



**Submission by Match Group, Inc. to the  
Australian Competition and Consumer Commission**

*Response to app marketplaces Issues Paper  
(as part of the Digital Platform Services Inquiry)*

16 October 2020

## A Introduction

1. Match Group, Inc (**Match**) welcomes the opportunity to respond to the Australian Competition and Consumer Commission (**ACCC**) 'App marketplaces Issues Paper' (**Issues Paper**).
2. In this submission Match sets out:
  - in **Part B**, Match's role in app marketplaces; and
  - in **Part C**, Match's response to questions in the Issues Paper.

## B Match's role in app marketplaces

3. Match is a publicly traded corporation (NASDAQ: MTCH), with headquarters in Dallas, Texas, USA. Match provides dating products available in over 40 languages to customers in more than 190 countries through apps and websites. Throughout 2019, Match brands had approximately 9.2 million subscribers globally.<sup>1</sup> As of 31 December 2019, Match companies had approximately 1,700 full-time employees.<sup>2</sup>
4. Match's brands in Australia include Match™, Tinder, OkCupid, Hinge, PlentyOfFish, Twoo and Ablo.

 match tinder okcupid Hinge

 PlentyOfFish Twoo ablo

5. All of Match's products in Australia are available as apps on Apple's and Google's app marketplaces, the App Store and Google Play Store respectively. Many of Match's products in Australia are also available on websites. However, the vast majority of Match's user base uses mobile devices to access Match's products and services. Users cannot download these mobile apps from a website; they must be downloaded from an app marketplace.
6. Many of Match's apps are free to download and offer additional premium features to users with a subscription or one-off purchase. Match can accept payments from users made either when they are in one of Match's apps or on one of its websites.
7. Match charges customers less for its products and services when payments are made on Match's website than for purchases made inside one of Match's apps. This is because Match's apps fall within the arbitrary definition set by the major app marketplaces of apps that sell 'digital goods and services' within the app. Apps that fall within this definition are required by the app marketplaces to use the app marketplaces' proprietary in-app purchase systems and pay the app marketplaces a 30% commission for each transaction / in-app purchase made by a user.

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<sup>1</sup> Match Group Inc., Annual Report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 For the Fiscal Year Ended 31 December 2019 (**Match Group 2019 Annual Report**) p 45, available at <https://www.sec.gov/Archives/edgar/data/0001575189/000157518920000018/mtch-20191231.htm>.

<sup>2</sup> Ibid page 7.

## C Key issues for the app marketplaces report

### a) Intensity of competition in the relevant markets

1. Other than Google and Apple, are there other significant suppliers of app marketplaces in Australia?

2. What are the barriers to entry and expansion in app marketplaces?

8. There are no significant suppliers of mobile app marketplaces in Australia or globally other than Apple and Google.
- On **Apple** mobile devices, the App Store is the **only** marketplace currently available for iOS users to download apps. While Apple mobile device users can technically access third party app marketplaces (eg, TutuApp or Panda Helper) on their Apple mobile devices,<sup>3</sup> this usually requires sophisticated hacking skills (eg, 'jailbreaking') and could also be considered a breach of Apple's terms and result in loss of warranty.<sup>4</sup>
  - **Google** allows third party app marketplaces to be deployed on Android devices alongside its own Google Play Store. For example, Samsung supplies its Galaxy Store app marketplace, which is only available on Samsung-branded Android devices. There are also other less known app marketplaces, such as APKPure and F-Droid. Despite the existence of these other app stores, the ability to distribute through the Google Play Store is a 'must-have' for Android app developers. Alternative Android app stores are rarely used by consumers, as Google Play is pre-installed on all Android devices. The Google Play Store accounts for 90% or more of Android-compatible mobile app downloads and so other app marketplaces are not significant in the same way.<sup>5</sup>
9. Match is not an app marketplace operator and is therefore unable to provide detailed information to the ACCC on the barriers to entry and expansion in app marketplaces. Match however provides the information below based on its observations as an app developer.
10. The main barrier to entry for app marketplaces would be whether mobile operating system owners, who also license development tools necessary to develop on their operating systems, allow alternative marketplaces to be developed alongside their own app marketplace. One owner may wish to take a 'free market' approach whereby it reviews and approves rival app marketplaces for its operating system which can distribute apps in competition with itself. Another owner may wish to exercise greater control over app distribution and require apps be distributed only through its own approved app marketplace.
11. For example, Apple does not allow third party app marketplaces on its mobile operating system, iOS.<sup>6</sup> Technically, Apple could allow competing app stores to exist on iOS devices as Google does for Android devices.
12. Even in the case of the 'free market' approach, barriers could also include development costs for the marketplace, compliance with any requirements of the operating system owner (who licenses development tools) and the network effects that would already be enjoyed by the longstanding app

<sup>3</sup> N Statt, 'This illicit iPhone app store has been hiding in plain sight', in *The Verge* (20 February 2019) available at <https://www.theverge.com/2019/2/20/18232140/apple-tutuapp-piracy-ios-apps-developer-enterprise-program-misuse>; see also <https://support.apple.com/en-us/HT201954>.

<sup>4</sup> See L Franceschi-Bicchierai and B Merchant, 'The Life, Death, and Legacy of iPhone Jailbreaking' in *Vice* (28 June 2017) available at [https://www.vice.com/en\\_us/article/8xa4ka/iphone-jailbreak-life-death-legacy](https://www.vice.com/en_us/article/8xa4ka/iphone-jailbreak-life-death-legacy).

<sup>5</sup> See, eg, *Case 3:20-cv-05671 Epic Games, Inc v Google LLC*, filed 13 August 2020 (*Epic Games v Google*), page 34.

<sup>6</sup> See Apple, 'Developer Program License Agreement' (*DPLA*) clauses 3.2(g), 3.3.2(b); Apple, 'App Store Review Guidelines' clause 3.2.2(i).

marketplace incumbent. These factors would make it difficult for a new app marketplace to obtain scale and achieve cost efficiencies or to argue in favour of a business case for a new app marketplace.

13. In a detailed report into competition in digital markets recently published by the US House Judiciary Committee's Subcommittee on Antitrust (**House Report**) it was observed that first-mover advantages, network effects and barriers to entry are common features of app marketplaces and other digital markets.<sup>7</sup> This suggests that even though Google does not restrict rival app marketplaces from being developed for Android devices, alternative Android app stores that currently exist or may exist in the future do not provide an effective substitute for developers and consumers on Android mobile devices.

**3. To what extent are app providers able to publish and distribute an app without using the Apple App Store and the Google Play Store? Explain any factors limiting or preventing app providers bypassing the major marketplaces.**

**Apple mobile devices**

14. App developers are not able to publish and distribute an app on an Apple mobile device without using the Apple App Store. Distributing apps to consumers via an app distribution channel outside of the App Store is likely to result in Apple claiming the app developer has breached its developer agreements with Apple.<sup>8</sup> This would result in the developer losing access to their developer accounts and development tools for Apple's mobile device operating system, iOS.
15. Apple uses three specific clauses in its Developer Program Licence Agreement (**DPLA**) and App Store Review Guidelines to require that Apple mobile app developers only distribute apps through the App Store and do not create rival app stores (the **iOS App Distribution Clauses**):
  - Clause 3.2(g) of the DPLA requires that developers distribute their apps through Apple's App Store only. It states:

*Applications for iOS Products, Apple Watch, or Apple TV developed using the Apple Software may be distributed only if selected by Apple (in its sole discretion) for distribution via the App Store, Custom App Distribution, for beta distribution through TestFlight, or through Ad Hoc distribution as contemplated in this Agreement...*
  - Clause 3.3.2(b) of the DPLA prohibits 'Application[s]' that '*... create a store or storefront or other code or applications...*'; and
  - Clause 3.2.2(i) of the App Store Review Guidelines render it 'Unacceptable' to create '*... an interface for displaying third-party apps, extensions, or plug-ins similar to the App Store or as a general-interest collection.*'
16. Apple recently updated its rules to enable developers like Microsoft and Google to operate a gaming app catalogue / marketplace on Apple mobile devices as part of their respective cloud streaming gaming services, xCloud and Stadia.<sup>9</sup> Rather than having users install video game applications on their devices, xCloud and Stadia enable users to play these games via cloud streaming technology (games would therefore not be subject to the performance limitations of individual user hardware).<sup>10</sup>

<sup>7</sup> US House Subcommittee on Antitrust, Commercial and Administrative Law, 'Investigation of Competition in Digital Markets' (7 October 2020) (**House Report**) see pages 95 – 96, and more generally pages 37 – 38, 40 – 45.

