

16 October 2020

By email: digitalmonitoring@accc.gov.au

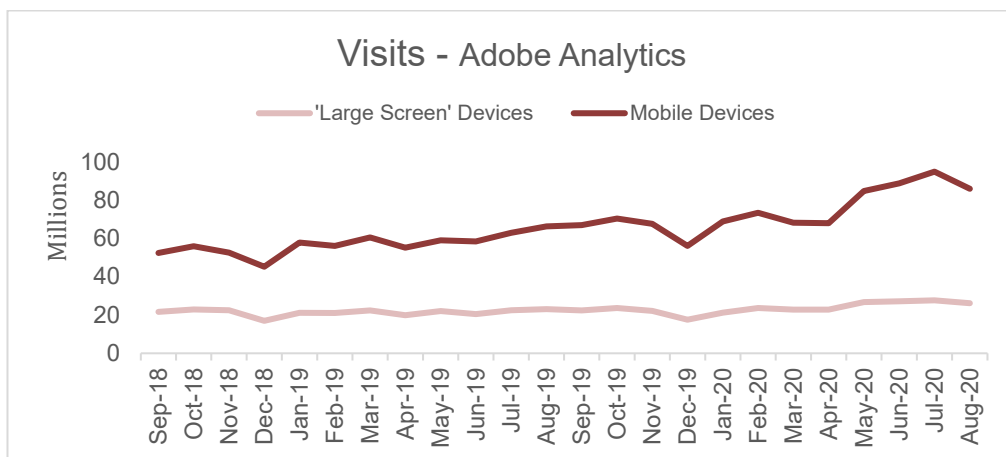
Dear Sir / Madam

Submission on ACCC Digital Platform Services Inquiry - March 2021 report on app marketplaces

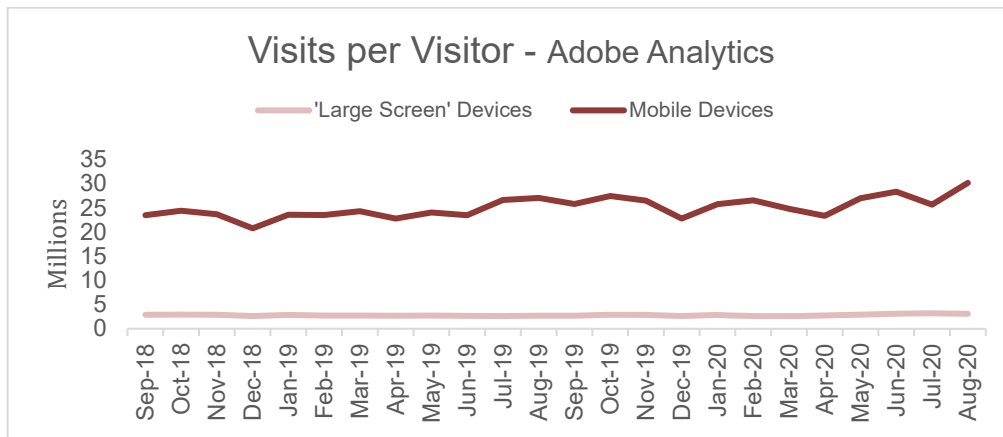
REA Group Limited (**REA**) welcomes the opportunity to comment on the Australian Competition and Consumer Commission (**ACCC**) Digital Platform Services Inquiry’s March 2021 report on app marketplaces (**App Marketplaces Report**), following the release of an issues paper on 8 September 2020 (**Issues Paper**).

REA is a Melbourne-based, multinational digital advertising company specialising in property. REA’s core business involves advertising properties on behalf of real estate agents and allowing property seekers to search for properties. REA operates (among other businesses) the residential property website www.realestate.com.au, the commercial property website www.realcommercial.com.au and the share accommodation website www.flatmates.com.au, as well as equivalent mobile sites and mobile device apps.

