



Statement of Issues

18 June 2020

Google LLC – proposed acquisition of Fitbit Inc

Purpose

1. Google LLC (**Google**) proposes to acquire Fitbit Inc. (**Fitbit**) (the **proposed acquisition**).
2. This Statement of Issues:
 - outlines the Australian Competition and Consumer Commission (**ACCC**)'s preliminary views on competition issues arising from the proposed acquisition,
 - identifies areas of further inquiry, and
 - invites submissions from interested parties on particular issues.
3. Statements of Issues do not refer to confidential information provided by the parties or other market participants and therefore may not necessarily represent a full articulation of the ACCC's preliminary position.

Overview of ACCC's preliminary views

4. The legal test which the ACCC applies in considering the proposed acquisition is set out in section 50 of the *Competition and Consumer Act 2010*. In general terms, section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.
5. The ACCC divides its preliminary views into three categories, 'issues of concern', 'issues that may raise concerns' and 'issues unlikely to raise concerns'. In this Statement of Issues there are two broad issues that may raise concerns across several relevant markets.
6. Google is a significant supplier of consumer and business facing technology services with a substantial presence in multiple technology markets. Google's accumulation of data from a variety of sources provides it with important economies of scope and contributes to its market power in a range of markets.

The accumulation of additional, individual user data via this transaction in an entity which already benefits from substantial market power in multiple markets may contribute to reduced competitive outcomes in the future.

7. In addition to barriers to entry and expansion caused by economies of scale and scope, and network effects, Google's market position has been supported by its acquisition strategy. Google's history of strategic acquisitions has enabled it to increase its touch points with consumers, accumulate additional data, and entrench and extend its market power, particularly into emerging markets. The ACCC recognises that competitive outcomes in technology markets are difficult to predict. For example, Google's strong position in a range of advertising markets, which was perhaps originally unforeseen, was built on its accumulation of consumer data from sources such as online search.
8. Google has been successful in offering valued consumer services on a range of devices from personal computers and tablets to smartphones. This has allowed Google to collect large volumes of high quality data and offer targeted advertising services. Current information suggests that wearables are an emerging channel or platform through which many services may be offered and data collected. This is exhibited by the expansion of many technology companies into wearables in recent years. Wearables are likely to be capable of many of the core functions currently undertaken by smartphones, particularly as the use of voice assistants and cellular connectivity increases. These features will increasingly allow users to make phone calls, send messages, conduct searches and control other devices from their wearable, whilst leaving their smartphone at home.
9. Therefore, it is important to ensure that an acquisition at this stage in the development and adoption of wearables does not substantially lessen competition. An important factor is what may occur in the absence of the proposed acquisition, and whether alternative purchasers or investment in Fitbit would enable potential rivals to Google to emerge and challenge Google in both existing and newly developing markets. Whether the proposed transaction substantially lessens competition in any market does not need to be more likely than not – there just needs to be a real chance that it would occur.
10. The ACCC understands that Fitbit's data is unique. It is voluminous in depth and the nature of its customer base is such that it lends itself to having value for drawing health insights or for developing data-dependent health services. Feedback from the market is that other wearable datasets are not as voluminous, reliable or broad as Fitbit's data.
11. The ACCC notes Google's public statement that 'Fitbit health and wellness data will not be used for Google ads.'¹ However, this commitment is not binding on Google and experience also suggests that intentions stated by an acquiring party at the time of an acquisition may well change over time. Therefore, the ACCC has not put significant weight on the statement in our competition assessment.

