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**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No: 1403/7/7/21

Salisbury Square House  
8 Salisbury Square  
London EC4Y 8AP

Monday 20<sup>th</sup> January 2025

Before:  
Ben Tidswell  
Dr William Bishop  
Tim Frazer

(Sitting as a Tribunal in England and Wales)

**BETWEEN:**

Dr. Rachael Kent

**Class Representative**

v

Apple Inc. and Apple Distribution International Ltd

**Defendants**

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**A P P E A R A N C E S**

Mark Hoskins KC, Tim Ward KC, Michael Armitage, Matthew Kennedy, Antonia Fitzpatrick  
(Instructed by Hausfeld & Co. LLP) On behalf of Dr. Rachael Kent

Marie Demetriou KC, Brian Kennelly KC, Daniel Piccinin KC, Hugo Leith, Hollie Higgins  
(Instructed by Gibson, Dunn & Crutcher UK LLP) On behalf of Apple Inc. and Apple  
Distribution International Ltd

Monday, 20 January 2025

(10.30 am)

(Proceedings delayed)

(10.40 am)

THE CHAIRMAN: Yes, good morning, Ms Demetriou. I gather we have got a problem with the microphones.

MS DEMETRIOU: I think if we speak close to the microphone, then it works, if we can all remember to do that.

THE CHAIRMAN: Good okay. So we might have some transcript. Yes, good, okay, that's really helpful. Thank you very much.

MS DEMETRIOU: Sir, good morning. Apple calls Mr Schiller, who is already in the witness box.

THE CHAIRMAN: Yes, thank you.

Good morning, Mr Schiller.

MR PHILIP SCHILLER (affirmed)

Examination-in-chief by MS DEMETRIOU

THE CHAIRMAN: Thank you, Mr Schiller. Please sit down.

You should have some water there, I hope.

THE WITNESS: I do, thank you.

THE CHAIRMAN: Yes, good. Thank you.

MS DEMETRIOU: Mr Schiller, you may have a hard copy of your witness statement in front of you, but we can bring it up on the screen at {B2/5/1}.

A. I see that on the screen.

1 Q. Is that your witness statement?

2 A. Yes, it is.

3 Q. Can we please look at page 71 {B2/5/71}, please. That  
4 should now come up on the screen. Can you confirm that  
5 that's your signature?

6 A. That is.

7 Q. I understand, Mr Schiller, that you have a small  
8 correction to make. Could we have pages 2 and 3  
9 {B2/5/2-3} put up on the screen side by side, please.  
10 It's to paragraph 8. I'll just let you turn that up.  
11 Do you see it there on the screen?

12 A. I do.

13 Q. It is a small correction. As I understand it, you would  
14 like to delete the words "marketing and management" at  
15 the bottom of page 2?

16 A. Yes.

17 Q. Then delete the words "Macromedia, Inc.,  
18 FirePower Systems, Inc.", going over on to page 9 [sic];  
19 is that correct?

20 A. Correct.

21 Q. Subject to that correction, is your statement true to  
22 the best of your knowledge and belief?

23 A. Yes, it is.

24 Q. Thank you.

25 Mr Schiller, I have one question for you before

1           handing over to my learned friend. Could we, please,  
2           turn to {G2/18/82}, so that should come up on screen. I  
3           do not think you will have that in hard copy.

4           Mr Schiller, this is an excerpt from your evidence  
5           during the Australian trial, and would you mind -- you  
6           were asked at the Australian trial about the basis on  
7           which Apple first set the 30% Commission. Could I just  
8           ask you to read to yourself lines 24 -- line 24 to the  
9           bottom of the page. (Pause)

10          A. Yes, I have read that.

11          Q. Thank you.

12                 Do you stand by that evidence, Mr Schiller?

13          A. Yes, I do.

14          MS DEMETRIOU: Thank you.

15                 My learned friend will now ask you some questions.

16                         Cross-examination by MR HOSKINS

17          MR HOSKINS: Good morning, Mr Schiller.

18                 My name is Mark Hoskins. I'm going to ask you some  
19                 questions on behalf of the Class Representative. I am  
20                 afraid there are some other people who are then going to  
21                 ask you some questions but I am first up.

22          A. Good morning.

23          Q. Just to confirm, you have given evidence in cases  
24                 concerning the App Store in California?

25          A. Yes.

1 Q. In Australia?

2 A. Yes.

3 Q. Anywhere else?

4 A. Those are the two cases I can recall right now, yes.

5 Q. You must be getting quite good at it by now?

6 A. I do not know. I just try to do the best I can to  
7 answer questions and help.

8 Q. Let us start with just some basic facts. In terms of  
9 devices, the iPhone launched in the UK in November 2007?

10 A. Yes, that is correct.

11 Q. The iPad launched in the UK in May 2010?

12 A. Yes, I believe so.

13 Q. Apple launched the App Store on 10 July 2008?

14 A. Yes, that is correct.

15 Q. Now, I am going to take you to various documents, and  
16 you and I have a sort of custom bundle with their own  
17 tabs so that we can sort of move swiftly through it.  
18 I also have to give another reference so it can come up  
19 on the screen, so I will give you your reference and  
20 I will give another reference, but do not worry about  
21 the other reference.

22 A. Okay, thank you.

23 Q. First of all, can we please have up on the screen  
24 {D1/572/1}. Mr Schiller, it is bundle tab 1 in your  
25 custom bundle. You see, at the bottom of that page, it

1           should be an email from Tom Neumayr. Do you see that?

2       A. I do.

3       Q. He is an Apple employee. You see that from the email  
4           address. The date is 25 July 2018. Is that what you  
5           have got?

6       A. I see that.

7       Q. The subject is:

8           "The Information: Hear Steve Jobs, at the Dawn of  
9           the App Store, Predict the Future of Mobile."

10       Tom Neumayr explains in this email:

11       "The Information and The Wall Street Journal have  
12       jointly published an audio recording of [an] August 2008  
13       interview with Steve [that's Steve Jobs], discussing the  
14       success of the App Store one month after launching."

15       Have you seen this email before?

16       A. I do not recall it.

17       Q. Okay.

18       Have you heard this interview before?

19       A. I do not recall the interview either.

20       Q. Can we go to page 5 {D1/572/5}, please.

21       You will see in bold are the questions and then in  
22       not bold are the answers that Steve Jobs gave. If we go  
23       to the third question on page 5:

24       "You couldn't tell me how many apps per [phone]."

25       Steve Jobs said:

1           "I can't do that either, but I can tell you  
2           an interesting fact in just a second. Users have  
3           downloaded over 60 million apps from the App Store in  
4           the first 30 days. Let's say we're talking on Monday.  
5           That is 30% as big as iTunes for music downloads."

6           Then the interviewer says:

7           "In terms of on a unit basis."

8           Steve Jobs says:

9           "Yeah. Let me say that again. App downloads equal  
10          30% of all iTunes song downloads during the last  
11          30 days."

12          Then, if you go down a little bit to the question:

13          "What does that number say to you?"

14          "It says the App Store is much larger than we ever  
15          imagined. iTunes has been out for over five years. In  
16          30 days, users downloaded 30% as many apps as everybody  
17          in the world downloaded songs from iTunes."

18          Then the question:

19          "What did you expect? What was your internal ...

20          "We didn't expect it to be this big. The mobile  
21          industry's never seen anything like this. To be honest,  
22          neither has the computer industry ... Sixty million  
23          downloaded applications in the first 30 days.  
24          Thirty percent as big as iTunes song downloads during  
25          the last 30 days -- this is off the charts."

1           That shows, does it not, that the App Store was  
2           literally a phenomenal success as soon as it was  
3           introduced?

4       A.   I am not sure the relative comparison for that, but it  
5           was certainly larger than we expected, and as Mr Jobs  
6           was comparing it to iTunes for music, it certainly was  
7           smaller than that, but compared favourably for early  
8           start, so I think he was making a good comparison.

9       Q.   Steve Jobs was obviously delighted with the first few  
10          days of the App Store, was he not?

11      A.   Reading by this, yes.

12      Q.   Did you share that delight?

13      A.   I do not recall what I was thinking about the App Store  
14          at this time in 2010, I am sorry.

15      Q.   Do you have a hard copy of your statement with you up  
16          there?

17      A.   I do not know if I do.   If it is not in the binder that  
18          you provided me, I do not have it here.

19      MR HOSKINS:   Okay.

20           Do you want to hand him one up?   Is that ... If you  
21          want, I am very happy for him to have one.

22      MS DEMETRIOU:   Mr Schiller, is it at tab 1 of the  
23          bundle that you have got?   Is that your statement or  
24          not?

25      A.   No, tab 1 is the email he just read to me about --



1 MR HOSKINS: I think we have got one. (Handed).

2 Can we have on the screen bundle {B2/5/62}.

3 A. Thank you.

4 Q. Mr Schiller, I am going to take you to page 62 of this  
5 statement and it is paragraph 220. Do you have that?

6 A. Yes, I see that.

7 Q. You say there:

8 "I am aware of several payment platforms (as opposed  
9 to digital app marketplaces) that charge fees for their  
10 payment services at rates lower than Apple. Examples  
11 include PayPal and Stripe. The rates of Commission  
12 applicable to those platforms are generally less than  
13 3 percent and are set out at [PS1/643] and [PS1/664]."

14 PS1 is the exhibit to your witness statement, it is  
15 exhibit PS1, yes?

16 A. Yes.

17 Q. You say:

18 "I will refer to them collectively as the payment  
19 processing fees."

20 Please, for the screen, can we have {D2/499/1}.

21 Mr Schiller, in your bundle, if you go to tab 2. You  
22 will see at the bottom of the page, there is a number of  
23 references in the bottom right, but one of them is  
24 PS1/643, so this is page 643 of your exhibit which we  
25 have just seen you refer to in your witness statement,

1           yes?

2       A.   Yes.

3       Q.   If we turn over the page to 644 {D2/499/2}, this is the

4           document that you refer to in your witness statement in

5           relation to Stripe, is it not?

6       A.   It looks like it, yes.

7       Q.   You see the heading at the top of the page, "stripe",

8           and this is a document that has been produced by Stripe,

9           is it not?

10      A.   Yes.

11      Q.   Then if we go to page 3 {D2/499/3}, please, you will see

12           the main heading is, "What's included", and there is

13           a subheading, bottom left:

14               "Comprehensive security and rigorous compliance.

15               "Comprehensive security and rigorous compliance.

16               "Data security and encryption.

17               "Regulatory licences worldwide.

18               "Secure Dashboard access."

19           Over the page, at the top of page 4 {D2/499/4}, top

20           left:

21               "Financial reconciliation and reporting.

22               "Real-time reporting.

23               "Unified reporting.

24               "Deposit tagging.

25               "QuickBooks + NetSuite support."

1           So what this shows is that companies such as Stripe  
2           offer services that go beyond just simple processing of  
3           payments, do they not?

4       A. Not compared to what I am referring to, no. This is all  
5           about the processing of the payment and nothing more.  
6           As an example, you point out they talk about  
7           comprehensive security. That security is only,  
8           I believe, about security of payment processing. Where  
9           we talk about security, we are talking about security of  
10          the platform, security of user data in applications,  
11          security of the applications you download and install.  
12          I do not believe Stripe or any of these payment  
13          processors do any of those things. So this is security  
14          of payment processing and reconciliation and reporting  
15          of payment processing, nothing beyond that, to my  
16          knowledge.

17       Q. All their activities relate to payment processing, but  
18           they go beyond the simple making the payment be  
19           processed. That is what this shows, yes?

20       A. I believe that is a judgment. If you think this is  
21           simple or advanced, I do not know, but it is all about  
22           payment processing only.

23       Q. But you do not doubt that Stripe offer these services  
24           that they are stating here in this document?

25       A. No --

1 Q. You are not questioning that?

2 A. No, I do not.

3 Q. If we go back to your witness statement, back to page 62  
4 {B2/5/62}. Could you please just remind yourself what  
5 you say in paragraphs 221 to 222. (Pause)

6 A. Yes, I see that.

7 Q. So, here, you are drawing a distinction between services  
8 offered by Apple and services offered by companies such  
9 as Stripe and PayPal; is that correct?

10 A. Yes.

11 Q. If we go to paragraph 222 {B2/5/63}, in the first  
12 sentence, you say:

13 "My understanding is that Stripe, PayPal, Paddle and  
14 other such services do not provide a platform for  
15 distributing apps and unlimited free app updates to  
16 consumers around the world."

17 So here, as I understand it, you are drawing  
18 a distinction between Apple and companies such as Stripe  
19 on the basis that only Apple distributes apps; is that  
20 right?

21 A. That we distribute apps in our service for developers  
22 and these payment processors do not.

23 Q. But what you are focusing on in paragraph 222,  
24 I understand there are broader differences between Apple  
25 and these companies, but what you are focusing on is

1           that you are saying:

2                 "... Stripe, PayPal, Paddle and other such services  
3           do not provide a platform for distributing apps and  
4           unlimited free app updates to consumers around the  
5           world."

6                 So I am not denying that you want to make other  
7           points about points of distinction, but the one you are  
8           making here is focused on the app distribution job that  
9           Apple carries out; correct?

10          A.   That is one of the ones I mention here.   That is not all  
11           that I mention here.

12          Q.   Can you elaborate a bit for the Tribunal, just on the  
13           differences in the services that Apple provides as  
14           a distributor of apps -- and I stress the word  
15           "distribution", I do not need to know all the  
16           differences -- the difference in services that Apple  
17           provides as a distributor of apps as compared to the  
18           services that payment service providers offer?  What is  
19           the distinction you are making here?  Just unpack it  
20           a bit.

21          A.   Sure.  So not counting the development and the tools and  
22           technology, so I will not mention those.  When it comes  
23           to the process of distributing apps, Apple provides  
24           a technology and platform for developers to submit their  
25           app to Apple, there is actually a web portal that they

1 submit it to, and they provide the metadata, so the  
2 information about the app, what it is called, what it  
3 does, what category it is in. They submit it to Apple  
4 for App Review and for analysis, for signing -- we  
5 technically sign it to make sure it is secured so that  
6 later, when it gets to the user, it has not been  
7 tampered with. We host it so that Apple actually has  
8 the app and we build a network -- there is  
9 an information services team in Apple that builds  
10 a distribution network around the world to then allow  
11 the user to select it on the App Store, find it on the  
12 App Store. I could talk for an hour about all the  
13 things in the App Store that help in the distribution.  
14 I will not, I will forego that for now.

15 The user then, after all those steps, decides  
16 "I want to get that app". There is technology from  
17 Apple where they click a button and the app gets  
18 downloaded and distributed, it gets installed on their  
19 device and it is all -- that is an entire end-to-end  
20 encrypted secure process.

21 Then the app, once on device, the App Store is  
22 responsible for the developer providing an update to the  
23 user and Apple will make sure the user's app gets  
24 continually updated as well. Similarly, if a user loses  
25 their device and wants to get their apps back, we keep

1 track of which apps that have been distributed the user  
2 has access to and has already received and they can  
3 easily put back on their device. Or, if they want to  
4 have more than one device, we know that they paid for it  
5 on this device and they can now also get it on another  
6 device and we distribute it to that as well.

7 Q. We could go on --

8 A. Yes, we could --

9 Q. -- and I am sure we can --

10 A. -- there are many capabilities.

11 Q. The point you are making, I think, is Apple does all  
12 these things in relation to distribution and payment  
13 processors do not do any of those functions. Is that  
14 the distinction you are drawing?

15 A. To my knowledge, yes.

16 Q. If you go back to paragraph 222, in the second sentence  
17 you continue by saying:

18 "Payment processors handle the payment flow between  
19 two parties that have already connected and agreed on  
20 a transaction. Unlike Apple's App Store, Stripe,  
21 PayPal, Paddle and other services are not bringing in  
22 customers for their users."

23 So, as I understand it, you are drawing  
24 a distinction here on the basis that Apple "brings in  
25 customers" whilst companies like Stripe do not. Is that

1           the distinction you are drawing here?

2           A. Yes, to my knowledge, that is the case.

3           Q. In what way does Apple bring in customers for  
4           developers?

5           A. There are many ways that we work with developers to  
6           attract customers. One is through the different  
7           marketing means we have on the App Store. We will do  
8           emails, we will do advertisements, we will host events  
9           and demonstrate applications for users, and that will  
10          drive a lot of their reach to customers. We have the  
11          store itself, which has more than half a billion  
12          visitors a week to the App Store, and we have a number  
13          of features on the App Store, all designed to help  
14          discovery of apps for users.

15                 The front page of the App Store we call the Today  
16          tab and it is full of editorial to market applications  
17          to users and tell them about them, and we have  
18          an editorial team who every day is writing stories and  
19          publishing stories on the Today tab for the users that  
20          come there to discover apps. As you move along in the  
21          store, you will find many features, all designed to help  
22          with discovery of applications, from charts that tell  
23          you, here are the top apps in a category that you may be  
24          interested in, to rankings and listings of the best apps  
25          for different activities.



1           We have other editorial throughout the Store --

2       Q.   Okay, I do not want to cut you off, but we do not need  
3           all this detail in a sense. But that is my judgment  
4           call and if you feel I am being unfair, you will come  
5           back to this.

6           But the basic point, as I understand it, that you  
7           are making is, Apple, through the App Store, means that,  
8           for example, users can search for and download apps and  
9           you have all the other stuff around that, but that is  
10          the basic premise: through the App Store, users can  
11          search for and download apps; is that correct?

12       A.   I would not quite say it that way, to try to keep my  
13           answers short, thank you. When we envisioned the idea  
14           of the App Store at the very beginning, it was a concept  
15           where every user and iPhone would have in their pocket  
16           a store helping them discover apps 24/7, 365 days  
17           a year, and so there were many features and capabilities  
18           all designed in the App Store to help with this  
19           discovery, as we call it, of applications for developers  
20           and users.

21       Q.   The point you are making, as I understand it, in this  
22           part of your witness statement is payment processors do  
23           not do any of that. That is another distinction between  
24           the App Store and payment processors?

25       A.   Correct, yes.

1 Q. Still in that second sentence at paragraph 222, you say  
2 that:

3 "Payment processors handle the payment flow between  
4 two parties that have already connected and agreed on  
5 a transaction."

6 Can you just explain a bit what you mean by those  
7 words, "have already connected and agreed on  
8 a transaction"?

9 A. My experience with using many of these payment  
10 processing technologies is I have already decided to  
11 make a purchase with a vendor and it is only after that  
12 step that usually the payment processing service is  
13 invoked to then handle the transaction. So the process  
14 of choosing to buy something has already begun and, as a  
15 user, you have already made a choice I want to purchase  
16 it, then you click on a button to transact with PayPal  
17 or Stripe after that decision is made.

18 Q. So just to make sure I have understood it correctly, is  
19 the point you are making that the developer and the user  
20 has already connected and agreed on a transaction  
21 through the App Store, and then the payment processing  
22 comes in after that has occurred? Is that a fair  
23 description?

24 A. No, this is not about the App Store. This is about  
25 payment processors and how they are different than the

1 App Store. In the App Store we are involved in the  
2 process with the user and the developer from before the  
3 user chooses to get the app or make a purchase in an app  
4 all the way through until they have completed it; where  
5 payment processing comes in only much later in that  
6 process when the user has already decided to purchase  
7 something, but somewhere else, not in the App Store,  
8 because as you know, the App Store itself does not have  
9 payment processing outside of the ones that we provide  
10 and work with.

11 Q. Just going back to paragraph 221 on the previous page  
12 {B2/5/62}, in the first sentence, you say:

13 "These payment processing fees should not be  
14 compared to Apple's Commission rate because unlike these  
15 payment platforms, Apple offers an array of services and  
16 benefits to developers which go well beyond processing  
17 payments ..."

18 Then, in brackets, you say:

19 "... (though payment processing is a service to  
20 developers integrated within IAP ... ) ..."

21 I am interested in unpacking a bit what you say in  
22 brackets, you say "payment processing is a service to  
23 developers."

24 Can you just explain that a bit, please?

25 A. Yes. When a developer chooses to make their app

1           available for a fee upfront or uses IAP, an in-app  
2           purchase within their app, or there is a subscription  
3           any one of those business models, when they are working  
4           with Apple in the App Store, we handle all the steps  
5           required for the user to make that transaction. Within  
6           that, is payment processing. That is one of the steps  
7           included in the overall transaction. Apple sets up the  
8           relationship with the payment processors on our own and  
9           manages those fees and that process for the developer as  
10          part of the overall commerce engine and transaction  
11          process.

12        Q. Can we, please, have up on the screen {E/17/1}.

13           Mr Schiller, I would like you to go to tab 3 of your  
14           bundle, please. If you go to page 2 {E/17/2}, this  
15           should be a document you are very familiar with, it  
16           should be, "Apple Developer Program License Agreement".

17        A. If you could hold on one second, the pages are out of  
18           order in this tab for me and I just want to ...

19        Q. Of course. You sort it out.

20        A. These are complicated binders. Thank you.

21           All right, apologies. So page 2, did you say?

22        Q. Page 2 and it should be the DPLA.

23        A. Yes.

24        Q. I am going to just show you some provisions in the DPLA  
25           and then I am going to ask you a question, so you will

1           need to bear with me for a bit while we go through some  
2           of the provisions.

3           First of all, you will see the heading "Purpose",  
4           and that says -- so this is an agreement between Apple  
5           and the developers, yes?

6       A. Yes.

7       Q. So when it says "You would like to use", it is talking  
8           to the developer:

9           "You [the developer] would like to use the Apple  
10          Software (as defined below) to develop one or more  
11          Applications (as defined below) for Apple-branded  
12          products. Apple is willing to grant You a limited  
13          license to use the Apple Software and Services provided  
14          to You under this Program to develop and test Your  
15          Applications on the terms and conditions set forth in  
16          this Agreement."

17          So you see the reference there to developing and  
18          testing your applications in the "Purpose", yes?

19       A. I see that, yes.

20       Q. Then, just so we can square the circle, so to speak, if  
21          you go to page 4 {E/17/4}, you see the definition of  
22          "Apple Software", if you can just remind yourself by  
23          reading it to yourself. (Pause)

24       A. I see that.

25       Q. Then if you go to page 9 {E/17/9}, there is the

1 definition of "Program", and "Program" is defined as:

2 "... the overall Apple development, testing, digital  
3 signing, and distribution program contemplated in this  
4 Agreement."

5 Do you see that?

6 A. I am sorry, no. I see -- oh there, I am sorry,  
7 apologies, yes, there it is, "Program", yes.

8 Q. Then, if we go to page 12 {E/17/12}, you will see the  
9 heading, "Internal Use License and Restrictions":

10 "2.1. Permitted Uses and Restrictions; Program  
11 Services."

12 Then 2.1 begins:

13 "Subject to the terms and conditions of this  
14 Agreement, Apple hereby grants You during the Term,  
15 a limited, non-exclusive, personal, revocable,  
16 non-sublicenseable and non-transferable license to:

17 "(a) Install a reasonable number of copies of  
18 the Apple Software provided to You under the Program on  
19 Apple-branded products owned or controlled by You, to be  
20 used internally by You or Your Authorized Developers for  
21 the sole purpose of developing or testing Covered  
22 Products designed to operate on the applicable  
23 Apple-branded products, except as otherwise expressly  
24 permitted in this Agreement ..."

25 So you see that, yes?

1       A. I do.

2       Q. Then the final provision I want to show you before

3       I finally ask you a question is at page 45 {E/17/45}.

4       A. Yes.

5       Q. Do you want to take it -- if it is -- if you need time

6       to sort it --

7       A. No, that is all right. The binder is battling me, but I

8       am there.

9       Q. Okay. Clause 8, "Program Fees", and it says:

10       "As consideration for the rights and licenses

11       granted to You under this Agreement and Your

12       participation in the Program, You agree to pay Apple the

13       annual Program fee set forth on the Program website,

14       unless You have received a valid fee waiver from Apple."

15       The question is this: it is apparent from these

16       terms that, under the DPLA, the program fee is the sum

17       of money that must be paid by developers in order to

18       develop and test iOS Apps, is it not?

19       A. Under the -- for the capabilities provided by the DPLA,

20       yes. We have the Developer Agreement first, which is

21       free and provides capabilities for developers to begin

22       developing. Then the DPLA is a further agreement that

23       gives additional capabilities to developers, and there

24       is a program fee for that program.

