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

Response to Digital Platform Services Inquiry Interim Report No. 2 – App Marketplaces (March 2021)

9 September 2021

Executive Summary

Match Group, Inc. (***Match***) welcomes the Australian Competition and Consumer Commission's (***ACCC***) Digital Platform Services Inquiry (***DPSI***) Second Interim Report (March 2021), released 28 April 2021 (***App Store Report***).

Match appreciates the opportunity to provide this submission in response to the App Store Report.

In this submission Match:

1. sets out its views in relation to some of the key findings and observations made by the ACCC in the App Store Report;
2. comments specifically on the requirement by Apple and Google that app developers use Apple and Google's respective in-app purchase (***IAP***) systems;
3. discusses relevant overseas regulatory solutions that have been proposed or implemented in respect of app stores and digital platforms more broadly to address this and other issues, including South Korea's recently passed law banning mandatory IAP; and
4. recommends the ACCC promptly undertake further industry consultation in respect of Apple and Google's IAP requirements as proposed by the ACCC in its App Store Report as a necessary next step for unbundling IAP.

Apple and Google's restrictions on app developers harm competition and consumers, and they thus justify direct and targeted near-term action by the ACCC. Such a prompt response in Australia would be consistent with the approach taken by overseas governments and regulators. The ACCC suggested in its App Store Report that further consultation is necessary in respect of Apple and Google's IAP requirements. Match suggests that the ACCC undertake that consultation as soon as possible as delaying any Australian solutions further will lead to additional lost competition, innovation and consumer welfare in Australia.

1 App Store Report findings, measures and next steps

The ACCC made several findings that are consistent with the concerns expressed globally by app developers and which are being examined in global antitrust investigations and court disputes. These findings include:

- Apple and Google each hold '*significant market power*' in their dealings with app developers;[1]
- Apple's App Store and Google's Play Store are '*effectively isolated from competition*' and only constrain one another to a very limited extent due to high user switching costs between mobile operating systems and the fact that both stores are 'must haves' for developers.[2] This view is supported by the European Commission's (***EC***) preliminary findings that *'For app developers, the App Store is the sole gateway to consumers using Apple's smart mobile devices running on Apple's smart mobile operating system iOS.*' and that Apple '*… has a dominant position in the market for the distribution of music streaming apps* ***through its App Store***.' (emphasis added).[3] It is also supported by the EC's decision that '*Google is dominant in the worldwide market (excluding China) for app stores for the Android mobile operating system*' since 2011;[4]
- Apple and Google act as 'gatekeepers' of their respective app stores.[5] As gatekeepers, they have the unilateral power to set, amend and enforce terms of access to their app stores;[6]

[1] ACCC, 'Digital Platform Services Inquiry 2020-2015: March 2021 Interim Report' (28 April 2021) (***App Store Report***), pp 23, 43.
[2] App Store Report, p 5.
[3] EC Press Release 'Antitrust: Commission sends Statement of Objections to Apple on App Store rules for music streaming providers' (30 April 2021), available here.
[4] EC Press Release 'Antitrust: Commission fines Google €4.34 billion for illegal practices regarding Android mobile devices to strengthen dominance of Google's search engine' (18 July 2018), available here. Full decision available here.
[5] App Store Report, pp 44, 78.
[6] App Store Report, pp 44, 63, 78.

- the need to protect users and the integrity of the iOS and Android operating systems through app review and approval processes does not negate the need for fair and reasonable terms and timely and transparent processes.[7] Consistent with this view, EC Vice President Margrethe Vestager said in an interview with Reuters '*I think privacy and security is of paramount importance to everyone… The important thing here is, of course, that it's not a shield against competition, because I think customers will not give up neither security nor privacy if they use another app store or if they sideload*';[8]
- app store '… *rules may be unclear, overly broad or applied in an inconsistent manner, with limited avenues of appeal. Businesses whose products or services are not clearly within the terms and policies set, interpreted and enforced by digital platforms can face risks and uncertainties to their business. This process may lead to inefficient investment decisions and unduly restrict or prevent the emergence of alternative business models.*';[9] and
- Apple and Google have the ability and incentive to use information gathered from apps to gain a competitive insight into rival businesses to assist their own strategic or commercial app development decisions.[10]

In response, the ACCC recommended that Apple and Google implement six 'potential measures'. These measures include that Apple and Google:

- allow developers to provide app users with information about alternative 'off-app' payment options;
- provide developers with additional transparency regarding app search and display rankings; and
- ring-fence information collected via their respective app stores from operational and commercial decision-making.

While these potential measures may be a useful first step in providing fairer treatment for developers, they do not go far enough for two reasons.

First, these potential measures do not directly target the principal concern of many app developers which impacts competition and consumers: that Apple and Google bundle developer access to the App Store and Play Store with the mandatory and exclusive use of Apple and Google's respective IAP systems (***IAP Bundling***).

IAP Bundling is of principal concern because it forecloses competition among IAP systems, leads to higher prices and reduced service levels for consumers across a wide variety of apps, disintermediates the relationship between app developers and their customers, provides lucrative and sensitive commercial transaction data to Apple and Google and stifles investment and innovation by developers and competing payment system providers (eg, FinTech and other digital innovators). The ACCC said, however, that further consultation is needed before any IAP unbundling remedy is considered. IAP Bundling and the need for this consultation in the near-term is discussed in **Section 2** below.

Second, these potential measures are unlikely to be implemented without direct intervention and enforcement by the ACCC. Google, for example, has not yet implemented a European choice screen equivalent for Australian consumers despite a recommendation from the ACCC to do so within a six-month time period from July 2019.[11] The ACCC said that regulation may be required if Apple and Google fail to implement the six potential measures.[12]

[7] App Store Report, pp 5 – 6.
[8] Reuters, 'Exclusive EU's Vestager warns Apple against using privacy, security to limit competition' (2 July 2021), available here.
[9] App Store Report, p 48.
[10] App Store Report, p 130.
[11] ACCC, 'Digital Platforms Inquiry Final Report' (26 July 2019), see recommendation 3, available here.
[12] App Store Report, p 3.

The ACCC also said that it would revisit the concerns raised in the App Store Report throughout the DPSI and would take into account steps by Apple and Google to address them.[13] The ACCC is considering more broadly issues that arise when digital platforms occupy critical gatekeeper roles and compete with businesses that rely on access to the gatekeeper platform and is having regard to overseas regulatory solutions being proposed (eg, the Digital Markets Act (***DMA***) in Europe).[14] These regulatory solutions are discussed in **Section 3** below.