¹ <https://www.blog.google/products/hardware/agreement-with-fitbit/>

Issues that may raise concerns

Aggregation of data

12. Google is the leader in the collection of a wide range of high quality consumer data as well as a market leader in artificial intelligence and data analysis.
13. Google currently has more avenues from which to gather consumer data than any other company and this gives it a significant competitive advantage in many markets. The health and fitness data collected by Fitbit will provide Google with access to consumer data that is likely to be an important element of services in several markets.
14. The ACCC's preliminary view is that the proposed acquisition may have the effect of, or may be likely to have the effect of, substantially lessening competition in:
 - a. the supply of data-dependent health services and/or
 - b. the supply of certain ad tech services in Australia that rely on the collection and analysis of large amounts of individual data and in particular those services which enable targeting of online display advertising to consumer segments.²
15. In relation to data-dependent health services, the ACCC is concerned that the acquisition may eliminate potential competition between Fitbit (either under current ownership or under alternative ownership) and Google. Google has a strong focus on new and developing markets and will likely become a strong competitor in the supply of data-dependent health services with or without the proposed acquisition. The health and fitness data collected by Fitbit puts Fitbit in a strong position to enter and compete in data-dependent health markets. The proposed acquisition eliminates this potential competition between Google and Fitbit.
16. The ACCC is also considering the potential for the proposed acquisition to limit entry into data-dependent health markets as they evolve. The health and fitness data collected by Fitbit is likely to be an important resource for firms developing new and innovative services in these markets. In the absence of the acquisition, there is a greater likelihood that Fitbit will partner with other businesses endeavouring to develop these services. By reducing this likelihood, the proposed acquisition may lessen competition in these emerging markets.
17. In relation to certain ad tech services, the ACCC is concerned about the potential for the acquisition to reduce the (limited) competitive constraint on Google

² The ad tech services the ACCC is focussing on are:

- Demand side platforms – platforms used by advertisers to help them purchase ad inventory from suppliers of ad inventory as effectively and cheaply as possible, and which utilise various data to provide ad targeting services
- Supply-side platforms/ad exchanges – supply-side platforms are platforms used by publishers to maximise the price at which ad inventory is sold by setting price floors, determining what data to include in the auction and deciding which buyers can bid. Ad exchanges provide a platform for demand-side platforms and supply-side platforms to connect, often via a real-time bidding auction. The functions of supply-side platforms are increasingly integrated with those of ad exchanges.

arising from the threat of expansion or new entry. The ACCC is focusing in particular on demand side platform (DSP) services. Google has market power in the supply of these services. This is underpinned by the considerable data advantages it holds over its rivals. The proposed acquisition will likely increase this advantage. By increasing this advantage, the proposed acquisition is likely to have the effect of reducing the commercial incentives for existing suppliers to 'take-on' Google and reduce the commercial incentive for new entry. The likely effect will be to entrench Google's market power in the supply of these ad tech services.

18. The ACCC is also considering potential competition between Google and ad tech suppliers who may otherwise partner with Fitbit. The ACCC understands that the health and fitness data collected by Fitbit is likely to be useful in improving certain ad tech services, predominantly by allowing suppliers with existing information on individual online users to better target display advertising to those particular consumers. In the absence of the proposed acquisition, there is a greater likelihood that Fitbit - either under current or alternative - ownership will enter partnerships to make its data available to alternative suppliers of ad tech services (subject to privacy laws). This will enable these suppliers to improve their advertising targeting and increase the competitive constraints on Google. The proposed acquisition eliminates this prospect.

Ability and incentive for Google to foreclose competing wearable manufacturers

19. The ACCC's preliminary view is that the proposed acquisition may have the effect, or may be likely to have the effect, of substantially lessening competition in the supply of wearables. Google is a significant supplier of and controls some key inputs necessary for the supply of wearables, including Wear OS, Google Maps, the Google Play Store, and the Android smartphone operating system. Many third party wearable manufacturers rely on access to one or more of these Google products. The ACCC is concerned that the acquisition of Fitbit may provide Google with the incentive to foreclose or otherwise inhibit access to some of these products in order to increase the sales of its own wearables at the expense of its rivals. The ACCC is also concerned that if wearables are found to be important for another segment of Google's business, (e.g. health, discussed further at paragraph 77) Google's incentive to foreclose competing wearables may further increase.

Issues unlikely to raise concerns

20. The ACCC's preliminary view is that there are three issues that are unlikely to raise concerns. The ACCC will continue to assess these issues, and consider submissions, however, the focus of our investigation is now on the issues of concern identified above.
21. The three issues are set out below.

Removal of potential competition in the sale of wearables

22. In the absence of the proposed acquisition, Google may have entered the wearables market organically and competed against Fitbit.
23. The ACCC is exploring whether the proposed acquisition removes this potential for future competition between Google and Fitbit.