In relation to app marketplaces, REA in its capacity as both an app developer and an app provider has a wealth of experience in dealing with the Apple App Store and the Google Play Store. REA has released 10 apps across Apple and Google’s app marketplaces with over 10 million downloads in aggregate. This submission will focus on our experiences with our www.realestate.com.au free app and our recently launched www.flatmates.com.au freemium app. Both apps mirror the services that REA offers to consumers via its traditional web experience. The path to consumers via a mobile experience is increasingly important to REA’s business given trends showing that consumers are increasingly reliant on our mobile experiences and, more importantly, are more engaged on the mobile experiences as shown below:¹



¹ Data sourced from Adobe Analytics (Sept 18 – Aug 20). Visits per visitor is used to measure engagement, the higher the visits per visitor indicates a greater engagement level from the users as they repeatedly return to REA’s experiences.



The decisions made by consumers in relation to property will be some of the most important decisions in their lives – if nothing else this will be true in a financial sense for most consumers. REA is continuously looking to expand the availability and accessibility of its service offerings to ensure consumers are equipped with the information they need along each step of their property journey, and that real estate agents are provided with the best tools to drive their business. As REA’s businesses have adapted from their traditional web roots to native apps on both Android and Apple devices over the past decade, REA has experienced a range of obstacles with the app marketplaces which have potentially resulted in the stifling of further innovation and limiting the accessibility of REA’s services to consumers and real estate agents via mobile apps.

With this context in mind, REA wishes to make a number of observations regarding in-app purchases on the App Store and Play Store.

1. App marketplace terms are provided on a “take it or leave it” basis, and there are few viable alternatives to Apple and Google

There is a significant power imbalance between app marketplaces and app developers and providers. The world of app developers and providers is incredibly fragmented, whereas there are essentially just two app marketplaces which distribute the vast majority of all mobile apps: Apple’s App Store and Google’s Play Store. There are no feasible alternative suppliers of app marketplaces for app developers and providers such as REA to deliver its apps on. As a result of high barriers to entry, REA does not consider there will be feasible alternatives to the Apple and Google marketplaces in the short to medium term.

The provision of app marketplace services in Australia could be characterised as a duopoly between these two providers (although there are some monopolistic characteristics as well, given each of Apple and Google operate their own mobile licensing operating system on their own devices, and do not necessarily act as a constraint on each other in some respects). There is little doubt that Apple and Google are dominant and have the freedom to act without effective constraint (including from each other in some respects) in the app marketplaces market.

In addition to being the suppliers of the two major mobile app marketplaces, Apple and Google are also major app developers, operators of the mobile licensing operating system, and device manufacturers. In relation to their own branded apps, Apple and Google also compete with some downstream developers and providers of

apps that require access to Apple and Google's marketplaces. Apple and Google are able to leverage their dominance in adjacent markets as operators of the mobile licensing operating system, and device manufacturers in relation to the app marketplace market.

Consistent with the characteristics of a duopoly (or monopoly) market, the app marketplace terms and conditions for the App Store and the Play Store are provided on a "take it or leave it" basis and there are no practical or effective alternatives to these app marketplaces for app developers and providers to distribute their apps. REA does not use any other alternate provider of an app marketplace.

REA does not attempt to bypass the Apple and Google app marketplaces and does not consider this to be a viable alternative to deliver native app experiences to our consumer and customer base. REA, as an app developer and provider with a market capitalisation in excess of \$14 billion², is forced to comply with the terms set by Apple and Google for any app (including updates to an existing app) which we wish to make accessible on either app marketplace.

In particular, some terms that operate unfavorably for REA, and that may work to limit the accessibility of our services to consumers and real estate agents include:

- (i) the mandatory use of proprietary in-app purchase services, which imposes significant 30% fees on app providers for all one-off app purchases, and also forecloses alternative payment service providers (as discussed in further detail below);
- (ii) in terms of the Apple App Store, the mandated use of fixed pricing tiers as part of the IAP requirements limits REA's ability to freely set prices. When establishing a new payment point within an app, this inflexibility, coupled with the requirement that Apple app users cannot be charged a higher price than non-app users means Apple's terms can in effect dictate pricing changes off-app.
- (iii) The fixed pricing system is also a significant restriction on our ability to provide a range of different products at a range of different prices to our consumers, including restricting our ability to offer pro-rata subscriptions or discounts.

