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Our ref: IM-70348
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Contact phone: 02 6243 4936 / 02 9230 3813

27 February 2020

Dear Interested Party

Re: Request for submissions: Google's proposed acquisition of Fitbit

The Australian Competition and Consumer Commission (**ACCC**) is seeking your views on the proposed acquisition of Fitbit, Inc. (**Fitbit**) by Google LLC (**Google**) (the **proposed acquisition**).

Fitbit is a manufacturer and supplier of wrist-worn wearable devices and other related products. Google has an extensive range of interests including online search and advertising technology, mobile hardware and various commonly used software such as Google Chrome. Further details regarding the acquisition can be found at **Attachment A**.

The ACCC's investigation is focused on the impact on competition. In particular, we are seeking your views on:

- the impact of the proposed acquisition on prices and features of wearables including the wearable operating system
- the ability to foreclose or otherwise frustrate the ability of other businesses to compete
- the impact that Google's increased access to data will have on markets which rely on the collection of data, e.g. advertising markets and
- the impact of Google extending its "ecosystem" of products.

Further issues you may wish to address are set out in **Attachment B**.

This matter is public and you can forward this letter to anybody who may be interested.

The legal test which the ACCC applies in considering the proposed acquisition is in section 50 of the *Competition and Consumer Act 2010*. Section 50 prohibits acquisitions that are likely to have the effect of substantially lessening competition in a market.

Please provide your response by no later than **5pm on 25 March 2020**. Responses may

be emailed to mergers@acc.gov.au with the title: *Submission re: Google Fitbit - attention Braeden Smith / Nicholas Welfare*. If you would like to arrange a time to discuss the matter with ACCC officers, or have any questions about this letter, please contact Braeden Smith on 02 6243 4936 or Nicholas Welfare on 02 9230 3813.

Updates regarding the ACCC's investigation will be available on the ACCC's Public Mergers Register at ([ACCC mergers register](#)).

Confidentiality of submissions

The ACCC will not publish submissions regarding the proposed acquisition. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the *Competition and Consumer Act 2010*. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, if the information provided to the ACCC is of a confidential nature, please indicate as such. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

Yours sincerely



Tom Leuner
General Manager
Merger Investigations

Attachment A

Google

Google is a US-based information technology company. Google is the largest subsidiary of Alphabet Inc., specialising in internet-related services and products.

Its principal activities are the provision of online search services, the sale of online advertising space on its own websites (including Google Search and YouTube), and the supply of advertising technology services to facilitate advertising space on third party websites. In addition to these core services, Google is also active in:

- technology hardware, including mobile phones (Google Pixels), Google Glass and Google Home
- operating systems for mobile phones (Android), wearable devices and laptops
- other commonly used applications such as Chrome, Google Maps, Google Calendar and Gmail
- payment systems through Google Pay.

Fitbit

Fitbit is an American company headquartered in San Francisco, California that develops, manufactures and distributes wearable devices, software, and services in the health and wellness sector under the brand name 'Fitbit'.

Fitbit's products include fitness wearables, smartwatches, smart scales, and software. Fitbit's wrist-worn wearable devices are supported by the Fitbit mobile app and Fitbit's proprietary OSs.

Fitbit has entered into a number of partnerships with corporate entities, health insurance companies and Governments to provide subsidised or complementary devices to consumers.

It is active in Australia via its subsidiary Fitbit (Australia) Pty Ltd.

The Transaction

The proposed acquisition was announced on 1 November 2019 and involves Google acquiring Fitbit by way of a share acquisition.

Attachment B

1. Please provide a brief description of your business or organisation.
2. Please outline the reasons for your interest in the proposed acquisition, including any commercial relationship/s with either Google or Fitbit.

