

Facebook response to the ACCC's Digital Platform Services Inquiry September 2020 Interim Report

8 March 2021

Executive Summary

The growth in the use of messaging apps (private messaging services as referred to in the Digital Platform Services Inquiry (**DSPI**) Interim Report September 2020 (**Interim Report**)) has been one of the key trends of the digital ecosystem in recent years, and this has accelerated during the COVID 19 pandemic as many families, friends and workplaces have used small group conversations and direct messaging to stay in touch. Many different competitive solutions have been developed to respond to this consumer demand - whether it is pre-installed and default messaging apps like iMessage and Android Messages which also have exclusive access to support SMS as well as their own proprietary protocols (along with similar device maker SMS solutions); the wide variety of downloadable apps offering messaging services such as Facebook Messenger, WhatsApp, Telegram, Signal, Snapchat, Discord, TikTok, Twitch or Google Chat (among others); or enterprise platforms such as Slack, Teams and Google Hangouts.

Given the important role that messaging apps play in keeping Australian households connected and work colleagues productive, the inquiry as part of the DPSI by the Australian Competition and Consumer Commission (**ACCC**) into private messaging is timely. Following the release of the Interim Report, Facebook provides this submission in order to set forth its concerns with the conclusions reached in the Interim Report.

In the Interim Report, the ACCC finds that Facebook's online private messaging services (Facebook Messenger and WhatsApp) are not "competitively constrained" by other private messaging services, implying that - even though there is a broad array of competing private messaging services - they do not provide effective competition against Facebook's services. This conclusion is reached via a limited competition analysis that does not consider the full range of alternative private messaging services and overlooks important evidence about the practical and economic realities of messaging in Australia. This submission addresses five primary flaws with this analysis:

1. It downplays the competitive impact that other private messaging services impose on Facebook

These services range from private messaging services that are functionally very similar to Facebook's messaging services, such as iMessage, Google's messaging services, and SMS, to the wide variety of private messaging options (whether or not integrated with other services), as well as other forms of private communication like email.

Take iMessage for example:

- As of November 2020,¹ iOS held a 54% share of the mobile operating system market in Australia (based on information provided to the ACCC, in September 2020, iMessage had an estimated range of 6 to 12 million daily active users (DAU) in Australia²). As of November 2020, and for iOS devices only (which Facebook considers is the most accurate base given that iMessage is only available on iPhones), Facebook Messenger had approximately [confidential]³ while WhatsApp had approximately [confidential].⁴ This is below even the lower bound of DAU of iMessage presented in the Interim Report and significantly lower than the upper bound.
- Additionally, iMessage has a significant advantage as a messaging service given its position as the default service pre-installed on iOS users' phones, which cannot be uninstalled or replaced for SMS. The Interim Report downplays the competitive constraint exercised by this preferencing of iMessage for iPhone users, as well as the fact that iMessage is the only messaging app that is allowed as a default for sending an SMS on iOS devices and users cannot opt to make any other messaging service the default for SMS (whereas on Android devices, users can opt for a competitive messaging app to be the default). This also runs in direct contradiction to the ACCC's views on the advantages of and impact on switching behaviour and customer inertia of default installations as expressed in the ACCC's 2019 Digital Platforms Inquiry (DPI) Final Report in relation to internet browsers and mobile operating systems⁵ which should apply equally to messaging services.

The Interim Report also does not recognise that Google's suite of messaging services is widely used and comes pre-installed on Android devices, and the rapid growth of rich communication services (RCS) which puts it in direct competition with Facebook's messaging services. Android devices represent approximately 45% of all devices in Australia.⁶ Facebook estimates that globally, Google Messages is the default messaging

¹ This is estimated based on the mobile operating system market share in Australia in November 2020. According to the same source referred to in the Interim Report, p 30, iOS currently has a 54% share. Available: <https://gs.statcounter.com/os-market-share/mobile/australia>.

² Interim Report, p 22.

³ [confidential]

⁴ [confidential]

⁵ See for example, the DPI Final Report, pp 68 to 72; see also the governance note '*Harnessing the power of defaults*' prepared by the Behavioural Economics Team of the Australian Government. Available: <https://behaviouraleconomics.pmc.gov.au/sites/default/files/resources/harnessing-power-defaults.pdf>.

⁶ This is estimated based on the mobile operating system market share in Australia in November 2020. According to the same source referred to in the Interim Report, p 30, Android has a 45% share of the market. Available: <https://gs.statcounter.com/os-market-share/mobile/australia>.

service on [confidential].⁷ This translates to [confidential] of smartphone devices in Australia that have a pre-installed Google Messages app.⁸

Google Messages has significant competitive advantages as a messaging service given that for the clear majority of Android devices, it comes pre-installed and no active choice is required by users in order to use it. The introduction of RCS has brought the features offered by Google Messages in line with Facebook Messenger and WhatsApp, like the ability to join group chats, send video and audio messages, and send high-resolution images, with just a phone number and without needing to use any one particular app. In fact, a third-party forecast from MobileSquared in 2019 indicated that RCS will surpass all other messaging services in 2021 to become the largest messaging platform globally.⁹

There are a variety of other private messaging services that have been discounted by the ACCC, despite clear evidence of their increasing use, including:

- Other over-the-top (OTT) messaging services, such as Zoom, Teams, Line, Telegram, Signal, Viber, WeChat and Discord as well as Slack, KakaoTalk, Hangouts, Skype, IRC, Matrix, Kik, Allo, Textra, Threema, Disa, Plus, GroupMe, YAATA and BBM, among many others. Users can switch between these services with absolute ease to communicate with their friends and family via whichever service is preferred by different audiences. For example, a user could message their friends in Australia on Discord or Teams, message their friends overseas on Signal or WeChat, and group video chat with their family in Australia and overseas on Zoom. Increasingly, since the impact of the COVID pandemic, many users are multi-homing amongst these services and Facebook's messaging services are just one option among many that are easily chosen.
- Messaging is also provided as an integrated part of other services, such as gaming or social media (termed "non-standalone services"), for example, Twitter, TikTok and LinkedIn. These services offer private messaging functionality because messaging is a key part of building a service ecosystem that drives user attention, and therefore advertising or other revenues and this messaging functionality provides a direct competitive constraint for the private messaging functions offered by Facebook.

⁷ Made by the five largest original equipment manufacturers (OEMs). This depends on the agreement in place between Google and the OEM (i.e. the manufacturer of the mobile device, e.g. Samsung, Xiaomi etc.).

⁸ There were an estimated 20.3 million smartphone users in Australia in 2020 (as per Statista:

<https://www.statista.com/statistics/467753/forecast-of-smartphone-users-in-australia/>). [Confidential].

⁹This is based on forecasts from:

<https://mobilesquared.co.uk/2019/04/26/rcs-will-be-largest-messaging-platform-in-2-years/>. This estimate is based upon total users of RCS compliant devices, and does not reflect active usage of RCS messaging applications.

- SMS, voice and email are extensively used and compete directly with OTT messaging. Over 90% of Australians use SMS, voice or email services, often as their primary channel of communication.¹⁰

[confidential]

2. Switching between private messaging services is so easy and inexpensive that many Australians already use multiple, competing services

The majority of users of online private messaging services “multi-home”, which means they simultaneously use multiple private messaging services (OTT, SMS and non-standalone). Users will switch between services depending on which offering is the most attractive and convenient to them at the time. For example, a survey by the ACMA¹¹ found extensive multi-homing in Australia across different channels of communication. The survey indicates that 74% of all Australians report to have used 5 or more separate communications services in the previous 6 months (up from 60% in 2019).¹²

Switching between messaging services on a device is easy and generally free, as there is no fee payable to use the service. While iMessage and Google’s messaging services are only offered on iOS and Android devices respectively (which is a business strategy decision by each of Apple and Google and not the result of any technical limitation), users of Facebook messaging services in Australia almost always have the option to switch to one of iMessage or Google Messages, in addition to the full range of other messaging services (including SMS). In fact, switching from the default (iMessage or Google Messages) to an OTT service requires the effort in downloading from an app store, this is not the case in reverse, nor the case between apps that are both downloaded from the app store. Switching between SMS and OTT services on a device is low cost, and to the extent that price was a potential source of difference between SMS and OTT messaging services, this is no longer the case. There has been a reduction over time in the price of mobile services in Australia and an increase in the take-up of bundles with free allowances of voice minutes / SMS. Coupled with the declining cost of data in Australia, this

¹⁰ ‘2020 Telco consumer experience: Australian adults, households and businesses’ (2020), ACMA report, p 20. Available: https://www.acma.gov.au/sites/default/files/2020-10/Telco%20consumer%20experience_Australian%20adults%20and%20households.pdf.

¹¹ ‘Trends in online behaviour and technology usage’ (2020), ACMA consumer survey, p 8. Available: https://www.acma.gov.au/sites/default/files/2021-02/Trends-in-online-behaviour-and-technology-usage_ACMA-consumer-survey-2020.pdf.

¹² ‘Trends in online behaviour and technology usage’ (2020), ACMA consumer survey, p 8. Available: https://www.acma.gov.au/sites/default/files/2021-02/Trends-in-online-behaviour-and-technology-usage_ACMA-consumer-survey-2020.pdf.

increases the level of substitutability between default messaging apps, Facebook messaging services, other OTT services, SMS and voice calls.

User registration processes are also designed to be quick and straightforward, promoting multi-homing. For example, the majority of online private messaging services only require a phone number to register, while iMessage and SMS do not require any registration process – sign-up is automatic and, once the app for an online platform has been installed on a device, it is readily accessible and operating systems are optimized to allow users to quickly flick back and forth between apps. Likewise, users’ contacts in their phone’s address books, which all messaging apps are able to access, provide users with a network of friends, family and co-workers to message which further encourages costless multi-homing.

3. Barriers to entry and expansion in private messaging are low

Recent entry and expansion in private messaging services, often in conjunction with existing services and apps, demonstrates that entry is commercially feasible, either on a standalone basis or in conjunction with existing services and apps. New private messaging services arise constantly. Rapid innovation creates opportunities for new entrants to offer unique and attractive product features and functions that draw users to their services.

The ACCC’s Interim Report fails to adequately consider the rise of new messaging services by suggesting that larger providers like Facebook benefit from “network effects”. However, network effects are not a barrier to entry in private messaging because it is easy for users to multi-home and switch between messaging services. This is particularly the case in private messaging because all OTT messaging apps are able to access users’ contact lists and therefore a network of contacts to message which facilitates costless multi-homing and switching. A new service does not have to entirely displace its competitors in order to enter the market and there are no incentives for users to only have, or use, one messaging service. Users frequently access multiple messaging services, which can concurrently benefit from any network effects.

4. Innovation in private messaging services is continuous

If it were the case that private messaging lacks dynamic competition, or in fact Facebook is insulated from this dynamic competition as the Interim Report suggests,¹³ then there would be a reduction in the level of innovation occurring in messaging. The opposite is true. WhatsApp and Facebook Messenger are constantly deploying new features, trialling new innovations and working hard to provide an appealing user experience – and so are many of our competitors. The COVID-19 pandemic in particular has seen an explosion in private messaging innovation to compete for users at a time that they are

¹³ Interim Report, Annexure B, pp 7-8.

more interested in using messaging, for example the introduction of new features in group chats for iMessage, the roll out of conversation categories in Google Messages and end-to-end encryption for 1:1 chats on RCS in Android Messages, message queuing in Microsoft Teams, and Signal's increase in size of video calls, introduction of chat wallpapers and animated stickers, and ability to share chats from Signal to other apps. This constant innovation is evidence of competition at work.

5. The Interim Report's analysis does not include conventional elements of competition market analysis, such as evidence of competition and consumer benefit

The Interim Report's analysis is confined to a narrow functional scope and ignores many elements that inform a demand and supply side assessment of substitution. For example:

- the Interim Report does not consider the broad range of substitutable services, rather it only considers private messaging services that have the exact same functionalities as Facebook's services;
- it does not attempt to measure (even qualitatively) relative substitution or demand elasticity between substitutable services, which are fundamental elements of assessing a market;
- it discounts the substantial evidence of users switching between messaging services which offer similar features, but also in response to new features developed through differentiation and innovation;
- it does not provide any evidence of harm to users that may suggest challenges in the dynamics of the market; and
- it does not consider the significant consumer benefit arising from messaging services, like the services that Facebook provides at no cost to consumers.