2. App marketplace services are bundled with the use of proprietary in-app purchase (IAP) services, include a 30% fee for one-off payments for / within apps

As the ACCC has noted in the Issues Paper, both app marketplaces mandate the use of their IAP services where consumers access, consume or receive content, functionality or services that are purchased or used in-app, subject to limited exceptions. In the case of one-off payments for or within apps (as opposed to free apps or subscription apps) these IAP services will result in the app marketplaces collecting 30% of the payments before remitting the remainder to the app provider. As set out below, this bundling of app marketplace access with IAP services has the effect of enforcing significant 30% fees on digital only businesses like REA. This

² As at 24 September 2019.

conduct also stifles innovation from app developers where app marketplaces reject new or updated apps on the basis that they do not conform with IAP service terms and conditions.

The mandatory use of IAP services restricts competition as it prevents app providers from utilising alternative payment channels which may be more attractive for both consumers and app providers. It also prevents other payment services businesses from competing with Apple's and Google's IAP functionality (though REA notes that it is not a payment services business, and so cannot provide detailed commentary on this last point).

REA's experience with the Apple and Google IAP terms, and the consequences of those practices, are set out below.

2.1 **Uncertainty and inconsistency as to how the IAP terms operate, with limited practical opportunity to understand how the terms operate**

REA has experienced the challenges of navigating through the terms and conditions of the Apple and Google app marketplaces, particularly as they relate to IAP services. Some of the restrictions which the app marketplaces impose in their IAP terms have certain exceptions, however there is little guidance as to how such exceptions may be applied and no practical opportunity for REA to seek early guidance or negotiate the IAP terms or any of the other app marketplace terms.

Some particular areas of concern on the way the IAP terms operate, and how they have impacted on REA's offering to consumers and real estate agents, are set out below:

- (a) **('Real world' purchases versus in-app purchases)**: Both Apple and Google do not mandate the use of IAP services where the payment is for "physical goods or services...consumed outside of the app"³ in the case of the Apple App Store, and for "physical products" or "digital content that may be consumed outside of the app"⁴ in case the Google Play Store. This distinction places an inappropriate commercial burden and lack of choice of payment channels on purely digital business such as REA. **[CONFIDENTIAL TO REA]**
- (b) **(Consumer facing and business facing apps)**: It is unclear how the IAP guidelines will be applied where purchases on one app are delivered to consumers in a related consumer facing-app. For example, real estate agents purchase property advertisements on our realestate.com.au platform, including the realestate.com.au mobile apps. We have a 'business facing' app that is designed for real estate agents to manage their listings, called Ignite. **[CONFIDENTIAL TO REA]**
- (c) **(Composite services)** It is unclear how composite services that are partly delivered in-app and partly delivered outside of the app fall within the IAP restrictions, and the relevant fees that would apply. **[CONFIDENTIAL TO**

³ Apple terms 3.1.3(e)

⁴ Google Play Developer Payments Policy: <https://support.google.com/googleplay/android-developer/answer/9858738>

REA If Apple or Google deemed part of the composite service offering required the use of IAP services, REA assumes that the 30% commission would be applied across the entire service, which may have the effect of rendering the service uneconomical. This would restrain REA's ability to freely determine its own commercial products, offerings and prices, simply because we wished to include an additional payment point within an app for the benefit of our consumers and customers.

- (d) (**'Digital currencies'**) REA has long-standing and deep relationships with real estate agents who are our customers. Each real estate agent has an account manager assigned to them to assist them with their business relationship with REA. REA is continuously innovating to provide better services to our customers, including as part of their in-app experience. **[CONFIDENTIAL TO REA]** Such practices by Apple severely constrain REA from innovating and providing the best experiences for our existing customers, and denies those customers the productivity benefits from using our apps to the fullest extent, simply because we have a direct relationship with those customers.

2.2 Commercial impacts on REA of the 30% fee for one-off app purchases

The 30% commission that the app marketplaces take from app providers for each one-off purchase made by a consumer using IAP services (noting that the use of IAP services are mandatory) is a significant disincentive for REA to improve the accessibility of our paid services, as making such paid services available to consumers will result in uncommercial outcomes for REA.

REA does not offer paid services in-app for services that do not already exist within its broader ecosystem. This means that we are required to pay a 30% fee to introduce any additional payment point into our apps for an existing product, to our existing customers or consumers.

