

Oral Testimony of Horacio Gutierrez
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Chairwoman Klobuchar, Ranking Member Lee, and Members of the Subcommittee.

Thank you for the opportunity to testify today on behalf of Spotify.

My message is simple, stark, and urgent.

- We believe *all* businesses, including Spotify, should work hard to earn the favor of consumers through ‘fair and square’ competition in the marketplace, based on better, more innovative products offered at attractive prices;
- But Apple abuses its dominant position as the gatekeeper of the App Store to insulate itself from competition and disadvantage rival services like Spotify;
- Apple's anticompetitive conduct *hurts consumers* with higher prices, less innovation and less choice;
- Our market moves at *internet speed*, and legislative action is urgently needed to give antitrust enforcement agencies the tools they need to prevent gatekeeper platforms like Apple from abusing the power of their platform;
- *And* unless decisive legislative and enforcement action is taken, other gatekeeper platforms *inevitably will follow* Apple's example, resulting in further *concentration of power* in the hands of a handful of “*digital sovereigns*.”

15 years ago Spotify pioneered a streaming audio service that today enables our 345 million customers to hear music and podcasts they want anywhere at any time.

Apple Music is one of our principal direct competitors. Its advantage is *not* better service. Instead, it is Apple's *total control* over the App Store which allows them to impose rules that disadvantage Spotify and benefit Apple's own service.

Some may not remember this, but iPhones weren't that popular when first introduced. Apple soon realized that the iPhone would not succeed if it only offered Apple's proprietary apps, and it invited third parties to develop apps for the iPhone and opened the App Store.

Apple therefore has things exactly backwards when it claims companies like Spotify are free-riding on Apple's innovations. It is Apple's success that rode in large part on the creativity of third-party app developers that created demand for Apple's devices. And the proof is Apple's own slogan--"*There's an app for that*"--which it used to drive sales of Apple devices.

How did Apple show its gratitude for app developers' help? By doing a classic "*bait and switch*." They waited until tens of millions of device owners were *locked* into the iPhone before changing the App Store rules to impose burdens on app developers that compete with Apple's own applications.

Apple has a *decade-long history* of using App Store policies to handicap Spotify and benefit Apple Music. It forced us to choose between two bad options:

1. Accepting Apple's *illegal tie* of its proprietary payment system, and paying Apple's 30% "tax", which would have forced us to raise consumer prices and made our service more expensive than Apple Music, or
2. Accepting a "gag order" prohibiting our communication with our own customers, so that we can't tell our users about the existence of our Premium subscription service and discounts and promotions available to first-time subscribers.

It doesn't take a Ph.D. in economics to recognize that this abusive conduct hurts consumers by depriving them of information about a product that competes with Apple's.

Apple's anticompetitive intent is clear from the fact that it targets businesses that are, or might become, Apple's competitors in downstream markets. The rules apply to companies that offer on-line gaming, music and video streaming, access to e-books. But companies like Uber, Starbucks, Ticketmaster, and Walmart are *exempt*.

Apple argues that these rules are "indispensable" to the safety and privacy of users.

But how can they be "indispensable" when they don't even apply to 85% of the apps in the App Store that are exempt from Apple's restrictions?

Apple's explanations are *cynical pretexts*. These restrictions are nothing more than an abusive "*power grab*" and a *confiscation* of the value created by others.

Even *Microsoft* in the heyday of the Windows PC operating system did not demand a 30% cut of revenues of competing browsers or media players.

Legislative action is urgently needed to stop these illegitimate power grabs. We welcome the broad antitrust reform proposed by Chairwoman Klobuchar along with Senators Blumenthal and Booker. Senator Hawley recently proposed a bill with a number of similar and very important reforms.

These reforms are essential to equip enforcement agencies with the tools they need to remedy the market and consumer harms that result from these platform abuses.

Thank you, and I look forward to answering your questions.