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

Case No: 1403/7/7/21

Salisbury Square House  
8 Salisbury Square  
London EC4Y 8AP

Tuesday 21<sup>st</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

Tuesday, 21 January 2025

(10.30 am)

MR HOSKINS: Sir, I have to report to you we are not going to make the application, so we will make the amendment you've allowed which means we will say Magill does not apply to both sides of the pleaded --

THE CHAIRMAN: But you are not going to amend to seek to satisfy the conditions. That is helpful. Thank you for that. That does mean we do not have to find any time --

MR HOSKINS: It has that benefit as well, sir, yes.

THE CHAIRMAN: Thank you. Good morning, Mr Schiller.

THE WITNESS: Good morning.

MR PHILIP SCHILLER (continued)

Cross-examination by MR WARD

MR WARD: Good morning, Mr Schiller. I am Tim Ward and I am going to be questioning you today. What you should have in front of you is a slim black file which contains your witness statement, and other files, white files in the box but the black file enables you to keep your witness statement open even if we go back and forth a little bit.

Now, just to summarise your relevant career from your witness statement, you were Senior Vice President of Worldwide Product Marketing responsible for the development and operations of the App Store, were you

1 not, before becoming Apple Fellow?

2 A. Yes, that is correct.

3 Q. In Australia, in your Australian evidence, you explained

4 that as Head of Development and Operations of the

5 App Store, you reported directly to Steve Jobs and

6 Tim Cook?

7 A. Yes, that is correct.

8 Q. You were also a member of the executive team, a key

9 decision-making body?

10 A. Yes.

11 Q. You confirmed in Australia that it was the executive

12 team that had oversight and management of the

13 introduction of the iPhone; is that right?

14 A. Yes.

15 Q. Now, as Apple Fellow, you still remain responsible for

16 the App Store?

17 A. Yes.

18 Q. So you were involved in really the key decisions made on

19 the App Store right from the outset?

20 A. Correct.

21 Q. It was, as we know, launched in 2007 and the App Store

22 was launched in 2008.

23 A. Yes.

24 Q. So we are now going back -- it is now 2015, getting on

25 for 20 years ago, are we not?

1 A. Yes, we are.

2 Q. You explained in Australia that there were no notes  
3 taken of the decisions taken by the executive team; is  
4 that not right?

5 A. That is true.

6 Q. If we could please just turn up in your tab 2 page 34,  
7 this is {G2/18/34}. I just want to look at what was  
8 said. Thank you. You will see at line 9 -- these are  
9 the questions and your answers:

10 "When the executive team met -- comprised, as  
11 you've ... described with people from many areas ..."

12 So sorry, Mr Schiller, I am running ahead. Thank  
13 you. Are you there? Page 34. When I give you  
14 page numbers, it is always going to be the ones in the  
15 bottom right corner rather than any internal numbering  
16 because that matches the electronic system.

17 A. Okay.

18 Q. Hopefully that will make everything easier for  
19 everywhere.

20 A. Yes, thank you.

21 Q. This is the question:

22 "When the executive team met -- comprised, as you've  
23 generally described -- with people from many areas of  
24 the business -- as they considered each issue, were they  
25 presented with documents explaining what matter was

1           being brought forward for their consideration?"

2           The answer was "No".

3           "Were slides presented to them so that they could  
4 view them as the issue was raised? No.

5           "Were their decisions recorded in any document in  
6 the nature of minutes? No."

7           We have seen you have not exhibited any such  
8 decision materials because there were none; is that  
9 right?

10          A. That is correct.

11          Q. Then you explain what happened at line 40 and you say:

12                 "When Mr Jobs came back in 1997 and he set this  
13 process up then in 1997, in one of the earliest meetings  
14 someone was taking notes, writing down what he was  
15 saying about what we were doing and he stopped and said,  
16 'Why are you writing this down? You should be smart  
17 enough to remember this. If you're not smart enough to  
18 remember this, you shouldn't be in this meeting [at  
19 all]' and we all stopped taking notes, and learnt to  
20 just listen ..."

21           You have also explained that this practice survived  
22 into the era of Mr Cook and up to the present day; is  
23 that right?

24          A. That is true.

25          Q. Obviously, as you know, the App Store has been under

1           scrutiny by regulators and courts now for quite a few  
2           years, has it not?

3       A.   For a few years, yes.

4       Q.   So the European Commission's Spotify investigation,  
5           opened in 2015, and they first sent Apple information  
6           requests in 2019.  Are you aware of that?

7       A.   Yes.

8       Q.   The US House Judiciary Committee investigation into  
9           digital markets began in June 2019.  You recall that?

10      A.   Yes.

11      Q.   There are various others, including class actions like  
12           this one and other regulatory actions, are there not?

13      A.   Yes.

14      Q.   Would you not be in a better position now to justify and  
15           explain your actions if there had been records taken?

16      A.   I do not know if that is true or not.  It is not the  
17           normal practice in our industry to document and  
18           transcribe meetings that -- it is just unusual to occur.

19      Q.   When the regulator started taking an interest many years  
20           ago, you did not reconsider the position and think we  
21           had better make a proper written record?

22      A.   I would not say that is the case either.  I believe  
23           there's been a lot more support in the organisation for  
24           providing background and information to requests from  
25           regulators and courts in the form of what are called

1           RFIs, Requests For Information, and other kinds of  
2           documentation.

3       Q.   For the purposes of your witness statement, we are  
4           relying on really your recollection of the decisions  
5           that were taken, are we not?

6       A.   Yes.

7       Q.   Starting with something that is, I think,  
8           uncontroversial: Apple is a publicly traded company, is  
9           it not?

10      A.   Yes, we are.

11      Q.   It was back in 2007 when the iPhone was launched?

12      A.   Yes.

13      Q.   Again, stating the obvious, as a publicly traded  
14           company, one of its goals was to make profits for  
15           shareholders?

16      A.   Yes.

17      Q.   Indeed, it does not exist for the benefit of, say,  
18           developers?

19      A.   Well, it can be both.

20      Q.   It can be both, but one of its goals at least is profits  
21           for its shareholders?

22      A.   Yes.

23      Q.   Let us look about what you say in your witness statement  
24           about benefits to others. Can we go, please, to -- this  
25           is {B2/5/39} but it is in your black folder. If we go

1 to page 39 -- tell me when you have it.

2 A. I am on that page .

3 Q. Thank you. You will see at the top of the page:

4 "IAP Benefits to developers.

5 "142. IAP provides a number of benefits to  
6 developers."

7 Then you list several benefits.

8 Then at page 51, if we could turn to that, please.

9 A. Yes.

10 Q. There is a heading there above 181, "Benefits to  
11 developers", and then you go on to explain how the  
12 various monetisation models benefit developers. So  
13 sorry, I have got these out of order but for no  
14 particular reason. If we now go back, please, to  
15 page 19, this is paragraph 66, you say:

16 "In my role as a key decision-maker in the design  
17 and development of the App Store as Senior Vice  
18 President of Worldwide Product Marketing, I, and other  
19 key decision-makers, discussed and decided the App Store  
20 would be developed with two goals in mind ..."

21 We will come to those in detail later.

22 "First, the App Store would be a safe and trusted  
23 place for iPhone users ...

24 "Second, Apple considered that the App Store would  
25 be a great ... opportunity for ... developers."



1 I want to look now at what was said at the time and  
2 we can start actually within your witness statement,  
3 please, at page 50.

4 A. I am sorry, did you say -- oh, page 50?

5 Q. Page 50, thank you.

6 You say:

7 "We designed the free model [we will come to the  
8 free model later] to encourage use of as many apps as  
9 possible by iPhone users to the benefit of Apple,  
10 developers, and consumers. As Steve Jobs outlined ... at  
11 [the] Launch, 'when a developer wants to distribute  
12 their app for free there is no charge for free apps at  
13 all. There's no charge to the user and there's no charge  
14 to the developer. We are going to pay for everything to  
15 get those apps out there for free. The developer and us  
16 have the same exact interest which is to get as many  
17 apps out in front of as many iPhone users as possible'."

18 I think that "exact same interest" means selling  
19 more devices, does it not?

20 A. That would be a benefit of that.

21 Q. The idea here is to make the devices more appealing  
22 through the apps on the App Store and sell more of them,  
23 sell more devices?

24 A. Hopefully, yes.

25 Q. Can we turn to tab 20 in your file, volume A3, and this

1 is {D1/572/1}. This is an interview with Steve Jobs  
2 from 2008, which Mr Hoskins showed you part of  
3 yesterday -- I am sorry, we have the wrong --  
4 {D1/572/1}?

5 A. You said tab 3?

6 Q. I said tab 20.

7 A. Tab 20, I am sorry.

8 Q. Two references at once, what could possibly go wrong?

9 Let me know when you are there, Mr Schiller.

10 A. Yes, I am on tab 20.

11 Q. You will recall Mr Hoskins showing you this yesterday  
12 and this was something unearthed in 2018 by something  
13 called The Information, The Information and the Wall  
14 Street Journal, and it is an interview with Mr Jobs from  
15 2008, so much earlier. Mr Hoskins showed you part of it  
16 yesterday but I want to show you some other parts of it.

17 Can we turn, please, to page 6. That is {D1/572/6}  
18 in the bottom right-hand corner. Do you have that?

19 A. Yes.

20 Q. It is a Q&A with Mr Jobs and it says in the middle of  
21 the page, just below the hole punch:

22 "OK. The 70-30 split, are the economics of this  
23 working out the way that you had said when we last  
24 spoke, which is that you might make some money, but you  
25 do not expect it to be a big source of profits?

1 "Yeah. It's just like iTunes.

2 Even with the huge popularity of this ..."

3 Noting this is 2008, just getting started, he says:

4 "It costs money to run it. Those free apps cost  
5 money to store and to deliver wirelessly. The paid apps  
6 cost money too. They have to pay for some of the free  
7 apps. We don't expect this to be a big profit generator.  
8 We expect it to add value to the iPhone. We'll sell more  
9 iPhones because of it."

10 And that is your understanding too, is it not?

11 A. Yes.

12 Q. Then over the page, please, on page 7 {D1/572/7} we will  
13 see, if we go just about the second hole punch where it  
14 says:

15 "[This] has exceeded your forecast?"

16 He says:

17 "Remember, we're on a ramp. There is going to be  
18 even a lot more iPhones out there in the future and  
19 a lot more iPod touches."

20 Just pausing there, iPod touches ran iOS and the  
21 App Store, did they not?

22 A. Yes, they did.

23 Q. "We're already at a \$360 million a year run rate. This  
24 thing is going to crest to half a billion soon.

25 "Who knows? Maybe it'll be a billion dollar

1 marketplace at some time ..."

2 We will see later that is something of  
3 an understatement in fact.

4 If we then turn to page 18, please, {D1/572/18} in  
5 the middle of the page between the hole punches it  
6 says -- Mr Wingfield says:

7 "Can you tell me what percentage of them were free  
8 versus paid?"

9 Do you see that?

10 A. Yes.

11 Q. Thank you. Mr Jobs says:

12 "I don't not know off the top of my head, but the  
13 majority, clearly, which is great. Our purpose in the  
14 App Store is to add value to the iPhone. Free apps do  
15 that just as well as paid apps sometimes. We love free  
16 apps."

17 So would you agree that what Mr Jobs is making clear  
18 is that what is in it for Apple is selling more devices,  
19 that is the business model?

20 A. That is not the only business model, but that was the  
21 main motivation in creating the App Store as a feature  
22 of the iPhone.

23 Q. Thank you. That still remains the case, does it not,  
24 that that is a key benefit of the App Store?

25 A. That is a benefit. There are other benefits as well.

1 Q. Would you agree that the App Store is a very important  
2 feature of iPhones that attracts users?

3 A. Yes, I do.

4 Q. Would you agree that it improves the experience of  
5 people who use the devices and makes them more likely to  
6 buy another one or recommend them to others?

7 A. Yes, I do.

8 Q. In the case of free apps, you say something about this  
9 in your witness statement. Can we turn to this back in  
10 your witness statement? You can put that bundle away  
11 and if we go to your witness statement, please, page 49.  
12 I think mercifully the page numbering is the same both  
13 internally and externally. {B2/5/49}

14 This is again talking about free apps in  
15 paragraph 169. If we just look at the last three lines  
16 together, you say:

17 "As explained above, Apple does not charge any  
18 Commission for such apps, but nonetheless gains  
19 a commercial benefit through making its hardware,  
20 software and services more attractive to consumers."

21 Of course that is why Steve Jobs no doubt said, "We  
22 love free apps", but I just want to pick up what you say  
23 about software and services because iOS is not marketed  
24 or licensed separately from Apple devices, is it?

25 A. It is not.

1 Q. But on those devices, there are means to access other  
2 Apple services than the App Store, aren't there?

3 A. Yes.

4 Q. So you can access Apple Music, which has a subscription,  
5 does it not?

6 A. Correct.

7 Q. And you can access iCloud, where you give away some of  
8 it with the phone but then there is additional capacity  
9 you can buy?

10 A. Yes.

11 Q. Then there is Apple TV, which we will talk about later,  
12 which you can also access through the device?

13 A. Yes.

14 Q. So the App Store serves to boost demand for the devices  
15 and that in turn boosts demand for these other services.  
16 Would you agree?

17 A. Yes, I can.

18 Q. Can we now go, please, to your statement on page 18 at  
19 paragraph 60. {B2/5/18}

20 Thank you. Do you have that, Mr Schiller?

21 A. I do.

22 Q. Thank you. This is where you are talking about the SDK  
23 and you say:

24 "There were many components to Apple's SDK, but the  
25 most important ... from a software engineering

1 perspective was the set of APIs incorporated into the  
2 SDK which allows developers to make use of the myriad  
3 features and attributes of the device in creating  
4 compelling applications ..."

5 Of course, compelling applications help sell  
6 devices, do they not?

7 A. Yes.

8 Q. When you improve the hardware or the software of the  
9 Apple device, that helps make the devices more  
10 attractive in their own right too, does it not?

11 A. Yes, it does.

12 Q. So there is a sort of double effect here, is there not?  
13 The device is more attractive, so you sell more, and the  
14 apps become more attractive and they drive sales of the  
15 devices?

16 A. Yes, I think that those statements can both be correct.

17 Q. All of that is true of both free apps and paid apps; is  
18 it not?

19 A. Yes.

20 Q. Then if we go back to your statement, please, at  
21 page 51, {B2/5/51} we touched on this earlier just to  
22 show you, this is under the heading of, "Benefit to  
23 developers". You outline as a benefit to developers  
24 these different monetisation models like paid, freemium,  
25 free apps and so forth, subscription.

1 A. Yes.

2 Q. You point out that these are a benefit to developers,  
3 but what it means though is that developers can use  
4 different business models and still place apps on the  
5 App Store, does it not?

6 A. Yes, they can.

7 Q. So that is all a benefit to Apple as well, is it not?

8 A. I believe so.

9 Q. Can we now turn back to paragraph 66 of your witness  
10 statement, which starts on page 19. {B2/5/19} I showed  
11 you the two headline points from it, but I also want to  
12 pick up what you say in the last three lines of (b) at  
13 the bottom of page 19. The starting bullet point is:

14 " ... Apple considered that the App Store would be  
15 a great business opportunity for all developers."

16 Then if we just skim to the last three lines, you do  
17 say:

18 "The App Store seeks to improve the experience of  
19 both iPhone users and app developers, and make it more  
20 likely that users will continue to purchase Apple  
21 devices because of the host of trusted and quality apps  
22 available."

23 Continuing to purchase means carry on with Apple  
24 rather than, say, switching to Android, does it not?

25 A. Yes.



1 Q. But even so, this evidence generally, if I may  
2 respectfully suggest, rather understates the position  
3 because it is not just a sort of coincidental feature,  
4 it is the core of the business model that the App Store  
5 will drive device and indeed service sales. Would you  
6 agree?

7 A. That was not how we thought of it when we designed it.  
8 We really were thinking of these exact elements that  
9 I outlined. Yes, of course, it does ultimately benefit  
10 devices and benefit Apple, but those were not what we  
11 were talking about or articulated directly when we  
12 worked on it.

13 Q. I showed you just a moment ago exactly what Mr Jobs said  
14 in 2007 and 2008, and I put to you that was the core of  
15 the business model, that the App Store would serve to  
16 sell devices and indeed services.

17 A. That is not the way we discussed it when we worked on  
18 it.

19 Q. I have put my case and we also have your earlier  
20 answers.

21 May we now look, please, at tab 19 of your bundle,  
22 which is volume A3, and this is {D/361/1}, please. This  
23 is a press release, I think, or at least a press  
24 statement probably based on an Apple press release. You  
25 can see about four lines down from the top it is

1 January 6, 2016. This is a journalist writing,  
2 Rhiannon Williams, and they say:

3 "Apple customers forked out more than \$1.1 billion  
4 on apps and in-app purchases over the festive period,  
5 spending over \$144 million on January 1 alone."

6 Then skimming down, please, to the fourth paragraph  
7 here, there is a quote from you, and you say, or you are  
8 quoted as saying:

9 "The App Store had a holiday season for the record  
10 books. We are excited that our customers downloaded and  
11 enjoyed so many incredible apps for iPhone, iPad, Mac,  
12 Apple Watch and Apple TV, spending over \$20 billion on  
13 the App Store last year alone ..."

14 As usual, you do not give a figure for Apple's  
15 profits. But the point here is there is a whole series  
16 of Apple devices there that are driven by sales of apps,  
17 are there not?

18 A. I do not think that is a correct statement, no.

19 Q. Well, let us try something that you hopefully will agree  
20 with. All of these devices have apps for them, do they  
21 not?

22 A. Yes.

23 Q. iPhone and iPad run the same version of iOS, do they  
24 not -- sorry, with some minor modifications?

25 A. iPad was based on iOS. It is evolved into its own

1 version of it.

2 Q. Yes, but it is essentially iOS for iPad, is it not?

3 A. That is a description for it that is somewhat accurate,  
4 not entirely.

5 Q. The details do not concern us, luckily. I think with  
6 the power of Wikipedia I have learned that Apple Watch  
7 and Apple TV also use some kind of variant of iOS; is  
8 that right?

9 A. Yes, in a fashion.

10 Q. The Mac uses its own software, does it not?

11 A. Actually, macOS came first. iOS was built from macOS.

12 Q. Of course.

13 A. So each of them are related in some degree.

14 Q. But the short point here is would you accept that the  
15 availability of high quality apps helps drive sales of  
16 all of these devices?

17 A. Yes.

18 Q. Would you accept that in practice the App Store has in  
19 fact driven device sales, at least as one of the many  
20 factors that has that effect?

21 A. Yes.

22 Q. Can we turn, please, to tab 36 now, which is in your  
23 volume A3, and this is D1/1673/1 -- sorry, it is  
24 {D1/1673.1/1}. My mistake. Thank you very much. This  
25 is from February 2024:

1 "Apple reports first quarter results."

2 This is a press release and it quotes Tim Cook and  
3 we can just look at the second paragraph:

4 "Today Apple is reporting revenue growth for the  
5 December quarter fuelled by iPhone sales, and  
6 an all-time revenue record in services."

7 Not profit, of course.

8 Then Tim Cook says:

9 "We are pleased to announce that our installed base  
10 of active devices has now surpassed 2.2 billion ..."

11 That is roughly one for every four people on the  
12 planet, is it not?

13 A. Well, not accounting for the fact that customers may  
14 have more than one because it is multiple kinds of  
15 devices.

