Introduction

The International Social Games Association (ISGA) welcomes the opportunity to provide feedback to be considered during the development of the final report of the Australian Competition and Consumer Commission's (ACCC) Digital Platform Services inquiry. The three key areas outlined for the upcoming report—international regulatory developments, major developments in digital platform markets, and potential or emerging issues—are highly relevant to the social (mobile) games industry. This submission delves into these areas, providing insights into the challenges and opportunities faced by the industry within the digital landscape.

ISGA believes that a collaborative approach, combining regulatory enforcement with proactive industry efforts, is essential to fostering a digital environment characterised by fair competition, innovation, and consumer protection. By leveraging international experiences, addressing the market power of app stores, and promoting safe gameplay experiences, Australia can foster a dynamic ecosystem for both game companies and players.

1. International Regulatory Developments

As the ACCC noted in its Interim Report No. 5, numerous jurisdictions are implementing ex-ante regulations to address anti-competitive practices, unfair business treatment and market entry barriers in the digital sphere. ISGA welcomes the ACCC and government's efforts to develop a new regulatory framework that promotes fair competition, innovation, and consumer protection in the digital marketplace, benefiting both businesses and consumers.

ISGA has closely monitored the implementation of these regulations across different countries, particularly concerning provisions applicable to app stores. The social (mobile) games industry represents one of the leading revenue sources for app store platforms. Just during the second quarter of 2024, mobile app consumer spending reached US$36.2 billion and mobile games accounted for 54% of the market share with US$19.7 billion.[1] In addition, gaming applications consistently ranked among the most popular categories within the Google and Apple App Store, comprising roughly 13% in both stores.[2]

For ISGA members, app stores are essential distribution channels and primary transaction platforms. However, as the ACCC's Interim Report No. 2 highlighted, the significant market power held by app store platforms enables them to impose a 30% commission on in-app purchases. Moreover, as gatekeepers, they dictate technological standards for app development and maintain exclusive control over app distribution and terms. This lack of

[1] https://www.pocketgamer.biz/mobile-game-spending-holds-steady-q2-up-four-years-in-a-row-to-197-billion/
[2] https://www.statista.com/statistics/270291/popular-categories-in-the-app-store/

competition is exemplified by current the legal dispute between Epic Games, Apple and Google in Australia.

To counter the dominance of major platforms, the European Union introduced the Digital Markets Act (DMA), which imposes specific obligations on designated app stores to foster competition and innovation within the mobile app ecosystem. However, as of August 2024, the European Commission has launched three investigations into Apple and Google's app store terms, questioning their compliance with DMA provisions regarding user steering[3] and effective side loading.[4] These initial inquiries suggest potential resistance from gatekeepers to fully comply with the DMA regulatory framework.

To effectively address the complexities of digital markets, ISGA recommends the new digital markets regime leverage the successes and challenges faced by other regulatory authorities in other jurisdictions, such as the European Commission. By learning from other regimes, the ACCC and government can develop and enforce a regulatory framework that effectively tackles anti-competitive behaviours, minimises burdens on businesses, and delivers tangible benefits to consumers.

Furthermore, given the rapid evolution of digital platforms and the power of dominant players, Australia should also consider aligning its regulatory approach with those of other leading jurisdictions, including the United Kingdom, the European Union and Japan. A harmonised regulatory approach will foster a level playing field, avoid regulatory arbitrage, and enhance the overall effectiveness of competition in digital platforms.

2. Major Developments in Digital Platform Markets

Since the release of the ACCC's Interim Report No. 2, the app distribution platforms have implemented changes to their business terms in response to emerging regulations, such as the EU's DMA, and antitrust pressures.[5] However, these modifications have had a limited impact on social (mobile) game companies' ability to provide consumers with more competitive options. For instance, in 2022, Google Play initiated a pilot program to introduce alternative billing systems in various jurisdictions, including Australia. Mobile gaming apps were excluded from participating in this pilot.[6] Similarly, Apple's decision to allow alternative payment methods for in-app purchases, following the US Epic Games trial, represented a partial concession as the company continues to impose a substantial 27% commission on app developers.[7]

[3]https://digital-markets-act.ec.europa.eu/commission-opens-non-compliance-investigations-against-alphabet-apple-and-meta-under-digital-markets-2024-03-25_en
[4] https://ec.europa.eu/commission/presscorner/detail/en/IP_24_3433
[5] https://www.theverge.com/2024/5/28/24158911/apple-v-epic-evidentiary-hearing-app-store-payments
[6] https://support.google.com/googleplay/android-developer/answer/12570971
[7] https://www.theverge.com/2024/5/28/24158911/apple-v-epic-evidentiary-hearing-app-store-payments

Following the introduction of the EU's DMA, interested companies such as Epic Games have announced the launch of third-party app marketplaces which might represent a more competitive option for app developers and users. However, the new entrants face significant barriers imposed by Apple.[8] In this regard, ISGA believes that the ACCC should prioritise the effective enforcement of competition law in the app distribution market. In addition, following the actions undertaken by the European Commission and the UK's Competition Market Authority, the ACCC should prioritise the application of the new regulatory framework in this market to foster a more competitive app distribution environment.

