



16 October 2020

Australian Competition & Consumer Commission
Digital Platforms Branch

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[REDACTED]

Nine welcomes the opportunity to provide its submission to the Australian Competition and Consumer Commission's Report on App Marketplaces as part of the Digital Services Platforms Inquiry (**App Marketplaces Inquiry**).

Nine is an Australian media company which produces Australian and international news, sport and entertainment content which is loved and relied upon by Australian audiences. Many parts of Nine's business are reliant upon apps being included in the Apple App Store, Google Play Store and connected TV app marketplaces to ensure audience accessibility on smartphones, devices and connected TVs. Nine is concerned that there is, and will continue to be, a significant impact on its business due to the onerous obligations imposed by Apple, Google and connected TV manufacturers and providers.

Many of Nine's leading brands are affected by the significant market power and imbalance the subject of the App Marketplaces Inquiry. The most relevantly impacted Nine brands are listed below:

- Our digital streaming: 9Now and Stan apps
- Our free news services: 9News app
- Our subscription news publications: *The Sydney Morning Herald*, *The Age* and *The Australian Financial Review* apps
- Our digital radio: 2GB, 3AW, 4BC, 6PR, 2UE 954, Magic 1278, 4BH 882 and 6GT apps
- Other: Domain

Nine strongly supports the Free TV and CRA submissions in relation to the App Marketplaces Inquiry. We particularly support Free TV's submissions on connected TVs and prominence. Nine also supports the issues raised in the App Marketplaces Inquiry issues paper and makes the following submissions (using the numbering of the questions in the issues paper) and provides examples specific to our experience.

2. What are the barriers to entry and expansion in app marketplaces?

2.1 Google and Apple

Google and Apple controlled operating systems and their accompanying app stores account for 99% of smartphones worldwide¹. As a result, app developers essentially have no option but to list in the App Store and Google Play Store.

¹ ACCC Digital Platforms Inquiry report
www.nineentertainment.com.au



- Apple prohibits apps not in the App Store and developers are required to adhere to Apple's very strict rules in order to reach any iPhone users
- Google allows third-party installations to Android phones, but confronting disclaimers prior to installation of non-Play Store apps severely limits app producers' ability to reach Android users

Apps are a vital channel for reaching Nine users of Nine's Video on Demand (**VOD**) products (9Now and Stan) and news products (*The Sydney Morning Herald*, *The Age*, *The Australian Financial Review* and 9News). This is because:

- For VOD: Apps are the primary avenue for accessing VOD on mobile devices and therefore an essential offering. A web-only offering would significantly impact reach and, in turn, the market opportunity in free broadcaster video on demand.
- For News: Research suggests apps are the preferred engagement medium for heavily-engaged users. The 2019 Reuters Digital News Report showed that there is a positive correlation between the percentage of users that subscribe for content and the proportion that have direct access to a news service (e.g. an app). Furthermore, features such as news alerts (which are typically activated through an app) are 2.5 times more likely to be used by heavy news users than by casual news users.²

2.2 Connected TVs and smart-TV aggregation devices

Nine appreciates that whilst the focus of the issues paper is on the Apple App Store and Google Play Store, Nine submits that connected TV's, set-top boxes and related smart-TV aggregation devices provide similar entry and expansion issues and should be considered by the ACCC in its review.

Smart-TV aggregators such as Apple TV, Amazon Fire, Foxtel IQ and Telstra TV also impose conditions on apps being included in their aggregated marketplace, meaning that similar to the issues raised above in relation to the connected TV manufacturers, app developers and owners have no choice but to also comply with the conditions and prices set by the aggregators so that our apps will be included on these formats.

There is also no attractive or commercially viable way to bypass the connected TV or smart-TV aggregation device marketplaces. If Nine were to leave their 9Now or Stan apps off the connected TV or smart-TV aggregation device, then on most connected TV and smart-TV aggregation devices consumers would not be able to access the 9Now or Stan content. Given the increasing prevalence of connected TVs, this will over time result in a significant number of consumers not being able to access Nine's content, which would irreparably damage Nine's business.

Whilst some Android devices and some newer Sony smart TVs allow the installation of an app without going through one of these app marketplaces, this would be an unattractive (and difficult) process for the consumer – as their TV warranties may become void, or they may face general security concerns.

User experience may also be impacted if the user downloads an app from the web instead of from the connected TV's designated app marketplace, with many of the features in the app not being able to be present or replicated, and making it increasingly unlikely that users will pursue with a less user friendly experience.

10) Are app developers required to use related products and services of particular app marketplaces in order to operate effectively?

² https://reutersinstitute.politics.ox.ac.uk/sites/default/files/inline-files/DNR_2019_FINAL.pdf
www.nineentertainment.com.au



10.1 Google and Apple

In order to stay on the Apple App Store, Nine has had no other choice but to add Apple features to its apps and web services in order to comply with App Store rules. For example, the addition of “Sign-in with Apple” aligns with Apple’s business objectives, but was not necessarily demanded by users of Nine’s apps and generated additional development cost for Nine, given the strict timeframe for its implementation.