25       Q. Then can we please have {B2/5/25}. Mr Schiller, that is

1 paragraph 90 of your witness statement. You say in  
2 paragraph 90:

3 "Developers must pay an annual program fee of USD 99  
4 in order to enter into the DPLA '[a]s consideration for  
5 the rights and licenses granted to [the developer] under  
6 the DPLA] ..."

7 Then you refer to clause 8, which we just looked at.  
8 Then you say:

9 "This program fee was not intended as a revenue  
10 stream for Apple and is not consideration for the value  
11 of the tools and technology to which developers are  
12 given access on paying that fee. Rather, it was used as  
13 a simple filter by which to establish ... the identity  
14 of developers and (ii) that those developers had  
15 a serious intent to develop quality apps for the  
16 App Store."

17 The question is this: it is not accurate, is it, to  
18 say that the program fee is not consideration for the  
19 value of the tools and technology to which developers  
20 are given access on paying that fee, because as we have  
21 seen, clause 8 makes it clear that the program fee does  
22 relate to the ability to use Apple's tools and  
23 technology to develop apps?

24 A. Well, it is related to the agreement to do so. I think  
25 the keyword for me in that paragraph is "value". It



1 does not represent all the value we provide the  
2 developers. As I explain, I was one of the  
3 decision-makers, back in 2007 -- or 2006 to 2007, that  
4 created this program and this fee, and our purpose was  
5 not so much to be a revenue source for Apple -- in fact,  
6 it went directly into the developer programs. It was to  
7 make sure that we had a -- one transaction with  
8 developers so that we have a -- a) one more tool to try  
9 to make sure they are really who they say they are, to  
10 help protect users that there was not fraud going on,  
11 and secondly, we thought if the entire App Store  
12 distribution model was free, we would -- might get a sea  
13 of developers taking part in it that had no serious  
14 purpose, no business model, no intent, and it would have  
15 created a lot of excess apps in the way of real serious  
16 developers reaching users and we thought it was  
17 important to have a little bit of a bar to access to be  
18 on the App Store and plan to distribute our apps. But  
19 it does not represent the value of all the technology we  
20 deliver to developers.

21 Q. But, unless you can tell me otherwise, there is nothing  
22 in the DPLA which goes beyond clause 8 in terms of  
23 defining what the program fees relate to, is there?

24 A. I am not sure if there is or is not.

25 Q. It is not quite correct, is it, to say that the program

1 fee is not a revenue stream for Apple? I mean, you do  
2 get the US\$99 from every developer that signs the DPLA.  
3 I mean, can you tell me, for example, how many  
4 signatories there are to the DPLA currently?

5 A. I do not recall the number. It is at least in the  
6 hundreds of thousands. But --

7 Q. Well, it is more than that, is it not, because in the  
8 UK, our understanding from the transactional data is  
9 there is about 1.3 million unique developers who  
10 distributed paid or free iOS Apps during the claim  
11 period, so it is millions, is it not, Mr Schiller?

12 A. I am not sure it is plural millions, I do not think it  
13 is, but I accept the number. I have not seen that  
14 number.

15 But again, the reason I say that we did not think of  
16 it as a revenue stream was I do not -- I am not in the  
17 accounting team or finance team, so I cannot speak with  
18 specificity to how it is today, but when we set this up,  
19 I believe we set it up to simply be -- to cover some of  
20 the expenses of the developer program and the programs  
21 we put on in that department for developers. I am not  
22 sure it goes into sales revenue, but again, I am not  
23 an accountant.

24 Q. Can we go back, please, to page 2 of the DPLA, so that  
25 is {E/17/2}. Hopefully you have still got the DPLA in

1 front of you, Mr Schiller, it is page 2 of that.

2 So we are back under the paragraphs under the  
3 heading "Purpose", and it is the third paragraph under  
4 that heading. If you count up six lines from the bottom  
5 of that third paragraph, you will see a sentence that  
6 begins:

7 "If You would like to distribute Applications ..."

8 Do you see that?

9 A. I do.

10 Q. So the DPLA says:

11 "If You would like to distribute Applications for  
12 which You will charge a fee or would like to use the  
13 In-App Purchase API for the delivery of fee-based  
14 content, You must enter into a separate agreement with  
15 Apple ('Schedule 2')."

16 Do you see that?

17 A. I do.

18 Q. Then can we please go to {E/17/95}, that is page 95 of  
19 your bundle, Mr Schiller. Schedule 2.1:

20 "Appointment of Agent and Commissionaire."

21 1.1 says:

22 "You hereby appoint Apple and Apple Subsidiaries  
23 (collectively 'Apple') as ..."

24 It is (ii) that applies in the United Kingdom:

25 "... Your commissionaire for the marketing and

1 delivery of the Licensed Applications to End-Users  
2 located in those [countries] listed on Exhibit A,  
3 Section 2 to this Schedule 2 ..."

4 Etc.

5 So, "You hereby appoint Apple ... as ... Your  
6 commissionaire for the marketing and delivery of the  
7 Licensed Applications to End-Users ..."

8 So do you accept that under Schedule 2, the  
9 developer appoints Apple as its commissionaire for the  
10 marketing and delivery of iOS Apps to end users?

11 A. Yes, it says that.

12 Q. Apple markets and delivers iOS Apps to end users by  
13 means of the App Store?

14 A. Yes, that is one of the means. We have other marketing  
15 tools as well.

16 Q. Developers must use Apple's IAP as the exclusive means  
17 of collecting payment from consumers for sales of  
18 digital goods and services through the App Store?

19 A. Yes.

20 Q. Can we go to page 98 {E/17/98}, clause 3.4, and it says:

21 "Apple shall be entitled to the following  
22 commissions in consideration for its services as Your  
23 agent and/or commissionaire under this Schedule 2."

24 So it is right, is it not, that the Commission is  
25 payment for the marketing and delivery of iOS Apps by

1 means of the App Store?

2 A. Yes, but not only marketing and delivery. It is not the  
3 only value we bring.

4 Q. It is not the only value you bring, but I am just  
5 looking at what your contract with developers says and  
6 what the contract with developers says is that the  
7 Commission is payment for the marketing and delivery of  
8 iOS Apps by means of the App Store; that is the effect  
9 of it, is it not?

10 A. Yes, it is not -- again, we were talking about my  
11 statement and the value. We are not saying that is the  
12 only value we are delivering to developers.

13 Q. The Commission is therefore also covering use of the  
14 IAP, is it not?

15 A. Yes.

16 Q. Can we go, please, to your witness statement, so  
17 {B2/5/43}, that is page 43 for you and me, Mr Schiller.

18 It is paragraph 152. You say:

19 "As I explain in detail at paragraphs 190 to 211 of  
20 this witness statement, Apple's App Store Commission is  
21 not a fee that Apple charges developers for using IAP."

22 I think you have just corrected that in the previous  
23 answer you gave me; correct?

24 A. Yes. I meant by that only for IAP, correct.

25 Q. Then you say:

1           "Rather, it is a fee that Apple charges developers  
2           for helping them develop, test and make available their  
3           apps via Apple's App Store ..."

4           But, Mr Schiller, having looked at the provisions of  
5           the DPLA, it is not correct, is it, that the Commission  
6           is a fee that Apple charges developers for helping them  
7           develop and test their apps, because that is actually  
8           covered by the annual program fee, as we have seen?

9           A. No, not entirely. We give them tools to do that with  
10          the program fee, but we still charge a Commission to  
11          cover that capability for those that use digital  
12          purchases.

13          Q. But again, can you point to a provision in the DPLA  
14          which says that the Commission is a fee that Apple  
15          charges developers for helping them develop and test  
16          their apps? Am I missing a provision?

17          A. I do not know, I would have to look through it all again  
18          to see if I can find it. I believe a lot of the part  
19          you have been pointing out is necessary legally, and  
20          I am not a lawyer, for Apple to have the right to  
21          distribute someone else's goods, their app, and the  
22          right to market it, because without setting up those  
23          rights in the DPLA, we cannot market their app for them,  
24          so we need to set up those rights for marketing and  
25          distribution in order to do so. I am not sure whether

1           or not in the entirety of the DPLA we articulate all the  
2           values we deliver for the Commission. It may or may  
3           not. I would have to look through it all again.

4       Q. Can we go to {B2/5/63}, page 63, please, Mr Schiller.

5           If you could just refresh your memory on what you say in  
6           paragraph 224, please. (Pause)

7       A. Yes, I see that paragraph.

8       Q. Is there anything in the list you provide there that you  
9           would like to correct?

10      A. Not at this time.

11      Q. So let us look at Steam. In relation to Steam, in your  
12          statement you say it charges 30% Commission for sales  
13          below US\$10 million. If we can please have -- I do not  
14          think this is in your bundles, we will have to look at  
15          it on the screen -- bundle {C2/8/90}. I should explain  
16          that this is an expert report, it is the second expert  
17          report produced by Dr Hal Singer, who is an expert who  
18          is instructed by the Class Representative.

19               Whilst this is produced by an expert instructed by  
20               the Class Representative, I understand that the figures  
21               that he gives and I am about to show you are not in  
22               dispute, they have not been challenged by Apple. Do you  
23               understand?

24      A. I understand.

25      Q. Can you please read paragraph 189 of that report?

1 (Pause)

2 A. I see that.

3 Q. First question: how closely did you follow these events  
4 at the time with Steam changing its Commission rate,  
5 Epic Games Store being launched, Microsoft Store  
6 announcing a reduction? Was that something you followed  
7 closely?

8 A. I am not sure how to define "closely", but I certainly  
9 did follow them and read them and people share news of  
10 that when we hear about it.

11 Q. So you were aware of each of these events at the time  
12 they happened?

13 A. I do not recall when I became aware. I certainly have  
14 heard about these.

15 Q. It is quite important. Were you following it  
16 contemporaneously or have you become aware of this as  
17 a result of your participation in the various  
18 proceedings?

19 A. Oh, I follow these things regardless of proceedings,  
20 these are --

21 Q. So contemporaneously?

22 A. Yes, sir.

23 Q. So why did you not explain in your witness statement  
24 that Steam charges a Commission rate that is lower than  
25 30% for sales above US\$10 million? Why only give half



1 the picture?

2 A. Because the list starts by saying that these  
3 marketplaces generally charge a 30% Commission, and  
4 I give a list of -- at the time of this statement --  
5 stores that had a 30% Commission, and I explain that  
6 that was for sales below 10 million. It was not a table  
7 of all commissions that stores charged, I was just  
8 pointing out the ones that charge a 30% Commission.

9 Q. You do not think it is a bit misleading just to give  
10 part of the picture in relation to Steam and not to  
11 explain that they charge less than 30% in other  
12 circumstances?

13 A. Certainly no attempt to be misleading. I think I was  
14 being accurate.

15 Q. You signed your witness statement in January 2024, did  
16 you not?

17 A. Yes.

18 Q. Why did you not explain in your witness statement that  
19 in August 2021, the Microsoft Store had reduced its  
20 Commission rate from 30% to 12% for games sold through  
21 its store? That is clearly relevant information. Why  
22 not tell the Tribunal that?

23 A. I am sorry, I do not remember the exact situation with  
24 the Microsoft Store. I know they had some announcements  
25 of changes on the PC side, but not the Xbox side.

1 I just list the one store of -- add one line for  
2 Microsoft. They have multiple stores. Their dominant  
3 store is their Xbox store, I believe, their largest  
4 store, and that is most relevant to that 30% comparison.

5 Q. So were you aware contemporaneously that the Microsoft  
6 Store announced a reduction in its Commission from 30%  
7 to 12% in August 2021?

8 A. I believe I was aware of some changes, I do not remember  
9 exactly. I think they still retained 30% for some  
10 titles, for games, and not for apps, but I do not  
11 remember the exact details.

12 Q. Apple did not reduce its Commission rates in response to  
13 the reductions by Steam and Epic Games in 2018, did it?

14 A. I do not recall us making changes specifically as  
15 a result of those at that same time.

16 Q. Similarly, Apple did not reduce its own Commission rates  
17 in response to the reductions by the Microsoft Store  
18 in August 2021, did it?

19 A. I do not believe so.

20 Q. Can we go, please, to {D1/85/1}. It is tab 5 for you  
21 and me, Mr Schiller.

22 A. Thank you.

23 Q. Now, this looks like a presentation to the press in  
24 relation to the launch of iPhone OS 4. Is that correct?

25 A. Yes, it is.

1 Q. You will see it is dated 8 April 2010, and you will see  
2 the legend for the speakers: "S" is Steve Jobs; "Q",  
3 questions from the press; "P" is yourself.

4 So it begins with Steve Jobs:

5 "Good morning. Good morning. Thanks for coming  
6 this morning."

7 Then if we go over to page 2 {D1/85/2}, Mr Jobs  
8 says:

9 "Now I'd like to talk for just a minute about the  
10 App Store. We have ... users have downloaded well over  
11 4 billion apps, well over 4 billion apps to date, and we  
12 have over 185,000 apps in the App Store now so, again,  
13 we've had some of our biggest days ever with new apps  
14 going into the App Store in the last few weeks. It's  
15 accelerating."

16 Now, I think these are probably worldwide figures;  
17 is that correct?

18 A. I believe so.

19 Q. This, again, is further evidence, is it not, that the  
20 App Store was a massive success from its launch, is it  
21 not?

22 A. Yes.

23 Q. Can we go to {C3/4/191}. We will have to do this one on  
24 the screen, Mr Schiller. Now, I should say, there is  
25 a graph there and the bit that is in pink is

1 confidential, so neither you, nor I must go anywhere  
2 near the pink bit, but I am not planning to ask you any  
3 questions about it. But, if you are tempted --

4 A. Thank you.

5 Q. -- tell us before you visit the pink bit.

6 A. I will, thank you.

7 Q. Now, this is from a report by Professor Hitt, who you  
8 probably know has been instructed by Apple in these  
9 proceedings as an expert economist.

10 A. If you say so. I do not know that.

11 Q. You do not know.

12 A. Yes.

13 Q. I want to look at exhibit 34 that he has produced. You  
14 will see the heading:

15 "App Store initial downloads and in-app purchases  
16 (10 July 2008 - 31 December 2022)."

17 You will see immediately below the graph he says:

18 "Source: UK Storefront App Store Transaction Data."

19 So we just looked at some worldwide figures and now  
20 we are going to look at some UK-only figures, yes?

21 A. Yes.

22 Q. This graph relates to the number in millions of initial  
23 downloads of in-app purchases in the United Kingdom.

24 You see that from the title and the -- above the  
25 graph -- quarterly number of transactions in millions.

1 Do you see that?

2 A. Yes.

3 Q. Again, we see, do we not, that the success of the  
4 App Store immediately from its launch worldwide was also  
5 the case in the United Kingdom on the basis of this  
6 graph? Do you agree?

7 A. Yes, I see the shape of that curve.

8 Q. Why do you think that the App Store proved so popular so  
9 quickly with iPhone users? What was the secret of your  
10 success?

11 A. That is a very big question with many elements.

12 Q. Oh dear, I am sorry I asked.

13 A. I know, that is why I warned you. Is there something  
14 you could help me focus on?

15 Q. If there is some particular aspect that you think --  
16 because obviously it was a big moment in Apple's history  
17 to launch the App Store.

18 A. Yes.

19 Q. Obviously it was very successful, very quickly.  
20 Obviously Steve Jobs was absolutely delighted with the  
21 success. Is there a factor, looking back on it, that  
22 you think was particularly significant or do you just  
23 think it was a number of factors, right place, right  
24 time, or ...?

25 A. I have not really thought about trying to summarise it

1 in a few words, but a great deal went into it. It was  
2 a revolutionary product, the iPhone, as well as the  
3 iPad; tremendous software and hardware integration to  
4 make a seamless experience for users. I believe the  
5 work we did to create a very robust platform for  
6 developers with a rich SDK that we ourselves were also  
7 using for software development. And a lot of trust and  
8 safety to create a new category of product that was as  
9 easy to use as a phone but had the power of applications  
10 like a PC in a new class of thing. The right time at  
11 the right moment became extremely popular.

12 Q. Was it a unique product at the time? Was that one of  
13 the reasons, that nobody else was doing what you were  
14 doing?

15 A. I believe that is part of the innovation was there was  
16 not anything quite like it, and certainly I think it  
17 still remains unique in the sense that Apple's  
18 implementation, we try to always make it the best of the  
19 class of products that we compete with, and I hope that  
20 makes a difference to users and they appreciate that.

21 Q. In 2007, 2008, was anyone else offering a smartphone  
22 with an App Store or were you the only ones?

23 A. Well, clearly Google followed us not long behind. I do  
24 not recall the date of when they introduced theirs, and  
25 then Samsung made their version of a similar product

1 capability, so I do not know the dates of their --

2 Q. But were you the first? Did you pre-date Google and  
3 Samsung?

4 A. Yes.

5 Q. Can we go back to your statement, {B2/5/56},  
6 paragraph 203. You explain -- paragraph 203, you say:

7 "In 2016, Apple introduced a reduced Commission  
8 structure for subscriptions."

9 You see that?

10 A. Yes.

11 Q. Then you give some details in the subparagraphs that  
12 follow. If we could please then go to {D1/381/1}, and  
13 that is tab 6 of our bundle, Mr Schiller. Now, this is  
14 an article in a publication called "The Verge" on 8 June  
15 2016, and I think that is you in the picture?

16 A. Yes, it is.

17 Q. You have not aged a day, Mr Schiller.

18 A. Oh, I wish, but thank you.

19 Q. What is The Verge?

20 A. It is an online publication that follows the technology  
21 industry.

22 Q. This is an interview that you gave to The Verge in 2016,  
23 yes?

24 A. I do not recall.

25 Q. I mean, it is clear from the context it is, if you look

1 at page 2 {D1/381/2}, the second paragraph:

2 "In a rare pre-WWDC sit-down interview with  
3 The Verge, Phil Schiller, Apple's senior vice president  
4 of worldwide marketing, said that Apple would soon alter  
5 its revenue-sharing model for apps."

6 It is you giving the interview, yes?

7 A. Yes, it appears I did.

8 Q. Then if we go to page 5 {D1/381/5}, if we go four lines  
9 down, you -- yes, this is a quote from you. You see the  
10 quotation begins in the second paragraph so this is you  
11 speaking, I think:

12 "For the first year of a subscription Apple will  
13 maintain its 70/30 revenue share; after one year, the  
14 new 85 percent/15 percent revenue share will kick in  
15 (applied per subscriber). The new app subscription  
16 model will roll out to developers this fall, though if  
17 app makers have subscribers they've already retained for  
18 a year, the new revenue split starts June 13th."

19 So you are explaining there the new subscription  
20 rule, yes?

21 A. Yes.

22 Q. Then if we go to page 7 {D1/381/7}, the second  
23 paragraph you say:

24 "But Schiller insisted that it wasn't any kind of  
25 'Apple tax' backlash or companies encouraging users to



1 go to their own websites that drove Apple's new  
2 subscription model: 'It wasn't done from a negative like  
3 that,' he says. When I asked about this, he stresses  
4 that it was 'absolutely done because we recognize that  
5 developers do a lot of work to retain a customer over  
6 time in a subscription model, and we wanted to reward  
7 them for that by helping them to keep more of the  
8 revenue'. Apple can help drive customers to the  
9 original download, Schiller argues, but only the  
10 developer can keep the customer over time and 'we want  
11 to incent them to do that'."

12 I just wonder whether you could explain to  
13 the Tribunal a bit more about what you were saying here  
14 about the reasons for amending the Commission rates for  
15 subscriptions. Do you want to unpack that a little bit?

16 A. Yes. The idea to create a second year lower 15% rate  
17 for recurring subscriptions came from our App Store  
18 business team working with developers. They saw that  
19 subscriptions were becoming potentially a bigger  
20 business for developers, and us, and new apps were being  
21 created that might take advantage of that. The team  
22 believed that if we created this new subscription model  
23 of 30/15, that even more developers would explore taking  
24 advantage of it to their benefit, as well as ours. So  
25 we wanted to create this new product, so to speak, in

1           the commerce system of the second year subscription. In  
2           doing that, we were trying to create an incentive for  
3           developers to want to use this and to want to work to  
4           set up customers and subscriptions and to do work to  
5           retain them to keep subscribing. For example, a video  
6           service, adding new videos in their subscription system  
7           each year so users want to stay and do not churn out, is  
8           the term in the industry.

9           So this created an incentive for developers to want  
10          to use subscriptions and want to do work in an ongoing  
11          basis to keep their users subscribing, and we were  
12          building a product and capability for developers to do  
13          that.

14         Q. Are you familiar with the notion of a two-sided market?

15         A. I have, yes, heard that term.

16         Q. It is your business model.

17         A. Yes.

18         Q. Yes.

19          So, basically, I think what you are saying is  
20          the new subscriptions were good for developers, they  
21          would develop -- take advantage of that offer to develop  
22          new ways of offering subscriptions in apps, and that is  
23          good for Apple, because the more successful the  
24          App Store, the more people want the App Store, the more  
25          phones you sell. Is that in a nutshell?

1 A. Yes.

2 Q. Can we go, please, to {D1/159/1}, tab 8 for you and me,  
3 Mr Schiller.

4 Now, I think this is an email from you to Eddy Cue  
5 and Steve Jobs, dated 28 July 2011. Do you see that?

6 A. Yes, I do.

7 Q. I have got a little heading in my note, "2011 Musings",  
8 I think you throw this out as "food for thought", you  
9 will see the first line of the email.

10 Can you help us, what position did Eddy Cue hold in  
11 Apple at this time?

12 A. Eddy was responsible for our services businesses, like  
13 iTunes, and also had a shared responsibility with me for  
14 the App Store. Part of the team reports to him and part  
15 reports to me.

16 Q. Was he the senior vice president of services at this  
17 time, can you remember?

18 A. I do not recall if he was a senior vice president or  
19 vice president at this time. I am sorry, I do not  
20 remember when that occurred.

21 Q. No, that is fine.

22 But he was responsible for services, he was high up  
23 in the company?

24 A. Yes.

25 Q. And in the Australian trial, and I think as you just

1           adverted to now, you explained that you and Eddy Cue  
2           were jointly responsible for the App Store from about  
3           2007. Was that still the case in 2011?

4           A. Yes.

5           Q. Obviously we know that Steve Jobs was the co-founder and  
6           CEO of Apple at that time?

7           A. Yes.

8           Q. You told the Australian trial that the key  
9           decision-makers in the design and development of the  
10          App Store were you, Eddy Cue and Steve Jobs; is that  
11          correct?

12          A. Yes.

13          Q. In the email, if you look at the first paragraph, you  
14          say:

15                 "Do we think our 70/30 split will last forever?  
16          While I am a staunch supporter of the 70/30 split and  
17          keeping it simple and consistent across our stores,  
18          I don't think that 70/30 will last that unchanged  
19          forever. I think someday we will see enough challenge  
20          from another platform or web based solutions to want to  
21          adjust our model (already Google has rolled out a web  
22          in app purchase model at 95/5)."

23                 Just so I understand that, what you were asking  
24          here, the food for thought was whether someday some form  
25          of competition would require Apple to depart from its

1           70/30 split. That is the question you were posing; is  
2           that right?

3       A. Yes.

4       Q. And we know, for example in 2011, any competition that  
5           Apple was facing at that time did not cause Apple to  
6           change its 70/30 split at that stage, did it?

7       A. Correct. Other stores were at 30% as well.

8       Q. If we go back -- well, I am not sure we need -- well,  
9           let us do it, it is easy this way. Let us go back to  
10          the DPLA. So it is tab 3 of our bundle, and it is  
11          {E/17/98}, and it is page 98, Mr Schiller, please,  
12          behind tab 3. We saw 3.4 a little earlier this morning,  
13          but 3.4(a) says:

14                "For sales of Licensed Applications to End-Users,  
15                Apple shall be entitled to a Commission equal to  
16                thirty percent ... of all prices payable by each  
17                End-User."

18          So that is the current position in the DPLA, is it  
19          not?

20       A. Yes.

21       Q. So Apple has not felt any need since the introduction of  
22           the App Store to change the 70/30 split in order to  
23           respond to competition, has it?

24       A. I do not agree with that statement.

25       Q. Well, you can unpack it, but can we agree that when the

1 App Store was introduced, it was a 70/30 split?

2 A. Yes.

3 Q. And it is still a headline 70/30 split; is that correct?

4 A. It is one of the commissions, not the only one, yes.

5 Q. Is it the headline Commission rate?

6 A. I do not know what the word "headline" means in this  
7 context.

8 Q. Okay, you explain what you want to say.

9 A. The Commission structure now has, of course, free, which  
10 we had free before but I believe there are additional  
11 categories of apps that are free, more so than when we  
12 started, so they went from 30 to zero. We have, as you  
13 have explained, a 15% Commission rate for the majority  
14 of applications, so Small Business Programs, Video  
15 Partner Programs, News Partner Programs, and also the  
16 second year of a subscription. There still remains  
17 a 30% Commission, but it is not for the majority of  
18 applications.