<sup>8</sup> See for example: DPLA cl 3.2(g), 3.3.2(b); Apple, 'App Store Review Guidelines' clause 3.2.2(i).

<sup>9</sup> See Apple, 'App Store Review Guidelines' <https://developer.apple.com/app-store/review/guidelines/#streaming-games> clause 4.9.

<sup>10</sup> For an explanation of cloud gaming, see G Gurwin, 'Everything we know about cloud gaming' in *digitaltrands* available at <https://www.digitaltrands.com/gaming/what-is-cloud-gaming-explained/>.

17. Microsoft publicly criticised Apple's rule changes because they would require for example that Microsoft list its cloud streamed games individually on Apple's App Store and limit any app marketplace by Microsoft to a directory which links users back to the games listed on Apple's App Store.<sup>11</sup> It therefore appears that the changes might not truly allow developers to run a gaming app marketplace in competition with Apple's App Store.

#### **Android mobile devices**

18. App developers are technically able to publish and distribute an app without using the Google Play Store. Developers could list an app on app marketplaces specific to certain brands of Android mobile devices (eg, Samsung's 'Galaxy Store' on Samsung mobile devices, Amazon Appstore on Amazon's Fire Phone, OPPO App Market on OPPO mobile devices, etc). Developers could also list apps on app marketplaces that Match understands can be installed by Android users on their devices. For example, a developer could list their app on app marketplace 'SlideMe' – Android mobile device users download and install 'SlideMe' from its website using their device's web browser.
19. However, as noted above the Google Play Store still accounts for 90% or more of Android-compatible mobile app downloads and so other app marketplaces are not significant in the same way. Developers need to ensure they reach the broadest possible audience in order to ensure their businesses remain viable.
20. On 28 September 2020, Google announced in an Android Developer blog various forthcoming changes to its policies and terms.<sup>12</sup> In relation to responding to concerns raised by developers on choice of app marketplaces, Google said it was making changes in Android version 12 (next year's Android release) to '*... make it even easier for people to use other app stores on their devices while being careful not to compromise the safety measures Android has in place.*'<sup>13</sup> Details have not been provided on what this means in practice and whether such changes will overcome issues raised by app developers globally.
21. While app developers are also theoretically able to distribute the services they deliver via mobile apps through websites and web-apps, these are technically different from mobile apps, and as discussed below provide users with an inferior experience.<sup>14</sup> The option of distributing Match's portfolio of apps solely or primarily through websites and web-apps is not viable, particularly because the functions that Match app users enjoy cannot be delivered via a website.

#### **4. What development tools and support are offered to developers by app marketplaces and are these offered on equal terms to all developers?**

22. Developers are provided with development tools<sup>15</sup> by an operating system owner, called a Software Development Kit (**SDK**). A mobile app SDK only enables a developer to develop an app for the operating system for which the SDK was designed. The app marketplaces also provide their APIs to developers, and the build and dependency management plug-ins around 'integrated development environments' (**IDEs**).

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<sup>11</sup> Verge, 'Microsoft snubs Apple's olive branch to cloud gaming: 'a bad experience for customers'' (11 September 2020) available at <https://www.theverge.com/2020/9/11/21433071/microsoft-apple-app-store-rules-xcloud-game-streaming-xbox-game-pass>.

<sup>12</sup> Sameer Samat, VP product management, Google, '*Listening to Developer Feedback to Improve Google Play*' (28 September 2020) (**Google Developer Blog update**) available at <https://android-developers.googleblog.com/2020/09/listening-to-developer-feedback-to.html> (accessed 29 September 2020).

<sup>13</sup> See *Peekya Services, Inc v Google LLC* Case 3:20-cv-06772, filed 9 September 2020 US District Court, Northern District of California (*Peekya v Google*), pp 15 – 19; See *Epic Games, Inc v Google LLC* Case 3:20-cv-05671, filed 13 August 2020, pp 26 – 36, US District Court, Northern District of California (*Peekya v Google*), pages 15 – 19.

<sup>14</sup> See House Report, pages 96 – 97 and 334.

<sup>15</sup> See Google's standard developer tools at <https://developer.android.com/>; and Apple's developer tools at <https://developer.apple.com/develop/>.

23. App developers do not obtain direct development support from operating system owners. However, operating system owners may provide general guides and tutorials (eg, on their websites) on how to build apps using their relevant SDKs.
24. App developers need to remain compliant with any terms and conditions (including as set out in guidelines or policies) that govern access to the development tools provided by each operating system owner. Non-compliant developers will have their access to these tools limited or withdrawn.
25. Sophisticated developers may have the resources to better understand these conditions of access and how to maximise use of SDKs.
26. App marketplaces do not generally provide development support for app developers until the app has reached the stages of strategic early adoption or promotion. There are also some (albeit limited) opportunities for app developers to connect with app marketplace development teams,<sup>16</sup> including at conferences/summits.<sup>17</sup> When app developers have specific needs (eg, requiring clarification about issues that are blocking production), there is a separate escalation process through the app marketplaces' business development team. In addition, app marketplaces provide forums in which developers actively discuss app development issues.<sup>18</sup> Google provides an 'experts program'<sup>19</sup> which allows experienced app developers and technology experts to share learnings and best practices. Match is unaware of Apple offering a similar program.
27. Match understands that the development tools provided by the app marketplaces are the same irrespective of the size and type of app developer.

**5. To what extent do app providers place an app on one of the major app marketplaces and not the other? What factors influence whether an app provider places their app on one, or multiple, app marketplaces?**

28. App developers need to list their apps on both the App Store and Play Store to maximise their potential user base. Apps which benefit substantially from direct network effects need to offer apps on both Apple's App Store and Google's Play Store, or else the service offered in the app would be far less valuable to consumers. For example, users of Tinder (a Match online dating product) want to connect with any potential match irrespective of the operating system or make of their mobile device.
29. It is not possible for an app developed for one operating system (and listed on its relevant app marketplace) to be used to reach users of devices which run another operating system for the simple reason that an app developed with the SDK used for one operating system is not compatible on any other operating system. Therefore, the app marketplaces of each operating system are separate and distinct channels for reaching distinct customers.
30. Developers who wish to develop Android apps for distribution on a non-Google marketplace accept terms and conditions from each of the various Android app marketplaces for both the basic publishing / distribution of the app on the marketplace and for any developer tools which might also be made available to the developer by the app marketplace. Developers need to have a registered developer account with Google in order to develop Android-compatible apps.

**6. To what extent do consumers use more than one app marketplace? What are the barriers associated with using or changing app marketplaces?**

<sup>16</sup> Eg through their own developer program (see, eg, Apple's developer program at <https://developer.apple.com/support/>).

<sup>17</sup> See, <https://developer.apple.com/learn/experts/>.

<sup>18</sup> See, eg, Google's developer forum at <https://developers.google.com/community/gdg>; and Apple's developer forum at <https://developer.apple.com/support/forums/>.

<sup>19</sup> Google Developers 'Experts Program' available at <https://developers.google.com/community/experts>.

