Submission: Digital Platform Services Inquiry – March 2025 – Final Report

August 2024

1. Introduction

Spotify welcomes the opportunity to make a submission on the *Digital Platform Services Inquiry –March 2025 – Final Report*.

Founded in Sweden in 2006, Spotify has evolved over the last 18 years into an audio streaming service that offers users in Australia and around the globe access to a comprehensive catalogue of music tracks, podcasts and audiobooks. We offer a premium subscription tier and an advertising supported free tier to our users.

Since entering the Australian market in 2012, Spotify has been deeply committed to Australia and its creators. In 2023, more than 80 percent of all royalties generated by Australian artists on Spotify were from listeners outside of the country, with Brazil, Mexico, and Germany emerging as new export markets for local artists. Globally on Spotify, Australian artists were discovered by first-time listeners more than 2.7 billion times last year, and more than 4,000 local artists were added to our editorial playlists. With more artists having a seat at the table and the ability to make money from their art, Australia's music industry is bigger than ever. In 2023, royalties generated by Australian artists from Spotify reached nearly 275M AUD, up almost 10 percent since 2022. Approximately half of these royalties were generated by independent artists.[1]

As a company that depends upon accessing its customers through mobile ecosystems like Apple's App Store, Spotify has seen and experienced first hand the unfair and anticompetitive behaviour Apple has increasingly engaged in as its market power over mobile ecosystems has grown and become even more entrenched – market power that now extends across multiple levels of the chain, including the App Store and Operating System (iOS).

Despite more than a decade of dominance and monopolistic conduct, traditional competition laws have had limited effect on this entrenched power, and Apple's conduct has continued. It has resulted in anticompetitive harm for thousands of app developers and millions of consumers globally. This problem has been compounded by the persistent circumvention of regulations and court rulings.

[1] Spotify Loud and Clear Report, Spotify Newsroom, 11 July 2024 <https://newsroom.spotify.com/2024-07-11/spotify-celebrates-a-thriving-australian-music-industry-with-pop-sensation-tones-and-i/>

Spotify fights globally to support sensible legislation to correct market failures presented by digital giants like Apple, and for free and fair competition that puts consumers in the position of determining market outcomes, not digital gatekeepers. Spotify appreciates the ACCC's diligent work in this area and encourages the government to move forward swiftly with legislation that will restore competition – and, importantly, will take lessons from other jurisdictions to avoid the delay, avoidance, and willful noncompliance tactics that Apple has perpetuated elsewhere.

Spotify submits the following observations and comments to the ACCC with regard to its current consultation on competition. In this document, Spotify comments on international regulatory developments and trends in app marketplaces in the last few years. Spotify is not commenting on the consultation's questions about emerging competition in gaming, artificial intelligence, or cloud services.

2. International regulatory developments

Spotify has been intensely involved and hopeful about global legal developments when it comes to competition in app stores, particularly in Apple's App Store. So far, those hopes remain largely only hopes, but Spotify remains committed to helping legislators and enforcers understand the need for swift and effective intervention and the ways to do so.

In our experience, Apple responds to new legal requirements with new anticompetitive fees, obfuscation, and delay. In particular:

- The Digital Markets Act (DMA) applies in Europe. Apple's App Store was designated as a gatekeeper. Although the European Commission strongly encouraged Apple to market test potential compliance strategies during the six month period between designation and compliance, Apple refused. Instead, it announced new fee structures that are designed to thwart the goals of the DMA. Depending on the "options" an app developer selects, the fees are as high as 25 percent of revenues plus annual per-user fees. Apple has also proposed a fee for participating in alternative app stores. Such alternative app stores present the possibility of bringing competitive pressures to the market and result in outcomes that reflect competitive pressures, as most markets do. But Apple is intent on thwarting any such competition with its fee structure that punishes any app store or developer with per user fees that cannot work economically.
- In response to a complaint from Spotify, the European Commission investigated Apple's App Store practices under traditional European competition law. On 4 March 2024, after almost five years of investigation, the Commission found that Apple had violated the law, and it fined Apple 1.84 billion Euros. It also required Apple to cease its illegal conduct. In response, Apple demanded a 27 percent commission from music streaming services, which violates the Commission's decision. In August 2024, Spotify decided to agree to some of Apple's new "entitlement" in response to the decision, under protest. Spotify now shares basic pricing information in app with its users in Europe. But Spotify is not able to create a simple or easy user experience to purchase services in app, as Apple continues to demand a 27 percent tax for any payments resulting from an in-app link.

