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Competition Policy

“Competition in the Evolving Digital Marketplace”

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Chairman Johnson, Ranking Member Coble and distinguished members of the Committee: My name is Morgan Reed, and I would like to thank you for holding this important hearing on the evolving digital marketplace and the role it plays in driving innovation, fostering economic growth and, most importantly, creating new jobs.

I am the executive director of the Association for Competitive Technology (ACT). ACT is an international advocacy and education organization for people who write software programs—referred to as application developers—and providers of information technology (IT) services. We represent over 3,000 small and mid-size IT firms throughout the world and advocate for public policies that help our members leverage their intellectual assets to raise capital, create jobs and innovate.

Our community leaders are not political spokesmen—they are engineers; and I have drawn upon our membership’s technical expertise and business concerns to inspire and inform these comments. In general, our membership finds the digital marketplace to be dynamic and open, with few impediments to moving between technologies. Instead, the challenges faced are more often connected to elements not directly tied to technology at all, but rather to regulatory uncertainty and to limited options for maximizing online advertising revenue.

The Smartphone Ecosystem is Creating Jobs and Opportunities in a Tough Economy

The state of the U.S. economy is profoundly unsettled. Questions about job security, healthcare, and foreclosure have become dinner table conversation throughout this country.

In the face of all of this turmoil, there has been a bright spot in economic growth: Sales of smartphones and tablets, such as the iPhone, the Android and the iPad, continue to outpace all predictions and are providing a huge growth market in a slumping economy. Smartphones that run third party applications are creating opportunities for handset manufacturers like HTC, Apple and Motorola, communications firms like Verizon and AT&T, and most especially for application developers like our members.

Just a little over two years ago, Apple launched its Apps Store to provide a place for developers to sell independently developed applications for the iPhone. Since then, over 250,000 new applications have gone on sale, with billions of applications sold or downloaded. The Android platform has recently exceeded the growth rate seen in the iPhone, totaling more than 100,000 applications available, with 10,000 new programs available each month.

And at the end of this year, we will also see the release of Windows Phone 7, with its own applications store which will likely be a big player. For me, each application showing up in a mobile store represents work done by a member—or a potential future member—of ACT.

Even more important are the opportunities that lay farther ahead. As Members of Congress you all have BlackBerries, and many of you have iPhones, Androids or Windows Mobile devices as well. Yet according to a recent Morgan Stanley report¹, most people haven't yet invested in such technology. True "smartphones" have around 25% penetration in the U.S.; in Asia, it may be as low as 6%. This represents a pathway for growth leading far into the future.

The Apps World is Dynamic

While a great deal of attention has been paid to the iPhone, the latest numbers show that the hype is larger than the footprint. Similar devices using the Symbian operating system are, far and away, the actual market leaders around the world. Statistics published for the second quarter of 2010 showed that Symbian devices comprised a 41.2% share of smart mobile devices sold, with RIM (BlackBerry) at 18.2%, Android at 17.2%, and Apple at 15.1%. This represents a drop in Apple marketshare from third overall, to fourth.²

Symbian's dominance often goes unnoticed because its reach is so complete. Nearly every major carrier in the world carries Symbian phones. Here in the U.S., Symbian

¹http://www.morganstanley.com/institutional/techresearch/pdfs/2SETUP_12142009_RI.pdf