### ***Apple mobile device users***

31. Consumers that access an app from one marketplace do not generally use a different marketplace.
32. The only way that an Apple mobile device user can access another app marketplace (eg, mobile apps on the Google Play Store) is by purchasing an Android device. Consumers who own both an Apple mobile device and an Android mobile device could download apps with more than one marketplace. However, the rate of 'multi-homing' (ie, using two mobile devices with different operating systems to access apps) is very low.
33. Rates of multi-homing and rates of switching between mobile devices with different operating systems (and therefore app marketplaces) are low due to the following:
  - **High switching costs:** users would need to re-download and repurchase the app (unless they can use the app developer's own payment systems), and need to overcome substantial sunk costs in paid software and/or digital content tied to the existing app marketplace they use. In addition, there are significant personal and financial costs involved with migrating data between mobile operating systems. Information saved within a mobile operating system includes passwords, contact details, communication history and personal details within apps (including payment details and shipping addresses).

It is easier for a user to continually upgrade their device to another device using the same operating system than to move to a different operating system which would involve a costly, painstaking and time-consuming data migration exercise. Operating systems make it easy for data migration to occur within the same operating system. Both Apple and Google provide migration features facilitating the transfer of data, contacts, photos and apps to a new device running the same operating system. While third party apps exist to help consumers transport their data to a rival mobile operating system, these are not always effective and can be difficult to use.
  - **Learning costs:** there are also significant time and learning costs in new users becoming familiar and efficient with another smart mobile operating system's interface and features. The prospect of high switching costs contributes to a user spending more time on the same device and, on average, a smart mobile device user will use the same device for several years.<sup>20</sup> This further disincentivises switching to a device with a different operating system.
  - **Integration/interoperability costs:** switching costs are increasingly becoming magnified by the fact that, while consumers do not often multi-home the same type of device (eg, owning multiple mobile phones), they do often purchase interoperable devices within the same ecosystem (ie, running the same operating system). For example, in Australia, iPads account for approximately 83% of tablets sold,<sup>21</sup> which suggests that most users of iPhones that also have a tablet would use an iPad. In addition, products such as smart watches and wireless earbuds generally work better with mobile phones produced by the same manufacturer. This acts as a further disincentive to switch device brands and operating software.

### ***Android mobile device users***

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<sup>20</sup> A Ng, 'Smartphone users are waiting longer before upgrading – here's why' (17 May 2020) available at <https://www.cnn.com/2019/05/17/smartphone-users-are-waiting-longer-before-upgrading-heres-why.html>.

<sup>21</sup> 49GS Statcounter, 'Tablet Vendor Market Share Australia – June 2019-June 2020', available at <https://gs.statcounter.com/vendorsmarket-share/tablet/australia>.

34. An Android device user could use more than one app marketplace on their Android device. For example, Samsung mobile device users have access to both the Play Store and the Galaxy Store.
35. As noted above however, the extent of use of multiple app stores on Android devices is low given that most Android app downloads occur via the Google Play Store.
36. Furthermore, an Android device user can only access Apple's App Store if they purchase an Apple mobile device. This is unlikely given low rates of multi-homing.

**7. Are there ways for consumers to source apps without using the two major app marketplaces? To what extent can consumers successfully download apps outside of app marketplaces?**

37. For the vast majority of users, sourcing apps from alternative sources is not within reach as it requires a relatively high level of technological aptitude. In addition, most consumers would not even be aware of alternatives to marketplaces preinstalled on their devices.

***Apple mobile devices***

38. An Apple mobile device user could 'sideload' an app marketplace onto their device. However, this practice is not permitted by Apple mobile devices and would require sophisticated hacking skills.

***Android mobile devices***

39. If an app marketplace is not pre-installed on an Android mobile device by an OEM, then device users must obtain this app marketplace as a standalone download (eg, from an app marketplaces website). This is because clause 4.5 of Google's Google Play Developer Distribution Agreement (*GPDDA*) prohibits developers from listing alternative app marketplaces on the Play Store.

**8. To what extent are web-versions of mobile apps substitutes to the mobile-version?**

40. App developers are able to distribute their services through websites and web-apps, which are applications run on a web server through a user's web browser. However, websites and web-apps are not a substitute for native mobile apps.
41. When compared with native mobile apps, websites and web apps provide inferior performance, prolonged load instances and restricted access to the device's hardware (eg, camera, microphone, GPS and other sensors). Websites and web apps do not support features (including gesture-based features) such as the SWIPE feature, which is crucial for Tinder. Furthermore, webpages and web-apps have no centralised point of distribution (like an app marketplace). Finally, tracking and data collection on web-apps is more limited than on mobile apps.
42. More broadly, applications available on fixed devices, such as personal computers, are not substitutes for mobile apps, especially as user time is increasingly mobile-device focused. Developers create services designed to be used on mobile devices. The value of the services that app developers create relies on the mobility of the device, for example localised weather information, traffic conditions for your local area, real-time navigation based on your precise location, potential dates which are located within a defined proximity to the user, etc. This value is diminished on fixed devices.

**b) App marketplace conduct**

**9. What goods and services do app developers use that are also offered by app marketplaces (e.g. AdMob)? What benefits and detriments are there from using the services as offered by app marketplaces compared to alternative services?**

**10. Are app developers required to use related products and services of particular app marketplaces in order to operate effectively?**

## 11. Do app marketplaces bundle services to encourage app providers/app developers to acquire services from their broader platform ecosystems?

43. The following services are offered by app marketplaces:

- **In-App payment services**

- *Apple In-App Purchase (IAP)* – a service that is used to process payments for in-app purchases on iOS devices. Apple's App Store Review Guidelines require that apps which allow users to make in-app purchases of 'digital' products and services use Apple's IAP service to process these transactions.<sup>22</sup>

Through its IAP service, Apple becomes the merchant of record in place of the app developer, deciding for the latter how payments should be processed. Developers are not able to access the billing data of their customers.

Finally, Apple charges a 30% commission on in-app purchases (except for subscriptions that last longer than 12 months for which it charges 15%). This is a significant fee, particularly when compared with the cost of payment processing services more broadly,<sup>23</sup> and is a particularly significant cost for new and smaller app developers.

- *Google Play Billing (GPB)* – a service that is used to process payments for in-app purchases on Android devices. On its face, Google's policy for processing in-app payments appears to be more flexible than Apple's. However, Google also requires developers to use GPB to process in-app payments for digital goods and services.

According to clause 3.2 of the GPDDA, the app developer is obliged to use a Payment Processor for in-app purchases. The Payment Processor has to be authorised by Google but it is not stipulated that it should be a Google entity. It appears that Google is now applying a policy to reflect its interpretation that this clause requires the use of GPB for apps that offer payments for digital / non-physical goods.<sup>24</sup>

Google's GPB carries many of the same disadvantages as Apple's IAP from the perspective of app developers. Like Apple, Google charges a 30% fee (or 15% for subscriptions retained for more than 12 months) for every in-app payment. The app developer-customer relationship is also disintermediated.

- **App development software**

- *Android Studio* – App developers can use the official integrated development environment for Android devices to build apps for Android devices. The vast majority of Android app developers use it. However, there are alternatives available including Eclipse, IntelliJ IDEA, and Netbeans. Other ways to build apps for Android include using Xamarin, React Native and Flutter.
- *Apple's app developer tools* – App developers that want to develop apps for iOS devices must use Apple's tools and resources to build their apps. While iOS app

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<sup>22</sup> Apple App Store Review Guidelines Art. 3.1.1 provides that 'If you want to unlock features or functionality within your app, (by way of example: subscriptions, in-game currencies, game levels, access to premium content, or unlocking a full version), you must use in-app purchase [referring to Apple's IAP service].'

<sup>23</sup> Payment processors typically charge between 1-4% of transaction value plus a fixed fee (generally below \$1). See, eg, <https://www.fundera.com/blog/credit-card-processing-fees>; See, eg, PayPal charges a 2.6% + \$0.30 fee per completed online transaction in Australia available at <https://www.paypal.com/au/webapps/mpp/paypal-seller-fees>.

<sup>24</sup> See Google Developer Blog update and updates to Google's Payments Policy.

developers can use alternative app development tools including Xamarin, Reactive Native or Flutter, they must use Apple tools (eg, SDKs) to build, sign and distribute on Apple's App Store.