16 Q. Would you agree that this business model that we have  
17 been discussing has been a big success?

18 A. I am not sure which business model now you are saying.

19 Q. The business model that includes, as one of the drivers,  
20 using the App Store to drive device sales?

21 A. It includes the App Store. I do not think the business  
22 model is the App Store drove these device sale numbers  
23 directly.

24 Q. I put it to you earlier, we looked at what Mr Jobs said  
25 and I suggest to you that is indeed the business model

1 or at the very least a part of the business model.

2 A. That is your view, yes.

3 Q. We have been over this a number of times.

4 Let us go back now, please, to page 19 of your  
5 witness statement at paragraph 66 {B2/5/19}, and these  
6 are the two goals for the App Store?

7 A. Give me one second to --

8 Q. Yes, thank you. We can put away that bundle. Right,  
9 bundle safely on the table.

10 Paragraph 66, page 19. We talked about how -- point  
11 (a) is "App Store... safe and trusted place for iPhone"  
12 users. Point (b) "Apple considered the App Store would  
13 be a great business opportunity for all developers".

14 Now, you were asked about this in Australia, as you  
15 probably remember, and what you explained was that these  
16 goals were formulated even before the App Store was  
17 launched. Do you recall that?

18 A. Yes.

19 Q. You could not recall any contemporaneous record of them.  
20 Is that --

21 A. But there was, yes.

22 Q. Well, what was put to you in Australia was the first  
23 time this language appeared in writing was May 2019, and  
24 since then have you been able to find any earlier  
25 documents?

1       A. Yes.

2       Q. You have?

3       A. If --

4       Q. Can you tell me where they are in the bundle?

5       A. They are statements we have already reviewed in this

6       case and they are referenced in my statement. As you

7       recall from our earlier discussion, from the beginning,

8       Mr Jobs stated or tried to do two diametrically opposed

9       things at once: make the iPhone safe for users and open

10      it for developers. Those are the exact same two goals.

11      Q. I see.

12      A. So they were in a statement at the launch of the SDK, in

13      the letter he wrote openly about launching the store,

14      and in every communication we have ever had since.

15      Q. I see. Let me just show you tab 34, please, just to be

16      sure that we have put our case on this. This is the

17      document that was suggested to you in Australia was the

18      first time this language appeared. Can we turn that up,

19      please. It is {D1/1771}.

20      A. I see that.

21      Q. Thank you. This is -- looks like a page from the Apple

22      website. It was created -- or at least not created,

23      launched on 29 May. I am going to put to you that this

24      was the first time that we are aware of where this

25      language was used:

1            "We created the App Store with two goals in mind ...  
2            a safe and trusted place for customers to discover and  
3            download apps, and a great business opportunity for all  
4            developers."

5            You have given your evidence that is not right, and  
6            your solicitors will obviously show the court the  
7            documents that support what you have said, but I have  
8            put my case to you in any event so we can take this up  
9            later to the extent needed.

10           What I also wanted to do was show you a document  
11           which led to this particular web page going live, and  
12           this is tab 33, so it is the previous tab in your  
13           folder. Do you still have that open, Mr Schiller? So  
14           sorry.

15           A. I will open it back up.

16           Q. I should have asked you to keep it open.

17           A. That is all right.

18           Q. Tab 33. This is {D1/705/1}, please. This is an email  
19           thread that involves you from 29 May 2019 and we will  
20           see that Mikal says:

21           "Thank you for confirming, Phil. We are now live  
22           with the new US page!"

23           We believe that to be the page that we just looked  
24           at. But below this is a thread of discussion involving  
25           various people, including you.

1           If we go to page 7, please, {D1/705/7} there is  
2           an email from Kristin Huguet. Is that the right way to  
3           pronounce her name?

4       A. Close.

5       Q. Help me get it right.

6       A. Kristin Huguet.

7       Q. Thank you very much. Kristin Huguet works in Apple  
8           communications, does she not?

9       A. Yes.

10      Q. She does. If we look at the bottom of page 7, this  
11         document contains various edits of what became that web  
12         page. At the bottom of page 7, May 24 at 1.46,  
13         Kristin Huguet says:

14                 "Attached are the edits from PR, which include many  
15                 of Phil's changes as well."

16                 Then she says over the page:

17                 " ... I again removed at the end the point about the  
18                 App Store earning the most money. While it is true,  
19                 I don't think it helps us in this case as it is one of  
20                 the leading reasons we are also in the crosshairs."

21                 Do you remember that exchange?

22      A. I do not recall that exchange, no.

23      Q. Would you agree with me, though, that this document is  
24         partly part of a PR exercise aimed at crafting a message  
25         in the face of regulatory challenge at that time?



1       A. I agree that any document we place on a website is in  
2       part a message, a PR message. Everything is. And we  
3       were certainly addressing questions and concerns from  
4       many groups. I think of more concern to Kristin and  
5       team was press. We get a lot of press questions on  
6       these things as they become newsworthy, and having  
7       a public-facing document that include many statistics  
8       and details that we had not shared with all press was  
9       a goal of the document.

10      Q. Okay. When you say "many statistics and details", what  
11      you are saying is you deliberately omitted the detail  
12      about the App Store earning most money. We see that at  
13      the top of page 8.

14      A. I see that she wrote that. I do not recall that.

15      Q. Okay. But is it not right that at that time, 2019,  
16      there was just a high degree of sensitivity about this  
17      because of the regulatory pressure you were under?

18      A. No. I recall other conversations about monetisation of  
19      the App Store, which, as I think about this statement  
20      that she wrote, the reason we have talked about it  
21      previously is if there had been third-party reports,  
22      publications that have often talked about how  
23      a developer can make more money per user on the  
24      App Store than on the Android store, even though Android  
25      has a larger market share, and we often believe that is

1           due to the trust that is been created with users, they  
2           are willing to spend more on the App Store. So I like  
3           making that reference and telling people: hey, the  
4           App Store performs better for developers than the  
5           Android store, and that is because of all of this trust.  
6           You can see where she does not want to make a point like  
7           that for sensitive -- her concerns.

8       Q. Mr Schiller, that is a different point. This is  
9           about -- you are always happy to talk about the benefit  
10          to developers, but this is about the benefit to Apple,  
11          that Apple is making the most money out of the  
12          App Store. That is the part that she wanted to omit.

13      A. Well, you are just guessing at that now. She says "the  
14          point about the App Store earning the most money", and  
15          my experience in conversations with Kristin and team is  
16          the only point I recall about earning the most money is  
17          about developers earning more money per user than  
18          Android.

19      Q. Okay. What I am going to do now is put my case to you  
20          on this, which is that this is part of a PR exercise  
21          aimed at minimising Apple's profit and presenting the  
22          App Store as a form of benefit to developers and  
23          consumers, but not Apple itself --

24      A. Oh, I do not agree your view of that at all.

25      Q. Let us turn to a new topic, please. You can put that

1 file away and go back to your witness statement. This  
2 is now, please, page 53 of your witness statement  
3 {B2/5/53}, where you talk about the setting of the price  
4 at 30%. If we look, please, at paragraph 191, you say:

5 "Our decision in relation to the Commission rate  
6 applicable to paid apps ... was not based on the costs  
7 that we expected Apple would incur ..."

8 We have already established, I think, there is no  
9 written record of this decision, is there?

10 A. There is not.

11 Q. In Australia, you confirmed that you could not recall  
12 any documents looking at the benefits, the risks, the  
13 costs or the profit impact of the decision. Is that  
14 still correct?

15 A. That is correct.

16 Q. Can I ask you to look at the Spotify Decision, which is  
17 in your bundle, tab 4, bundle 1, and is {AB6/45/1}. We  
18 would like to go, please, to page -- let me just check,  
19 it is 42 in the hard copy, and that is 44 in the  
20 electronic copy.

21 A. I apologise, I did not catch all that. Which tab in  
22 bundle --

23 Q. I do not blame you at all, Mr Schiller. For you, we are  
24 in your first bundle, A1, and we are under tab 4.

25 A. Thank you.

1 Q. Thank you very much, we have the right version up  
2 electronically. When you have that, I will give you the  
3 page.

4 A. Yes, please.

5 Q. If you look at the right-hand corner, it is {AB6/45/44},  
6 internal 42?

7 A. Yes.

8 Q. What you should see is a paragraph number 127 at the top  
9 of the page.

10 A. I am there.

11 Q. We are on the right page.

12 You will see just above that the Commission says:  
13 "The economics of and the impact on the downstream  
14 markets were not taken into account when setting the  
15 level of the fee."

16 Meaning the 30%. Would you agree with that as well?

17 A. Not entirely, no.

18 Q. You think the Commission is wrong?

19 A. I think the economics, as we discussed, were to our  
20 knowledge equal to or better than what else we saw in  
21 the marketplace and so --

22 Q. The market comparators?

23 A. For apps and so that is a consideration.

24 Q. To that extent then. We will come to those comparators  
25 in a moment.

- 1 A. Yes.
- 2 Q. You looked at the comparators, but beyond that, what it  
3 is talking about here is economics of and impact on the  
4 downstream markets, which of course means the app  
5 developers and the end consumers, that is what the  
6 Commission is saying you did not take into account.
- 7 A. We considered developers and end users and a number of  
8 factors, so I am not quite sure I understand the  
9 reference to economics here.
- 10 Q. Okay, well, that is fair enough. You are not  
11 an economist, you said yesterday, you are not a finance  
12 guy, so I will not push you to interpret the Commission.
- 13 Can we now turn on in the same document to internal  
14 page 152, electronic page 154. {AB6/45/154} Thank you.  
15 If we could just zoom in on the footnote 762, this is  
16 a short quote from the *Epic* judgment, which we also  
17 have. Just for economy of effort I am going to the  
18 quote in the Spotify Decision. Can you see that at the  
19 bottom of the page?
- 20 A. Paragraph 512?
- 21 Q. Page 152 using the internal page numbering, and it is  
22 footnote 672 right at the bottom.
- 23 A. Oh, the footnote, yes, thank you very much.
- 24 Q. Can you see that?
- 25 A. I do.

1 Q. Thank you so much. It is a quote from the judgment in  
2 *Epic v Apple* in California. In the quote, the  
3 Commission explains in the third line:

4 " ... the court considered that there are limited  
5 constraints on Apple's terms for app distribution and  
6 the ... fee it charges: [and then it is this] 'Apple set  
7 its 30% Commission rate almost by accident when it first  
8 launched the App Store without considering operational  
9 costs, benefit to users, or value to developers ..."

10 Would you agree with that: not cost, benefit to  
11 users or value to developers?

12 A. Not entirely, no.

13 Q. In what way is it wrong?

14 A. Benefit to users, I do believe there were benefits to  
15 users of the App Store in the business model that we  
16 discussed. Example, you brought up many times about the  
17 model for free and the benefit there. So there were  
18 benefits we thought of.

19 Value to developers, again, in the context we just  
20 discussed of compared to other distribution methods and  
21 it being advantageous to them, that was discussed as  
22 well.

23 Q. There was no effort to quantify any of those benefits?

24 A. Not that I recall.

25 Q. No.

1           Let us go now to the comparator exercise that you  
2 mentioned. So sorry, I am going to come to that. Give  
3 me a moment, please. I am going to try and stick to the  
4 order in my notes, we are going to come to that,  
5 otherwise we will get lost.

6           Let us come back to what Mr Jobs said at the time.  
7 We can put that file away and take up your volume A2,  
8 tab 15, and electronically this is {D1/36/2}.  
9 Mr Hoskins showed you this yesterday, I think. This is  
10 from the -- this is a transcript of the iPhone SDK  
11 launch of March 6, 2008, so that is the launch of the  
12 App Store, is it not?

13       A. Yes, it is.

14       Q. We can see that you are there, Steve Jobs is S and you  
15 are P, and actually it is something that Steve Jobs said  
16 that I want to show you.

17           Can we turn, please, to -- lots of different  
18 numbering here, but the easiest one to read is actually  
19 PS1/56, which is in the biggest hand, but the electronic  
20 numbering is {D1/36/28}.

21       A. Yes, I am there.

22       Q. We are going towards the bottom of the page, this is S,  
23 so Mr Jobs, and he says:

24           " ... just to make it a little clearer, we don't  
25 intend to make money off the App Store. I mean, we

1 don't make a lot of money off iTunes and the split with  
2 the music companies is about the same, so in the case of  
3 the iTunes music store, we give all the money to the  
4 content owners and we are basically giving all the money  
5 to developers here and if that 30% ... pays for the  
6 running of the store ... that will be great, but we just  
7 want to create a very efficient channel for these  
8 developers to reach every single iPhone user."

9 So he is saying here, is he not, that he is hoping,  
10 but he is not sure, the Commission will cover the costs  
11 of running the store. Would you agree?

12 A. Yes.

13 Q. Can we look now at tab 20, which is the interview we  
14 already looked at, {D1/572/1}. This is -- thank you --  
15 the interview with Mr Jobs in 2008. I am so sorry, yes,  
16 it is a different volume, volume 3.

17 A. Yes.

18 Q. We looked at this earlier, but I want to go back to it  
19 now to page 6 and we actually looked at this very  
20 paragraph but I want to just take something different  
21 from it. In the middle of the page underneath the words  
22 "even with the huge popularity of this", do you have  
23 that?

24 A. Yes, I am on that page.

25 Q. Mr Jobs says:



1            "It costs money to run it. Those free apps cost  
2 money to store and deliver wirelessly. The paid apps  
3 cost money, too. They have to pay for some of the free  
4 apps. We don't expect this to be a big profit  
5 generator. We expect it to add value to the iPhone. We  
6 will sell more iPhones because of it."

7            So the idea here was that the Commission would cover  
8 the costs and the profit would come from the devices.  
9 Do you agree?

10        A. I think that is an extrapolation different than what he  
11 is said. He simply did not think at this time that we  
12 would cover the costs of running the store, and the  
13 store is a benefit to the iPhone. That is what he said.

14        Q. So what he is saying, I think in terms, is we do not  
15 expect to make profit out of the Commission, but we --  
16 the plan is to sell more phones because of the  
17 App Store. Would you agree?

18        A. Well, "plan" is too strong a word. The hope. Yes, but  
19 he hoped that the total solution would help us sell more  
20 iPhones against our competitor, yes.

21        Q. Thank you. Let us now go to the comparators point that  
22 I kept putting off, but not intentionally. We can close  
23 that and go back to the Australian transcript that  
24 Ms Demetriou showed you yesterday. This is in your  
25 first bundle, tab 2, and it is {G2/18/82}. If we can

1 zoom in on the bottom half, please, this is the part  
2 that Ms Demetriou showed you yesterday and asked you if  
3 you would adopt in this case. You talk about various  
4 comparators. It is fair to say that the issue of what is  
5 or is not a good comparator for the App Store in the  
6 period of this claim is something the experts are  
7 debating and I am not proposing to put our expert case  
8 to you, but I do want to ask you about what you say  
9 here, because you list certain things that you say you  
10 were taking into account at the time. There were  
11 multiple channels for software at the time and you say  
12 the biggest channel was still shipping CDs through  
13 stores and you say they were charging 50 to 70%.

14 Would you agree that shipping CDs is different from  
15 running an electronic App Store?

16 A. Yes, it is different.

17 Q. Then you talk about Steam, which the experts discussed,  
18 then you mention something called Handango. Again with  
19 the help of Wikipedia, I have learned Handango was  
20 a kind of app -- some sort of app for mobile devices at  
21 the time, was it not? You will tell me, not me telling  
22 you.

23 A. Yes, I actually used it at the time so I had an account  
24 on it. It was a web-based portal for downloading  
25 applications to -- or not smartphones yet, feature

1 phones, Nokia and Ericsson, a Sony, and they were often  
2 written in the language called Brew, B-R-E-W, for sports  
3 scores or news headlines, if you download them on to  
4 your devices.

5 Q. What Wikipedia did tell me, reliably or otherwise, is  
6 that Handango changed ownership and went bust around  
7 2013, does that sound right to you?

8 A. That I do not know.

9 Q. Well, in any event, that is long before our claim.

10 Beyond that, we are going to leave this issue to the  
11 experts.

12 Now, as it has turned out, the App Store has been  
13 highly profitable, has it not?

14 A. Yes.

15 Q. Can we look at tab 26, so this is {D1/1469/1} and it is  
16 in your third volume. Thank you. Do you have that?  
17 Third volume, tab 26.

18 A. I hope I am on the right thing. The tab is number 26,  
19 the first page says tab 25, so I want to make sure we  
20 are on the same document.

21 Q. I think that is because it was tab 25 to your witness  
22 statement but the content starts on the next page, where  
23 hopefully you will see this is from the Apple Newsroom.  
24 Do you have that?

25 A. Yes.

1 Q. It says -- this is May 2023:

2 "App Store developers generated \$1.1 trillion in  
3 total billings and sales in the App Store ecosystem in  
4 2022."

5 So we are an awful long way from Steve Jobs' billion  
6 dollar marketplace at this point, are we not?

7 A. Yes, but we are comparing a bit apples and oranges here,  
8 no pun intended. The trillion dollars is also referring  
9 to commerce that occurs unrelated to through Apple or  
10 through in-app purchase, that includes physical goods  
11 and other methods.

12 Q. I see. But what we do not see here, unless we have  
13 missed it, is any figure about how profitable the  
14 App Store is for Apple, do we?

15 A. Correct.

16 Q. Can we now turn, please, to your tab 37 in volume A3 and  
17 this is {D1/757/1}. To make sense of this document,  
18 I would like to go to page -- sorry, the bit I actually  
19 want is page 9, so if you look in the right-hand corner,  
20 Mr Schiller, this is confidential so we will not be  
21 reading out any numbers. It is {D1/757/9} in the bottom  
22 right-hand corner. Can you see that page, it has some  
23 big blue boxes on it?

24 A. I can see it on the screen. I lost track of where you  
25 would like me to go and find it.

1 Q. Do you mind if we just use the screen for this purpose  
2 and we will see how we go.

3 A. Sure, that is fine.

4 Q. This is from a slide deck that was prepared by Apple  
5 Financial, which we discussed with Mr Parekh, and I am  
6 obviously not going to ask you any detailed questions  
7 about it and the numbers are confidential. But the only  
8 point I wanted to make is if you look in the bottom  
9 right-hand corner, this is described as "FY20 products  
10 and services summary", you can see that at the top.

11 A. I see that.

12 Q. Then the bottom right, I am not reading out any numbers,  
13 I am just going to describe what is there, just in case  
14 anyone pops up on the other side. There are figures for  
15 operating margin and in the right-hand corner there, so  
16 the big pale blue box on the right, there is a figure  
17 for the App Store that we must not read out. Do you see  
18 that?

19 A. I see that and I do want to make sure you understand, I  
20 do not get this report --

21 Q. I want to go to --

22 A. So I have not seen it other than in testimony.

23 Q. That is fine, we have explored it with your CFO,  
24 Mr Parekh, so I am not going to cover that ground with  
25 you.

1       A.   Okay.

2       Q.   But the point I want to make is a much broader point  
3            which is that when you and Steve Jobs set the level of  
4            the Commission, you had no idea that the App Store would  
5            be a success on this kind of scale, did you?

6       A.   No, we did not.

7       Q.   You have explained that it was set without any economic  
8            analysis at all, was it not?

9       A.   Correct.

10      Q.   Is it not right that looking back now it is exceeded  
11            your wildest hopes for it, you have made  
12            an extraordinary amount of money, have you not?