- The Digital Markets, Competition and Consumers Act (DMCC) was enacted a few months ago in the United Kingdom. It remains to be seen how Apple will respond. To Spotify's knowledge, Apple has not conferred with any app developer of significant size about compliance with the DMCC.

We see the same as regards challenges under existing law:

- In the United States, Apple was ordered to stop its illegal rules forbidding app developers from communicating purchase options to customers pursuant to a lawsuit filed by Epic Games and subsequent court rulings. Apple responded by demanding a 27 percent tax for any payments resulting from communications with customers about offers in-app. This continues to be a topic of contentious litigation in the US.
- In the United States, a jury unanimously found that Google's app store policies violate the antitrust laws.
- Japan recently passed a bill about app store marketplaces. Spotify is hopeful that the Japan Fair Trade Commission will use all of its powers to stop the exploitation of Japanese consumers and app developers.
- In Australia, as the ACCC is aware, litigation is ongoing between Epic and the two large app stores.

This record is, unfortunately, clear. Apple earns undisclosed billions from its App Store's monopolistic policies, and it is unwilling to relinquish those profits. It even refuses to testify under oath how big those profits are.

Australia can benefit from these global learnings and develop legislation that will bring the benefits of competition to consumers quickly and without further exploitation of app developers. In particular, legislation should be designed to prevent designated digital platforms from continuing their anticompetitive practices. Spotify believes that service-specific codes of conduct could be an effective way of restoring competition quickly, especially with regard to fair treatment of business users, preventing anticompetitive self-preferencing, and preventing tying.

3. Trends in app marketplaces

Unfortunately, anticompetitive practices continue to plague app marketplaces. Apple continues to demand a 30 percent tax on in-app purchases of digital goods and services. It continues to restrict Spotify from sharing truthful information about pricing in the Spotify app in Australia, and to offer promotions or ways to manage an account, like updating credit card information - greatly impacting user experience.

A few years ago, Spotify was focused on music. We are evolving and now bring to users a variety of audio content - music, podcasts, audiobooks. As Spotify develops, there are new competitive issues and new and innovative ways we could serve consumers absent Apple's anticompetitive regime.

As the Commission may know, audiobooks are dominated by Amazon's Audible offering. We are offering something new and exciting for eligible Spotify Premium users in Australia who automatically receive fifteen hours per month of audiobooks with their subscription. They can purchase more hours if they wish, but not in app due to Apple's rules requiring the use of its in app payment system and associated commissions. Worse, Spotify is barred from telling customers how they could buy more audiobook hours because Apple's rules prevent Spotify from delivering messages such as "buy more audiobook hours for $X at Spotify.com." Indeed, when users buy audiobooks a la carte Spotify is banned from telling customers in app what the price for that audiobook is, much less from completing the transaction in app. Instead, customers are left to figure out for themselves how to buy audiobooks.

Spotify has a wide range of innovative ideas that would bring valuable new options and services to market, but only if we can do so profitably. Under Apple's rules and fees, many of those ideas are impossible to test in market, given the high cost of Apple's fees.

Finally, despite the Digital Markets Act having been in full effect since March 2024, no general purpose alternative iOS app store has even attempted to enter the market. Spotify believes that this is because Apple designed its fee structure, particularly its "Core Technology Fee" to ensure that free apps like Instagram and LinkedIn, which can remain on Apple's current store for free, would find it uneconomical to consider an alternative app store.

Spotify thanks the Commission for its work on these issues and remains committed to assisting in its efforts to restore competition to mobile ecosystems.