 2021), [6.2.3].

supports a vibrant, healthy, competitive market in which small developers have an opportunity to be found by consumers and compete with established developers on a trusted platform.

14. Customer switching between devices with different operating systems (both between iOS and Android and between either of iOS or Android and other device operating systems including Samsung Smartphone) is a constant threat for Apple should it cease to compete effectively for customers through innovation. Apple has previously provided the ACCC with confidential switching data, which shows that there is a meaningful, consistent and upward-trending willingness of consumers to switch between devices and platforms, and an ongoing capacity for them to do so.
15. Apple also competes with other software distribution platforms to attract developers to the App Store. The Discussion Paper misapprehends the importance and extent of competition on this side of the market. By way of example, at least 22 other digital distribution platforms launched between 2008 and 2011 with which the App Store competes, including Google's Android Market (now Google Play), Nokia and Samsung's Ovi Store, Galaxy Apps Store, Amazon's App Store, and Nintendo's eShop. Apple also competes against PC and console app platforms such as Microsoft's Xbox and Sony's PlayStation, and other tablet devices. Apple seeks to attract new developers and to encourage existing developers to invest additional resources to enhance their existing apps or develop new apps. It does so by introducing new or improved features and services, and by adjusting its commission downwards for various categories of developers.
16. The Discussion Paper also fails to take into account the two-sided nature of app marketplaces and the fact that the availability of a broad selection of innovative and popular apps helps Apple sell iPhones. Apple has strong incentives to provide access to app developers to features and functionality within the device – such as the camera, sensors or GPS technology – as these apps then serve to improve the quality and experience of Apple's mobile ecosystem. Developers have benefitted enormously from Apple's approach. Apple has made it easy for them to create applications using Apple's proprietary technologies and intellectual property. And Apple has made it easy for developers to access customers around the world. Apple gives developers access to customers in 175 countries worldwide, with consistent rules, pricing and guidance across the globe, reducing costs and making it easier for developers to succeed across borders and to enter new markets.
17. Gaming apps multi-home on several platforms (smartphones, game consoles and PCs) and developers can exploit the fact that content purchased on another platform can be accessed by users of the app within iOS without incurring additional charges by Apple to the developer or user. Dating service providers rely on a similar approach, as users of dating apps can use their dating subscription plan previously made via web app or the provider's website on their iOS device.
18. For example, Apple has supported web apps (as an alternative means for developers to distribute apps to iOS users, other than the App Store) since the earliest days of the iPhone. Apple embraced the concept of web apps in 2007 when it launched the iPhone. Apple believed that web apps provided a great opportunity to create for the iPhone. When it decided to open its proprietary technology platform to native apps, Apple continued to support web apps. And in recent years, Apple has continuously added new functionality to its WebKit application programming interface (**API**) to enable greater features and functionality for web apps.

2.2 Apple is not a "gatekeeper" - developers have, and make use of, alternatives to native app distribution on the App Store

19. The Discussion Paper states that "*Apple's market power in the supply of mobile OS provides it with market power in relation to the distribution of mobile apps through the Apple App Store*". In taking this approach, the Discussion Paper fails to capture the distinction between "distribution of native apps" into the store and "distribution/monetisation of content" by developers.