13      A.   On the first part, it certainly exceeded anything we  
14            imagined.  How much money we make, you are getting to  
15            profitability and that is not for me to talk to --

16      Q.   But it --

17      A.   -- since I am not in the finance team.

18      Q.   Let me just put it very broadly; if you feel unable to  
19            answer it, that is fair enough.  Would you agree it has  
20            been extremely profitable, the App Store?

21      A.   Yes.

22      Q.   That is even without taking into account the sales for  
23            devices and other services that it is helped to push,  
24            would you agree?

25      A.   Yes.

1 Q. Let us move on to a different topic. I think we can put  
2 that bundle away and this time it is going back to your  
3 witness statement. I want to ask you about free apps  
4 again and the fees that are paid by the people who host  
5 free apps.

6 A developer who only creates free apps pays no  
7 Commission at all, do they?

8 A. They do not.

9 Q. They only pay the developer program fee, which is \$99 or  
10 £79 in the UK?

11 A. The majority do. There are groups of developers that do  
12 not even pay that.

13 Q. They are exempted?

14 A. For example, governments, education institutions,  
15 non-profit institutions, those kind.

16 Q. I see, but commercial developers pay -- free app  
17 developers would pay the \$99 fee?

18 A. Yes, and that is not on a per app, that is on a per  
19 account. You could have 1,000 apps under that \$99 if  
20 you want.

21 Q. I understand. What I want to do is go to your witness  
22 statement now at page 18, so it is {B2/5/18}, please,  
23 paragraph 60. We looked at this earlier. This is about  
24 the benefits in terms of SDKs that help create  
25 compelling applications. Now, that is something that is

1           available to developers who just use free apps, is it  
2           not?

3       A.   Yes.

4       Q.   When you say at 62 and 63, if you want to just read  
5           those to yourself, you list -- 62 you list various  
6           software tools and then 63 you explain that there will  
7           be functionality for game apps. Do you want to just --  
8           those I am sure are familiar, but do familiarise  
9           yourself.

10      A.   Yes, I see those.

11      Q.   Those are tools that would be available to developers of  
12           free apps, are they not?

13      A.   Yes.

14      Q.   Then if we go to page 59, please, we touched on this  
15           earlier. There is a heading between paragraphs 211 --  
16           so sorry, 59.

17      A.   I am on that page.

18      Q.   Thank you so much. There is a heading in italics:

19                "Benefits that developers get from their use of  
20           Apple's tools, software and proprietary technology and  
21           Apple's ongoing services to developers."

22                I am going to just invite you to read this to  
23           yourself down to paragraph 218. The question I am  
24           asking you is whether all of this applies equally to  
25           developers of free apps. (Pause)



1 A. Which number would you like me to read to?

2 Q. So sorry, Mr Schiller. So from 212 down to 218. The

3 only question I am going to ask you is: are these

4 benefits that are also applicable to developers of free

5 apps? So I am not going to ask you any detailed

6 questions about it. That is the only question I want

7 you to think about. (Pause)

8 A. There is reference in 218(e) to taxes and I think that

9 would not apply to free apps --

10 Q. Yes, that would be irrelevant, wouldn't it?

11 A. Correct.

12 Q. Thank you.

13 A. That is the only thing I see that would be a difference

14 between a paid and free app on that list.

15 Q. Yesterday when Mr Hoskins was asking you questions, you

16 talked more generally about the services of sort of

17 marketing and delivery that you provide for app

18 developers.

19 A. Yes, I did.

20 Q. That would include, for example, hosting, would it not?

21 A. Yes.

22 Q. Those are also benefits that accrue to developers of

23 free apps, are they not?

24 A. Yes, they are.

25 Q. For the Tribunal's note, we can show you later where

1           that is in the Developer Program Licence Agreement but  
2           we need not take up time with that now, given  
3           Mr Schiller's answer.

4           You provide all of this, all of these benefits to  
5           free apps for £79 per developer for the reason we  
6           already discussed, that the free apps help you sell  
7           devices, do they not?

8       A. Yes. Not only that, there are other reasons as well,  
9       but that is included.

10      Q. In the case of paid apps, not free apps, you get paid,  
11      I am going to suggest, in four ways. You get the  
12      developer program fee, which is applicable to developers  
13      of paid apps. You also get the Commission, which they  
14      pay but free apps do not pay. You get the benefit of  
15      increased device sales and you get the benefit of  
16      increased sales of other services. Would you agree with  
17      that?

18      A. I think they are all in some mix in the equation to  
19      different degrees.

20      Q. Thank you. Let us turn to a different topic which is  
21      more about costs than prices, which is R&D and the  
22      development of the iPhone.

23           Now, your witness statement explains the iPhone was  
24           launched in 2007. In October 2007 you decided to open  
25           up the iPhone to third-party developers, and then you

1           launched the first SDK in March 2008, six months later.

2           A.   Correct.

3           Q.   Just for the Tribunal and for the transcript, that is  
4           paragraphs 56 and 59 of Mr Schiller's witness statement.

5           Can we go instead, please, to page 10 at  
6           paragraph 38 of your witness statement, so that is  
7           {B2/5/10}.

8           A.   Yes.

9           Q.   What you say at paragraph 38 is:

10                "Apple incurred significant costs in developing the  
11                iOS operating system."

12                You say:

13                "A copy of a summary of Apple's research and  
14                development expenses between 2005 and 2020 is at  
15                [PS1/6]. Records of Apple's research and development  
16                expenditures are maintained in the ordinary course of  
17                Apple's business and this summary was prepared based off  
18                Apple's records. The document shows that between 2005  
19                and 2007, the period during which Apple was developing  
20                the iOS operating system, Apple invested approximately  
21                USD2 billion in research and development."

22                So that is 2 billion in R&D over two years. We do  
23                not need to turn it up, but for the transcript that  
24                document is {D1/1889/1}. Indeed of course that is what  
25                Mr Schiller says it says, so we do not need to look at

1           it.

2           To be clear, when we look at this \$2 billion figure,

3           that is for two years, 2005, 2007, is it not?

4   A.   Yes.

5   Q.   It is for the whole of Apple, is it not?

6   A.   Yes.

7   Q.   At that time, of course, you were developing not just

8           the iOS but the iPhone itself, were you not?

9   A.   Yes.

10   Q.   Because they were launched simultaneously?

11   A.   Correct.

12   Q.   The iPhone was quite a significant new product line for

13           Apple, was it not?

14   A.   Yes, it was.

15   Q.   How many years do you think it took to develop it?

16   A.   Things do not start all on one date, but some of the

17           project began five or six years previously, and really

18           the full team was established in the three years or so

19           before it and all dedicated it.

20   Q.   So that 2005 to 2007 would include, just to be rather

21           approximate, a big chunk of iPhone development, but

22           perhaps not all of it?

23   A.   Correct.

24   Q.   But at that time, Apple had other product lines, did it

25           not?

1       A.   Yes.

2       Q.   Again with the power of Wikipedia, I think the answer is

3           that you had PCs -- or desktop computers probably is

4           a better term?

5       A.   Macintosh.

6       Q.   Remembering the advertising wars of that era, it is

7           definitely not a PC, it is a Macintosh?

8       A.   Yes, thank you.

9       Q.   Then you also had laptops or MacBooks?

10      A.   Yes.

11      Q.   You again I think had a first generation of Apple TV

12           around that time?

13      A.   I believe so. I am forgetting now the date of that,

14           yes.

15      Q.   Given my normal source, I am not going to press the

16           exact date. But on the services side, you had iTunes as

17           well?

18      A.   Yes.

19      Q.   But probably not yet the Cloud in 2007?

20      A.   Correct.

21      Q.   So when we look at that R&D budget of \$2 billion, that

22           would cover R&D for all of those products and services,

23           would it not?

24      A.   Yes.

25      Q.   Even when we think about the iPhone, putting aside all

1           these other products and services, there is the hardware  
2           side and the software side, is there not?

3       A.   Yes.

4       Q.   When we think about it in terms of how much was spent on  
5           iOS, out of that 2 billion has to come all those other  
6           products and services and the very important new  
7           hardware product of the iPhone itself, would you not  
8           say?

9       A.   Not entirely, I do not think -- it is already hard to  
10          split this out and I am sure you have talked with the  
11          finance people about that.

12      Q.   We did.

13      A.   But it is even harder to split out the R&D between  
14          hardware and software because of the interrelated nature  
15          of it --

16      Q.   I understand.

17      A.   -- and teams were working together on it so I would not  
18          be so absolute saying you just need to remove the  
19          hardware, it is not part of the iOS development. They  
20          are a joint project.

21      Q.   I understand. Of course you explain in your statement  
22          that the decision to open up the phone to developers was  
23          taken in October 2007 and the SDK was launched in March  
24          2008.

25      A.   Correct.

1 Q. So that is a six-month period, is it not?

2 A. Just about, yes.

3 Q. So the R&D that was used for the benefit of the  
4 App Store was just a part of the R&D for the six months,  
5 putting aside all these other projects, would you not  
6 agree?

7 A. No.

8 Q. No?

9 A. No. There is a great deal of the work that went into  
10 iOS that was necessary to and part of the work that  
11 became the SDK. The SDK was taking work that was  
12 already occurring and turning it into a developer facing  
13 set of tools, and so it did not start from scratch at  
14 that period.

15 Q. I see, I understand. What I am putting to you really is  
16 just that when we look at that 2 billion, however one  
17 divides it up exactly, the App Store itself is just  
18 a small portion of that 2 billion.

19 A. It is a portion. I would not say small or large.  
20 I would not give it a descriptor like that.

21 Q. Thank you. If we go back to your statement {B2/5/22},  
22 paragraph 78 you have a heading:

23 "Apple continually improves the App Store."

24 Can you see that?

25 A. Yes, I do.

1 Q. Thank you. Under that there are five bullet points that  
2 you give. In 2012, [you say] Apple redesigned [it] to  
3 replace the "Categories" tab with "Top Charts" and  
4 "Genius" tabs" and then you say "Apple created App  
5 Previews". Then in 2016 you introduced search ads and  
6 also in 2016 you "launched the App Store Improvements  
7 process to remove apps that no longer function". Then  
8 in 2017, the App Store storefront was overhauled with  
9 a ground-up redesign.

10 For the purpose of our case, the only one of these  
11 that falls into our case period is in fact the last one,  
12 the redesign. It is right, is it not, that Apple  
13 carries out customer services to see how the App Store  
14 is actually regarded by -- I said services. I will  
15 start again. Carries out customer surveys to see how  
16 the App Store is regarded by developers, does it not?

17 A. Yes and before we move off it on that previous point --

18 Q. Yes.

19 A. -- I would suggest that item (d) also covers this period  
20 because while we started the --

21 Q. You are quite right.

22 A. We do it annually now, that programme.

23 Q. So sorry, thank you for correcting me. I just misspoke.

24 So item (d) is about removing apps that no longer  
25 function as intended.



1       A. We have a programme that is now an annual programme in  
2       that process so --

3       Q. A sort of cleansing process --

4       A. I jokingly called it our spring cleaning --

5       Q. Understood, so sorry, it was just pure misspeaking on my  
6       part.

7               But 2017 was more of a ground-up redesign, as you  
8       say?

9       A. Yes.

10      Q. What I tried to say before putting my foot in my mouth  
11      was that you actually carried out surveys to see how  
12      developers regard these kind of developments.

13      A. I believe there have been some surveys done.

14      Q. Okay. Can I show you one under your tab 38, that is  
15      {D1/563/1}. Thank you. This is -- sorry, this is in  
16      your bundle 3. Tab 38.

17      A. I have no content on tab 38.

18      Q. I am very sorry about that. Let us see if we can manage  
19      on the screen because luckily I am just showing you some  
20      big picture slides.

21               Those behind me have worked very, very hard to get  
22      the bundles in good order and I have not always made it  
23      easy --

24      A. I appreciate the work that goes into that. Thank you  
25      very much.

1 Q. Shall we look at tab 38 on the screen. If you decide  
2 that you wanted to see this in hard copy, we will come  
3 back to it later. You will see this is an App Store  
4 developer marketing research document, July 2018. Have  
5 you ever seen this before?

6 A. I do not recall it.

7 Q. You will see it says "FY18 developer survey results" for  
8 various countries, and of course we are interested in  
9 the UK. This would be after the relaunch, would it not?

10 A. Yes. Well, FY18 covers 2017 to 2018, so -- but it is  
11 July, so yes, it would. Thank you.

12 Q. Let us go, please, to page 23 {D1/563/23}. We can see  
13 in fact in fairness that one of the questions asked was  
14 impact of redesigned App Store that launched with iOS  
15 11. If we look at the second column, that is the UK, we  
16 have 29% don't know, 14% negative, 47 no impact, and  
17 then 11% positive. Do you see that?

18 A. I do.

19 Q. Those are quite mixed reviews, are they not, for the new  
20 relaunch, would you agree?

21 A. Without studying how they asked and what the users  
22 understood about that, I cannot say either way.

23 Q. It is an internal Apple document so I hope that their  
24 research met your standards, as one would expect.

25 Can we go to page 14, it is a different question

1 {D1/563/14}. Thank you. This is a question about  
2 satisfaction with the tools and services Apple provides  
3 as a development platform. Here, if we again look at  
4 the second column, the UK, we can see at the top, 8%  
5 "very dissatisfied", 16% "somewhat dissatisfied", 14  
6 "neither", 43 "somewhat" and just 19 "very satisfied".  
7 Would you agree with me that again those are rather  
8 mixed reviews?

9 A. Well, it is mixed with different feedback. I do not  
10 know again the trend analysis on this and whether this  
11 is an improvement or not from the past and I do not know  
12 competitively how it would compare to how they think of  
13 tools on Android and Windows and if this is much better  
14 or not, so I would rather not make a qualification about  
15 the data.

16 Q. I understand. I will show you the slides anyway so you  
17 can comment to the extent that you feel able and you  
18 have made clear you have not seen this before so let us  
19 look at the next one on page 15. {D1/563/15} This is  
20 overall satisfaction with the App Store. Without  
21 reading out the percentages, you can see the UK column  
22 again is rather a mixed bag.

23 All I am really putting to you is that this Apple  
24 research seems to show there are plenty of developers  
25 who are not very impressed by the continuing innovation

1           on the App Store. Would you accept that?

2       A. That there certainly are some. I would not qualify it  
3       with "plenty".

4       Q. It sounds like you are not really in a position to go  
5       behind these slides in truth?

6       A. I just do not think this slide tells you compared to  
7       what both either temporally or competitively, so I think  
8       it would be improper to make a qualification of overall  
9       satisfaction and what is good or bad.

10      Q. I understand. We just observed this was obviously  
11      something that Apple itself thought would be  
12      informative, was it not, it is an Apple exercise?

13      A. Or useful to us to continually try to get better and  
14      improve, which we do care a lot about.

15      Q. Okay. Let us just continue on this topic but turn to  
16      something else, which is the *Epic* judgment, which is in  
17      your volume 2 under tab 16 where the topic of innovation  
18      is covered.

19           Can we go to that, please, and starting at page 102  
20      electronic, 101 paper. Did I give the reference? I am  
21      not sure I did. It is {AB5/7/102}.

22      A. Yes, I am there.

23      Q. Thank you very much.

24           If we can go to the electronic page 102, so  
25      Mr Schiller, depending on your taste for the references,

1           it is 101 in the middle, 102 in the right-hand corner.

2       A.   Yes.

3       Q.   Do you have that?

4       A.   I do.

5       Q.   This summarises some other research that was done in  
6           2018 and if we pick up just above the bullet points it  
7           says:

8           There is "an email summarising 2018 write-in answers  
9           suggesting that developers perceive the App Store as  
10          lacking features common to other platforms."

11          Can you just read those four bullet points?   (Pause)

12       A.   I see that.

13       Q.   In fairness, what I will do is in fact -- sorry, this is  
14           going to just complicate matters slightly. I think  
15           I should just show you the document itself, which we  
16           have in the bundle. It is at tab 39. It is {D1/594/1}.  
17           This is again a document that there is no reason to  
18           think you have really seen it before, but it is not  
19           copied to you. Does it look at all familiar?

20       A.   I do not have any content on tab 39 so I will have to  
21           look at it only on screen.

22       Q.   Okay, sorry.

23       A.   That is all right.

24       Q.   You will see on the screen -- I am so sorry, it is my  
25           fault again, it is absolutely mine -- if you look just

1           above the bullet "Search", you can see it says:

2           "Q: What can we do to make the App Store better?

3           "Total number of respondents: 3,587."

4           There is a mixture of answers in there, some of  
5           which were highlighted in the decision in *Epic*.

6           Let us put that document away, I will not ask you  
7           any further questions about it as you do not have it  
8           there and it is a bit difficult to pick through.

9           Let us go back to *Epic*, which is in your bundle 2,  
10          tab 16. Did you keep it open by any chance?

11         A. I did.

12         Q. Great. It is {AB5/7/102} is where we were?

13         A. Yes, I am on that page.

14         Q. Thank you. That is what we just looked at. After that  
15         feedback, the judge says on the next page: {AB5/7/103}

16                 "Indeed, Apple's own... head of App Review,  
17         Philip Shoemaker, has described the App Store as  
18         'antiquated' with 'no radical innovation, only  
19         evolution' for the last ten years."

20                 I am going to show you what he said, but it is  
21         actually marked as confidential, so I will not be able  
22         to read it out. In your case you have only listed in  
23         your witness statement innovations, the latest of which  
24         was 2017, have you not?

25         A. I used those as examples, yes.

1 Q. I take it you would not agree with Mr Shoemaker?

2 A. Not in the least.

3 Q. No. If you go down to a paragraph which just summarises  
4 some of the complaints, the judge says:

5 "Apple's slow innovation stems in part from its low  
6 investment in the App Store."

7 Would you agree with that?

8 A. Not at all.

9 Q. We will be looking at that with the experts.

10 Then in the last paragraph, the judge says:

11 "Ultimately the point is not that Apple provides bad  
12 services. It does not: most developers are satisfied  
13 with the App Store ... rather, the point is ...  
14 a third-party App Store could put pressure on Apple to  
15 innovate by providing features it has neglected."

16 Would you accept that?

17 A. I do not have that same opinion, no. I think we work  
18 very hard every day to be competitive and innovative.

19 Q. Let us just look for completeness, so you have seen the  
20 primary evidence, to Mr Shoemaker's deposition, which  
21 unfortunately is now marked as confidential. It is  
22 under your tab 17 and it is --

23 MS DEMETRIOU: I am just rising because it may be if  
24 something confidential is coming up on screen, I just  
25 want to make sure that the people sitting at the back

1           are within the confidentiality ring and if not, whether  
2           they would kindly move to the side.

3       A.   Is anybody in the room not in the confidentiality ring?  
4           So everybody is?

5       MR WARD:  We are clear?  Okay.  It is not going to be very  
6           exciting, anyway, I am sorry to say, but it is {H2/4/1}.  
7           This is an extract, it is all marked as confidential,  
8           I will not read out any of the content but just describe  
9           it.  This is Mr Shoemaker's deposition in the  
10          proceedings.