2 IAP Bundling

IAP Bundling is of significant concern for app developers and is the subject of antitrust disputes and investigations globally. This unilateral term that Apple and Google impose on app developers demonstrates their market power and adversely affects competition and consumers. The removal of Epic Games' Fortnite app from the App Store and the Play Store also demonstrates the extent to which Apple and Google can respectively exercise substantial power to enforce such a term.

In announcing the release of the App Store Report, ACCC Chair Rod Sims said:[15]

> *The ACCC is also concerned with restrictions imposed by Apple and Google which mean developers have no choice but to use Apple and Google's own payment systems for any in-app purchases…*

The ACCC said:[16]

> *Apple and Google's respective terms which prevent app developers from using alternative payment systems for payments made in-app affects the ability of alternative payment systems to operate in the app marketplaces. This in turn leads to a loss of consumer choice, as consumers are unable to use any other payment option when making payments in-app.*

Despite this, the ACCC did not ultimately recommend banning IAP Bundling as a potential measure to address competition and consumer harms. The ACCC said:[17]

> *The ACCC notes the potential risk of less secure payment systems offering in-app payments if Apple and Google were required to allow alternative payment systems, and the role that Apple and Google play in protecting consumers from harmful apps (as discussed in chapter 6). The ACCC also notes that, at this stage, it is not clear how effective the unbundling would be at addressing the issues raised by Apple and Google's control over of their respective marketplaces and payment systems, and notes that it is also not clear what detriment to app developers may arise from any resultant changes to Apple and Google's revenue raising model. For example, there is a potential risk that this may lead to changes in Apple or Google's fee or commission structure if the unbundling were to undermine their ability to apply and collect commissions on in-app payments. This could have a number of effects, such as limiting app marketplaces to less efficient forms of charges (for example, Apple or Google imposing a larger flat fee on apps providing digital goods and services), which might encourage smaller innovative apps to explore alternative avenues to app marketplaces to avoid having to pay the fee, in turn reducing the apps available through the app marketplace, and reducing its value to consumers. Any legislative requirement to unbundle would therefore require significant further work and industry consultation.*

[13] App Store Report, p 13.
[14] App Store Report, p 82.
[15] ACCC, Media Release 'Dominance of Apple and Google's app stores impacting competition and consumers' (28 April 2021), see here.
[16] App Store Report, p 77.
[17] App Store Report, p 78.

Match responds to the ACCC's above points as follows:

(a) Risk of less secure payment systems offering in-app payments:

- If IAP Bundling was truly about protecting against security risks every app in the Apple App Store and the Google Play Store would be required to use Apple and Google's mandatory IAP systems to guard against these risks. This is not the case. Only a subset of apps (ie, those that offer 'digital goods and services,' as defined by Apple and Google) are required to use Apple and Google's respective IAP systems. All other apps are required by Apple and Google to use alternatives to Apple and Google's IAP systems.
- Apple and Google's claims about the risks of unbundling IAP are entirely pretextual and without evidentiary support. In the *Epic Games v. Apple* (US) litigation, Apple's Vice President of the App Store, Matt Fischer, admitted that he is not aware of any studies that Apple has ever done that look at whether there are any security issues if any game company offers alternative IAP systems.[18] Apple Fellow Phil Schiller also admitted that he is not aware of *any* security issues that had been introduced by apps that were, for a period of time, able to offer alternative IAP systems in their iOS apps.[19]
- Companies which specialise in payments solutions, such as PayPal, Stripe or Adyen have already developed payment solutions that could easily be viable, secure alternatives to Apple and Google's IAP systems. Major app developers use these solutions every day to process IAPs for 'physical goods and services'. Indeed, when given the choice, many if not most consumers choose an independent IAP system over the IAP systems offered by Apple and Google. Further, Match understands how important security is given it successfully implemented its own secure IAP system for its Tinder app on Android. Match's alternative IAP system and those offered by independent third parties are no less secure than Apple's and Google's IAP systems and their use on Android and iOS mobile devices is already ubiquitous. The uptake of innovative FinTech payments systems in other contexts is evidence that viable and secure alternatives can and do exist. This uptake supports the contention that the supposed security concerns regarding IAP transactions are exaggerated.
- Match agrees that secure payment systems are critically important. However, a blanket ban on all competitive IAP alternatives is an extreme, unnecessary and damaging method to achieve this end. IAP Bundling forces developers into offering a 'one size fits all' billing system – it provides less flexible and worse outcomes for consumers. Payments systems providers and app developers should instead be allowed to offer alternative IAP systems that comply with recognised security standards and protocols. In a competitive market, there would be strong incentives to develop secure IAP systems to meet these standards and to provide strong privacy protections for consumers given the sensitivity of transaction data. In turn, app developers would also be incentivised to use secure IAP systems to ensure their apps maintain a reputation of having a secure, private and efficient billing system.

(b) What detriment to app developers may arise from any resultant revenue raising model changes:

- IAP Bundling is a major concern worldwide which is clear from the significant number of ongoing regulatory investigations and court disputes on the matter.
- It is not difficult to imagine what the world would look like for app developers if Apple and Google are no longer able to bundle their IAP systems: we already live in that world for physical goods and services. Developers would be able to choose which IAP systems to make available in their apps, and consumers would be able to choose from the different options developers make

[18] *Epic Games v Apple* (US), Matt Fischer testimony (6 May 2021), transcript p 906-908.
[19] *Epic Games v Apple* (US), Phil Schiller testimony (13 May 2021), transcript p 3110.

available. There is no technical reason why this model would work for merchandise sales and ride-share, but not for purchases of digital subscriptions or in-game items.

- It is difficult to see how, in light of the ACCC's findings, a future without IAP Bundling could be worse for developers and consumers, or result in Apple or Google being limited to '*less efficient forms of charges*'.[20] The ACCC's findings support the view that the current charge levied through IAP Bundling extracts economic rents rather than only profit / surpluses. For example, the ACCC found that:
    - it is highly likely that Apple and Google's significant market power enables each of them to unilaterally set and enforce rules like IAP Bundling;[21]
    - '.. *it is highly likely that the commission rates are inflated by the market power that Apple and Google have…*';[22]
    - as Apple and Google compete to supply apps within certain app categories '… *there is the potential for the imposition of their respective IAP requirements and commission to raise costs for their rivals*.';[23]
    - IAP Bundling may also impact downstream competition within app categories among developers with different business models;[24] and
    - IAP Bundling results in mobile app developers having no choice among IAP solutions. This limits competition and innovation and, as noted by the ACCC, *'leads to a loss of consumer choice, as consumers are unable to use any other payment option when making payments in-app'*.[25]
- The EC's views also support the position that the current charge levied through IAP Bundling extracts economic rents rather than only profits / surpluses. On 30 April 2021, the EC announced it had sent a Statement of Objections to Apple as part of its investigation into Apple's App Store rules (in particular, IAP Bundling and marketing / anti-steering restrictions). The EC's investigation considered the impact of these rules on music streaming app developers.[26] The EC said its preliminary view is that:

    > *… Apple's rules distort competition in the market for music streaming services by raising the costs of competing music streaming app developers. This in turn leads to higher prices for consumers for their in-app music subscriptions on iOS devices. In addition, Apple becomes the intermediary for all IAP transactions and takes over the billing relationship, as well as related communications for competitors.*

- As is detailed further below, the view of 37 US State Attorneys General also supports this position. These State Attorneys General assert that there are '*no pro-competitive efficiencies from the tie* [ie, IAP Bundling] *that outweigh the harm to consumers. App developers and app users are each harmed by Google's forced intermediation of in-app payment processing*.'[27]
- Match does not believe that unbundling IAP will lead to less efficient or more competitively detrimental forms of charges. Match also believes that Apple and Google will continue to generate substantial revenues across their ecosystems in the event that IAP is unbundled. The following are relevant considerations:

[20] App Store Report, see p 78.
[21] App Store Report, p 78.
[22] App Store Report, p 72.
[23] App Store Report, p 76.
[24] App Store Report, p 76.
[25] App Store Report, p 77.
[26] EC Press Release 'Antitrust: Commission sends Statement of Objections to Apple on App Store rules for music streaming providers' (30 April 2021), available here.
[27] *Utah v. Google* (US), Case No. 3:21-cv-05227 (***Utah v Google***), paragraph 289, available here.

- Apple and Google recover ecosystem costs and generate profits across a range of avenues, including device sales. Match understands these devices are sold under a for-profit model. This for-profit model is in contrast to the subsidisation model used by other companies who also engage in IAP Bundling but sell hardware at a loss (eg, gaming consoles).[28] In July 2021 Apple reported USD $81.4 billion in device revenues for the quarter (up almost double from last quarter).[29]
- Google calculated that it would only require 6% revenue share from its Play Store to break-even, which is significantly lower than the 30% commission currently charged. Further, Google's internal documents admit that it could profitably dis-integrate its IAP software, and that its revenue share at 30% has no rationale other than to copy Apple.[30]
- In addition, Apple and Google both offer advertising services which generate substantial revenues. Apple's total revenue was reportedly USD $274.52 billion last fiscal year and its App Store advertising alone is expected to generate revenue of USD $2 billion this fiscal year.[31] Google's advertising business alone reportedly generated revenue of USD $147 billion last fiscal year.[32] In June 2021, Google reported USD $50.44 billion in advertising sales for the quarter.[33]
- Developers' apps add significant value to iOS and Android devices and their app stores, driving device sales. As Judge Gonzalez Rogers said in her questioning of Apple CEO Tim Cook during the *Epic Games v Apple* (US) case:[34]

  > *I understand this notion that somehow Apple is bringing the customer to the dance… But after that first time, after that first interaction, the developers are keeping customers with the game. Apple is just profiting from that, it seems to me.*

- The ACCC expected that '… *Apple and Google would be more likely to change their revenue raising models only if most or all developers took the option to bypass IAP*.'[35] Unbundling IAP would not reduce Apple or Google's IAP revenues to zero and is unlikely to cause them to cease providing their IAP services or automatically cause most or all developers to bypass these services. Indeed, expert testimony in the *Epic Games v Apple* (US) litigation shows that Apple's App Store profit margin approaches 80%:[36] There is plenty of room for Apple to reduce its margins and remain profitable and fully incentivised to invest in its IAP system and App Store. Unbundling IAP would simply require Apple and Google to provide their IAP systems alongside competitive alternatives. Apple's Matt Fischer said in 2018 that if Apple's IAP was optional for developers '… *no one will ever use it*.'[37] Match assumes this is in part due to the level of fees (which flow from IAP Bundling) – Match considers it likely that Apple and Google would need to reduce their fees if IAP Bundling is removed in order to remain competitive.
- As far back as 2009 Apple's App Store was profitable. In response to a 2009 email which requested data for the App Store financial model stating '*He* [Steve Jobs] *wants to*

[28] *Epic Games v Apple*, Richard Schmalensee Cross Examination, p 10, available here.
[29] Apple Inc., Condensed Consolidated Statements of Operations (Unaudited) (26 June 2021), available here.
[30] *In re Google Play Consumer Antitrust Litigation* (US) Consolidated First Amended Class Action Complaint filed 27 August 2021, paragraphs [193]-[196].
[31] Wall Street Journal, Patience Haggin, 'Apple's Privacy Changes Are Poised to Boost Its Ad Products' (27 April 2021) available here.
[32] Statista, Joseph Johnson, 'Advertising revenue of Google from 2001 to 2020' (5 February 2021), available here.
[33] Alphabet Inc., 'Alphabet Announces Second Quarter 2021 Results' (27 July 2021), available here.
[34] See CRN, 'Apple App Store profits look 'disproportionate', US judge tells CEO (24 May 2021), available here.
[35] App Store Report, p 82.
[36] See MarketWatch, 'Opinion: How much does Apple make from the App Store? Even a landmark antitrust trial couldn't reveal it' (28 May 2021, updated 2 June 2021), available here.
[37] *Epic v Apple (US)*, Epic Opening Demonstratives, p 35, available here.

understand the profits and costs (the assumption is that it is at best slightly positive given all the free apps, which is fine).', Apple's Senior VP, Eddy Cue, replied '*We are definitely making money…*'.[38]

- Downloads of apps since that time have continued to grow exponentially. In H1 2021, approximately 16.3 billion apps were downloaded from the App Store and approximately 56.2 billion were downloaded from the Play Store.[39]
- In H1 2021, consumer spending on in-app purchases, premium apps and subscriptions was estimated to have increased by 22.1% to USD $41.5 billion globally on the App Store (from approximately $34 billion in H1 2020) and increased by 30% on the Play Store to USD $23.4 billion (from approximately $18 billion in H1 2020).[40] In light of this spending, Match expects that Apple and Google earn considerable revenues from their app stores given 16% of apps on the App Store and 16.6% of active apps on the Play Store[41] are subject to IAP Bundling.
- The number of smartphone users worldwide is projected to increase from approximately 6.38 billion in 2021 to approximately 7.52 billion by 2026.[42] In Australia, there are approximately 20.6 million smartphone users and this figure is projected to increase to 21.5 million by 2025.[43] Match expects that app downloads will naturally continue to increase as a function of increased smartphone usage. Match considers this will compound the impacts of IAP Bundling.