- **Advertising services**

- *Google AdMob* – a marketing tool that allows app developers to display ads within their apps (ie, 'in-app ads'). AdMob also provides analytics functions. Alternatives include Mobclix and AirPosh.
- *Google Ad Manager* – a platform that allows publishers (ie, app developers) to serve and sell ads on their properties (including in mobile).
- *Google Ads* – a marketing tool that allows app developers to create search campaigns for their apps. There is no alternative provider of this service for advertising on Google's Play store.
- *Apple Search Ads* – a marketing tool that allows app developers to create search campaigns for their apps whereby links apps appear in response to searches performed on Apple's App Store. There is no alternative provider of this service for advertising on the App Store.

## 12. What strategies (if any) are used by app marketplaces to entrench consumers in their broader platform ecosystems?

44. **First**, users of mobile devices where there are no alternative app marketplaces are particularly susceptible to strategies which are used to entrench them in the broader platform ecosystem. As discussed in Match's response to **question 6 above**, there are high financial and personal costs preventing consumers from switching between operating systems, and by extension, app marketplaces.
45. As explained in an email by the late Steve Jobs in response to an Amazon Kindle advertisement which implied it was easy to switch from an Apple to an Android device: *'The first step might be to say they must use our payment system for everything, including books (triggered by the newspapers and magazines). If they want to compare us to Android, let's force them to use our far superior payment system. Thoughts?'*<sup>25</sup> Consumers may also remain with an operating system / app marketplace for a variety of other reasons as explained below.
46. **Second**, operating system owners / marketplace operators develop default apps for mobile devices that users become intimately familiar with. This includes messaging, video calling, email/calendar, camera, video/music streaming and payment processing services. Many of these apps can be used effectively within the same ecosystem across different platforms in various contexts, increasing exposure and familiarity with the broader platform's ecosystem.
47. **Third**, popular mobile apps developed by the marketplace operator are sometimes specifically bundled together or pre-installed on devices. For example, FaceTime, Apple Maps, Apple Music and Safari are pre-installed on all Apple devices, and Google Chrome, Gmail, Google Maps and Google Drive are pre-installed on all Google devices. In addition, bundling of apps and other services appear to be more common of late. For example, Apple has recently announced its new Apple One bundling subscription which bundles six of Apples services into one subscription.<sup>26</sup>

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<sup>25</sup> Email chain 22 to 23 November 2010 between Apple's Philip Schiller and Steve Jobs, obtained as part of the public record in the Apple eBook litigation in the US, see <https://www.theverge.com/2020/7/30/21348130/apple-documents-steve-jobs-email-books-amazon-apps-antitrust-investigation-schiller>.

<sup>26</sup> Apple One, available at <https://www.apple.com/au/apple-one/?cid=CDM-AU-DM-P0020440-456393&cp=em-P0020440-456393&sr=em>.

48. Consumers often commit to a platform ecosystem on a household (eg, family) or user group (eg, workplace) basis where the entire group runs devices using the same platform ecosystem to take advantage of different benefits. For example, family members may be able to access content purchased by other family members (including songs, movies, TV, cloud storage, books and apps through, for example, Apple's 'Family Sharing' service). Additionally, certain features (eg, FaceTime or AirDrop on Apple devices) only function between Apple devices.
49. As explained above, some app developers are also required to use app marketplaces' proprietary in-app purchase systems. Billing data is obtained via these systems and the billing process (including refunds) becomes managed by the app marketplace, again increasing consumer familiarity with the particular marketplace.

**13. Do app marketplaces have the ability to self-preference their own apps over those of third party app providers? How?**

**14. For app providers: what has been your experience of competing with app marketplaces in their capacity as app providers?**

**15. What is the effect of Google and Apple pre-installing selected apps on products they own?**

50. App marketplaces are potentially able to self-preference their own apps over third party apps in a number of ways including:
- **pre-installing and defaulting apps** on devices. Pre-installation of apps / app marketplaces (which become the 'default' app for the function the user wishes to perform using that app) on a device means that users are less likely to search for and download competing third party apps or app marketplaces. Data from App Annie shows that pre-installed apps comprise 9 of the top 10 most-used apps on iOS (or 15 of the top 20), and 8 of the top most-used apps on Android.<sup>27</sup>
  - **superior interoperability** between products and the mobile device / operating system. For example, headphones and smart watches enjoy greater interoperability with mobile devices of the same brand and the relevant default apps on the mobile device (eg, music, health, etc). Third party apps may not compete as vigorously because they do not have access to the same features or because users face permission prompts that are not present with pre-installed apps;
  - **continual device warnings or prompts** displayed each time a non-preinstalled app attempts to use a device's function or sensor. This could act to dissuade a user from using that app and instead default to using the relevant competing app preinstalled by the operating system owner; and
  - **lower app costs** for their own apps compared to apps that are required to pay the app marketplace 30/15% commissions.
51. Match does not have direct experience competing with app marketplaces in their capacity as app providers because app marketplaces have not to date offered dating / matching apps. Hypothetically, if an app marketplace were to develop dating / matching apps, Match would find it difficult to compete, given that Match's cost base would be 30% higher due to the requirement to use the app marketplaces' in-app purchase systems. In addition, the app marketplace would have access to Match's transaction and billing data and customer information collected by the app

<sup>27</sup> [App Annie](#), Aug 2020 Worldwide based on Usage Penetration (defined as % of iOS/Android users who used the given app in that month).

marketplaces through their in-app purchase systems, enhancing the ability by which the app marketplace (ie, Google or Apple) could precisely target Match's customers.

52. Microsoft has committed to app fairness principles that were originally set out by the Coalition for App Fairness (**CAF**), a group formed by app the global app developer community including Match, Spotify, Epic Games, etc concerned with conduct arising in app marketplaces.<sup>28</sup> The CAF's App Store Principles are:

- 1. No developer should be required to use an app store exclusively, or to use ancillary services of the app store owner, including payment systems, or to accept other supplementary obligations in order to have access to the app store.*
- 2. No developer should be blocked from the platform or discriminated against based on a developer's business model, how it delivers content and services, or whether it competes in any way with the app store owner.*
- 3. Every developer should have timely access to the same interoperability interfaces and technical information as the app store owner makes available to its own developers.*
- 4. Every developer should always have access to app stores as long as its app meets fair, objective and non-discriminatory standards for security, privacy, quality, content, and digital safety.*
- 5. A developer's data should not be used to compete with the developer.*
- 6. Every developer should always have the right to communicate directly with its users through its app for legitimate business purposes.*
- 7. No app store owner or its platform should engage in self-preferencing its own apps or services, or interfere with users' choice of preferences or defaults.*
- 8. No developer should be required to pay unfair, unreasonable or discriminatory fees or revenue shares, nor be required to sell within its app anything it doesn't wish to sell, as a condition to gain access to the app store.*
- 9. No app store owner should prohibit third parties from offering competing app stores on the app store owner's platform, or discourage developers or consumers from using them.*
- 10. All app stores will be transparent about their rules and policies and opportunities for promotion and marketing, apply these consistently and objectively, provide notice of changes, and make available a quick, simple and fair process to resolve disputes.<sup>29</sup>*

53. Microsoft has committed to these principles, including not blocking apps from Windows based on a developer's choice of payment system, not using any non-public information or data from its app marketplace about a developer's app to compete against it, and to charge reasonable fees that reflect the competition Microsoft faces from other app marketplaces on Windows.<sup>30</sup> In an environment which operated on these principles, app developers would be able to compete on the merits with an app marketplace.

**16. What types of data are collected by app marketplaces on consumers' use of apps that are made available on their marketplace? Why is this data collected and what is it used for?**

<sup>28</sup> See Google 'Supported locations for distribution to Google Play users' available at <https://appfairness.org/app-developers-coalition-for-app-fairness-competition-innovation/>.