3. Identifying Potential or Emerging Issues

Potential issues in online gaming

Social (mobile) games are a significant sector in Australia, with approximately 55% of all video games played on mobile devices. The mobile games market is a vibrant, but complex, global consumer market. For this reason, ISGA members are committed to providing safe gameplay experiences and prioritise close collaboration with authorities to develop and implement robust consumer protection regulations.

The online games industry is proactively addressing consumer protection concerns through self-regulation. This includes developing campaigns and initiatives focused on data privacy, age restrictions, and in-app purchases. These efforts demonstrate the industry's commitment to providing a safe and secure environment for players of all ages. In this regard, ISGA has taken the lead in establishing responsible standards for the sector. Since 2013, we have developed the Best Practice Principles (BPP)[9] based upon core values of consumer protection, accountability, and transparency. We are proud to have received endorsement from an Australian Parliamentary Committee and remain committed to driving industry-wide responsible practices.

The latest version of our BPP now encompasses in-app purchases, advertising practices, and player safeguards. These provisions also align with the Australian Consumer Law, Privacy Act, Australian Privacy Principles, and industry self-regulation tools such as the PEGI Code of Conduct[10]. As such, ISGA members are committed to providing clear and accurate advertising for games and in-game purchases. This includes informing users when purchases are necessary and clearly communicating the value and cost of in-game purchases, ensuring players fully understand their buying decisions.

[8] https://www.reuters.com/technology/epic-games-says-apple-stalling-launch-its-game-store-europe-2024-07-05/
[9] https://www.i-sga.org/_files/ugd/2d092c_1f9fcbd29e18449685df72fe029a1cb6.pdf
[10] https://pegi.info/pegi-code-of-conduct

Specifically, regarding loot boxes, ISGA best practices also align with recent industry developments, such as the Principles and Guidance on Paid Loot Boxes recommended by the Technical Working Group convened by the UK's Department for Culture, Media and Sport.[11] To enhance player protection the principles advocate for restricting loot box purchases by under-18s without parental consent, implementing spending controls for all gamers, providing clear disclosures about paid loot boxes, and informing users about refund policies.

Child protection is paramount for ISGA, our games designed for children should not directly encourage purchases or persuade adults to buy in-game items for them. In this regard, we advocate for the use of age verification, parental controls and other safety tools to ensure age-appropriate content and features. To support guardians and parents, ISGA provides comprehensive guidance on maximising parental control usage through our Smart Mobile Games safe play portal.[12]

Furthermore, ISGA has been actively engaged with key stakeholders in Australia to assist with addressing emerging challenges associated with social (mobile) games, such as online safety and privacy. ISGA participated in the eSafety Commissioner's consultation on the Draft Online Safety Industry Standards, and we are closely monitoring the development of industry codes focusing on class 1c and class 2 materials to prevent children from accessing or being exposed to age-inappropriate material online. Our contributions also extended to actively participating in the consultation taking place as part of the review of Australia's Online Safety Act, where we advocated for comprehensive and proportionate measures to safeguard all users, particularly children.

As such, ISGA strongly supports Australia's new classification regime for mobile games, set to take effect in September 2024. The Guidelines for the Classification of Computer Games 2023 mandate a minimum M rating (Mature—not recommended for children under 15) for games containing in-game purchases linked to chance, such as loot boxes. This crucial step empowers parents and guardians to make informed decisions about the games their children play. In addition, the classification provides valuable information to consumers, particularly those unfamiliar with loot boxes or similar game elements. In line with this, simulated gambling, like social casino games, will be restricted to adults with a mandatory R18+ rating. These measures align with the industry's commitment to promote safe gameplay experiences and protect players of all ages.

In sum, the online game industry, particularly the social (mobile) gaming sector, continues to strive to prioritise consumer protection. Through a combination of self-regulation and collaboration with the government, the industry has implemented robust measures to safeguard players. From the development of industry-wide best practices to the support of

[11] https://ukie.org.uk/loot-boxes
[12] https://www.smartmobilegamers.org/

comprehensive classification systems, the industry is committed to maintaining a safe gameplay environment. These collective efforts underscore the industry's dedication to fostering a positive and secure experience for players of all ages.

About ISGA

ISGA is an international non-profit industry association established in 2013 to develop and communicate global best practices in social games. ISGA represents social (or mobile) games businesses, including Huuuge Games, Pixel United, Playstudios, Playtika, SciPlay and Zynga. Together, we promote player education through our Smart Mobile Gamers website developed with leading digital safety organisations, clinical psychologists, and games researchers.

For more information, please contact:

ISGA appreciates the opportunity to contribute to this important consultation and would be pleased to provide further elaboration or information on this submission.

Raghav Joshi, Policy Director - [redacted]
Veronica Perez-Lima, Policy Advisor - [redacted]