[redacted]

- More broadly, Match would expect greater global antitrust concern and scrutiny to result if Apple and Google implemented more detrimental forms of charges following IAP unbundling. Correcting conduct of widespread concern, such as IAP Bundling, should not be delayed or discounted because of a perceived risk that some worse conduct might result. Worse conduct would warrant an enforcement response from an antitrust regulator. In any case and as noted above, unbundling IAP would merely require Apple and Google to provide their IAP systems in a competitive market and with competitive fee structures. Match therefore expects that unbundling IAP would not reduce Apple or Google's IAP revenues to zero and so the perceived risk of alternative forms of charges being levied is exaggerated.

[38] *Epic v Apple (US)*, Email from Eddy Cue to Philip Schiller and Mark Donnelly, Exhibit PX-0406, available here.
[39] SensorTower, 'Global App Spending Approached $65 Billion in the First Half of 2021, Up More Than 24% Year-Over-Year' (28 June 2021) available here.
[40] Ibid.
[41] See App Store Report, p 68, referencing Sensor Tower data, based on estimated numbers of apps on the App Store and the Play Store, as of 21 January 2021.
[42] Statista, 'Number of smartphone users worldwide from 2016 to 2026' (2 Jun 2021), available here.
[43] Statista, 'Smartphone penetration rate as share of the population in Australia in 2017 with a forecast until 2025' (8 October 2020), available here.

(c) the benefits of unbundling IAP:

In a future without IAP Bundling, Apple and Google would be required to compete with alternative IAP solutions offered by payment systems providers and app developers. This competition is likely to drive IAP fees down from their current level and increase innovation and consumer welfare. Developers could also offer customers more tailored payment solutions and innovative products and lower prices.

Unbundling IAP would remove the issues of customer disintermediation and sensitive transaction data being made available to and unfairly leveraged by app store operators. This would also enhance the efficiency of app developers and allow them to better serve their customers. In particular:

[redacted]

[redacted]

Match is looking forward to soon releasing its own competitive alternative IAP system for its iOS and Android users, and delivering the above benefits in South Korea (which recently banned IAP Bundling, see discussion below).

(d) The ACCC's potential measure regarding off-app alternatives:

While Match appreciates the potential measure suggested by the ACCC that Apple and Google allow marketing of off-app payment alternatives, Match considers that this will have relatively limited impact (if implemented). This is because it is not always possible or optimal to steer consumers out of a developer's app and onto a website or web app to offer content or subscriptions. In particular:

- It is inconvenient for consumers to move between platforms to use an app or obtain premium content. This is particularly so for consumers who do not have easy or regular access to a computer. This inconvenience is exacerbated because many of Match's users [redacted]. This inconvenience deters consumers from obtaining premium content or even using the app.
- In Match's experience, consumers generally want access to additional features in the moment. Match expects the same would be true for gaming apps, which make up a substantial proportion of downloaded apps subject to IAP Bundling. Requiring consumers to go off-app in order to pay for and ultimately access additional features would substantially decrease an app's free-to-paid conversion rates, even where the app developer is investing in innovative solutions and adding value for consumers.
- It is unclear whether the proposed measure (if it were even implemented by Apple and Google) would also result in app developers being permitted to make direct in-app price comparisons (eg, directly advertising that off-app prices may be cheaper than the mandatory IAP price). If not, Match expects that only the savviest users would bother navigating to the off-app alternative.
- It does not assist apps that do not have a web app alternative. For example, Hinge is only accessible via its mobile app. Expecting developers to also create and maintain websites or web apps (particularly to access specific in-app content) raises their costs.
- Requiring consumers to go off-app in order to pay for or gain access to additional features will perpetuate network effects driven by the scale that is already present in web browser markets.[51] App developers are more likely to focus their time and money developing websites that are compatible with the underlying code of a dominant web browser as it is likely to generate the most user traffic. In turn, users are more attracted to web browsers that have the most compatible websites as they are less likely to malfunction, will load faster and are more secure.
- Overall, websites and web apps present an inferior experience for app users and customers do not opt to use them. They are characterised by inferior performance, prolonged load instances and restricted access to a device's hardware compared with native apps. As recognised by the ACCC in its competition assessment:[52]

[redacted]

[51] See for example, the ACCC's findings in its Digital Platforms Inquiry Final Report regarding Google Chrome and Apple Safari. See also ACCC, 'Digital Platform Services Inquiry – September 2021 Report on market dynamics and consumer choice screens in search services and web browsers Issues Paper' (11 March 2021), available here.

[52] App Store Report, p 32.

Ultimately, native apps appear to benefit in performance from tighter integration with the OS and hardware. They provide a richer user experience and provide better access to the mobile device's OS and hardware features such as camera, microphone, GPS, sensors and swipe based controls. Web sites and web apps do not have the same level of centralised distribution and discoverability as native apps. Users are overwhelmingly choosing to spend time with native apps over websites and web apps. Based on the information available and submitted, the ACCC's view is that web sites and web apps are not significant or effective alternatives to the App Store and the Play Store for consumers using mobile devices

3 Regulatory solutions and interventions

The ACCC has indicated it is considering the broad theme of digital platform power and control throughout the DPSI. In the context of this broader focus on power and control, Match understands from the App Store Report that the ACCC is interested in understanding solutions which seek to regulate digital platforms, including the DMA proposed in Europe.[53]

Match provides below an update on some key global enforcement developments since the March 2021 App Store Report. Match also explores overseas solutions such as the recently passed South Korean legislation prohibiting, among other things, IAP Bundling, the United States' proposed app store-specific laws, the United States' broader digital platform antitrust bills, Germany's 'two-step' 'paramount significance' rules, the DMA and the UK's forthcoming 'Strategic Market Status' regime.

While Match encourages the ACCC to consider Australian equivalents to the broader regulatory solutions outlined below, work in that regard should not delay the ACCC from undertaking, in the near future, the '*significant further work and industry consultation*' it considered necessary to examine the effectiveness of IAP unbundling. IAP Bundling is a significant issue with substantial costs on developers and consumers and impacts on competition and innovation.

Match's view is that the ACCC should act promptly and decisively on unbundling IAP. Consultation on the impact of unbundling IAP should happen now. Unbundling IAP is a regulatory intervention that can directly address in the short to medium term what are clear and divisible competition and consumer harms that result from IAP Bundling. The introduction of broad 'catch-all' provisions will, given the Australian common law system, inevitably involve legal challenge and require judicial consideration and clarification. While Match appreciates the perceived benefits of such 'catch-all' provisions in the long-term, delaying the unbundling of IAP to await the application of such provisions will allow detrimental conduct to continue to take a toll on Australian businesses and consumers and the economy more broadly.