19 Q. Well, I will come back to that in a minute, it is  
20 something I want to explore with you.

21 Can we go next, please, to {D1/222/1} and it is  
22 tab 9 of our bundle, Mr Schiller.

23 THE CHAIRMAN: Mr Hoskins --

24 MR HOSKINS: I am so sorry.

25 THE CHAIRMAN: -- we should take a break at some stage, but

1           only when it is convenient.

2       MR HOSKINS: No, I am moving on to another topic so that is  
3           absolutely fine.

4       THE CHAIRMAN: Well, why do we not -- we will take  
5           10 minutes. Thank you.

6           Possibly Mr Schiller could do with some help with  
7           his bundle, I think.

8           Mr Schiller, you are not to speak to anybody during  
9           the break, please.

10       A. Yes, I understand, sir. Thank you.

11       (11.47 am)

12                               (A short break)

13       (11.58 am)

14       MR HOSKINS: Can we, please, go to {D1/222/1}, tab 9 for us,  
15           Mr Schiller. You will see this is an email, dated  
16           15 February 2013, that is sent by Eddy Cue to Tim Cook  
17           and to you. Do you see that?

18       A. I see that, yes.

19       Q. If you could just read the first paragraph to yourself,  
20           please. (Pause)

21       A. I see that.

22       Q. Do you see, in the second sentence, he says:

23           "Did we think that customers would buy significantly  
24           more if we gave them a straight discount instead of  
25           an iTunes card?"

1           Can you just give us an idea of what is the issue  
2           that he is discussing here, what is this about?

3       A. This is about a sales promotion through retail channels  
4       for students in a time of year we call "back to school".  
5       Usually graduating high school seniors in the US buy or  
6       are given presents of products to go -- prepare for  
7       college, and so we often would have a promotion at that  
8       time of year called "back to school" to give  
9       an incentive to a parent buying a Macbook or something  
10      for their child.

11     Q. But what is the issue about discounts and iTunes cards?

12     A. Well, there is no issue. Eddy's just suggesting  
13     a different idea, that rather than giving an amount of  
14     money off towards a purchase, that instead we provide  
15     that value in an iTunes card so the user would get  
16     additional value through the card versus a cash  
17     discount.

18     Q. So it is an incentive to purchase an Apple product and  
19     it is whether you do it by way of discount or whether  
20     you do it by way of an iTunes card. Is that what is  
21     happening?

22     A. It is an idea that Eddy's proposing for that, yes.

23     Q. This applies to Macs, iPads and iPhones, we see that in  
24     the first sentence, he is talking about all those  
25     products?



1 A. Yes.

2 Q. Then he goes on to say, in the middle of that paragraph:

3 "Getting customers using our stores (iTunes, App and  
4 iBookstore) is one of the best things we can do to get  
5 people hooked to the ecosystem. The more people use our  
6 stores the more likely they are to buy additional Apple  
7 products and upgrade to the latest versions. Who's  
8 going to buy a Samsung phone if they have apps, movies,  
9 etc already purchased? They now need to spend hundreds  
10 more to get to where they are today."

11 What point was Eddy Cue making there?

12 A. Well, I think he was just trying to convince Steve to  
13 provide the iTunes card, which would benefit the  
14 businesses he was managing. He was lobbying for  
15 a promotion that included his business, as opposed to  
16 our standard promotion that we do, which is a cash-back  
17 offer.

18 Q. But the way he is presenting it, the way he is trying to  
19 sell it goes beyond that, does it not? He says:

20 "The more people use our stores the more likely they  
21 are to buy additional Apple products and upgrade to the  
22 latest versions."

23 There is a dynamic here he is describing, is there  
24 not?

25 A. Well, I do not consider him really describing a dynamic.

1 I think he is arguing, trying to convince Steve to  
2 include his iTunes gift card and that is all he is  
3 doing.

4 Q. Well, he says:

5 "Who's going to buy a Samsung phone if they have  
6 apps, movies, etc already purchased? They now need to  
7 spend hundreds more to get to where they are today."

8 His point is the more Apple stuff you have, the less  
9 likely you are to switch away from Apple to anyone else,  
10 such as Samsung. That is the point he is making, is it  
11 not?

12 A. I do not think he has any knowledge or data that that is  
13 the case. Again, he is just trying to make an argument  
14 to convince Steve to include his iTunes gift card.

15 Q. Is that the point he is making, though?

16 A. I do not think he is really making that point. I do not  
17 think he knew whether that was the case. He is really  
18 trying to convince our boss to include an iTunes card  
19 with a Mac. Primarily, that was the promotion, was Mac.

20 Q. He is trying to persuade him by saying that this will  
21 tie customers into the Apple system and make it less  
22 likely they will switch. That is the sales pitch to  
23 Tim Cook, is it not?

24 A. That is the pitch he is making.

25 Q. Can we go to {D1/102/1}. Tab 10 for us, Mr Schiller.

1           This is an email from Steve Jobs, dated 24 October 2010.  
2           It is to "ET". Can you just explain what that recipient  
3           group is? What is "ET"?

4       A. That the -- stands for "executive team". There was  
5       a group of us who reported to Steve Jobs and ran  
6       different functional parts of Apple that would meet once  
7       a week and discuss the business at Apple, and that is  
8       called the executive team, the "ET".

9       Q. So those are the people that ran the business, these are  
10       the top people; is that correct?

11      A. Yes.

12      Q. What does the subject mean, "Top 100 - A"?

13      A. Top 100 is an annual meeting we have at Apple of the top  
14      100 people that we would meet and have an offsite and  
15      discuss our business and our year ahead.

16      Q. So it is planning the business for the future,  
17      strategising, that sort of thing, is it?

18      A. The meeting, yes.

19      Q. Item 1, is "2011 Strategy", it has got "SJ", Steve Jobs  
20      beside it. What are these bullet points? Are these  
21      points that were to be made at the meeting, do you  
22      think? He says:

23           "Here's my current cut.

24           Steve"

25           Is this some sort of agenda or plan for the meeting?

1       A. It looks like a draft outline for the meeting.

2       Q. Steve Jobs says -- if you go -- so it is number 1, "2011

3       Strategy -- SJ", and you follow the bullets down, you

4       will see:

5               "2011: Year of the Cloud."

6       The final entry under "Year of the Cloud" is:

7               "Tie all of our products together, so we further

8       lock customers into our ecosystem."

9       Do you see that?

10      A. I do see that.

11      Q. What point is Steve Jobs making here, do you think?

12      A. I do not know what he was thinking. I do not recall

13      that being the presentation.

14      Q. Well, again, to put it colloquially, what he is saying,

15      Mr Schiller, is the more that people have Apple

16      products, the more likely they are to stay with Apple

17      and not to switch to a competitors. It is a very simple

18      point, is it not?

19      A. That could be. It could also mean the more we make

20      products that our customers love, they want to stay with

21      us and use more of our products. I think there are many

22      interpretations of that.

23      Q. Well, let us see what he says over the page at page 2

24      {D1/102/2}. There is a heading there:

25               "MobileMe -- Cue, SJ [so that is Steve Jobs],

1 Roger Rosner."

2 Then, if you go three bullets down:

3 "2011.

4 Apple's year of the cloud.

5 Tie all of our products together.

6 Make Apple's ecosystem even more sticky."

7 So what point's being made there?

8 A. Again, it can be the same, that if our customers are  
9 able to use more of our products together in a way that  
10 is better, they will want to use more of our products.

11 Q. Mr Schiller, it was part of Apple's commercial strategy  
12 to encourage customers to buy as much Apple product as  
13 possible to lock in customers to Apple's ecosystem and  
14 to discourage them from switching away to other products  
15 and services, was it not?

16 A. No.

17 Q. No part of your commercial strategy whatsoever? It  
18 never even entered your mind?

19 A. There are parts of what you say that are true and parts  
20 that are not. We certainly want customers to buy more  
21 of our product. Of course we do. Every company does.  
22 We certainly want customers to use multiple products  
23 from us. Again, every company does. We want to make  
24 customers like how our products work together better  
25 than our competitors' products work together. Of course

1           that is a good thing for our users. But when you talk  
2           about "lock in", that was just never a strategy.

3       Q. Well, let us go to another document, {D1/236/1}, tab 11  
4           for our bundle. Subject:

5           "Goldman Sachs switching report."

6           It is from you, you see who it is to. It is dated  
7           20 June 2013. Who were the group of people you sent the  
8           email to?

9       A. Mostly people who worked for me in product marketing as  
10          well as Mr Cue, and Matt Fischer, who worked for him at  
11          the time.

12      Q. You say:

13           "Here is an interesting report on the cost and  
14           methodology ... from iPhone to Android."

15           Do you see that?

16      A. Yes.

17      Q. Then if we go to tab 12, {D1/235/1}, this is the  
18          Goldman Sachs report. Do you see that?

19      A. Yes, I do.

20      Q. Could you just read, please, the paragraphs under the  
21          headings, "What's changed", and "Implications". (Pause)

22      A. Yes, I see that.

23      Q. So Goldman Sachs did this study and they state under the  
24          "What's changed" heading:

25           "Over the past several years we have written

1           extensively on our view that Apple's iOS customers are  
2           remarkably loyal, with high switching costs ..."

3           Under "Implications", they say:

4           "Our conclusion suggests the cost of switching  
5           platforms is significant, and indeed, it was not  
6           possible to transfer all of our content."

7           Why did you circulate this report?

8       A.   Well, first, I want to correct -- you called this  
9           a study. It is not a study. It is actually a report  
10          they published of one person. So one person tried this  
11          and wrote up --

12       Q.   I understand. But why did you circulate the report?  
13           Why was it important to you for the others to read it?

14       A.   Because I had not seen an attempt at a methodology  
15           previously, that I recall, for somebody trying to  
16           estimate the effort and cost of switching between  
17           Android and iOS before seeing this report.

18       Q.   But you were not just interested in the methodology, you  
19           were interested in the conclusion, were you not? This  
20           is Goldman Sachs.

21       A.   I do not recall whether I was interested in the  
22           conclusion or not. I was interested in just sharing  
23           this. It was something different than anything I had  
24           seen.

25       Q.   Well, this must have been cheering to you, the idea that

1 Apple has remarkably loyal customers and that switching  
2 costs are high; that is good news for the business, is  
3 it not?

4 A. The first part, that we have loyal customers, of course.  
5 The second part, no, I do not recall thinking that or  
6 saying that and I certainly did not write that at this  
7 time.

8 Q. It is not bad for the business, is it? If they have got  
9 high switching costs, it means they are more likely to  
10 stay with you than switch to others. Why are you  
11 fighting this? I do not understand?

12 A. I am just saying it was not a strategy.

13 Q. I mean, the truth is, Apple has been very successful at  
14 retaining customers, both worldwide and in the UK, has  
15 it not?

16 A. I think we work hard to keep our customers. I do not  
17 know where you evaluate successful or not. We try to  
18 make customers love our products and enjoy buying from  
19 us, yes.

20 Q. Well, let us look a bit more at that. {D1/773/1},  
21 please, and tab 13 for us, Mr Schiller.

22 DR BISHOP: Mr Hoskins, could I ask you, what year was that  
23 Goldman Sachs report?

24 MR HOSKINS: The Goldman Sachs was 2013, I think. Yes,  
25 19 June 2013.



1 DR BISHOP: Thank you.

2 MR HOSKINS: I am sorry, I have given a wrong reference.

3 It should be {D1/733/1}.

4 Do you see this is a document, it looks like  
5 a slide, "iPhone Buyer Survey, FY19-Q3 Global Report",  
6 and although the date does not appear on the slide,  
7 I can tell you it is from 21 August 2019, yes?

8 A. Okay.

9 Q. This is produced, is it, by Apple Market Research and  
10 Analysis? You see that?

11 A. Yes.

12 Q. And what is the purpose of this sort of survey?

13 A. The product marketing team at Apple produces surveys  
14 about customers after they have purchased our product to  
15 ascertain different bits of information from that.

16 Q. If we go to page 2, sorry, and it is page 31 {D1/733/31}  
17 on the electronic, you see the slide has the heading:

18 "About one-quarter or less of iPhone buyers  
19 considered other smartphone brands, except in China  
20 (46%), HK."

21 I am presuming this is not confidential because it  
22 is not marked, but if someone wants to shout out -- it  
23 is fine?

24 So about one-quarter or less of iPhone buyers  
25 considered other smartphone brands. If you look at the

1 smaller writing below the graph, "Q30", you see the  
2 question that was asked to produce these results:

3 "When you got the [MODEL] ..."

4 I presume that is an iPhone model:

5 "... did you consider getting a different brand of  
6 smartphone?"

7 Do you see that?

8 A. I do.

9 Q. If you look at the entity for the UK, you will see that  
10 only 15% of UK iPhone buyers even considered other  
11 brands when they purchased a new smartphone. Is that  
12 correct?

13 A. Yes, I see that.

14 Q. If you go to page 32 {D1/733/32} in the electronic,  
15 page 3 for us, Mr Schiller, it is quite hard to follow  
16 through, but you will see the UK is in a sort of  
17 fetching and sort of slight turquoise colour, and it is  
18 clear that actually since Q3 in 2015, consideration of  
19 other brands was actually reducing in the UK. Do you  
20 see that?

21 A. Yes, it looks like it is.

22 Q. Then if we can please go to {D1/1040/1}, tab 15 for us,  
23 Mr Schiller.

24 So, "iPhone Buyer, FY21-Q4 Global report: GEOs."

25 The date of this document is 1 December 2021. Again

1 it is produced by Apple Market Research and Analysis.

2 If we go to page 52 in the electronic {D1/1040/52},  
3 page 2 for us, you will see a similar sort of graph that  
4 we saw previously:

5 "Consideration of other brands remained low across  
6 most markets ..."

7 You will see the figure for the UK is 12%.

8 A. I see that.

9 Q. So Apple has been very successful at retaining iPhone  
10 customers in the United Kingdom, has it not?

11 A. Again, depending on your expectations, one could say  
12 that.

13 Q. Well, the person who did the slide says, "Consideration  
14 of other brands remained low ...", so I appreciate we  
15 can debate whether a figure is high or low, but Apple  
16 itself calls that figure low, yes?

17 A. Yes.

18 Q. Then if we can go to {D1/798/1} and tab 16 for us,  
19 Mr Schiller, a similar report but this time this is for  
20 iPads. You will see it is for "iPad Buyer, FY20-Q2  
21 Global Report", and this is dated 1 May 2022.

22 If we go to page 18 in the electronic {D1/798/18},  
23 page 2 for us, you see:

24 "Most respondents did not consider another device  
25 than the iPad."

1           Then you see for the UK only 10% even considered  
2           buying something other than an iPad. Do you see that?

3       A. Yes, but I think as you are stating these, you need to  
4           keep in mind this is data surveying the customers who  
5           chose to buy an iPhone or an iPad. It is not a survey  
6           of the customers who did not choose to buy an iPhone or  
7           an iPad. So if -- I will make up a number -- if half of  
8           the owners of iPhone instead bought a Samsung and not  
9           an iPhone in this period, they would not have been  
10          counted in the base surveyed, and so we would not know  
11          that from this data. So I would be careful to -- the  
12          statement you are making about low, is low among those  
13          who did choose to buy.

14       Q. You accepted that Apple has been very successful at  
15          retaining iPhone customers in the United Kingdom. It  
16          has also been very successful at retaining iPad  
17          customers in the United Kingdom, has it not?

18       A. Based on this data for those who chose to buy again,  
19          they did not consider others. I think that is the  
20          conclusion from this data.

21       Q. But -- answer the question, please. Apple has been very  
22          successful at retaining iPad customers in the  
23          United Kingdom, has it not?

24       A. I do not know, I have not looked at that data.

25       Q. If we go back to your witness statement, please,

1 {B2/5/16}.

2 If we look at paragraph 50, you explain what a web  
3 app is and then, in the final sentence, you further  
4 explain:

5 "Web apps, however, are not available from the  
6 App Store."

7 Why are web apps not available from the App Store?

8 A. Because we design the App Store to meet the need of  
9 delivering native applications to our users. That was  
10 all the work we did that is discussed in my document in  
11 creating the App Store. We already had a methodology  
12 for web apps where developers can reach users directly  
13 on the web via the browser, Safari, and that need had  
14 been met in the launch of the original iPhone in 2007.  
15 The App Store was created for a new class of  
16 applications called native applications that aren't  
17 available over the web.

18 Q. For iOS Device users, presumably the fact that web apps  
19 are not available from the App Store makes web apps less  
20 attractive when compared to native iOS Apps available on  
21 the App Store?

22 A. I do not know that is the case, no.

23 Q. You do not? So I have a phone; I am sitting there,  
24 I can go to the App Store and I can download a native  
25 app straight from there, and you are saying that is not

1           any more -- or not easier than having to go to  
2           a separate web store and download it from there, that is  
3           your evidence, is it?

4       A.   Not --

5       Q.   -- (overspeaking) --

6       A.   Not at all.  No, you do not download web apps, so the  
7           whole concept I think is very different than you are  
8           describing.  A web app is an app you simply go in the  
9           browser and you go to the website and you are in the web  
10          app.  There is no downloading; it is native on the web.  
11       If you want, you can create an icon on your home screen  
12       to just click on and be in it, that is an optional  
13       feature that we engineered.  But you do not have to do  
14       that, you can just be on the website on the web page so  
15       there is no downloading involved.  There are pluses and  
16       minuses to both.  Both are good technologies, web apps  
17       and native apps, they are just very different, but you  
18       do not download web apps.

19      Q.   Excuse my technical limitations, but it is easier for  
20           iOS Device users to simply get a native app through the  
21           App Store, is it not?  Simply looking at the ease of  
22           getting access to the relevant app?

23      A.   I am sorry, when you say "easier", comparing to web  
24           apps?

25      Q.   Mm.

1       A. No, I do not think it is easier to launch the App Store,  
2       go to an app, product page and click the "get" button,  
3       download it and then go into the app, those steps,  
4       versus go to your Safari browser, go to a website and  
5       start using the web app. I do not think the direct --  
6       the access to it by itself is necessarily harder or  
7       easier for a web app.

8       Q. Well, let us look at paragraph 52 of your statement.  
9       You say there:

10               "Following the release of the iPhone, Apple received  
11       feedback from developers that they wanted the  
12       opportunity to create native apps on the iPhone, not  
13       only web apps."

14               So why did developers want the opportunity to create  
15       native apps on the iPhone?

16       A. For some developers, they wanted to take advantage of  
17       Apple's unique technologies that we had built into  
18       iPhone and to build rich experiences that would benefit  
19       from those, and for some there was added performance  
20       that you can get from a native app compared to a web  
21       app, if you want the maximum performance for certain  
22       classes of applications.

23       Q. So native apps offered more opportunities to developers  
24       in terms of what they were offering their customers?

25       A. Different opportunities. There are uniquenesses to web

1 apps and uniquenesses to native apps. It depends what  
2 the developer individually wants to do and what they  
3 would most benefit from.

4 Q. If we look at paragraph 51 of your statement, you say:

5 "From a consumer's perspective, the experience of  
6 accessing the same content through a native app or a web  
7 app can be a very similar experience, depending on the  
8 steps a developer takes to create the experience. When  
9 web apps are run through Safari on iOS Devices,  
10 a consumer will not see the search bar in the interface,  
11 which can make the web app experience indistinguishable  
12 from a native app experience. Web apps are thus able to  
13 function as substitutes for native apps, subject to the  
14 unique demands of the app in question. There are  
15 a large number of use cases among the 27 categories of  
16 apps offered on the App Store in which the consumer  
17 experience between web apps and native apps may be  
18 largely indistinguishable."

19 Why is the comparison between native apps and web  
20 apps in this paragraph of your statement couched in such  
21 tentative terms, "can be", "can make", "subject to the  
22 unique demands of the app in question", "may be largely  
23 indistinguishable"?

24 A. For the reasons I have just explained, that, depending  
25 on the way the developer creates the app and what they



1 want the app to do, there may be a way to do that with  
2 a web app that is as good or in some cases better for  
3 the use cases than a native app, but there might not be.  
4 It depends on what they want.

5 Q. Is your evidence in your statement about web apps based  
6 on your general experience or have you referred to  
7 specific reports and studies on this issue in order to  
8 prepare your evidence?

9 A. I have, certainly, general experience; there are web  
10 apps I use myself every day, and so I have certainly  
11 experience with it. I have worked on web apps from the  
12 launch of the iPhone, which only allowed for web apps  
13 for third-party applications when we launched it in  
14 2007, and I have worked of course on native apps since  
15 the creation of the App Store for the experience in  
16 both.

17 I have read many articles and stories about HTML5  
18 and web applications. I have worked with developers who  
19 create HTML5 web applications throughout my career, so  
20 I have experience from many -- many angles.

21 Q. Can we go, please, to {AB6/25/1}, and it is tab 17 of  
22 our bundle, Mr Schiller.

23 This is the United Kingdom Competition and Markets  
24 Authority market study final report into mobile  
25 ecosystems, dated 10 June 2022. Have you seen this

1 report before?

2 A. I do not believe I have.

3 Q. So you did not take account of this report when  
4 preparing your evidence?

5 A. No.

6 Q. Can we go, please, to page 115 electronically  
7 {AB6/25/115} and page 2 in our bundle. Can I ask you to  
8 read -- I am afraid I am going to ask you to do a wee  
9 bit of reading, paragraphs 4.126 to 4.133  
10 {AB6/25/115-117}. Take your time. (Pause)

11 A. I have read that. Thank you.

12 Q. Thank you.

13 So you see at paragraph 4.126 {AB6/25/115}, under  
14 the heading, "Competitive constraints from web apps in  
15 Apple's ecosystem", the CMA stated:

16 "The evidence suggests that currently web apps place  
17 only a very limited constraint on the App Store within  
18 Apple's ecosystem, for the following reasons."

19 Now, I appreciate you are not a competition expert.  
20 Is that something you can speak to or is it something  
21 that is just outside your experience and knowledge?

22 A. I do not believe I have -- I am the correct person to  
23 speak to competition between what the CMA describes as  
24 web apps and native apps.

25 Q. I am hopefully moving to something that is within your

1 knowledge. If we look at paragraph 4.129 {AB6/25/116},  
2 the CMA says:

3 "We understand from online content providers and app  
4 developers that the use of the WebKit browser engine  
5 materially restricts the functionality of web apps  
6 compared to native apps, as considered further in the  
7 next chapter. Some examples of reduced functionality  
8 available for web apps on iOS Devices include."

9 Then there is six specific examples.

10 Do you know whether these reduced functionalities  
11 exist for web apps on iOS Devices? Do you have any  
12 reason to disagree with what the CMA is saying there?

13 A. I do not have a great deal of knowledge of the different  
14 web browser engine features and capabilities and how  
15 they compare and so I would not be the best person to  
16 speak to this.

17 DR BISHOP: May I ask a question at this point.

18 MR HOSKINS: Of course.

19 DR BISHOP: WebKit. When did -- when was WebKit created and  
20 when did it become part of the Apple offering  
21 (inaudible)?

22 A. Yes, sir. The WebKit was created before iPhone on the  
23 Mac. Apple created our browser, Safari, and the engine  
24 underneath it is called WebKit.

25 DR BISHOP: Okay. Thank you very much.

1 A. You are welcome.

2 MR HOSKINS: Can we go over the page to page 4, we see the  
3 CMA there says -- or the second sentence rather of  
4 paragraph 4.130 {AB6/25/117}:

5 "For example, parties submitted that Apple does not  
6 allow any browser other than Safari to offer the  
7 functionality that enables users to add the icon of  
8 a web app to the home screen."

9 Do you know if that is correct or not? Do you have  
10 any reason to disagree with what the CMA is saying  
11 there?

12 A. I have no reason to disagree.

13 Q. Then paragraph 4.131, you have not referred in your  
14 statement to any studies into developers' views on the  
15 comparative functionalities of web apps and native apps,  
16 have you?

17 A. No, I did not.

18 Q. Your evidence is based on your own personal experience,  
19 as you described earlier, yes?

20 A. Correct.

21 Q. Paragraph 4.133, again you have not referred to any  
22 alternative survey that calls the CMA's findings into  
23 question, have you?

