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Spotify v. Apple—Why These Two Tech Giants Don't See Eye-to-Eye

BY DYLAN BLANCHARD / ON NOVEMBER 15, 2022



Photo by Sara Kurfeß on Unsplash

On October 25, 2022, the audio streaming platform Spotify posted an article on their blog titled *It's Past Time to Play Fair: Apple's Anti-Competitive Behavior Hurts Everyone—Including Audiobook Listeners, Publishers, and Authors*.¹ The article links to a self-published website² devoted to explaining all the ways in which Apple participates in the market unfairly; most recently culminating in Apple's continuous compliance roadblocks on Spotify's latest app feature is audiobooks.³

The website provides further background to the tech foes' conflict, beginning with the complaint Spotify filed against Apple with the European Commission in 2019, which alleged Apple's behavior hinders competition—specifically, that Apple's App Store (the platform any iPhone user must go through to access Spotify on their phone) “purposely limit[s] choice and stifle[s] innovation at the expense of the user experience” and “act[s] as both a player and referee to deliberately disadvantage other app developers.”⁴ Spotify's complaint focuses on the 30% fee Apple charges on all purchases of services consumed on an app downloaded from the App Store, which pushes Spotify to raise prices to compensate for the additional fee and allows Apple Music, who is not subject to the fee, to charge much less for similar services. According to Spotify, if the company opts not to collect payment through the App Store to avoid the fee, Apple then pushes back with several actions that disadvantage Spotify.⁵ Although the case is still pending, the European Commission released a preliminary view on the matter, issuing a

Statement of Objections in regard to Apple’s practices and finding that Apple was in breach of the European Union’s competition law.⁶

To some, Spotify’s publicization of this ongoing conflict may seem like a marketing ploy meant to villainize one of its biggest competitors,⁷ Apple Music, or distract from some of its own controversial practices.⁸ Spotify, however, purports that the reality of Apple’s actions is problematic for not only Spotify but any platform interested in listing on the App Store and should be of concern to all App developers and consumers.

This concern is not unwarranted—Apple does hold an incredible share of the market Spotify competes in. Not only does Apple own Apple Music, a direct competitor of Spotify’s platform, but as of September 2022, there are more Apple iPhones in use in the United States than any other type of smartphone, giving Apple its highest-ever share of the American smartphone market.⁹ Consequentially, this means that Spotify, and other App developers, must abide by Apple’s App Store guidelines and compliance regulations in order to compete for any business from iPhone users, which is over half the market. On the other hand, Apple contends that the success of Spotify, among other apps, is due in large part to the App Store, as it provides iPhone users access to Spotify on their mobile devices and therefore expands Spotify’s customer base, arguing that “[Spotify] want[s] all the benefits of the App Store but don’t think they should have to pay anything for that.”¹⁰ Apple also says its requirements are warranted as a means of securing payments and protecting against fraud.¹¹

Whether Apple’s behavior should be considered fair competition or not, it continues to garner scrutiny, not only from the European Commission but likely from the United States Department of Justice as well. Under the Biden Administration, the Department of Justice has taken aggressive steps to thwart antitrust among tech giants like Google and Facebook, making a case to be brought against Apple all the more likely.¹²

Ultimately, Spotify may be correct in its claims. Apple’s restrictive App Store regulations violate antitrust and competition laws throughout the world and in order to give app developers a fair competitive chance they need to be loosened. However, as long as the iPhone continues to dominate the smartphone market Spotify will always be at the mercy of Apple’s App Store, and this dynamic will continue to be contentious.

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1. It’s Past Time to Play Fair: Apple’s Anti-Competitive Behavior Hurts Everyone—Including Audiobook Listeners, Publishers, and Authors, Spotify For the Record (Oct. 25, 2022), [<https://perma.cc/XK8M-PQHT>].
2. Leveling the Playing Field, Time to Play Fair, [<https://perma.cc/6RJG-MBK8>] (last visited Nov. 13, 2022).

3. “Over the past month, Apple, the App Store’s gatekeeper, has rejected Spotify’s app three times, saying that its new audiobooks offering broke Apple’s rules governing how developers can communicate with customers about online purchases. The rejections are the latest skirmish in a long-running battle between Spotify and Apple.” Tripp Mickle, *Spotify Wants to Get Into Audiobooks but Says Apple Is in the Way*, *The New York Times* (Oct. 25, 2022), [<https://perma.cc/6SLA-FG55>].
4. Joe Rossignol, *Spotify Files Complaint Against Apple With European Regulators Over ‘Unfair’ App Store Practices*, *MacRumors* (March 13, 2019), [<https://perma.cc/722C-UBS3>].
5. *Id.* (“[I]f Spotify chooses not to collect payments via the App Store ... Apple ‘applies a series of technical and experience-limiting restrictions’ on the company ... this has [] included ‘locking Spotify and other competitors out of Apple services such as Siri, HomePod, and Apple Watch.’”)
6. Natasha Lomas, *Europe Charges Apple with Antitrust Breach, Citing Spotify App Store Complaint*, *TechCrunch* (April 30, 2021), [<https://perma.cc/YJ29-CTY4>].
7. April Glaser, *Why Spotify Is Such an Awkward—and Necessary—Critic of Apple’s Power*, *Slate* (March 13, 2019), [<https://perma.cc/LN5B-R7SD>].
8. Spotify has previously been under fire for controversies relating to its allowance of content producers to say antisemitic or racist comments and spread misinformation. See Frank Pallotta, *Spotify CEO Addresses Joe Rogan Controversy*, *CNN Business* (Feb. 3, 2022), [<https://perma.cc/ZB5R-JFS7>]; Alex Ross, *Reasons to Abandon Spotify That Have Nothing to do with Joe Rogan*, *The New Yorker* (Feb. 2, 2022), [<https://perma.cc/2XQL-AXSJ>]. Spotify has also been critiqued for their unfavorable pay structure for the artists streaming on their platform. See Author, *Songwriters v. Spotify*, 48 *Pepperdine L.J.*, 811-813 (2021); Marissa Alper, *Justice at Spotify*, *UMAW*, [<https://perma.cc/JG3T-9TXJ>].
9. I. Bonifacic, *iPhone Overtakes Android to Claim Majority of US Smartphone Market*, *engadget* (Sept. 3, 2022), [<https://perma.cc/SD8M-HNSV>].
10. *Supra* note 5.
11. “[Apple] says routing app purchases through its payment system protects users from fraud and keeps the App Store safe for users.” *Supra* note 3.
12. John Sisco, *Apple Faces Growing Likelihood of DOJ Antitrust Suit*, *Politico* (Aug. 26, 2022), [<https://perma.cc/6SEV-L72M>].