Impact on search and search advertising

24. The proposed acquisition will provide Google with access to a set of additional user data collected from wearables, but it is unlikely that access to this type of data would have a significant impact on Google's search and search advertising service offerings.
25. The ACCC's preliminary view is that the proposed acquisition is unlikely to substantially lessen competition in the supply of search or the supply of search advertising services.

Overlap in mobile payment systems

26. The proposed acquisition will remove competition between Fitbit and Google in the offer of mobile payment services, but the ACCC's preliminary view is that this is unlikely to substantially lessen competition in these markets as there are a number of alternative service providers and development of mobile payment systems for a wearables provider does not appear to be particularly difficult.

Making a submission

27. The ACCC is seeking submissions from interested parties, particularly on the following key issues:
 - The extent to which Fitbit's data is unique and whether or not there are other sources of this data
 - The extent to which, in the absence of the proposed acquisition, Fitbit (either on its own or in partnership with others) and Google will compete or are likely to compete in the provision of data-related health services and certain ad tech services.
 - The likelihood that other competitors could constrain Google in the provision of data-related health services or certain ad tech services, post-acquisition, and
 - The likelihood that the acquisition will alter Google's incentives in relation to providing third party access to products such as Wear OS, Google Maps or the Google Play store.
28. Interested parties should provide submissions by no later than 5pm on 10 July 2020. Responses can be emailed to mergers@acc.gov.au with the title: Submission re: Google/Fitbit - attention Braeden Smith/Nicholas Wellfare. If you would like to discuss the matter or have any questions, please contact Braeden Smith on 02 6243 4936 or Nicholas Wellfare on 02 9230 3813.
29. The ACCC anticipates making a final decision on 13 August 2020, however, this timeline can change. To keep up to date with any developments, please check the ACCC's Mergers Register at www.acc.gov.au/publicregisters/mergers-registers/public-informal-merger-reviews.

Confidentiality of submissions

30. 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 have an opportunity to be heard. Therefore, if the information provided is confidential, please indicate as such. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

About ACCC ‘Statements of Issues’

31. A Statement of Issues is not a final decision about a proposed acquisition. A Statement of Issues outlines the ACCC’s preliminary views and identifies further lines of inquiry.
32. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It also provides the merger parties and interested parties with the basis for making further submissions.

Timeline

Date	Event
27 February	ACCC commenced review of the proposed acquisition
18 June	ACCC publication of Statement of Issues
10 July	Deadline for submissions from interested parties in response to this Statement of Issues
13 August	Anticipated date for ACCC final decision

The parties

Google

33. Google is a wholly owned subsidiary of Alphabet Inc., a public company headquartered in Mountain View, California, and listed on the NASDAQ stock exchange.
34. Google is active in a wide range of areas, including online search services (Google Search) and other online services such as YouTube, Google Maps and Gmail, as well as cloud computing services.
35. Google is also very active in ad tech services, through the supply of:

- search and display advertising inventory on Google owned and operated properties (such as Google Search and YouTube), and
 - ad tech services that facilitate the buying and selling of advertising inventory on Google owned and operated properties and on third party websites, including:
 - Google Ad Manager, which includes Google’s supply side platform, ad exchange and publisher ad server, and
 - Google Marketing Platform, which includes Google’s demand side platform, advertiser ad server and analytics tools.
36. Google is present across the entire ad tech supply chain. Ad tech services, which rely on data to target advertisements at specific consumer segments, are discussed further below.
37. Google also develops and maintains the Android ecosystem, which includes an open-source mobile operating system and a suite of mobile apps and services. As part of this, Google maintains and develops a licensable operating system for smartwatches (Wear OS) and a health and fitness app (Google Fit).
38. Google does not currently offer any smartwatches or other wrist-worn wearable devices. Google markets a range of Android smart mobile phones (called Pixel), connected home devices (including Nest, Chromecast, and Google Home products), laptops (called Pixelbook), tablets (called Pixel Slate), gaming devices (called Stadia) and various accessories.
39. Google also has an established presence in health, with Dr David Feinberg leading Google Health, bringing together “groups from across Google and Alphabet that are using AI, product expertise and hardware to take on big healthcare challenges”.³
40. Specifically Alphabet, Inc. has been active in the healthcare industry with the following companies:
- Verily Life Sciences – a research and development company that develops tools to collect and organise health data in order to predict and prevent disease onset and progression. It also works with other industry partners to provide healthcare delivery tools, such as specialised medical sensors, disease screening and prevention tools, as well as health platform and population health tools. Verily is known for the development of its Study Watch, a clinical tool intended to be used for the scalable collection of rich and complex datasets across clinical and observational studies, such as into Parkinson’s disease.
 - Calico Labs – a research and development company focused on aging and age-related diseases, such as neurodegeneration and cancer.
 - DeepMind – an artificial intelligence (AI) company acquired by Google in 2014 before being shifted to operate under Alphabet, Inc. following a restructure in 2015. DeepMind has developed a number of AI research and mobile tools for use by patients and healthcare providers.