20. The App Store is one of many distribution channels for apps to consumers; developers have multiple options for distributing their content to consumers. For example, as Apple has explained to the ACCC, a developer can avoid paying any commission by offering apps to be downloaded for free and then monetising through alternative means (such as in-app advertising). In practice, most apps are free to download (both for users and developers) and native app distribution does not trigger a commission unless the developer chooses to charge for the app download itself, which is rarely the case. 84% of native apps on the App Store do not attract any commission payable to Apple (as at October 2020).
21. In addition, developers have multiple monetisation options which they can pursue to avoid paying a commission to Apple. As the ACCC is aware:
- (a) Apple receives **no commission** when developers:
 - (i) offer apps for free;
 - (ii) offer apps that generate revenue from in-app advertising;
 - (iii) sell physical goods and services in their app; or
 - (iv) offer "reader apps", where users purchase or subscribe to content outside of the app, but can access that content on their devices (eg, a subscription to Netflix or Spotify, book titles for use in Amazon's Kindle app, or newspapers or magazines).
 - (b) Apple receives a 15% commission:
 - (i) for digital subscriptions purchased through the App Store after the first subscription year; or
 - (ii) where developers earn less than US\$1 million in revenue in the previous calendar year for all their apps, as well as developers new to the App Store.
 - (c) For other purchases of paid apps on the App Store (including in-app purchases of digital content and during the first year of digital subscriptions), Apple receives a 30% commission. Apple has **never** increased its 30% commission - which is substantially less than the 50% to 70% industry-standard revenue share charged on software application sales when Apple launched the App Store.
22. Any assessment of Apple's market power in relation to distribution of native apps on the App Store must therefore take into account the options available to app developers to adjust their monetisation approach, and avoid paying the commission altogether.
23. The Discussion Paper also raises "*concerns about Apple and Google's ability to set and enforce terms and conditions for access to the app marketplaces including the mandatory and exclusive use of proprietary billing systems for in-app payments*". It concludes that "*it is highly likely that the commissions charged by Apple and Google on in-app payments are inflated by their market power*". Once again, these statements ignore the reality that developers can and do sell digital content for use in their iOS apps outside of Apple's In-App Purchase (**IAP**). On this, they pay no commission to Apple - and never have.
24. Many significant apps successfully use these strategies to "disintermediate" Apple and distribute their content outside of the App Store. Prominent examples are music streaming services (Spotify above all) and video streaming services (eg, Netflix). With apps available for free download on the App Store, Spotify and Netflix have in essence disintermediated the App Store, continuing to appear in the App Store but in reality acquiring the bulk of their subscriptions outside the App Store (and thus avoiding paying any commission). Spotify, for instance, **turned off entirely** the option for consumers to subscribe via Apple's IAP in 2016,

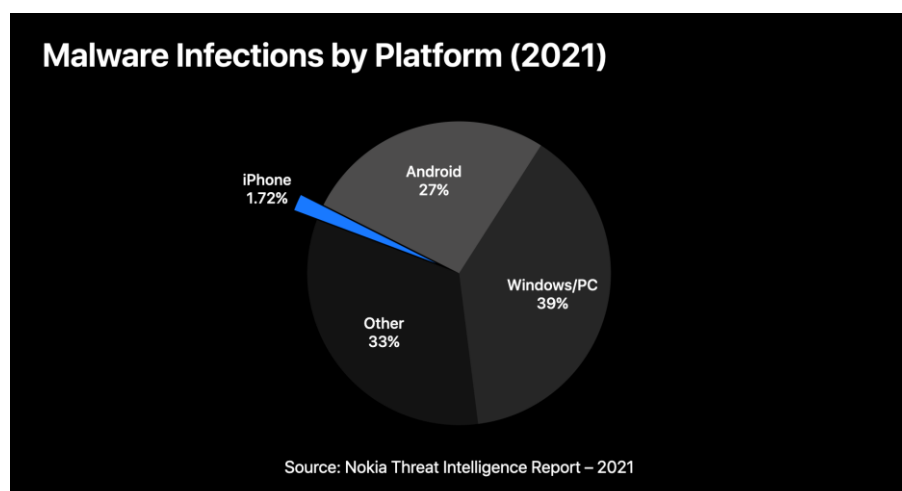
and has relied instead since then on Apple's reader-rule to allow users to access content on Spotify's iOS app.

25. The ACCC's assessment of "the distribution of mobile apps" as an activity where Apple purportedly has market power ignores this reality. Apple, as the owner of the App Store platform, is concerned about quality, integrity, safety, and overall experience. It has strong incentives to ensure that apps can be distributed through the App Store only if they meet sufficiently high standards. However, developers choose how to monetise their apps. If they choose to charge for download, Apple will take a commission on that sale. Alternatively, developers can use the App Store for app discovery and distribution and have their app loaded for free, whilst monetising their service also on different platforms and allowing users to import and consume the content on the iOS app free of charge.
26. As the Discussion Paper acknowledges, the Federal Government has recently announced consultation on payment systems reforms to address perceived gaps in current regulatory structures, including in relation to competition issues, in the context of in-app payment services and digital wallets. Apple submits that that consultation and regulatory development forum is a more appropriate means of identifying and addressing any sector-specific reforms in payment systems regulation for digital wallets and in-app payment services.