The risk of delay caused by legal challenge is already evident in the way Epic Games' Federal Court proceedings against Apple are unfolding. Apple initially successfully applied for a stay of the proceedings in Australia so that they would instead be heard by a United States court.[54] This decision was overturned on appeal to the Full Federal Court.[55] The Full Federal Court decision suggests that a stay in Epic Games' case would have resulted in the choice of forum clause contained in Apple's Developer Program License Agreement depriving Epic Games of the '*legitimate forensic advantages*' provided by Australia's competition law and would prevent fundamental Australian public interest issues in relation to Australian conduct and an Australian company (ie, Apple's Australian subsidiary) from being ventilated.[56] Apple has already said that it would appeal the Full Federal Court's decision.[57]

The approach of South Korea, and the proposed approach in the United States, are examples of direct, targeted and immediate action by a government to intervene in response to IAP Bundling. These regulatory interventions will mean that developers based in South Korea and the United States will have

[53] App Store Report, see for example pp 13, 83.
[54] *Epic Games, Inc v Apple Inc (Stay Application)* [2021] FCA 338, available here.
[55] *Epic Games, Inc v Apple Inc* [2021] FCAFC 122.
[56] Ibid [122].
[57] See for example: Australian Financial Review, 'Apple loses appeal in Fortnite court battle' (9 July 2021), available here.

IAP system choice and will likely see substantially reduced costs, have greater capacity to invest in their apps and to upscale their operations and have greater ability to innovate and compete on price. Australia's local app industry by comparison will be less competitive with and stagnate relative to countries that have implemented such remedies.

3.1 Enforcement developments

The issue of IAP Bundling is being tackled directly and swiftly by regulators globally. A number of important developments have occurred since the ACCC concluded its interim review of app stores.

In response to a complaint filed on 21 February 2020, the **Competition Commission of India** (***CCI***) has been investigating Google for allegedly abusing its dominance in smart mobile operating systems and Android app stores including in respect of IAP Bundling.[58]

On 4 March 2021, the **UK Competition and Markets Authority** (***CMA***) launched an investigation into Apple following complaints that its terms and conditions for app developers are unfair and anti-competitive. Match understands the CMA is currently gathering evidence from app developers and other interested parties.[59]

On 22 June 2021 the **Netherlands Authority for Consumers and Markets** (***ACM***) announced that its investigation into whether Apple is abusing its dominant position will continue because it complements rather than overlaps with the EC's investigation into Apple's conduct.[60] The ACM suggested this was because its investigation is considering App Store conditions (including IAP Bundling) imposed by Apple on apps which *do not* compete with Apple's apps (especially relating to online dating in the Netherlands). This is in contrast to the EC's investigation, which is focusing on conditions imposed by Apple on apps which *do* compete with Apple's apps (eg, Spotify). The ACM expects to complete this investigation this year. Match understands that the ACM is finalising its decision in this investigation.

On 7 July 2021, **37 Attorneys General** from various states in the United States brought civil enforcement proceedings against Google to prevent Google from unlawfully restraining trade and maintaining monopolies in two markets (ie, the Android software application distribution market and the Android in-app purchase payment processing market).[61] The Attorneys General allege Google engaged in five categories of anticompetitive conduct to obstruct competition in the relevant markets. Some of these include:

- Tying of the Google Play Store and Google Play Billing for all in-app purchases.[62]
- Using practical, technological and contractual impediments to close the Android app distribution ecosystem off from competition. Examples provided include restrictions on direct download of apps or app stores, misleading warnings to consumers about the risk posed by direct download of apps or app stores, contractual arrangements with Android device manufacturers that prevent modification of operating systems to allow for direct download of apps or app stores, blocking competing app stores from distribution on the Google Play Store, and preventing competing app stores and apps from purchasing advertising on key Google properties including YouTube and Google Search.[63]
- Sharing monopoly profits with large app developers to prevent them from switching to a competing app store, or developing their own app store.[64]

[58] Case No. 07/2020, *XYZ v Alphabet Inc. & Ors*. For a summary of the investigation, see Lexology 'Throwback: Competition Commission of India conducting an investigation on Google against an allegation for play billing, pre-installation of Google pay on Android phone' (16 August 2021), available here.
[59] See UK Government, 'CMA investigates Apple over suspected anti-competitive behaviour' (4 March 2021), available here.
[60] Authority for Consumers & Markets, 'ACM can continue its investigation into the Apple App Store' (22 June 2021), available here.
[61] *Utah v. Google* (US), available here.
[62] Ibid, para 23.
[63] Ibid, para 19.
[64] Ibid, para 22.

The Attorneys General allege that Google's conduct has the effect of foreclosing competition in the relevant markets, and causing harm to consumers, app developers and competing Android app stores by stifling innovation, limiting choice, raising prices, depressing output and reducing developer profits.[65] Further, the Attorneys General allege that there are '*no pro-competitive efficiencies from the tie* [ie, IAP Bundling] *that outweigh the harm to consumers. App developers and app users are each harmed by Google's forced intermediation of in-app payment processing*.'[66]

In their complaint, the Attorneys General reference a Payment Policy change announced by Google in September 2020. This change would require app developers to use Google Play's IAP system and represents a shift by Google towards a more aggressive enforcement of IAP Bundling.[67] Google's announcement stated Google had always required that app developers use Google Play's IAP system, and that it was merely clarifying the language in the Payments Policy to be more explicit.[68] Google provided app developers with a deadline of 30 September 2021 to complete any necessary updates.[69] As noted above, Google recently announced that developers can apply for a six month extension to this deadline. This demonstrates that at least Google will respond to direct enforcement and regulatory pressure on the issue of IAP Bundling.

On 30 August 2021, the **Russian Federal Antimonopoly Service** (***FAS***) issued a warning to Apple regarding violations of Russia's antimonopoly legislation.[70] The FAS press release states that Apple's App Store Review Guidelines, which prohibit app developers from informing consumers about alternative measures of paying for goods outside the App Store, negatively impact competition and may lead to an increase in price. The FAS has given Apple until 30 September 2021 to comply with the warning.

3.2 App store-specific regulatory bills

(a) South Korea – Google Power Abuse Prevention Act

On 31 August 2021, South Korea's National Assembly passed the *Google Power Abuse Prevention Act* in its plenary session. The Act was proposed in what appeared to be a response to Google's more aggressive IAP enforcement approach contained in its amended Payment Policy set to begin in October 2021. The proposed law amends Korea's *Telecommunications Business Act* to effectively include a ban on IAP Bundling and 30 percent commissions. In response to this proposal, Google announced that it would provide app developers with an option to request a six-month extension to comply with its amended Payment Policy.[71]

The Act will come in to full effect following promulgation, which Match understands will occur on 14 September 2021, prior to the commencement of Google's more aggressive IAP enforcement approach under its amended Payment Policy.