24 A. I have not.

25 Q. Can we go, please, to {AB6/45/1}. It is tab 7 in our

1 bundle, Mr Schiller. This is the decision of the  
2 European Commission in relation to its investigation  
3 into Apple's App Store practices in relation to music  
4 streaming. It is dated 4 March 2024. Have you seen  
5 this decision before?

6 A. I believe I have.

7 Q. Have you read it before?

8 A. I do not recall whether I read the whole thing or was  
9 provided a summary. I am sorry, I do not recall.

10 Q. Why did you not refer to this decision in your  
11 statement? It is clearly relevant to the matters that  
12 we are discussing this morning.

13 A. Sorry, I am not sure -- first of all, this came out  
14 after my statement.

15 Q. 4 March 2024, I am sorry, is that ... yes, that is the  
16 answer to my question. Thank you.

17 A. Thank you.

18 Q. Can we go, please, to recital 278, that is page 84  
19 electronically {AB6/45/84}, page 3 in the hard copy.  
20 Now, can you read recitals at paragraphs 278 to 279,  
21 please. (Pause)

22 A. I have read that.

23 Q. And 280 and 281 {AB6/45/84-85}, please. I am trying to  
24 give you this in bite-sized chunks. (Pause)

25 A. I have read that.

1 Q. Are there any aspects of what the Commission has found  
2 as a result of its investigation that you wish to take  
3 issue with?

4 A. Not at this time, no.

5 Q. If we go to page 5, so that is page 86 electronically  
6 {AB6/45/86}, the Commission states at paragraph 288:

7 "Web-based apps are typically also inferior to  
8 native apps beyond the specific segment of music  
9 streaming apps because of their more limited  
10 functionalities. Indeed, Apple itself does not consider  
11 an app offering functionality similar to that of  
12 a webpage as worthy of getting accepted to the  
13 App Store; see [paragraph] 4.2 of the Guidelines ..."

14 So just looking at the first sentence, "Web-based  
15 apps are typically also inferior to native apps beyond  
16 the specific segment of music streaming apps because of  
17 their more limited functionalities", is that something  
18 you agree or disagree with?

19 A. I do not agree with how that is worded.

20 Q. What is your position?

21 A. I think there are benefits and differences between web  
22 apps and native apps that, depending on what you are  
23 trying to do --

24 Q. (Overspeaking).

25 A. -- it will decide what is best and so you cannot simply

1 state that web apps are always inferior to native apps.

2 They do have advantages as well.

3 Q. Is that based on your personal experience or do you have  
4 some studies, or --

5 A. Well, it is sim --

6 Q. -- documents that would support that view?

7 A. It is simple fact. For example, a web app can be  
8 integrated with a web server product directly, where  
9 a native app is not, and so if you are providing  
10 a service based on a web server, a web app might be  
11 something you would want to do.

12 Secondly, a web app, every time you just go to the  
13 web page, you get the current version. There is no  
14 update process required. So for developers that have  
15 specific needs for things that are constantly being  
16 evolved and changing, a web app may be more appropriate  
17 and useful methodology for developing your app.

18 So I do not think it is as simple as just saying it  
19 is always inferior to have a web app; there are  
20 differences depending on what the developer needs.

21 Q. Yes, so there will be some differences and some people  
22 may value some things more than others, but do you  
23 accept as a general overview of the position what the  
24 Commission says, "Web-based apps are typically also  
25 inferior to native apps beyond the specific segment of

1 music streaming apps because of their more limited  
2 functionalities"? Overall, what the Commission is  
3 saying is, web-based apps, even though they may have  
4 some advantages, overall are to be considered inferior  
5 to native apps. Do you agree or disagree?

6 A. I just think it is an opinion and that is their opinion.  
7 I cannot disagree that that is their opinion. Someone  
8 else could have a different opinion. I have met people  
9 who believe web apps are the most important way to  
10 distribute software and they would feel different. It  
11 is an opinion.

12 Q. Why -- you see the second sentence:

13 "Indeed, Apple itself does not consider an app  
14 offering functionality similar to that of a webpage as  
15 worthy of getting accepted to the App Store; see 4.2 of  
16 the Guidelines: 'Your app should include features,  
17 content, and UI that elevate it beyond a repackaged  
18 website. If your app is not particularly useful,  
19 unique, or "app-like", it doesn't belong on the  
20 App Store'."

21 Why does Apple take that position?

22 A. This is referring to something a bit different. That  
23 line from our Guidelines, we saw developers who wanted  
24 to capitalise on the discovery of the App Store with  
25 users that would just simply create an app of a web



1 page, not even a web app, a web page. So if somebody  
2 simply was creating a web page and wrapping it up as  
3 an app to make it look like a native app when it is not,  
4 that is not something we wanted to host in the App Store  
5 because that is different, it is a website, and that is  
6 why we created that language.

7 Q. Go back to your statement, please, {B2/5/68}. I would  
8 like to take you to paragraph 242, Mr Schiller.

9 Do you see the subheading, "Game Streaming  
10 Services", and in paragraph 242 you begin by saying:

11 "In recent years, there have been significant  
12 developments in game streaming services."

13 Then, in the final sentence, you say:

14 "On 25 January 2024, Apple announced that it was  
15 introducing new options that would allow developers to  
16 submit apps with the capability to stream games."

17 Then, in paragraph 247, you say:

18 "From 2022, iOS users were able to play Fortnite in  
19 the GeForce Now app on iOS. Xbox Cloud Gaming also  
20 allows users to play Fortnite (and transact with Epic)  
21 on their iOS Devices through a web browser."

22 You do not give any examples in your statement of  
23 any significant developments in game streaming services  
24 prior to 2022, do you?

25 A. I do not.

1 Q. So when you say, in the opening sentence of  
2 paragraph 242, that there have been significant  
3 developments in game streaming services in recent years,  
4 is it right that you are talking about since 2022?

5 A. I was not being specific about a date range, but it is  
6 a fairly recent phenomenon, the beginning of  
7 a new market for games with streaming.

8 Q. Can we go to paragraph 240 of your statement, which is  
9 page 67 {B2/5/67}. It is the top of page 67, you say:

10 "Apple has recognised other app transaction  
11 platforms as competitors since at least 2008. For  
12 example, in 2008 Apple gave consideration to the  
13 different app commerce models used by Microsoft, Xbox,  
14 Nintendo and PlayStation in Apple's In-App Commerce  
15 presentation appearing at -- [and this is a reference  
16 again to your exhibit] -- [PS1/243], and adopted its  
17 approach to allow in-game commerce in part because  
18 developers believed Apple 'could vault into a leadership  
19 position' as compared with other app transaction  
20 platforms as set out on page 27 ..."

21 And again, a reference to your exhibit, PS1/270.

22 So if we could go to the document at PS1/243, if we  
23 go to {D1/48/1}, and it is tab 18 of our bundle, and if  
24 we go to page 2 {D1/48/2}.

25 So you will see, tab 12, so this PS1/243, this is

1 from your exhibit to your statement. If we go to  
2 page 2, you will see an email of 11 December 2008. The  
3 subject is "App Commerce preso", I presume that means  
4 presentation?

5 A. Yes.

6 Q. It is from Ron Okamoto, was he an Apple employee?

7 A. Yes.

8 Q. It says:

9 "Attached is a keynote preso outlining the various  
10 app commerce models used by Microsoft Xbox, Nintendo,  
11 Sony Playstation, etc. We've included summaries for  
12 other models and developers so we can see the current  
13 scope of what is offered."

14 This presentation looks at different business models  
15 used by companies other than Apple, does it not? That  
16 is its purpose?

17 A. Yes.

18 Q. If we go to page 28 {D1/48/28}, this is the specific  
19 slide that you rely upon in your statement. You see the  
20 heading, "Summary":

21 "Download and install is the widely supported model  
22 by major consoles.

23 "In-game commerce is just coming to fruition without  
24 a clear leader to benchmark against."

25 Then, 3:

1           "Developers believe Apple could vault into  
2           a leadership position, and turn iPhone/iPod touch."

3           You do not rely on any other slides in your  
4           statement from this presentation, do you?

5       A. No.

6       Q. This is the only one you have referred to specifically?

7       A. That is where that quote came from, yes.

8       Q. Neither this slide, nor this presentation, contains any  
9           analysis of whether and to what extent Apple competes  
10          with the other companies referred to in the  
11          presentation, does it?

12      A. Well, I think the existence of the analysis itself,  
13          looking at these other transaction platforms for games,  
14          is the example that we consider them competition because  
15          we use them to benchmark and evaluate our offering  
16          against them.

17      Q. But the presentation does not contain any analysis of  
18          whether and to what extent Apple competes with such  
19          companies, does it?

20      A. Other than as I have mentioned. I cannot think of other  
21          content in here about that.

22      Q. This is the only evidence that you exhibit to your  
23          statement to suggest that Apple competes with companies  
24          like Microsoft Xbox and Nintendo, is it not? It is this  
25          one document?

1 A. This is the one I reference when I am saying that, yes.

2 Q. So this is the best one you could come up with to  
3 support your point, is it?

4 A. I am not sure. I think if I thought about other  
5 documents I have seen through the years, if it was  
6 a question of finding the best one, I could entertain  
7 an exercise like that and see what else I could find.

8 Q. Can we go to paragraph 7 of your statement at {B2/5/2},  
9 page 2 for us. You explain in paragraph 7 your  
10 background and experience. Am I right in understanding  
11 that your background and experience is in marketing and  
12 management?

13 A. At Apple, yes.

14 Q. What was your other experience and when was it then,  
15 other than marketing and management? Have you had  
16 anything this century other than marketing and  
17 management?

18 A. No, I have been at Apple the entire time I have been --  
19 in this century.

20 Q. Makes us all feel old, does it not?

21 A. Sometimes, yes, sir.

22 Q. Your role with Apple is at an executive level?

23 A. Yes.

24 Q. Have you ever worked as an app developer?

25 A. No.

1 Q. Can we look at the second report of Professor Hitt, who  
2 is one of Apple's economic experts, that is {C3/4/108}.  
3 Sorry, just give me a second to find my bundle. It is  
4 paragraph 180. Professor Hitt says:

5 "Many technical tools exist to provide developers  
6 with the option to make game app transactions on a wide  
7 range of platforms. For example, developers are able to  
8 choose from a variety of game developer engines -- such  
9 as Unity, Unreal Engine, CryEngine, GameMaker Studio,  
10 and more -- that allow developers to distribute their  
11 games across different platforms."

12 Have you personally ever used any of these software  
13 development tools?

14 A. No.

15 Q. Are you aware that the Class Representative has  
16 instructed someone called David Howell to provide expert  
17 evidence on mobile app development?

18 A. No, I am not aware of that.

19 Q. Can we go to Mr Howell's first statement, that is  
20 {C2/4/3}. If you could read to yourself, please,  
21 paragraphs 5, 6, 7 and 8, you will see what Mr Howell's  
22 expertise is.

23 A. Do I have this in a binder as well --

24 Q. No, you do not. This one is on the screen.

25 A. Thank you very much.

1 Q. If you just tell them when you want to flick over the  
2 page, they will do that for you.

3 A. I will, thank you. (Pause)

4 I have read through paragraph 8.

5 Q. So you will see that Mr Howell has significant hands-on  
6 experience in designing mobile apps. Do you agree?

7 A. Yes.

8 Q. If we go to page 23 {C2/4/23}, paragraph 41, could you  
9 read that, please. (Pause)

10 A. I see that.

11 Q. Given your background in marketing and management, are  
12 you in any position to disagree with what Mr Howell says  
13 there?

14 A. No, I am not familiar with the tools he is referencing,  
15 and so could not state either way the accuracy of that.

16 Q. Mr Howell makes a number of technical points on this  
17 subject and I could take you through each of them, but  
18 obviously if the answer each time is going to be, "I am  
19 sorry, I am just not in my field", say that to me now  
20 and I will not do the exercise. But if you would  
21 like -- if you think you might be able to deal with this  
22 sort of technical information, then I am very happy to  
23 take you through it.

24 A. Entirely up to you. I will be happy to try my best and  
25 if it seems that is happening with the multiple

1           questions, you can decide to not continue.

2       Q.   That is fine.

3           So next, if you would read paragraph 42, please.

4           (Pause)

5       A.   I have read that.

6       Q.   So you see Mr Howell says:

7           "... a developer using Unity to build a native app  
8           will still need to employ a significant amount of native  
9           code in order for it to interact properly with the  
10          relevant operating system.  It is therefore not  
11          a complete solution in itself (i.e. an app created using  
12          Unity still cannot be deployed across multiple platforms  
13          without modification or re-engineering)."

14          Are you able to comment on that?

15       A.   I am aware of this generally.  Again, I am not an app  
16       developer, but I do understand generally about  
17       third-party SDKs, as we refer to them, and one very  
18       popular one is Unity, that is used by many game  
19       developers.  It makes it easier for a game developer to  
20       create a number of capabilities in their game that will  
21       be common across different platforms, but that does not  
22       complete the effort to make a native application for  
23       their game, they still have other work to do.  So,  
24       generally, I am aware of what he is writing about.

25       Q.   So do you agree with what he says in the last two



1 sentences of paragraph 42?

2 A. Starting with the term "However"?

3 Q. Yes.

4 A. Other than the use of the word "significant", I cannot

5 judge how much code is native versus the original game

6 in Unity, so I do not know either way what -- whether

7 that is the correct term, but generally the concept of

8 what he is saying there I certainly agree with.

9 Q. This is his first report; if you have not read that,

10 I presume you have not read his second report either?

11 A. Correct.

12 Q. Can we have that up, please, it is {C2/12/5}.

13 You see paragraph 9, four lines down, the sentence

14 begins:

15 "In reality (and as explained in my First

16 Report) ..."

17 Do you see that?

18 A. Yes.

19 Q. Could you read to the end of paragraph 9, please.

20 (Pause)

21 A. Yes, I see that.

22 Q. Do you disagree with what he says there?

23 A. No, I do not.

24 Q. Then paragraph 11, can you read that, please. (Pause)

25 A. I see that.

1 Q. Do you agree that these are the sorts of technical  
2 issues that need to be addressed when developing  
3 versions of apps for multiple platforms?

4 A. Yes, they can be.

5 Q. If you could read paragraph 12 {C2/12/6} and, as  
6 a spoiler, I am going to ask you exactly the same  
7 question. (Pause)

8 So do you agree that these are the sorts of  
9 technical issues that need to be addressed when using  
10 cross-platform tools for development?

11 A. Yes.

12 Q. Then, paragraph 14 {C2/12/7}, he says:

13 "... I note that most mobile apps are not games, and  
14 would thus derive little or no benefit from employing  
15 a game engine like Unity or Unreal Engine, which are  
16 designed for 3D graphics, physics simulations, and  
17 resource-intensive features not relevant to most mobile  
18 apps."

19 Do you agree with that?

20 A. For most, yes, I think there are non-game apps that also  
21 use game-like capabilities, but I would say as a general  
22 statement it is true, yes.

23 Q. Then he goes on in paragraph 14 to say:

24 "While cross-platform frameworks like native  
25 Flutter, Xamarin, and Qt exist for non-game apps, the

1           functionality of apps produced using these tools lags  
2           considerably behind native app functionality."

3           Are you able to comment on that?

4       A.   I am not, because I do not know those tools and should  
5           not make a statement about their quality.

6       MR HOSKINS:   Sir, I am almost finished, but the few  
7           remaining questions I have concern confidential  
8           material, so I am -- I think I could probably get  
9           finished pretty close to 1 o'clock, but it is up to you  
10          whether you would rather carry it over.

11      THE CHAIRMAN:   Yes, so you mean on the subject, presumably,  
12          you have got more for Mr Schiller --

13      MR HOSKINS:   No, no, I have simply -- I have got two more  
14          pages of notes, but it concerns confidential material so  
15          I will be about another 5 minutes in total.

16      THE CHAIRMAN:   Then what happens this afternoon?

17      MR HOSKINS:   Mr Kennedy pops up.

18      THE CHAIRMAN:   Yes, and what is the timing for that?

19          I mean, we have got Mr Schiller for two days --

20      MR HOSKINS:   That is right, and tomorrow it is Mr Ward.

21      THE CHAIRMAN:   Yes, I see.   So we are expecting to use all  
22          of the two days.

23      MR HOSKINS:   Absolutely, we are.

24      THE CHAIRMAN:   Right.   Well, in that case, why do we not go  
25          into closed session and you can finish off.   That would

1           make sense, would it not?

2       MR HOSKINS:   That would be excellent.   Then I can enjoy my  
3           lunch.

4       THE CHAIRMAN:   You can enjoy your lunch.

5       MR HOSKINS:   Sorry, Mr Schiller.

6       THE CHAIRMAN:   (Inaudible).

7           Is there anybody in the courtroom who is not in  
8           the confidentiality ring?

9           No?   Good.

10          For the transcript.   I was going to -- maybe  
11          I should do that now, give the ruling.

12                               (Technical discussion)

13                               Ruling

14       THE CHAIRMAN:   This ruling concerns an application to amend  
15           by Apple, made on the third day of a seven-week trial.  
16           It is opposed by the Class Representative.

17           The Class Representative's claim against Apple  
18           concerns, among other things, alleged abuse based on two  
19           sets of restrictions: first, the iOS App Distribution  
20           Restrictions, as they are called, and secondly, the iOS  
21           Payment System Restrictions.

22           In its Amended Defence, Apple pleads at  
23           paragraph 101(d) in respect of the iOS App Distribution  
24           Restrictions as follows:

25                 "In any event, the App Distribution Restrictions

1       only concern the terms on which Apple permits developers  
2       to use intellectual property that belongs to Apple (i.e.  
3       the technology that is licensed under the DPLA). The  
4       'actual and potential' competition that the CR alleges  
5       is foreclosed by the App Distribution Restrictions would  
6       be competition in breach of Apple's intellectual  
7       property rights. Save in limited circumstances that do  
8       not apply on the facts alleged by the CR, it is not  
9       anticompetitive for a dominant undertaking (let alone a  
10      non-dominant undertaking) to impose limits on the use of  
11      its intellectual property."

12       Apple relies on this pleading to invoke the line of  
13      authority initiated by Cases C241-242/91 P RTE v  
14      Commission [1995] 4 CMLR 18 ("Magill"), which provided  
15      that competition law will only exceptionally intervene  
16      so as to require mandatory licensing of technology  
17      protected by IP rights, by reference to a set of  
18      conditions that must be satisfied in order to create  
19      a duty to licence.

20       There is no similar pleading by Apple in the  
21      section of the Amended Defence relating to the iOS  
22      Payment Systems Restrictions. Mr Hoskins KC for the  
23      Class Representative noted this in opening. Apple  
24      responded by a letter which indicated an intention to  
25      amend to include the Magill pleading in relation to the

1        iOS Payment System Restrictions.

2            In her Amended Reply, the Class Representative did  
3        not plead (in response to Apple's case on the iOS  
4        Distribution Restrictions) that the Magill conditions  
5        have been satisfied in this case. The Class  
6        Representative does however assert that this is not  
7        a Magill case, for other reasons which need not be  
8        explored here.

9            Ms Demetriou KC for Apple did not concede that the  
10        pleading, as it stood, required amendment. However, she  
11        (rightly in our view) made the application to amend to  
12        put the matter beyond doubt. The proposed amendment  
13        replicates paragraph 101(d) in the section of the  
14        Amended Defence dealing with the iOS Payment Systems  
15        Restrictions, together with some inconsequential  
16        cross-referencing.

17           Ms Demetriou KC effectively conceded that, to the  
18        extent the pleading was not sufficient, it was  
19        an oversight that was not fully appreciated until  
20        Mr Hoskins KC raised the matter in opening. She  
21        submitted that the prejudice to the Class Representative  
22        of allowing the amendment was slight, as there is no  
23        distinction between the argument applying to each  
24        restriction (Apple's case not being based on detailed  
25        examination of the IP rights involved, but rather being

1       advanced at a higher level). The proposed amendment was  
2       only necessary to clarify what aspects of competition  
3       law had had a bearing on a part of the case, not to  
4       provide details of IP licensing conditions or other  
5       facts.

6       On the other hand, she submits, the prejudice to  
7       Apple could be significant, most notably if the Magill  
8       argument is successful in relation to the iOS App  
9       Distribution Restrictions but cannot be deployed in  
10      relation to the iOS Payment Systems Restrictions.

11      Mr Hoskins KC advanced various criticisms of Apple's  
12      approach to the Magill issue, which he said had caused  
13      the Class Representative difficulty. There may be some  
14      force in what he says, but they largely concern the  
15      Magill issue generally, rather than the application to  
16      amend. All other things being equal, and by reference  
17      to authorities such as *Quah v Goldman Sachs* [2015] EWCH  
18      759 (Comm), we would consider the decision to grant  
19      permission for the amendment to be relatively  
20      straightforward, notwithstanding the lateness of the  
21      application.

22      However, Mr Hoskins KC put a further point to us.  
23      This was that, if permission were given for the  
24      amendment, the Class Representative would be entitled to  
25      amend her Amended Reply and we should expect that

1        amendment to include a plea that the Magill conditions  
2        were not satisfied in this case in relation to the iOS  
3        Payment Systems Restrictions. That would bring the  
4        question of satisfaction of the Magill conditions into  
5        the case. On that basis, the Class Representative was  
6        likely to seek to amend her Amended Reply in relation to  
7        the iOS App Distribution Restrictions as well, in order  
8        to argue that the Magill conditions are satisfied in  
9        relation to that part of the case.

10        Mr Hoskins KC told us he did not anticipate that any  
11        fresh evidence would be required in order for the Class  
12        Representative to argue its case on satisfaction of the  
13        Magill conditions. He accepted however that Apple might  
14        reasonably take a different view on that, in which case  
15        he said it would be a matter for Apple to decide whether  
16        or not to seek an adjournment of the trial.

17        In these circumstances, the principles set out in  
18        cases like Quah are of limited assistance. It is of  
19        course possible to link a chain of events leading from  
20        the application for permission to amend through to the  
21        possibility of an adjournment as a result of the Class  
22        Representative pleading satisfaction of the Magill  
23        conditions, and it might be said that permission to  
24        amend should be refused because of the consequences that  
25        flow from that linkage.



1           However, we think that is the wrong way to look at  
2           the matter, for two reasons.

3           First, Apple's proposed amendment addresses what can  
4           fairly be described as an oversight. It is to a large  
5           degree a technical matter and required for the sake of  
6           clarity, rather than introducing any substantive matter  
7           into the case or causing (of itself) any prejudice to  
8           the Class Representative. The Magill issue, as  
9           a principle of competition law, is already a live one in  
10          the case. Indeed, it might be said that the only reason  
11          why any amendment is required is the Tribunal's general  
12          requirement that propositions of law as well as fact  
13          need to be pleaded. We agree with Apple that there is  
14          no material change to the shape of the case simply  
15          because Apple says that the iOS Payment Systems  
16          Restrictions are subject to Magill, given the way Apple  
17          puts its Magill case.

18          Secondly, the Class Representative has, to date,  
19          chosen not to seek to argue that the Magill conditions  
20          are satisfied. Mr Hoskins KC suggested that there was  
21          some opacity about the meaning of paragraph 101(d) of  
22          the Amended Defence. While we accept that Apple has not  
23          been as forthcoming on the point as it might have been,  
24          we consider that the pleaded case in relation to the  
25          iOS Application Distribution Restrictions raises Magill

1       fairly and squarely. There is therefore a degree of  
2       opportunism about the Class Representative's position,  
3       in seeking to take advantage of Apple's pleading  
4       difficulties in order to revisit her own position on the  
5       Magill conditions.

6             In these circumstances we do not think it right that  
7       the question of whether or not Apple has permission to  
8       amend should be determined by whether or not any  
9       consequential amendment by the Class Representative  
10      should have implications for the continuance of the  
11      trial. That outcome would greatly exaggerate the  
12      significance of the proposed amendment and in our view  
13      would not be a just outcome. Apart from the obvious  
14      prejudice to Apple, it could have undesirable  
15      consequences including, if we were to accept that there  
16      was merit in Apple's Magill argument, the likelihood of  
17      inconsistency in the outcome of the case for each of the  
18      sets of restrictions, for no good reason other than  
19      a technical pleading point relating to an issue which is  
20      already properly advanced in the proceedings.

21            On the contrary, in our judgment the question of  
22      whether or not the trial should be affected by the  
23      introduction of an argument about satisfaction of the  
24      Magill conditions (a point which is currently absent  
25      from the case) is one which should be considered in the

1 light of any application by the Class Representative to  
2 introduce such a point by amendment to her Amended  
3 Reply, with a full justification for that application.