3. No basis for any requirement that Apple provide unfettered access to iPhone hardware or iOS

27. The Discussion Paper expresses a concern that digital platform service providers are engaging in self-preferencing conduct which can distort competition and decrease consumer welfare, or restricting interoperability of service outside a platform's ecosystem. To the extent that these concerns relate to Apple, they are misconceived.
28. As a preliminary matter, Apple notes that it makes technologies available to third-party developers including software tools which safely interact with device features, and has a strong track record of doing so. It is in Apple's interests to do so, as the greater the range of high-quality apps available on the App Store, the more attractive the overall iPhone experience will be for users and the better it is able to compete against other devices. The assumption underlying this concern (that Apple would want to disadvantage third-party apps) is flawed. Apple's incentives are driven by its overall business model, which remains that of selling mobile devices; the more attractive the device, the greater Apple's sales. Apple does not sell its consumers' personal information to advertisers or others. Apple generates the vast majority of its revenue from the sale of products like the iPhone and iPad. A greater choice of features and functionality that users desire is key to ensuring the attractiveness of Apple's devices.
29. Apple wants developers to create applications using the new technologies and innovations it introduces with every new device generation. Apple's incentives are reflected by the fact that Apple is constantly investing in its developer community by providing new tools, more flexible monetisation rules and other benefits for developers. Apple must compete, and innovate, to ensure that developers focus on developing innovative features for their iOS apps so that they are available on a timely basis and the iPhone maintains its reputation as delivering cutting edge performance. The Discussion Paper ignores Apple's incentives to ensure that it can offer a broad selection of innovative and high-quality apps on the App Store.
30. Apple has invested significant engineering time and resources to make more developer tools such as APIs available to third-party developers, and each year Apple has opened more and more APIs to developers. Today, there are more than 150,000 APIs available to developers, and that number continues to grow. This is clear evidence of Apple fostering competition by developers, rather than restricting or distorting it.
31. By way of example, whilst Safari is pre-installed on iOS devices in order to provide a seamless out-of-the-box experience for users (who expect to be able to immediately access the internet when they power on their Apple device with minimal set-up), Apple does not restrict users' ability to download and use alternative browser apps:

- (a) On iOS devices, users in Australia can choose among a variety of other mobile browsers available on the App Store, including Firefox, Firefox Focus, DuckDuckGo, Google Chrome, Microsoft Edge, Brave, Aloha, Cake, Opera Touch, DuckDuckGo Privacy Browser, and Dolphin. Additionally, Bing Search, Yahoo Search, Ecosia, Quant, Start Page, and Google Search are all search-enabled apps that allow users to browse the web.
 - (b) Further, Apple devices enable users to quickly change their default browser to the browser of their choice, and some web browser apps, including the DuckDuckGo browser, prompt users to switch their default browser when a user opens the app. Since the introduction of the App Store, Australian users have downloaded alternative browser apps or search-enabled apps millions of times on Apple mobile devices.
32. More fundamentally, if Apple were engaged in “self-preferencing” behaviour of the kind described in the Discussion Paper, and if Apple had the market power alleged, one would observe over time a strengthening effect in the market position of Apple’s apps that compete with third party apps. This is simply not happening, with competing apps from well-established players such as Microsoft, Hulu, Spotify, PayPal, Amazon, Skype, Google, and Meta often having a much greater share of the market in those downstream app categories than equivalent Apple apps.
33. It cannot be seriously argued that Apple must grant the same level of access to third-parties as it does to its own integrated apps, and at the same time. Apple must be careful when providing access to software technologies to ensure that the security, safety, quality, device performance, and integrity of the user experience is not compromised. This takes time to develop, refine, and test. It takes time to develop public APIs before being released because, once released, third party developers rely on the underlying functionality of the APIs always being there to power their own apps. And there are some technologies that Apple does not make available to third-party developers if doing so would compromise the security, safety or privacy of Apple’s users.
34. To the extent that there are differences in access to Apple’s proprietary technologies between third-party apps and Apple services, such differences are objectively justified by the need to ensure the safety and performance of Apple devices and the privacy and security of users. Any requirement that, for example, Apple give “comparable access to device hardware or operating system features as [its] first-party apps” would undermine Apple’s rigorous privacy and security controls (including App Review) and result in net consumer welfare detriments.
35. The Android iOS provides a real-world illustration of the counterfactual. In 2021, the iPhone platform accounted for just 1.72% of malware infections globally. By contrast, Android accounted for 27% and Windows/PC accounted for 39%, according to the 2021 Nokia Threat Intelligence Report:



