

A Primer on the Open App Markets Act (OAMA)– Setting Fair Rules to Ensure a Competitive App Marketplace

[S. 2710](#) / [H.R. 7030](#)

Recommendation – Support

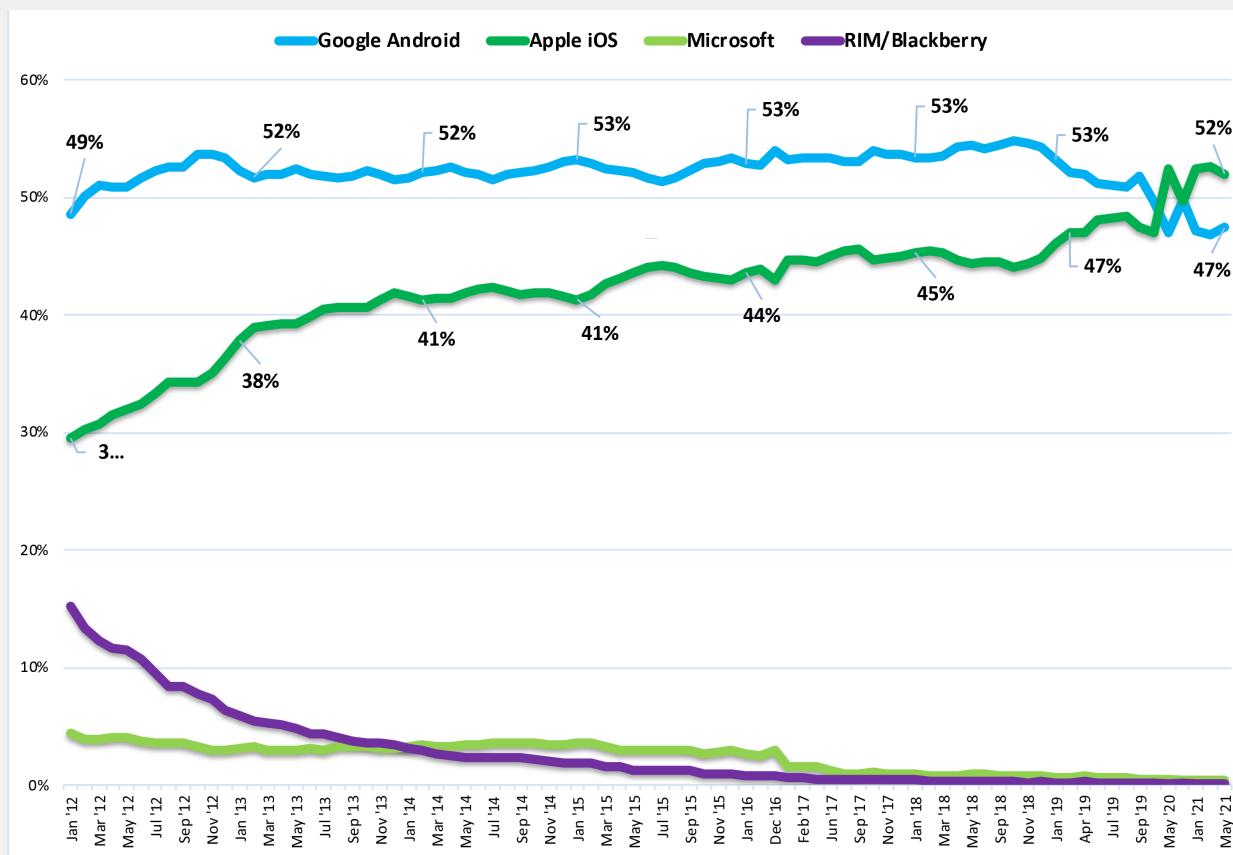
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Smartphones run on either Apple’s iOS or Google’s Android mobile OS and Apple and Google make billions in app store revenues.

Apple and Google have close to a 50-50 share of the US smartphone market

US Smartphone Operating System Subscriber Share
2012-2022



Source: Statista

1. Transient high market shares and market power are not indicative of a competition problem. Indeed, it is this possibility that incentivizes companies to take risks and introduce new and innovative products or services. But if a market is competitive or tends to competition, then this market power is temporary and can be challenged by existing suppliers in the market or potential entrants. Persistently high market shares indicates the absence of meaningful competition.