In particular, the consumer benefit of private messaging services (including Facebook's services) is substantial and vibrant competition in this area has prompted all competitors to innovate to the benefit of consumers. Twenty years ago, Australians' private messaging primarily centred around SMS text messages which were costly and provided no additional functionality beyond short text strings. Australians can now freely and easily message each other with richer and diverse functionality such as use of images, videos, real-time calling, GIFs, or other interactive features, and this consumer benefit must be properly considered in any policy assessment relating to the private messaging space.

Finally, in addition to these substantive concerns, Facebook would like to highlight the importance of an open, public consultation process on the important issues raised in this Interim Report. Facebook would welcome confirmation that future reports, including interim reports, issued as part of the DPSI will adopt a more consistent and transparent consultation process, similar to the process that is being adopted for the second interim report.

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2. Engagement on the DPSI

2.1. Facebook welcomes the opportunity to engage with the ACCC on the DPSI

Alongside the ACCC's ongoing Ad Tech Inquiry, the five-year DPSI will contribute to shaping Australia's digital economy and defining the principles, practices and policies that will inform Australia's part in the global effort to promote effective regulation, innovation and competition in digital services. Facebook recognises the significance and value of the DPSI, which aligns with Facebook's ongoing focus to ensure that digital platform services are driving innovation and customer value, competing vigorously and contributing to meaningful economic growth in Australia, within the global framework in which Facebook competes.

The Interim Report recognises ongoing international regulatory developments and the need for the ACCC to consider this inquiry and its contributions to developing Australia's regulatory framework in the context of these broader global changes.¹⁴ Facebook welcomes this recognition and emphasises the clear need for consistency of regulatory frameworks and reform globally.

Facebook's products and services have immense value for all of its users (consumers, advertisers and businesses) and it makes continual investments to anticipate and meet the evolving expectations of those users in a dynamic digital landscape. Facebook faces significant competitive pressure from a very wide range of services in Australia and globally to attract and retain user attention. Facebook recognises that if its products and services do not meet the needs of our users, they will leave, making Facebook's services less attractive to advertisers that use its services and which are responsible for 98% of Facebook's revenue. As Vice President and General Counsel, Jennifer Newstead described:

"Billions of people use Facebook's products every day. To earn their time and attention, we compete fiercely against many other services across the world. As the internet has grown over the last 25 years, the ways in which people share and communicate have exploded thanks to dynamic competition. The most successful platforms mature and adapt to people's changing preferences. Our products became and remain popular for this very reason — we constantly evolve, innovate and invest in better experiences for people against world-class competitors like Apple, Google, Twitter, Snap, Amazon, TikTok and Microsoft. We innovate and improve constantly because we have to."¹⁵

¹⁴ Interim Report, Appendix G, p 1.

¹⁵ Statement by Jennifer Newstead, Vice President and General Counsel, Facebook, (9 December 2020). Available: <https://about.fb.com/news/2020/12/lawsuits-filed-by-the-ftc-and-state-attorneys-general-are-revisionist-history/>.

In this context, and through the DPSI, Facebook urges the ACCC to undertake a rigorous analysis of the competition dynamics to avoid any conclusions and recommendations that might inadvertently stifle consumer choice, hinder innovation, constrain competition or risk consumer harm, or otherwise result in other unintended consequences. Facebook welcomes the opportunity to engage with the ACCC in relation to the Interim Report and throughout the 5-year DPSI process. This process provides an opportunity for open and regular engagement between the ACCC and market participants on issues relating to digital platforms and that the ACCC is looking at through this inquiry.

2.2. Facebook welcomes increased transparency and consultation for future interim reports

Facebook recognises that the DPSI creates a broad mandate for the ACCC to consider competition and consumer protection issues in the supply of digital platform services, supplier practices, market trends, changes in services and developments in the markets for the supply of digital platform services outside Australia. In that context, Facebook welcomes the ACCC's decision to structure its inquiry around "*particular sectors that supply digital platform services, as well as data brokers*",¹⁶ and to produce specific and targeted interim reports that provide an in-depth focus on particular dynamics in each of those sectors.

Facebook encourages the ACCC to adopt a consistent and transparent consultation process for each interim report similar to that being adopted for the second interim report. This will enable each stakeholder a reasonable opportunity to put information and material relevant to the ACCC's deliberations on each interim report before the ACCC in a timely manner. This will provide a balanced public record of relevant stakeholder views, to ensure that any final policy proposals are well-evidenced, actionable, proportionate and do not produce unintended effects that cause significant detriment to users, advertisers, publishers and / or the wider Australian economy. In the absence of such a process, there is the risk that the ACCC's deliberations and resulting recommendations will fail to take account of relevant matters and information.

¹⁶ACCC website, 'Approach to interim reports'. Available: <https://www.accc.gov.au/focus-areas/inquiries-ongoing/digital-platform-services-inquiry-2020-2025/interim-reports>.

3. Private messaging services

3.1. Factors and empirical analysis that establish effective competition

The findings in the Interim Report that Facebook’s online private messaging services are not constrained, or are alternatively asymmetrically constrained, by other private messaging services do not align with the practical or economic realities of how private messaging services compete or Facebook’s commercial and practical experience.

The Interim Report concludes that Facebook has a “*degree of freedom from competitive constraints*”¹⁷ in its supply of online private messaging services. This conclusion follows from a limited competition analysis which relies upon selective functional comparison that does not consider the full range of alternative private messaging services and overlooks important evidence about the practical and economic realities of messaging in Australia.

In response, this submission addresses the following factors that indicate effective competition:

- the broad range of private messaging services that operate as a constraint on Facebook based on a demand and supply-side analysis;
- the core similarities of the functional characteristics and consumer uses served by this broad range of private messaging services when compared to Facebook’s services;
- the prevalence of consumer switching as they multi-home between the competing services; and
- the dynamic environment in which Facebook continually and competitively responds to improvements and innovations by Facebook’s existing competitors and new emerging private messaging services.

In summary, these characteristics of private messaging are not consistent with the conditions that would enable a supplier of online private messaging services to have a “*degree of freedom*” from constraint or to act in a way that would substantially lessen competition or otherwise cause consumer harm. In fact, Facebook faces considerable competition from and is constrained by its competitors and must continue to innovate to retain the attention and support of users, and avoid losing advertising revenue.

¹⁷ Interim Report, p 33.

3.2. A range of competing services exert significant constraints on Facebook’s messaging services

It is well established that services do not need to be identical in order to compete. The ACCC accepted this position in its assessment of competitive constraints in digital news services. The fact that functionally differentiated services may compete vigorously for the same users, is all the more apparent in highly dynamic digital ecosystems characterized by consumer choice-led innovation. Facebook faces real and significant constraints from a significant number of private messaging services, ranging from online private messaging services and SMS that are functionally very similar to Facebook’s messaging services, to other non-OTT forms of communication such as email and voice and video calls.

- a. iMessage has significant usage and benefits from its status as the only pre-installed default messaging app with exclusive access to support SMS protocols in iPhones, on over half of all mobile devices in Australia

iMessage's wide use and range of features make it a significant competitor to Facebook's private messaging services and the key linchpin of Apple's ecosystem, one of Facebook's biggest competitors.¹⁸ iMessage has a large number of users and is one of the most commonly used private messaging services in Australia. As of November 2020, iOS held a 54% share of the mobile operating system market in Australia.¹⁹ The Interim Report even estimates that iMessage had between 6 to 12 million DAU in Australia in September 2020, which represents a significant share (between 30% and 60%) of all mobile device users.²⁰

As an initial matter, the number of DAU of iMessage is greater than the number of WhatsApp DAU [confidential] and broadly in line with the number of Facebook Messenger DAU [confidential] in Australia as of September 2020.²¹ However, given iMessage is only available on iOS devices, on a more like-for-like comparison as of November 2020, and for iOS devices only, Facebook Messenger had approximately [confidential],²² while WhatsApp had approximately [confidential]²³. This is below even the lower bound of iMessage DAU presented in the Interim Report and significantly lower than the upper bound.

¹⁸ Transcript of Facebook’s investor relations, ‘Fourth Quarter 2020 Results Conference Call’ (27 January 2021). Available: https://s21.q4cdn.com/399680738/files/doc_financials/2020/q4/FB-Q4-2020-Conference-Call-Transcript.pdf.

¹⁹This is estimated based on the mobile operating system market share in Australia in November 2020. According to the same source referred to in the Interim Report, p 30, iOS currently has a 54% share, while Android has a 45% share of the market. Available: <https://gs.statcounter.com/os-market-share/mobile/australia>.

²⁰ Interim Report, p 22.

²¹ Facebook data.

²² [confidential].

²³ [confidential].

[confidential]

Additionally and more importantly, iMessage has a significant competitive advantage from its status as the only pre-installed and default messaging app on iOS devices with exclusive access to APIs which support SMS protocols (i.e. is fully integrated within the “Messages” app in iOS which combines both SMS and iMessage as text message services), and which cannot be uninstalled from iOS devices. iOS users also cannot opt to make any other messaging service the default for SMS (whereas on Android devices, users can opt for a competitive messaging app to be the default). This means, for example, users can get SMS messages on iMessage even when data is switched off on the device, but will not get messages on other apps like Facebook Messenger or WhatsApp. In practice when a user is using iMessage to send a message from their iOS device, the message will automatically default to an SMS when it is sent to an Android user.

The user is often not even aware that this is the case given the seamless integration of both SMS and iMessages within the “Messages” app. Defaulting to SMS adds no additional cost to iMessage users as 97% and 96% of pre-and post-paid mobile tariffs (respectively) in Australia included unlimited voice calls or SMS messages in 2018-19 and this share has increased steadily over time since 2014-15.²⁴ This effectively enables iMessage users to seamlessly communicate with all their contacts at no additional cost, using the same “Messages” app, whether or not those contacts are an iOS user or an Android user.

As a result, the default iMessage service is less "costly" from a time and effort perspective and more convenient than actively installing and using an alternative messaging service such as Facebook Messenger or WhatsApp. Similarly, switching from the default of iMessage on iOS devices to other competitive apps may involve additional effort in downloading from the App Store, whereas this is not the case in reverse or between apps that are both downloaded from the app store. The Interim Report acknowledges to some extent this competitive advantage that being a default service provides to iMessage²⁵ and the benefits of being a default option have also been recognized previously by the ACCC.²⁶

²⁴ ACCC's 'Communications Market Report 2018-19' (20 December 2019), p 36. Available: https://www.accc.gov.au/system/files/Communications%20Market%20Report%202018-19%20-%20December%202019_D07.pdf.

²⁵ Interim Report, p 20.

²⁶ See for example, the DPI Final Report, pp 68 to 72; see also the governance note 'Harnessing the power of defaults' prepared by the Behavioural Economics Team of the Australian Government. Available: <https://behaviouraleconomics.pmc.gov.au/sites/default/files/resources/harnessing-power-defaults.pdf>.

However, despite that, the Interim Report finds that the constraint imposed by iMessage on Facebook's messaging services is limited because of the cost of switching to an iOS device in order to use iMessage.²⁷ For iOS users, which as noted above, is just over half of all Australian smartphone users, users will have default access to iMessage which competes directly with Facebook Messenger, WhatsApp and a wide variety of other private messaging services. Likewise, for Android users (which are essentially the remaining smartphone users), users will have access to Google's suite of messaging services (as set out in further detail below). This does not mean that either iMessage or Google's messaging services exercise less of a competitive constraint on Facebook's messaging services. Rather, it means that, in general for each device user, one of them is exercising that constraint on Facebook's messaging services at each point in time.

b. Google's suite of messaging services are widely used and the rapid growth of RCS will increase its competitive constraint

Google's suite of existing messaging and real-time communication (RTC) applications, including Google Messages (a RCS messaging service), Google Voice (which enables text and voice messaging), Google Chat (a messaging application), Google Meet (a video communication service), Google Hangouts (which is being replaced by Meet and Chat), Google Duo (a video chat service) and Gmail (an email service) compete directly with Facebook Messenger and WhatsApp. These services impose a strong competitive constraint both individually and collectively on Facebook's messaging services.