³ <https://www.blog.google/technology/health/david-feinberg-google-health/>

Fitbit

41. Fitbit is a public company, headquartered in San Francisco, California, and listed on the New York Stock Exchange. Founded in 2007, Fitbit develops, manufactures and distributes wrist-worn wearable devices as well as smart scales, software and services.
42. Fitbit is a significant supplier of wearables in Australia and globally. In FY19 Fitbit reported worldwide revenues of \$1.43 billion, increased active users to a total of 29.6 million and sold an additional 16 million devices. Despite this, it has made net operating losses over the past few years.
43. Fitbit's wearables run on its own proprietary operating systems. These are exclusively used on Fitbit's devices and are not licensed to third parties.
44. To complement its wearables, Fitbit has also developed the Fitbit mobile app. The app functions as a companion to a Fitbit wearable, allowing users to sync their wearable with their mobile phone. It also allows users to view metrics tracked through their Fitbit device.
45. Fitbit offers health and wellbeing solutions to employers, insurers, and healthcare providers via its Health Solutions business.⁴ Fitbit's Health Solutions business grew 17 per cent in FY19 to \$95 million in revenue.⁵
46. Fitbit also has a presence in data-related health services and takes part in a number of health studies. It has announced disease detection partnerships with a number of parties, including recently in May 2020 that it was launching a large scale study into atrial fibrillation.⁶

Industry background

Wearables

47. A wearable generally refers to any technology that can be worn on a person's body. However, for the purposes of this Statement of Issues wearables will refer to wrist-worn wearables.
48. A wearable consists of two main components. These are the hardware (i.e. the device itself) and the operating system that it runs on it.

Wearable devices

49. There are two general sub-categories of wearables: fitness trackers and smartwatches.
50. Fitness trackers are wrist-worn wearable devices that include sensor hardware that can measure users' daily activity and health metrics, such as steps taken,

⁴ <https://healthsolutions.fitbit.com/aboutus/>

⁵ <https://investor.fitbit.com/press/press-releases/press-release-details/2020/Fitbit-Reports-2019-Fourth-Quarter-and-Full-Year-Results/default.aspx>

⁶ <https://investor.fitbit.com/press/press-releases/press-release-details/2020/Fitbit-Announces-Large-Scale-Study-to-Identify-Atrial-Fibrillation/default.aspx>

heartrate, oxygen saturation in the blood, calories burned, distance travelled, sleep quality and active minutes.

51. Smartwatches are wearable computers in the form of a wristwatch. Smartwatches typically have a larger screen and more computing power than fitness trackers. Like fitness trackers, smartwatches monitor and record users' daily activity and health metrics, but they typically provide additional functionality such as communication or entertainment functions. Smart watches can be relatively basic and inexpensive, or be feature rich and expensive, based on a number of hardware and software factors.
52. Fitbit currently sells devices that fit into both of these categories.

Operating systems

53. An operating system is the software that supports a wearable's basic functions. There are three options for manufacturers:
 - developing their own wearable operating system from scratch
 - using an open source operating system, which involves using a basic operating system developed by a third party and modifying it to match the needs of a specific device, or
 - licensing an operating system, which involves entering an agreement with the owner of an existing operating system for access to/use of that system. Licensees may be restricted from altering the licensed operating system or accessing collected data.