Apple's gross app store revenue increased to \$85 billion, and Google's to over \$45 billion in 2021

Worldwide Gross Revenue in Billions of Dollars

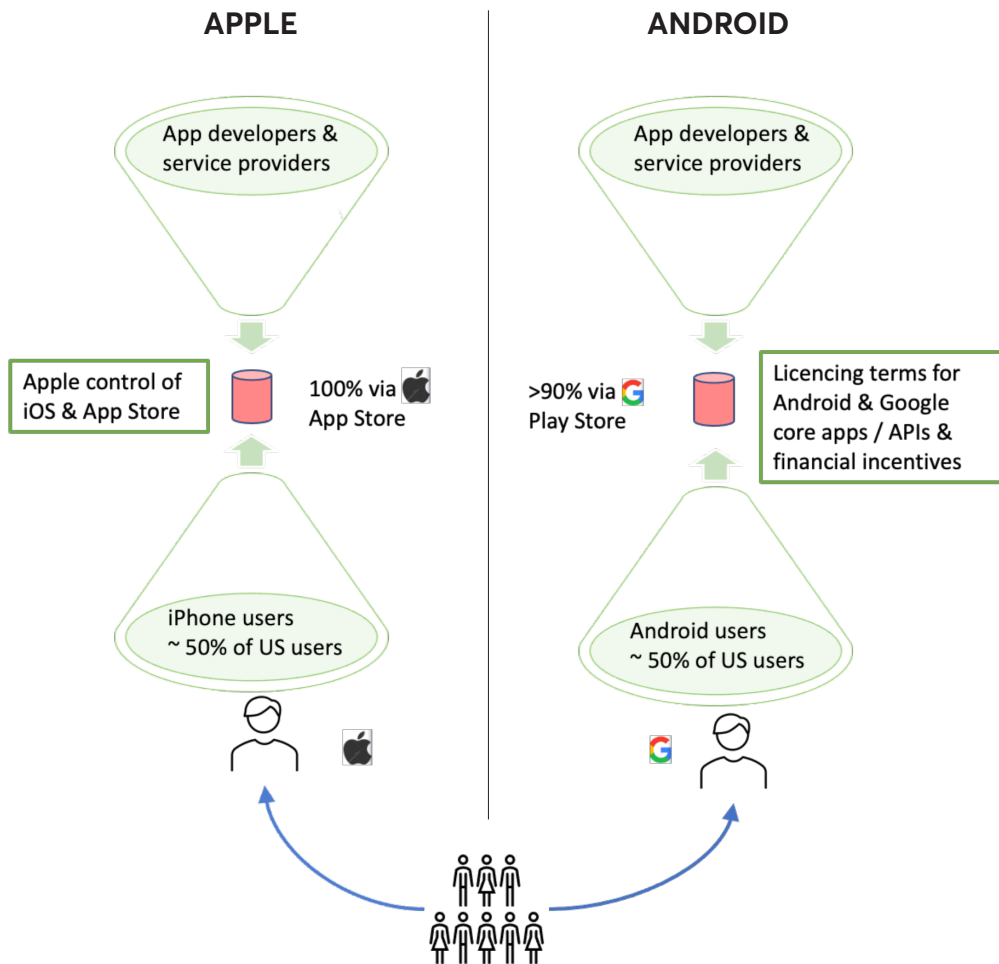


Source: Statista

Apple has a termination monopoly on iPhone users and Google on Android users, as a user typically uses an Apple or an Android smartphone, not both at the same time

Apple’s control and market power is based on its control of the iOS, limiting the interaction it allows third party apps (apps not developed by Apple) with the iOS, and restricting all app distribution on iPhones via its own App Store.

Google’s control is based on its ability to set licensing conditions for compatible versions of Android – a requirement to run most popular Google apps and related APIs and to get a share of Google’s digital advertising revenue generated on smartphones.



Control of the Mobile Operating System and (main) App Store allows Apple and Google to impose rules, commercial terms, and restrict access at the expense of captive users – both consumers and businesses that sell consumers apps and services – and entrench and exploit their persistent market power.

