

# ANTITRUST AND TRADE REGULATION

ROBINS KAPLAN LLP

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## SUMMARY OF THE UNITED STATES SENATE SUBCOMMITTEE ON COMPETITION POLICY, ANTITRUST, AND CONSUMER RIGHTS HEARING, **ANTITRUST APPLIED: EXAMINING COMPETITION IN APP STORES**

On April 21, 2021, the United States Senate Subcommittee on Competition Policy, Antitrust, and Consumer Rights held a hearing to discuss Google and Apple's role in the mobile app ecosystem and their effect on third-party app developers. The hearing was led by Senator Amy Klobuchar and attended by representatives from Apple and Google, as well as app developers Spotify, Match Group, and Tile. At the hearing, the app developers testified about alleged anticompetitive behavior by Apple and Google, including examples of favoring powerful companies at the expense of smaller developers and collecting data about competitors' apps to benefit of their own products and services.

Apple and Google argued that the gatekeeping nature of their respective app stores enables them to maintain quality and privacy standards, which benefit consumers and developers. They further testified that they were the first to provide developers with tools and large platforms to distribute their products, and their growth stems from advancements, not anticompetitive behavior.

Spotify was the first app developer to testify and alleged that Apple has used the App Store to handicap Spotify and benefit its in-house competitor, Apple Music. Spotify testified that it was told it would be removed from the App Store if it did not agree to pay a 30% tax on in-app purchases, or a gag order that would prevent it from communicating with its customers. Spotify explained that the additional 30% tax would force it to increase the cost of its premium membership, making it more expensive than Apple Music and thus less competitive. Spotify ultimately chose to forgo paid services through its iOS app, forcing customers to make upgrades through a web browser.

Tile then testified regarding what it called Apple's "copy and kill" strategy. According to Tile, Apple developed its new tracking product, AirTags, by collecting proprietary data on Tile's existing, competing product and using that data to produce a copycat with increased functionality and interoperability. Tile claimed that Apple developed AirTags after years of collecting data on Tile and slowly dismantling Tile's operability on Apple's platform. Tile further alleged that Apple gives its own trackers advantages on iPhones that other trackers do not enjoy, such as greater precision and an easier set-up, to move consumers to Apple's product—an allegation that Apple has denied.

Finally, Match expressed concern over Apple's allegedly intimidating business practices, such as when Apple failed to approve a security update to one of Match's apps. Match testified that when it asked Apple for explanation, an Apple representative disagreed with Match's assessment of how to keep its users safe. Match claimed there are not clear standards for how Apple enforces its own rules, which forces apps developers to operate without clear guidance about what is permissible.

As always, we welcome your feedback, comments, or suggestions.  
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