Other industry participants

54. In addition to Fitbit, there are a number of other manufacturers of wearables.

Prominent manufacturers

55. Apple manufactures a smartwatch called the Apple Watch. Apple Watches from Series 3 onwards include models with cellular connectivity. Other features available on Apple Watches include sensors to measure blood-oxygen levels and ECG, a compass, and fall detection. Apple's products all run on Apple's own operating system, watchOS.
56. Samsung currently markets fitness trackers and smartwatches. Some of Samsung's smartwatches include cellular connectivity. Samsung's wearables predominantly run on Samsung's Tizen operating system.
57. Garmin produces wearable bands and smartwatches for activities such as fitness, running, golf, water sports, and swimming. These products contain features such as GPS, heart rate monitors, Bluetooth music playback, maps, NFC payment, and pulse-oximetry. Garmin's wearable products operate on Garmin's own operating system, Garmin OS.

Other manufacturers

58. Xiaomi has traditionally focussed on low-cost fitness trackers. However, in November 2019 it launched its first smartwatch which has cellular connectivity. Xiaomi's devices have traditionally run on its proprietary OS, however it has recently launched a device using Wear OS.
59. Huawei offers both low-cost fitness trackers as well as smartwatches. Huawei has previously used Wear OS on its devices but is switching to its own operating system Harmony OS.
60. Fossil offers a range of smartwatches under the brand names Fossil, Emporio Armani, Diesel, Tory Birch, Skagen and Michael Kors. Fossil's watches use Wear OS.

Data collected by wearables

61. A wearable constantly collects data on a user that is unique to them, over and above the data automatically collected by other devices such as from use of a personal computer or a smartphone. The additional data collected includes, but is not limited to, heart rate, heart rate variability, calories, and oxygen saturation. In addition to different types of data, models that are enabled with GPS will also collect location data on a user, even when they do not have their smartphone with them. For example, when they are exercising.
62. The primary use of health data collected from a wearable is to provide the user with their health information. This generally occurs through data being sent to a wearables companion app, usually downloaded onto a smartphone. This allows a user to see all their information in one location and compare their information against their goals.
63. A user also has the option to allow third party apps to access the data that is collected by their wearable. This may be done to track exercise, nutrition or other aspects of health. This third party access can typically only occur with the user's consent.
64. There are other ways in which a user's data can be utilised, including in advertising and health related markets.

Advertising and ad tech services

65. Online advertising can be broadly divided into three categories:
 - Search advertising, which appears alongside search results when a user performs a search query on a general search engine (such as Google or Bing) or a specialised search engine (such as Amazon or Expedia)
 - Classified advertising, which appear on general classifieds websites (such as Gumtree and Trading Post) or specific classifieds websites (such as Seek or Domain), and
 - Display advertising, which refers to all other types of online advertising, including advertising in banners or videos on webpages, in mobile apps, and alongside social media content.