The Interim Report does not consider the range of Google's suite of messaging services, which come pre-installed and are often default on Android devices, or assess the competitive constraint of such services on Facebook Messenger and WhatsApp, either by reference to a functional characteristics test or user switching and substitutability.²⁸

Google's messaging services have a large number of users. Android devices represent approximately 45% of all devices in Australia.²⁹ Facebook estimates that Google Messages globally is the default messaging service on around [confidential] of Android devices.³⁰ This translates to around [confidential] smartphone devices in Australia that have a pre-installed Google Messages app.³¹ Google's messaging services pose a

²⁷ Interim Report, p 2.

²⁸ Interim Report, Section 2.2.

²⁹ This is estimated based on the mobile operating system market share in Australia in November 2020. According to the same source referred to in the Interim Report, p 30, iOS currently has a 54% share, while Android has a 45% share of the market. Available: <https://gs.statcounter.com/os-market-share/mobile/australia>.

³⁰ Made by the five largest OEMs. This depends on the agreement in place between Google and the OEM (i.e. the manufacturer of the mobile device, e.g. Samsung, Xiaomi etc.).

³¹ There were an estimated 20.3 million smartphone users in Australia in 2020 (as per Statista: <https://www.statista.com/statistics/467753/forecast-of-smartphone-users-in-australia/>). [Confidential].

significant and growing competitive threat to the estimated [confidential]^{32 33} on Android Phones given their default status on most Android phones and the relative ease with which users could switch or multi-home between Facebook and Google’s messaging services. For the remaining Android users where Google Messages is not the default messaging service, OEMs offer their own messaging services that enable SMS, which compete with Facebook’s messaging services (as set out further below in **Section 3.2(e)**).

Similar to iMessage, Google Messages has significant advantages as a messaging service given that for the clear majority of Android devices, it comes pre-installed on the device and is the default with exclusive access to APIs that support SMS as well as its own proprietary protocols.

Furthermore, the introduction of RCS has significantly enhanced and brought the features offered by Google Messages and other RCS-based messaging services in direct competition with OTT messaging services like Facebook Messenger and WhatsApp. RCS is a messaging protocol that Google and other industry participants have developed as a richer alternative to replace SMS. This protocol enables users to join group chats, send video and audio messages, and send high-resolution images, with just a phone number and without needing to use any one particular app. RCS allows users to communicate in this way across different device types, mobile carriers, as well as applications that use the RCS protocol.

Google commenced rollout of RCS with its first partner deal offering the service on 4 November 2016.³⁴ RCS has experienced an increasing reach on Android phones in Australia and was enabled in Google Messages for a wide range of Android devices on the Telstra network as of the end of 2019.³⁵ This functionality appears to have been extended to other Australian network operators in late 2020, when the RCS standard was made available on Google Messages globally.³⁶ Overall, RCS functionality in Google Messages now appears to be ubiquitous on Android devices across Australia, which means that Google Messages now has much the same functionality as iMessage, Facebook Messenger, and WhatsApp in Australia. Notably, there is no technical limitation to

³² [confidential]

³³ [confidential]

³⁴ ‘Partnering with global carriers to upgrade SMS’ (4 November 2016), Google Blog post by Amir Sarhangi (Head of RCS). Available: <https://www.blog.google/products/android/partnering-global-carriers-upgrade-sms/>.

³⁵ ‘Google and Telstra quietly enable RCS messages (Rich Communication Service) in Australia for more handsets’ (16 December 2019), Ausdroid. Available: <https://ausdroid.net/2019/12/16/google-and-telstra-quietly-enable-rcs-messages-rich-communication-service-in-australia/>.

³⁶ ‘Google is rolling out RCS for Messages Australia wide regardless of carrier’ (21 October 2020), Ausdroid. Available: <https://ausdroid.net/2020/10/21/google-is-rolling-out-rcs-for-messages-australia-wide-regardless-of-carrier/>; and ‘Helping you connect around the world with Messages’ (19 November 2020), Google blog post by Drew Romy (Product Lead, Messages). Available: <https://blog.google/products/messages/helping-you-connect-around-world-messages/>.

offering this service, or other Google messaging services, on non-Android devices, rather this reflects a business strategy decision by Google (like Apple with iMessage).

The take-up of RCS worldwide is forecast to increase significantly. A third-party forecast from MobileSquared in 2019 indicated that RCS will surpass all other messaging services in 2021 in terms of total P2P users to become the largest messaging platform globally.³⁷ By 2023, this reach is expected to extend even further, with 70.4% of all smartphone users having RCS enabled devices.

There are strong revenue incentives for mobile operators to continue adopting RCS technology, in particular due to RCS's potential use in application-to-peer (**A2P**) communications, which itself is growing rapidly.³⁸ This is a relevant consideration even when focusing on private messaging, as it creates an incentive for RCS to become a feature across messaging applications.

It will likely be simpler for most businesses to transition their existing SMS A2P communications to RCS-enabled messaging applications than it would be to an application such as Facebook Messenger or WhatsApp, as RCS communication applications such as Google Messages come pre-installed on many devices and have a wide reach. Critically, large telecommunications companies have a significant interest in retaining their market share in A2P communications, which has led companies such as T-Mobile and Sprint to ally with Google and campaign for global adoption of RCS.³⁹

- c. OTT private messaging services (e.g. Zoom, Teams, Line, Telegram, Signal, Viber, KakaoTalk, WeChat and Discord) are a material competitive constraint

While the Interim Report acknowledges the existence of a number of other standalone OTT private messaging services like Line, Telegram, Signal, Viber, KakaoTalk, WeChat and Discord both globally and in Australia, it incorrectly discounts their relevance where Facebook actually does face strong competitive pressure from these services in Australia.

Firstly, there is significant multi-homing between these services and Facebook's messaging services as users switch between apps to most effectively communicate with family and friends. For example:

- **[confidential]**. This is consistent with the ACCC's findings in Figure 2.2 of the Interim Report of significant multi-homing by existing users in Australia of

³⁷ This is based on forecasts from:

<https://mobilesquared.co.uk/2019/04/26/rcs-will-be-largest-messaging-platform-in-2-years/>. This estimate is based upon total users of RCS compliant devices, and does not reflect active usage of RCS messaging applications.

³⁸ A2P communications are automated messages such as marketing messages, appointment reminders, and chat bots.

³⁹ 'Thinking of going shoppable? Don't forget to A/B test your video ads' (19 January 2021), MarketingTech. Available: <https://marketingtechnews.net/news/2021/jan/19/thinking-of-going-shoppable-dont-forget-to-a-b-test-your-video-ads/>.

Facebook Messenger even just between standalone messaging services (which excludes iMessage, FaceTime and Google Chat).

- A recent ACMA survey reflects the extensive multi-homing in Australia across different channels of communication. The survey indicates that 74% of all Australians report to have used 5 or more separate communications services in the previous 6 months (up from 60% in 2019).⁴⁰

The Interim Report conducted no broader analysis of multi-homing across all standalone messaging services or private messaging services more generally, but even this shows that when restricting the analysis to existing Facebook users, multi-homing across apps other than Facebook messaging apps is very common.

Secondly, while the Interim Report recognises the prevalence of multi-homing by Facebook Messenger users in Figure 2.2, it ultimately concludes that it is asymmetric because users of other services are more likely to use Facebook Messenger than vice versa.⁴¹ However, the data used as part of this analysis may inflate any perceived asymmetry in multi-homing behaviour because it does not include iMessage, FaceTime, and Google Chat and SMS which are defaults available on the device and therefore core alternative message apps which are relevant to assessing the extent of multi-homing (further detail on which is set out below in **Section 3.4**).

In addition, restricting the focus of the competitive analysis to usage shares in Australia significantly understates the competitive pressure applied by these messaging services. Competition for private messaging services occurs in a global context, and it is in this global context that Facebook's messaging services face competitive constraint from a large range of OTT private message apps, including Telegram, Signal, Snapchat, Slack, Google Hangouts, Skype, IRC, Matrix, Discord, KakaoTalk, Kik, Textra, Threema, Line, Disa, Plus, GroupMe, Viber, WeChat, YAATA, BBM Enterprise among many others.

- On the demand side, other OTT private messaging services (and non-OTT services like SMS) are used to connect with friends and family around the world. Even if an online messaging service does not have a significant user base in Australia, users in Australia will still use that service to communicate with particular family members or friends overseas. Therefore, growth of messaging services in overseas markets will also drive growth in Australia. In fact, according to research by the eSafety Commissioner, Discord is growing rapidly, including as a result of increasing

⁴⁰ 2020 Telco consumer experience: Australian adults, households and businesses' (2020), ACMA report, p 20. Available: https://www.acma.gov.au/sites/default/files/2020-10/Telco%20consumer%20experience_Australian%20adults%20and%20households.pdf; Question is: "In the past 6 months, which of the following communication services have you used for personal purposes?". Note that this survey does not distinguish between mobile and fixed use of these communication services, so includes emails used on a mobile or a fixed device.

⁴¹ Interim Report, p 23.

adoption in the youth market in Australia over a relatively short period of time.⁴² In addition, Line, Viber and Telegram are all significant competitors to Facebook in other countries:

- Line has more than 160 million users in Thailand, Japan, Indonesia and Taiwan;⁴³
 - Viber is one of the largest services in Ukraine, Russia and much of Eastern Europe;⁴⁴ and
 - Telegram recently surpassed 500 million users across key markets such as India, Brazil, Italy and Malaysia.⁴⁵
- On the supply side, messaging services do not generally operate on a domestic-only basis, they compete and innovate with global usage in mind. The competitive pressure these services apply to Facebook in countries other than Australia also produces benefits for Australian consumers. This is because the costs of service improvements are largely fixed across countries, as Facebook’s messaging services are almost identical globally. It costs no more to deploy service improvements to one country or many. Therefore, competitive pressure imposed by messaging services in other jurisdictions drives continual enhancements and improvements in Facebook’s messaging services that directly benefits consumers in Australia.

While the Interim Report categorises services such as Zoom, Teams and Skype as standalone private messaging services, it considers the position of these services in a market defined by the features and functions of various messaging services (rather than the extent to which users can and do switch between services) and finds that standalone services are likely to compete more closely with each other than with Facebook Messenger and WhatsApp. On the basis of this limited analysis, the ACCC suggests they

⁴² ‘*The Digital Lives of Aussie teens*’ (February 2021), eSafety Commissioner. Available:

<https://www.esafety.gov.au/about-us/research/digital-lives-aussie-teens>.

⁴³ ‘*Line Revenue and Usage Statistics (2020)*’ (18 November 2020), Business of Apps. Available:

<https://www.businessofapps.com/data/line-statistics/>.

⁴⁴ Viber does not report MAUs. Statista reports that Viber had more than 1 billion accounts in March 2020. Available:

<https://www.statista.com/statistics/316414/viber-messenger-registered-users/>.

⁴⁵ ‘*WhatsApp’s loss is Telegram’s gain; app sees 25 million new users in 3 days*’ (14 January 2021), Business Today.

Available:

<https://www.businesstoday.in/technology/news/whatsapps-loss-is-telegrams-gain-app-sees-25-million-new-users-in-3-days/story/427907.html>. Techcrunch (2020) also reports that “*Telegram often sees a surge in its user base when [a] Facebook-owned service is facing an outage*”. Available:

<https://techcrunch.com/2020/12/23/telegram-to-launch-an-ad-platform-as-it-approaches-500-million-users/>.

are complements, rather than substitutes, of Facebook’s messaging services.⁴⁶ Facebook considers that the multi-homing amongst these services and Facebook’s messaging services reflect the clear competitive constraint that these services impose:

- Although the business models of these other standalone services are somewhat different to Facebook Messenger and WhatsApp (in particular, their revenue models differ as they rely on upselling business-grade services), all offer free variants of their services on both desktop and mobile, have expanded to target personal use of their services particularly in the COVID environment, and are continually improving the quality and features available in order to acquire and keep users. For example, Microsoft Teams now markets the ability for friends and family to connect within the same app and has launched the ability to start a chat with friends even if they do not have the Teams app.⁴⁷ In any event competition between messaging services (like most technology-based services) is driven by differentiation.
- Many consumers use these services as substitutes for Facebook’s messaging services. Messaging services such as Zoom, Teams and similar apps can and are readily used as substitutes for Facebook’s messaging services. For example in April 2020, Zoom reported massive growth in weekend calls following global lockdowns due to the COVID-19 pandemic, as people around the world were forced to connect with friends and family remotely. Zoom’s Chief Product Officer, Oded Gal, noted:

*“The biggest change is that people use it across the board for business usage, but also for personal use for events, for family... for weddings and even birthdays... Our meetings on weekends have increased 2,000%. So that's a big change from our standpoint”.*⁴⁸

- The enhancement of messaging capabilities on Zoom and Teams and the development of IP voice and video services in Facebook’s messaging services (as well as other standalone competitors) points towards a convergence between messaging, voice and video services. Services such as Zoom and Teams can increasingly be used for both personal and business purposes as noted above, and from a supply-side perspective, these services are already and can continue to be easily adapted to compete directly with Facebook Messenger and WhatsApp.⁴⁹

⁴⁶Interim Report, p 30.