Section 3 of the OAMA sets fair market rules to ensure a competitive (app) marketplace enabling more innovation, choice, and better pricing for consumers

Examples of restrictions imposed by Apple or Google	Detrimental impacts on competition, innovation, and developers	Detrimental impacts on consumers	Relevant section of Open App Markets Act (OAMA) that addresses the issue
App Development by imposing software/ hardware restrictions & opaque/ arbitrary app review processes.	This limits interoperability, innovation, and creates uncertainty for app developers regarding the features they can and cannot offer.	Consumers are locked-in and stuck with expensive products and services, less able to switch, have less choice and lose out on innovative services.	OAMA Sec. 3(f) Open App Development addresses this by requiring timely and equivalent access to software and hardware interfaces and features.
App Distribution by mandating the use of Apple/ Google in-app payment (IAP) for 'digital' apps that are not fully ad-funded and limiting (Android) or banning (Apple) alternative app distribution.	IAP commission is passed on as higher prices or reduces developer margins. It promotes ad-funded businesses and Apple or Google's services. Related pricing rules constrain developers' ability to make offers like cheaper bundles or extending free trials.	Consumers face higher prices and lose out on innovation and flexibility of alternative payment systems and app distribution.	OAMA Sec. 3(a)(1), (2) & (3) and 3(d)(2) address this by allowing app developers and users the freedom to choose alternative in- app payment systems and app distribution mechanisms.
App Discovery by preinstalling and making it difficult to change defaults that are Apple/Google apps or services and controlling all app listings and rankings in the (main) app store.	This gives Apple/Google an easy way to preference their own apps, makes it difficult for competing services to reach users and gain scale, and undermines the original innovator's first-mover advantage.	Consumers' ability to experiment with and benefit from new innovative services is restricted as Apple/ Google can compete without needing to offer a better product.	OAMA Sec. 3(d) and 3(e) address this by allowing users to easily choose/change defaults, allowing alternative app distribution, and requiring equal treatment of all apps in search results or other rankings.
App Use by restricting developers' communications with users. E.g., developers cannot freely inform users about better or cheaper offers outside the app store that can be used on the phone.	Apple/Google are free to collect and use non-public business info via the app review process, IAP, and the operation of the app store. This undermines developer incentives to innovate and invest as confidential information may be used to compete against them.	Consumers end up paying more than they should for services and miss out on potentially innovative services.	OAMA Sec. 3(b) & 3(c) address this by requiring no interference with legitimate business communications with an app developer's own users, and restrictions on the use by Apple/Google of non-public business information.

2. For details see:

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>

Investigation of Competition in Digital Markets, Majority Staff Report and Recommendations, Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary, published on 06 October 2020.

Section 4 ensures actions taken by Apple or Google to protect user privacy and security are not a violation of conduct required or prohibited in Section 3

Nothing in the OAMA stops Apple or Google from adopting measures that protect user privacy and security	Relevant section of Open App Markets Act (OAMA) that addresses the issue
The measures should be applied consistently to all apps and should not be a pretext to exclude, or impose unnecessary or discriminatory terms on, third-party apps, in-app payment systems, or app stores.	OAMA Sec. 4(b): Requirements
Apple/Google can take measures to achieve user privacy, security, or digital safety; to prevent spam or fraud; and to protect preexisting intellectual property.	OAMA Sec. 4 (a) (1)
User data collection	
Apple's ATT (App Tracking Transparency) and similar systems by Google are explicitly allowed. Companies can provide an end user with an option to limit the collection and sharing of data with third-party apps or app stores.	OAMA Sec. 4(a) (2)(D)
And Apple/Google can continue to provide a user the option to offer consent prior to the collection and sharing of the user data by an app.	OAMA Sec. 3(b)
Third party app stores and security	
Apple/Google can set up their systems so that a user must make an active choice to install third party apps or app stores and she can be made aware of reasonable risks prior to doing so.	OAMA Sec. 4(a) (2)(B)
Apple/Google can remove malicious or fraudulent apps or app stores	OAMA Sec. 4(a) (2)(C)
Apple/Google can develop systems to verify the authenticity and origin of third-party apps or app stores	OAMA Sec. 4(a) (2)(A)

Recommendation – Support

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. The Act also includes provisions to safeguard user security and privacy. For example, nothing in the bill prohibits Apple from introducing new and innovative ways to ensure user safety for apps distributed via third party app stores.

Consumer Reports supports the Open App Markets Act [S. 2710](#) / [H.R. 7030](#)