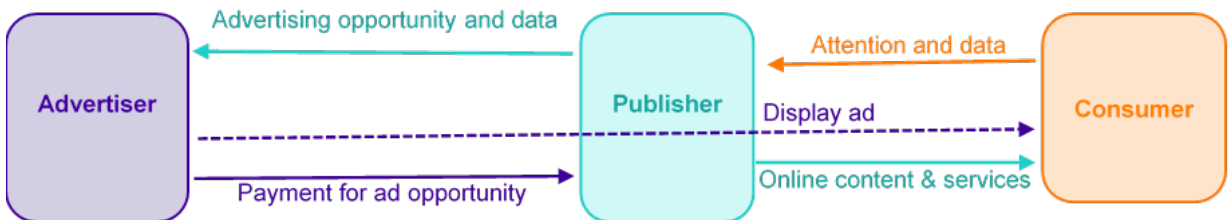
Value of data in online advertising

- 66. Data has an important role in the supply of online advertising, and can be used as an input or to observe the outcomes of online advertising. For example, data enables a supplier of advertising inventory (i.e. the publisher of a website), or an intermediary that facilitates the supply of online advertising, to target ads to particular users who are most likely to find the ads relevant or interesting.
- 67. Data also allows an advertiser or supplier to analyse the effectiveness of an ad, and measure the ad’s impact on consumers and the return on investment for the advertiser. The ACCC has received consistent feedback that rich datasets are key to providing high quality ad tech services. Market participants consider that the scale and scope of the data collected by Google across its owned and operated sites and third party sites mean that Google is a critical provider of the ad tech services which enable the delivery of targeted advertising.
- 68. User data, such as that collected by a wearable, is one data source which could be used in the supply of online display advertising to target specific consumers. Other user data includes demographic data (such as age and gender) and behavioural data (for example, a user’s browsing history and how often the user uses social media). It can be collected from a number of sources, including manual input by a user when registering for a new product or service and/or the user’s activity when using a product or service, such as use of a wearable.
- 69. User data is distinct from search data, which is data gathered from search queries entered by users of a search service. Search data usually provides clear information about a user’s desires; compared to user data, it is more likely to reveal user intent at a particular point in time.
- 70. Google currently collects data via its owned and operated platforms and also collects “off-platform” data, including via APIs and software development kits from website or app which use Google services.

Ad tech services

- 71. Figure 1 below provides a simplified diagram of the transaction between advertisers, publishers, and consumers in online advertising.

Figure 1: Simplified diagram of transactions between advertisers, publishers and consumers



- 72. The ad tech supply chain involves a complex network of intermediaries and platforms that provide technologies and/or data to facilitate the programmatic sale and purchase of digital display advertising inventory.

73. Two of the key participants in the ad-tech supply chain are Ad exchanges/supply-side platforms (**SSPs**)⁷ and demand-side platforms (**DSPs**). SSPs are platforms used by publishers to maximise the price at which ad inventory is sold by conducting an auction for the sale of that inventory, setting price floors, determining what data to include in the auction and deciding which buyers can bid. DSPs are platforms used by advertisers to target advertisements at those consumers most likely to buy their products and services and to help them purchase ad inventory from suppliers as effectively and cheaply as possible.
74. In addition to data being utilised by supply and demand side platforms, there are a number of specific data-related service providers that support the ad tech supply chain. These includes data management platforms, data analytics service providers, ad verification and measurement service providers, and data brokers. These service providers perform varying roles including: storing, managing and analysing data sets, measuring the performance of advertising campaigns, ensuring brand safety, and providing additional data that supplements data collected first-hand.
75. In order to successfully target advertisements at consumers, it is important to have the ability to track and identify a user across the internet or across devices. This is because the data becomes most useful when an advertiser is able to track the activities of an individual and understand more about the development of their intentions to purchase a product. This tracking and identification of users across the internet or across devices is done via a number of methods including the use of unique IDs, user log-ins, and cookies.
76. Generally speaking, each ad tech service provider will identify individuals in different ways, i.e. different ad tech platforms from different providers can have different unique IDs for the same individual. The ability to track and target individuals therefore often depends on unique IDs being recognised between providers of demand side platforms and providers of supply side platforms. This is often referred to as a 'match rate'.
77. Tracking and identification is easier for providers that operate platforms on both the supply and demand side (such as Google). This is because an individual's ID/log-in/cookie would likely be the same across that provider's platforms, leading to better match rates. The ACCC is considering whether matching data in this way leads to advantages not just in ad tech services supporting the delivery of targeted advertising, but also in other markets in which the ACCC has concerns, such as health services.

Health services

78. Data collected from wearables can also be used in health services applications, providing insights into both:
- individual users for which that data is collected (subject to applicable privacy laws). This may assist in the provision of healthcare solutions such as tailored health management services.

⁷ The ACCC notes that supply side platforms are increasingly being integrated with ad exchanges. As such, the term SSP will be used to refer to the combined SSP and ad exchange service.

- broader insights into different types of users, categories of users or consumers with specific attributes or health conditions. This may assist in the development of related products or services for specific health conditions or to address wider population health.

79. Such applications include the following:

- Health and wellness improvement
- Health management, analytics and insights
- Diagnostic or prognostic tools

Further information regarding these applications is provided in paragraphs 88 to 103 below.

The proposed transaction

80. Google proposes to acquire 100% of the issued and outstanding shares in Fitbit for a total value of approximately US\$2.1 billion.