4 In that regard, we do not accept that the Class  
5 Representative is entitled "as of right" to introduce  
6 the question of fulfilment of the Magill conditions by  
7 way of consequential amendment. The Tribunal is  
8 entitled to regulate by directions the consequential  
9 amendments flowing from Apple's amendments. That arises  
10 from the very wide case management powers the Tribunal  
11 has under Rule 88 of the Competition Appeal Tribunal  
12 Rules 2015. It is also consistent with our duty to deal  
13 justly with matters under Rule 4. We also note that  
14 CPR 17.3(1), dealing with amendments to statements of  
15 case in High Court proceedings, confers that power  
16 expressly on the High Court.

17 We therefore grant permission to Apple to amend its  
18 Amended Defence in the proposed form shown to us. We  
19 also direct that the Class Representative, if so  
20 advised, should seek permission if she wants to make  
21 consequential amendments to the Amended Reply, unless  
22 she decides to limit her consequential pleading to the  
23 existing provisions in the Amended Reply which respond  
24 to paragraph 101(d) of the Amended Defence (that is,  
25 unless she simply replicates her current pleading in

1 relation to Apple's Magill case in relation to the  
2 iOS App Distribution Restrictions).

3 That does not presuppose any particular outcome  
4 should the Class Representative wish to seek to further  
5 amend her Amended Reply to add a pleading about  
6 satisfaction of the Magill conditions. If such  
7 an application is made, it will be dealt with on its  
8 merits, including of course by reference to the  
9 potential impact on the trial.

10 Discussion

11 MR HOSKINS: Thank you very much, sir. I will obviously  
12 need to take instructions --

13 THE CHAIRMAN: Yes.

14 MR HOSKINS: -- but if we are going to make the application,  
15 we will make it tomorrow morning if that suits, because  
16 everybody needs to know where they stand so ... If we  
17 are to make -- I can see Ms Demetriou is looking very  
18 worried at me. If we are going to make the application,  
19 we will send the proposed amendments around this  
20 evening.

21 THE CHAIRMAN: Well, and also, I suppose, if you are going  
22 to do that, we ought to think about the timing as well.  
23 I mean, I --

24 MR HOSKINS: I was going to take instructions this  
25 morning --

1 THE CHAIRMAN: Yes.

2 MR HOSKINS: Sorry, over the lunch adjournment. Hopefully  
3 I will be able to tell you before we rise today whether  
4 we are going to make the application tomorrow morning  
5 and you can decide whether we need to sit a bit earlier  
6 to make sure we do not disrupt the witnesses.

7 THE CHAIRMAN: Yes, I suspect it might be helpful.

8 Ms Demetriou?

9 MS DEMETRIOU: Well, sir, we would want the chance to  
10 respond to the application by taking instructions, so we  
11 want to see the application first and we will need some  
12 time to respond to it. So I am not going to be able to  
13 simply respond on my feet tomorrow morning. We will  
14 need to take instructions from Apple, because the  
15 proposed amendment, if it is made, would go to factual  
16 matters.

17 THE CHAIRMAN: That must be right, must it not, Mr Hoskins?

18 It probably is not going to happen that quickly.

19 MR HOSKINS: I was not intending to -- I mean, Apple did not  
20 put in a paper application. I was not intending to put  
21 in a formal paper application.

22 THE CHAIRMAN: No, I do not think that is what Ms Demetriou  
23 is saying. I think she is saying that you need to give  
24 her a bit more notice so that she can get her ducks in  
25 a row --

1 MR HOSKINS: Sure, that would be --

2 THE CHAIRMAN: So if you were to provide -- I mean, I think  
3 it is not even so much providing a draft pleading,  
4 although I am sure that would be helpful, and at some  
5 stage necessary, but really the key point is  
6 understanding whether you are going to argue and on what  
7 basis you are going to argue the Magill submissions are  
8 satisfied.

9 MR HOSKINS: Is that a mini skeleton then?

10 THE CHAIRMAN: No, I do not think so. I think a letter  
11 would be sufficient, but I think they need to know the  
12 gist of what is coming in order to take instructions,  
13 and obviously seeing a draft pleading makes that a lot  
14 easier for them to understand.

15 I think the most important thing is that, as far as  
16 delay goes, you do need to get on and make a decision  
17 about it quickly.

18 MR HOSKINS: Absolutely.

19 THE CHAIRMAN: Then I think we need to work out what the  
20 best way of dealing with it and what time we need to  
21 allocate for that and when. So I do not think, at the  
22 moment, it makes sense to try and anticipate when that  
23 is going to be, but I think it would be very helpful if  
24 we were to know, either this afternoon, if possible, or,  
25 at the very latest, by the time we start tomorrow

1 morning, what your position is.

2 MR HOSKINS: Absolutely. Absolutely fine. We are keen to  
3 get on with it as well. As you see, the complaint was  
4 too much haste rather than not enough haste on our part.  
5 Absolutely.

6 THE CHAIRMAN: Thank you.

7 Ms Demetriou, is there anything else on that?

8 MS DEMETRIOU: No, I think we need to see the application or  
9 see the reasons in the letter, and then I need to take  
10 instructions as to what we need to do to respond  
11 because, as I have said, if the application is made to  
12 introduce -- to plead satisfaction of the Magill  
13 conditions, those are factual matters, so I need to take  
14 instructions as to what factual evidence we would want  
15 to adduce.

16 THE CHAIRMAN: Well, it may well be, certainly from what  
17 Mr Hoskins said earlier in the discussion last week, he  
18 is going to be saying there is enough in the record and  
19 you are going to need to make a decision about whether  
20 you agree with that or not.

21 MS DEMETRIOU: Well, sir, I think I have already made clear,  
22 I did make submissions in relation to that and we do not  
23 accept that the evidence in the record goes to the  
24 factual matters that are raised by Magill, by the Magill  
25 conditions, and so we will -- I will need an opportunity

1           to take instructions on those points, to investigate  
2           what sort of evidence Apple would have wanted to adduce,  
3           or would want to adduce to meet any such allegation.

4   THE CHAIRMAN:   Yes.

5   MS DEMETRIOU:   That is not something I can do in a few  
6           hours --

7   THE CHAIRMAN:   No, of course.

8   MS DEMETRIOU:   -- because I will need to take instructions  
9           from people who are in California, for example.

10   THE CHAIRMAN:   Yes, of course.  No, that is understood.

11           Well, let us see where we get to once we know what the  
12           plan is and obviously you will need to see some form of  
13           articulation of what is going to be said.

14   MS DEMETRIOU:   Yes.

15   THE CHAIRMAN:   Good.  Thank you.

16   MR HOSKINS:    What time would you like to start at?

17   THE CHAIRMAN:   Well, I think we can start again at  
18           2 o'clock, if that is convenient for everybody else.

19           Mr Schiller, I am sorry to subject you to all of  
20           that, it was just a bit of housekeeping I needed to get  
21           off my desk.  As you know, during the break, you are not  
22           to discuss your evidence with anybody else.  We will  
23           start again at 2 o'clock and then Mr Hoskins is going to  
24           ask you some questions in a private session.  Then we  
25           will see how we manage that after that.



1 THE WITNESS: Yes, sir, thank you.

2 (1.13 pm)

3 (The luncheon adjournment)

4 (2.00 pm)

5 MR PHILIP SCHILLER (continued)

6 Cross-examination by MR HOSKINS (continued)

7 (Confidential section removed)

8 Cross-examination by MR KENNEDY

9 MR KENNEDY: Good afternoon, Mr Schiller.

10 A. Good afternoon.

11 Q. My name is Matthew Kennedy and I will also be asking you  
12 some questions on behalf of the Class Representative.

13 I would like to start by taking you back to the  
14 beginning, and if we could go to paragraph 66 of your  
15 witness statement, which is {B2/5/19}, that is tab 1 of  
16 the binder that you have, I hope. You should have a new  
17 binder, Mr Schiller, I should have made that clear. It  
18 may be that your statement has been put in the old one,  
19 and maybe you can move it to the new one and then we  
20 will not get into any --

21 A. I would prefer not to open the binder clips and cause  
22 a problem, so I will use both binders, if it is okay  
23 with you, sir.

24 Q. Whatever is most convenient for you, Mr Schiller.

25 I know it is slightly annoying to have to shuffle back

1           and forth, but ... It is paragraph 66, it is page 19.

2           A. Yes, I have that open.

3           Q. If we pick it up at the third sentence, which starts:

4                     "In this regard, Apple's centralised app  
5           distribution model -- coupled with human-assisted review  
6           of every app and every update -- was seen as critical to  
7           protecting the functional integrity, safety and security  
8           of iOS Devices."

9                     When you say "was seen as", are you referring to  
10          what was thought to be the case by Apple prior to the  
11          launch of the App Store?

12          A. Yes.

13          Q. You do not refer here to any contemporaneous documents  
14          evidencing the decision to impose what the Class  
15          Representative calls the App Distribution Restrictions  
16          or the reasons for that decision, do you?

17          A. I do not refer to any documents.

18          Q. Did you look for or cause anyone else to look for  
19          contemporaneous documents evidencing that decision or  
20          the reasons for it when you were preparing your  
21          statement?

22          A. No.

23          Q. Could we go to {D1/22/1}, and this is in tab 2 of your  
24          new binder. What we should have is an email chain  
25          between Scott Forstall and Kim Vorrath, dated 15 October

1           2007. Do you have that?

2           A. Yes, I see that.

3           Q. You were shown this in the Australian Proceedings. Do

4           you recall that?

5           A. I am sorry, I do not recall.

6           Q. At the time of this email, Mr Forstall was the senior

7           vice president of iOS software; correct?

8           A. Yes.

9           Q. Ms Vorrath was another member of the iOS software team;

10          is that correct?

11          A. Yes.

12          Q. If we look about halfway down, we see an email

13          on October 11th, which was a Thursday, and it is

14          an email from Mr Forstall, and he says:

15                 "Can you two get me your white papers on the iPhone

16          developer platform by Saturday?

17                 "We will discuss it at ET on Monday, and I have

18          another meeting next week to go over the open policy

19          questions with marketing (like how strict the signing

20          policy should be, what should be the criteria for

21          enabling EDGE, etc). Please make sure to list all the

22          outstanding questions, especially around policy."

23          You see that?

24          A. I do.

25          Q. Attached to this email are two documents, which I am

1           going to show you quickly and then we are going to go  
2           back to them and discuss them more at length in  
3           a moment, but I just want to see if you recall the  
4           documents. The first is {D1/994/1} and that is in tab 3  
5           of your new binder, Mr Schiller. If I can just ask you  
6           to have a quick look at that and tell me if you  
7           recognise that document.

8       A. I do not.

9       Q. The second attachment is {D1/29.1/1}, and that is behind  
10       tab 5 of your binder, Mr Schiller. Again, just have  
11       a quick look and tell me if you recognise it.

12      A. I do not recall this, no.

13      Q. In October 2007, you were a member of Apple's executive  
14       team, yes?

15      A. Yes.

16      Q. Mr Forstall's email that we have just seen, if we can go  
17       back to it {D1/22/1}, it is tab 3 -- sorry, tab 2,  
18       Mr Schiller -- if you continue to have it open --  
19       suggests that there was going to be an ET on the Monday  
20       after this email was sent, which would have been  
21       15 October, and that would be an executive team meeting,  
22       would it?

23      A. Yes.

24      Q. Did you attend that meeting?

25      A. I cannot say whether I did or not. We have an ET

1 meeting every Monday morning, and we make -- all make  
2 most of them, but I cannot say with certainty every one.

3 Q. Do you have any reason to think that you would not have  
4 attended that particular one?

5 A. I have no recollection either way.

6 Q. Mr Forstall's email states that he has a further meeting  
7 "to go over the open policy questions with marketing",  
8 do you see that?

9 A. I do.

10 Q. At the time of this email you were senior vice president  
11 of worldwide product marketing, yes?

12 A. Yes.

13 Q. You were closely involved with the development of the  
14 App Store, yes?

15 A. Yes.

16 Q. You attended the meeting at which it was decided that  
17 Apple would create an SDK to allow developers to develop  
18 third-party native iOS Apps; correct?

19 A. Yes, that is true.

20 Q. So it is likely that you would have attended a meeting  
21 which concerned matters such as how strict the signing  
22 policy for native iOS Apps would be, yes?

23 A. Yes.

24 Q. Would you agree that it is therefore likely that you saw  
25 the two documents, the two attachments that I showed you

1           at the time of this email?

2       A.   No.

3       Q.   You do not think it is likely that you would have seen

4           the two documents?

5       A.   No, they do not -- from our quick look at them, they do

6           not look like the type of documents the software

7           engineering team would present at an executive team

8           meeting.

9       Q.   Would you agree that even if you did not see the

10          documents, it is likely that you discussed the matters

11          that are discussed in them?

12      A.   It is likely, yes.

13      Q.   If we go back to the first attachment, this is

14          (D1/994/1}, tab 3 of your bundle, Mr Schiller, it is

15          dated on its face 2 November 2020, but that is

16          erroneous, it is a function of the metadata being

17          changed during document collection. The correct date is

18          some time prior to 15 October 2007, it was an attachment

19          to Mr Forstall or Ms Vorrath's email, okay?

20      A.   I will accept your word on it --

21      Q.   Take my word for it.

22      A.   -- I do not know, yes.

23      Q.   We see on the face that the document was prepared by

24          Mitch Adler, John Wright and Dallas De Atley. Do you

25          see that?

1 A. I see that.

2 Q. Mr Adler was a software engineer; is that correct?

3 A. I do not know him.

4 Q. Mr Wright was a senior software manager; is that

5 correct?

6 A. I do not know him.

7 Q. Mr De Atley was a member of Apple's platform security

8 team; is that right?

9 A. I do not know him.

10 Q. MacOS 10 I think, it is not X; is that correct?

11 A. That is correct.

12 Q. It is 10, just to confuse people so ... "MacOS X

13 Embedded" was the name used for iOS at the time; is that

14 correct?

15 A. I have vague recollection that the software engineering

16 team referred to that at some point. I do not know

17 when.

18 Q. We can go to a confidential document, so it is better if

19 it is not brought up on the public screens, but

20 hopefully it can be brought up on your screen. It is

21 behind tab 6, it is H2/19 -- you cannot do that?

22 (Off microphone discussion)

23 THE CHAIRMAN: It is only being shown on the screen, but

24 I do not think there is anybody here not in --

25 MR KENNEDY: Okay.

1           It is {H2/19/233}, that is behind tab 6 of your  
2 bundle, Mr Schiller, it is page 5 of the hard copy  
3 bundle.

4           I am afraid, Mr Schiller, if you give me one moment,  
5 because the documents have been switched out earlier  
6 this morning, but if we pick it up on internal page 233,  
7 and if we pick it up at line 9, you will see:

8           "Now, you see on the cover ..."

9           Could you pick it up at line 9, please?

10       A. Yes.

11       Q. Could I ask you to read down to line 15? This is  
12       Mr Federighi's deposition, by the way.

13       A. I am sorry, you want me to read this pink document?

14       Q. Read it to yourself.

15       A. Oh, to myself. Oh, thank you.

16       Q. Just for context, it is the deposition of Mr Federighi.

17       A. I see that, yes.

18       Q. You see that he confirms the understanding that you just  
19       relayed to me a moment ago about the naming convention  
20       at the time?

21       A. Yes, I see that.

22       Q. Thank you, Mr Schiller.

23           Going back to the first attachment, {D1/994/1}, so  
24       back to tab 3 of your bundle, if we pick it up on page 2  
25       {D1/994/2} -- this is not confidential, Mr Schiller --



1           what we see at the top, and if we could maybe zoom in,  
2           it is quite small text, it says:

3                 "The transition from a closed system to one with  
4           a more open developer model demands answers to questions  
5           of control and security."

6                 Mr Schiller, the decision to allow third-party  
7           developers to develop native iOS Apps for the iPhone was  
8           taken on 17 October 2007; is that correct?

9           A.   Approximately.  I do not recall --

10          Q.   That is what it says at paragraph 56 of your statement  
11               {B2/5/17}?

12          A.   Yes.

13          Q.   We can turn it up if you would like --

14          A.   Then I am sure it was accurate --

15          Q.   As long as I have copied it out correctly --

16          A.   -- it was approximately then --

17          Q.   -- that is the date.

18          A.   -- yes.

19          Q.   This reference {D1/994/2} to "the transition from  
20               a closed system to one with a more open developer model"  
21               anticipates that decision, yes?  It is a reference to  
22               that decision that was in progress at the time --

23          A.   To allow the development of native applications, yes.

24          Q.   Exactly.

25          A.   Yes.

1 Q. If we look first at the heading "Assumptions", we see:

2 "Existence of a robust sandbox to contain  
3 applications and developers."

4 Then, down the page:

5 "Malware reduction", we see:

6 "Active prevention and discouragement of malware is  
7 a critical part of our security plan. Application  
8 signing provides a process that enables legal protection  
9 and the identification method for application  
10 blacklisting. (Technical defences primarily reside in  
11 the aforementioned sandboxing -- to be covered in  
12 another document)."

13 It would be fair to say, at this time, that  
14 sandboxing was seen as the primary technical defence  
15 against malware, yes?

16 A. No, I would not put words in their mouths and say that.

17 I see where it does talk about the importance of  
18 sandboxing, but I am not --

19 Q. Well, let us look at what the document says,

20 Mr Schiller --

21 A. I do not want to stand here and --

22 Q. -- it says, in parentheses:

23 "Technical defenses primarily reside in the  
24 aforementioned sandboxing ..."

25 That is what the document says, yes? So I am not

1           putting words in their mouth, I am just reading the  
2           document and asking whether you agree that that is what  
3           it says.

4       A. I see that it says that, yes.

5       Q. Sandboxing was implemented on iOS?

6       A. Yes.

7       Q. Application signing, in this paragraph, presumably  
8           refers to what is sometimes called "code signing", yes?

9       A. Yes.

10      Q. Code signing was also seen as a critical part of Apple's  
11          security plan, yes?

12      A. Yes.

13      Q. Code signing was implemented on iOS such that any native  
14          iOS App distributed to an iOS Device must be signed with  
15          an Apple-issued certificate, yes?

16      A. Yes.

17      Q. If we look at the heading "Revenue from Apple  
18          distributed applications", it says:

19                "Protect revenue for Apple and third parties who  
20                subscribe to Apple's distribution methods."

21                We will come back to this shortly, but just drawing  
22                that to your attention now.

23                Then, below that, "Independent application  
24                distribution":

25                "To enable enterprise application distribution we

1 must enable application signing independent of Apple's  
2 primary signing and distribution service."

3 Then, next heading, the larger heading,  
4 "Distribution Methods":

5 "Distribution will be provided in two forms:  
6 Apple-signed and distributed and developer-signed and  
7 distributed. Developer-signed and distributed  
8 applications are currently slated for the first  
9 deployment to enterprise operations where software will  
10 only be used internally (ie not publicly)."

11 Then, final sentence:

12 "There is an open policy question around the models  
13 for freeware distribution."

14 So apps that were going to be distributed under the  
15 enterprise programme were going to developer-signed; is  
16 that correct?

17 A. Yes.

18 Q. Freeware is software that is available for free; is that  
19 correct?

20 A. Yes.

21 Q. It was put to you, Mr Schiller, in the Australian  
22 Proceedings that the final sentence, that is the  
23 sentence that reads, "There is an open policy  
24 question ..." and so on, it was put to you that this  
25 indicates that it was an open policy question whether

1 the enterprise programme was widened to distribute  
2 developer-signed apps directly or by sideloading to iOS  
3 users. Do you recall that being put to you at the time?

4 A. I do not recall.

5 Q. You said that you did not believe that to be the case,  
6 you said you did not believe that that sentence was  
7 a reference to widening out distribution or a model  
8 similar to enterprise distribution more generally?

9 A. Correct. I still do not believe that sitting here  
10 today.

11 Q. I just want to take a closer look at this section, this  
12 distribution section of the document. We have seen that  
13 there is a larger heading "Distribution Methods", and  
14 then beneath that we see what look like three  
15 subheadings. We see "iTunes (Apple signed)", "Web  
16 (Apple signed)" and "Internal (Developer signed)"  
17 {D1/994/2-3}. You see that?

18 A. I do see that.

19 Q. Let us just take a look at each of them in turn. So  
20 "iTunes (Apple signed)" {D1/994/2}:

21 "Distribution through iTunes allows Apple to apply  
22 DRM to ensure non-transferability of purchased  
23 applications. Apple could also provide distribution  
24 without DRM through iTunes."

25 "DRM" refers to digital rights management, yes?

1       A.   Yes.

2       Q.   DRM controls would prevent an iOS Device user purchasing  
3       an app and then copying that app and providing it to  
4       another iOS Device user; is that correct?

5       A.   Yes.

6       Q.   Apple charges Commission on paid apps, yes?

7       A.   Yes.

8       Q.   Without DRM controls for paid apps, those apps could be  
9       distributed without users paying for them and without  
10      developers paying Apple's Commission; correct?

11      A.   Well, there are many things that could happen, not just  
12      that.  But, yes, those --

13      Q.   But that is one of the things that could happen?

14      A.   Sure.

15      Q.   Then, if we go over the page, "Web (Apple signed)"  
16      {D1/994/3}:  
17              "Distribution through the web should be supported,  
18      but Apple will provide no transfer protection."  
19              I think that is a reference back to DRM protection?

20      A.   It may be.

21      Q.   This suggests, Mr Schiller, does it not, that Apple  
22      envisaged that third-party developers would be able to  
23      distribute their apps through the web?  Correct?

24      A.   No.

25      Q.   "Distribution through the web should be supported ...",

1           and we see, in the heading, "Apple signed", and we see  
2           the distinction was drawn between Apple signed and  
3           developer signed, and I think you agreed that developer  
4           signed applied to enterprise distribution, yes?

5       A.   Yes.

6       Q.   So this reference to an Apple signed app being  
7           distributed on the web is not a reference to the  
8           distribution of apps generally through the web, not the  
9           enterprise programme?

10      A.   I was simply commenting that I thought I heard you say  
11           that "Apple should" and I do not believe there was any  
12           discussion at this time that Apple should do that.

13      Q.   I do not think I said "should", I will be corrected by  
14           the transcript if I am wrong.

15      A.   Okay.

16      Q.   The question was, this suggests that Apple envisaged  
17           that third-party developers would be able to distribute  
18           their apps through the web?

19      A.   Oh, sorry, "would". No, I do not believe, quote,  
20           "Apple" did envision that. This is an engineering  
21           document laying out the different technologies and  
22           methodologies for doing these things, not one suggesting  
23           that it was responsible for deciding whether we should  
24           or would.

25      Q.   But the authors of this document envisaged that that

1 would be possible?

2 A. Technically. It is about the technology that they  
3 needed to create as engineers.

4 Q. Then the final heading, "Internal (Developer signed)":

5 "Companies that wish to control distribution of  
6 their software can deploy packages internally. Again,  
7 Apple will provide no transfer protection, but will  
8 provide mechanisms for use only on devices controlled by  
9 the company's trusted IT department ..."

10 That is a reference to enterprise distribution, yes?

11 A. I believe so.

12 Q. So this document contemplated three types of  
13 distribution: distribution by Apple, that is the first  
14 heading; distribution by developers directly, second  
15 heading; and enterprise distribution, third heading,  
16 yes?

17 A. Well, I think this considered three technical solutions  
18 to different types of distribution, being an engineering  
19 document, not whether there would be three methods of  
20 distribution. They were having to work six months in  
21 advance in developing whatever was the solution we chose  
22 to implement, and so they were mapping out here is the  
23 things they needed to consider doing. It was not  
24 a policy decision. It was not even an evaluation of  
25 what is the right thing to do. It is they are mapping



1 out the engineering capabilities to support and what  
2 would be needed by these titles.

3 Q. But they envisaged that it would be possible to have  
4 these three different types of distribution, yes?

5 A. Technically, yes.

6 Q. If we go to the bottom of page 3 {D1/994/3}, we see  
7 a heading "Release", and it reads:

8 "As noted above, release will come from  
9 an Apple-signed and distributed channel, or  
10 a developer-signed and distributed channel (enterprise).  
11 The former requires an Apple department dedicated to  
12 review of software before signing. We plan to create  
13 tools to validate basic API-compliance. We should also  
14 create UI, power, and stability criteria for such  
15 signing. Whether this is developer-tested and submitted  
16 or Apple-tested is under consideration and will require  
17 significant resources to implement."