⁴⁷Microsoft Teams website. Available: <https://www.microsoft.com/en-au/microsoft-teams/teams-for-home>.

⁴⁸<https://www.cnet.com/news/zoom-calls-on-weekends-are-up-almost-2000-percent/>.

⁴⁹ Zoom is also reported to be enhancing its messaging capabilities in order to improve its ability to compete with Google, Microsoft and Slack. See, ‘Zoom calls on weekends are up almost 2,000%’ (23 April 2020), CNET. Available: <https://mytechdecisions.com/unified-communications/zoom-reportedly-developing-email-calendar-messaging-services/>

- This is increasingly the case since the COVID pandemic where the barriers between work and home have eroded, as have the lines between work and personal for use of smartphones. The use of Zoom has increased through the pandemic in Australia from an almost non-existent base, with 7% of Australians using it daily.⁵⁰ Australian free sign-ups surged 54 times between January and April 2020 alone, and Zoom’s growth and usage is expected to continue through 2021.⁵¹ Globally, Microsoft Teams has grown by 894% since COVID-19 lockdown began which is a higher percentage growth than Zoom, which achieved 667% growth in the same span of time.⁵²

- d. Other OTT non-standalone private messaging services (e.g. Twitter, TikTok, Snapchat, Fortnite / Houseparty) compete with Facebook and are poised to expand

Facebook’s private messaging services compete directly with the wide variety of downloadable apps that offer messaging services.

The Interim Report differentiates between “standalone” and “non-standalone” private messaging services and does not consider that “non-standalone” messaging services such as Twitter, TikTok, Snapchat, Fortnite and Houseparty pose a significant competitive constraint on Facebook because the constraint imposed by such services is presumed to be weaker than the constraint imposed by standalone services, as their “primary purpose” is not messaging.⁵³ However the Interim Report does not clearly examine the “primary purpose” nor provide empirical evidence why the messaging they provide is not an effective constraint.

These services impose a material constraint upon Facebook’s messaging services because for non-standalone service providers, messaging is a key part of building a service ecosystem that drives user attention, and therefore advertising or other revenues. This messaging functionality provides a direct competitive constraint to Facebook’s private messaging functions. For example:

⁵⁰ ‘Digital Consumer Trends 2020’ (2020), Deloitte, p 31. Available:

<https://www2.deloitte.com/au/en/pages/technology-media-and-telecommunications/articles/digitalconsumertrends.html>.

⁵¹ ‘Zoom usage to enter new phase in 2021’ (10 January 2021), Australian Financial Review. Available:

<https://www.afr.com/technology/zoom-usage-to-enter-new-phase-in-2021-20210108-p56som>.

⁵² ‘Microsoft Teams Revenue and Usage Statistics (2021)’ (26 February 2021), Business of Apps. Available:

<https://www.businessofapps.com/data/microsoft-teams-statistics/>.

⁵³ Interim Report, Box 2.2, p. 31.

- Twitter offers direct messaging and has recently begun to roll out tests for voice messages through direct messaging.⁵⁴ Using features such as group messaging, media, stickers / emojis, read receipts, attachments and notifications, Twitter makes its direct messaging as attractive to users as possible;⁵⁵
- similarly, TikTok already has direct messaging with similar features to standalone competitors and has almost 4 million active users in Australia. In 2020, it experienced a year of exponential growth and gained 315 million new users in Q1 alone that was hailed as the “*best quarter for any app ever*”.⁵⁶ By July 2020, TikTok had 689 million global monthly active users; a rise of 36% from the end of 2019.⁵⁷ TikTok is on track to hit 1.2 billion active users globally in 2021.⁵⁸ While TikTok does not report any official annual revenue, reports suggest that its investors have already valued it at over \$50 billion,⁵⁹ with its owner, ByteDance, having a reported market valuation of \$180 billion;⁶⁰
- following Epic Games’ acquisition of online video messaging service Houseparty in June 2019, it introduced a ‘Party Hub’ chat feature into popular video game Fortnite in September 2019. The feature allows players to start a game with other video chat participants, amongst other things. The introduction of this feature has been highly successful – time spent in Fortnite grew by 130% in the 3 months after Party Hub’s introduction in September 2019;⁶¹

⁵⁴ ‘Twitter to start testing voice DMs’ (23 September 2020), The Verge. Available:

<https://www.theverge.com/2020/9/23/21452932/twitter-voice-audio-direct-messages-test-brazil>.

⁵⁵ Twitter’s SEC Filed Annual Report (2019) specifically highlights competition from social media and messaging services, i.e. that it “...compete[s] for our audience against a variety of social networking platforms, messaging companies and media companies, some of which have greater financial resources, larger audiences or more established relationships with advertisers, such as Facebook (including Instagram and WhatsApp), Alphabet (including Google and YouTube), Microsoft (including LinkedIn), Snap, TikTok, and Verizon Media Group, or in certain regions WeChat, Kakao and Line.” at p. 11.

Available:

<https://investor.twitterinc.com/financial-information/sec-filings/sec-filings-details/default.aspx?FilingId=13933075>.

⁵⁶ ‘TikTok Crosses 2 Billion Downloads After Best Quarter For Any App Ever’ (29 April 2020), Sensor Tower. Available:

[TikTok Crosses 2 Billion Downloads After Best Quarter For Any App Ever](https://www.sensortower.com/en/news/2020/04/29/tiktok-crosses-2-billion-downloads-after-best-quarter-for-any-app-ever),

⁵⁷ ‘TikTok reveals detailed user numbers for the first time’ (24 August 2020), CNBC. Available:

<https://www.cnbc.com/2020/08/24/tiktok-reveals-us-global-user-growth-numbers-for-first-time.html>.

⁵⁸ ‘State of Mobile 2021’ (13 January 2021), App Annie, p 24; ‘The New Normal in 2021: Five Things You Need to Know in Mobile’ (10 November 2020), App Annie.

⁵⁹ ‘Exclusive: ByteDance investors value TikTok at \$50 billion in takeover bid - sources’ (29 July 2020), Reuters. Available:

<https://www.reuters.com/article/us-bytedance-tiktok-exclusive/exclusive-bytedance-investors-value-tiktok-at-50-billion-in-takeover-bid-sources-idUSKCN24U1M9>.

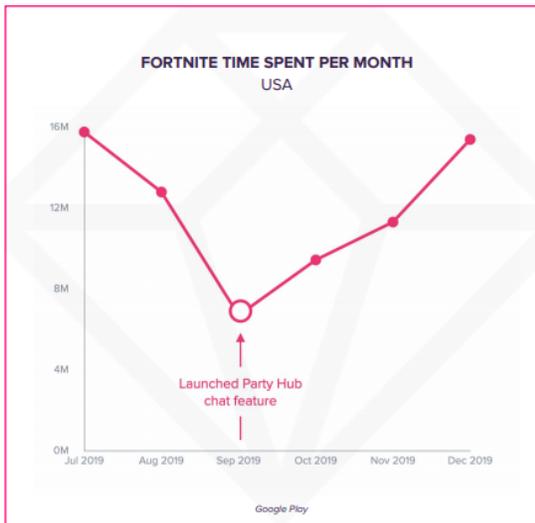
⁶⁰ ‘TikTok rival Kuaishou hits \$160bn valuation as shares surge after IPO’ (5 February 2021), Financial Times. Available:

<https://www.ft.com/content/05686da9-60f8-4a3a-a5c5-95155bd01ffe>.

⁶¹ Epic Games’ website. Available:

<https://www.epicgames.com/fortnite/en-US/news/houseparty-brings-video-chat-to-fortnite>.

Figure 1: Fortnite time spent per month increased substantially after incorporation of Party Hub chat feature



Source: App Annie Mobile App Evolution Report⁶²

- Like Twitter and TikTok, LinkedIn offers direct messaging and provides a range of features in its offering similar to other OTT messaging services, including group messaging, file sharing, GIFs, emojis and an automatic away message. Over the past five years, messaging on LinkedIn has increased 400%;⁶³
- social news aggregator Reddit offers two forms of direct messaging via its ‘Chat’ and ‘Private Messaging’ features. Reddit users are given the option to choose between an email like inbox / messaging system, or an instant messenger with features such as group chats, stickers and notifications;⁶⁴ and
- Pinterest provides a direct messaging service with the ability to share pins, profiles and boards.⁶⁵

⁶² ‘Mobile App Evolution’ (2020), App Annie, p 25. Available:

https://s3.amazonaws.com/files.appannie.com/reports/App-Annie_Mobile-App-Evolution-Report_2020-07.pdf.

⁶³ ‘New Features To Make Your LinkedIn Messaging Experience Even Better’ (24 September 2020), LinkedIn Official Blog. Available:

<https://blog.linkedin.com/2020/september/24/new-features-to-make-your-linkedin-messaging-experience-even-better>.

⁶⁴ Reddit website, ‘How do group chats work?’. Available:

<https://reddit.zendesk.com/hc/en-us/articles/360050399571-How-do-group-chats-work>.

⁶⁵ Pinterest website, ‘Send Pins, boards, and profiles’. Available:

<https://help.pinterest.com/en/article/send-pins-boards-and-profiles>.

From the demand side, users do not discriminate between standalone vs non-standalone apps when considering the “job to be done” by messaging services. From a supply-side substitutability perspective, innovation is driven by that user demand, and as these examples show, non-standalone messaging platforms can, and do provide messaging services that are attractive to their significant user bases, whether or not that appears as standalone.

e. SMS, voice, video and email are extensively used and compete with OTT messaging

SMS and voice services remain the incumbent communications services in Australia. Both SMS and voice services are available by default on all mobile devices and continue to be the most commonly used communications services by users. Emails are a similarly common communications tool – for instance, email was the most common online activity for Australian users in 2020.⁶⁶

The empirical evidence demonstrates that SMS, voice calls and email exercise a strong constraint on Facebook’s messaging services (and other OTT private messaging services).

Over 90% of Australians use SMS, voice or email services, often as their primary channel of communication.⁶⁷ This is higher than the proportion that use OTT services. Based on a survey conducted by the ACMA in 2020 (which is referred to in the Interim Report), mobile phone calls, mobile texting and email are the top three communication services used for personal purposes in Australia.⁶⁸ Another ACMA survey shows that almost all Australian adults use mobile phone calls (98%), mobile texting (92%) and email (90%) to communicate and this usage has increased since June 2017.⁶⁹ By comparison, a lower proportion of respondents used messaging / calling apps (77%) and social networking apps (72%).

⁶⁶ ‘Trends in online behaviour and technology usage’ (2020), ACMA consumer survey, p 6. Available:

https://www.acma.gov.au/sites/default/files/2021-02/Trends-in-online-behaviour-and-technology-usage_ACMA-consumer-survey-2020.pdf.

⁶⁷ ‘Trends in online behaviour and technology usage’ (2020), ACMA consumer survey, p 8. Available:

https://www.acma.gov.au/sites/default/files/2021-02/Trends-in-online-behaviour-and-technology-usage_ACMA-consumer-survey-2020.pdf.

⁶⁸ ‘Trends in online behaviour and technology usage’ (2020), ACMA consumer survey, p 8. Available:

https://www.acma.gov.au/sites/default/files/2021-02/Trends-in-online-behaviour-and-technology-usage_ACMA-consumer-survey-2020.pdf.

⁶⁹ ‘Trends in online behaviour and technology usage’ (2020), ACMA consumer survey, p 20. Available:

https://www.acma.gov.au/sites/default/files/2021-02/Trends-in-online-behaviour-and-technology-usage_ACMA-consumer-survey-2020.pdf. ; Question is: “In the past 6 months, which of the following communication services have you used for personal purposes?”. Note that this survey does not distinguish between mobile and fixed use of these communication services, so includes emails used on a mobile or a fixed device.

