

Apple, Google App Antitrust Debate Sparks Senate Pile-On

By [Christopher Cole](#)

Law360 (April 21, 2021, 10:28 PM EDT) -- [Apple](#) and [Google](#) sought to fend off an onslaught of criticism in a [U.S. Senate](#) hearing Wednesday, as critics lacerated the tech giants for allegedly monopolizing smartphone app stores and one developer even alleged it faced pressure from Google before testifying.

"We have a huge monopoly problem here across the board," Sen. Amy Klobuchar, D-Minn. who chairs the Senate Judiciary Committee antitrust panel, said near the end of a volley of sharp questions from both parties over the phone software makers' role as market gatekeepers.

"This is a huge business and it's growing, and it's growing fast," Klobuchar said, pointing to figures showing the phone app marketplace will balloon to \$900 billion in revenue by 2023. "And there's nothing wrong with that, but what's wrong is that we don't have competition," she said.

Apple keeps a tight grip on iPhone software through its App Store, while Google controls program installs on Android devices through its Play Store. Both companies are facing a barrage of regulatory probes and [antitrust suits](#) over allegedly abusive fees and exclusionary conduct.

On top of that, Congress is signaling that a big change is coming — driven by a House investigation to the digital marketplace and sweeping antitrust bills, including a proposal from Klobuchar.

Apple and Google executives staunchly defended their business practices, telling senators they pour app store revenues into security features and work tirelessly to partner with software developers to provide a fair, healthy app ecosystem.

But app developer witnesses countered those arguments, sharing stories about how Apple and Google allegedly took advantage of gatekeeping power to extract outrageous commissions, undercut their apps' growth and treated their customers like the tech giants'

own.

They also claimed to be frequently intimidated, and in a surprise turn of events, one witness, from the dating service provider [Match Group Inc.](#), revealed that someone from Google contacted his company Tuesday night about his testimony the following day.

"They can hurt us in little ways. They can hurt us in big ways," said Jared Sine, Match's chief legal officer and secretary, who described the call to a Match representative as a threat of potential retaliation.

When Klobuchar pressed Sine to explain the call, he said Google was asking why the testimony was different from what Match said in an earnings call earlier this year. In the earnings call, Match said it was hopeful it could overcome the 30% commission for in-app purchases imposed by Google, he said.

Wilson White, Google's senior director of public policy and government relations, defended the company reaching out to Match, which he called "a very valued partner of ours." White said it appeared that Google "asked an honest question" about the difference in the testimony and the earnings call, saying, "I respectfully don't view that as a threat."

Treating app partners that way is "the antithesis of how we carry out business," he said.

Google's outreach over Sine's testimony came up again when Sen. Richard Blumenthal, D-Conn., asked why the call was made.

"It looks like a threat. It talks like a threat. It's a threat," he said, adding that it was an insult to the committee and "potentially actionable."

"That's the plan, Sen. Blumenthal," Klobuchar responded.

The senator has boosted her Capitol Hill profile by going after Big Tech, whose booming profits and dominance she has compared to the Gilded Age. She said America should be proud of what Apple and Google have achieved, but not at the expense of market entrants.

"I don't challenge the success, [but] you have to keep rejuvenating capitalism," she said.

During his testimony, Horacio Gutierrez, head of global affairs and chief legal officer at [Spotify](#), also attacked Apple's alleged anti-competitive conduct.

For example, he said, Spotify had to raise subscription rates for its streaming services to keep pace with Apple's 30% store fees, yet at the same time Apple was turning out its own music service that could compete at a lower rate, he said. Gutierrez also claimed that Apple doesn't apply its rules evenly to every developer.

"Apple's anti-competitive intent is clear," he said. "Legislative action is urgently needed to stop these illegal power grabs."

Apple was also on the defensive against Tile Inc., a small company that sells services to help consumers find lost items. Kirsten Daru, Tile's general counsel, said originally Tile had a symbiotic relationship with Apple.

But she said things turned sour as Apple used "patently unfair" tactics, including launching its own app that had Tile features and making changes to its operating system that "denigrated our user experience," and later refusing access to a chip that Tile needed to launch a new product.

The changes ended Tile's interoperability with Apple's operating system and forced customers to switch to Apple's competing products, Daru said. She said it seemed like Apple was turning its iOS into a "Hotel California," alluding to the Eagles' song lyrics that say, "You can check out anytime you like, but you can never leave."

Daru urged lawmakers to take decisive action, but cautioned that "regulating a giant like Apple won't be easy."

What Tile's witness described was closely linked to the concept of "Sherlocking," which came up several times in the hearing. Blumenthal said Apple's alleged penchant for imitating other companies' apps was nothing new.

Blumenthal noted that the late Steve Jobs, Apple co-founder, liked to say that his company was "shameless about stealing great ideas," an expression that itself was derived from a Picasso saying about art.

"That seems to be the M.O. of Apple," the senator said.

But Apple was fierce in defending its market practices and said its app marketplace functions in ways to protect developers and consumers. Kyle Andeer, the company's chief compliance officer, told the panel that "bad actors from around the world" are always trying to plant malware through App Store software and that the company won't tolerate it, which is why its rules are designed the way they are.

"Each week we review about 100,000 submissions, and we reject about 40% of them," he said, explaining that Apple invests heavily in security to keep the app marketplace flourishing. "The App Store is a great value for developers."

Andeer maintained that his company, "started by tinkerers and dreamers," still faces strong competitive headwinds: "We were in a street fight back then, and we still are today."

White, from Google, similarly came to the Play Store's defense, saying it creates an open-source environment because "everyone should have equal access to the benefits of mobile devices."

"We believe the business model supports entry and innovation," he said, adding that "the value proposition of Google Play is a strong one."

Wednesday's hearing showed the complexity of the antitrust issues surrounding the tech behemoths, as both political parties grappled with what to do next. Conservatives shared their worries about market power abuse, while also broaching issues such as censorship.

Sen. Mike Lee, R-Utah, the panel's ranking Republican, said tech companies' control over Americans' lives has become "simply unprecedented" and raised the issue of social media company Parler's "total deplatforming" in the wake of the Jan. 6 storming of the U.S. Capitol. Apple and Google banned Parler from their app stores, and [Amazon](#) shut down the platform's cloud service following the events.

"Millions of voices went silent," Lee said. "I found this troubling, and not just because this was one company taken down."

However, Apple recently agreed to reinstate the platform.

"I do give Apple credit for continuing to work with Parler," Lee said. "All eyes now turn to Google and Amazon to see what they'll do."

Regardless, he said, "these are not actions of companies that feel that they have meaningful competition."

Mark Cooper, director of research at the [Consumer Federation of America](#), the only witness not from a private company, told the subcommittee that all of the practices Klobuchar described that led to her abuse concerns were "all illegal in the [Microsoft](#) case" of the 1990s, which should be the standard now.

"The great challenge, of course, is where do you draw that line?" he said, referring to potential enforcement actions and changes to antitrust law.

--Additional reporting by Michele Gorman, Matthew Perlman and Bryan Koenig. Editing by Breda Lund.