An example of this is our Flatmates.com.au app. Users on the Flatmates.com.au website can purchase subscriptions to enhance their experience on the Flatmates.com.au platform and improve their chances of finding other users who are interested in room sharing. In order to provide consumers with the greatest experience in their property journey, we sought to add an additional payment point to the Flatmates.com.au app, giving consumers the flexibility to purchase subscriptions both in-app and on web. The impacts of the mandatory application of Apple and Google IAP terms were that: (1) we were required to pay a 30% commission on any purchases made through the app (even though the listing was 'consumed' by other consumers on both the app and the web); and (2) we were not able to increase our existing prices charged to users who purchased through the app to recoup the additional administration cost of the IAP services. **[CONFIDENTIAL TO REA]**

The 30% fee charged by the app marketplaces is not proportionate to the effort or service that is provided by the app marketplaces. For example, our Flatmates paid plans range from \$24.99 to \$599.99, and our REA Premiere listings purchased by agents can cost more than \$1,000 depending on the location of the property. The amount of effort for the app marketplaces to distribute our apps is the same whether the consumer is purchasing the basic \$24.99 plan from Flatmates or our Premiere listings on our REA platform. The 30% fee is a significant deterrent for REA to provide

our more premium products via app as the monetary cost to REA would be more significant for such products.

As a result of the lack of competition in payment service providers for in-app purchases, innovation and other projects relating to the expansion of paid services to REA's mobile app users are being assigned a lower priority in favour of other higher return on investment projects, and may ultimately result in certain services only being accessible to users via a web experience.

More generally, the development of new premium products and services which we would only be able to pursue if users were willing to purchase such products and services are often shelved or de-prioritised as it is significantly more difficult to make such products and services commercially viable in an environment where offering the same opportunities and experience in-app attracts an additional 30% fee.

Alternatively, such products and services are only made available to users via our web experience which means that over 60% of our users who predominantly use our mobile experiences are unable to access such products and services which is ultimately a sub-optimal outcome for consumers given trends are indicating that consumers are increasingly reliant on mobile apps.

3. Review processes for the approval of apps or new content are opaque and lead to inefficiencies in the development of new apps and updates to existing apps

Unclear app marketplace terms and REA's inability to negotiate the terms, together with an opaque review process, is a persistent problem that REA has faced in engaging with Apple and Google. The result is that significant resources are invested in a new app or app feature and related monetisation models, only for Google or Apple to reject such app or app feature, or mandate the use of IAP (which has a significant impact on the commercial viability of the product across all of our platforms, not just in-app). Such decisions are often given without reasons and are made when the work has already been completed and submitted to the app marketplace for review.

As is often the case with many of the global technology giants, and as highlighted above for specific examples, the terms and conditions of Apple and Google's app marketplaces are difficult to navigate and often vague or unclear, which has resulted in a number of surprises to REA when seeking approval for new apps or new feature for existing apps. Furthermore, the outcome of an app review by Apple or Google being subjected to the discretion of a particular reviewer's interpretation of the terms, giving rise to inconsistency in the application of terms and conditions.

For example, Apple has previously rejected an update to one of our apps on the basis that the update was not compliant with the IAP terms. Apple did not specify which provisions of the IAP terms were not complied with, nor did they specify the offending features of the app update. As an app developer, we are left in an undesirable position where we would have to tweak our app and resubmit it to the app marketplace iteratively via a trial and error process until it is accepted. This is a material disincentive for REA to pursue more innovative technologies and attractive app features going forward as any time and resource investment may be rejected for breach of the unspecified app marketplace terms, even where we have genuinely tried to develop features which comply with those terms to our best understanding and knowledge of the terms.

The uncertainty created by the ambiguous terms of the app marketplaces (as described above), together with opaque review system also makes it difficult to determine whether certain apps or updates which have been accepted onto an app marketplace have negotiated specific arrangements with Apple or Google, or have simply not been identified as non-compliant by the review system. The lack of transparency both in the terms themselves and in Apple and Google's application of the terms, leads to significant inefficiencies for REA, with flow on impacts for the users of REA's apps.