<sup>29</sup> CAF, 'Our vision for the future' available at <https://appfairness.org/our-vision/>.

<sup>30</sup> See R Alaily '10 app store principles to promote choice, fairness and innovation' in *Microsoft* available at <https://blogs.microsoft.com/on-the-issues/2020/10/08/app-store-fairness-caf-interoperability-principles/>.

**17. What types of data are collected by app marketplaces specifically through the use of development tools they provide to app developers? Why is this data collected and what is it used for?**

**18. Is this data available to other market participants, at the same level of quality and granularity, through alternative sources? To what extent can this data be used to identify successful apps, or apps that are more likely to be successful in the future?**

**19. To what extent could app marketplaces use this data to identify emerging competitors to their own apps?**

#### ***Transaction / billing data***

54. App marketplaces collect valuable transaction and billing data where developers use app marketplaces' own in-app purchase facility. This data includes customer lists, the purchasing activity of individual users (which can be used for all manner of purposes, including their propensity to purchase subscriptions) and the success of subscriptions. As noted above, some developers are required to use these in-app purchase facilities.
55. The impact of using these facilities means that the app marketplace manages parts of the customer-side relationship, including refund requests. This deprives an app developer of valuable data which could be used by them to make strategic commercial decisions. It also means that the refund and customer support process becomes inefficient. For example, a user might contact an app developer directly, which makes sense because they assume the billing relationship is with the developer of the app being used. Instead the developers would, for example, direct users to the marketplace operator who owns the customer relationship because of their in-app purchasing system. This confusion could cause frustration from consumers and could mean that developers are unable to flexibly cater to consumer needs. Consumers could also be faced with delays and a customer support experience that is not tailored to the circumstances of the customer's use of a particular app.

#### ***Usage data***

56. App marketplaces collect app usage statistics, including the number of times each app on a device was opened, the amount of time it was open for and the time it was opened. For example, the Google Play Store provides app developers with crash data, number of daily permissions denied and active users/sessions.

#### ***App performance and diagnostic data***

57. Performance and app stability telemetry are mostly operational metrics. Some of this data is available to access through development tools.
58. If developers opt in, diagnostic, analytics and usage data are collected via development tools. Bug reporting, including detailed profile and log information, is also optional information which can be shared with some anonymisation.

### **c) Relationships between app marketplaces and app developers and providers**

**20. What is the process for getting an app approved for distribution on the various app marketplaces? How has this process changed over time?**

**21. How effective is the key marketplaces' current review process? Do they successfully ensure that low quality and malicious apps are filtered?**

**22. To what extent do app developers/providers have concerns with app marketplace review processes? Please provide detail relating to each marketplace used**

59. The process for getting an app approved for distribution is broadly similar on various app marketplaces whereby developers:
- sign up for a developer account;
  - accept relevant agreements, in particular a developer agreement and associated policies or guidelines;
  - pay an annual registration fee; and
  - submit an app to the app marketplace for review and obtain the app marketplace's approval. This step must be done for every update made by the developer to the app.
60. Notwithstanding some efforts by app marketplaces to make the application of certain terms, conditions and policies clearer, app developers globally have continued to raise concerns that the app listing and review process is arbitrary and not transparent, and could involve greater fairness and clarity and genuine cooperation between parties.
61. While developers respect that app review processes are in place to enable a level of quality control to benefit end-users, in some cases it is unclear when an app developer will be subject to certain conditions while other apps offering similar services are not. This confusion impacts developers who are unable to push through updates to their apps. Features which were once approved by the app marketplace in one review process could be considered non-compliant in the next review.
62. For example, Apple rejected an app update to Down Dog's yoga app on the basis that the app did not automatically charge customers following the expiry of a free trial.<sup>31</sup> Down Dog suggested its experience with auto-charging trials in the past resulted in negative consequences (eg, fewer users trying the product, large refund requests from users who forgot to cancel, disbelief from users when Down Dog indicated Apple would not allow it to issue refunds).<sup>32</sup> On 3 July 2020, Down Dog announced on Twitter that Apple had approved the update but expressed fears that *'there may have been a different result had we not made their rejection public. Other developers might have simply complied with Apple's initial decision'*.<sup>33</sup>
63. Even if an app marketplace made its review process transparent and enabled developer comments and concerns to be voiced, developers could remain dissatisfied if marketplaces are able to make arbitrary decisions which suit their commercial purposes at the time.

**23. How important is ranking highly on app marketplaces' 'search' function to an app's discoverability?**

**24. How transparent is the operation of search ranking? What information are app providers/developers provided with on the operation of ranking systems?**

**25. To what extent can app providers/developers increase the ranking of an app?**

**26. How important is getting an app featured to the success of an app?**

**27. How does an app become featured in an app marketplace? How transparent is this process?**

64. App ranking has continued to become important given the explosion in the number of apps listed on the major app marketplaces. Ranking on app marketplaces is particularly important for new apps to increase awareness among users. App ranking is arguably less important for established apps with strong brand names since users will search directly for these apps when in an app marketplace.

<sup>31</sup> See Down Dog tweet dated 1 July 2020, available at <https://twitter.com/downdogapp>.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

65. However, even a high organic search ranking based on an app's popularity and a highly relevant search query by a user does not ensure that an app will appear at the top of the app search results page for that user. In particular, App developers can pay for advertising that results in their apps being 'featured' at the top of the search results page. It is common for developers to bid on their competitors' 'branded' keywords (so a user searching for 'Tinder' may instead see an ad for 'OkCupid' at the top of their search results screen). This practice makes it all the more important for apps to obtain a high search ranking and to even bid on their own branded keywords.
66. App marketplaces therefore profit from an app's brand recognition by requiring the developer of the app to bid for search advertising on the brand name that the developer has worked hard to build. Apple for example is expected to generate \$2 billion this year as a result of this practice.<sup>34</sup> These practices increase the cost base of app developers. These costs are compounded where that app developer must also pay a 30% commission on all in-app transactions.
67. Match does not receive specific or useful insights into the operation of search ranking on the major app marketplaces. Generally speaking, app developers can increase the ranking of an app in a number of ways including:
- **advertising** – including physical and digital advertising campaigns. Digital advertising campaigns importantly include buying search advertising as described above. This involves a paid advertisement appearing in response to a user's search query in the app marketplace;
  - **increasing app downloads** – whether this be through advertising and/or otherwise incentivising downloads for example by making the app free for initial users;
  - **increasing positive feedback and ratings** – including by providing users with simple ways to give feedback without intruding on their experience. Promptly addressing negative reviews and feedback is equally important; and
  - **minimising uninstalls** – for example, by maintaining user engagement.
68. While ranking highly on search results is important, the ACCC should query whether the algorithmic ranking of popular apps (where ranking data is trained by previous user behaviour) should be influenced by whether an app developer has an advertising relationship with an app marketplace.
69. Apple and Google also offer seasonal promotions, which involve driving more paid users to an app (thereby increasing the relevant marketplace's revenue). These promotional features are important for competitive brands.

**28 Are there processes in place to respond to user feedback, and for the removal of outdated or misleading reviews? If so, are these processes to be effective?**

**29 Are app providers or app marketplaces able to 'hide' or otherwise suppress negative reviews from display?**

70. Both Apple and Google enable developers to reply to user app reviews on their respective app marketplaces. Reviewers are notified when a developer responds to their feedback and reviewers are able to update their reviews.
71. App developers and other users are able to report user feedback on an app if it contains abusive or offensive material, or is otherwise in breach of app marketplace terms of use. Match understands

<sup>34</sup> Amy Gesenhues, 'Apple search ads expected to generate \$2 billion in revenue by 2020', *Search Engine Land* (22 October 2018) available at <https://searchengineland.com/apple-search-ads-expected-to-generate-2-billion-in-revenue-by-2020-306882>.

that the app marketplace reviews this material and can decide to remove it from the marketplace. The relevant terms of use could be interpreted differently by the specific review team that is assessing a report by an app developer. This creates issues around the consistency and transparency of the feedback reporting process.