11           If we turn to the next page -- sorry, it is  
12          {H2/4/64}, that is my fault.  It is the next page in the  
13          hard copy but just an extract.  Thank you, that is the  
14          one we want.  Could I just ask you to read to yourself  
15          lines 14 to 20 and this is really the basis of what is  
16          in the *Epic* judgment that I wanted you to see.  (Pause)

17       A.   I see that, yes.

18       Q.   We just agreed that you have not listed any innovation  
19           in the App Store since 2017, have you?

20       A.   Again, I gave a few examples.  If we were to be asked to  
21           provide a list of all the innovations by year, I am sure  
22           a team could work on that.  There have been quite  
23           a large number.

24       Q.   I am putting to you that you do not accept that the rate  
25           of innovation in the App Store is slow?



1 A. I do not.

2 MR WARD: Sir, would that be a convenient moment?

3 THE CHAIRMAN: Yes, we will take a ten-minute break. Thank  
4 you.

5 (11.46 am)

6 (A short break)

7 (11.56 am)

8 MR WARD: Thank you, sir.

9 Can we now, please, turn to page 55 of your witness  
10 statement. {B2/5/55}

11 A. Yes, thank you.

12 Q. This is where you talk about changes to the rates of  
13 Commission and we are going to look at them one by one.  
14 You say that:

15 "As part of [your] role as Senior Vice President  
16 [etc] a member of the Executive Team, my possibilities  
17 included helping define and create the Commission rates  
18 and the changes to them which occurred over time in  
19 respect of apps distributed through the App Store."

20 Again, there are no written records of those  
21 decisions, are there?

22 A. No.

23 Q. What we are going to do is look at what you tell us  
24 about those and then see what we can work out from the  
25 documents about them.

1           The first one you talk about is the Reader Rule.  
2           This is paragraph 202, and as you say, it was introduced  
3           in 2011 and it removed the developers' obligation to pay  
4           a Commission with respect to accessing digital content  
5           viewed on iOS Devices but purchased elsewhere.

6           Then here you do give a reason for this. You say  
7           you adopted it in response to the emergence of Amazon's  
8           Kindle Reader app. Are you there?

9       A. Yes.

10      Q. Good:

11           " ... and the fact that users were beginning to read  
12           books on their iOS devices ... they had previously  
13           purchased on Kindle."

14           The way this works, if I can summarise, the standard  
15           position on the App Store is that a customer can only  
16           use content that is purchased on the App Store within  
17           the app, is it not?

18      A. That is how it started when we launched the App Store.

19      Q. Then 30% Commission would apply to those purchases?

20      A. Correct.

21      Q. What happens here is if you have, for example, the  
22           Kindle app, to use the example you have given, if you  
23           have purchased the book on the Amazon store, you can  
24           nevertheless read it in the Kindle app without paying  
25           Apple 30%?

1 A. Correct.

2 Q. What you say at 202(c) is you receive no compensation or  
3 Commission for those purchases, but of course they  
4 firstly have to download the app in the store, do they  
5 not?

6 A. Yes.

7 Q. Which may or may not be free -- I think it is free in  
8 the case of Kindle --

9 A. Yes, it is.

10 Q. -- but generally it may or may not be free, and that  
11 app may carry with it the ability to also buy things for  
12 which Apple would get a Commission?

13 A. It may.

14 Q. It may.

15 A. I am sorry, in the case of the Reader Rule, it is not  
16 mixed. It is either a Reader Rule app or it is not, so  
17 in this unique situation it would not offer both.

18 Q. I see, okay. I want to explore what lies behind this.  
19 You said that the rule was introduced in 2011. Can we  
20 go, please, to your volume 5, tab 47. This is  
21 {D1/106/1}.

22 This is an email thread, at the top it is from  
23 Steve Jobs to Phil Schiller but there is a thread we  
24 will look at, and it is dated November 2010, so it  
25 predates when you say the Reader Rule was introduced.

1           If we go to the second page of this, please,  
2       {D1/106/2} so the bottom of the thread, there is  
3       an email from you to Steve Jobs, I assume, saying:

4           "I just watched a new Amazon Kindle App ad on TV.

5           "It starts with a woman using an iPhone and buying  
6       and reading books with a ..."

7           I cannot imagine why that word is confidential, but  
8       I will not read it out, an app:

9           "[She] then switches to an Android phone and can  
10       still read all her books.

11          "While the primary message is there are Kindle apps  
12       on a lot of mobile devices, the secondary message that  
13       cannot be missed is that it is easy to switch from  
14       iPhone to Android. Not fun to watch."

15          Steve Jobs says:

16          "What do you recommend we do?

17          "The first step might be to say they must use our  
18       payment system for everything ..."

19          Which was of course the rule at that time, was it  
20       not?

21          You gave a slightly longer reply on the next  
22       page and you say:

23          "I found the TV ads on YouTube ..."

24          In the second paragraph:

25          "In both versions of the TV ad Amazon is

1 demonstrating that users build vast libraries of Kindle  
2 books directly on their phones, which does in fact  
3 violate our published terms and guidelines. One reason  
4 we originally approved the exception for Amazon not  
5 using in-app purchase ... was the expectation that users  
6 would often be buying books on a Kindle device and later  
7 accessing them on a phone."

8 You are accepting there in 2010 there was already  
9 an exception for Amazon, are you not?

10 A. Yes, but applied to all developers that did the same  
11 thing, it was not -- it was more an exception in the  
12 rules, allowed in the rules for any developer. We had  
13 the ability from the start for apps that provided  
14 content to other hardware platforms that were not going  
15 to be consumed on iPhone. For example, if you had  
16 a store for games on Nintendo Switch, which does exist  
17 on the App Store, they do not use in-app purchase  
18 because the consumption of that game is not on the  
19 iPhone, it is on the Nintendo Switch --

20 Q. We are going back in time now, so this is 2010. In your  
21 witness statement, you say the Reader Rule is introduced  
22 in 2011 and I understand the Reader Rule is of general  
23 application, but what seems to be being said here is  
24 there is a deal for Amazon in particular because it says  
25 "we approved the exception for Amazon".

1       A. Again, the basis for this and the whole reason it led to  
2       the Reader Rule is Amazon said this app -- we won't name  
3       its name, I do not know why either -- was for the  
4       purpose of a user who is going to -- who has content  
5       they read on their Kindle device and they really won't  
6       be reading it on their iPhone. So that is the main  
7       purpose of the app.

8               What occurred through watching this TV ad, and then  
9       subsequently talking to Amazon, is the increase in the  
10      switch of use case where now users were in fact getting  
11      this Kindle content to read on their iPhone, so they  
12      were becoming more like regular apps for consuming  
13      content on an iPhone.

14      Q. Okay, we are going to come on to that because that is  
15      what you go on and say in this email, but just before we  
16      do, it is just the point about timing. To be clear, it  
17      appears from this Amazon is getting a special treatment  
18      here ahead of the Reader Rule, which you say was adopted  
19      in 2011; is that true?

20      A. I do not think they were. They were being treated like  
21      apps that consumed content on another hardware device  
22      which was allowed. For example, there was, I believe,  
23      a Pebble watch app at the same time.

24      Q. Why does your witness statement say the Reader Rule was  
25      only introduced in 2011?

1       A. Because the Reader Rule, which was introduced in 2011,  
2       which came as a result of this, is we -- I had this  
3       conversation with the head of this team at Amazon, said  
4       if the users are going to now consume the content on the  
5       iPhone, the same rule applies to you that applies to all  
6       developers, they need to purchase it on the device, and  
7       Amazon explained: we do not think that will happen.  
8       People purchasing it on Kindle, we do not want to  
9       introduce IAP into the app. If you make us do that we  
10      will have to take the app off the device, we cannot do  
11      that. So we said okay, let us come up with a rule for  
12      anyone like you who now wants to have the user acquire  
13      the content somewhere else, on a Kindle or on the web or  
14      wherever, and consume it now, which had not been the  
15      case before, on the iPhone and not have to use IAP.

16     Q. Sure --

17     A. That is where the Reader Rule came from is this exact  
18      discussion.

19     Q. Indeed and if you look at the top of the thread we can  
20      see Steve saying in his second paragraph:

21             "I think it is time to begin applying this uniformly  
22      except for existing subscriptions."

23             So the short point I am making is that Amazon was  
24      already enjoying the exception on a bespoke basis before  
25      you adopted the rule. That is what the email says.

1       A. They were not knowingly to us. Our understanding at the  
2       time, my understanding and the team's understanding at  
3       the time was that people were not reading books in this  
4       device and that was what was presented to us from  
5       Amazon. What we learned through this process is they  
6       were beginning to and so the use case was changing, and  
7       so when Steve said to begin applying this uniformly, it  
8       is the idea that Amazon will have content users  
9       purchased elsewhere and consume in the device and they  
10      do not have to apply IAP.

11      Q. Let us look at what you said in the email. One reason  
12      we -- sorry, this is in your answer so we are about in  
13      the middle of the page in the paragraph that begins, "In  
14      both versions of the TV ad", do you have that?

15      A. Yes, I do.

16      Q. In the third line you say:

17                "One reason we originally approved the exception for  
18      Amazon not using in-app purchase ..."

19                So I will just put to you one more time they got  
20      an exception, but you do not accept that?

21      A. They were getting them on their other device and the  
22      primary reading purpose was for that other device, not  
23      for iPhone.

24      Q. Primary, but this is saying they are not obliged to use  
25      in-app purchase at all, does it not?



1 A. Correct.

2 Q. Then you go on and say:

3 " ... the expectation was users would often be  
4 buying books on a Kindle device and later accessing them  
5 on an iPhone. Amazon's early marketing of the Kindle  
6 app reflected that ... pattern [but] a lot has changed  
7 since then. We have sold many more iPhones and iPod  
8 touch than they have Kindle devices, we have the iPad  
9 now as a reading device as well, and their marketing has  
10 changed to reflect that more often Kindle app users are  
11 purchasing digital books ... on their phones.

12 "I ... think we should tell Amazon that based on  
13 their own TV ads it is clear that the use of the app now  
14 violates our terms and guidelines ..."

15 So your proposal was now we have the powerful  
16 reading app, you should comply with our rules; is that  
17 not what you are saying?

18 A. No. Everything you just read is consistent with how  
19 I described it. It has changed and the use case that  
20 Amazon described logically was not the case any more and  
21 they were even showing it was not the case any more and  
22 so they need to move into a new model, and so we created  
23 the Reader Rule to help them do that.

24 Q. Let us move on from there to another document on the  
25 same topic, which is on tab 18, which is in your

1 volume 3. This is document {D1/128/1}, that is the one.

2 This is from March 2011, so it is shortly  
3 afterwards. Again, if we go -- this is an email thread  
4 which you will see from the top it is about "ESPN's app"  
5 and it is from you to Steve Jobs and Eddy Cue. Remind  
6 me who he is, you explained yesterday?

7 A. Yes, vice president in charge of our services at the  
8 time, now senior vice president.

9 Q. Thank you. If we go to the bottom of the thread, so on  
10 the next page, {D1/128/2} the first email in the thread,  
11 bottom half of the page, it is from Mr Cue on 16 March  
12 2011 and he is notifying you:

13 "ESPN is planning to launch a new app called Watch  
14 ESPN. The app is for ... iPad and iPhone ... and allows  
15 you to watch the following channels live."

16 Then it lists the various channels and then it says:

17 "They are submitting the app on March 22nd. The app  
18 is free but requires you to be a cable or satellite  
19 subscriber. You authenticate using your provider's  
20 username and password.

21 "This is going to be huge for our iOS users!"

22 In other words, a desirable app that would help make  
23 the phone desirable, yes?

24 A. Yes.

25 Q. "I don't see this app as a problem with our subscription

1 rules but want to make sure you agree."

2 Then you reply:

3 "This will be a great app!

4 "I think it is at issue with our current guidelines.

5 It sounds like a Reader ... app for subscription video

6 that has no in-app purchase. In fact, it sounds like

7 I need to go outside the app to get an ID and password

8 to use the app. Why would this be okay but

9 a Kindle Reader app that does not use IAP not be okay?"

10 So obviously the debate about Kindle is still going  
11 on.

12 Then if we look at Eddy Cue's reply starting at the  
13 bottom of the previous page, page 1 electronically,  
14 {D1/128/1} he says:

15 "Here would be my reasons.

16 "Service pays for TV access; the app is giving you  
17 access to something that is primarily consumed outside  
18 the app.

19 "I can't buy ESPN by itself."

20 In other words, because it is always part of a cable  
21 package is what he means, is it not?

22 A. I believe so.

23 Q. Probably what he is saying.

24 "There is no way to buy it from the app nor does it  
25 link the app to buy ...

1            "In the case of Kindle, the primary consumption is  
2            on the device and you're buying on the device.

3            At the highest level you are correct but I am trying  
4            to put it in practical terms.

5            "We would have to get 30% of all cable bills just  
6            [to] watch ESPN. That is unreasonable."

7            So that is the debate that he says even that would  
8            be going too far.

9            Then you reply and you say -- this is back on the  
10           first page, about the middle of the page: {D1/128/1}

11           "The reason we are where we are with Netflix, Kindle  
12           and some others is that at the start they said that  
13           primary consumption and purchase was not on the device  
14           either ...

15           "If key differentiators are where you primarily  
16           consume the content and how it is charged outside the  
17           app ... this will be very subjective. I'd prefer we had  
18           something simpler and less up to interpretation to base  
19           the guidelines on.

20           "I think we need to adjust our guidelines to enable  
21           apps like this, but ... do it in a way that makes sense  
22           to us and we can implement ..."

23           This is you essentially advocating for the  
24           Reader Rule, is it not?

25           A. Yes, it is, and in addition I think this is -- we were

1           talking earlier about how the goal of the App Store is  
2           simply to sell more devices, and I somewhat did not take  
3           that perception entirely. I think this is a great  
4           example of it. As you say, this is going to be a great  
5           app, Eddy thinks so, I think so. It should help drive  
6           users to want to use more devices, but still we need to  
7           make sure the rules apply fairly and the model of the  
8           Store works even in the light of all of that.

9       Q. The idea was to get these desirable apps onto the  
10       platform so that would help drive devices?

11      A. Yes, in a way that is easy for our users and fair to all  
12       the developers.

13      Q. Yes, and transparent as well. Then look at the answer  
14       at the top which I think must come -- it is a little  
15       hard to know whether this is from you or Steve Jobs  
16       because the heading of the email is "from  
17       Philip Schiller" but then this seems to be a reply to  
18       you so perhaps it does not really matter whether this  
19       was you or Steve Jobs, or you are just writing a second  
20       email in the same frame, thinking further, which --

21      A. It appears so.

22      Q. We will assume it is you, but feel free to deny it when  
23       we have looked at it:

24                "I still think the best and simplest solution is to  
25       update our guidelines to allow reader/player content

1 apps on our store.

2 "If content providers don't want to use IAP to  
3 transact purchases in the apps then they wouldn't have  
4 to but they couldn't use other payment systems in their  
5 app either or have web links in their apps to directly  
6 facilitate purchases."

7 Then this is the important bit:

8 "I think the revenue we may lose from these apps is  
9 easily offset by having a great selection of apps for  
10 our devices like this ESPN app and Netflix and Kindle  
11 too."

12 That is really the point you just made to me, is it  
13 not?

14 A. Yes.

15 Q. The benefit in device sales will outweigh what you  
16 surrendered in Commission?

17 A. We cared about all of the factors, yes.

18 Q. Just explain to me why, in the previous paragraph, you  
19 were keen that they should not even be able to use other  
20 payment systems or have web links to their apps?

21 A. Yes, my thinking at this time as we were working on this  
22 was that the original business proposition of the  
23 App Store was very fair. We said we are going to build  
24 this infrastructure, we are going to invest all of  
25 this -- all this resource in it, and if you want to use

1           it for free to deliver free apps to users that benefit  
2           our users, that is great. If you are going to make  
3           a business on top of our technology and investment, then  
4           we should share in that business and we should get  
5           a Commission.

6           So those two simple ideas were, I think, very fair.

7           This was a new third idea, which is a developer  
8           saying: I do not need your help, Apple, to acquire  
9           customers. I am going to get them myself outside the  
10          app, for example, Amazon with their Kindle products, and  
11          they will already have purchased the content before  
12          coming to the app and before coming to the store, so can  
13          they just consume what they've already previously  
14          purchased? To me the fair model is to say: well, if you  
15          truly do not need customer acquisition, then fine, then  
16          we will not get a cut of the business that you have  
17          generated on our technology. If they instead needed to  
18          do acquisition in the app with another payment model,  
19          then truth is they really are still acquiring the  
20          customer after they get the app, after they are on the  
21          iPhone, after they use our App Store check and that  
22          would not be fair in that original model.

23        Q. Even though -- I did not mean to talk over you. But  
24        even in that situation you would get the benefit of more  
25        apps -- more device sales from having their app on your

1 system?

2 A. Either the benefit or, as you say, not get the negative  
3 that these apps are not available for us but they are  
4 available on Android, which is the case with the ones we  
5 are talking about here.

6 Q. What we are, I think -- what you have accepted is that  
7 ultimately the Reader Rule aimed to make more money for  
8 you from these kind of apps, through devices?

9 A. That was not the thinking.

10 Q. That is what it says here:

11 "They'll be easily offset by having a great  
12 selection of apps for our devices."

13 A. "I would hate to see Android have these apps and not  
14 iOS" as well.

15 Q. Would you agree that this decision has really paid off  
16 for Apple?

17 A. I am not sure how to measure that. I know there are  
18 some very large developers that are available on our  
19 competitor's products that might not be available on  
20 ours without a Reader Rule.

21 Q. Let me show you under tab 57 -- I should just say before  
22 we go there, you talk about them as competing  
23 developers. There is a big issue in this case about the  
24 extent to which there is platform competition. I am not  
25 going to go into that with you, just to be clear.



1 A. I appreciate that. My job is the business of iPhone and  
2 App Store and I know at least I personally compete with  
3 other platforms every single day.

4 Q. Can we go, please, to tab 57. Sorry, it is {D1/1877/1}.  
5 This is a slide deck, we cannot tell from the first  
6 page, but the second page, this is a sort of App Store  
7 presentation:

8 "I am excited to kick off services with an update on  
9 the App Store."

10 We are going to look at some confidential slides but  
11 not read out anything that is confidential.

12 Is it likely you will have seen this slide deck  
13 before?

14 A. I do not know that I have, I do not recognise it.

15 Q. It is from October 2020, if that helps.

16 A. I am not sure if I have seen this.

17 Q. It contains some information that I am going to just  
18 show you and not read out. If we go to, please, page 3,  
19 {D1/1877/3} this is a graph that says:

20 "Size of business -- last 4 quarters."

21 If we can just read but not read out the text that  
22 is marked as "confidential" underneath.

23 A. Yes, I see that.

24 Q. Thank you. If we can go now to page 6, {D1/1877/6} this  
25 is:

1 "Games and subscriptions -- last 4 quarters."

2 There is a pie chart. Again, I am not going to read  
3 it out but I am just going to show you:

4 "These days, we have [and then it is confidential]  
5 for the App Store [then it is confidential]. Together  
6 they represent [confidential] of our growing  
7 [confidential] business."

8 Then there is a breakdown underneath and then  
9 subscriptions, there is a confidential figure and  
10 a confidential year-on-year figure. You see all of  
11 that?

12 A. I do.

13 Q. Could we turn then to page 12. {D1/1877/12} This is  
14 "Top Subscription Apps -- Last 4 Quarters." Do you see  
15 those?