There are also strong commonalities between the main functionalities and use cases for SMS and OTT services. They each offer features like text, voice and video messaging, sending photos or videos, using emojis and other rich text communication, group messaging, among many others, such that there is no relevant functional distinction as set out further in **Section 3.3** below. **[confidential]**

The ACCC has previously concluded that SMS and OTT messaging services are in the same relevant market⁷⁰ in its Domestic Mobile Terminating Access Service Declaration Inquiry (**Domestic MTAS Declaration Inquiry**) in 2019, concluding that “*OTT messaging services are now effective substitutes for SMS services for which SMS termination is required to supply*”,⁷¹ without any suggestion that the opposite is also not true. As part of this inquiry, the ACCC proposed removing regulation on SMS termination declarations on the basis that SMS and OTT services compete effectively with one another.

To the extent that price was previously a potential source of difference between SMS and OTT messaging services (with most OTT services being offered for free), this is no longer the case. There has been a reduction over time in the price of mobile services in Australia and an increase in the take-up of bundles with free allowances of voice minutes / SMS. As mentioned above, 97% and 96% of pre-and post-paid mobile tariffs respectively in Australia included unlimited voice calls or SMS messages in 2018-19 and this share has increased steadily over time since 2014-15.⁷² Coupled with the declining cost of data in Australia, this increases the level of substitutability between Facebook messaging services, SMS and voice calls.

This reduction over time in the price of mobile services in Australia—to the point where the marginal cost of calls and SMS for many users is essentially zero—has significantly narrowed any impediment to switching between voice, SMS and OTT messages. This means that traditional mobile services—which can essentially be accessed free of charge like many OTT messaging services—will continue to impose a constraint on Facebook Messenger and WhatsApp. This is especially true given that SMS may be the most convenient option for many users, as the default messaging service on all devices as standard, and which does not require the recipient of the message to have an account with a particular OTT service provider in order to communicate with the sender.

⁷⁰ This is the retail market for messaging services which includes retail P2P SMS and OTT messaging services. ACCC’s, ‘*Domestic Mobile Terminating Access Service Declaration Inquiry*’ (29 June 2019), p 24. Available: <https://www.accc.gov.au/system/files/DORIS%20-%20D19-95275%20MACE%20-%20MTAS%20Declaration%20Inquiry%202018-19%20-%20Final%20Report%20-%20PUBLIC%20-%20FINAL%20-%2028%20June%202019.PDF>.

⁷¹ ACCC’s ‘*Domestic Mobile Terminating Access Service Declaration Inquiry*’ (29 June 2019), p 2. Available: <https://www.accc.gov.au/system/files/DORIS%20-%20D19-95275%20MACE%20-%20MTAS%20Declaration%20Inquiry%202018-19%20-%20Final%20Report%20-%20PUBLIC%20-%20FINAL%20-%2028%20June%202019.PDF>.

⁷² ACCC’s ‘*Communications Market Report 2018-19*’ (20 December 2019), p 36. Available: https://www.accc.gov.au/system/files/Communications%20Market%20Report%202018-19%20-%20December%202019_D07.pdf.

Whilst the ACCC has acknowledged the growth of OTT as a competitive alternative to SMS, its conclusion that SMS does not pose a material competitive constraint on Facebook’s services and OTT services generally is simply not consistent with the facts and analysis presented above (as well as previous analysis by the ACCC).

3.3. Even on the basis of the ACCC’s functional characteristics test, Facebook faces significant constraints to its messaging services

The private messaging services set out above are directly substitutable, on a like-for-like functional basis, with Facebook’s services and exercise effective competitive constraints on Facebook.

The functional similarities between iMessage and Google’s messaging services on the one hand and Facebook’s messaging services on the other, are acknowledged by the ACCC:

“the iMessage and Chat features bring the functionality of Apple and Google’s default messaging apps closer to that of other popular standalone services such as Facebook Messenger and WhatsApp.”⁷³

iMessage offers all of the same key functionalities as Facebook Messenger and WhatsApp by default. All three services allow users to send direct messages, emojis, and GIFs, as well as operate video calls.⁷⁴ Users can also share contact information and enable group messages (of varying sizes). Similar to WhatsApp,⁷⁵ iMessage makes use of end-to-end encryption for messages sent via the service. These default features are summarized in **Figure 2** below.

Figure 2: Facebook Messenger, WhatsApp and iMessage key features

	Direct messages	Live video	Emoji	GIF	Contact information sharing	Group messages	Group size limit	End-to-End encryption
Messenger	✓	✓	✓	✓	✓	✓	250	×
WhatsApp	✓	✓	✓	✓	✓	✓	256	✓
iMessage	✓	✓	✓	✓	✓	✓	25	✓

Source: Publicly available information

While the full suite of iMessage features is only available for messages sent between iOS users, iMessage can also be used to send messages to Android devices given its exclusive access to APIs offering SMS protocols. Messages sent to Android devices via iMessage

⁷³ Interim Report, p 22.

⁷⁴ iMessage is integrated with FaceTime, which allows users to make live video calls without having to open a separate application.

⁷⁵ End-to-end encryption is an opt-in feature for Facebook Messenger.

are converted to SMS or MMS and, as explained in **Section 3.2(e)** above, SMS is itself a strong constraint on Facebook's messaging services.

Both individually and collectively, Google's suite of messaging services also have a significant overlap in functionality with Facebook Messenger and WhatsApp. Google's messaging applications contain a variety of differentiated and common features and functionalities. Google Messages covers a wide range of features similar to Facebook Messenger and WhatsApp (among many other apps like iMessage, Viber, Signal, Telegram and Snapchat), such as the ability to send texts, images, emojis, GIFs, and start video calls. Other more specialized Google applications also overlap with Facebook Messenger and WhatsApp in some areas – for example, Google Chat allows for group messaging, while Google Meet allows for video calls. These default features are summarized in **Figure 3** below. This degree of substitutability and constraint may become more significant in the future as the RCS standard becomes even more widespread.

Figure 3: Facebook Messenger, WhatsApp, Google Messages and other Google communication apps key features

	Direct messages	Live video	Emoji	GIF	Contact information sharing	Group messages	Group size limit *	End-to-End encryption
Messenger	✓	✓	✓	✓	✓	✓	250	x
WhatsApp	✓	✓	✓	✓	✓	✓	256	✓
Google Messages	✓	✓	✓	✓	✓	✓	*	x**
Other Google Apps:								
Google Meet	✓	✓	✓	✓	✓	✓	60	x
Google Hangouts	✓	✓	✓	✓	✓	✓	150	x
Google Duo	x	✓	✓	x	x	✓	32	✓
Gmail ***	✓	✓	✓	✓	x	x	-	✓

Source: Publicly available information
 Notes: * Information not available
 ** In the process of rolling it out
 (<https://blog.google/products/messages/helping-you-connect-around-world-messages/>)
 *** Thought integration with Chat, Hangouts and Meet

The functional similarity between these applications suggests that, even based on the Interim Report's approach to assessing substitutability in terms of similarities between the functionalities offered by different messaging services, iMessage and Google's messaging services should be viewed as exercising a significant constraint on Facebook's messaging services. The RCS standard also increases the functional substitutability between SMS and Facebook's services.

A detailed comparison of the functions and features of a number of messaging services is set out in **Annexure 1**, which shows a more granular view by comparison to Annexure C in the Interim Report.

3.4. There is extensive multi-homing across messaging services and switching between services is easy and inexpensive

As the ACCC recognises, “many users of standalone services sign up to and/or use more than one service—that is, they multi-home”.⁷⁶ However, what the Interim Report does not then consider is in fact how the extensive multi-homing, and the ease with which users can switch between messaging services, is indicative of the competitive and dynamic nature of private messaging services.

Intense “*feature competition*”,⁷⁷ as referenced in the Interim Report, is a characteristic of dynamic competition, which itself manifests in switching as services compete for user attention on a service.

The ease with which people can switch between private messaging services on which they multi-home is facilitated by a variety of factors, including that:

- the majority of users of online private messaging services multi-home between OTT private messaging services and all have access to SMS, voice calls and email. Users will switch between services depending on which offering is the most attractive and convenient to them at the time. Many users choose to multi-home so they can reach out to their closest contacts across a variety of services and some users may multi-home because they prefer particular features on one service, and other features on another. As noted above, an ACMA survey in September 2020 revealed that during the previous six months 74% of Australian adults had used 5 or more of the communications services,⁷⁸ 55% of Australian adult internet users had used 1 to 3 apps to communicate, and 35% had used 4 or more apps to communicate,⁷⁹
- switching between messaging services on a device is generally free as there is no fee payable to use the service. While some messaging services, such as iMessage and Google Messages, are limited to iOS and Android devices specifically (only a result of business strategy decisions by each of Apple and Google and not by technical limitation), these devices each represent around half of mobile phone users in Australia and together, they represent almost all mobile phone users. In effect this means that users of Facebook messaging services in Australia almost always have the option to switch to one of iMessage or Google Messages, in

⁷⁶ Interim Report, p 23.

⁷⁷ Interim Report, Appendix B, pp 7-8.

⁷⁸ ‘Trends in online behaviour and technology usage’ (2020), ACMA consumer survey, p 8. Available: https://www.acma.gov.au/sites/default/files/2021-02/Trends-in-online-behaviour-and-technology-usage_ACMA-consumer-survey-2020.pdf.

⁷⁹ ‘Trends in online behaviour and technology usage’ (2020), ACMA consumer survey, p 9. Available: https://www.acma.gov.au/sites/default/files/2021-02/Trends-in-online-behaviour-and-technology-usage_ACMA-consumer-survey-2020.pdf.

addition to the full range of other messaging services (including SMS), all of which are freely available for download. Users can and do switch between different messaging services on their mobile devices easily given there are no meaningful barriers to switching;

- moreover, with respect to the default iMessage for iOS and Google messages for Android, switching away from the default may in fact involve additional effort in downloading a competitive app from an app store, which is not the case in the other direction or between apps that are downloaded from an app store;
- user registration processes are also designed to be quick and straightforward, promoting multi-homing. For example:
 - both iOS and Android devices have autofill functionality for account details and passwords, meaning personal details can be auto-filled when registering new accounts as can passwords if login details are required after registration;
 - both iOS and Android have security / verification code autofill capabilities which make two-factor authentication even quicker for those platforms that require it when registering;
 - many apps also provide a ‘keep me logged in’ option, allowing users to remain logged in to a service whilst using their phone. This avoids users having to login before each use;
 - once the app for an online platform has been installed on a device, it is readily accessible and operating systems are optimized to allow users to quickly flick back and forth between apps. In fact, both iOS and Android devices have split-screen multi-tasking functionality, allowing a user to have multiple online private messaging services open at the same time (e.g. a person might use an iPad to monitor their WhatsApp messages whilst replying to a friend on Signal); and
 - all messaging apps are able to access users’ contacts in their phone address books. This provides seamless access for users to their network of friends, family and co-workers to message which also facilitates and incentivises costless multi-homing.

Illustrative of the ease with which multi-homing and switching between services on which users multi-home occurs simply as the result of changes in user preferences (or

even as a result of endorsement of particular apps by influential figures) is the reported shift in the use of Signal and Telegram⁸⁰ following WhatsApp's announcement of changes to its privacy terms and conditions to better facilitate business communications.

3.5. Barriers to entry and expansion in private messaging are low

Recent entry and expansion in private messaging services demonstrates that entry is commercially feasible, either on a standalone basis or in conjunction with existing services and apps. Rapid innovation creates opportunities for new entrants to offer unique and attractive product features and functions that draw users to their services. This entry and expansion is also facilitated by the ease of switching between messaging services and the prevalence of multi-homing, discussed above.

For example:

- Zoom and Teams have recently entered or expanded from low user bases to become, according to the ACCC's figures, the third and fifth largest standalone services in a matter of months;⁸¹
- Google RCS has recently been developed, and has had increased growth and uptake, and significant and projected growth as discussed in more detail above;
- TikTok, which provides a private messaging service for its users, has seen a rapid rise in its user base since it launched in 2015. As mentioned above, in 2020, it experienced a year of exponential growth. In Q1 alone, TikTok gained 315 million new users in a quarter that was hailed as the "*best quarter for any app ever*".⁸² By July 2020, TikTok had 689 million global monthly active users (MAU); a rise of 36% from the end of 2019.⁸³ TikTok ended 2020 as the most downloaded app of the year⁸⁴ In 2021, TikTok ranked in the top 5 by time spent and its average monthly time spent per user grew faster than nearly every other app analysed,

⁸⁰ For example, as reported in:

<https://www.irishtimes.com/business/technology/whatsapp-fights-back-as-users-flee-to-signal-and-telegram-1.4457258>
and

<https://7news.com.au/technology/which-messaging-apps-users-are-flocking-to-after-whatsapp-announced-it-would-share-data-with-facebook-c-1940453>.