The Act will apply to '*app market business operators*', which are defined in the bill as '*a person who conducts a value-added telecommunications service business of registering and selling mobile contents and engaging in a business of intermediating transactions for users to purchase mobile contents*'.[72] In the 'Legislative Intent and Key Provisions' section of the bill, Apple and Google are specifically mentioned as the main targets of the bill.[73]

The bill introduces a range of obligations for covered app market business operators, including:

[65] Ibid, para 150.
[66] Ibid, para 289.
[67] Ibid, para 197.
[68] Google, 'Listening to Developer Feedback to Improve Google Play (28 September 2020), available here.
[69] Ibid.
[70] Federal Antimonopoly Service, 'FAS Russia Issued a Warning to Apple' (30 August 2021), available here.
[71] Google, 'Allowing developers to apply for more time to comply with Play Payments Policy' (16 July 2021), available here.
[72] *Google Power Abuse Prevention Act* bill (Amendment to the Telecommunications Business Act) Article 2, paragraph 13.
[73] Ibid.

- *un-bundle mandatory IAP:* prohibition on app market business operators from taking advantage of their position in a transaction to force the providers of mobile contents to use a specific payment method;[74]
- *prevent user harms:* requirement to take precautions against any end-user harm related to mobile content, and protect the rights and interests of the users regarding payments and refunds of mobile content;[75]
- *independent dispute resolution*: requirement to allow the Telecommunications Dispute Resolution Committee to handle disputes over payment, cancellation or refusals of the usage fee in the app market;[76] and
- *timely app evaluation*: prohibition on app market business operators from wrongfully delaying the evaluation of mobile contents.[77]

The Act has the potential to significantly decrease costs to app users by expanding in-app payment options, thus creating incentives for competitive prices. Additionally, this Act will prevent other common harms faced by app developers including substantial lost profits to inflated IAP commissions, delay in evaluation of apps after registration and arbitrary application of terms and conditions during dispute resolution. This Act will also ensure adequate precautions are taken by app stores to prevent potential harms to consumers.

As a result of the *Google Power Abuse Prevention Act*, Match is working to now roll out its completed IAP solution in South Korea by 14 September 2021 when the prohibition comes into effect. Match looks forward to bringing competition and innovation into IAP payments for iOS and Android apps in South Korea.

(b) United States – Open App Markets Act bills

On 11 August 2021, a bi-partisan bill for an *Open App Markets Act* was introduced in the United States Senate,[78] which was followed on 13 August 2021 by a companion bi-partisan bill introduced to the House of Representatives.[79]

The *Open App Markets Act* bill applies to 'covered companies' which own or control an app store with over 50 million users in the United States.[80] App stores are defined broadly by the Act to mean *'any publicly available website, software application, or other electronic service that distributes apps from third-party developers to users of a computer, a mobile device, or any other generate purpose computing device'*. The bill introduces a range of prohibitions and requirements on the conduct of covered companies, including:

- *un-bundle mandatory IAP*: a covered company cannot require app developers to use an IAP system that is owned or controlled by the covered company as a condition of distribution on an app store, or accessibility to an operating system;
- *pricing terms or conditions of sale*: a covered company cannot make distribution on its app store conditional on an app developer agreeing to pricing terms or conditions of sale that are equal to or more favourable to those on a competing app store, or take punitive action or otherwise impose less favourable terms on app developers for using or offering different pricing terms or conditions of sale on a competing app store;

[74] Ibid, Article 50-1(9).
[75] Ibid, Article 22-9(1).
[76] Ibid, Article 45-2.
[77] Ibid, Article 50-1(11).
[78] *Open App Markets Act* bill (Senate), available here.
[79] To promote competition and reduce gatekeeper power in the app economy, increase choice, improve quality, and reduce costs for consumers: the *Open App Markets Act* bill (House of Representatives), available here.
[80] *Open App Markets Act* bill, s 2(3).

- *restricting business offers:* a covered company cannot impose restrictions on app developer communications with consumers in respect of legitimate business offers such as pricing terms or service offerings;
- *using non-public data*: a covered company cannot use non-public data derived from third-party apps for the purpose of competing with those apps;
- *self-preferencing*: a covered company must refrain from self-preferencing its own apps through ranking schemes or algorithms in the app store over third-party competing apps;
- *interoperability of third-party app stores:* a covered company must allow and provide readily accessible means for consumers to install third-party app stores on the operating system, as well as the ability to hide or delete preinstalled app stores on the operating system; and
- *FRAND terms*: a covered company must provide access to operating system interfaces, development information and hardware and software features to app developers on a timely basis and on fair and reasonable terms.

Match considers that the Open App Markets Act has the potential to significantly decrease costs to app users by expanding IAP options, thus creating incentives for competitive prices. Additionally, this momentous legislation allows apps to freely communicate with their users to ensure consumers are aware of the best prices available to them – all things currently not possible under the Apple and Google monopolistic regimes. The bill would also enable sideloading to give users more platform choices, while continuing to bolster innovation and promote better small business, privacy, security and consumer safety outcomes.

Other IAP-specific bills have been introduced and are being considered by various state legislatures in the United States, including in Georgia, Illinois, Massachusetts, Minnesota, New York and Rhode Island.[81]

3.3 United States – Federal antitrust bills

In addition to the *Open App Markets Act* bill and various app store-specific state bills, in June 2021 the US House Judiciary Committee voted to pass a six-bill legislative package targeted at increasing antitrust regulation of digital platforms nationally. This bill package is in addition to the numerous state bills that have been proposed in various state legislatures. Match considers this legislative package is also likely to address Apple and Google's IAP Bundling, despite being less targeted in nature. In Match's view, however, it is likely to take longer and therefore targeted legislation is preferred.

The ***American Choice and Innovation Online Act***[82] is aimed at prohibiting digital platforms from self-preferencing their own products, services or lines of business over competitors. This bill also prohibits digital platforms from engaging in a range of other discriminatory conduct, including:

- restricting or impeding interoperability between platforms, operating systems, hardware or software and business users' (eg, app developers) technology;
- using data obtained from or generated by the platform to support the platform operator's own products or services;
- restricting or impeding a business user from accessing data generated on the platform by the activity of the business user or its customers;
- restricting or impeding third-party developers from communicating information or providing hyperlinks to consumers;
- self-preferencing on consumer interfaces that include search or ranking functionality; and

[81] Georgia – House Bill 229, Senate Bill 63; Illinois – Senate Bill SB 2311; Massachusetts – Senate Bill SB 2311; Minnesota – House Bill HF 1184, Senate Bill SF 1327; New York – Senate Bill 4822; and Rhode Island – House Bill H 6055.
[82] *American Choice and Innovation Act*, bill available here.