16 A. I do.

17 Q. It says:

18 "Switching to subscriptions, here's a look at our  
19 top subscription apps.

20 "As Tim and Luca said on Monday, we've invested  
21 a lot over the past few years in ..."

22 Then I will not read that out. Would you agree that  
23 the proposition I put to you earlier that the cut in the  
24 subscription revenue through the Reader Rule has really  
25 paid off for Apple?

1       A. Not at all. I think you have confused a few concepts.  
2       In the Reader Rule, Apple gets no Commission. This  
3       business you are referencing here in the slides are  
4       subscriptions that you quite rightly --

5       Q. Sorry, you are absolutely right, Mr Schiller. We have  
6       been talking about subscriptions. I misspoke. I meant  
7       subscriptions. Thank you, you are quite right. Let me  
8       put my question again because it was a question about  
9       subscriptions.

10      A. Yes, please.

11      Q. I was putting to you that the approach you have taken to  
12      subscriptions had really paid off for Apple, not for  
13      Reader Rule.

14      A. Yes, I agree.

15      Q. Thank you. If we now go to your bundle 1, tab 4, back  
16      to Spotify, which is {AB6/45/154}, please. We are going  
17      to see -- we have the same page numbering issue that we  
18      had before, which is I want to go to electronic 154,  
19      which is paper 152, in Spotify.

20      A. I am on that page.

21      Q. Thank you very much. In Recital 512 towards the bottom  
22      of the page, you will see in the fifth line it quotes  
23      you or purports to quote you. It says:

24                "In fact, in ..."

25                I will read the first sentence as well just for

1 context:

2 "Apple's reduction of the fee of the second year of  
3 a subscription to 15%... is in the Commission's  
4 preliminary view not evidence of meaningful constraints  
5 from outside subscriptions on Apple's ability to act  
6 independently in the market for the provision to  
7 developers of platforms for distribution ... in fact, in  
8 2016, Phil Schiller, the Senior Vice President of  
9 Worldwide Marketing at Apple, explicitly insisted in  
10 interview that this reduction was not in any way linked  
11 to companies encouraging users to go to their own  
12 websites to subscribe but ... rather ... to reward  
13 companies more for their work in retaining subscription  
14 customers."

15 Was the object not really to reward Apple?

16 A. It was to create a business for both developers and  
17 Apple.

18 Q. I think you accepted yesterday when Mr Hoskins put it to  
19 you that the general idea was indeed to incentivise  
20 developers to sell more devices?

21 A. No. I do not recall that ever being mentioned with the  
22 team who was creating subscriptions. It was all about  
23 creating a new subscription business on the App Store  
24 for developers and Apple.

25 Q. Just give me a moment. (Pause)

1           Let us go to the Multiplatform Rule, which you also  
2           mention. That is at paragraph 205 in your statement,  
3           which is on page 57. {B2/5/57}

4       A. Yes, I am there.

5       Q. Thank you. What you say is:

6           " ... Apple introduced the Multiplatform Rule  
7           relating to apps that operate services across multiple  
8           platforms, in part in response to developer feedback."

9           Now, you say it is in part in response to feedback,  
10          but the point of the Multiplatform Rule is that it  
11          allows apps that operate across multiple platforms to  
12          use content purchased elsewhere, provided it is also  
13          available on the App Store, does it not?

14       A. Yes.

15       Q. So, for example, a game, you might have to help me out  
16          with how this works, but you might buy coins or credits  
17          or something on another -- on the developer's website  
18          and then you would still be able to use them while  
19          playing the game on the App Store; is that right?

20       A. Yes, you mentioned coins and credits. That is a good  
21          example of what we call an intermediary currency, so you  
22          have bought a value that you then apply wherever you  
23          play the game. It also applies to direct purchases.  
24          Let's say you in a game purchase the ability to use  
25          another level. When you then go and get on the

1 App Store, you automatically have that level unlocked as  
2 well. So there are many uses of it.

3 Q. So the game itself might well have a charge on the  
4 App Store too rather than be a free download, might it  
5 not?

6 A. It would be very rare. It is almost always freemium, in  
7 other words, a free download and then purchases. It  
8 could be both, but that would be very rare.

9 Q. In this instance, unlike the Reader Rule, you have to  
10 have the ability to purchase those matters on the  
11 App Store, so another level was your example?

12 A. Yes. The user can purchase it on whichever platform --  
13 it could be the user is on more than one platform, say  
14 an Xbox and an iPhone. The item you want to purchase is  
15 available in both places, the user chooses where they  
16 purchase it.

17 Q. We have downloaded the app on the App Store and it is  
18 free at that point and you want to purchase a next level  
19 and you -- but you have to have the option of at least  
20 purchasing it on the App Store, but if you do have that  
21 option, you can use that next level even if you  
22 purchased it on the Xbox; is that right? Do you want to  
23 put it in your own words --

24 A. Yes, you are very close. Let me just say it slightly  
25 differently. Imagine there is a game on both your Xbox

1           on your TV and on your iPhone in your hands and you have  
2           it in both places, usually you log in to your account,  
3           the same account because the developer wants to know who  
4           you are. Then there is something you want to purchase  
5           and you can choose to purchase it while you are playing  
6           on Xbox, you can choose to purchase it while you are  
7           playing on the iPhone, so you have the option for  
8           either. Wherever you purchase it, on the iPhone you get  
9           access to it regardless of whether you purchased it on  
10          Xbox or on iPhone, and we only get our Commission if you  
11          purchase it on iPhone. If you purchase it on Xbox, we  
12          get none.

13        Q. Thank you very much. But in order to get the benefit of  
14          the Multiplatform Rule, there must be at least the  
15          ability to purchase it on iPhone?

16        A. Yes, that is correct.

17        Q. Right. Here, is it not right that again the  
18          Multiplatform Rule promotes use of that app on the  
19          platform, so if I already have the Xbox, I download the  
20          app on the platform as well, I can use my Xbox credits,  
21          if you like. Would you agree?

22        A. Yes.

23        Q. So it makes it more likely that a gamer will use the  
24          iPhone or the Apple device for gaming, does it not?

25        A. I do not know about more likely. It just makes it

1 possible for them to use a game where you do not have to  
2 pay again for content that -- previously that is what  
3 you had to do. Previously you would pay again, and that  
4 was not just Apple, that is the way it was on Xbox, on  
5 PlayStation, on Nintendo, on Android; everybody had you  
6 pay again for the content on that device. We were one  
7 of the first to come up with this new Multiplatform Rule  
8 where you did not have to.

9 Q. The benefit of that for you is it encourages customers  
10 using the Apple devices for gaming, does it not?

11 A. It started because there was a game we would not even  
12 get unless we went this way, and that was Microsoft  
13 Minecraft, which was available on other platforms but  
14 not iOS, and they implored on us that we needed to do  
15 this in order for them to consider bringing Minecraft to  
16 iOS.

17 Q. But what you did was adopt a general rule, did you not,  
18 rather than an exception for Minecraft?

19 A. That is what we always try to do. When a large  
20 developer wants something unique, we try to consider how  
21 can we make sure every developer in a similar situation  
22 has access to that same term.

23 Q. Making the platform attractive to gamers helps sell  
24 Apple devices, does it not?

25 A. It does, but again the primary motivation was developers



1           told us that we needed to do this in order to get their  
2           software.

3       Q.   But having gained -- sorry, excuse me a moment.

4           Having Minecraft on your platform, to use that  
5           example you have just given me, has a big upside for you  
6           in making the devices more attractive, does it not?

7       A.   Well, it made it more competitive. We had competitors  
8           who had it and we did not, and this was necessary to  
9           become competitive.

10      Q.   It also helped you to sell devices, does it not?

11      A.   Hopefully.

12      Q.   Can we look now at tab 44, please, in your bundle, which  
13           is volume A4. This is {D1/1318/1}. This is again  
14           confidential material that we are not going to read out.  
15           This is a slide deck again on the App Store. If we go  
16           to the second page, please, this is -- in fact, we know  
17           from the metadata a board of directors App Store update  
18           from 2022. Does this look at all familiar to you?

19      A.   I do not recall it.

20      Q.   Okay. It says:

21           "Thanks Eddy. Hello and good morning. I am  
22           Matt Fischer and I lead the global App Store and  
23           Apple Arcade business."

24           That is right, is it not? Matt Fischer is a senior  
25           executive in the App Store?

1 A. Not any longer, but at this time he was and reported to  
2 me.

3 Q. If we go to page 17, please. {D1/1318/17} Again I will  
4 avoid reading out anything confidential. Under the  
5 heading of "Games" it says:

6 "Now let us talk about games."

7 Then there is something I cannot read out, but you  
8 can see it.

9 A. Yes.

10 Q. Over the page at 19, {D1/1318/19} something that is not  
11 confidential, apart from the figure, which I will not  
12 read out, it says:

13 "What is awesome is that Apple is driving this  
14 growth. Our total market share last year was [blank],  
15 making iOS the biggest gaming platform in the world ...  
16 by far."

17 What I am depending to put to you is, although you  
18 do not say this in your witness statement, the  
19 Commission reduction that you gave was aimed at making  
20 money for Apple through sales of devices as well as the  
21 apps themselves. Would you accept that?

22 A. Not when we conceived of it and implemented it, that was  
23 not our thought.

24 Q. That has certainly been the effect of it, has it not?

25 A. Again, I do not know how many device sales to attribute

1           and I have not seen a study of that to games or the  
2           App Store, so I would not -- I do not deny it is likely,  
3           I just haven't seen any data that says that --

4       Q.   Okay and when you say it was not how you conceived of  
5           it, unfortunately we do not have any decision-making  
6           documents to test that with, do we?

7       A.   No, but you have me and I was the one who did it and  
8           I was personally there in the meeting and this was my  
9           work.

10      Q.   Let us turn now to the Video Partner Program.  This is  
11           in your witness statement {B2/5/56}.  What you say here  
12           is, paragraph 204, you say:

13                "In 2016, Apple reduced the Commission payable on  
14           certain transactions relating to the Video Partner  
15           Program.  The Video Partner Program is designed for apps  
16           that deliver premium subscription video entertainment  
17           services.  Participating apps are required to integrate  
18           with a number of Apple technologies, such as Universal  
19           Search, Siri, AirPlay ... single sign-on or zero  
20           sign-on, to ensure a seamless experience for customers."

21                Over the page at (b), you make clear at the bottom  
22           of (b): {B2/5/57}

23                "... developers must use IAP to enjoy the reduced  
24           Commission."

25                This is a reduced Commission that is only available

1           to a video service that integrates into Apple TV, is it  
2           not?

3       A.   Yes.

4       Q.   To give an example, at least from the UK, Amazon Prime?

5       A.   Yes.

6       Q.   It is not available to all -- any video streaming  
7           program, is it?

8       A.   Well, it is available to any that meet the criteria and  
9           requirements for the program.

10      Q.   So if I were to take the CAT livestream and meet your  
11           criteria, you would happily put it on Apple TV, would  
12           you?

13      A.   No, that would not be a premium service, yes.

14      Q.   I will not take that personally, Mr Schiller. But in  
15           other words, there are -- you apply some commercial  
16           criteria to decide which services you had be prepared to  
17           entertain?

18      A.   Yes, I believe there is a team that does that.

19      Q.   So Apple has to agree that it wants the service on  
20           Apple TV?

21      A.   It is not about wanting, I think there is some objective  
22           criteria --

23      Q.   Some commercial --

24      A.   Yes.

25      Q.   So you would not have -- well, we need not go further.

1           Let us look at Apple TV itself for a minute. Now,  
2           Apple sells a device, does it not, a piece of hardware  
3           called Apple TV, which is a black box, is it not?

4       A. Yes.

5       Q. It is a small black box?

6       A. Correct.

7       Q. You use it to connect to a TV to stream services?

8       A. Yes.

9       Q. When you have the black box, you can use it as well to  
10       access Apple's own TV content, which is called Apple+,  
11       I think?

12      A. Apple TV+.

13      Q. Apple TV+. That is a separate subscription service,  
14       I think it is £9 a month in the UK or something similar?

15      A. Correct.

16      Q. So there is a charge for the hardware, I do not know  
17       what that is, but maybe a couple of hundred pounds or  
18       dollars?

19      A. Less, but yes.

20      Q. Yes. Then there is a separate charge, if you want  
21       Apple TV+ as well?

22      A. That additional service, yes.

23      Q. So two different charges, you can have one without the  
24       other, can you not?

25      A. Yes, you can.

1 Q. Because I can also access Apple TV+ on an iPhone, say?

2 A. You can.

3 Q. But once I have Apple TV, I can also access other  
4 services such as Amazon Prime?

5 A. Yes, there are, I believe, many customers who have  
6 an Apple TV and do not use the TV+ service.

7 Also, just to make sure we were clear, you do not  
8 have to subscribe to Apple TV+ on the Apple TV device.  
9 You could have already subscribed on your iPhone or your  
10 iPad, and then when you use the Apple TV, you  
11 automatically get it without paying on the Apple TV,  
12 just to be complete.

13 Q. Yes, I understand. I was just reading that back to  
14 myself to make sure I followed it, and I did.

15 If you want to persuade customers to buy Apple TV,  
16 in other words the primarily hardware product, but not  
17 Apple TV+, the Apple TV proposition, you need  
18 an attractive bundle of content offerings, do you not?

19 A. I would not use the word "bundle", but you need apps of  
20 content to be offered to the user.

21 Q. So if I am going to spend -- you said it was less than  
22 £200.

23 A. Yes.

24 Q. 100, 150, whatever it is. If I am going to spend my  
25 £100 on the black box for Apple TV to attach it to my

1 television, there need to be attractive content  
2 offerings that make you think this box will stream TV  
3 services that I want to watch?

4 A. Yes.

5 Q. One of my options is Apple TV+, but it does not have to  
6 be?

7 A. Correct.

8 Q. When you are offering reduced Commission here, what you  
9 were doing was encouraging these content providers to  
10 sign up for Apple TV, were you not?

11 A. No, and I will share what I know of it because I did not  
12 work on this with the team who did it, but I certainly  
13 spoke to them many times. The team working on Apple TV  
14 were trying to create a new experience for the user that  
15 would be better than competitive boxes, like a Roku or  
16 something built into your smart TV, and there were  
17 a bunch of features as described by this program that  
18 would make that experience better for users, like Siri  
19 searching of TV shows across multiple services. So by  
20 offering this program, the incentive was that to  
21 developers they could pay a lower Commission if they did  
22 extra work to integrate and create a better user  
23 experience.

24 Q. But the point of creating a better user experience, as  
25 you put it, is to sell the device, is it not?

1 A. Yes.

2 Q. The reduced Commission helps get content providers on  
3 board to make the device acceptable -- attractive, not  
4 acceptable, better than acceptable?

5 A. Yes.

6 Q. So the purpose of the reduced Commission is again to  
7 drive overall revenue for Apple, is it not?

8 A. That is an end result. I would not summarise it so  
9 abruptly that we do not say that the primary purpose is  
10 a better user experience. The end goal is more device  
11 sales, I agree with you, but we are also driven to  
12 simply make the best user experience. That is part of  
13 our goal and desire so we did not want to ignore that.

14 Q. Sure. As a listed company in the -- with an interest in  
15 making profit, the point of a better user experience is  
16 ultimately, as you say, in the end goal, sell more  
17 devices, is it not?

18 A. That is the hope.

19 Q. That is the hope.

20 Now, if we go to your witness statement, please, at  
21 paragraph 56, you say -- do you have that to hand?  
22 Sorry, it is page {B2/5/56}. I mean page 56,  
23 paragraph 204. You say:

24 "In 2016, Apple reduced the Commission payable on  
25 certain transactions relating to the Video Partner



1           Program."

2           But it is right, is it not, that in 2016 what we had  
3           actually were just some bespoke deals for certain  
4           developers, was it not?

5       A. I do not think of that. We tried to create a program  
6           that applied to any developer who would meet the  
7           criteria and do the work to get the benefits.

8       Q. Let us look at some documents around this issue. The  
9           first one is at tab 59 in your bundle A5, and this is  
10          {D1/418/1}.

11          This is an email that I think you have seen before,  
12          even though you were not a recipient. It is from  
13          Eddy Cue and it is dated November 1, 2016. For some  
14          reason I cannot really understand, for the recipient the  
15          name is redacted too, so we won't read out the  
16          recipient. Does this email look at all familiar to you?

17       A. I may have seen it in testimony. I did not see it as  
18          part of my work.

19       Q. Let us look at it together now anyway. We see it is  
20          from 2016 and it is addressed to a person that we cannot  
21          name and it says:

22                "I really enjoyed our time together.

23                Here are the details of what we discussed on Prime  
24          Video.

25                Amazon Prime Video app in iOS and Apple TV.

1           15% revenue share for customers signing up using the  
2           app ... no revenue share for customers that already  
3           subscribe."

4           Then various other details.

5           So that is back in 2016 and appears to be a deal  
6           with Amazon, does it not?

7       A.   It does.

8       Q.   Then if we go now to the next tab, which is tab 16, this  
9           is an email from October 2018 and it is {D1/603/1}. Can  
10          we go to the bottom of this thread, it is a little bit  
11          involved, and this time I think you are in the thread,  
12          so this hopefully will be familiar.

13          At the bottom there is what I think -- if we go to  
14          the bottom of page 2, please, what I think is a Tweet,  
15          in other words it is extracted into the document, and  
16          this is from someone called David Barnard and this is  
17          dated September 28, 2018:

18          "I didn't realise App Store subscriptions could be  
19          automatically cancelled through the StoreKit API. I'm  
20          surprised I haven't seen more offer to switch billing  
21          away from the App Store."

22          And you have then forwarded this saying:

23          "What is this about?

24          Does the Hulu app switch people away from IAP to  
25          Hulu billing?"

1           Do you remember this at all?

2       A. Vaguely, yes.

3       Q. Good. Let us keep going and see what happens in the  
4       discussion.

5           Then Mr Kosmynka says:

6           "Looks like this is an API provided to a limited set  
7       of developers (HULU, Netflix). The API is not  
8       a StoreKit API. The prompt shown in this Tweet was on  
9       the web, not in the app."

10          You say:

11          "I don't know anything about this private API (why  
12       it was provided). We need to learn about it. I don't  
13       think it is a good idea."

14          So it sounds as though some ability to avoid using  
15       Apple in-app payment is being extended to some  
16       developers. Would you agree?

17       A. Not quite. I would describe differently what I recall  
18       from what this ended up being about. As you can see,  
19       I clearly was not aware that there was a capability.  
20       The capability, as I learned later in this, was that  
21       there was a unique scenario with a number of video  
22       streaming developers who also have TV subscription  
23       services, an example Hulu, Hulu is video streaming  
24       service but they also have the Hulu TV service,  
25       a separate service, for a bundle of replacing your

1 standard TV offering with theirs.

2 Because of the intricacies of TV bundle deals, the  
3 Apple TV team had to give them a way to migrate users  
4 between the streaming service -- sorry, this is  
5 complicated -- the streaming service to a bigger bundle  
6 that includes the live TV service, but the live TV  
7 service was not offered on iOS, they offered it only via  
8 their web, and so they need a way to move the user who  
9 is upgrading from streaming only to streaming plus live  
10 TV off of IAP because they cannot do it on IAP, so  
11 an API was provided to that -- any developer who's in  
12 that situation. So that is what I subsequently learned  
13 through this whole process was what the Apple TV team  
14 did to help these developers.