18 We see that it was an open question whether  
19 developers would test their own apps for compliance with  
20 Apple's criteria or whether Apple would do the testing,  
21 yes?

22 A. I see that the engineers wrote that, yes.

23 Q. So, at this time, it was an open question whether what  
24 became App Review would be administered by Apple or by  
25 developers, yes?

1 A. I am not aware that it was, no.

2 Q. Then the next paragraph:

3 "Apple-signed but developer-distributed software is  
4 still under policy consideration."

5 You have agreed with me that enterprise distribution  
6 was developer-signed, and so this cannot be a reference  
7 to enterprise distribution, correct? It has to be  
8 something else?

9 A. Well, it could be. Again, I am not sure that, at the  
10 time of this, that all the decisions on enterprise  
11 distribution were decided either. Then there is a third  
12 kind of distribution that you have not discussed that we  
13 had to engineer that fits a similar description and that  
14 is called ad hoc distribution --

15 Q. There is no reference to ad hoc distribution in this  
16 document. This document refers to three types. It  
17 refers to two types of Apple-signed iTunes, and at the  
18 time, it was envisaged that Apple Distribution would go  
19 through the iTunes music store, that was --

20 A. Correct --

21 Q. That was --

22 A. -- which again is not exactly what we did.

23 Q. -- what became the App Store, the first heading, yes?  
24 Then we see the second heading, which is "Web (Apple  
25 signed)", and we see the third heading, "Internal

1 (Developer signed)", yes?

2 A. But again, the "Web" could have been a reference to what  
3 became ad hoc distribution; the name did not exist yet.

4 Q. The only form of enterprise distribution that was  
5 contemplated in this document was a developer-signed  
6 version of enterprise distribution; correct?

7 A. I have not read through the whole document. On these  
8 pages, it appears so.

9 Q. So what I am going to suggest to you, Mr Schiller, is  
10 that the reference we have just seen under the heading  
11 "Release", "Apple signed but developer-distributed  
12 software is still under policy consideration", is  
13 a reference back to the second heading "Web (Apple  
14 signed)" distribution.

15 A. I do not know that that is true.

16 Q. It says that this was "still under policy  
17 consideration", yes?

18 A. I do not recall that was the case.

19 Q. This document does not say that there is any security  
20 question surrounding the second form of distribution,  
21 web distribution Apple-signed, does it?

22 A. I do not know if they considered that or not in this  
23 document.

24 Q. There is nothing in this document?

25 A. I do not know.

1 Q. If we go back to where we started, page 2 {D1/994/2},  
2 under the heading "Distribution Methods", and again,  
3 just looking at that final sentence:

4 "There is an open policy question around the models  
5 for freeware distribution."

6 You said this final sentence was a reference to  
7 enterprise distribution. What I am going to suggest to  
8 you, Mr Schiller, is that once we look at the whole  
9 document, what we see is that this is clearly  
10 a reference to something other than enterprise  
11 distribution. Would you agree?

12 A. I do not know either way.

13 Q. Well, if we go back to the heading "Release" on page 3  
14 {D1/994/3}, we see:

15 "Apple-signed but developer-distributed software is  
16 still under policy consideration."

17 So that is identified as being under policy  
18 consideration, yes?

19 A. Yes.

20 Q. The other thing that is identified as being under policy  
21 consideration is the model around freeware distribution,  
22 yes?

23 A. I see it mentions that.

24 Q. I think we are agreed that developer -- sorry,  
25 enterprise distribution was developer-signed?

1 A. Yes.

2 Q. The second heading, "Web (Apple signed)", therefore  
3 cannot be enterprise distribution, so it is very likely,  
4 is it not, that the open policy question that is  
5 referred to in the paragraph under "Distribution  
6 Methods" is a reference to "Web (Apple signed)"  
7 distribution?

8 A. I do not want to make assumptions of what it may or may  
9 not mean because, again, I was not party to this  
10 document, it does not reflect the discussions I know we  
11 had at that time, and it was an engineering discussion,  
12 not a policy document, so I do not want to make  
13 assumptions. I can only say what it says.

14 Q. In Mr Forstall's email, he refers to discussing the open  
15 policy questions with marketing. Do you recall that?

16 A. Yes, I do.

17 Q. You thought it likely that you would have attended that  
18 meeting?

19 A. Yes.

20 Q. So it is likely that these open policy questions which  
21 are identified in this document were discussed at that  
22 meeting at which you were present, yes?

23 A. No. I have recollection of a discussion with  
24 Mr Forstall and the engineering team and the marketing  
25 teams about how enterprise distribution would work and

1 the terms around that. I recall having a discussion  
2 about ad hoc distribution, but we did not call it that  
3 at the time, and how developers would test their own  
4 software and how we would help them share applications  
5 between team members, and I remember talking about the  
6 App Store. Those are the three things I recall talking  
7 about. These other subjects that you are referring to  
8 in this document are not ones that I recall discussing  
9 with them.

10 Q. Mr Schiller, can we have a look on page 3 of the  
11 document {D1/994/3} we are still in, and there is  
12 a heading that says "Development". It says:

13 "During development, engineers must have access to  
14 debug tools and their application. In order to enable  
15 development, we plan to tie a developer's identity and  
16 SDK to their development devices. This will allow them  
17 to iterate without going through an Apple-owned signing  
18 server ..."

19 That looks like a reference to ad hoc distribution,  
20 does it not?

21 A. It might be.

22 Q. That is not the same as "Web (Apple signed)"  
23 distribution, which we see at the top of the page?

24 A. There was a --

25 Q. So this document does cover -- it seems to cover ad hoc

1 distribution, does it not?

2 A. It seems to. I am not certain.

3 Q. It seems to be covering it distinct from the second type  
4 of distribution, which is "Web (Apple signed)"?

5 A. It may or it may --

6 Q. So that is a fourth thing, it looks like, Mr Schiller.

7 THE CHAIRMAN: (Off microphone - inaudible) -- I think it is  
8 difficult in that you seem to be (inaudible) -- he is  
9 providing an answer and then you keep talking again.  
10 I think you need to be clear when you are actually  
11 asking Mr Schiller a question, and give him a chance to  
12 answer.

13 MR KENNEDY: Of course, sir.

14 Sorry, Mr Schiller.

15 What I was putting to you was that this document  
16 appears to cover ad hoc distribution under that heading  
17 "Development"?

18 A. I am not as sure as you are, because in "Distribution  
19 Methods", it talks about three signed processes, iTunes,  
20 web and internal, and then there is a section on  
21 "Development", but that is not necessarily  
22 a distribution method. So, again, I am not sure I would  
23 necessarily read it the way you are suggesting.

24 Q. But, Mr Schiller, if we just look at the second sentence  
25 under the heading "Development" {D1/994/3}:

1            "This will allow them to iterate without going  
2            through an Apple-owned signing server ..."

3            So the concern that appears to be expressed here was  
4            that if you sent the app to Apple to be signed before  
5            you could test it, it would slow down the process, and  
6            so ad hoc distribution envisaged an unsigned app being  
7            tested on a limited number of devices; is that correct?

8            A. Yes, but when we talked about ad hoc distribution, it  
9            was not about what you are referencing. It was not  
10           about time to go through a server in any discussion  
11           I recall. I recall us talking about, imagine you are  
12           a small, independent developer, a student, and you want  
13           to share with five of your friends and show them the  
14           work you are doing, we wanted ad hoc distribution to  
15           support that methodology. It was about how to  
16           distribute it, not about time of development. So this  
17           language does not reflect the discussion I recall around  
18           ad hoc distribution.

19           Q. In the example you give of the student sharing with five  
20           friends, was it envisaged that that app would be signed  
21           by Apple prior to distribution to the five friends?

22           A. No.

23           Q. So it would be -- the heading "Web (Apple signed)" would  
24           be an inapposite heading to describe the process that  
25           you are recollecting, yes?



1       A. That is right. Again, I am pointing out that these  
2       three headings do not match the three types of  
3       distributions we discussed, so I cannot make assumptions  
4       about what was meant by words that sound different than  
5       any meeting I had.

6       Q. If we now turn to the second attachment, Mr Schiller,  
7       that is the {D1/29.1/1}, tab 5 of your bundle, starting  
8       at page 1, the heading is "iPhone SDK v0.4".

9       A. I see that, thank you.

10      Q. iPhone SDK v0.4 is a reference to the SDK that Apple  
11      developed to allow third-party developers to develop  
12      native iOS Apps for the iPhone, yes?

13      A. Yes.

14      Q. If we look at heading A, "High Level Questions", we see,  
15      first bullet, "Revenue protection? Yes", and we saw in  
16      the previous document that revenue protection refers to  
17      protecting Apple's revenue from app distribution, yes?

18      A. I see that, yes.

19      Q. Fourth bullet:

20               "Protection against Spyware, access user data? No,  
21               don't care too much."

22               Mr Schiller, this suggests that, at the time, Apple  
23               was not particularly concerned with the protection of  
24               iPhone users' data, does it not?

25      A. No, I do not believe that is correct.

1 Q. Over the page, sixth bullet -- sorry, I have a bad  
2 reference. Sixth bullet on the first page:

3 "We need to define the security/control level we are  
4 trying to achieve:

5 We want to control what apps get installed

6 [We] want to be able to blacklist apps that don't  
7 behave correctly."

8 Do you see that?

9 A. I do.

10 Q. It would have been possible(?) to achieve those two aims  
11 using code signing, yes? (Pause)

12 You can prevent an app from being installed if it  
13 does not have an Apple-issued certificate, yes?

14 A. I am not sure. I -- again, I'm not an expert on  
15 code-signing technologies, but I know our keys in  
16 security methods do keep an app from being installed if  
17 it was not signed properly, if that is what you mean.

18 Q. It might be helpful, Mr Schiller, to go back to  
19 {D1/994/4}. You will see a heading "Revocation" and it  
20 says:

21 "The most important moment in the application  
22 lifetime to check for revocation is installation  
23 time ..."

24 As I understand it, Mr Schiller, that is a reference  
25 to checking the signature at the time of installation in

1           order to determine whether or not the app can be  
2           installed on the phone. Does that sound right?

3       A. It could be.

4       Q. In terms of blacklisting apps, again, the code-signing  
5           architecture allows you to trace back an app to  
6           a developer and then blacklist that developer and that  
7           app; correct?

8       A. Yes, I am not sure that is the correct terminology for  
9           it, but I do believe they have a methodology for  
10          stopping malware that has been detected based on the  
11          signature in the key. If it's been determined at least  
12          we recognise the key and it does not get installed  
13          properly. I am not sure there is a list. I am not sure  
14          exactly the methodology for it.

15      Q. Sorry, blacklist is just the terminology used in the  
16          document, Mr Schiller. I am not sure it is --

17      A. I know that, I am just saying I am not so sure I agree  
18          with that terminology. I am not sure it is accurate any  
19          more, but --

20      Q. It may not be --

21      A. -- but the process exists.

22      Q. Centralised distribution is not necessary to achieve the  
23          two aims that are identified under that bullet  
24          {D1/29.1/1}, is it?

25      A. It is not listed as one of these items, correct.

1 Q. But, as a matter of fact, it is not necessary to have  
2 centralised distribution in order to have code-signing;  
3 correct?

4 A. I do not know. That is the methodology we use. I have  
5 not thought about applying a methodology without  
6 distribution in this example, so I am not quite sure  
7 what you are asking me.

8 Q. Well, Mr Schiller, you are familiar -- well, the  
9 question is can you have a code-signing infrastructure  
10 that is Apple administered without having centralised  
11 distribution?

12 A. Yes, you can.

13 Q. Yes, and that is the method, or the infrastructure that  
14 has been adopted under the DNA changes that Apple has  
15 made in the European Union; correct?

16 A. In part. There is more to it than that, but ... --

17 Q. That is one of the things that has been done under the  
18 changes following the DNA, Apple signs all apps  
19 distributed -- all iOS Apps distributed in the EU, even  
20 though it does not distribute all apps in the EU;  
21 correct?

22 A. True. Yes.

23 Q. So the answer to my question, centralised distribution  
24 is not necessary to achieve these aims?

25 A. There are other ways as well, yes.

1 Q. If we go over the page {D1/29.1/2}, we see:

2 "Could a random developer have a site?"

3 The answer is:

4 "Not clear."

5 A. I see that.

6 Q. What I am going to suggest to you, Mr Schiller, is that  
7 this is a reference to the second form of distribution  
8 that we saw in the previous document, "Web (Apple  
9 signed)".

10 A. I do not know for certain. It is a guess that that is  
11 what it might mean. I do not know.

12 Q. If we go to page 6 {D1/29.1/6}, and it should be page 6  
13 in your hard copy as well, you will see a heading, "E)  
14 iTunes ..."

15 Then, number 9:

16 "Is iTunes the only way to install applications on  
17 the device? OTA, Enterprise, Web download --> won't be  
18 tied ... to the phone (for free apps for example)."

19 Then if we go down to heading F), we see the first  
20 bullet:

21 "Application store needs to be hosted by iTunes  
22 Music Store."

23 That is why we see reference to iTunes in this  
24 context, correct? It was, at the time -- I think we  
25 have covered this actually, but at the time, it was

1           envisaged that the iTunes Music Store would be used for  
2           app distribution; correct?

3       A.   It could be that, meaning also it could be simply to  
4           mean that we started with the technology of the iTunes  
5           Store, and that was the foundation that we built the new  
6           App Store from. So, at the time, since it had not been  
7           implemented yet, it was not fully understood how the  
8           delivery mechanisms of that store would work.

9       Q.   Thank you, Mr Schiller.

10           Then, if we look at the third bullet, this is under  
11           heading F), we see:

12                 "When they have an app they want to distribute ..."

13           Then a new sub-bullet:

14                 "We'll need to give them a way to sign it -- we sign  
15           it, or they sign it if it's free ..."

16           Then, further down the page, "Open Questions",  
17           second bullet:

18                 "Will iTMS ..."

19           I think that is a reference back to the iTunes Music  
20           Store; correct?

21       A.   Yes, it is.

22       Q.   "Will iTMS be the only way to get apps?"

23           Then what we see is:

24                 "Can vendors update their own apps?"

25           This is the next bullet:

1 "Podcast model vs. games model.

2 "Depends on the revenue model to some extent."

3 Do you see that?

4 A. I see that. But again, this questioning confuses me  
5 with the points you were making previously, that they  
6 cannot be entirely accurate. You were talking about the  
7 headings that said web distribution and that the  
8 engineers on this paper were suggesting that was  
9 a method of distribution, but then it says "Open  
10 Questions ... Will [iTunes Music Store] be the only way  
11 to get apps." So, here, they are saying it is  
12 a question if there is any other way -- so previously  
13 saying there is web distribution is not a given, is not  
14 understood for certain, this team did not know. So  
15 again, I do not think this team knew, who were working  
16 on these documents, one way another of what decisions  
17 were made to make the iPhone secure with distribution.  
18 They were worried about the technology of limitations  
19 they would be on the hook to build and how they would  
20 work. So I do not think you can infer from headings  
21 that someone thought there was web distribution, because  
22 here you see, "Will [iTunes Music Store] be the only way  
23 to get apps?", so it completely contradicts that  
24 previous point. I find this very confusing to make  
25 assumptions based on this engineering document.

1 Q. But the previous document we saw said that it was  
2 an open question whether there would be distribution  
3 outside what became the App Store, yes?

4 A. Yes.

5 Q. This document, I think you are saying, reflects some  
6 uncertainty about whether or not there would be  
7 distribution outside either the iTunes store or --

8 A. Essentially, the authors do not know --

9 Q. Can I finish my question, Mr Schiller.

10 I think your point is there is some uncertainty in  
11 this document about whether or not there will be  
12 distribution outside of iTMS or the App Store; correct?

13 A. I am simply pointing out the sentence here says it is  
14 an open question, so the authors do not know what the  
15 distribution methods will be.

16 Q. But, Mr Schiller, the documents are consistent in  
17 describing -- whether or not there will be distribution  
18 outside the App Store is an open question, yes?

19 A. For these people, yes.

20 Q. Yes. So there is no inconsistency. I think you  
21 suggested there was some inconsistency.

22 A. It was when you were pointing to the heading that said  
23 "Web (Apple signed)", that that was one of the three  
24 distribution methods being considered. This team did  
25 not know that, based on their open questions.



1 Q. I am sorry, Mr Schiller, I do not understand the answer.  
2 Why do you say they did not know that?

3 A. Because it says right here, "Will [iTunes Music Store]  
4 be the only way to get apps?", they did not know whether  
5 there would be one, two or three methods of  
6 distribution.

7 Q. But the document does not suggest that it had been  
8 determined that there would only be one method of  
9 distribution; correct?

10 A. It does not say there would be more than one.

11 Q. Okay.

12 Then, the bottom of page 7 {D1/29.1/7}, we see  
13 a heading "J) DRM ...", again, I think a reference to  
14 digital rights management?

15 A. Yes.

16 Q. Over the page, {D1/29.1/8}, first bullet we can see,  
17 first full bullet:

18 "Do we want to enforce the distribution of ... apps  
19 through iTunes. For paid yes, otherwise no."

20 Mr Schiller -- oh, sorry, do you see that,  
21 Mr Schiller?

22 A. I see that.

23 Q. You see that.

24 This suggests, Mr Schiller, that at the time, Apple  
25 was contemplating enforcing distribution through the

1 App Store in the case of paid apps, but not free apps?

2 A. No, I would not say Apple was. The author of this  
3 section it says was "Augustin". I do not know that  
4 person. I never recall meeting with them on any of  
5 these topics. So the fact that they wrote this in this  
6 section, they were responsible for this section, I do  
7 not think you can say "Apple thought".

8 Q. This document appears to have contributions from various  
9 different teams involved in the development of the SDK,  
10 yes?

11 A. Yes.

12 Q. Different ownership for different parts of the work  
13 stream; is that correct?

14 A. Yes.

15 Q. Your point is that it may just be this was a view  
16 expressed by Augustin, yes?

17 A. Correct.

18 Q. But that person had some responsibility for the  
19 development of the SDK?

20 A. Of the SDK, yes.

21 Q. Mr Schiller, the reason I suggest that it was  
22 contemplated that Apple might enforce distribution  
23 through the App Store in the case of paid but not free  
24 apps is because Apple was going to charge a Commission  
25 on paid apps, but not on free apps?

1       A. No, I do not recall that discussion at all.

2       Q. Centralised distribution of paid apps was therefore  
3       necessary to ensure that developers did not circumvent  
4       the Commission?

5       A. I do not recall us discussing that.

6       Q. There is no reference in anything we have seen in either  
7       of these two documents so far to any security  
8       considerations justifying centralised distribution, is  
9       there?

10      A. Not in these documents, no.

11      Q. If we just -- last bit on this document, Mr Schiller,  
12      heading L), we see, "Validation, Certification and  
13      Runtime (Dallas/Eric)":

14             "Our goal would be to restrict the behavior of 3rd  
15      party applications in order to protect the operating  
16      system and to ensure a solid user experience.

17             "All third party applications should be signed by  
18      Apple in order to run on the phone. This allows Apple  
19      the opportunity to inspect the binary and verify it's  
20      not doing anything overtly malicious. In addition, it  
21      would allow us to revoke that application at a later  
22      date."

23             Mr Schiller, what this shows is that code signing,  
24      and the App Review that proceeds it, were seen as  
25      sufficient to protect the operating system and ensure

1           a solid user experience, yes?

2       A. No, I do not believe you can make that statement from  
3       this document in these sections.

4       Q. There is no mention in this section, which appears to be  
5       a section concerned with security of centralised  
6       distribution, is there?

7       A. No, because I believe the people writing this  
8       section were responsible for validation and  
9       certification and they are talking about their piece of  
10      the work, not the overall process in all the other parts  
11      of the system combined.

12      Q. But there appears to be some overlap in authorship.  
13      I think Dallas -- in the heading "Validation,  
14      Certification and Runtime", it was Dallas De Atley who  
15      was the author of the first document we looked at which  
16      did consider distribution method, yes?

17      A. Yes.

18      Q. Final question, over the page {D1/29.1/9}, heading  
19      "Runtime", we see the final bullet and there is  
20      a reference to "Kill pill". The question is a simple  
21      one: do you know what that refers to, Mr Schiller?

22      A. No, I do not.

23      Q. Thank you.

24           Mr Schiller, I just want to show you one final  
25      document on this topic. If we go to {D1/36/1}, I am

1           afraid it is not in the hard copy bundle. This is the  
2           transcript, if we go to page 2 {D1/36/2}, please. This  
3           is the transcript of the iPhone SDK launch event and you  
4           exhibited this document to your witness statement. Do  
5           you recall that?

6           A. Yes, I do.

7           Q. If we go to page 26 of the document {D1/36/26}, which is  
8           part of the Q&A, and we will see a question, it is about  
9           halfway down, Mr Schiller, it says:

10                  "What sort of safeguards have you built in to make  
11                  sure that all these apps and applications that are going  
12                  to be coming on to the iPhone are secure?"

13                  There is an answer given by "S", which I think is  
14                  Steve Jobs?

15           A. Yes.

16           Q. If we pick it up in the second paragraph, we see:

17                  "The way we are going to do that is that the  
18                  developers have to register with us and for ... \$99.00  
19                  that they pay to join the program, they actually get  
20                  a[n] electronic certificate and that tells us who they  
21                  are ... if they write a malicious app, we can track them  
22                  down, we can tell their parents ... and we will know who  
23                  they are."

24                  Then, over the page {D1/36/27}, if we can just zoom  
25                  in, we see:

1           "The other thing that we can do since the  
2           distribution of their applications is going to be  
3           through the App Store, if we are alerted to a malicious  
4           app that we didn't catch, we'll turn off the spigots so  
5           no more people download it. So we are putting controls  
6           in place, some of which we are talking about here today  
7           and others which we'll just keep to ourselves for now to  
8           keep the iPhone a great experience for users. But we  
9           put a lot of thought into this and I think it's a real  
10          problem. You have anything to add to that?"

11                 So this event is after Apple decided to impose what  
12                 the Class Representative calls the App Distribution  
13                 Restrictions, yes?

14         A. Yes.

15         Q. When Mr Jobs refers to turning off the spigots, he is  
16                 referring to the revocation of an app's signature or  
17                 code-signing certificate, yes?

18         A. Oh, I think he is talking about not distributing it from  
19                 the App Store as well.

20         Q. If we just go back to the paragraph, though:

21                 "... if we are alerted to a malicious app that we  
22                 didn't catch ..."

23                 So that appears to be one that slipped through the  
24                 net --

25         A. That is right.

1 Q. -- of App Review:

2 "... we'll turn off the spigots ..."

3 So that is the circumstance that Mr Jobs is  
4 considering, yes?

5 A. Yes, but he also, above that, talks about trying to do  
6 something between what we have with an iPod, which  
7 allowed no software -- native software distribution, and  
8 a Windows PC, where you can download anything to it,  
9 trying to create something in between is referring to  
10 this unique solution that involves not only the signing,  
11 but the App Store, and he is talking about the entire  
12 system. So part of his answer includes this idea of  
13 this new system we are creating on iPhone.

14 Q. The specific thing he refers to, when he is asked the  
15 question about safeguards, is developer registration,  
16 yes?

17 A. I am talking about the same answer, yes. So, I am  
18 sorry, we are -- I am a page ahead --

19 Q. If we go back a page {D1/36/26} --

20 A. Could we go back a page?

21 Q. -- it is at the bottom, it is the second -- starting  
22 "The way we are going to do this ..."; is that right,  
23 Mr Schiller?

24 A. No, before that. So the question was, "What sort of  
25 safeguards have you built in ...", right? He

1 immediately in the -- answers, it is a good question,  
2 what are the things we can do technically, it is a big  
3 concern, talks about mobile viruses, and he said:

4 "On one side you've got a closed device like the  
5 iPod, which always works. You pick it up ... on the  
6 other side you've got a Windows PC where people spend  
7 a lot of time every day just getting it back up to where  
8 it's useable ..."

9 He is talking about those two extremes. The thing  
10 in the middle we were creating with iPhone and native  
11 apps in the App Store is the solution he is talking  
12 about there.

13 Then he goes on to talk about turning off the  
14 spigots, so you cannot assume he does not think about  
15 the App Store in that, given the preceding answer. I do  
16 not think that is a correct interpretation of what he is  
17 saying.