Competition to supply fitness wearables and smartwatches

3. Please describe consumer preferences in the supply of wearables, when answering you may wish to comment on smartwatches versus fitness wearables, relative prices, functionality and data use.
4. Please identify and describe current and future suppliers of fitness wearables and smartwatches, in answering this question you may wish to comment on price, promotional activity, product ranges, product quality or service standards. Please provide specific examples where possible.
5. Please describe the business/commercial relationships between smartwatch/wearable device companies and hand-held device and hand-held operating system companies (e.g. iPhone and Android devices), and how these will be impacted by the proposed acquisition?
6. Please comment on the extent to which ownership of other devices within a particular eco-system (e.g. the customer owning an iPhone or Android device) influences customer decisions when purchasing a smartwatch or wearable.
7. If you are a competing manufacturer of fitness wearables and smartwatches or the developer of a health or fitness app, please provide details of the data that you collect from your customers. Please identify the ways in which you use this data, including whether you make it available to third parties.
8. If the proposed acquisition proceeds, would it alter the competitive dynamic for the acquisition of, or access to consumer data? When answering this question please consider the way in which various suppliers of wearables, smartwatches and operating systems compete for access to consumer data, including privacy guarantees, access to additional services or any other factors.
9. Would the proposed acquisition provide Google with the ability and/or incentive to restrict access or otherwise impact access by third party wearable manufacturers to: Google's Wear OS, Google Play Store, or any other Google service including Google search advertising? What impact could such behaviour have on competition to supply fitness wearables and smartwatches?
10. What is the likelihood that absent the proposed acquisition:
 - a. Google would enter the supply of wearables (fitness wearable and/or smartwatches) and compete with Fitbit and other wearables?
 - b. Another potential competitor would enter the supply of wearables?

When answering this question, please provide details.

11. In the absence of the proposed acquisition, how is Fitbit's own product line and wearable operating system likely to develop into the future?

Competition to supply operating systems for fitness wearables and smartwatches

12. Please describe the extent to which operating systems for wearables compete with each other, and whether this competition is separate or connected with the physical device. In answering this question please also provide details on:
- a. other suppliers of operating systems for fitness wearables and smartwatches, including the extent to which they compete with Google's WearOS and Fitbit's OSs, and/or the physical wearables,
 - b. how suppliers of operating systems compete to have their system installed on particular hardware, and
 - c. what features do suppliers of operating systems focus on, including power consumption, product support, data access/data protections or price.

Competition to supply complementary products

13. If, post-acquisition, a consumer owns a Google manufactured Fitbit device, would that influence their subsequent purchasing decisions relating to other goods and services that Google supplies (such as mobile phones, smart speakers, tablets, laptops, etc.)?
14. Are wearable devices likely to become important complements to other devices in the future (such as smart speakers)? If so, would the proposed acquisition provide Google with the ability or incentive to deny competitors in complementary goods or services effective access to Fitbit devices?
15. Would the proposed acquisition have any impact on competition in markets to supply products that are complementary to wearable devices?

Data

16. If the proposed acquisition proceeds, would Google's ownership of Fitbit advantage Google in any of its business ventures related to the use of data? When answering this question please have consideration of:
- a. the ability of Google to integrate Fitbit's data into its existing dataset, and
 - b. the value of the Fitbit data in improving Google's data-driven services, such as search algorithms, its digital advertising technology services (e.g. demand side platform services), or any other avenue to monetise its datasets.

Payment Systems

17. Please identify the different pay services available for fitness wearables and smartwatches. Please explain any key differences between these payment systems, including but not limited to, which banks accept them and useability.
18. If the proposed acquisition proceeds, would there be a reduction in competition in the supply of mobile contactless payment solutions? What impact would this have on the cost for participating financial institutions and the services offered to consumers?

Bundling

19. If you are a retailer or distributor of electronic goods, please provide information on any conditions that you must comply with in order to retail particular brands. When answering this question, please consider:
- a. bundling or any requirements to sell a particular portfolio of goods, and
 - b. exclusive supply or restrictions on supply competing brands.
20. Would the proposed acquisition give Google the ability or incentive to impose conditions on retailers that would limit competing suppliers of wearables (or other products) from obtaining access to retailers' shelves?

Insurance and health markets

21. Please provide information on the relevance of wearables, and the data collected to insurance and health markets or any information on Google's expansion into insurance and health markets, in particular we are interested in:
- a. the arrangements of schemes whereby consumers are provided with complementary or subsidised wearables
 - b. the data collected from consumers and what it is used for
 - c. whether the proposed acquisition would strengthen Google's position in these ventures
 - d. any future plans for Google, Fitbit or other technology companies to increase their presence in these markets.

Other information or competition issues

22. Please provide any additional information or comments, or identify other competition issues, that you consider relevant to the ACCC's consideration of the proposed acquisition under section 50 of the Act.