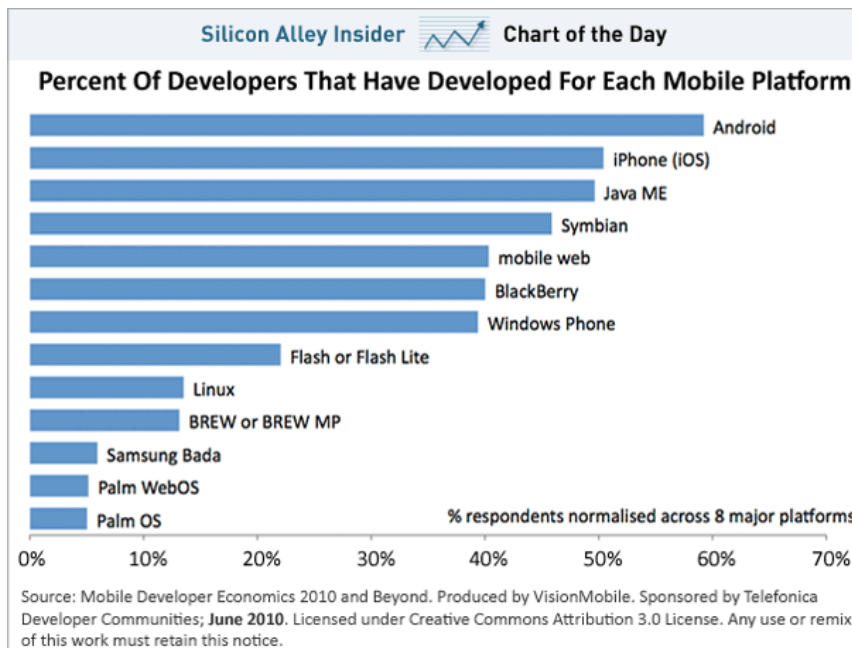
² <http://arstechnica.com/gadgets/news/2010/08/smartphones-lead-mobile-sales-android-moves-into-no-3-spot.ars>

phones can be found on all GSM networks: AT&T carries Symbian smartphones from SonyEricsson and Nokia³, as does T-Mobile⁴. Symbian phones have several different app marketplace options, including Nokia's Ovi, Samsung Apps, and the Sony PlayNow Arena⁵.

But even Symbian's dominance is likely fleeting. A study released by Gartner on September 10, 2010, says that Symbian's first place ranking will be challenged not by the iPhone, but by Google Android. By 2014, iOS (the operating system for the iPhone and iPad) will have fallen to a distant third.⁶

Developing for Multiple Platforms is the Norm

Both external sources⁷ and ACT's internal polling show that a high percentage of our members are developing for multiple platforms. This is not an inhibition or barrier to development, as some have suggested. In fact, the range of options in platform languages provides *more* opportunity for developers.



³ <http://www.wireless.att.com/businesscenter/phones-devices/device-solutions/symbian-smartphones.jsp>

⁴ http://www.t-mobile.com/shop/phones/?shape=smp&WT.z_unav=mst_shop_phones_smart

⁵ <http://www.trustedreviews.com/mobile-phones/news/2009/10/28/Symbian-App-Store-Goes-Live/p1>

⁶ <http://www.gartner.com/it/page.jsp?id=1434613>

⁷ Chart: Mobile Developer Economics 2010 and Beyond. Produced by VisionMobile

Mike Sax, our current board president, is a perfect example. Mike is a long-time developer of applications for the Windows platform. Two years ago, he wrote an app for the iPhone called Easywriter that was a huge success, with millions of downloads. Two months ago, Mike attended the Android developers conference to prepare for porting Easywriter to Android, and he's already thinking about his next Windows Phone 7 application. For developers like Mike, getting to work with, and develop for, the newest innovative technology platforms is almost as important as breathing.

Other ACT members are developing games for the Xbox 360 and porting them to the iPhone using Unity, and still more are looking at breaking into the business market on the BlackBerry Torch.

Finally, another group is bypassing the application marketplace concept and focusing on mobile web applications that will run well on mobile devices as well as a traditional desktop.

But possibly the most important thing we have noticed about the new apps world is how it has reinvigorated the developer community. With mobile and Xbox 360 apps, we have seen the return of the small, passionate developer who is focused on a product that will be created and shipped in a matter of months. These developers no longer have to worry about printing boxes and marketing materials, or how to take credit cards. The apps market model gives the developer a straight shot to the consumer, and developers find that empowering.