72. Match is not aware of an established process by which app developers can work with an app marketplace to remove untrue reviews. It is difficult for developers to assert through current feedback reporting processes that reviews are false or misleading and that they should be removed.
73. App developers can request that aggregate user rating scores (ie, from 1 – 5 stars) on Apple's App Store be reset when a new version of their app is released (all written reviews remain however).<sup>35</sup> Apple recommends using this feature sparingly because an app with few ratings may discourage potential users from downloading it.
74. It can be assumed that app marketplaces have the ability to hide or otherwise suppress negative reviews from display given they have control over the marketplace itself.

**30. What range of consumer data can be collected from the use of an app?**

**a) To what extent is this data accessible to the app providers?**

**b) To what extent is this data accessible to the app marketplace or other third party?**

**c) For what purposes is this data collected?**

**31. What terms and conditions are in place between app marketplaces and app providers for the access of data by app marketplaces?**

**32. To what extent are app developers able to limit the amount/types of consumer data is shared back with the app marketplace?**

75. As noted above, developers are deprived of valuable data which could allow them to improve the quality of their products and offer a better user experience.
76. App marketplaces also collect information on app usage, app downloads/installations, app opens, etc.
77. Apple's and Google's IAP services (which they impose on certain app developers through their respective app marketplaces) collect valuable transaction and billing data where developers use app marketplaces' own in-app purchase facility, including customer lists, the purchasing activity of individual users and the success of subscriptions. App marketplaces take ownership of the customer relationship away from app developers. This data is not made available to the app developer itself and the developer is unable to adequately assist customers in relation to refund requests, hardship exceptions, partial payments, etc.

**33. What terms in the Google Play Store and the Apple App Store, related to payments in the app, are app providers required to comply with?**

**34. Which types of apps are required to pay the service fee for in-app purchases? How transparent is the process for determining when this fee is required to be paid?**

**35. To what extent does the imposition of this fee affect an app's commercial viability?**

### ***App developer concerns***

78. App developers globally have expressed concerns with the in-app purchase payment terms of both the Google Play Store and the Apple App Store. These concerns have led to private litigation and

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<sup>35</sup> Apple, 'Ratings, Reviews, and Responses' available at <https://developer.apple.com/app-store/ratings-and-reviews/>.

regulatory investigations worldwide. One of the focuses of these disputes is the requirement to use IAP/GPB and pay a 30% commission for in-app transactions and subscriptions.

### **Apple's payment conditions**

79. In respect of payments made by users while using the app on an Apple device, app developers are responsible for determining the prices for subscriptions and à la carte features, subject to Apple's requirement that app developers charge at specific price tiers ending in '\$.99' (eg, \$0.99, \$1.99 etc).
80. Apple's App Store Review Guidelines (**Guidelines**) and its DPLA require a subset of app developers to use Apple's in-app payment system, 'IAP', and pay Apple a 30% commission on all transactions, when their apps accept payment for digital goods and services.<sup>36</sup> This means that app developers who offer 'digital goods or services' as opposed to 'physical goods or services' are subject to these requirements.
81. Apple's DPLA and Guidelines do not distinguish specifically between apps that offer 'physical' or 'digital' goods or services. Apple refers to apps providing 'physical goods or services' as apps that enable the purchase of 'goods or services that will be **consumed outside of the app**'.<sup>37</sup> In its report on its market study into mobile app stores, the Netherlands Authority for Consumers & said:  
*Apple stated about this distinction what apps have to use IAP in an interview with ACM, that the digital products are actually on (or are consumed on) the iPhone. Therefore, Apple is a party to the transaction. As for a transaction related to a physical product, Apple is not able to verify whether the transaction took place or not. In that context, Apple stated that apps that offer digital content, "require some extra work for Apple, for example, handling the billing process and tax services, compliance and covering credit card fees."*<sup>38</sup>
82. In its letter addressing concerns raised by Spotify about IAP and the 30% commission, Apple stated that:  
*[a]pps that sell physical goods — including ride-hailing and food delivery services, to name a few — aren't charged by Apple. The only contribution that Apple requires is for digital goods and services that are purchased inside the app using our secure in-app purchase system.*<sup>39</sup>
83. In Geradin and Katsifis' paper outlining the growing competition concerns over various app store practices by Apple,<sup>40</sup> and in the authors' response<sup>41</sup> to a rebuttal put forward by Apple advisers Sven Völcker and Daniel Baker,<sup>42</sup> Geradin and Katsifis consider that this distinction between 'digital' and 'physical' goods is unclear and unprincipled and that the application of the in-app purchase and 30% commission requirements on certain app developers over others is unjustified. Some of the points noted by Geradin and Katsifis include:<sup>43</sup>
- the distinction between 'digital' and 'physical' goods or services is naturally unclear and leads to confusing outcomes for developers. This is evidenced by the exceptions that are introduced by Apple in response to public outcries against it after it attempts to apply this

<sup>36</sup> See eg, Apple, 'App Store Review Guidelines' available at <https://developer.apple.com/app-store/review/guidelines/> clause 3.1.

<sup>37</sup> Apple's App Store Review Guidelines available at <https://developer.apple.com/app-store/review/guidelines/> and provided as **Annexure 3**, cl 3.1.5(a).

<sup>38</sup> ACM Report, page 89.

<sup>39</sup> See Apple Statement, 'Addressing Spotify's claims', *Apple Newsroom* (14 March 2019) available at <https://www.apple.com/newsroom/2019/03/addressing-spotifys-claims/>; see also ACM Report, page 89.

<sup>40</sup> D Geradin and D Katsifis, 'The antitrust case against the Apple App Store' (19 May 2020) available at <https://ssrn.com/abstract=3583029>.

<sup>41</sup> D Geradin and D Katsifis, 'Bringing an end to Apple's anti-competitive practices on the App Store: A response to Völcker & Baker' (17 September 2020) (**Geradin and Katsifis' Rebuttal**) available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3694716](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3694716).

<sup>42</sup> S Völcker and D Baker, 'Why There Is No Antitrust Case against Apple's App Store: A Response to Geradin & Katsifis' (27 August 2020) available at <https://ssrn.com/abstract=3660896>.

<sup>43</sup> see Geradin and Katsifis' Rebuttal, pages 17 – 27.

distinction (eg, the 'reader', 'premium subscription video' and 'person-to-person experiences' app exceptions – see below);

- the 30% commission is not justified on the basis that it reflects the value of the App Store as a distribution / customer acquisition channel, because 16% of apps in the App Store carry the burden of paying this 30% commission, while the other 84% of apps only pay a \$99 annual fee to Apple;
- users convert to paying customers *because* the app developer engages in multi-million dollar marketing campaigns to drive digital traffic to the App Store (and in most cases, users use the App Store to search and find a specific app or type of app) and invest in the app itself to substantially increase user engagement;
- it does not make sense that apps offering physical goods or services should not also pay the commission if, as Völcker and Baker argue, Apple should be given some credit for driving customer acquisitions to developers; and
- Apple could verify that any transaction (whether digital or physical in nature) has occurred by using an API connecting the developer or its non-IAP payment processor with Apple. Apple does not have the ability to actually monitor the delivery of 'digital goods and services' in a way that is fundamentally different to physical goods and services anyway. In particular, Apple would still need to contact the app developer to verify that transactions for digital goods actually occurred. As such, IAP is *not* the only way Apple can track and verify transactions and provide support to affected customers – it could still do this where other payment processing systems are used.