15 Q. Okay. So let us see what the email explains about this.  
16 You said you do not know anything about this private API  
17 and you want to learn about it and then Eric Gray -- who  
18 was Eric Gray?

19 A. He works on the App Store in the Services Commerce Team.

20 Q. He says:

21 "This was originally provided to Netflix as part of  
22 a custom ATV relationship (before they implemented IAP  
23 for iOS). It was extended to Hulu and a handful of  
24 other video partners as part of ATV integrations. As  
25 those partners moved to iOS, the capabilities were able

1 to be leveraged."

2 So what we are seeing here then is there is a wider  
3 exception than just for Hulu, is there not, in 2018?

4 A. Yes.

5 Q. Then you say:

6 "I'm never a fan of one-off bandaid solutions. Can  
7 we get rid of this now? It makes no sense on iOS (where  
8 the majority of Hulu and Netflix subscriptions are."

9 In other words, if they are subscribing to iOS, you  
10 want your 30%, do you not?

11 A. Oh, it had nothing to do with subscriptions. I am  
12 trying to be fair and make sure the rules are followed  
13 and applied equally to all, private APIs or bandaid, as  
14 I call it, solutions. That is my only concern.

15 Q. Ultimately they are enjoying an exception here, are they  
16 not?

17 A. They are in a unique situation. The team had to create  
18 a way to help them, and again, you see what my feelings  
19 are. I do not like one-off solutions for a small number  
20 of developers even though it is very helpful to them.

21 Q. Then we go to the first page, {D1/603/1} so we go at the  
22 bottom, and Eric says he will investigate approaches to  
23 getting rid of it or upgrading it to something better or  
24 safer that can more widely assist and then Eddy Cue  
25 says:

1           "What are specific ways in which a partner uses it  
2           legitimately?"

3           "Legitimately" meaning other than just not paying  
4           Apple Commission?

5       A. No, that is about using a private API, which we always  
6       feel is risky for device quality and user safety and  
7       I think that is what he is talking about, following the  
8       rules.

9       Q. The answer Eric Gray gives is:

10           "The main reason for this was to allow them to  
11           provide direct customer support for customers that reach  
12           out to them directly. We still don't have good  
13           solutions on customer support hand-offs and customers  
14           get frustrated. When customers reach out to AppleCare  
15           to cancel, it is generally always processed and 75% of  
16           the time includes a refund from the last bill."

17           So what Eric Gray seems to be saying is that the  
18           developers just prefer this because it gives them the  
19           contact with the customer. Would you not agree?

20       A. Not exactly. I think it is a little different than  
21       that.

22       Q. All right, that is just what he says. Then Eric says:

23           "Can we get a meeting scheduled?"

24           There is something redacted for privilege, but we  
25           cannot do anything about that.

1           Then Pam says:

2           "What are we calling it?"

3           Then top of the page it is called the "Video partner  
4           custom APIs". This is now 2018, and that is a title  
5           which is pretty similar to Video Partner Program, but  
6           would you agree that what we are seeing here in 2018 is  
7           indeed bandaied solutions where some developers are  
8           getting special treatment that is so confidential even  
9           you do not know about it?

10          A. No, not at all. This is -- first of all, your  
11           comparison to 2016, the Video Partner Program was  
12           created in 2016, was available to all these developers.  
13           This is a subset of those video partners, so this is not  
14           all of them this, is a subset, which is why Eddy called  
15           it "Video Partners Custom API", for one thing, so no  
16           confusion between timing and availability of the  
17           program.

18          Q. It is plainly --

19          A. We have a -- again my recollection is this applied to  
20           developers who had this live TV service and the team did  
21           not know how else to enable them to do what they are  
22           trying to do. I do not like private APIs, I am not  
23           a fan of them. We could talk at length,  
24           Craig Federighi, who I know you will speak to, could  
25           speak more eloquently than I about them. But the

1 Apple TV team, which does not report to me, created  
2 an API solution for these developers and that is why  
3 I was not aware of it until this exchange.

4 Q. So when at the top it says "we should call this Video  
5 Partner Custom APIs", is this not really what morphed to  
6 the generalised 15% discount for the Video Partner  
7 Program?

8 A. No, not at all. This is not that.

9 Q. But either way, these people are enjoying a form of  
10 exception from the general 30% rule, are they not?

11 A. Yes. The team created an engineering solution to help  
12 these unique developers with the complex scenario that  
13 they had.

14 Q. Okay. Let us go now to tab 62, which is {D1/973/1}.  
15 The subject here is "Oz: Phase 1 is live", and it is  
16 from you to a range of people, including other names we  
17 have seen already, Matt Fischer and Kristin Huguet. It  
18 is also to Steve McGuigan, who I believe is also in some  
19 sort of public affairs type role, is he not?

20 A. No, he works on App Store marketing.

21 Q. Thank you. What we see here is if we go to the second  
22 page of this, please, page 2, {D1/973/2} towards the  
23 bottom there is an email from Steve McGuigan, that is  
24 the one, thank you, sort of around the second hole punch  
25 saying:



1           "Hello Oz team.

2           "Congratulations on the Phase 1 launch of Oz. We  
3 are live!"

4           Then he says at the bottom:

5           "Here are the links to the new pages that are ...  
6 live ..."

7           If we go to the next page, please, page 3:

8 {D1/973/3}

9           "Apple Video Partner Program [the third bullet]:  
10 a new website explaining [the programme] and how ..."

11           Isn't this when the Video Partner Program became  
12 public, not 2016?

13       A. No, not at all. This is a website in which the team is  
14 outlining a number of programs and they added a tab for  
15 the Video Partner Program on it. Again, the Video  
16 Partner Program was driven from the Apple TV team. They  
17 worked directly with all the streaming video developers  
18 and so it existed, that was already going on. But  
19 I believe the Apple App Store marketing team themselves  
20 hadn't created a web page for it publicly, even though  
21 the program had been running for years and was called  
22 that, it was available to developers, because  
23 a different team had been the one running it, so we just  
24 wanted to make sure there was another resource for it.

25       Q. So tell us what the Oz initiative is then?

1 A. It was an update to the App Store marketing pages on  
2 apple.com.

3 Q. Is your evidence then that Oz is not the launch of the  
4 Video Partner Program?

5 A. It was not.

6 Q. I see. Can we go now, please, to tab 63, which is  
7 {D1/968/1}. This is an email from you at the top to  
8 deal with a Wall Street Journal infographic on  
9 competition issues and of September 2020 and it is  
10 addressed to Tim Cook, Luca Maestri and Eddy Cue.  
11 Luca Maestri was the CFO at that point?

12 A. Yes.

13 Q. What I would like to do is go to the email that you have  
14 forwarded, which is from Fred Sainz. Does this look  
15 familiar to you, Mr Schiller?

16 A. Apologies, I do not recall this so perhaps as we look  
17 over it, it will refresh my memory.

18 Q. What Fred Sainz says on September 18 is:

19 "Phil,

20 We were informed by the Wall Street Journal  
21 yesterday afternoon that they are preparing a 'text-rich  
22 infographic' to be published as early as next Monday  
23 (but more than likely later in the week) to provide  
24 readers an overview of the *Epic* dispute and the  
25 grievances raised against Apple by other companies ..."

1           Pausing there, by this point the *Epic* litigation  
2           that we have been discussing in California was under  
3           way, was it not?

4       A.   Yes.

5       Q.   " ... grievances raised against Apple by other companies  
6           including Facebook, Netflix, Spotify, Match Group,  
7           Airbnb and audiobooks.com publishers."

8           So that is a lot of large developers, is it not?

9       A.   Yes.

10      Q.   " ... including the New York Times and Wall Street  
11           Journal via industry body Digital Content Next; and  
12           government agencies around the world, including the FTC,  
13           DoJ, Congress and the European Commission. The  
14           infographic will also reference Amazon Prime video and  
15           Taylor Swift's open letter to Apple regarding the trial  
16           version of Apple Music in 2015."

17           Can you remind us, was that something to do with the  
18           level of royalties paid by Apple Music?

19      A.   I believe so, but I did not work on that, so I am only  
20           guessing from public documents.

21      Q.   Okay. Then it provides some extracts from the body of  
22           the Wall Street Journal report together with some  
23           comments, and they were excerpts of what they plan to  
24           report.

25           If we look at the first one that is in bold:

1           "More than a decade after the launch of the  
2           App Store Apple is facing backlash from a host of  
3           companies including Facebook, Epic, Netflix and multiple  
4           companies allege (in the Journal's words) 'Apple wields  
5           monopoly power over the gateway that connects users to  
6           apps.'"

7           Is that familiar to you?

8           A. No, it is not.

9           Q. But you are familiar with the fact that those were the  
10          views, were allegations?

11          A. I can't speak to their views. I just see this statement  
12          here.

13          Q. "They have assured us they will note that we dispute the  
14          claim."

15          Etc. Then they quote in bold:

16          "Analysts estimate the App Store generates about \$15  
17          billion in annual sales for Apple.

18          "We have declined to offer feedback here."

19          It is right, is it not, that as far as we can see  
20          Apple never talks about its own revenue from the App  
21          Store in public --

22          A. For many --

23          Q. -- as opposed to billings?

24          A. Yes.

25          Q. You prefer not to talk about that.

1 A. It is just not how we report the revenue.

2 Q. I understand.

3 Over the page:

4 "Apple says the [App Store Commission] is in  
5 line with other app market places take from developers  
6 and is needed to cover expenses ..."

7 Obviously that is an issue that is going to be  
8 discussed later in the trial whether it is in line.

9 Then it says:

10 "Apple won't allow companies to mention this in  
11 their apps where consumers can go to subscribe outside  
12 the app."

13 Just pausing there, I want to ask you about that.  
14 Are you familiar with this? It says underneath:

15 "While true per guideline 3.1.1, we have made clear  
16 that developers are free to price their apps, and in-app  
17 purchases, at whatever price point they [want] matches  
18 the value of the content they offer."

19 So that is all correct, is it not?

20 A. Yes.

21 Q. Then it goes underneath to the next bullet point:

22 "Apple also won't allow companies that opt to pass  
23 its App Store Commission on to consumers to say in their  
24 app that they've done so."

25 It is said underneath:

1           "While correct per guideline 2.3.10, we have noted  
2           that the guidelines don't pertain to what developers do  
3           on their own websites."

4           That is the Guidelines as they existed at that time.  
5           The fact seems to be that Apple was seeking to prevent  
6           developers from telling customers that they passed on  
7           the Commission. Would you agree?

8       A. In the app experience, yes.

9       Q. Was the reason for that so that Apple could not be  
10       blamed for the prices that developers were charging?

11      A. No.

12      Q. What reason did Apple have for not allowing developers  
13       to say: the price is £10 and, by the way, £3 of that  
14       goes to Apple?

15      A. When we created the App Store, we created what we felt  
16       was a very simple business model and for developers who  
17       choose to do in-app purchase, they are choosing to do it  
18       with us with the terms we have offered, and that it  
19       would be a bad user experience to start to see prices  
20       with -- deconstructed into different elements and it is  
21       said: here's the price I am charging, here's taxes and  
22       here's Apple's fee. We just thought that was not  
23       a great experience. We used as our model a very popular  
24       retailer in the United States, Nordstrom's, which is  
25       known for high quality. When you go to a Nordstrom's

1           and you go to buy a pair of jeans, it does not say: here  
2           is the price minus the fee of the store. It is just not  
3           a quality experience you expect and that was our view  
4           when we started this store and that is how we created  
5           our rule.

6       Q.   Are you not really seeking to prevent the retailers --  
7           prevent the developers from mentioning this because  
8           there is reputational damage in taking 30%?

9       A.   That was not our thought when we created that rule.

10   MR WARD:  Sir, I see the time. I have a little bit more to  
11           do in this area, but if that is a convenient moment,  
12           I am happy to come to it after lunch.

13   THE CHAIRMAN:  How are you doing generally?

14   MR WARD:  Well, I am not going to be all day. I will be --  
15           without committing myself, I am cautiously optimistic of  
16           finishing by the afternoon break.

17   THE CHAIRMAN:  Is the position that Mr Federighi is not  
18           going to be here until tomorrow or can we get him on --

19   MR WARD:  I do not know. Shall we find out over lunch and  
20           fill you in?

21   THE CHAIRMAN:  The only thing I am worried about -- I do not  
22           want to take up time discussing this, but Thursday does  
23           look quite tight with two sets of experts and we will  
24           have to start a little bit late because I am not free  
25           until 11.00, but we can make up the half an hour I am

1           sure, still I'm just wondering if we can take the  
2           pressure off. Of course that involves quite a few  
3           moving parts. I do not know whether it is possible.  
4           Why do you not have a think about it. If we could take  
5           some pressure off Thursday, it would be quite helpful.

6       MR WARD: I can see that, sir.

7       THE CHAIRMAN: But there are many other ways of (inaudible).

8           So we will break. The usual rules apply, you are  
9           not to discuss your evidence with anybody.

10      THE WITNESS: I will not. Thank you very much, sir.

11      (1.01 pm)

12                               (The luncheon adjournment)

13      (2.02 pm)

14      MR WARD: Thank you, sir.

15           Mr Schiller, I actually do want to go back to the  
16           document we were discussing just before lunch.

17           I confess I thought I would finished with it, but I have  
18           not. That is tab 63 for you, and it is volume A5, and  
19           it is {D1/968/1} in the electronic bundle.

20           You will recall --

21      A. Can I have the tab number again, please?

22      Q. Yes, it was tab 63.

23      A. Yes, thank you.

24      Q. You recall this is an email directed to you from

25           Fred Sainz, a little bit above the line as well, talking



1       about an article in Wall Street Journal and making some  
2       points in bold from the Wall Street Journal and then  
3       some responses. We have dealt with -- if we go to the  
4       second page, please, around the first hole punch, we had  
5       dealt with the point about Apple not allowing companies  
6       to say that they had passed on the Commission, and I do  
7       not want to deal with that but I do want to go two  
8       bullet points down further, where it says:

9                "Amazon in 2016 struck a deal to allow it to pay ...  
10              a 15% fee on Amazon Prime first year digital ... sales."

11             Do you recall, we looked at that this morning?

12       A. Yes.

13       Q. I said to you there appears to be a deal with Amazon  
14       back in 2016 and you agreed with that?

15       A. Yes.

16       Q. Just for the transcript, that -- at least on the  
17       LiveNote -- is [draft] page 87, lines 16 and 18. I am  
18       sure the final transcript will be slightly different.

19             Can we now look at what it says below in this email:

20                "We have pointed to Tim's comments in his response  
21              letter to Chairman Cicilline ..."

22             If I am pronouncing that correctly?

23       A. I believe so.

24       Q. Chairman Cicilline is the chairman of the House  
25       Judiciary Committee, or was?

1 A. At that time, yes.

2 Q. As we know, they were investigating digital platforms,  
3 and it says "we have pointed", the Wall Street Journal,  
4 that is, to Tim's comments at the hearing that:

5 "'The suggestion that Apple granted unique terms to  
6 the Amazon Prime video app that allows it to pay a lower  
7 Commission is false. Apple does not play favourite in  
8 this manner' and that rather 'Apple ultimately developed  
9 a set of standard terms for Amazon, and every other  
10 video streaming service ...'"

11 But is it not right that Apple had indeed struck  
12 a deal with Amazon back in 2016?

13 A. Are you referring to the Video Partner Program?

14 Q. I am referring to the deal that you and I looked at. We  
15 can look at it again, if you like.

16 A. Sure, because this is talking about the Video Partner  
17 Program.

18 Q. What it is a response to is the suggestion that Amazon  
19 in 2016 struck a deal to allow it to pay Apple a 15% fee  
20 on Amazon Prime and if we can -- "Tim" here, I assume,  
21 is Tim Cook, is it not?

22 A. Yes, it is.

23 Q. We looked at it -- I just reminded you, but the document  
24 itself is your tab 59 and it is {D1/418/1}.

25 A. Yes, Eddy's email.

1 Q. We looked at this earlier. The second bullet point is  
2 "15% revenue share for customers that sign up using the  
3 app... no revenue share for customers that already  
4 subscribe." Is that not exactly what the Wall Street  
5 Journal article seems to be talking about? We can go  
6 back to it --

7 A. But it was not -- again, that is the Video Partner  
8 Program. That is what those terms are and that was live  
9 at that time and so these are not inconsistent.

10 Q. Okay.

11 A. Nowhere in Eddy's email does he say no one else can get  
12 this.

13 Q. Let us move on from that. There is another program that  
14 I do not think you do mention in your witness statement  
15 but I want to ask you about because Professor Hitt, who  
16 is the expert for Apple, does talk about, which is the  
17 News Partner Program. You do not mention that, but that  
18 is another form of Commission Reduction Program, is it  
19 not?

20 A. Yes, it is.

21 Q. In fact what we can do is just look at what  
22 Professor Hitt says about it, which is your tab 45,  
23 which is in your volume A4, just because he summarise it  
24 is and we can see if you agree with his summary. It is  
25 {C3/4/250}. There is confidential information that we

1           are not going to read. Thank you.

2           Do you have that, Mr Schiller?

3       A. Yes. The page number would be?

4       Q. 250, using the C3/4 rather than the internal.

5       A. All set, I am on that page.

6       Q. Thank you. If you look at paragraph 456, he says:

7           "Apple launched the NPP on 26 August 2021. The  
8           program reduced Commission rates on all in-app purchase  
9           transactions on the App Store for digital news content  
10          to 15 percent for app developers that enrolled in the  
11          program."

12          Is that right?

13       A. That is correct.

14       Q. He gives a confidential figure for how much -- how many  
15       people -- how much spending this actually accounts for,  
16       but I do not need to ask you about that.

17          Now, Apple News is an app that comes pre-installed  
18          on every iPhone and iPad, is it not?

19       A. Yes.

20       Q. If we turn to tab 66 for you, volume 5, and for us,  
21       {D1/1510/1}, please, we will find a news release  
22       explaining it. Thank you. Sorry, is it a news release  
23       or just a website page, actually?

24       A. Yes, it looks like a web page about the program.

25       Q. Yes. We just want to get clear what it says about it

1 just so we understand it, and it says under "the News  
2 Partner Program":

3 "The News Partner Program is designed for  
4 subscription news publications that provide their  
5 content Apple News in Apple News Format. Publishers  
6 that work with Apple News may qualify for a Commission  
7 rate of 15% on qualifying in-app purchase subscriptions  
8 from day one. In addition, the News Partner Program  
9 will help support, fund and collaborate ... [to]  
10 educate ... consumers ..."

11 There are some eligibility requirements:

12 "You must maintain a robust Apple News channel ...

13 The primary function must be to deliver original  
14 professional news ...

15 You must be available on the App Store and allow  
16 users to purchase auto renewable subscriptions ..."

17 A. Yes.

18 Q. If I understand it -- of course many of the kind of news  
19 partners who are on the program, like, say, for example,  
20 The Times, or maybe even the New York Times, would have  
21 their own apps available on the App Store with the  
22 possibility of a paid subscription; is that not right?

23 A. Yes.

24 Q. An app such as the New York Times would otherwise be  
25 paywalled, would it not? You would have to subscribe to

1           get further than the headline?

2       A.   They could.

3       Q.   Yes.   There may be different models, of course.

4       A.   Yes.

5       Q.   But is it right that the way that Apple News works is  
6           that in a sense it curates sources from different  
7           sources -- stories from different sources and presents  
8           them within the app; is that not right?