Why is there no Flash on the iPhone?

One question posed by this hearing is "why does Apple's iOS not support Adobe Flash?" Despite some of the grand conspiracy theories being floated, the facts suggest a simple answer: Apple wants to create the fastest, most efficient, and most stable mobile computing platform on the planet. On the mobile platform, where memory, processor time, and battery life are the most limited resources, Flash is a resource-hogging, battery-eating crash monster.

The most common source of system crashes and performance loss on any computer system are poorly written third party applications. In order to minimize this risk, Apple has put strict rules on third party application developers like our members. These rules are designed to ensure that the applications in the App Store are fully optimized for the iOS platform and therefore less likely to create performance problems. This approach allows iPhone and iPads to avoid the kind of speed, battery, and stability problems that are found on “Wild West”-style platforms that allow any and all programs to run on them. The end result is that the consumer doesn’t have to worry about their computing device becoming slow or unstable. It just works.

Apple was not alone in raising concerns about Flash. The Android operating system didn’t support Flash until its most recent release, and older Android phones remain incompatible with Flash. Microsoft has also announced that its initial release of Windows Phone 7 will not include a Flash player. None of these vendors rejected Flash for anti-competitive reasons. Instead they simply concluded that Flash is not ready for their devices.

Cross Platform Tools Hullabaloo – A Flash in the Pan

The license terms Apple drafted to restrict the use of misbehaving tools, however, were overly broad and seemed to prevent the use of any cross-platform tools to develop iOS applications. This was clearly not the intent of the rules, however, given that Apple never stopped approving apps built with alternative cross-platform tools like Unity. As Unity CEO David Helgason said:

“All along Apple kept approving every single Unity game submitted to the AppStore – several per day – and even featuring some of them highly, so it was clear that Apple never stopped liking the results of what Unity developers have been doing. And neither did the gamers by the way: they’ve downloaded tens of millions of copies of Unity-based games, more often than not without knowing or caring if tools or middleware had been used or not.”⁸

⁸ <http://blogs.unity3d.com/2010/09/10/unity-and-ios/>

We believe that Apple had no interest in preventing cross-platform games in general. Apps built using the cross-platform Unity toolkit kept getting approved because Unity simply does not have the same problems as Flash. At least 20% of the top selling iOS games were built using Unity, and in July of 2010, Unity had more than 200,000 registered developers⁹. Therefore, last week Apple revised its license to clearly allow the use of cross-platform tools, including some types of Flash applications.

The Apple App Store has created an amazing opportunity for our members to innovate and grow their companies. With heavy competition from Microsoft's Windows Phone 7, BlackBerry, HP's Palm OS, and Google's Android, ACT believes that Apple has little or no power to harm competition in the industry even if they wanted to. In fact, the biggest challenge our members face is not from Apple's App Store, but to be forced into an advertising-based business model.

Competition Issues Do Exist

Some of our members have expressed concern about what the rise of the Android smartphone platform will mean to revenues. As Android's marketshare rises, developers are increasingly concerned that they will be forced to rely exclusively on advertising revenue, rather than a mix of business models.

Revenue from ad-supported applications is significantly lower; with some companies reporting a 75% difference in earnings. Additionally, the advertising model relies entirely on number of viewers, which limits the viability of smaller, niche products whose value to a broad audience may be limited. Given that Google's Android OS is tied to its dominant search engine and advertising platforms, our members have some concerns about its ongoing effect on competition in the smartphone marketplace.

Chairman Johnson, Ranking Member Coble and distinguished members of the Committee, the future of the digital marketplace looks bright for small business, so long as the marketplace remains dynamic and competitive. I hope that the committee will continue to focus the spotlight on the contribution small business makes to the future of

⁹ <http://unity3d.com/company/fast-facts>

the digital economy and the way government can do a better job to encourage that productive future. Thank you for your time and consideration on this important topic.