Apple: third party or social login

In September 2019, Apple announced changes to its rules that stated “Apps that use a third-party or social login service (such as Facebook Login, Google Sign-In, Sign in with Twitter, Sign In with LinkedIn, Login with Amazon, or WeChat Login) to set up or authenticate the user’s primary account with the app must also offer Sign in with Apple as an equivalent option.” and that “Existing apps and app updates must follow [the new rules] by April 2020.

Non-compliance with these rules results in a potential removal of apps from the App Store.

In this instance, compliance with App Store rules required a change across all platforms, not just the iOS app, in order to allow customers to access their service from multiple devices (e.g. web browser). This converts a web log-in experience, that is completely separate from Apple, into an acquisition channel for Apple’s Sign-in with Apple product.

For Nine, the mandate to incorporate Sign-in with Apple if other third-party sign-in options were already offered to users had a significant impact.

Different apps opted for varied approaches based on benefits to consumers and business requirements:

- 9Now: Opted to remove Sign-in with Facebook rather than add Sign-in with Apple, which would have undermined its addressable advertising proposition due to data limitations. Removal of Facebook authentication was disruptive to users, and would not have occurred if not for Apple’s mandate. The estimated development effort from this change was over 110 days and put over 3million existing 9Now users, who logged in via Facebook, at risk of being unable to access the app unless they re-register. This produces user frustration and dissatisfaction and the risk for Nine that we will lose that section (or a portion of that section) of our audience.
- *The Sydney Morning Herald/The Age*: Redirected product development resources to urgently integrate Sign-in with Apple, for no business benefit as other commercial circumstance dictated that we needed to maintain Google authentication on these products. The requirement to invest in product development with no discernible benefit to Nine not only has financial implications for Nine, but also forcibly redirects investment away from innovation in improving apps for our users in favour of investment to support Apple’s objectives. The estimated development effort as a result of this change was ~140 days.
- Nine Radio: limited the ability to launch new apps (in development) with third-party logins, as planned and already available on the web.

13) Do app marketplaces have the ability to self-preference their own apps over those of third party app providers? How?

13.1 Google and Apple

Apple, in particular, has significant influence on the visibility of apps in the App Store via the ‘Today’ tab. By specifying additional requirements for apps to be eligible on this tab, Apple influences developers to create



apps in a way that suits Apple's needs, but which do not necessarily meet or align with Nine or its audience's needs.

Featuring apps on the 'Today' tab allows Apple to preference their own apps that offer a similar service (e.g. Apple TV+ vs. 9Now, Apple News vs. *The Sydney Morning Herald*). For example, Apple indicated that they would not promote our new apps for *The Age* and *The Sydney Morning Herald* unless they were "universal" apps that worked on both iPhone and iPad.

13.2 Connected TVs and smart-TV aggregation devices

Self-preferencing and prominence are issues that significantly affect Nine's app on these devices. Connected TV manufacturers and smart-TV aggregation devices are increasingly being sold with preset or pre-installed preferences (including buttons on remote controls taking the user directly to the pre-installed app without having to navigate). These deals are predominantly being done at an international level and those opportunities are not generally being offered to smaller or local businesses such as Nine. The effect of this is that large international companies are excluding Australian business from participating in these deals, in circumstances where Australians may prefer to watch Australian content, but need to navigate to find it, rather than having it most readily available. Navigation to local content on connected TVs and smart-TV aggregation devices is incredibly difficult and complex.

22) To what extent do app developers/providers have concerns with app marketplace review processes? Please provide detail relating to each marketplace used.

22.1 Google and Apple

It is Nine's experience that there is very limited support in understanding what is permitted on the Apple App Store in particular. The rules listed are often open to interpretation and the only reliable way to confirm your interpretation is correct is by submitting an app for review and waiting for feedback.

Previously approved elements can be ruled out in app updates as subsequent reviews are inconsistent with initial submissions. Apple representatives in Australia can provide general advice but are reluctant to speculate on the outcome of the App Store review process.

Furthermore, changes in app marketplace rules and review processes can significantly disrupt market dynamics in industries completely separate from their own.

- For example, Apple disrupted the way ad-funded industries earn revenue by announcing significant changes to the ability to collect an advertising identifier (IDFA) that links a device to marketing campaigns
- This identifier was an essential element of the digital proposition of 9Now in attracting advertising revenue to digital campaigns on iOS
- Apple gave app providers a short window (two months) to adapt to this material change which resulted in a significant redirection in development resources away from innovations and feature improvements. Despite this limited time frame to comply, Apple then subsequently decided to provide extra time for app owners to comply – the impact on Nine was that resources needed to be diverted off existing projects to meet this tight time frame, delaying other major projects and resourcing.