- interfering with or restricting a business user from pricing its own goods.

Another bill is the ***Ending Platforms Monopolies Act***,[83] which prohibits a platform from owning or controlling a line of business that utilises the platform for the sale or provision or goods or services, or offers a product or service that the platform requires a competitor business to purchase as a condition for access to the platform. If passed, the Act would empower the FTC to decide which, if any, businesses the platforms would be forced to divest. Such divestments might include Apple or Google being forced to divest their respective app stores or payment systems, separating those products from the companies' respective operating systems.

3.4 Germany – Competition law amendment implementing declare and prohibit regime

Germany's legislature amended Germany's competition laws, introducing specific ex-ante competition rules for digital platforms with overwhelming importance to competition across multiple markets.[84] This was because the Bundestag considered that Germany's existing antitrust laws had not allowed regulators and courts to act quickly enough to prevent alleged abuses of market power in rapidly changing digital markets.

As a result the Bundestag amended the German competition law as follows:

- Germany's Federal Cartel Office (***FCO***) can intervene early and take preventive measures against large digital platforms where competition is threatened. In particular, the FCO can prohibit companies of 'paramount significance to competition across markets' from engaging in anti-competitive conduct in a two-step process. First, the FCO can **declare** that a company is active on multi-sided or platform markets and has paramount significance for competition across markets. This declaration order is valid for up to five years. Second, the FCO may, separately or in conjunction with a declaratory order, issue a **prohibition order**. This order prohibits an array of conduct, including a platform: self-preferencing, impeding downstream or upstream competitors, impeding potential competitors, using competitively sensitive data to create barriers to entry, refusing interoperability or data portability, etc;[85]
- the prohibition does not apply to the extent that the respective conduct can be **objectively justified**. The burden of proof is on the recipient of a prohibition order to prove there are objective justifications for the prohibited conduct;
- an internet-specific criteria in respect of traditional abuse of dominant control has been added to the law. It specifies that access to data to compete and the power flowing from the provision of intermediary services are relevant factors for assessing market power;
- appeals against FCO decisions will bypass Germany's court of first instance for competition law cases and instead proceed to its Federal Court of Justice; and
- the merger notification thresholds were raised (eg, from turnover of €25 million to €50 million).

On 21 June 2021, the FCO announced it had initiated proceedings against Apple under these new digital platform competition rules.[86] The FCO initiated step one against Apple to determine whether it is of paramount significance to competition across markets. The FCO suggested it is taking this step in response to complaints about various conduct by Apple, including self-preferencing and IAP Bundling. If it is the case that Apple is of paramount significance, then the FCO may also apply prohibitions against Apple. This could involve the FCO constraining Apple's ability to take advantage of its gatekeeper position to impose terms on developers, including IAP Bundling.

[83] *Ending Platforms Monopolies Act*, bill available here.
[84] Tenth Act Amending the Act against Restraints of Competition for Competition Law 4.0 (ARC-Digital Competition Act), approved by the German Bundestag on 14 January 2021.
[85] See s 19a(2), Acts against Restraints of Competition (Competition Act – ***GWB***), available here.
[86] Bundeskartellamt, 'Proceeding against Apple based on new rules for large digital companies (Section 19a(1) GWB) – Bundeskartellamt examines Apple's significance for competition across markets' (21 June 2021), available here.

3.5 Europe – Digital Markets Act Proposal

Match's understanding of the DMA as proposed by the EC and later amended by the European Parliament in its DMA Draft Report[87] is as follows:

- The DMA will apply to '**core platform services**'. These services include online intermediation services (eg, marketplaces, app stores, etc), online search engines, social networking services, video sharing platform services, number-independent interpersonal electronic communication services (eg, WhatsApp, Messenger), operating systems, cloud services and advertising services (eg, ad networks, ad exchanges, etc).[88]
- Core platform services providers can be designated as '**gatekeepers**' if (cumulatively) they:
    - have a significant impact on the internal market;[89]
    - operate one or more important gateways to customers;[90] and
    - enjoy or are expected to enjoy an entrenched and durable market position.[91]
- A core platform provider would be required to inform the EC where it meets the above thresholds.
- If a platform provider is designated as a gatekeeper, it will have particular obligations it must comply with. The obligations contained in Article 5 of the DMA are 'self-executing' and apply broadly to all gatekeepers. The following are relevant obligations in relation to app stores:
    - **Ability to promote** obligation is likely to have three effects. First, it will require Apple and Google to allow app developers to promote content to consumers acquired through their respective app stores. Second, it will require Apple and Google to allow app developers to direct consumers to purchase content off platform. Finally, where content is purchased off platform, Apple and Google will be required to ensure consumers can access the content on the platform.
    - **No tying** obligation could prevent Apple and Google from engaging in IAP Bundling, as they will not be able to make access to their respective app stores conditional on an app developer using their IAP service. This obligation may also prevent Apple from making access to its iOS operating system conditional on an app developer using the App Store.
- In contrast, the obligations contained in Article 6 are 'susceptible of being further specified'. This provides flexibility for the EC and gatekeeper to enter regulatory dialogue and tailor the measures that are required to be implemented to ensure compliance. In relation to app stores, Match considers:
    - **Interoperability of ancillary services** obligation would require Apple and Google to allow third-party ancillary service providers to run on their app stores, which may enable app developers and third party payment providers to run their own IAP systems.
    - **Self-preferencing prohibition** would prevent Apple and Google from favouring their own apps in their respective app stores over other app developers.

[87] DMA Draft Report (1 June 2021), available here (***DMA Draft Report***).
[88] Ibid, Article 2(2).
[89] Ibid, Article 3(1)(a). This is presumed to be the case per Article 3(2)(a) where: (i) the undertaking to which the provider belongs has annual EEA turnover of EUR 6.5 billion or more in the last three financial years, or the equivalent fair market value of the undertaking amounts to at least EUR 65 billion in the last financial year; and (ii) the provider provides a core platform service in at least three Member States. The European Parliament (DMA Draft Report, p 32) however suggested adjustments to this presumptive threshold, increasing the EEA turnover to EUR 10 billion or equivalent fair market value amounting to at least EUR 100 billion. This adjustment is proposed so that the DMA only regulates providers which 'play an unquestionable role as gatekeeper'.
[90] Ibid, Article 3(1)(b). This is presumed to be the case per Article 3(2)(b) where: (i) the core platform service has more than 45 million monthly active end users in the European Union; and (ii) the core platform service has more than 10,000 yearly active business users in the European Union. The European Parliament, Draft Report, p 32 however also suggested adjustments to this presumptive threshold by having it apply to providers operating at least two platform services.
[91] Ibid, Article 4(1)(c). This is presumed to be the case per Article 3(2)(c) where the thresholds in 3(2)(b) have been met for the last three financial years.

