



February 01, 2022

The Honorable Dick Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Chuck Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

**Re: Committee hearing on S.2710 – Open App Markets Act**

Dear Chairman Durbin and Ranking Member Grassley:

Consumer Reports supports S.2710 and applauds the bipartisan group of Senators working together to address the stranglehold that Apple and Google have on our smartphones. Smartphones are the linchpin of our digital ecosystem, and the apps on smartphones are increasingly the [primary mode for consumers](#) to access online services – both inside and outside their homes.

Multiple investigations and studies have found that Apple and Google have too much market power when it comes to our smartphones. These investigations include not only this Committee’s examination of this problem, but also the House Antitrust Subcommittee’s investigation, as well as competition enforcers around the world.<sup>1</sup>

These findings are not surprising given [virtually all smartphones](#) run on either Apple’s iOS or Google’s Android mobile operating systems. This has been the case for nearly a decade. Moreover, a consumer typically uses either an Apple or an Android smartphone, not both at the same time, and very few consumers switch from Apple to Android or from Android to Apple.<sup>2</sup> This gives Apple and Google absolute control over the terms and conditions for almost all transactions on smartphones.

**As a result, consumers end up paying more for services than they should. S.2710 will allow app developers to use alternative payment systems and to freely inform consumers if they can get better deals.**

This domination of the mobile marketplace is highly lucrative to Apple and Google. Apple’s gross app store revenue in 2021 increased to over [\\$85 billion](#), and Google’s to over [\\$45 billion](#). So it is not surprising that the two have imposed rules for their app stores that entrench their dominant positions at the expense of their captive users – both the consumers who use their smartphone systems, and the businesses that sell consumers apps and services.

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<sup>1</sup> See for example the UK’s Competition and Market Authority’s *December 2021 Mobile ecosystems market study interim report*: <https://www.gov.uk/government/publications/mobile-ecosystems-market-study-interim-report>

<sup>2</sup> The UK’s CMA estimates that in 2020 users switching away from Apple to Android were 2.5% of Apple’s user base and users switching from Apple to Android were 8%. *Op. Cit.*, para 3.27.

One example of this unchecked power is that Apple and Google prohibit payment solutions in their app stores other than their own. This enables them to charge a [15% to 30% service fee](#) on sales through their app stores, and on an ongoing basis on digital sales via apps.

Consumers face higher prices when part or all of these fees are passed on to us. Paying this higher price is not a choice that consumers actively make. They often aren't even aware that they can buy the same service for a lower price, or with added benefits, outside the app store. That's because Apple and Google explicitly prohibit app developers from freely communicating this fact to consumers.

The Open App Markets Act will prohibit Apple and Google from mandating payment exclusivity, and will introduce competition in payment systems. It will also allow app developers to freely inform consumers if they can get a better deal, by prohibiting interference with legitimate business communications.

**Third-party apps are not able to compete on a level playing field. S.2710 will require non-discrimination, and will prohibit Apple and Google from using confidential marketplace data to undercut retail competitors.**

But the problems don't stop there. Apple and Google's own apps are often set as the default choice. Their own apps don't have to pay the 30% commission, and they may get preferential ranking in app store search results. Third-party apps are artificially disadvantaged. Consumers might not end up buying or using the app that best serves their needs.

That's why we need fair market rules to ensure that third-party apps can compete on fair terms with Apple and Google's own apps. The Open App Market Act's provisions requiring non-discrimination and prohibiting the use of confidential marketplace data to compete in the retail market would help do exactly that, and enable more innovation and choice for customers.

These fair market rules will restrict self-preferencing for Apple's or Google's own apps in store search results, and will allow consumers to more easily set third party apps as defaults for key functions like email, search and smart voice assistants. Third-party apps will also have equivalent access and interoperability with the underlying mobile operating systems and mobile device functions, like payment chips and Bluetooth capabilities, to Apple and Google's own apps. This would enable businesses other than Apple and Google to innovate freely on smartphones, leading to more innovation by all companies – big and small – to the benefit of consumers.

**The bill proposes targeted solutions and includes provisions to safeguard user security and privacy.**

The Open App Markets Act narrowly targets policy intervention at the app marketplace, and proposes fair market rules that will benefit consumers. These targeted solutions strike the right balance between introducing more competition on smartphones and preserving Apple and Google's own incentives to keep developing their mobile ecosystems.

Importantly, Apple and Google would not be in violation of the Open App Markets Act if they are taking actions to protect user privacy, security or digital safety or to prevent spam or fraud. This means that nothing in the bill prohibits Apple from introducing new and innovative ways to ensure user safety for apps distributed via third party app stores. These less restrictive alternatives that enable more competition exist. These solutions fall between the current Apple

model that prohibits *any* alternative app distribution, and unrestricted distribution. Such solutions could include, for example, Apple notarizing apps distributed via third party app stores.<sup>3</sup>

**Consumer Reports supports S. 2710 – the Open App Markets Act.**

Throughout our 85+ year history, Consumer Reports has emphasized the fundamental importance of competition for ensuring a marketplace that works for consumers, and for all who seek to reach them. Competition empowers consumers with the leverage of choice, the ability to go elsewhere for a better deal, which means businesses must be responsive to consumers’ interests. Addressing dominant online platforms’ gatekeeper role, its exploitation, and lowering entry barriers, is crucial to achieving this.

We look forward to working with you to ensure that the app marketplace works for consumers and for businesses big and small that seek to serve their needs.

Sumit Sharma  
Senior Researcher, Consumer Reports

George P. Slover  
Senior Policy Counsel, Consumer Reports

**cc: Members, Senate Judiciary Committee**

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<sup>3</sup> See for example the direct examination of [Dr. James W. Mickens](#) in the EPIC – Apple Case, available here: <https://app.box.com/s/6b9wmjvr582c95uzma1136exumk6p989/file/811109540289>