⁸¹ Interim Report, Figure 2.3. Excludes iOS and Google message services.

⁸² 'TikTok Crosses 2 Billion Downloads After Best Quarter For Any App Ever' (29 April 2020), Sensor Tower. Available: <https://sensortower.com/blog/tiktok-downloads-2-billion>.

⁸³ 'TikTok reveals detailed user numbers for the first time' (24 August 2020), CNBC. Available: <https://www.cnn.com/2020/08/24/tiktok-reveals-us-global-user-growth-numbers-for-first-time.html>.

⁸⁴ 'TikTok was the most downloaded app of 2020', (15 December 2020), Business of Apps. Available: <https://www.businessofapps.com/news/tiktok-was-the-most-downloaded-app-of-2020/#:~:text=And%20the%20most%20downloaded%20app,bolstered%20by%20COVID%2D19%20lockdowns.>

including 70% in the US and 80% in the UK, surpassing Facebook. TikTok is on track to hit 1.2 billion active users in 2021;⁸⁵

- Discord has successfully entered and rapidly expanded in Australia, which is recognized in the eSafety Commissioner research, as noted above. Discord's success has been driven by its strong reach within a particular demographic – gamers, who also tend to be younger.⁸⁶ Its use of topic-based text channels has provided a different way of organising chats than existing apps, allowing for communication “*without clogging up a group chat*”.⁸⁷ Discord's estimated MAU base is 140 million worldwide and its user base has doubled over the last 12 months, which provides it with a strong basis for further expansion.⁸⁸ The Interim Report acknowledges that Discord has approximately 2 million MAU in Australia,⁸⁹ a sizable and engaged user base. Despite its growing popularity, the Interim Report does not acknowledge the strength of the competitive constraint that Discord and similar services impose and will increasingly impose on Facebook's messaging services; and
- a range of new entrants in messaging services have emerged globally, including Honk, a new, real-time messaging app launched in December 2020 and ranked #37 in “social networking” in the Apple App Store.⁹⁰

The Interim Report identifies identity-based network effects as a barrier to entry and expansion for standalone services.⁹¹ This is not the case for the following reasons:

- the degree of multi-homing and the ease of switching between messaging services limits the impact of network effects as a potential barrier to entry given the clear incentives for users to have, or use, more than one messaging service. In fact, users have the ability to access multiple messaging services, which can concurrently benefit from network effects. In addition, private messaging

⁸⁵‘State of Mobile 2021’ (13 January 2021), p 24, App Annie; ‘The New Normal in 2021: Five Things You Need to Know in Mobile’ (10 November 2020).

⁸⁶As per Interim Report, Appendix C.

⁸⁷Discord website. Available: <https://discord.com/>.

⁸⁸‘Discord Revenue and Usage Statistics (2020)’ (30 October 2020), Business of Apps. Available: <https://www.businessofapps.com/data/discord-statistics/>. See also: ‘Chat App Discord Is Close To A \$7 Billion Valuation—Roughly Doubling In Value In Less Than A Year’ (24 November 2020), Forbes. Available: <https://www.forbes.com/sites/abrambrown/2020/11/24/chat-app-discord-is-close-to-a-7-billion-valuation-roughly-doubling-in-value-in-less-than-a-year/?sh=258de1995055>.

⁸⁹Interim Report, Figure 2.1, p 23.

⁹⁰ Tweet from Tiffany Zhong, “1 day and it's already #37 in Social Networking (App Store)” including an ad for Honk. Available: <https://twitter.com/tzhongq/status/1341819800075431936?s=27>.

⁹¹Interim Report, p 32.

services are able to access users' contacts which is, in effect, the user's network which facilitates costless multi-homing and switching; and

- at the time of selecting which messaging service to use, users are far more likely to be influenced by local network effects as most messaging communication occurs between close connections. Users only require a small group of people within their local network (or even one person) to use a new service for there to be incentive for them to use the service as well. It is not necessary for a users' entire network of Facebook messaging friends to migrate to another messaging service for the service to become a viable option. Local network effects mitigate any potential impact of broader identity-based network effects on the ability to enter or expand.

None of the evidence set out in this section is consistent with a conclusion that Facebook's messaging services face limited competitive constraint.

3.6. Innovation in private messaging is continuous and drives competitive reactions from Facebook and others

By focussing on the functional characteristics of various private messaging services at a particular point in time, the Interim Report overlooks constant innovation that drives competition between services and delivers significant benefits for consumers. The private messaging space is highly dynamic. The functions offered by messaging services today have changed significantly over time and will continue to evolve based on technological advancements and changing consumer preferences.

The fast-paced nature of these developments compounds the need to remain relevant and attractive to users which increases the speed at which services are improved, enhanced and updated. This drives service providers including Facebook to constantly experiment with innovative features and design elements to attract users and compete with market disruptors who are able to differentiate their service offerings with recent innovations. The Interim Report recognises this practice as a product of "*feature competition*", a well-accepted concept that it notes is a sign of dynamic competition.⁹²

However, the Interim Report considers that Facebook is insulated from this dynamic competition due to barriers to entry and the advantages of scope resulting from Facebook's acquisitions.⁹³

In fact the opposite is true. The dynamic nature of this industry is such that all messaging services, including Facebook Messenger, WhatsApp, iMessage, Google's messages services and others are constantly deploying new features, trialling new innovations and

⁹² Interim Report, Annexure B, p 7.

⁹³ Interim Report, Annexure B, pp 7-8.

working hard to provide an appealing user experience. New private messaging services arise constantly. Rapid innovation creates opportunities for new entrants to offer unique and attractive product features and functions that draw users to their services. This innovation demonstrates the high level of competition between messaging services.

Facebook continually competitively responds to improvements and innovations by Facebook's existing competitors and new, emerging private messaging services. **Annexure 2** illustrates key features that Facebook Messenger and WhatsApp have introduced over the last 12 months both in response to features that competitors have introduced and as a proactive approach to improve the quality of its services and retain the attention and support of users.

Other suppliers of messaging services are also innovating, for example:

- Google developed Google Meet to be free for all users during the pandemic.⁹⁴ In early 2020, Google rolled out iMessage-like reactions to its own Messages app, and then subsequently to its Messages web client.⁹⁵ In October 2020, Google Messages rolled out conversation categories,⁹⁶ and in November 2020, Google also announced it was rolling out end-to-end encryption for 1:1 chats on RCS in Android Messages.⁹⁷ It also began testing scheduled messaging sending options in December 2020.⁹⁸
- Apple's launch of iOS 14 in September 2020 saw the introduction of a list of new features for iMessage, including the ability to (1) use custom images for group chats (after this feature was made available to Facebook Messenger and WhatsApp users), (2) pin up to nine conversations above the usual messages feed, (3) reply to a specific message within a chain and (4) mention (i.e. tag) a contact within a message resulting in the tagged user receiving a notification that they have been tagged.⁹⁹

⁹⁴ 'Helping businesses and schools stay connected in response to Coronavirus' (4 March 2020), Google Cloud Blog. Available:

<https://cloud.google.com/blog/products/g-suite/helping-businesses-and-schools-stay-connected-in-response-to-coronavirus>.

⁹⁵ 'Google Messages gets iMessage-like reactions on the web too' (11 December 2020), Android Police. Available: <https://www.androidpolice.com/2020/12/11/google-messages-gets-imessage-like-reactions-on-the-web-too/>.

⁹⁶ 'Google Messages conversation categories are about to roll out' (30 October 2020), Android Police. Available: <https://www.androidpolice.com/2020/10/30/google-messages-is-getting-smarter-with-conversation-categories-in-search/>.

⁹⁷ 'Google is rolling out end-to-end encryption for RCS in Android Messages beta' (19 November 2020), The Verge. Available: <https://www.theverge.com/2020/11/19/21574451/android-rcs-encryption-message-end-to-end-beta>.

⁹⁸ 'Google Messages begins testing scheduled sending options' (3 December 2020), 9to5Google. Available: <https://9to5google.com/2020/12/03/google-messages-scheduled-sending/>.

⁹⁹ Apple website, 'Reply to specific messages on your iPhone, iPad and iPod touch'. Available: <https://support.apple.com/en-au/HT211303>.

- After rolling out audio tweets for iOS in June 2020, Twitter began experimenting with voice notes in its direct messaging service in September 2020.¹⁰⁰
- In September 2020, it was reported that Zoom was focussing on major upgrades to its messaging functionalities to offer more advanced messaging features, and had hired a significant number of engineers to help build out the new messaging product.¹⁰¹ Also, buoyed by its success in video, it was reported that Zoom was also exploring email and calendar services.¹⁰²
- Among a large number of features launched over the latter half of 2020 to help messaging in working from home environments, Microsoft announced in January 2021 that it would soon support messaging queuing in Microsoft Teams when sending messages while offline, which is aimed at ensuring messages are received and overcoming challenges around dropped connections.¹⁰³
- In January 2020, after increasing its size for video calls, Signal added more features to its service, including chat wallpapers, an “about field” for users’ Signal profile, animated stickers, for iOS media auto-download settings and full-screen profile photos (to match Android), and the ability to share Signal chats from other apps.¹⁰⁴
- In December 2020, Telegram launched live voice channels, and several usability improvements.¹⁰⁵

The sheer rate of development, including during the COVID-19 pandemic, where there has been significant growth in the use of private messaging services, illustrates the strong level of competition in this dynamic environment.

The pressure to innovate is also apparent from the evolution of private messaging over the past several decades which has seen major transitions occur following new

¹⁰⁰ ‘Twitter to start testing voice DMs’ (23 September 2020), The Verge. Available:

<https://www.theverge.com/2020/9/23/21452932/twitter-voice-audio-direct-messages-test-brazil>.

¹⁰¹ ‘Zoom invests in big messaging upgrade in challenge to Slack’ (15 September 2020), The Information. Available:

<https://www.theinformation.com/articles/zoom-invests-in-big-messaging-upgrade-in-challenge-to-slack>.

¹⁰² ‘Buoyed by Video Success, Zoom explores Email, Calendar Services’ (23 December 2020), The Information. Available:

<https://www.theinformation.com/articles/buoyed-by-video-success-zoom-explores-email-calendar-services>.

¹⁰³ ‘Message queuing is on the way to Microsoft Teams’ (27 January 2021), Windows Central. Available:

[https://www.windowscentral.com/message-queueing-way-microsoft-teams?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A%20wmexperts%20\(Windows%20Central\)&utm_content=Google%20Feedfetcher](https://www.windowscentral.com/message-queueing-way-microsoft-teams?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A%20wmexperts%20(Windows%20Central)&utm_content=Google%20Feedfetcher).

¹⁰⁴ ‘Signal takes advantage of the situation, implementing several WhatsApp features!’ (22 January 2021), Wabetainfo.

Available: <https://wabetainfo.com/signal-takes-advantage-of-the-situation-implementing-several-whatsapp-features/>.

¹⁰⁵ Telegram website, ‘Voice chats’. Available: <https://telegram.org/blog/voice-chats>.

technological innovations (e.g. the transitions from SMS to online instant messaging, to OTT messaging, RCS and real time video conferencing). There has been a rise and fall of numerous services over the years that have failed to adapt and stay relevant amidst the rapid rate of technological progress (e.g. ICQ / AIM and MSN Messenger).