36. As the ACCC is aware, App Review is an integral part of Apple’s multi-layered approach to security. App Review carries out a comprehensive check of every app and app update before it is made available for download, providing a critical layer of security through a mix of human review and automated processes. App Review applies the App Store Review Guidelines which helps to ensure that the apps on the App Store are safe, provide a good user experience, comply with Apple’s privacy rules, secure devices from malware and threats, and use approved business models. When users download an app from the App Store, they can trust that the app will:
- (a) work properly;
 - (b) not compromise the functionality of their device; and
 - (c) not engage in forms of program abuse that harm customers, such as tricking users in to purchasing subscriptions, engaging in bait-and-switch tactics to evade human review, or impersonating other apps.

4. Many of the proposed reforms place consumer welfare (including privacy and security) at substantial risk and will result in net public detriments

37. The potential regulatory interventions canvassed in the Discussion Paper are ill-founded and premature, given the absence of any evidence demonstrating real competitive harm insofar as Apple is concerned. With respect to the App Store, in particular, this is of key concern, given the draconian nature of the interventions proposed, including the possibility that Apple could be required to provide full access to iPhone hardware or iOS features to all third-party apps within the App Store.
38. Apple’s multi-layer approach to security is designed around its “walled garden”, of which a single App Store is a key element. Replacing Apple’s robust systems of App Review and quality control with a blanket obligation to provide access to hardware and iOS features to third-parties would in no way be sufficient to match the protection offered by Apple’s current approach. This is obvious from the fact that Android, which does rely on lesser protections, has a significantly poorer track record on preventing malware. Similarly, Apple’s built-in privacy protections, such as App Tracking Transparency, would be rendered ineffective by such remedies, as apps could access device or user data and collect or share this without the user’s permission.
39. On the other hand, the incentives of individual developers are *not* aligned with Apple’s (and ultimately consumers’) in the same way: a developer cares for its own app, not for the App Store, and not for the impact that the App Store experience has on the performance, functionality or sale of Apple devices. A developer can inflict negative externalities on the App Store (and the ecosystem) which it does not “internalise” (in practice, a “bad” experience with an app damages the App Store more broadly and potentially other apps too, if the consumer decides to “switch away”, but the developer of that particular app does not care about these externalities). Apple, on the other hand, has designed its business model to internalise the complementarities across its products and services, and directly takes into account that users benefit from a vibrant app ecosystem and that a larger user base on iOS in turn is attractive for app developers.
40. The increased risk of malware attacks that would result from mandating access to hardware or software features would put all users at greater risk. The App Store is designed to detect and block today’s attacks, but changing the threat model would bypass these protections from more sophisticated attacks. Scammers would then use their newly developed tools and expertise to target third party stores as well as the App Store, which would put all users at greater risk, even those who only download apps on the App Store. Further, malware would not just impact the entry point app. For example, it could seriously undermine the functioning of other apps because effects such as excessive battery use or invasive data collection interfere with apps already downloaded.