84. This 30% commission is charged on the transaction value of user payments made in respect of the app, including, where charged by the app developer, the purchase of the app itself, any subscriptions purchased in the app and any other in-app transactions. Since 2016, Apple lowered the commission to 15% for subscriptions exceeding more than one year.
85. App developers are also restricted from informing users about opportunities to make purchases outside of their iOS app. For example, a user could technically make a payment by accessing their profile on a web-page, however, Apple's terms restrict developers from steering users towards these alternative payment mechanisms.
86. All other apps (ie, that supply physical goods or services / those that are consumed outside the app) must use their own or a third-party payment solution (eg, PayPal, Braintree, ApplePay, etc) instead of IAP.
87. As noted above, the distinction between those apps that must use IAP and those that are free to choose among third-party solutions is unclear. Apple has introduced a number of exceptions to the requirement to use IAP in response to public backlash over its application of this distinction, including:
- **Reader apps** – Apple allows so-called 'Reader' apps to disable IAP (and thus avoid paying the 30%/15% commission), but these apps must still abide by Apple's marketing restrictions (ie, not promote these out of app payment channels). This rule applies to apps that enable users to access content or subscriptions purchased elsewhere, such as on the web and is limited to '*magazines, newspapers, books, audio, music, video, access to professional databases, VoIP, cloud storage, and approved services such as classroom management apps*'. Examples of reader apps include Amazon Kindle, Audible, Netflix and Spotify.<sup>44</sup>

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<sup>44</sup> See <https://www.apple.com/ios/app-store/principles-practices/>, last accessed on 1 July 2020.

- **Premium subscription video apps** – It is understood that in around 2016, Apple and Amazon entered into private negotiations which resulted in an agreement whereby the Amazon Prime Video app could be displayed on iOS without Amazon using IAP (and paying a commission) for in-app purchases (eg, to rent or buy movies).<sup>45</sup> Apple has said that this exception, which currently includes Amazon Prime Video, Altice One and Canal+, is applied to '*premium subscription video entertainment providers*' and is consistent with the Reader Rule.<sup>46</sup> However, some consider that this concession goes beyond the reader rule since Apple allows these video providers to use their *own* payment solution to accept in-app purchases, provided that the user has already purchased a subscription on the web. Currently, Apple's Guidelines make no reference to this. This additional exception confuses developers as it is not clear that the original '*digital goods or services*' definition is meaningful.
- **Person-to-person experiences** – Apple recently announced that apps offering real-time person-to-person experiences, like tutoring or telehealth, are not obliged to use IAP. However, this only applies to services between single individuals and does not apply to a 'one-to-many' real-time services.<sup>47</sup> There does not seem to be any principled reason why only apps offering a one-to-one service should benefit from this exception but not the other categories. As Geradin and Katsifis put it: '*if a Yoga class is “one-to-one” (one teacher – one student), there is no obligation to use IAP. But if the Yoga class is attended by two students, then the app has to use IAP. We leave it to the reader to decide whether this makes any sense.*'.<sup>48</sup> This exception was introduced after Apple faced criticism and regulatory scrutiny for its attempt to require ClassPass (an app helping people book exercise classes at local gyms) and Airbnb to use IAP and pay the 30% commission after they began allowing users to sell virtual services throughout the COVID-19 pandemic.<sup>49</sup>

88. There does not therefore appear to be a justifiable rationale for Apple (or Google) to require some apps (offering digital services), and not others (offering physical services), to use proprietary in-app purchase systems and pay a 30% commission. Uber, for example, provides a similar type of service to Tinder: Uber connects a rider to a driver to meet and take a ride, while Tinder connects two people together so they can meet and go on a date. Uber is not required to use IAP because Apple considers it involves services consumed outside the Uber app. Similarly, Uber is not required to use GPB whereas Tinder is.

89. Developers who opt for a data-driven / advertising-based model would not need to use IAP and would thereby avoid needing to pay a commission. This means that app developers that must pay the commission are at a competitive disadvantage to developers offering competing apps that are not subject to the commission. Other app developers have simply chosen not to supply 'digital goods and services' at all so that they do not have to pay a commission to Apple.<sup>50</sup>

### **Google's payment conditions**

<sup>45</sup> N Statt, 'Amazon Prime Video now allows in-app rentals and purchases on the iPhone, iPad, and Apple TV' in The Verge (1 April 2020) available at <https://www.theverge.com/2020/4/1/21203294/amazon-prime-video-ios-in-app-purchases-iphone-ipad-apple-tv-change>. Previously Amazon Prime Video did not allow in-app purchases in order to avoid the 30% commission.

<sup>46</sup> M Gurman, 'Apple Lets Some Video Apps Sell Shows Without Taking 30% Cut', in Bloomberg (1 April 2020) available at <https://www.bloomberg.com/news/articles/2020-04-01/apple-lets-some-video-apps-sell-shows-without-taking-30-cut>

<sup>47</sup> Guidelines, clause 3.1.3(d); <https://developer.apple.com/news/?id=xqk627qu>.

<sup>48</sup> Geradin and Katsifis Rebuttal page 18.

<sup>49</sup> Geradin and Katsifis Rebuttal page 17.

<sup>50</sup> For example, ClassPass stopped offering virtual classes since those classes were subject to Apple's commission. See, J Nicas and D McCabe 'Their Businesses Went Virtual. Then Apple Wanted a Cut' in *The New York Times* (28 July 2020) available at <https://www.nytimes.com/2020/07/28/technology/apple-app-store-airbnb-classpass.html>.

90. The GPDDA provides that app developers must pay a 'Transaction Fee', which is subject to change from time to time.<sup>51</sup> As at the date of this submission, the 'Transaction Fee' is a service fee that app developers must pay to Google for all 'apps and in-app products' offered through Google Play and is equivalent to 30% of the transaction price or 15% for any subscribers that the app developer retains after 12 months.<sup>52</sup> Google also requires app developers to only use Google's own in-app payment processor, GPB, to process subscriptions and in-app purchases of digital content.
91. On its website, Google clarifies the types of digital content for which Google Play Billing can (and should) be used, including:<sup>53</sup>
- **One time products**, which is 'content that users can purchase with a single, non-recurring charge to the users form of payment' and includes consumable products (eg, in-game currency) and non-consumable products (eg, premium upgrades and level packs); and
  - **Subscriptions**, which are products that provide access to content on a recurring basis and renew automatically until they are cancelled.
92. Another condition of distributing apps through Google Play is that app developers must not charge less than AUD\$0.99 and no more than AUD\$550.00 for paid apps and in-app purchases.<sup>54</sup>
93. As noted above, On 28 September 2020, Google announced in an Android Developer Blog various forthcoming changes to its policies and terms and clarified its future approach to enforcing these policies and terms.<sup>55</sup>
94. In particular, Google published an updated Developer Program Payments Policy which requires that all apps providing in-app purchases for digital goods use Google's own proprietary in-app purchasing system, 'Google Play Billing'.<sup>56</sup> Google will also extract a 30% 'service fee' from these apps, including for the purchase of the app itself, sales of subscriptions within the app and any content or feature purchases made within the app by consumers.<sup>57</sup> These payment related changes will be effective from 20 January 2021.
95. Google also provided examples of apps which must use the GPB system (and which will incur Google's 30% service fee) for in-app purchases. These apps include, for example, subscription services for fitness, gaming, dating, education, music and video apps. Google also provides examples of apps which must not use this billing system, including those for the 'purchase of physical services'.<sup>58</sup>

**36. How satisfied are app developers and app providers with their relationships with the key app marketplaces? For example, in relation to costs and fees, interoperability of**

<sup>51</sup> GPDDA cl 3.4.

<sup>52</sup> Play Console Help, 'Service Fees', available at <https://support.google.com/googleplay/android-developer/answer/112622?hl=en-GB>, accessed 21 September 2020.

<sup>53</sup> Google Developers, 'Google Play's billing system overview' available at <https://developer.android.com/google/play/billing>, accessed 21 September 2020.

<sup>54</sup> See, Google, 'Supported locations for distribution to Google Play users' <https://support.google.com/googleplay/android-developer/table/3541286?hl=en>.

<sup>55</sup> Sameer Samat, VP product management, Google, 'Listening to Developer Feedback to Improve Google Play' (28 September 2020) available at <https://android-developers.googleblog.com/2020/09/listening-to-developer-feedback-to.html> (accessed 29 September 2020).