3.7. The analysis in the interim report is too constrained, excluding substantial evidence of competition and resulting consumer benefit

a. A functional characteristics test is too narrow

The Interim Report concludes that certain rival messaging and communication services are unlikely to impose a strong competitive constraint on WhatsApp and Facebook Messenger as they are differentiated from—and have different functional characteristics to—Facebook’s services.¹⁰⁶

In addition to uncommercially constraining its analysis of the substantive similarities in functionality between rival messaging services, the ACCC’s competition assessment assumes a market that is defined almost entirely on the basis of similarities or differences between the features and functions of different types of messaging and communications services. This is not supported by the ACCC’s Merger Guidelines which state:

“[c]omparable product characteristics and functionality will often be indicative but are not sufficient to determine whether products are demand-side substitutes. Demand-side substitution depends on the willingness of customers to switch from one product to another in response to a price increase.”¹⁰⁷

The most significant factor in assessing competition for private messaging services is the extent to which users can and do switch between different services. As mentioned above in **Section 3.4**, users multi-home across several messaging services and are constantly switching between them, depending on their specific needs for each message, notwithstanding that they may have different features and functions. Conversely, services that share certain characteristics are not necessarily close substitutes from a user’s perspective.

The fact that services can be highly differentiated, with different functional characteristics, yet still be a significant competitive constraint is acknowledged in the ACCC’s analysis of Apple News in the DPI. The DPI Final Report explains why Apple News’ business model is “clearly distinct” from Google and Facebook,¹⁰⁸ and has

¹⁰⁶Interim Report, section 2.2.1.

¹⁰⁷ACCC’s ‘Merger Guidelines’ (November 2008, amended in November 2017), p 14. Available: <https://www.accc.gov.au/system/files/Merger%20Guidelines%20-%20Final.PDF>.

¹⁰⁸DPI Final Report, p 224.

fundamentally different characteristics in how news content is displayed to users. In addition, like iMessage, it is only available to consumers who use Apple products. Despite this, the ACCC suggests that Apple News may compete against Google and Facebook as the gateway for accessing news in the future.¹⁰⁹ This suggestion is based on the acknowledgement that, even if services have different functional characteristics, or are only available to a specific subset of users, they can compete with and be an important constraint on other services.

In addition, assessing the strength of competitive constraints limited to functional characteristics at a specific point in time does not take into account that messaging services are constantly innovating to introduce new and enhanced features (as explained above).

Finally, the Interim Report also does not outline any consideration of demand or supply elasticity between substitutable services, which are fundamental elements of assessing a market and the competitive constraints within that market.

- b. The evidence demonstrates clear consumer benefits from a competitive and dynamic ecosystems, with no evidence of consumer harm as a result of presumed freedom from competitive constraints

The Interim Report’s hypothesized “*degree of freedom from competitive constraints*” does not provide any examples of resulting harm to users. Instead, the empirical evidence demonstrates that consumers have benefitted and continue to benefit from ongoing innovation by private messaging services (including Facebook Messenger and WhatsApp) as they compete for the time of multi-homing users.

As discussed in detail above at **Section 3.6**, private messaging is dynamic and highly competitive and this applies constant pressure on suppliers to innovate, improve user experience and introduce disrupting features and functionalities to their services.

In response to these strong competitive constraints and users’ evolving preferences, Facebook is constantly implementing its own innovative features to improve the way users connect with their friends and family and allow them to do so in new and entertaining ways (see **Annexure 2** for a list of Facebook Messenger and WhatsApp’s latest key new features released in 2020 alone) and competing messaging service providers are doing the same.

The ultimate winners from this innovation are consumers, who constantly have access to new and more convenient ways to keep in touch with their family and friends and communicate more broadly.

¹⁰⁹ DPI Final Report, p 224.

The assessment in the Interim Report does not consider the competitive implication of the significant consumer benefit arising from messaging services. The fact that customers multi-home and that messaging services must constantly enhance and innovate is clear evidence of this benefit. The presence of the consumer benefits is not given due significance in the Interim Report and is not attributed to the significant levels of competition that Facebook faces from other messaging services that the evidence reflects.

4. Other issues addressed in the Interim Report

Facebook notes that there are a number of other issues that are addressed in the Interim Report, some of which relate to private messaging services and others which have a broader focus.

4.1. Personalized advertising has significant benefits for consumers which must be balanced with an analysis of the impact of data collection, use and privacy

Facebook acknowledges the privacy concerns identified in the Interim Report and shares the ACCC's apprehension about the risk of consumer harm that would follow from unnecessary data collection and / or misuse of personal information. However, Facebook believes that personalized advertising, underpinned by strong pro-privacy data principles and practices, brings significant benefits to consumers and advertisers. Facebook will address this in detail in its future submissions to the ACCC.

4.2. Fair contracts with business users

The Interim Report outlines concerns about digital platforms' ability to vary terms without notice and how this might adversely affect businesses that rely on those services¹¹⁰ and supports the ACCC's previous recommendation in the DPI Final Report to introduce a prohibition on certain unfair trading practices.¹¹¹ Facebook considers that Australia's existing unfair contract terms regime provides effective protection for consumers without the need for a civil penalty regime. Moreover, the measures Facebook currently employs ensure a high standard of integrity in the terms it offers to business users. Facebook will address any proposed reforms to the existing unfair contract terms regime when Treasury releases its exposure draft legislation with changes to the unfair contract terms regime for public consultation.

¹¹⁰Interim Report, pp 71, 73.

¹¹¹ Interim Report, p 74.

4.3. Competitive landscape in which Facebook operates

Facebook acknowledges the update to the ACCC's findings from the DPI Final Report in relation to competition dynamics in markets for social media and display advertising in section 1.2 and Appendix B of the Interim Report. In the Interim Report, the ACCC has maintained its view that Facebook has substantial market power in social media and the overall supply of display advertising. Facebook has engaged extensively with the ACCC on these matters throughout the DPI.

As the ACCC is aware, Facebook does not agree with the ACCC's characterisation of the relevant markets and competition dynamics nor its conclusions in relation to market power. Facebook competes for users and advertisers with a large and diverse group of connecting and across markets for sharing services that encompass a wide array of functions including messaging, photo / video sharing, video broadcasting and chatting. To the extent the ACCC's subsequent interim reports in the DPSI process continue to focus on the ACCC's views regarding social media and display advertising, Facebook will engage in detail with those issues then.

ANNEXURE 1

Comparative table of features and functionalities for messaging services¹¹²

*Note: * Information not available*

Feature / Functionality	Facebook Messenger	WhatsApp	iMessage	FaceTime	SMS / MMS	Voice Calls	Google Messages	Google Chat	Google Hangouts	Google Meet	Google Duo	Signal	LINE	WeChat	Discord	Threema	Viber	Telegram	Zoom	Skype	Microsoft Teams	Slack	Webex	Gmail	Email	Snapchat	TikTok	Twitter	LinkedIn	Reddit	Pinterest	Houseparty	IRC	Matrix	Kik	Texta	Disa	Plus	GroupMe	YAATA	BBM Enterprise		
Messaging / Call Features																																											
Text	✓	✓	✓	x	✓	x	✓	✓	✓	✓	x	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		
Voice	✓	✓	✓ ¹¹³	✓	✓ ¹¹⁴	✓	✓ ¹¹⁵	✓	✓	x	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	x	x	✓	x	x	✓	x	✓	x	✓	x	x	x	x	✓ ¹¹⁶	✓	✓			
Video (with member limit)	50 ¹¹⁷	8	1 ¹¹⁸	32	1 ¹¹⁹	x	1 ¹²⁰	x	25 ¹²¹	100,000 ¹²²	32	8	50 ⁰	9	50 ¹²³	1 ¹²⁴	20	1 ¹²⁵	50,000 ¹²⁶	10,000 ¹²⁷	10,000 ¹²⁸	15	3,000 ¹²⁹	x	x	15	x	x	1 ¹³⁰	x	x	8	x	*	x	x	x	x	50 ¹³¹	1 ¹³²	15		
Group message (with member limit)	250	256	✓*	✗	✗	✓	✓*	400 ¹³³	150	250 ¹³⁴	x	1,000	50 ⁰	50 ⁰	10	25 ⁶	250	200,000	1000 ¹³⁵	600 ¹³⁶	250 ¹³⁷	15	2000	x	x	32	x	50	50	x	10	8	x ¹³⁸	✓ ¹³⁹	50	10 ¹⁴⁰	✓ ¹⁴¹	✓ ¹⁴²	500	✓*	250		
File transfer	✓	✓	✓	x	✓	x	✓	✓	✓ ¹⁴³	x	x	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Read receipts	✓	✓	✓	x	x	x	✓	✓	x	x	x	✓	✓	x	x	✓	✓	✓	x	x	✓	x	x	✓	✓	✓	x	✓ ¹⁴⁵	✓	x	x	x	x	✓	✓	✓	x	x	x	x	x	✓	
Delete sent messages	✓	✓	✓	x	✓	x	✓	✓	✓ ¹⁴⁶	x ¹⁴⁷	x	✓	✓	✓	✓	✓	✓	✓	✓	x	x	✓	✓ ¹⁴⁸	✓	✓	✓	x	✓	x	x	x ¹⁴⁹	x	x	x ¹⁵⁰	✓	x	x	x	x	✓	✓	✓	
Stickers / Emojis	✓	✓	✓	✓	x	x	✓	✓	✓	x	✓	✓	✓	✓	✓	✓	✓	✓	✓	x	✓	✓	x	x	x	✓ ¹⁵¹	x	✓	x	x	x	✓	x	✓	✓	✓	✓	✓	✓	✓	✓	✓	
GIFs	✓	✓	✓	x	x	x	✓	x	✓	x	x	✓	✓	x	✓	✓	✓	✓	✓	x	x	✓	✓	x	x	✓	x	✓	✓	x	x	x	x	✗	✓	✓	x	x	✓	✓	✓		
Screen share	✓	x	✓ ¹⁵²	x	x	x	x	x	✓ ¹⁵³	✓	✓	x	✓	x	✓	x	✓ ¹⁵⁴	x	✓ ¹⁵⁵	✓	✓	✓	✓	x	x	x	x	x	x	x	x	✓	x	x	x	x	x	x	x	x	x	✓	
Contact Sharing	x	✓	✓	x	✓	x	✓	x	✓	x	x	✓	✓	✓	✓	✓	✓	✓	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	✓	
Location tracking	✓	✓	✓	x	x	x	✓	x ¹⁵⁶	x	x	✓	✓ ¹⁵⁷	✓	✓	x	x	✓	✓	x	x	x	x	x	x	x	✓ ¹⁵⁸	✓	✓ ¹⁵⁹	x	x	x	✓ ¹⁶⁰	x	x	✓ ¹⁶¹	✓	x	x	x	x	✓	x	✓
Payment service	x ¹⁶²	x ¹⁶³	x	x	x	x	x	x	x	x	x	x	✓	✓	x	x	✓	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	
Polls	✓	x	x	x	x	x	x	x	x	✓	x	x	✓	x	x	✓	✓	✓	✓	x	✓	x	✓	x	✓	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	✓	x	x
Games	✓	x	x	x	x	x	x	x	x	x	x	x	✓	x	x	x	✓	x	x	x	x	x	x	x	✓	x	x	x	x	x	✓	x	x	x	x	x	x	x	x	x	x	x	x
Scheduled Meetings	x	x	x	x	x	x	x	x	x	✓	x	x	x	x	x	x	x	x	✓ ¹⁶⁴	✓ ¹⁶⁴	✓	x	✓	x	x	x	x	x	✓ ¹⁶⁵	x	x	x	x	x	x	x	x	x	x	✓	x	x	
Accessibility																																											
Pre-installed Application	✓ ¹⁶⁶	x	✓ ¹⁶⁷	✓ ¹⁶⁸	✓	✓	✓ ¹⁶⁹	x	x	x	✓ ¹⁷⁰	x	x	x	x	x	x	x	x	x	✓ ¹⁷¹	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Available on Smartphone	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓ ¹⁷²	x	✓	✓	✓	✓ ¹⁷³	✓	✓	✓	
Available on Tablet	✓	✓	✓	✓	✓ ¹⁷⁴	✓ ¹⁷⁵	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓ ¹⁷⁶	x	✓	x	x	x	✓	x	✓	
Available on Computer	✓	✓	✓	✓	x	x	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓ ¹⁷⁷	✓ ¹⁷⁸	✓	x	x	x	x	✓	✓	✓	
Privacy																																											
E2EE/privacy (default)	x	✓	✓	✓	x	x	✓ ¹⁷⁹	x	x	x	✓	✓	✓	x	x	✓	✓	✓ ¹⁸⁰	✓ ¹⁸¹	x	✓	x	✓	x	x	✓	x	x	x	x	x	x	x	x	✓	x	x	x	x	x	x	*	✓
Pricing																																											
Free option	✓	✓	✓	✓	x ¹⁸²	x ¹⁸³	✓	✓	✓	✓	✓	✓	✓	✓	✓	x	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	x ¹⁸⁴
Upgraded Package Available	x	x	x	x	x	x	x	x	✓	✓	x	x	x	x	✓	x	x	x	✓	x	✓	✓	✓	x	✓	x	x	x	✓	x	x	x	✓	x	x	✓	x	x	x	x	x	*	