- **No 'Sherlocking'** obligation would prohibit Apple and Google from using data generated by app developers on the App Store and Play Store to compete with those app developers.
- **Open software** obligation would require Apple and Google to allow third-party app stores and software to operate on their respective operating systems.
- **'FRAND' terms** obligation is targeted directly at app stores, and would require Apple and Google to offer app developers access on fair and non-discriminatory terms. Further, the EC will have the ability to consider whether the 30% commission charged by Apple and Google is fair and non-discriminatory.

Structural remedies will be available to the EC after two non-compliance decisions have been made by it.[92] An offer of an undertaking / commitment in the course of proceedings or an investigation will not prevent the use of structural remedies. The EC would more broadly have powers to conduct market investigations, adopt interim measures and impose fines.

3.6 United Kingdom – The Digital Markets Unit and its proposed regulatory regime

On 7 April 2021, the Digital Markets Unit (***DMU***) was established within the CMA. The UK Government intends to provide the DMU with statutory powers to enforce the Government's anticipated pro-competition regime for digital markets.[93] This pro-competition regime was recommended to the UK Government in an 8 December 2020 advice by the Digital Markets Taskforce (***DMT***) led by the CMA.

On 20 July 2021, the UK Government released its consultation paper on the proposed pro-competition regime for digital markets' (***Consultation Paper***).[94] In its Consultation Paper, the UK Government stated that it will give the DMU statutory power to designate firms with '*Strategic Market Status'* (***SMS***), oversee mandatory **principles-based codes of conduct** and implement **pro-competition interventions** (***PCIs***) that apply to designated firms.[95]

(a) SMS Designation

The Consultation Paper sets out the proposed test for SMS as *'a firm must have **substantial and entrenched market power** in at least one activity to be designated with SMS, and this market power must provide the firm with **a strategic position**'*.[96] Once a firm is found to have SMS in one or more activities, the designation will apply to the whole firm.[97] The Consultation Paper also contains a number of factors for the DMU to consider when prioritising designation assessments, including **firm revenue** and **activities** with significant network effects, economies of scale or high barriers to entry.[98]

Match considers that the SMS status is likely to be applied to Apple and Google as a high priority, given that they each fall within the contemplated prioritisation rules on an **annual revenue** (ie, over £1 billion UK revenue and over £25 billion global revenue) and **activity** (ie, app stores) basis.

(b) Codes of Conduct and Pro-Competition Interventions

The Consultation Paper states that '*the enforceable code of conduct will seek to prevent the harms that may result from strategic market position of firms with SMS...PCIs will, by contrast*, *enable the Digital*

[92] The EC originally proposed that a structural remedy only be applied where there is no equally effective behavioural remedy or the equally effective behavioural remedy would be more burdensome. The European Parliament's DMA Draft Report deleted this in Amendment 82.
[93] UK Government, 'Government unveils proposals to increase competition in UK digital economy' (20 July 2021), available here. In the interim, the UK Government has published terms of reference to govern the DMU until its functions and powers are finalised in statute, see Digital Markets Unit (non-statutory) Terms of Reference, available here.
[94] UK Government, Consultation Paper 'A new pro-competition regime for digital markets' (July 2021), available here (***Consultation Paper***).
[95] Ibid, paragraph 23, available here.
[96] Ibid, paragraph 60.
[97] Ibid, paragraph 54.
[98] Ibid, paragraph 77.

Markets Unit to implement measures that address the root causes of a firm's substantial and entrenched market power'.[99] However, the exact scope of the final remedies are currently unclear.

In relation to a codes of conduct framework, the Consultation Paper proposes two different options for the framework's design. The first option would allow the DMU to implement tailored obligations to the SMS designated firm to address the specific activities undertaken by that firm.[100] This approach was recommended by the DMT in its initial advice, as it would provide the DMU flexibility to address a wide range of practices and address the changing behaviour of firms.[101] The second option would be to adopt a similar approach to the DMA, enacting a single set of high-level principles for all SMS designated firms in primary legislation.[102] It is unclear from the Consultation Paper which option is preferred by the UK Government.

In relation to the power to implement PCIs, the Consultation Paper suggests that this could include *'measures to overcome network effects and barriers to entry/expansion through mandating interoperability, third-party access to data or certain separation measures*',[103] but does not go further to detail the exact scope of those remedies. The DMT's initial advice considered that the DMU should be able to implement the following types of remedies through PCIs:[104]

- *data-related interventions* – including interventions to support greater consumer control over data, mandating third-party access to data and mandating data separation/data silos;
- *interoperability and common standards* – these can be important in data-related remedies, for example to support personal data mobility, but can also be used to ensure software compatibility or enable systems to work together;
- *consumer choice and defaults interventions* – these remedies can be used to better enable effective consumer choice, for example to address concerns regarding how choices are presented to customers and the defaults that are selected which influence consumer decision-making;
- *obligations to provide access on fair and reasonable terms* – these remedies provide third parties with access to key facilities or networks in a non-discriminatory manner; and
- *separation remedies* – which aim to address structural features of the market that inhibit competition, for example to ensure that different units within an SMS firm are operated independently of each other.

The proposed remedies that may be made available to the DMU may address app store-related issues in similar ways to the DMA. For example, the interoperability obligation may enable developers and third party platform providers to run their IAP systems on each app store (though this is not entirely clear). The consumer choice and default intervention could ensure that IAP alternatives are presented to consumers fairly. The separation remedies could address issues to do with the leveraging of sensitive data by app stores.

The issue remains however, as with the DMA, that these remedies are broad and regulate digital platforms across their ecosystem. Match considers this may result in lengthy consultation, long implementation lead times and a heightened risk of legal challenge. Given that IAP Bundling is a clear and divisible competition issue with identified harms, separating it out into a targeted consultation and future reform package is appropriate, likely to be relatively efficient and would see immediate benefits upon implementation as highlighted above.

[99] Ibid, paragraph 105.
[100] Ibid, paragraph 87.
[101] CMA, 'A new pro competition regime for digital markets' (December 2020), paragraph 10 (***DMT Advice***).
[102] Consultation Paper, paragraph 88.
[103] Ibid, paragraph 104.
[104] DMT Advice, paragraph 10.

4 Conclusion

Match requests that the further consultation that the ACCC suggested was necessary in its App Store Report in respect of Apple and Google's IAP requirements should be undertaken by the ACCC soon. As outlined above, direct and prompt responses are being taken by overseas governments and regulators, recognising the damaging impact that conduct like IAP Bundling is having. Further delays to any Australian solutions will continue to see a loss of competition, innovation and consumer welfare in Australia.

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