41. Potentially even more seriously, malware introduced into a device can be used as a stepping stone to getting access to other devices or systems to which that device connects. Individual mobile devices are recognised as a common entry point to deploy network-wide attacks in enterprise settings. Moreover, with access to personal information from a user's device, attackers are well positioned to launch attacks on a user's friends and family.
42. The Discussion Paper's proposed regulatory interventions risk not only failing to meet their stated aim of increasing competition and consumer choice, but actively reducing the existing choice available to consumers and exposing consumers and their families to substantial greater privacy risk. In addition, it would be patently unreasonable to require a remedy that removes the existing necessary security and privacy protections available on the assumption that Apple could be expected to find alternative safeguards to replace them. Not only is it clear that the integral and embedded nature of the existing protections cannot be fully replicated, but such a requirement would force Apple to completely re-architect its systems and spend potentially vast amounts of resources developing security solutions that would, of necessity, be less effective than those it already offers users.
43. Taken at their highest, the Discussion Paper's proposed remedies would help malicious actors circumvent App Review. Via App Review, native app developers must expose the compiled binary of their apps to scrutiny. Critical to this protection is the fact that the behaviour of the native app is observable. Web content is not. Browser engines compile and execute code originating from websites in real time, much of which is not static and may be unseen and unknown to users.
44. Today, iOS guarantees that the only dynamic code on the platform is vetted by WebKit in a dedicated process, helping Apple to ensure that dynamic code cannot be abused to circumvent App Review and attack the user's device or invade the user's privacy. With third-party engines on iOS, attackers would have more avenues to infiltrate a device undetected by system security protections and more opportunities to degrade user privacy.
45. To fully assess and even attempt to mitigate the risks implicated by increased and unfettered access by third-parties to device hardware and operating system, Apple would need to completely rethink the iOS security, privacy, and performance model and it (and third parties) would incur massive costs in the process. To take one example: architecting a novel sandbox for third-party browser engines would require ground-up analyses of third-party engines with which Apple is not familiar. Third-party vendors would very likely need to substantially re-design their engines to meet iOS security and privacy requirements.

5. Proposals to limit developers' and other platforms' use of consumer data are welcome - but have no relevance to Apple

46. Apple welcomes measures to limit or restrict the commercialisation of user data, particularly with respect to data which is collected without the user's knowledge and permission.
47. Privacy is embedded in the DNA of Apple's products and the App Review process. Apple believes privacy is a fundamental human right, and privacy has long been an integral part of Apple's brand.
48. As the ACCC is aware, Apple does not engage in the commercialisation of user data. In fact, Apple limits the use of user data by third-parties by:
 - (a) not engaging in tracking consumers across third party apps in the provision of Apple-delivered advertising. Therefore, unlike third-party advertising service providers, Apple does not need to prompt users for permission to track because it does not engage in this practice. Apple simply does not track users in this way;
 - (b) giving users an additional privacy choice related to Apple's own limited data collection practices across a limited number of first party apps – a choice that third parties do not give users. As this is an additional consumer choice about the use of their data, Apple proactively presents users with a more prominent, unavoidable

option to choose between Personalised Ads On or Off for Apple-delivered advertising. This choice screen is presented upon launch of the App Store or of Apple Stocks or Apple News in Australia and informs users as to the purpose of Personalised Ads and its privacy practices, so that the user can decide whether to turn on or off Personalised Ads; and

- (c) when users choose to have personalised advertising, relying exclusively on a limited amount of first-party data (ie, data that is collected by a company through the use of its own services, such as the information that a user provides directly to a developer from their use of a developer's app). By contrast, most major advertising platform companies — including Meta and Google — do not offer users a choice of disabling the use of first-party data for targeted advertising. And those that do offer such a choice bury it beneath a cumbersome process involving numerous settings screens. Apple is once again at the forefront, by expressly and unavoidably prompting users for permission to use first-party data to deliver Personalised Ads.
49. However, part of the ACCC's proposal includes Apple being required to ring-fence its data obtained as an app marketplace operator from other operations and business decisions to minimise the risk that the information provide an unfair competitive advantage over other app developers.
50. Such a remedy would be inordinately burdensome on Apple and the organisation of its business, and without any basis insofar as Apple is concerned. Apple's business is perhaps uniquely structured in a cross-functional way, with different functions all working together cohesively and operational units being shared with multiple business groups across Apple.² Remedies that mandate functional or structural separation could require significant systemic changes across that business. And obviously, such systemic changes would have a long-lasting impact on Apple.
51. The ACCC has provided insufficient evidence of harm to warrant such a burdensome remedy and conversely has not articulated with cogent evidence, in the case of the integrated Apple hardware, software and services, what the benefit to consumers would be or doing so.

² See <https://hbr.org/2020/11/how-apple-is-organized-for-innovation>