9       A.   It does.

10      Q.   And so, in a sense, promotes those stories, but they are  
11         just accessible through the app without buying  
12         a subscription; is that right?

13      A.   No, I do not think there is a requirement that all of  
14         the content on one side of the paywall as well as the  
15         other needs to be there.   So, for example, a news  
16         application like the Wall Street Journal provides some  
17         content for free on the front end of it and then when  
18         you subscribe you get added content.   I do not think the  
19         News Partner Program has any requirement that all the  
20         subscribed content also needs to be available to users  
21         in the news app, so you can still have your subscription  
22         model that you want.

23      Q.   But it may contain some material that would otherwise be  
24         behind the paywall?

25      A.   Not otherwise.   It is a choice the publisher has, up to

1           them.

2       Q.   So the news app only would include stories that are not  
3           paywalled; is that right?  So, in other words, let us  
4           stay with the Wall Street Journal.

5       A.   Yes.

6       Q.   The Wall Street Journal has paywalled content, in other  
7           words behind a paywall, but for all I know, it may have  
8           some content which you can just read on the website.

9       A.   Yes, they do.

10      Q.   Does the news app only include content that is free to  
11          read on the Wall Street Journal's own website?

12      A.   Generally.  I do think there is programs that the news  
13          team has with developers for paywall access if the user  
14          has it as well, and I do not know the details of that.

15      Q.   So you cannot be sure what the answer is?

16      A.   No.

17      Q.   But in any event, what happens is the news app will  
18          curate some stories from, say, the Wall Street Journal  
19          and present them in the Apple News feed; that is right,  
20          is it not?

21      A.   Yes.

22      Q.   That is provided there is also the ability to renew the  
23          Wall Street Journal in the App Store?

24      A.   Yes.

25      Q.   So this again is another service used by Apple to

1           increase the attractiveness of its devices, is it not?

2           The news app on Apple is itself a feature to use the  
3           devices -- to promote the devices?

4       A.   I have never heard it stated that way or thought of that  
5           way.   It is an application we provide on our device and  
6           we hope our customers enjoy it.

7       Q.   You hope your customers enjoy it, meaning that they are  
8           attracted by the iPhone more strongly than they  
9           otherwise would be?

10      A.   They could.   Again, I have never heard a connection  
11           purposely made between the two, but of course they  
12           could.

13      Q.   But you do not add features to the iPhone other than in  
14           the completely rational pursuit of profit, do you?  
15           Better phone, better sales

16      A.   No, I would disagree with that.   We have many things  
17           that we do that might be at the expense of profit or  
18           that might be just for some other greater good or might  
19           be independent of profit.   I do not think it is fair to  
20           say --

21      Q.   Fair enough.   I will focus my question on the news app.

22      A.   Yes, please.

23      Q.   You add the news app to the iPhone to make the iPhone  
24           more attractive, do you not?

25      A.   I think you could make that statement.   I do not recall



1           anyone ever saying it that way when we worked on it. We  
2           worked on it because customers, we thought, would  
3           benefit from having a great news source that they could  
4           readily get at easily and they would enjoy their iPhone  
5           for that, yes.

6       Q.   The more they enjoy the iPhone, the more they want to  
7           buy the iPhone, would you agree?

8       A.   Yes, but I think we are -- I want to make sure we are  
9           not confused on how this is from a developer's  
10          perspective, the addition of the News Partner Program.  
11          This is also true of what we just talked about with  
12          Video Partner Program, so the same categories exist.

13               If you are a news publication, The Economist, you  
14               have choices of what you want to do with your business.  
15               One choice is you can make a free app and make all your  
16               money from advertising and Apple would make no  
17               Commission on that. You could make an app where you  
18               charge outside the app and not inside the app. That is  
19               the Reader Rule, and again Apple would get nothing and  
20               there would be no charging in the app. You could have  
21               charging in the app for a one-time fee or  
22               a subscription, and then Apple gets 30% of the  
23               subscription in the first year and 15% on the subsequent  
24               year and we added, with the program here, one more  
25               choice for these developers. You could choose to get

1           15% right upfront if you did extra work to integrate  
2           with the news application and make it easy for users.

3           So these are just a range of business choices that  
4           we created for developers and it is up to them on which  
5           one of these they would like to take advantage of.

6       Q.   Thank you.

7           Let us go now back to your witness statement,  
8           please, at page 57, so this is {B2/5/57}.

9           It is the bottom of the page that we want. We are  
10          going to talk now about the Small Business Program. Do  
11          you have that?

12       A.   Yes, I am there.

13       Q.   Thank you. What you say here is:

14           "After an extended period of consideration, in  
15           January 2021, Apple launched the App Store Small  
16           Business Program, which reduced the Commission paid by  
17           certain developers ..."

18           Then there is a press release. It may be helpful  
19           actually to turn that up.

20           It is under tab 67 for you and it is {D1/1003/1}.

21          Sorry, it is volume 5.

22       A.   Yes, thank you, I am trying to be quick for you.

23       Q.   I am trying to help you.

24       A.   You are. I appreciate it, thank you. Tab 67.

25       Q.   Tab 67 and this again I think comes from your own

1           exhibit, which is why it has a different tab name on the  
2           first page, which we can safely ignore.

3       A.   Thank you.

4       Q.   If we go to the second page, {D1/1003/2} would you mind  
5           just scrolling to the very top of the second page.  We  
6           can see this is the:

7                 "Apple announces App Store Small Business Program."

8           If we go now to the second page, we can see in the  
9           third line there, the first full paragraph:

10                "The App Store Small Business Program ... will  
11           launch on 1 January ..."

12                Is that correct?

13       A.   Yes.

14       Q.   If we scroll down, we can see what the terms of it are  
15           at the bottom of that page, same page for you,  
16           Mr Schiller.  It says in the bullet points, that is all  
17           we need here:

18                "Existing developers who made up to US\$1 million in  
19           2020 for all ... their apps, as well as developers new  
20           to the App Store, can qualify for the program and the  
21           reduced Commission.

22                "If a participating developer surpasses the  
23           US\$1 million threshold, the standard Commission rate  
24           will apply for the remainder of the year."

25                So you have to be below the threshold to get in, but

1           if you tip over the \$1 million threshold, you are back  
2           into 30%; is that right?

3       A.   For the over \$1 million transaction --

4       Q.   For the sales over 1 million.

5       A.   Correct.

6       Q.   It is not a retroactive charge?

7       A.   That is correct.

8       Q.   One thing you say in your witness statement, if we go  
9           back to that at {B2/5/58}, is you say:

10               "A very large ..."

11               This is 58(b).

12       A.   Yes, I see that.

13       Q.   "A very large percentage of developers who distribute  
14           paid apps or offer in-app purchases are eligible ..."

15               Our expert economist Dr Singer has calculated that  
16           this is just 3.2% of consumer spend, so it may be a lot  
17           of developers but it is not much money. Do you have any  
18           reason to doubt that?

19       A.   I do not know if that is correct or not.

20       Q.   That is fine.

21               In your statement, you do not give any indication of  
22           the reasons for this program. Can I go back now,  
23           please, to {D1/968/1}, which is -- I have just lost the  
24           tab number momentarily. Yes, it is tab 63, which we  
25           have been looking at already this afternoon. As we have

1       discussed, I am afraid at some length, there is a lot of  
2       discussion here of the Wall Street Journal article. If  
3       we look above that, because we have looked at that, just  
4       looking at the top half of the page, you, Phil Schiller,  
5       send the email to Tim Cook:

6               "FYI."

7       Tim Cook's response is -- apart from a criticism of  
8       some detail he thinks might be inaccurate:

9               "What is the latest on our ability to execute the  
10       Commission change by January 1?"

11       As we have just seen, January 1, 2021 is the Small  
12       Business Program. Your reply is:

13               "I have a meeting this afternoon ... to discuss the  
14       proposal and input from the anti-fraud team. I will let  
15       you know where we are ..."

16               Is this a reference to the Small Business Program?

17       A. I believe it may be.

18       Q. Would you agree that part of Mr Cook's response to this  
19       discussion of criticism from developers and from  
20       regulators is to check on the progress of the Small  
21       Business Program?

22       A. No, I do not think that is fair. This is an article  
23       being published about our Commissions at 30%. He  
24       already knew we were working on a program for small  
25       business developers that would affect most developers to

1 be at 15% and he wanted to know the status of that.

2 I think it is relative to the topic, but it does not  
3 imply the way you said it.

4 Q. The topic is a lot of criticism, in part because of the  
5 level of the Commission, is it not?

6 A. That is the -- the subject of the story, but that does  
7 not then mean that that is what his sentence means.

8 Q. Let us go now to the *Epic v Apple* judgment, which for  
9 you is in volume A2, tab 16. For the EPE it is  
10 authorities bundle 5, tab 7. {AB5/7/1}. Can we go,  
11 please, to page 36. Sorry, I may have the wrong part.  
12 It is page 36 electronically or it is the small  
13 numbering on the document itself 35. {AB5/7/36} Do you  
14 have that, Mr Schiller?

15 A. Yes, I am open to that document.

16 Q. Thank you. Let us see what is said in the  
17 second-to-last paragraph. This is the judge, who  
18 summarises some evidence:

19 "Apple's implementation of the Small Business  
20 Program was spurred, in part, by the COVID-19 pandemic.  
21 However, Mr Cook also admitted that 'lawsuits and all  
22 the rest of the stuff' was 'in the back of [his] head'.  
23 Mr Schiller similarly testified that the Small Developer  
24 Program began with a lot of 'commentary' about the  
25 'App Store's Commission level', but was pushed over the

1 edge by the pandemic. He too expressly acknowledged  
2 that the current lawsuit helped 'get it done' along with  
3 'scrutiny and criticism ... from around the world'."

4 That scrutiny and criticism is both regulators and  
5 indeed complainants like we just saw in the email, would  
6 you agree?

7 A. Well, I think both regulators and some of the press are  
8 writing stories about that, yes.

9 Q. So that was, as it says here, at least part of the spur  
10 for the Small Business Program?

11 A. Not for the program. As I said, for getting it done.  
12 I had been working with the team for a few years on the  
13 program and it was complicated and we just weren't  
14 getting it done and I think as I state both the pandemic  
15 and the pressure on developers because of the pandemic  
16 as well as some of the public discussion of it helped me  
17 to push the team to get the work done so that it was  
18 completed.

19 Q. Just one moment, please, Mr Schiller.

20 Can we go now to tab 61 in your bundle, which is  
21 {D1/931/1}. That is bundle A5 for you. Thank you.  
22 Again we will not read out anything confidential. This  
23 is another App Store presentation of the kind we have  
24 already seen but do you think you would have seen this  
25 at the time? It is for financial year 21 focus.

1 A. I may have. I do not recall.

2 Q. Obviously whoever is presenting it thinks they are  
3 presenting it to Tim and Luca, which presumably is  
4 Tim Cook and Luca Maestri?

5 A. Yes.

6 Q. What we will see is if we go, please, to page 2,  
7 {D1/931/2} you see financial year 20 review, financial  
8 21 focus areas.

9 At the bottom of the page, whoever it is who is  
10 speaking to this says:

11 "I wanted to take a moment to recognise the unique  
12 and challenging times we have all been living through  
13 these past ... months."

14 Of course.

15 If we go now, please, to page 10, {D1/931/10} now we  
16 are getting into confidential material which I am not  
17 going to read out. Anyway, there is a large number in  
18 a large box, both large in typeface and large in  
19 numbers, and that obviously describes underneath what  
20 kind of thing it is. Then there is some commentary  
21 underneath it. Could we please read that, in particular  
22 if we look at the last two lines of that. I do not know  
23 why this is confidential, but rather than have  
24 an argument, I will not read it out.

25 A. All right, I have read that.



1 Q. You have read it, thank you.

2 Then if we look at the next slide, please, which has  
3 got a bit mangled, probably because it is a moving  
4 graphic, I expect, but we can see the effect of it in  
5 the text underneath.

6 Is the reality not that the period with COVID was  
7 a real success story for the App Store?

8 A. It was, which has nothing to do with the comment I made  
9 about the Small Business Program. The input to get it  
10 done was developers who were feeling pressure in their  
11 business due to the pandemic. I think you are aware  
12 there were many kinds of businesses that were failing  
13 during the pandemic, whether they are in the service  
14 business or other in-person businesses and other things  
15 that were -- we all learned about.

16 Q. Thank you.

17 I just have two more short topics to deal with and  
18 the first one is one where I want to see if you can  
19 help, even though you have not addressed it in your  
20 witness statement.

21 Are you aware that in 2015 there was a change to the  
22 price tiers in the App Store in the UK following  
23 a change to EU VAT law?

24 A. I do not recall.

25 Q. Okay. So you would not be able to help at all with the

1 thinking that went into it at the time?

2 A. No. I certainly review all price tier changes, I and  
3 others approve them on a periodic basis. I understand  
4 the general process, but any specific individual change,  
5 I can't recall.

6 Q. Okay. Just give me a moment. (Pause)

7 So you would not be able to assist with the details  
8 of what happened on that particular occasion?

9 A. I do not believe so.

10 Q. Okay, thank you. Well, I will not ask you any more  
11 about that in that case.

12 Just the final thing I wanted to deal with very  
13 briefly is if we go back to your witness statement,  
14 please, at page 10, paragraph 38, {B2/5/10} which we  
15 already looked at, you say -- do you have that up?

16 A. I do.

17 Q. Thank you. If we just look at the last four lines,  
18 which we have not looked at before:

19 "Apple does not in the ordinary course maintain  
20 records which allocate specific costs incurred in the  
21 development of specific products. On the contrary,  
22 there are many joint costs ..."

23 Then if we now go, please, to page 23. {B2/5/23}

24 A. Yes, I am there.

25 Q. Thank you, you are a little ahead of me. If we look at

1 paragraph 80, you say:

2 "There is no reliable way to identify all costs  
3 associated with running the App Store."

4 Again you say they are incurred jointly.

5 Yesterday you said that you are not in the  
6 accounting or finance team. That is correct, is it not?

7 A. That is correct.

8 Q. You probably know that we have been exploring these  
9 matters with Mr Parekh, the CFO?

10 A. Yes.

11 Q. Indeed there is going to be expert evidence on this as  
12 well --

13 A. Okay.

14 Q. -- next week. But I am simply going to put my case to  
15 you that we do not accept the propositions that you have  
16 advanced here.

17 A. I am sorry about that. I have a great deal of knowledge  
18 of this, of why I said what I said, and it involves the  
19 fact that I worked at Apple previous to 1997, before  
20 Mr Jobs came back, where we did maintain separate P&Ls  
21 for divisions at Apple and we did try to work under  
22 a model where we had much more detailed per-product  
23 accounting of costs across the company to generate  
24 profits and loss, and I was not in finance or accounting  
25 then either, but I had to work in a system where we had

1 things like chargebacks, we had separate sales and  
2 marketing teams per division and people fought over  
3 those people, and separate engineering, and we were  
4 highly ineffective. In fact, I believe, we lost -- the  
5 last year of that system we lost \$2 billion as  
6 a company.

7 So when Mr Jobs came back and merged us into one  
8 P&L, I have tremendous knowledge on the change it made  
9 in how we work and the reality of how we became one P&L  
10 for the company and how that benefited the methodologies  
11 we have today.

12 So I have, from my business perspective, I believe,  
13 a great deal of knowledge and experience of both when we  
14 did attempt to do it and why we changed and how that  
15 change affected the company.

16 Q. I will not go back through this with you, but we did in  
17 fact put to Mr Parekh a number of P&Ls for the App Store  
18 from Apple's disclosure.

19 A. I, as the person managing the business of the App Store,  
20 never review (inaudible) and P&Ls. I do not look at  
21 profit; I look at billings and downloads and accounts,  
22 but not profits.

23 MR WARD: Thank you. Just one moment.

24 Thank you very much, Mr Schiller. We have no  
25 further questions for you.

1 A. Thank you very much.

2 Re-examination by MS DEMETRIOU

3 MS DEMETRIOU: Mr Schiller, just a few short topics.

4 Just thinking back to yesterday's questions, you  
5 were asked some questions about a switching cost, do you  
6 remember, and consumer lock-in, and it was suggested to  
7 you by Mr Hoskins that it is expensive for iOS Device  
8 Users to switch to Android. Do you remember that  
9 discussion?

10 A. Yes, I do.

11 Q. It was suggested that Apple had a strategy of making it  
12 difficult. The documents that you were shown by  
13 Mr Hoskins on that issue came from 2013 and I want to go  
14 back to one of them. It is at {D1/235/1}. I do not  
15 have your references, I am afraid, so we are just going  
16 to be able to look at it on screen. I am sorry, because  
17 I do not know the hard copy references to your bundle.  
18 It may not be in there.

19 A. That is okay, I see it on the screen and I recall this  
20 document from yesterday and previous.

21 Q. Thank you. It is the Goldman Sachs note and it looked  
22 at one user's switching cost from iOS to Android.

23 If we go to page 3 and if you look at the first  
24 bullet, you can see that the first bullet identifies the  
25 explicit switching costs as being almost \$80. Do you

1           see that?

2           A. I do.

3           Q. Can you see that one component of that was  
4           a \$25 subscription to iTunes Match?

5           A. Yes.

6           Q. What is that, first of all?

7           A. It was a previous system under iTunes. iTunes as  
8           a music program was an application where you bought  
9           individual songs, so it was not a subscription program,  
10          it was not a streaming program as we have now with  
11          Apple Music. So in those days you would buy a song or  
12          buy an album.

13                 If you had already purchased an album, you could  
14          have iTunes match your music to that album and you would  
15          not have to pay for them individually because you  
16          already bought it, you had the CD. It is a program that  
17          the iTunes team worked on with music companies. The  
18          rights to be able to do that cost \$24.99, and we  
19          remitted some amount of that to music companies, so this  
20          was a feature that we used to have for matching music  
21          that you did not have to pay for individually, which is  
22          all of it irrelevant now in the streaming music days.

23          Q. So is it a cost that someone switching today would need  
24          to incur?

25          A. No.

1 Q. The note also refers to about \$50 worth of paid apps  
2 that need to be replicated on Android. Do you see that?

3 A. Yes.

4 Q. So, at the end of that first bullet point.

5 I want to take you now to a chart in the expert  
6 report of Prof Hitt, who is one of the experts retained  
7 by Apple in these proceedings {C3/4/43}. I will just  
8 give you a moment to look at the chart. In fact,  
9 I think one of my learned friends showed you this during  
10 your cross-examination. You can see that the chart  
11 shows different transaction types: free download, paid  
12 download and IAP over time, yes?

13 A. Yes.

14 Q. Can you comment, please, on what has happened to the  
15 prevalence of apps that you had to pay to download since  
16 2013?

17 A. They've become extremely small to the point of almost  
18 not visible.

19 Q. So can you comment on how the cost of replacing apps for  
20 someone switching to Android might have developed since  
21 2013?

22 A. I believe, for the vast majority, it has minimised to  
23 near nothing. Applications either are not paid for  
24 upfront or they are available on both and you can log in  
25 and get what you already paid for because now there are

1 cross-platform Multiplatform Rules on all platforms. So  
2 I think that category has, for reasonable assumption,  
3 gone away.

4 Q. Thank you.

5 You gave evidence yesterday about Apple's efforts to  
6 encourage developers to use subscriptions and the  
7 question for now is: do subscriptions lock users into  
8 iOS or can they be carried over to Android when  
9 switching?