- ¹¹²This table has been prepared on the basis of desktop research and empirical evidence.
- ¹¹³iMessage does not have a voice calling function, however supports voice messaging via a recorded audio message being sent to another user. See ‘*Send photo, video or audio messages on your iPhone, iPad or iPod touch*’, <https://support.apple.com/en-au/HT203038>.
- ¹¹⁴SMS / MMS does not have a voice calling function, however recorded audio files can be sent via MMS.
- ¹¹⁵Google Messages supports voice messaging, allowing recorded voice messages to be sent to another user. See ‘*Send photos, videos, or voice messages in Messages*’, https://support.google.com/messages/answer/6159880?hl=en&ref_topic=7502602.
- ¹¹⁶Voice call capabilities in GroupMe are integrated with Skype, ‘*How do I make a Skype call from a GroupMe chat?*’ <https://support.microsoft.com/en-us/office/how-do-i-make-a-skype-call-from-a-groupme-chat-7e67f105-7ab7-4b66-91e4-b58e7352c829>.
- ¹¹⁷Via Messenger Rooms, <https://www.messenger.com/rooms>.
- ¹¹⁸iMessage does not have a video calling function, however recorded video messages can be sent to another user. See ‘*Send photo, video or audio messages on your iPhone, iPad or iPod touch*’, <https://support.apple.com/en-au/HT203038>.
- ¹¹⁹Recorded videos can be sent via MMS.
- ¹²⁰Google Messages does not have a video calling function, however it supports video messaging where recorded messages can be sent to another user. See ‘*Send photos, videos, or voice messages in Messages*’. <https://support.google.com/messages/answer/6159880>.
- ¹²¹Gmail and Google Workspace Basic can include up to 10 participants. Business and Education can include up to 25 participants. See ‘*Start a video call*’, <https://support.google.com/hangouts/answer/3110347>.
- ¹²²Google Meet provides a live stream view which can have up to 100,000 participants. For standard video calls, Google Account users can create a video call with up to 100 participants. Business, schools and organisations with advanced features can have up to 250 participants. See ‘*What is Google Meet*’, <https://apps.google.com/intl/en/meet/how-it-works/>.
- ¹²³Discord’s Go Live feature allows a viewing limit of up to 50 participants. Standard video chats in the server can have up to 25 participants.
- ¹²⁴See ‘*Video Calls the Threema Way*’, <https://threema.ch/en/blog/posts/video-calls>.
- ¹²⁵See ‘*Video Calls and Seven Years of Telegram*’, <https://telegram.org/blog/video-calls>.
- ¹²⁶Zoom’s Video Webinars provides a live stream view to up to 50,000 attendees. Standard video calls range between 100 to 1000 participants, depending on the plan.
- ¹²⁷Skype’s Meeting Broadcast feature enables a meeting of up to 10,000 attendees. Standard Skype video calls can have up to 50 participants.
- ¹²⁸Microsoft Teams live events can have up to 10,000 attendees. Normal Microsoft teams video chats can have up to 50 participants.
- ¹²⁹Webex events can have up to 3000 participants. Standard meetings can have between 25 and 1000 participants, depending on the plan.
- ¹³⁰LinkedIn does not have its own video calling function, however links to Microsoft Teams, Zoom and BlueJeans. Recorded video messages can also be sent over LinkedIn.
- ¹³¹GroupMe’s video features are facilitated by Skype. Skype has a 50 participant video call limit.
- ¹³²Yaata does not support video calling, however its MMS capabilities allow recorded video messages to be sent to another user. See ‘*YAATA – SMS/MMS messaging*’, https://play.google.com/store/apps/details?id=rpkandrodev.yaata&hl=en_AU&gl=US.
- ¹³³An unthreaded single conversation stream can have up to 400 participants, see ‘*Google Chat known limitations*’, <https://support.google.com/a/answer/9296435?hl=en>.
- ¹³⁴Standard Google Account users can create a video call with up to 100 participants. Business, schools and organisations with advanced features can have up to 250 participants. See ‘*How to video conference with Google Meet*’, <https://apps.google.com/intl/en/meet/how-it-works/>.
- ¹³⁵Zoom allows up to 1000 participants with the ‘Large Meetings’ add-on.
- ¹³⁶Skype can add up to 600 additional participants to group conversation, <https://support.skype.com/en/faq/FA34800/how-do-i-manage-group-chats-in-skype-on-desktop>.
- ¹³⁷Maximum number of members in a private channel is 250, and private channels facilitate chats <https://docs.microsoft.com/en-us/microsoftteams/limits-specifications-teams>.
- ¹³⁸Desktop search does not reveal maximum number of users available in this format.
- ¹³⁹Desktop search does not reveal maximum number of users available in this format.
- ¹⁴⁰As an SMS/MMS app, maximum number of participants in a group chat depends on the carrier limits of the mobile phone service provider.
- ¹⁴¹Desktop search does not reveal maximum number of users available in this format.
- ¹⁴²Desktop search does not reveal maximum number of users available in this format.
- ¹⁴³Only images and videos. See ‘*Share your photos and videos*’, <https://support.google.com/hangouts/answer/3115410>.
- ¹⁴⁴Images only.
- ¹⁴⁵Can manually enable show ready receipts on Direct Message.
- ¹⁴⁶Google Hangouts allows users to delete their entire message history. See ‘*Delete or turn off your message history*’, <https://support.google.com/hangouts/answer/3112001?hl=en&co=GENIE.Platform=Desktop>.
- ¹⁴⁷All messages disappear when a user exits the video call, see ‘*Send chat messages to video call participants*’, <https://support.google.com/meet/answer/9308979?co=GENIE.Platform%3DDesktop&hl=en>.
- ¹⁴⁸Notification provided to recipient that message has been deleted.
- ¹⁴⁹Can delete messages but will be visible to other users after deletion.
- ¹⁵⁰Unable to determine from desktop search.
- ¹⁵¹See Snapchat’s Cameo feature.
- ¹⁵²iMessage only allows for a screen to be shared on a Mac. See ‘*Share screens using Messages on Mac*’, <https://support.apple.com/en-au/guide/messages/icht11883/mac>.
- ¹⁵³Google Hangout allows for a screen to be shared on a computer. See ‘*About Google Screensharing*’, <https://support.google.com/google-ads/answer/3015113?hl=en>.
- ¹⁵⁴Viber allows for a screen to be shared on a computer.
- ¹⁵⁵Includes co-annotation.
- ¹⁵⁶Many of Google’s applications allow for users’ location to be shared through Google Maps.
- ¹⁵⁷Location pin feature.
- ¹⁵⁸See Snapchat’s Snap Map feature.
- ¹⁵⁹Twitter won’t show location unless a user has opted-in to the feature and chosen to attach location information to their Tweets.
- ¹⁶⁰Houseparty tracks location based upon a user’s IP address.
- ¹⁶¹Kik logs user IP addresses which could be used to determine the user’s ISP and approximate location.
- ¹⁶²Payment services are not currently available in Australia, however have been rolled out in the US.
- ¹⁶³Payment services are not currently available in Australia, however have been rolled out in India.
- ¹⁶⁴Can schedule reminders for a call, rather than organise a scheduled meeting.
- ¹⁶⁵In Recruiter mode, Recruiters can set up ‘Candidate Scheduling’ to organise a time for a meeting.
- ¹⁶⁶Facebook Messaging aps are pre-installed on some devices.
- ¹⁶⁷Pre-installed for iOS phone users.
- ¹⁶⁸Pre-installed for iOS phone users.
- ¹⁶⁹Google Messages is pre-installed on some Android devices.
- ¹⁷⁰Google Duo is pre-installed on some Android devices.
- ¹⁷¹Starting with Version 1902 of Microsoft 365, Teams is being included as part of new installations of Microsoft 365.
- ¹⁷²IRCCloud on the App Store.
- ¹⁷³Not available on iPhone.
- ¹⁷⁴Calls need to be made from a tablet with a SIM.
- ¹⁷⁵Calls need to be made from a tablet with a SIM.
- ¹⁷⁶IRCCloud on the App Store.

¹⁷⁷ Accessible through Google Chrome.

¹⁷⁸ IRCCloud on the App Store.

¹⁷⁹ End-to-end encryption is not available for group message. See 'How end-to-end encryption in Messages provides more security', <https://support.google.com/messages/answer/10262381?hl=en>.

¹⁸⁰ End-to-end encryption is not available for group message. See 'Telegram FAQ', <https://telegram.org/faq#q-why-should-i-trust-you>.

¹⁸¹ End-to-end encryption is available for account owners and admin providing additional protection when necessary. See 'End-to-end (E2EE) encryption for meetings', <https://support.zoom.us/hc/en-us/articles/360048660871-End-to-end-E2EE-encryption-for-meetings>.

¹⁸² However, 97% and 96% of pre-and post-paid mobile tariffs (respectively) in Australia included unlimited voice calls or SMS messages in 2018-19 and this share has increased steadily over time since 2014-15. See ACCC's 'Communications Market Report 2018-19'.

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¹⁸⁴ BBM Enterprise has a one-year free trial.

ANNEXURE 2

Table of the latest key Facebook Messenger and WhatsApp features released in 2020

Feature	Description	Date introduced
Facebook Messenger		
One-Time Notification	Allows businesses to send follow-up messages to users who have requested a notification. For example, a user may elect to be notified when an item is back in stock.	February 2020
Messenger Desktop App	Enables users to access Facebook Messenger on MacOS and Windows computer devices.	April 2020
Messenger Rooms	Enables users to start a video call with up to 50 participants. This feature also allows users to apply 360-degree backgrounds and filters within the room.	April 2020
Messenger App Lock	Enables users to add another layer of security to their private messages and helps other people from accessing them. The application can then be unlocked by either fingerprint or face authentication.	July 2020
Messenger Rooms Live Broadcast	Enables users to turn their Messenger Room into a live broadcast with up to 50 people, including those who do not have a Facebook account. The room creator controls the live broadcast, including where the room is shared, who can view the broadcast and who can participate.	July 2020
Screen Sharing	Allows users to share their screen with other members of a video call.	July 2020
Forwarding Limit	Limits the number of messages that can be forwarded at a time to five, to prevent the spread of spam, viral misinformation and harmful content.	September 2020
Watch Together	Allows users to stream content (including TV, movies and original Facebook content) to members of Facebook Messenger video calls and Messenger Rooms.	September 2020
Cross-App Communication	Allows Facebook Messenger and Instagram users to message and call each other across the two platforms, without needing to use or download the other app.	September 2020
Custom Emoji Reactions	Allows users to react to messages using their preferred six emojis.	October 2020

Vanish Mode	Allows users to send messages that will automatically disappear from both users' message chain after they have been viewed and the vanish mode chat is closed.	November 2020
WhatsApp		
Dark Mode	Allows users to have a black background with white text. This feature reduces the users' battery consumption and eye-strain in low light environments.	March 2020
Forwarding Limit	Limits the number of messages that can be forwarded at one time to constrain virality and stop the spread of misinformation.	April 2020
Group Voice/Video Call Participant Increase	Allows eight users to be on a video call at one time.	April 2020
QR Codes	Allows users to scan another users' QR code to add them to their contacts.	July 2020
Video Call Focusing	Allows users to expand a particular member a video call to full screen.	July 2020
Video Call Function in Group Chats	Allows members of a group chat with eight or less members to start a group video call by clicking one button.	July 2020
Dark mode for WhatsApp Web and Desktop	Enables users to apply dark mode on their computer.	July 2020
Business QR Codes	Allows users to scan a QR code displayed by a business to initiate a chat. Businesses can also choose to pre-populate a message to start the conversation once the QR code is scanned.	July 2020
Animated Stickers	Allows users to send animated stickers to other users.	July 2020
Always Mute	Allows users to mute another users' messages indefinitely.	October 2020
Disappearing Messages	Allows users to send messages in group chats or one-to-one chats that will disappear within seven days.	November 2020
Carts	Allows users to browse a catalogue, select multiple products and send an order as one message to a business.	December 2020