TechScape: Why the EU is taking a €500m bite out of Apple

Publication Date: 2024-02-20

Author: Alex Hern

Section: Technology

Tags: Technology, TechScape newsletter, European Commission, Europe, European Union, Apple, Music streaming, features

Article URL: https://www.theguardian.com/technology/2024/feb/20/techscape-european-commission-500-million-euro-fine-apple-music-streaming

Another week, another clash between Apple and European regulators. According to the Financial Times, the company is facing a massive fine for alleged anti-competitive conduct in its music streaming business. From its story: The fine, which is in the region of €500mn and is expected to be announced early next month, is the culmination of a European Commission antitrust probe into whether Apple has used its own platform to favour its services over those of competitors. The probe is investigating whether Apple blocked apps from informing iPhone users of cheaper alternatives to access music subscriptions outside the App Store. The process dates back to a 2019 complaint lodged by Spotify. From our story at the time: Apple's App Store is an important distribution platform for Spotify. But Apple takes a 30% commission on all sales made through the App Store – including music streaming subscriptions – which Spotify and many other third-party app developers have long complained is an unfair "tax". "Apple requires that Spotify and other digital services pay a 30% tax on purchases made through Apple's payment system, including upgrading from our free to our premium service," said Daniel Ek, Spotify co-founder and chief executive, in a blog post. "If we pay this tax, it would force us to artificially inflate the price of our premium membership well above the price of Apple Music. And to keep our price competitive for our customers, that isn't something we can do." For more on the fine itself, our Dan Milmo has an explainer. In the years since, the complaint has narrowed somewhat. Apple declined to respond directly to the FT's report, saying it won't comment on speculation, but pointed to a decision by the European Commission last year to drop the "tax" aspects from the investigation launched by Spotify's complaint. In the revised statement of objections, the key harm was no longer the 30% fee extracted from apps that use in-app purchases, or the requirement to offer them in the first place, but simply the ban on telling users that other payment options exist. "We're pleased that the Commission has narrowed its case and is no longer challenging Apple's right to collect a commission for digital goods and require the use of the in-app payment systems users trust," Apple said at the time. Those so-called "anti-steering" rules have been tested by regulators around the world, and in various jurisdictions Apple has been hit with formal limits on its ability to impose them. But those limits rarely go as far as competitors such as Spotify would like, since Apple has hit on a canny wheeze: if forced, it allows companies to direct users to alternative ways of paying, and then charges a commission anyway. In some cases, that new commission has been an eye-watering 27% of the cost, with the justification that the 3% saving on the in-app purchase commission reflects the fact that Apple isn't paying for credit card processing directly. 'Now we're just haggling over the price' Assuming the fine arrives as predicted, Apple is unlikely to be too downhearted. The Digital Markets Act, which Apple and other “tech gatekeepers” have until 6 March to comply with, has already forced changes to its App Store that will almost certainly also fix any competition commission concerns about Apple Music unfairly competing with Spotify. As for the cash itself, €500m is nothing to be sniffed at, even for a company the size of Apple – but it it is a small fraction of the potential maximum, and an even smaller fraction of the company’s annual profits. In fact, there’s a chance Apple may walk away from the fine with its head held high. Each time it gets slapped with a regulatory action that leaves it the space to offer compromises such as the 27% commission for external purchases, it manages to hammer home one of its core points: that the real criticism isn’t high-minded points of principle, but simple haggling over fees. If complaints over Apple’s control of the App Store boil down to “we would like to pay less”, Apple then has an easier battle to fight than one in which it is truly forced to relinquish control of its platforms. Some critics have a deeper case to make. Spotify, for instance, has long complained about more granular aspects of Apple’s platform, from the fact that Apple Music is installed by default on the company’s devices to the way the platform holder gets to break its own rules regarding free trials (Apple, uniquely, can offer trials that end the second they are cancelled; all third-parties are required to offer access right up until the first bill would be due). For others, the points of principle are slim on the ground. Take Epic Games, which famously introduced its own payment process for Fortnite, resulting in Apple yanking the game from the App Store. The company already pays a significant cut to operate on games consoles, and runs its own app store for PC; its issues with Apple have always been through the lens of the amount of money it pays. Which is perhaps why Epic is also the perennial Apple critic most eager to take the dive into the EU-mandated world of alternative App Stores. You may recall the controversy over whether the company’s proposals amounted to “hot garbage” or a meaningful concession. Well, three weeks on, Epic Games has confirmed it will launch the Epic Games Store for iOS. It’s a bold move: the company will immediately be on the hook for €0.50 for every download of its store, and €0.50 more for each download of Fortnite through it after the first million. But it should make that back with a single “battle pass” purchase per user compared to where it would be if it stayed on the App Store – and, to give the company credit, it clearly believes there is a point of principle at stake. It is also freshly flush with cash, in case it does take a while to break even. The company is controlled by founder and CEO Tim Sweeney, with a 40% minority stake held by China’s Tencent, but earlier this month it took a $1.5bn investment from Disney to work together on a “games and entertainment universe”. Disney is a long-time ally of Apple, and its CEO was on Apple’s board until 2019, when competition between Apple TV+ and Disney+ rendered that untenable. We aren’t seeing the beginning of a messy breakup just yet, but perhaps even the house of mouse would like to pay a smaller cut to the world’s most valuable company. If you want to read the complete version of the newsletter please subscribe to receive TechScape in your inbox every Tuesday.