10 A. The majority of apps that I am aware of that offer  
11 subscriptions are offered on both iOS and Android, and  
12 all of the ones I am aware of require the user to have  
13 an identity in their app and tie that identity to their  
14 subscription, so they can use that subscription on any  
15 platform they want to use the app on.

16 Q. Thank you.

17 So, as a general matter, can you comment on the  
18 position in relation to switching now as compared with  
19 2013, and so by that I mean how relatively difficult or  
20 easy is it now compared to 2013?

21 A. It is my opinion that over time, whatever barriers no  
22 matter how small they may be to switching have  
23 diminished over time rather than increased, that for the  
24 most part the things that you pay for, there are easier  
25 ways to pay for them that are multiplatform now, that



1 more developers have moved to subscription models and  
2 want those subscriptions to work wherever the user is,  
3 and that many of those applications also have log-ons so  
4 that you can get on, and even if none of that were true,  
5 the user could cancel the subscription and not have to  
6 pay if they did not want to, if they valued the switch.

7 So I think, for the most part, switching has gotten  
8 easier for the user over time.

9 Q. Thank you. That was topic 1. I am moving to topic 2.

10 Can we go to yesterday's transcript at page 75  
11 {Day6/75} and it is the very bottom of the page that  
12 I want to look at. It should come up on the screen for  
13 you.

14 You were asked yesterday whether the one document  
15 you referred to in your statement that discussed  
16 Microsoft Xbox and Nintendo was the best document that  
17 you could come up with to support your point that Apple  
18 competes with those platforms, and if you look at the  
19 bottom of the page you can see the question. So you had  
20 referred to one document and then Mr Hoskins said:

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

25 "Answer: This is the one I reference when I am

1 saying that ...

2 "Question: So this is the best one you could come  
3 up with to support your point?

4 "Answer: I am not sure. I think if I thought about  
5 other documents ... I could see what else I could find."

6 Obviously we do not have time to go through them  
7 all, but I want to show you a couple of documents and  
8 see if they are the sorts of documents you had in mind  
9 when you said that.

10 If we can go to {D1/85/1}, please, we can see from  
11 page 1, you looked at this document yesterday. That it  
12 is the transcript of the iPhoneOS 4 launch. If we go to  
13 page 11 and to the very bottom of the page, could you  
14 read to yourself the bottom paragraph, the final  
15 paragraph on that page.

16 A. Yes, I have read that.

17 Q. Do you have any comments to make about that? Is that  
18 the sort of document you had in mind?

19 A. Yes, that is an example of many mentions of competitors  
20 that have occurred through the years that we could find  
21 if we were doing a search for them whether it is in  
22 public events, whether in presentations, whether in  
23 analysis documents, whether in emails, I am sure we  
24 would find many examples.

25 Q. Thank you, Mr Schiller.

1           Let me just show you one more, {D1/732/1}. We can  
2           see from the first page that this is an Apple Arcade  
3           worldwide pricing slide deck. Can you first of all  
4           explain to the Tribunal what is Apple Arcade?

5       A. Yes. Apple Arcade is a service run on the App Store.  
6           We have many, many games users can get directly on the  
7           App Store for downloading and paying for games. Most of  
8           all those games have become what is called freemium,  
9           they are free to download and then the user pays with  
10          in-app purchase.

11          We saw an opportunity with some game developers that  
12          they wanted to offer their games without having to use  
13          freemium, so people could just play and not worry about  
14          constantly paying for things while they play, so we  
15          built a service called Apple Arcade, where developers  
16          can be in this offering, the user pays a flat monthly  
17          Commission and then can play all the games without  
18          having any in-app purchase requirements. That is called  
19          Apple Arcade. So it is a service we run. The games are  
20          all from developers on the App Store.

21       Q. Thank you. I would like to turn to page 2 {D1/732/1},  
22          please.

23       THE CHAIRMAN: What is the date of this document? Do we  
24          have a date for this document?

25       MS DEMETRIOU: I will come back to that, sir.

1           Could I just ask you, Mr Schiller, to read page 2 to  
2           yourself. (Pause)

3       A. I have read that.

4       Q. I am looking, for example, under "Approach", you see  
5           that there is first main bullet that starts "Proposed  
6           prices" and there are a number of sub-bullets and  
7           I would like you to explain briefly how Apple went about  
8           choosing a price for the Apple Arcade subscription.

9       A. The team working on the proposal for pricing considered  
10          prices compared to competitive services on competitive  
11          products, and there are a bunch mentioned that are in  
12          pink, so I will not name them out loud --

13      Q. Yes.

14      A. -- but we did compare that pricing to other devices and  
15          services.

16      Q. Thank you very much.

17           Sir, the date is 20 August 2019 of this document.

18      THE CHAIRMAN: Thank you.

19      DR BISHOP: May I ask a question about this?

20      MS DEMETRIOU: Of course.

21      DR BISHOP: The number of games that is given, I cannot  
22          (inaudible), the number of games that is given there,  
23          these were games from partners, not Apple-owned games;  
24          is that right?

25      A. None were from Apple. They were all from developer

1           partners.

2       DR BISHOP: Did developers want to get into this program or  
3           did they -- was there competition to get in? Was  
4           there -- I mean, did you have to ration the number in  
5           some way?

6       A. It is a little complicated, sir. First, the whole idea  
7           started with some developers who wanted us to create  
8           something like this and work with our team, so  
9           developers wanted this.

10           There are -- part of the program is that Apple has  
11           a relationship with helping the developer create the  
12           game, so we work together on it. We get a number of  
13           submissions and proposals from developers. Not all are  
14           accepted, some are, some aren't, so there is competition  
15           for it in that way. But we also go out and pitch ideas  
16           to game developers and say: would you like to be in  
17           this? Here's a great idea and here's the economics from  
18           being in it.

19           So that is my long answer, sir, for explaining there  
20           are both. There are developers competing to get into it  
21           and then we are out trying to suggest to developers that  
22           it would be great for them to join in.

23       DR BISHOP: And what about the fee the user pays, the  
24           consumer pays? Is that all just Apple revenue or is  
25           that in some sense shared or is there a sharing formula?

1       A. There is a formula. The way it is structured -- and  
2       I will not be specific because I believe it is  
3       confidential on the numbers -- but the developer -- we  
4       pay a fee for the cost of developing the game for most  
5       of them -- I say "most" because a few have already been  
6       developed, but for the majority that are not, they are  
7       original to the service, and we pay the entire cost to  
8       develop it all from Apple.

9       DR BISHOP: Oh.

10      A. Then we charge the user a monthly fee, I believe it is  
11      6.99 per month per family, that is a family rate, and  
12      then the developers can earn an additional amount beyond  
13      the development cost as a bonus pool, so we set up  
14      a certain amount of that user revenue goes back into  
15      a pool, and depending on the popularity of their game,  
16      they'll earn a pullback, and sometimes a quite large  
17      sum.

18      DR BISHOP: I see. It is quite complex and a special study  
19      in itself.

20      A. It is, but some of the benefits -- families love it  
21      because there is no in-app purchasing to worry or think  
22      about, to teach your child about. No advertising is  
23      allowed, so nobody is making money from ads and your  
24      kids aren't getting ads, and they've all been approved  
25      by Apple to make sure they are safe and good for

1 families.

2 DR BISHOP: Thank you.

3 A. You are welcome.

4 MS DEMETRIOU: Thank you.

5 Mr Schiller, a very short next topic. If we could  
6 go to {D1/644/28} -- so again this will come up on your  
7 screen -- do you remember that you were asked about this  
8 yesterday and Mr Hoskins suggested to you that the  
9 reference to [Redacted] was to in-app purchases, do you  
10 remember that?

11 A. Vaguely. I am sorry, I do not remember the exact  
12 discussion back and forth on that.

13 Q. Sorry, I just read out something in pink which  
14 I shouldn't have read out. If we look at the last  
15 bullet point and we see at the end -- we see then "not  
16 just the app itself but", and then there is a phrase  
17 which I just read out, and it was suggested to you that  
18 that meant in-app purchases. What you said was that you  
19 did not see it that way and you wondered whether it  
20 might have been a reference to something else called  
21 In-App Events. Do you remember that?

22 A. Yes.

23 Q. Then if we go forward two pages to page 30 {D1/644/30},  
24 which you were not shown, do you see that slide? I just  
25 wondered whether in light of this slide, there was

1 anything else you wanted to say about this?

2 A. Well, I think that just validates what I was stating  
3 yesterday, that my interpretation of that content about  
4 what Apple's involvement is in the process later on was  
5 referring to this concept called -- that we were  
6 creating called In-App Events, where we could more  
7 directly help the developer publish and market to users  
8 what are called In-App Events and that those can then be  
9 used to help generate more revenue for developers and  
10 that that was the concept we were working on.

11 Q. Thank you, Mr Schiller.

12 This is the last topic and it arises from something  
13 today, so if we can go to today's [draft] transcript at  
14 page 21, and you were asked about a publication on  
15 Apple's -- sorry, we need to -- it is not up on the  
16 screen, so today's transcript, page 21. This morning's.  
17 Thank you. Yes, that is it.

18 You were asked about a publication on Apple's  
19 website on May 29, 2019. Can I just ask you just to  
20 refresh your memory of the topic. So if you read this  
21 page and then on to page 22, line 14. Perhaps when you  
22 finish this page, just indicate and we can turn to the  
23 next one.

24 A. Yes, we can turn to the next one. (Pause)

25 Yes, I have read that page.



1 Q. Mr Ward asked you about how the document was prepared  
2 and he took you to an email exchange you had with  
3 Ms Huguet. We can see that referred to there at  
4 line 11. Do you see that? You were taken to an email  
5 thread.

6 A. Yes.

7 Q. This continues, if we go over the page, to page 23. Can  
8 you just remind yourself of all of this.

9 A. Okay, I see that.

10 Q. Then if we go on to page 24, perhaps read this page and  
11 then 25 up to line 10 so you have the whole of the  
12 evidence. (Pause)

13 A. Yes.

14 Q. And then if you go up to line 10 of page 25, please.  
15 (Pause)

16 A. I have read that.

17 Q. So you will see that the point that Mr Ward was putting  
18 to you was that Ms Huguet had suggested removing some  
19 text from the draft because it was about Apple earning  
20 money from the App Store, and I just want to take you to  
21 the email from Ms Huguet that Mr Ward put to you,  
22 {D1/705/7} at the bottom of the page.

23 A. Would you like me to open it in the binder?

24 Q. I think it is probably easier just to keep it on screen,  
25 if that is okay with you.

1 A. Okay.

2 Q. You see the email from her at the bottom of the page.  
3 You were shown this by Mr Ward. It goes over onto the  
4 next page, so perhaps we can put the next page up too.

5 You see at the top of that page she says:

6 "... I again removed at the end the point about the  
7 app store earning the most money."

8 A. I see that.

9 Q. You said that you could not recall the exchange. Now,  
10 Mr Ward did not show you any of the drafts of this  
11 statement and I would like to show you a draft just to  
12 see if it assists. If we look at a draft, which is at  
13 {D1/701/1}, please, this is an email from you to  
14 a series of people including Ms Huguet; do you see that?

15 A. Yes.

16 Q. And the subject is, "Updated App Store Brief", and then  
17 we see that you said this:

18 "For those interested, the previous App Store Story  
19 document that was sent around at the end of the last  
20 week has been updated and follows below.

21 "It includes numerous tweaks (thanks everyone for  
22 the edits) and a draft of an additional 4th section  
23 called 'We complete everyday'. I hope this new section  
24 helps communicate some simple and important points about  
25 the fierce competition we face in the smartphone and

1 App Store space."

2 The text that follows is quite lengthy, and I really  
3 want to show you page 4 {D1/701/4} under the heading,  
4 "We complete everyday", which is at the bottom of the  
5 page. It looks from your email that this is  
6 a section you added in. Could you just read that,  
7 please.

8 A. Yes, if we could go to the next page.

9 Q. If we could go to the next page {D1/701/5}. (Pause)

10 We can stop before "Conclusion". (Pause)

11 A. Yes, I have read that last part.

12 Q. So that last part, exactly, is the part that I wanted to  
13 direct your attention to. If we then go to the version  
14 of the document that was actually published, this is at  
15 {D1/1771/1}, Mr Ward showed you parts of this document  
16 but not the part relating to the questions he asked you  
17 about Ms Huguet's email. If we go to page 9 {D1/1771/9}  
18 of this document at the bottom:

19 "We believe competition makes everything better ..."

20 And then over the page {D1/1771/10}:

21 "We also care about quality over quantity, and trust  
22 over transactions. That's why, even though other stores  
23 have more users and more app downloads, the App Store  
24 earns more money for developers. Our users trust  
25 Apple -- and that trust is critical to how we

1           operate ..."

2           So you see the point being made there the App Store  
3           earns more money for developers.

4           If we return to the question that Mr Ward was  
5           putting to you and go back to your email exchanges with  
6           Ms Huguet, so {D1/705/1}, do you see that at 3.36 -- so  
7           I think we have to go down a bit, please -- it may be  
8           that my reference is wrong, just give me a moment.  
9           {D1/705/7}, thank you.

10          So your email at 3.36, you say:

11          "Two quick notes on this version."

12          Can I ask you to look at the second of those notes:

13          "I think it would be good to keep the section at the  
14          end that says we 'care about quality over quantity and  
15          trust over transactions'."

16          So having seen the text of your draft and the  
17          document as released, can I ask you if you want to say  
18          anything more about Mr Ward's question? He asked you if  
19          you recalled the exchange you had with Ms Huguet, and  
20          looking at the full set of documents relating to this  
21          now, what do you, to the best of your recollection, say  
22          was going on here?

23          A. Well, I believe it validates what I said earlier, which  
24          was that the comment about the section that she did not  
25          want to include about the App Store making money was in

1 fact the section that I had previously included in the  
2 draft where we talked about how the App Store, while  
3 being smaller than the Android Google Play Store, earns  
4 more money for developers, and that was the point we  
5 were discussing at that section that I was being  
6 questioned on.

7 MS DEMETRIOU: Thank you very much, Mr Schiller. I do not  
8 have any further questions in re-examination. It may be  
9 that the Tribunal has some questions for you.

10 Questions by THE TRIBUNAL

11 MR FRAZER: Mr Schiller, I just have one short question to  
12 make sure I have understood your evidence correctly and  
13 it is on this morning's [draft] transcript at page 40.  
14 Waiting for that to come up. Thank you. You can see  
15 round about line 15, we were talking about the program  
16 fee of £79 paid by developers, which is the only thing  
17 they pay if their apps were not paid-for apps or there  
18 was no in-app purchase. Mr Ward said:

19 "Question: You provide all of this, all of these  
20 benefits [that was the tools and the other benefits] to  
21 free apps for £79 per developer for the reason we  
22 already discussed, that the free apps help you sell  
23 devices, do they not?"

24 And your answer was:

25 "Answer: Yes. Not only that, there are other

1 reasons as well, but that is included."

2 I wonder if you could just expand on what those  
3 other reasons were as well, please.

4 A. Yes, sir.

5 When we created the program for developers and for  
6 the App Store, we created the whole infrastructure,  
7 number one, to help developers to create better apps  
8 than were possible without all the APIs we created and  
9 all the tools. They may also benefit that users want  
10 our products but we also like enabling developers and  
11 helping them to do great things, even if it cannot be  
12 shown that it drives device sales of our product. We  
13 care about that whole ecosystem just being better.

14 We care about privacy and security for users, so  
15 much of what we have built and we have made available to  
16 developers helps protect them in their business to make  
17 sure there aren't fraudulent transactions on them, help  
18 protect our users from fraudulent transactions.

19 Again, it could be argued that there is a connection  
20 between that and device sales, but it is not what is in  
21 our mind. We think there is actually a benefit to  
22 protecting our users and keeping them safe. We think  
23 there is a benefit to helping developers create better  
24 experience for users, even if it does not drive up  
25 sales. It may, but that is not the only reason. They

1           are not always correlated.

2           I think we have also tried to create whole new  
3           markets and opportunities for developers, even if it  
4           doesn't drive direct sales of our business. For  
5           example, there are whole classes of business that have  
6           created because of the App Store things like Airbnb and  
7           new ways to do lodging. Apple gets no revenue from any  
8           of those developers. They are physical transactions.  
9           We have talked about Lyft and Uber. So again, they are  
10          physical transactions, so Apple gets no benefit from  
11          those.

12          Whether they drive any device sales, we have never  
13          tried to measure or correlate. If they did, great, but  
14          even if they did not, we still want to do that and  
15          enable those capabilities.

16          So I think there are many reasons for these programs  
17          and these tools and making them available to all  
18          developers, whether or not we can connect those to our  
19          own business. We have never even attempted to ask that  
20          question.

21       MR FRAZER: Thank you, that is clear.

22       THE CHAIRMAN: Thank you very much, Mr Schiller. That is  
23          your evidence finished. It's been very helpful. You  
24          are released as a witness.

25       THE WITNESS: Thank you very much.

1 (The witness was released)

2 THE CHAIRMAN: Ms Demetriou, what happens next?

3 MS DEMETRIOU: Mr Federighi is not available this afternoon  
4 because we were told yesterday by Mr Hoskins that  
5 Mr Ward had said he needed the full day.

6 THE CHAIRMAN: Yes.

7 MS DEMETRIOU: So there was no message that was sent through  
8 to suggest that Mr Federighi might be needed so he is  
9 not available this afternoon.

10 I understand from my learned friends that there is  
11 a prospect that they may not need the full day with  
12 Mr Federighi tomorrow, in which case Mr Howell can start  
13 tomorrow.

14 THE CHAIRMAN: So that is the plan. If we run a bit short  
15 tomorrow we will see if we can make a start with  
16 Mr Howell?

17 MR KENNEDY: I think that is quite likely, sir.

18 THE CHAIRMAN: There is a little bit of -- I am looking at  
19 the timetable here. Obviously we have got them all  
20 back, we have the experts back on Monday and Tuesday,  
21 but I am particularly bothered that if Mr Howell takes  
22 longer for whatever reason, then we just end up being  
23 behind from the start next week, which is not very  
24 great. So I think if we can do that, it is helpful.

25 MR KENNEDY: Absolutely. We will endeavour to do so, sir.



1 THE CHAIRMAN: Of course, it all rather depends on how long  
2 you take. Who is doing that tomorrow?

3 MR KENNEDY: Me, sir.

4 THE CHAIRMAN: You are in charge of that. Okay, that is  
5 good.

6 Just so you know, did I say I will not be able to  
7 start until 11 o'clock on Thursday, so you have got  
8 that, but if we find ways to make that time up, we will  
9 find it somewhere during the day, but I do not think we  
10 want to sit particularly long on Thursday afternoon,  
11 maybe be a bit longer, but certainly not past 5 o'clock,  
12 just so that is clear.

13 Good. Is there anything else we need to do today?  
14 No?

15 MR KENNEDY: Sorry, sir, a question from behind me. Is it  
16 an 11.00 or 11.30 start on Thursday?

17 THE CHAIRMAN: It is an 11 o'clock start on Thursday.

18 MR KENNEDY: Thank you, sir.

19 THE CHAIRMAN: Otherwise, it is 10.30 tomorrow.

20 (3.04 pm)

21 (The hearing adjourned until 10.30 am  
22 on Wednesday, 22 January 2025)

23

24

25

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