<sup>56</sup> Google, 'Developer Program Policy Preview: Payments' available at <https://support.google.com/googleplay/android-developer/answer/9992660> (accessed 29 September 2020).

<sup>57</sup> See Google, 'Service fees' available at <https://support.google.com/googleplay/android-developer/answer/112622> (accessed 29 September 2020).

<sup>58</sup> Google, 'Developer Program Policy Preview: Payments', cl 2(a) available at <https://support.google.com/googleplay/android-developer/answer/9992660?hl=en>.

**apps with app marketplace services, tech support, rankings, display and presentation of apps etc.**

**37. Do app developers receive sufficient and clear information from app marketplaces in relation to software development and technical support?**

96. App developers have a mixed relationship with app marketplaces.
97. On the one hand app marketplaces provide an invaluable platform for businesses to develop and distribute their products and services to consumers worldwide (notwithstanding that apps themselves enrich and add significant value to app marketplaces and mobile devices themselves).<sup>59</sup>
98. On the other hand however, app developers have expressed a number of concerns with app marketplaces, particularly the application of various terms and conditions such as the obligation on some to use proprietary payment systems. These IAP services disintermediate app developers' relationship with their customers, undermining the developers' ability to serve those customers. Apple and Google both also levy exorbitant 30% commissions on in-app transactions (15% for subscriptions that last more than 12 months), which ultimately raises prices on consumers and threatens the viability of many businesses.
99. There are also concerns that the relationship between the key app marketplaces and app developers is often one-sided, since the app marketplaces might be regarded as unavoidable trading partners that determine the conditions for app acceptance onto their platforms. There are also concerns that there is no recourse available to independently dispute app review decisions.
100. As discussed above, there are industry-wide concerns about the level of technical support provided by app marketplaces to developers, particularly in relation to approval of updates to apps. While the guides provided by app marketplaces are useful, they are generic and do not account for the difficult and bespoke situations some developers find themselves in when faced with potential app delisting after years of running a growing and successful app.

**d) Relationships between app marketplaces and consumers**

**38. Are consumers presented with the terms relating to data collection (including amount and types of data collected) before deciding to download an app?**

**39. To what extent are consumers able to limit the amount and/or types of consumer data that is shared with:**

**a) the app provider**

**b) the app marketplace?**

**40. What terms and conditions are in place between app marketplaces and app providers regarding disclosure of this data collection to consumers? Who is required to provide these disclosures to consumers?**

101. App marketplaces typically require that app providers make available to users, at or before the time of download, information about the app's terms relating to data collection.<sup>60</sup> Consumers are generally presented with the app provider's terms relating to data collection before deciding to

<sup>59</sup> As the late Steve Jobs observed in a 2008 interview around the launch of the App Store: '[w]e expect [the App Store] to add value to the iPhone. We'll sell more iPhones because of it'.

<sup>60</sup> Apple App Store Review Guidelines, clause 3.3.10 and also clause 5.1 on Privacy, available at <https://developer.apple.com/app-store/review/guidelines/>; see also Google's GPDDA clause 4.8, available at <https://play.google.com/about/developer-distribution-agreement.html>.

download the app. For example, a link to Tinder's Privacy Policy is included in the description of the Tinder app in both the App Store<sup>61</sup> and Google Play Store.<sup>62</sup> The Privacy Policy is again brought to the user's attention after downloading the app on the registration page where Tinder advises users to '*Learn how we process your data in our Privacy Policy and Cookies Policy.*'<sup>63</sup> This advisory notice links users to the relevant pages.

102. The extent to which consumers are able to pick and choose the data that they share with the app developer depends on the particular app. By way of example, as a condition of using the Tinder app, Match requires users to provide their phone number, email address (for communications such as updates to Tinder's Privacy Policy or to send receipts) and date of birth (to ensure consumers are over 18 years old).
103. Finally, users can also control Tinder's access to the user's camera, photo album, geo-location, push notifications, etc.
104. App marketplaces typically collect information directly from consumers (eg, they know when a user has downloaded the Tinder app). Match does not provide consumer data directly to app marketplaces. To understand what control the consumer has over the amount and/or types of data collected by the app marketplace, a consumer would need to review the app marketplaces' terms of use and privacy policies or ask the app marketplace directly.

**41. What information do consumers receive regarding the cost of apps (including in-app purchases) prior to download? Is this information provided by the app provider or the app marketplace?**

**42. Do consumers receive sufficient and clear information from app marketplaces regarding the quality of apps they are looking to download?**

**43. How influential are app rankings/featured app status to be on a consumer's decision?**

105. Consumers are provided with the cost of apps and in-app purchases prior to making a payment for these services. The cost of paid apps is displayed clearly in Apple's App Store and Google's Play Store. The cost of these apps is set by app providers. The cost of in-app purchases (eg, premium features), is displayed to users while inside the app.
106. Users have access to significant information in the form of reviews and ratings on app marketplaces regarding the quality of apps they are looking to download. More established apps usually have more reviews and ratings, which can provide consumers with more information than the ratings and reviews available for newer apps, which can be more limited.
107. App rankings can be particularly influential on a consumer's decision when downloading apps, particularly for those brands that are new or not as well-known, and/or in circumstances where there are multiple competing apps.

**44. What risks are there to consumers when downloading apps in the Google Play Store or Apple App Store? What measures are in place to protect consumers from the risks of scams, or false and misleading apps, on app marketplaces?**

**45. What risks are there to consumers when downloading apps outside of the Google Play Store and Apple App Store (including through other app marketplaces or via direct**

<sup>61</sup> See <https://apps.apple.com/ca/app/tinder-dating/id547702041>.

<sup>62</sup> See [https://play.google.com/store/apps/details?id=com.tinder&hl=en\\_CA&gl=US](https://play.google.com/store/apps/details?id=com.tinder&hl=en_CA&gl=US).

<sup>63</sup> See Tinder Privacy Policy at <https://policies.tinder.com/privacy/intl/en> and Tinder Cookies Policy at <https://policies.tinder.com/cookie-policy/intl/en>.

**download online)? What is the likelihood of harm compared to downloading apps via the Google Play Store and the Apple App Store?**

**46. What complaints mechanisms are in place for consumers to report scam apps, or false and misleading apps to app marketplaces and what redress, if any, is available?**

108. Consumers that make a purchase on Apple's App Store using its in-app purchase system must contact Apple regarding any complaints about their payments. Refunds are processed by Apple via this system. If a user contacts an app developer directly, developers must direct users to Apple. Consumers can report suspicious activity generally directly to Apple.<sup>64</sup>
109. Consumers can contact Google in relation to issues relating to certain apps listed on the Google Play Store, including content issues or suspected violations of the GPDDP policies.<sup>65</sup> Consumers can also request redress (eg, refunds) from Google or the app developer directly.<sup>66</sup>

**e) Trends in apps and app marketplaces**

**47. Are there any technological changes that will affect the supply of apps in Australia? If so, describe what they are.**

**48. Have there been technological change/innovation in the supply of apps in markets other than Australia?**

**49. Has competition, or potential competition, in the supply of apps been affected by: a) acquisitions of start-up companies b) acquisitions of new technology c) mergers or acquisitions between companies at different levels of the app ecosystem chain? If so, please describe how.**

110. The sector has continued to see consolidation. Issues relating to the impact on current and future competition by acquisitions in digital markets has been covered extensively by the ACCC in its Digital Platforms Inquiry Final Report and in the House Report.

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<sup>64</sup>Requires logging into Apple ID, see <https://reportaproblem.apple.com/>.

<sup>65</sup> See, Google, 'Report content issues or violations' available at <https://support.google.com/googleplay/answer/2853570?co=GENIE.Platform%3DAndroid&hl=en>.

<sup>66</sup>See, Google, 'Learn about refunds on Google Play' available at [https://support.google.com/googleplay/answer/2479637?hl=en&ref\\_topic=3364671](https://support.google.com/googleplay/answer/2479637?hl=en&ref_topic=3364671)