In addition, Apple recently released iOS 14 earlier than expected, providing app developers with 24 hours' notice. This meant third party integrations such as Google Chromecast could not provide SDKs in time for a timely update to the 9Now app and users were left with a poor user experience.

30) What range of consumer data can be collected from the use of an app? a) To what extent is this data accessible to the app providers?

30.1 Google and Apple



Apple and Google place themselves firmly between the user and the app provider for all apps on the App Store and Play Store. For example, Apple provides very little information on *The Sydney Morning Herald* subscribers that initially subscribe via the App Store app. This has two main impacts:

- It is not always possible to communicate with these customers or understand if they are using the app, resulting in a worse customer experience and risking Nine's business relationship with app users
- Even as more information was made available (through development effort and significant time spent working with Apple), Apple's App Store rules limit direct contact with these customers

The lack of user information available also creates data challenges for other Nine group apps, e.g. Domain, where existing user profiles cannot be matched up with iOS app users. This can result in duplicate profiles and a very poor user experience.

33) What terms in the Google Play Store and the Apple App Store, related to payments in the app, are app providers required to comply with?

33.1 Google and Apple

The Sydney Morning Herald, *The Age* and *The Australian Financial Review* apps are classified as digital services / in-app products and are subject to a 30% commission for the first year of all subscriptions made through the app marketplaces and to 15% commissions in each subsequent year

This commission structure is non-negotiable and is the only payment method available for subscribers who commence subscriptions via apps. This commission has a large impact on Nine's net revenue, at a time when revenue derived from subscribers is increasingly important to maintaining total revenue, and as such diverts revenue to Apple that could otherwise be invested in additional journalism.

35) To what extent does the imposition of this fee affect an app's commercial viability?

35.1 Google and Apple

A 15% and 30% commission on subscriptions through app marketplaces significantly undermines the commercial benefit derived by Nine from these apps.

In the case of Nine's subscription apps, the commission charged by app marketplaces is fundamentally for processing a payment, no other real benefits exist for consumers or Nine. This is significantly higher than other payment channels.

Furthermore, strict rules on both app marketplaces forbid app providers from listing the full suite of subscription / payment options to app consumers, essentially forcing consumers to pay with the Google or Apple payment method.

These restrictions can undermine the business case for new consumer propositions to market. As a result, Nine and other popular app providers opt to not offer payments through the App Store or Play Store for select apps, for example:

- Stan: does not offer subscriptions sign-up in the iOS app, only existing customer sign-in;
- Spotify and Netflix: do not offer premium subscriptions sign-up in iOS or Android app, only ad-supported sign-up or existing customer sign-in³;

³ <https://www.reuters.com/article/us-apple-spotify-tech/apple-says-it-collects-fee-on-less-than-1-of-spo-ify-users-idUSKCN1TP2D0>



- Fortnite: no iOS app, Android app direct from website⁴.

This option is realistically only available for incumbents with significant brand recognition and consumer pull, which significantly disadvantages new entrants who are essentially forced into paying the high commissions.

I am instructed that due to the market power imbalance, competitive terms are virtually impossible to obtain on the App Store or Play Store due to an apparent reluctance of Google and Apple to engage in negotiations.

Reports suggest that improved terms can be made available to global conglomerates where tech giants can garner a mutually beneficial relationship (e.g. Existing customers can make purchases directly with Amazon in the iOS Amazon Prime Video app, bypassing the 30% commission applicable to almost all other similar providers⁵).

35.2 Connected TV's and smart-TV aggregation devices

Nine is concerned that the practical impact of this is that Australian content and stories may not be easily accessible to users and may result in less user engagement with local Australian content.

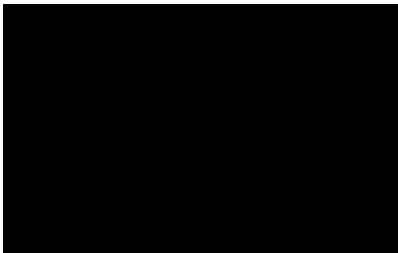
36) How satisfied are app developers and app providers with their relationships with the key app marketplaces? For example, in relation to costs and fees, interoperability of apps with app marketplace services, tech support, rankings, display and presentation of apps etc.

36.1 Google and Apple

App marketplaces are an important channel for Nine to reach its users but current payment terms of 15-30% of transactions are egregious. The market power of Google & Apple exposes Nine to significant risk of loss of revenue / unnecessary costs to comply with rules put in place to benefit tech giants but not our customers, e.g. IDFA, Apple sign-in.

Please do not hesitate to contact me if you would like any further information or would like to discuss this matter.

Yours sincerely



⁴ <https://www.epicgames.com/site/en-US/free-fortnite-faq>

⁵ <https://www.theverge.com/2020/4/3/21206400/apple-tax-amazon-tv-prime-30-percent-developers>