18 Q. Well, Mr Schiller, he says -- he outlines the two  
19 contrasting approaches, as you say, iPod versus Windows,  
20 and then he says, "So how are we going to do that?".  
21 Then he goes on to identify the specific security  
22 measures that I showed you, developer registration,  
23 code-signing and then we come on to the spigot point.

24 A. Yes.

25 Q. The point I was putting to you was that in referring to



1           the spigot, he is referring specifically to apps that  
2           have slipped through the net of App Review, yes?

3       A. I read this with a different assumption of what he  
4           means, and we are guessing. But I am assuming he means  
5           the App Store as well because of the preceding  
6           paragraph. But it is our interpretations.

7       Q. Okay.

8           Mr Schiller, we will move on to a new topic, you  
9           will be glad to hear, and that is the rationale for the  
10          Payment Systems Restrictions. If you pick it up at  
11          paragraph 152 of your statement, which is {B2/5/43}, so  
12          it is 43 of the hard copy bundle. Have you got that?

13      A. Yes, I do have that.

14      Q. Then, about three-quarters of the way down, you say:

15           "The obligation to use IAP follows from the  
16           obligation to pay Apple's Commission, not the other way  
17           around."

18           Do you see that?

19      A. I see that.

20      Q. So is it the case, Mr Schiller, that the payment system  
21          restrictions, which is the obligation to use IAP for all  
22          digital goods and services bought in-app, was introduced  
23          by Apple to ensure that developers did not circumvent  
24          the obligation to pay the Commission?

25      A. Yes, that was one of the reasons.

1 Q. It was not introduced for reasons of security or  
2 privacy, was it?

3 A. No, one does not negate the other.

4 Q. Can we go to {H2/17/1} and we will go to page 1 start  
5 with. This is another confidential document,  
6 Mr Schiller, so I will just ask you to read parts of it  
7 and then I will ask you a question about it.

8 This is the deposition of Mr Forstall in the Epic  
9 proceedings in the United States, so it is back in 2021.  
10 I think you were also involved in those proceedings,  
11 yes?

12 A. Yes.

13 Q. We have seen earlier that Mr Forstall was senior vice  
14 president of iOS software at the time; correct?

15 A. Yes.

16 Q. Back in the day, I should say.

17 If we go to page 4 of the hard copy bundle, page 28  
18 on the EPE {H2/17/28}, and again, I have had my  
19 documents switched out, Mr Schiller, so if you give me  
20 one moment, I will find you the reference.

21 THE CHAIRMAN: This is another confidential document.

22 MR KENNEDY: This is another confidential document, yes.

23 I am just going to ask the witness to read it. But I  
24 just ... I have had a "confi" version swapped for  
25 a "non-confi" version, so I just need to find the

1           relevant passage.

2           Mr Schiller, it is internal page 28, page 4 of your  
3           hard copy, and if you pick it up at line 16, you will  
4           see a question that is asked of Mr Forstall. Could  
5           I ask you to read from line 16 on that page to line 13  
6           on internal page 30 {H2/17/28-30}.

7           A. I see that.

8           Q. You have read the ... it is a couple of pages,  
9           Mr Schiller.

10          A. Oh, I am sorry, no, I am just looking at the page that  
11          you -- that --

12          Q. Oh, sorry, Mr Schiller, I was unclear.

13                 So if you -- do you see -- you will see a timestamp,  
14   14:59:28   14           "20:38:26", on the right-hand side. Do you see that?

15          A. Yes, I see that.

16          Q. If you could just pick it up at that line 16, and could  
17          you just read down that page, down the next page and  
18          over onto a third page and stopping at line 13 of that  
19          third page. Is that clear?

20          A. I think so. I will do that.

21          Q. Okay. Let me know if it is not, Mr Schiller.

22          A. Okay. (Pause)

23                 If I could have the next page? Thank you. (Pause)

24                 If I could have the next page? Thank you. (Pause)

25                 I have read that, yes.

1 Q. It is going to be slightly tricky to do this in open  
2 session, Mr Schiller, but what I am going to suggest to  
3 you is that Mr Forstall identifies three reasons for the  
4 introduction of IAP and I am going to direct you to the  
5 bits of the transcript where I say he identifies the  
6 reasons, okay?

7 A. Yes.

8 Q. So the first one is internal page 29 {H2/17/29}, and it  
9 is lines -- the end of line 9, there is a sentence that  
10 runs down 10 and 11. So I am going to suggest that that  
11 is the first reason.

12 A. I see that.

13 Q. Then if we go down to lines 21 and 22, the first  
14 sentence; I am going to suggest that is the second  
15 reason. You see that?

16 A. I see that.

17 Q. Then if we go over the page to page 30 {H2/17/30}, and  
18 then it is lines 6 and 7, it is the second sentence  
19 beginning with the word "And".

20 A. I see that.

21 Q. That is the third reason. Do you have any reason to  
22 disagree with Mr Forstall's account of the reasons for  
23 the introduction of IAP?

24 A. Yes. I think there were other reasons as well, and  
25 I think he even follows, at the last line you had me

1 read, to imply that there may be other reasons as well.

2 Q. But he does not identify any specific reasons?

3 A. I do not want to read that line 12 to 13 in public, but  
4 you can see for yourself what he said there.

5 Q. Yes, but -- and the point I was making is that he does  
6 not identify any further specific reasons. I see what  
7 he says there in lines 12 to 13.

8 A. That is right.

9 Q. Yes, and you have not exhibited any documents to your  
10 witness statement that evidence any further reasons for  
11 introduction in IAP?

12 A. Yes, we have.

13 Q. Contemporaneous documents?

14 A. The transcript from the announcement, where we  
15 publicly -- Mr Jobs publicly announced the capabilities  
16 in the App Store and talked about it and he outlined the  
17 reasons, and I do think it says something different  
18 there.

19 Q. What do you think it says different there?

20 A. He talks about security and privacy and risk to users.

21 Q. Can you identify the particular passages, Mr Schiller?  
22 I do not know if you have got your --

23 MS DEMETRIOU: If you just looked at the document, if you  
24 just -- can you not just put it to him?

25 MR KENNEDY: I think that is actually a different

1 transcript.

2 You are talking about the later transcript,  
3 Mr Schiller?

4 A. The announcement of the SDK and the ability to make  
5 native apps that Steve Jobs announced in 2007, in the  
6 fall of 2007, and he talked about --

7 Q. So you do not think that we looked at --

8 A. I believe that --

9 Q. -- a moment ago?

10 A. -- was the same one. Yes, the full document talks about  
11 user -- risk to users.

12 THE CHAIRMAN: Let us get that document back up again, shall  
13 we? I thought that was March of 2008 (off microphone -  
14 inaudible).

15 A. Was it the 2008? Then the first announcement was in  
16 2007, sir.

17 THE CHAIRMAN: When you are talking about the transcript,  
18 you mean the one we were looking at before?

19 A. No, sorry, the transcript that was -- is part of my  
20 evidence was the original launch announcement of the SDK  
21 and App Store idea in 2007, I believe it was in the  
22 fall. He said it would take us into February to release  
23 the SDK. That was that announcement.

24 MR KENNEDY: The press release, Mr Schiller, that  
25 accompanied the announcement --

1 A. There was --

2 Q. -- of the developer SDK?

3 A. -- there was -- there were three things. There was  
4 a letter, an open letter --

5 Q. (Overspeaking).

6 A. -- he published that was in my documentation, and then  
7 there was, I believe, a transcript -- I am sorry, I do  
8 not have it all in front of me. I am doing this from  
9 memory.

10 Q. Of course.

11 A. But I remember, for example, he had the quote that we  
12 are trying to do two diametrically opposed things at the  
13 same time, to keep users safe and open up the platform  
14 for developers.

15 Q. Mr Schiller, I think I know the document you are  
16 referring to, we are just trying to get the reference  
17 for you now -- it is not that one -- but it may just  
18 take a moment. If I could come back to it. There will  
19 be a transcriber's break, Mr Schiller, at some point,  
20 and perhaps we can return to this if necessary then,  
21 but ...

22 A. Sure. Thank you very much.

23 MS DEMETRIOU: In case it helps, it might be {D1/24/1}, if  
24 that helps my learned friend.

25 MR KENNEDY: {D1/24/1} looks --

1 MS DEMETRIOU: Page 2.

2 MR KENNEDY: Page 2 {D1/24/2}, if we zoom in on the third  
3 substantive paragraph:

4 "It will take until February ..."

5 Is this the --

6 A. That is one of the two references that I provided in my  
7 exhibits.

8 Q. Okay.

9 Mr Schiller, moving on to a new topic, which is the  
10 benefits of IAP. In paragraphs 141 and 142 of your  
11 statement, which is {B2/5/37}, you identify a number of  
12 benefits to consumers and a number of benefits to  
13 developers, yes? Do you recall that?

14 A. Yes.

15 Q. Mr Schiller, your role at Apple is not, and never has  
16 been, one that focuses on security generally or payment  
17 for prevention specifically; is that correct?

18 A. Security generally, yes, I do have a role with that.  
19 Payment specifically, no.

20 Q. It would be fair to characterise your role as being  
21 a business role or an executive role, yes?

22 A. An executive role, yes, in addition to my role for many  
23 years running product marketing and also running the  
24 App Store, which that is a part of the responsibility is  
25 working on that.



1           There is also a privacy and security council at  
2           Apple that I am an executive member of and so I have  
3           a responsibility in that area as well.

4       Q.   If we pick it up, Mr Schiller, at 141(a), so the bottom  
5           of page 37, and you say:

6           "IAP utilises users' billing information associated  
7           with their Apple ID, so users only need to enter their  
8           preferred billing method once when they create their  
9           Apple ID. If developers could forgo IAP and install  
10          their own payment portals, consumers would need to enter  
11          their billing information every time they purchase[d]  
12          [I think it should say] a paid app."

13          I think that may be a mistake, Mr Schiller, that  
14          should refer to in-app purchases; is that correct?

15       A.   So when we began, remember, the App Store, when we first  
16           launched it, was only for paid apps, but you are right,  
17           then as we added IAP and subscriptions, this would have  
18           the same meaning, the user, for every new app that has  
19           IAP or a subscription, they would have to enter their  
20           billing information.

21       Q.   Yes, but you are referring here not exclusively to paid  
22           app purchases, but also in-app purchases, yes?

23       A.   Yes.

24       Q.   Yes.

25           You say:

1            "This would make the consumer experience much less  
2            convenient, and also put the financial information of  
3            Apple's users at greater risk of being compromised."

4            Yes?

5            A. Yes.

6            Q. You make this point about the re-entry of billing  
7            information in a number of places in your witness  
8            statement, yes?

9            A. I believe so.

10          Q. When you refer to financial information, are you  
11          referring to credit and debit card information?

12          A. No -- well, I am talking about their payment method  
13          information, so, for example, it could be a credit card,  
14          but I think that also refers to the transactions  
15          themselves.

16          Q. Mr Schiller, Apple contracts with third-party payment  
17          processing systems to facilitate Apple's ability to  
18          accept payments through IAP, correct?

19          A. Yes.

20          Q. Those third-parties include acquirers?

21          A. Yes.

22          Q. Payment processors?

23          A. Yes.

24          Q. Card schemes?

25          A. Yes.

1 Q. Banks?

2 A. Yes.

3 Q. In order for a payment -- for an in-app purchase of

4 digital goods or services to be processed, it is

5 necessary for Apple to provide information about the

6 relevant iOS Device user to these third parties, yes?

7 A. I am sorry, did not quite follow the end of that

8 question.

9 Q. Should I restate the question?

10 A. Please, if you do not mind.

11 Q. In order for a payment for an in-app purchase of digital

12 goods and services to be processed --

13 A. Yes.

14 Q. -- it is necessary for Apple to provide information

15 about the relevant iOS Device user to these parties,

16 correct?

17 A. Yes. I do not know the details of how that works and

18 what security and processes there are around that. That

19 is not --

20 Q. You are ahead of me, Mr Schiller, that was my next

21 question.

22 A. Oh, I am sorry.

23 Q. I was going to ask you do you know what information is

24 provided to those third parties and in what form and

25 I think the answer is --

1 A. I am sorry, I do not.

2 Q. Thank you. If you go to paragraph 126 of your  
3 statement, {B2/5/35}, back a couple of pages. If we  
4 pick it up at the start of the second sentence, you say:

5 "Apple ID is the account that users use to sign into  
6 their Apple devices and access Apple media services,  
7 including the App Store. When users create  
8 an Apple ID ... they can enter their chosen payment  
9 credentials which are securely stored and retained. The  
10 payment methods that users in the UK can use with their  
11 Apple ID include Apple Pay, most credit and debit cards,  
12 PayPal, mobile phone billing ..."

13 And so on. Do you see that?

14 A. I do.

15 Q. So an iOS Device user can add Apple Pay to the payment  
16 methods associated with their Apple ID or I think it is  
17 now called Apple Account?

18 A. Yes, exactly.

19 Q. If that user then makes an in-app purchase of digital  
20 goods or services, they could use Apple Pay as the  
21 payment method for that transaction?

22 A. Yes.

23 Q. If an iOS Device user uses Apple Pay, Apple does not  
24 store or have access to the iOS Device users' complete  
25 card information, correct?

1       A. I believe that is correct.

2       Q. Can we go to {D2/219/1}. That is tab 15 for you. If we

3       pick it up at the third paragraph, just above the

4       heading "When you", and you will see the second

5       sentence:

6                "Apple doesn't store or have access to the original

7       credit, debit, or prepaid card numbers that you use with

8       Apple Pay."

9                Do you see that?

10      A. Yes.

11      Q. We will keep this document open for the next question.

12       So, instead, Apple stores something, an encrypted

13       device-specific device account number in the secure

14       element; is that correct?

15      A. I believe so.

16      Q. We can just pick this up, it is the next heading, it is

17       the seventh paragraph, you see:

18                "After your card is approved ..."

19                You will see there the creation of the

20       device-specific device account number, yes?

21      A. Yes.

22      Q. When a user uses Apple Pay within an app or a website,

23       Apple provides the encrypted device account number to

24       the other entities involved in processing the payment,

25       yes?

1 A. I believe so.

2 Q. In the EU, Mr Schiller, it is possible for developers to  
3 offer in-app purchases of digital content without using  
4 IAP, yes?

5 A. Yes.

6 Q. It is possible for developers in the EU to offer users  
7 the option to use Apple Pay for both digital and  
8 physical in-app purchases, correct?

9 A. Yes.

10 Q. If the payment system restrictions, which is our term  
11 that we use on this side of the court -- you understand  
12 what I mean by that, the obligation to use IAP?

13 A. Yes.

14 Q. If those were absent, Apple could allow developers to  
15 choose to offer users the option to use Apple Pay for  
16 both digital and physical in-app purchases in the  
17 United Kingdom, correct?

18 A. Yes.

19 Q. If an iOS Device user chose to use Apple Pay in those  
20 circumstances, the concerns you expressed about  
21 providing personal and financial information to third  
22 parties fall away, yes?

23 A. I have -- I -- I am not certain. I have not tried using  
24 how Apple Pay gets set up in an application that does  
25 not use our commerce engine in the App Store to see what

1 information the app themselves ask for in order to set  
2 that up. It may be as you say; I just do not know for  
3 certain.

4 Q. But the document that we have seen suggests that when  
5 you use Apple Pay to make a purchase within an app or  
6 a website, the merchant and other entities involved do  
7 not receive the credit card number; they receive the  
8 device account number, yes?

9 A. That is what it says, yes.

10 Q. That is both apps and web purchases, yes?

11 A. I believe so. Again, not my area of expertise as the  
12 Apple Pay implementation on the web, so I assume -- you  
13 may be right. I am just not 100% certain.

14 Q. You are aware that you can use Apple Pay to make in-app  
15 purchases of physical goods and services?

16 A. I am aware of that.

17 Q. Apple markets use of Apple Pay as safe, yes?

18 A. Yes.

19 Q. You have no reason to believe that it would not be safe  
20 in the same way it is safe to use for physical goods and  
21 services that it would not be safe for digital content?

22 A. I have not been involved with Apple Pay and its  
23 implementation and all its details so I am just reading  
24 what you are asking me to read from the Apple Pay team's  
25 documentation. I am not an expert on Apple Pay.

1 MR KENNEDY: Sir, that might be a convenient moment for the  
2 break and then we can continue.

3 THE CHAIRMAN: Ten minutes.

4 (3.15 pm)

5 (A short break)

6 (3.25 pm)

7 MR KENNEDY: Mr Schiller, I am afraid we are going to need  
8 to speed up, which is entirely my fault. If I am going  
9 too quickly at any point, I am sure somebody on the  
10 other side of the court will jump up, but do let me know  
11 if that is the case.

12 A. Okay, thank you.

13 Q. We were discussing, Mr Schiller, the provision of  
14 financial information to third parties in the event that  
15 developers were not required to use IAP; do you recall?

16 A. Yes.

17 Q. My question is: are you familiar with the payment card  
18 industry data security standards?

19 A. I have heard the term. I know nothing about it.

20 Q. That does speed us up. Thank you very much,  
21 Mr Schiller.

22 A. I am glad I could help.

23 Q. Mr Schiller, you also address fraud detection and you  
24 make two points in your witness statement. You say that  
25 Apple's fraud deduction features under IAP -- this is



1 paragraph 142(e) {B2/5/40}:

2 "As previously stated, IAP enables Apple to  
3 implement features to protect users and developers from  
4 fraud. These features are especially useful for small  
5 developers that may not have comparable means to combat  
6 fraud."

7 Do you see that?

8 A. Yes, I do.

9 Q. My question is: do you have any knowledge of the fraud  
10 prevention infrastructure that alternative providers of  
11 payment processing services could provide to developers?

12 A. No, I do not.

13 Q. Then if we go to paragraph 150, {B2/5/42}, you say that:

14 "The use of external payment mechanisms also  
15 degrades Apple's ability to monitor for and identify  
16 fraudulent actors."

17 You see that?

18 A. Yes, I do.

19 Q. My question is: do you know how much or what proportion  
20 of IAP transaction data relates to in-app purchases of  
21 digital goods and content from iOS Apps downloaded from  
22 the UK App Store store front?

23 A. The percent of UK App Store store front purchases that  
24 were fraudulent? No, I do not know that number.

25 Q. Sorry, you may have misunderstood my question, I am sure

1           that was my fault. The question is: of IAP transaction  
2           data as a whole --

3       A. Yes.

4       Q. -- how much of that transaction data relates to in-app  
5           purchases of digital goods and services through iOS Apps  
6           purchased on the UK App Store store front. It might  
7           be -- (overspeaking) --

8       A. Sorry, I do not know the exact percent.

9       MS DEMETRIOU: Excuse me, I do not think the question is  
10           very clear. By "in-app transaction data", I do not know  
11           what sort of data my learned friend is referring to, is  
12           it volumes or value?

13       THE CHAIRMAN: Mr Schiller has indicated he does not have  
14           that sort of detail anyway, so I suspect that that is  
15           probably the end of the line of questioning.

16       MR KENNEDY: Mr Schiller, at paragraph 141(b), and I am  
17           sorry to jump around, you say:

18           "IAP helps to ensure that transactions are secure  
19           and protected from fraud by incorporating Apple's  
20           security features, such as Face ID and two-factor  
21           authentication, and enabling Apple to verify that in-app  
22           purchases are in fact delivered to iPhones and iPads."

23           Question 1: is it possible to use Face ID and  
24           two-factor authentication without using IAP?

25       A. Yes.

1 Q. Question 2: when you say that Apple is able to verify  
2 that in-app purchases are in fact delivered, are you  
3 referring to the fact that, as part of App Review, Apple  
4 reviews in-app purchase flows?

5 A. That is one of the ways. It is not the only way.

6 Q. Is the other aspect that you are referring to the fact  
7 that the developer notifies Apple that it has delivered  
8 the content purchased when a particular in-app purchase  
9 takes place?

10 A. No. There is -- I am also referring to technology built  
11 into our commerce engine called StoreKit. The API for  
12 developers who implement IAP also has a feature in there  
13 for digital receipts that provide for communication back  
14 and forth via IAP that the goods have been received  
15 through a digital receipt system. So there is  
16 technology as well as the App Review process too.

17 Q. But the developer tells Apple via the StoreKit API that  
18 it has delivered the in-app content and Apple receives  
19 and registers that receipt, correct?

20 A. It is an automated process. It is not that they have to  
21 proactively think to tell Apple. It is automatically  
22 generated as a digital receipt.

23 Q. But the information flow is developer to Apple, correct?

24 A. It is app transactional to Apple. It is not -- the  
25 developer is not in the middle doing something any more.

1           It is set up and it works and it provides a digital  
2           receipt.

3       Q.   But it comes from the developer's side, if I can put it  
4           that way, from the app --

5       A.   It comes from the app.

6       Q.   From the app to Apple, and you are simply notified that  
7           the transaction in question has been completed?

8       A.   Yes.

9       Q.   In 141(d), you say that Apple is able to provide support  
10          by providing refunds. If we could have a quick look at  
11          Mr Burelli's evidence on this. This is the first  
12          Burelli report. {C2/6/23}. It is tab 24 of your hard  
13          copy bundle. We can start on the first page just to get  
14          your bearings.

15               Mr Burelli is an expert in payment systems that has  
16          been instructed by the Class Representative. Do you  
17          have tab 24?

18       A.   Tab 24, yes, I have it.

19       Q.   Just to show you the cover page, expert report of  
20          Francesco Burelli, and he is one of the Class  
21          Representative's experts specialising in payment  
22          systems, okay?

23       A.   Okay.

24       Q.   If we go to table 2, which is page 23, internal page 23,  
25          and again just let me know when you have got there.

- 1 A. I am on page 23.
- 2 Q. What you will see is on the left-hand side you see  
3 services provided by Apple via the ASPS, which is  
4 another reference to IAP.
- 5 A. Okay.
- 6 Q. You see that? What Mr Burelli has done in the left-hand  
7 column is he has looked at your witness evidence and he  
8 has looked at an affidavit that was submitted in the  
9 Australian Proceedings by someone called Mr Lloyd, who  
10 is, I think, one of Apple's solicitors in Australia.
- 11 A. Yes.
- 12 Q. He has sought to just create a list of all the things  
13 that you have said that Apple does. Do you see that?
- 14 A. I see the table yes.
- 15 Q. Okay. In the next three columns, what he has done is he  
16 has looked at alternative providers of merchant of  
17 record services, FastSpring, Paddle and BlueSnap. These  
18 are providers that Mr Burelli says might enter in the  
19 event that the payment system restrictions were lifted,  
20 okay?
- 21 A. Okay.
- 22 Q. What the table is doing is summarising Mr Burelli's  
23 researches into what these various entities do and  
24 comparing them to Apple, okay?
- 25 A. Okay.

1 Q. If we go over the page, we see in the second row:

2 "Customer support including managing refunds,  
3 cancellation, chargebacks, and disputes."

4 Do you see that? "Customer support", second row?

5 A. I see that.

6 Q. If we look across, we have three ticks for each of the  
7 three alternative merchants of record, so what this  
8 suggests, Mr Burelli(sic), is that alternative merchants  
9 of the record could similarly facilitate refunds for  
10 customers.

11 A. I see he put a check there. I cannot speak to the  
12 accuracy of this analysis. I have no idea.

13 Q. You are not familiar with the details of what these  
14 various providers provide, I assume?

15 A. Or the work he has done to -- simply -- I find it  
16 interesting -- my quick observation, I have not seen  
17 this before this moment -- that this entire capability  
18 is simply listed as a check. I know from experience  
19 things tend to be a lot more complicated than that, so  
20 I am -- so I have questions, but I do not want to waste  
21 your time on questions I have on something I have not  
22 seen before. It just seems not logical to me that all  
23 this financial capability is rendered to a comparison  
24 based on a check.

25 Q. But you have no --

1 A. Customer support is a check. There is so much more. We  
2 have 5,000 people that provide customer support of  
3 a very complicated nature. It often involves their  
4 device as well as their operating system as well as the  
5 purchase. How that all becomes a check that is the  
6 same, I do not understand how that could be. But I do  
7 not know. I am not party to this analysis.

8 Q. Okay. But you have no basis to think that Mr Burelli is  
9 wrong? I understand you say you have questions --

10 A. Well, I have a first initial reaction, just seeing a few  
11 of these checks, to question whether they might be right  
12 or not, but all I can do is give you an immediate  
13 reaction based on seeing this for the first time.

14 Q. But we see refunds listed in the left-hand side column  
15 and we see three checks?

16 A. Yes. Similarly it says fraud prevention. As we know,  
17 there is many technologies in fraud prevention. There  
18 are machine learning algorithms, there are data sets.  
19 There is a tremendous amount and this just says check.  
20 I have no idea what that check means.

21 Q. I think in answer to an earlier question you said that  
22 you did not have any specific knowledge of the  
23 alternative fraud prevention infrastructures that third  
24 parties offer.

25 A. That is correct.

1 Q. Just to make sure the question is clear, this suggests  
2 that alternative providers of merchant of record  
3 services could also provide refunds to customers?

4 A. That may be.

5 Q. If that was correct, customers would not need to go  
6 directly to the developer to seek a refund.

7 A. I do not know that. Again, I do not have familiarity  
8 with them. But assuming that were true, correct, they  
9 would not have to.

10 Q. Back to your witness statement, 141(f) {B2/5/28}. Just  
11 take a second to ... (Pause)

12 You say Apple maintains records of all transactions.  
13 This benefits users for a variety of reasons, including  
14 the ability to restore purchases. You see that?

15 A. Yes.

16 Q. Are you aware that under the alternative terms that are  
17 in place under the EU regime, so the alternative terms  
18 introduced following the DMA, there is a contractual  
19 obligation on developers of alternative marketplaces to  
20 offer restoration and redownloading of applications free  
21 of charge?

22 A. I have a vague recollection of that. I read through  
23 those terms once a while back. I do not recall them  
24 specifically.

25 Q. Paragraph 166 of your statement, Mr Schiller, page 48.



1 {B2/5/48}. Actually, go back one page to 162 {B2/5/47}  
2 just to pick up -- give you the context. This is:

3 "Jurisdiction specific exceptions relating to the  
4 requirement to use IAP."

5 In this section, you are discussing South Korea and  
6 the Netherlands.

7 A. Yes.

8 Q. If we look at the conclusion you give in 166 {B2/5/48}:

9 "In my view, these changes in the Netherlands and  
10 South Korea, compelled by regulatory change, detract  
11 from the seamless experience that users have come to  
12 expect ... and increase the risk to users of fraud and  
13 privacy violations."

14 Yes?

15 A. Yes.

16 Q. Under the changes introduced in both South Korea and the  
17 Netherlands, alternative providers of payment systems  
18 must comply with industry standards before they can  
19 offer in-app purchases or facilitate in-app purchases,  
20 correct?

21 A. Yes, I believe so.

22 Q. Mr Schiller, 141(e) of your statement, page {B2/5/38}.

23 You say:

24 "Apple offers parental control of IAP payment  
25 options so that children cannot make unauthorised

1 purchases."

2 Is that in relation to the Ask to Buy functionality?

3 A. Yes.

4 Q. As I understand it, the Ask to Buy functionality  
5 operates by creating a family group; is that correct?

6 A. Yes.

7 Q. Various people with an iOS Device and an Apple ID or  
8 Apple Account grouped together?

9 A. Yes. There is also a way to implement it individually  
10 on a child's device if a parent does not have a device,  
11 so there are a couple ways to do it.

12 Q. Then there is a family organiser and their payment  
13 information associated with their Apple ID can be used  
14 by other people, correct?

15 A. Yes.

16 Q. We saw earlier that one of the payment methods that can  
17 be associated with Apple ID or Apple Account is  
18 Apple Pay, correct?

19 A. Yes.

20 Q. You have accepted, I think, that absent the Payment  
21 Systems Restrictions, iOS Device users in the  
22 United Kingdom would be able to make in-app purchases of  
23 digital content using Apple Pay?

24 A. As their payment method for in-app purchase?

25 Q. As their payment method for in-app purchase.

1 A. Yes.

2 Q. The question is: is there any reason that Apple's Ask to  
3 Buy functionality could not be used in those  
4 circumstances in conjunction with Apple Pay?

5 A. I am not aware of the system working in that way now  
6 where -- the systems we have set up for parental  
7 controls were built relying on this centralised payment  
8 and distribution methodology, so if somebody were to use  
9 a different payment method to make that also work --  
10 even if that different payment method were Apple Pay, to  
11 make that work with the parental controls, I am not  
12 aware that that is engineered at this time that way.

13 Q. I think you are suggesting that it is not possible at  
14 the moment?

15 A. Correct.

16 Q. But just so I understand, so one of the payment methods  
17 you can associate with your Apple ID Apple Account is  
18 Apple Pay?

19 A. Yes.

20 Q. Ask to Buy operates by allowing other users, children,  
21 to use one of the payment methods associated with your  
22 Apple ID or Apple Account, correct?

23 A. Ask to Buy, my understanding of it is the Ask to Buy  
24 technology is agnostic to the payment method in the  
25 Apple Account. Whatever the payment method account at

1 Apple, Ask to Buy works. It is based upon the IAP  
2 information and infrastructure, and then whatever  
3 methodology is used for payment processing in the Apple  
4 Account will work with Ask to Buy. I do not know that  
5 Ask to Buy can work or does work with a payment  
6 processing solution that is not implemented in IAP.  
7 I have been under the impression that it does not work  
8 that way.

9 Q. Okay, but it is agnostic to the payment type in the  
10 Apple Account?

11 A. As long as it goes through IAP, correct.

12 Q. Has Apple looked into, do you know, whether it would be  
13 possible to extend the operation of Ask to Buy to  
14 circumstances where you are using Apple Pay but not  
15 using IAP?

16 A. I do not believe it is at this time and I do not know  
17 what it would take. I believe some time ago in  
18 a meeting that question was asked of our commerce team  
19 of if they could develop support to connect it through  
20 other payment methods, and there was not an agreement  
21 that there was a pathway to that at this time. I am not  
22 saying in the fullness of endless time, I do not know,  
23 but we walked out saying, hey, this is a project we  
24 cannot take on at this time.

25 Q. Paragraph 141(g), Mr Schiller:

1           "IAP allows consumers to manage all of their  
2           subscriptions in one place."

3           Mr Schiller, again, thinking about the changes made  
4           under the DMA, if a developer uses an alternative  
5           payment services provider, there is now an obligation to  
6           report back to Apple what transactions have taken place  
7           through that alternative payment service provider,  
8           correct?

9           A. You are talking about as it relates to commissions and  
10          payments?

11          Q. I am talking about external purchase server API, which  
12          reports back each of the transactions and then, as  
13          I understand it, Apple calculates the Commission payable  
14          to Apple on those transactions, yes?

15          A. That is correct.

16          Q. So Apple will be informed when a transaction takes place  
17          even a transaction that is using an alternative payment  
18          service provider, yes?

19          A. I believe so.

20          Q. So Apple would know if a subscription had been taken out  
21          in a particular app for a particular amount of money?

22          A. I believe that is the intent, yes.

23          Q. It would need that information to calculate the  
24          Commission that was payable on that transaction, yes?

25          A. Yes.

1 Q. Given that Apple will have that information, is there  
2 any reason why Apple could not continue to list all of  
3 an iOS Device user's subscriptions in one place in the  
4 iPhone settings page, for example?

5 A. Yes, I think there are reasons that would not work as  
6 you describe.

7 Q. Can you explain for the Tribunal why?

8 A. Well, first, I believe the reporting back from the  
9 developer to Apple about transactions that occur with  
10 alternate payment methodologies is not all an automated  
11 system yet. That is not all in place yet. There are  
12 hopes to get there, but it does not exist. So, first,  
13 there is not an absolute map of transactions that are  
14 provided to Apple yet. That is one issue.

15 The second is I am not sure that information in the  
16 form it comes provides the necessary full set of  
17 information that creates this payment and subscription  
18 view in the user's setting page that they can manage.  
19 It is a different data set coming directly from IAP, so  
20 I do not know that there is enough data there to provide  
21 that capabilities.

22 Third and the most important reason that exists is  
23 the user can see all their payments and all their  
24 subscriptions and with one button unsubscribe to  
25 something because it is integrated in IAP. There is not

1           any process today for a user to tell Apple, "I want to  
2           unsubscribe to something paid for in someone else's  
3           payment processing service", so it would have no purpose  
4           as a setting. So I do believe there is a bunch of  
5           issues in the way of that idea.

6       Q.   Moving back, if we could, to Apple Pay, would it be  
7           possible to implement a subscription management function  
8           within Apple Pay, obviously limited to transactions that  
9           had been made using Apple Pay?

10      A.   Possible? I believe so. But I do not know, again, the  
11           flow of data and the time it happens and whether that  
12           can be connected in or not. It is a project that would  
13           take an engineering and financial team to spend time  
14           evaluating to figure out and let me know can this be  
15           done or not and what would it take.

16      Q.   To your knowledge, has Apple looked into that at this  
17           point in time?

18      A.   Not specific to Apple Pay, to my knowledge. As  
19           I mentioned, we asked the question of the team in  
20           general about alternative payment schemes, which would  
21           include Apple Pay, certainly, and that investigation was  
22           not very fruitful yet.

23      Q.   Okay. Thank you, Mr Schiller.

24           If we move to paragraph 142, these are the benefits  
25           you identify to developers.

1           Absent the payment system restrictions, developers  
2           would have a choice within to use IAP or to use  
3           an alternative payment service provider, yes?

4       A.   I am not sure.  You are talking about a hypothetical  
5           future with some different rules.  I do not know what --  
6           how that would work yet.

7       Q.   If the contractual restriction upon using anything other  
8           than IAP was used, then logically you would be able to  
9           use something other than IAP?

10      A.   Depending on how we are structured, yes.

11      Q.   If developers valued the benefits that you say IAP  
12           provides, they could choose to use IAP?

13      A.   Yes.

14      Q.   If they valued another offering more, they could choose  
15           to use that offering, yes?

16      A.   Yes.

17      Q.   But at the moment, Apple deprives developers of that  
18           choice, yes?

19      A.   "Deprives" is not the word I would use, but we require  
20           use of IAP.

21      Q.   Mr Hoskins took you to the CMA Report.  I want to take  
22           you to one of the appendices of that report at  
23           {AB6/33/12}.  Just pick it up on page 1 just to show you  
24           what the document is, appendix H, and this is the  
25           appendix that deals with Apple's and Google's in-app



1 purchase rules. If we go to page 12, you will see what  
2 developers have said to the CMA about using IAP.

3 A. I am sorry, could you tell me what tab I am looking at?

4 Q. I am so sorry, it is tab 18 of your bundle.

5 A. Thank you very much.

6 Q. Page 12, and we are looking at paragraph 40, which is at  
7 the bottom of the page.

8 A. Yes, I am there.

9 Q. Paragraph 40 says:

10 "Most of the large app developers that responded to  
11 our requests for information said that Apple's and  
12 Google's payment systems are in various ways limited  
13 compared to the alternative payment solutions available  
14 from PSPs. Almost all developers said that they would  
15 not use Apple's or Google's payment systems if they were  
16 not required to. Some highlighted the difference in  
17 Commission between Apple's and Google's systems and  
18 third-party PSPs as the main reason. However, many  
19 stated that the alternative payment solutions they used  
20 elsewhere were preferable, irrespective of the  
21 Commission, as they offered greater flexibility and  
22 functionality and enabled the developer to offer a more  
23 consistent user experience across platforms."

24 That is right, is it not? Most developers would not  
25 use IAP if they were not forced to do so by Apple?

1 A. I do not believe that is the case.

2 Q. If we go back to your witness statement, tab 1 of your  
3 old bundle, paragraph 142(a), page 39 {B2/4/39}, run  
4 through these quickly if we can, go through each of the  
5 benefits that you identify, and the same question is  
6 going to be the same in each case, which is whether or  
7 not Apple is the only person who could provide this  
8 service or whether alternative providers of merchant of  
9 record services could also provide that service.

10 If you go back to Mr Burelli's table, if it would be  
11 convenient to do so, maybe it is convenient to have that  
12 open, that is tab 24, table 2 {C2/6/24}. We can sort of  
13 flip between the two documents. So first, 142(a):

14 "Apple gives developers greater flexibility to  
15 monetise their apps."

16 I do not think it is the case that developers could  
17 not monetise their apps otherwise than using IAP.  
18 Developers could use an alternative payment processor to  
19 process in-app payments, yes?

20 A. I do not know that others give it more flexibility than  
21 Apple. That is an opinion. I do not know that.

22 Q. But you would accept that you could use them to offer  
23 a one-time in-app purchase or subscription purchase,  
24 yes?

25 A. Yes.

1 Q. Then 142(c) {B2/4/39}:

2 "IAP removes the administrative burdens and supports  
3 developers in selling their services to, and receiving  
4 payments from, customers in the 175 countries ... this  
5 support includes: collecting and managing payment  
6 information from around one billion potential customers  
7 around the globe; handling conversions to 44 currencies;  
8 and ensuring compliance with local tax laws."

9 If we turn to Mr Burelli's report, pick it up at the  
10 start of table 2 {C2/6/23}, we see "Acceptance of  
11 various payment types ... and checkout functionality",  
12 yes?

13 A. I am sorry, I --

14 Q. I am sorry, tab 24, {C2/6/23}, internal page 23 for you.

15 A. Thank you. Page 23?

16 Q. Yes. It is the table we looked at before.

17 A. Yes.

18 Q. I think we could take your questions as read as to how  
19 this document has been prepared, but I just want to look  
20 at each of the categories and look at what Mr Burelli  
21 says.

22 A. Yes.

23 Q. The first itemised --

24 A. So we are -- I am sorry, apologies.

25 Q. After you, Mr Schiller.

1       A. I just want to make sure I am in the right place with  
2       you. So we are looking at, in my witness statement, 142  
3       section (c).

4       Q. Yes.

5       A. Which is about 175 countries --

6       Q. Yes.

7       A. -- and 44 -- and now we are looking at this expert  
8       table --

9       Q. That is exactly right, Mr Schiller, you --

10      A. So is there somewhere it says how many countries --

11      Q. We are getting there.

12      A. Okay.

13      Q. Over the page, 24 {B2/5/24}.

14      A. I said okay. Thank you.

15      Q. Okay, no, perfect. If you want to turn up -- have you  
16      got the page 24, Mr Schiller?

17      A. Yes.

18      Q. Then we see:

19                "Management/facilitation of the transaction  
20                Processing Stage."

21                We see FastSpring 240, Paddle 200, BlueSnap 200.

22      A. I see that.

23      Q. Then the second item {B2/4/39}, collecting and managing  
24      payment information. If we go back to the start of the  
25      table {C2/6/23}, we see, "Collection and storage of

1 customer payment information", and we see that those  
2 providers retain payment information for recurring  
3 payment purposes only?

4 A. I see that.

5 Q. Back to your list {B2/5/39}, "handling conversion to  
6 44 currencies". Over the page, 24 {C2/6/24}, about  
7 halfway down we see, "Currency conversion", and we see  
8 three ticks?

9 A. Yes, I do not know how many. There could be two or  
10 could be 44. It would help to have the details.

11 Q. Final item on your list {B2/5/39}, "complying with local  
12 tax laws". Go back to 24 {C2/6/24}, we see, "Ensuring  
13 developer compliance with regulatory, statutory and tax  
14 obligations", and we see three ticks.

15 Then back to your 142 {B2/5/39}, this time (d):

16 "The records maintained through IAP help Apple  
17 provide both routine and customised business  
18 analytics ..."

19 A. Yes.

20 Q. Back to Mr Burelli, I am afraid, page 24 {C2/6/24}, this  
21 time beneath "Currency conversion" we see "Recording  
22 sales and generating receipts" and then we see  
23 "including providing transaction statistics/analytics  
24 and summaries", again three ticks?

25 A. Again, I have no idea what a tick means in this table

1 compared to the number of analytic reports a developer  
2 can or cannot get, either way.

3 Q. Over the page in your statement (e) {B2/5/40}, we  
4 covered this already, this is "comparable means to  
5 combat fraud". We can move on to (f):

6 "The benefits that iPhone and iPad users gain from  
7 transacting through the App Store and IAP benefit  
8 developers as well by giving consumers the confidence to  
9 spend freely knowing that they will be less likely to be  
10 defrauded or have their information stolen."

11 Yes?

12 A. Yes.

13 Q. IOS Device users purchasing physical goods and services  
14 within an iOS app cannot use IAP, do they?

15 A. That is true, they do not.

16 Q. Sales of physical goods and services through iOS Apps  
17 was worth US\$910 billion in 2022, correct?

18 A. Yes.

19 Q. That does not suggest any lack of consumer confidence  
20 when making purchases using methods other than IAP, does  
21 it?

22 A. I cannot say either way.

23 Q. 142(g) {B2/5/40}, providing developers with support to  
24 resolve in-app purchasing issues quickly, including  
25 handling refunds, managing purchases. I am unclear what

1 "managing purchases" means. Can you elaborate?

2 A. There are a number of ways the developer is able to  
3 manage the purchases. They get to know within StoreKit  
4 what items have been purchased, whether the user wants  
5 to restore them, whether they are recurring or not, and  
6 whether they, for example, see a user's about to time  
7 out of their subscription and they want to offer them  
8 a discount to renew. There are many ways to manage  
9 purchasers.

10 Q. Thank you. We see in Mr Burelli's table, customer  
11 support, second row of the second page {C2/6/24},  
12 "managing refunds, cancellation, chargebacks, and  
13 disputes", yes?

14 A. I see that.

15 Q. Then the final --

16 MS DEMETRIOU: Excuse me, I am so sorry to interrupt, but  
17 there now have been a number of questions where my  
18 learned friend has simply asked Mr Schiller to confirm  
19 that he sees the three ticks. If that is the scope of  
20 the question, it seems rather pointless. But if my  
21 learned friend wants Mr Schiller to comment on whether  
22 he agrees, then he needs to be given a little bit of  
23 time to respond rather than rushing on to the next one.

24 THE CHAIRMAN: -- (overspeaking) -- putting all this to  
25 Mr Schiller on the basis that he knows that he might not

1           necessarily accept the basis of these (inaudible) is  
2           that right, and you are putting your case --

3       MR KENNEDY: Yes. I said at the start of the line of  
4           questioning that the reservation that Mr Schiller  
5           expressed when I first showed him the table was taken as  
6           read.

7       THE CHAIRMAN: There is a point as to what you are  
8           achieving, but I -- I do not mean that unkindly but the  
9           answers obviously are going to be the same for all of  
10          them -- (overspeaking) --

11       MR KENNEDY: We can move on to another topic then, sir.

12               Mr Schiller, your witness statement, paragraph 157.

13               Page 45 {B2/5/45}.

14       A. Yes, I am there.

15       Q. You say:

16               "If developers earning revenue from in-app purchases  
17               by users were able to circumvent IAP by offering an  
18               external payment mechanism, Apple would have no ability  
19               to collect the commissions contractually payable to them  
20               on those sales which are payment for the services Apple  
21               provides to developers."

22               Yes?

23       A. I do, yes.

24       Q. We have discussed this briefly, but in the EU, Apple has  
25               implemented the external purchase server API, yes?



1       A. Yes, we have recently rolled that out.

2       Q. Through that API, developers who make transactions  
3       through alternative marketplaces, alternative payment  
4       service providers, report back to Apple the sales that  
5       they had made, correct?

6       A. Not entirely. The alternative marketplaces do not  
7       report back any business information and they do not use  
8       that capability. This is only for alternate payments  
9       in-apps on the App Store. That is the only place that  
10      applies for --

11      Q. (overspeaking) -- my mistake -- but alternative payment  
12      service providers or developers who implement  
13      alternative payment service providers report back to  
14      Apple using this API, yes?

15      A. That is the hope. It's just been created and we are  
16      still rolling --

17      Q. That is the intention.

18      A. -- it out to developer -- that is the intention.

19      Q. Then Apple calculates the Commission it says is payable  
20      on those transactions using the information provided by  
21      the API, yes?

22      A. That is again the intention, yes.

23      Q. It will then send an invoice to developers each month --

24      A. Correct.

25      Q. -- for that. So Apple is still able to collect

1 commissions on in-app purchases on digital content in  
2 the EU even if the developer does not use API, yes?

3 A. Well, that is a hope. When you say "still able", it is  
4 to be determined as it is rolling out and we see what  
5 happens. We have built a process with IAP that is  
6 automatic and direct. Apple charges the user for their  
7 payment method, Apple keeps the Commission, it pays the  
8 developer the balance, and that automatically happens  
9 all the time.

10 Now in the system you are talking about, a system is  
11 being set up to try to get a report back of all the  
12 transactions. There is a bit of an honour system to it  
13 for that reporting, it is not automatic. Then there is  
14 a need to then bill the developer and an expectation  
15 that they will pay us back when they are billed. All of  
16 that is being developed and created now, and we are  
17 certainly concerned of whether it all works as hoped and  
18 whether developers pay those bills and what happens. We  
19 just -- it is all new.

20 Q. But it is not correct to say that Apple has no ability  
21 to collect the commissions contractually payable to  
22 them. This is the mechanism that Apple has designed in  
23 order to collect those commissions, yes?

24 A. In the world we are trying to create with the DMA and  
25 offer payments, there will be a way. But it is not

1           fully in place and working that way yet.

2       Q.   There will be a way?

3       A.   That is our hope.

4       MR KENNEDY:  No further questions, sir.

5       THE CHAIRMAN:  Thank you.  So that means we have Mr Ward?

6       MR HOSKINS:  It does, and somewhat unfortunately Mr Ward

7           is --

8       THE CHAIRMAN:  Not here.

9       MR HOSKINS:  Thought he would not be on today.

10      MR KENNEDY:  No one is more surprised than me, sir.

11      THE CHAIRMAN:  (inaudible).

12      MR KENNEDY:  Be careful what you wish more.

13      THE CHAIRMAN:  I do not think anyone is going to --

14      MR KENNEDY:  Third time is a charm, sir.

15      THE CHAIRMAN:  -- object if we finish early.  You are not

16           concerned about that?  I assume Mr Ward thinks he is

17           going to finish tomorrow?

18      MR HOSKINS:  That is right.  He made it very clear to myself

19           and Mr Kennedy he needed a day, which is why we --

20      MS DEMETRIOU:  I just wonder if, just given the issues with

21           the last witnesses, whether it would be worth starting

22           at 10.00 just so that there is no question at all of

23           overrunning tomorrow because Mr Schiller is not

24           available after tomorrow.

25      THE CHAIRMAN:  I am afraid I cannot do that tomorrow, I have

1           a commitment before court.

2       MS DEMETRIOU: Of course.

3       THE CHAIRMAN: I think the short answer to the question is  
4           if he is not finished by 4.30, he needs to be finished  
5           by 4.30, so Mr Ward needs to know that that is the  
6           (inaudible), so I think that is the deal.

7       MS DEMETRIOU: I am grateful.

8       MR HOSKINS: Mr Ward is completely aware of that. I cannot  
9           speak for him, but he knows what he has to do.

10      THE CHAIRMAN: Good, okay, thank you.

11           In that case, we have finished with you today,  
12           Mr Schiller. Usual rules apply. Please do not discuss  
13           your evidence with anybody else overnight. We will see  
14           you back here in the morning. You are free to leave the  
15           witness box now if you wish.

16      THE WITNESS: Thank you, sir.

17      MR HOSKINS: Sir, can I just say -- Mr Schiller, I am going  
18           to do something very legal and boring now, so you are  
19           free to go.

20           On the amendments, we have started having  
21           a discussion but we have not reached a landing. We are  
22           partially hampered by the fact that some of our team are  
23           ill. We will reach a landing tonight and we will report  
24           to you tomorrow whether we wish to make an application  
25           of the sort envisaged in your judgment.

1 THE CHAIRMAN: Yes, that is fine. Obviously if you are able  
2 to communicate anything in advance of 10.30 --

3 MR HOSKINS: Of course.

4 THE CHAIRMAN: -- to Apple, that would be helpful. The  
5 sooner you are able to give them warning, the better.

6 MR HOSKINS: Completely understood. As I said, we are not  
7 trying to -- (overspeaking) --

8 THE CHAIRMAN: -- (overspeaking) -- have a quick update at  
9 10.30 to tell us where we are.

10 Good, thank you. In that case.

11 (4.04 pm)

12 (The hearing adjourned until 10.30 am  
13 on Tuesday, 21 January 2025)

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INDEX

PAGE

MR PHILIP SCHILLER (affirmed) .....	1
Examination-in-chief by MS DEMETRIOU .....	1
Cross-examination by MR HOSKINS .....	3
Ruling.....	83
Discussion.....	91
MR PHILIP SCHILLER (continued) .....	96
Cross-examination by MR HOSKINS (continued) .....	96
(Confidential section removed) .....	96
Cross-examination by MR KENNEDY .....	96