Issues that may raise concerns: aggregation of data

81. The ACCC is concerned that the proposed acquisition may lead to significant competition issues in the supply of a number of different services that rely on consumer data.
82. The parties have submitted that the acquisition rationale is not premised on data, rather to facilitate Google's entry into wearables. The ACCC also notes Google's public statement that "Fitbit health and wellness data will not be used for Google ads".⁸ However, this commitment is not binding.
83. Google holds and collects an extensive amount of high quality consumer data. This includes data from registered user sign ups, Google platforms, Android and Google devices, payment and the internet of things⁹ as well as off-platform data from websites or apps which utilise Google services. Google combines many of these data points to develop unique profiles of individual users which are in-turn used to supply a range of services, including ad tech services which assists the delivery of targeted advertising.
84. The ACCC understands that individual health and fitness data (such as continuous heartrate and sleep monitoring) will supplement the existing data points that Google collects from consumers. Whilst Google already collects step count data through the Google Fit App on smartphones, the data collected by that app does not automatically include heart rate and sleep monitoring and contains significantly less data points than Fitbit's dataset. Acquiring Fitbit would provide Google with one of the largest and most detailed existing fitness and health datasets, as well as another avenue through which it can continue to gather consumer data.

⁸ <https://www.blog.google/products/hardware/agreement-with-fitbit/>

⁹ See ACCC Digital Platforms Inquiry, Final Report, June 2019, pp 86-87

85. Google is also a market leader in artificial intelligence and machine learning. Google currently leverages this expertise and its high volumes of high quality data to improve the delivery of many of its products, including search, video platforms, ad tech services, health and cloud computing.
86. Post-acquisition, Google will be able to incorporate the Fitbit data into its existing user profiles enabling greater targeting of advertisements, particularly for online display advertisements. Google will likely also utilise the data at an aggregate level, using its analytical tools to draw broader insights about groups of people (beyond just Fitbit users) with specific attributes, then apply these insights across different parts of its business.¹⁰ These broader insights may lead to applications in the supply of data-dependent health services.
87. The ACCC is concerned that the proposed acquisition may substantially lessen competition in both the supply of various data-dependent health services and certain ad tech services.

Data-dependent health services

88. The ACCC is concerned about the impact of the proposed acquisition on competition in the supply of data-dependent health services. The ACCC is still closely considering the precise services and markets that could be impacted but understands that wearable data in particular is likely to be useful in the provision of:
 - advice to wearables users to mitigate risk of illness, enhance wellness, or assist with condition management.
 - commercial insights to business customers, including insurance companies wishing to compile risk profiles, reduce costs, or enhance productivity.
 - diagnostics or prognostics tools, either directly to consumers through consumer facing applications, or to medical institutions/practitioners
 - analytics or data to pharmaceutical companies seeking to determine how best to allocate their research and development budget.
 - insights or raw data to health researchers, including medical researchers (both private and public), and/or academics.
89. Examples of such applications are provided below.

Health and wellness improvement

90. Wearables devices provide a source of health data which allows for the ongoing monitoring of a consumer's health signals. Tracking of this data can assist the delivery of ongoing health and wellness improvement in more tailored ways. Access to this type of data, combined with expertise in analytics or machine learning allows for the delivery of many types of consumer facing health and wellness services, such as apps that provide regular and tailored health advice or wellness tips.

¹⁰ Whilst there are restrictions under privacy laws in Australia and overseas that offer protections over the use of personal information, particularly sensitive personal information like health data, privacy laws generally do not restrict the use of aggregated or otherwise de-identified data.

Health measurement, analytics and insights for business

91. A number of wearable manufacturers also have agreements with business customers. These involve the businesses providing the manufacturer's wearables to their members, customers or employees either at a discount or for free.
92. The data collected by these wearables can then be used by the business to gain a better understanding of the health and lifestyle of each member, customer or employee. As a result, they may be able to reduce costs (e.g. for insurers) or enhance performance (e.g. for employers) by incentivising certain behaviours. Incentives may take the form of premium discounts for an insurance policy.

Diagnostic or prognostic tools

93. Currently, wearable devices are typically regarded as a consumer item. However, there is a move towards them also being used as medical devices and in the future they may become more widely used in medical contexts. Health data collected by wearable devices could be, and in the case of health studies/artificial intelligence is, used in a number of ways, including:
 - **Early detection of chronic diseases** – a user may have the option to provide the data from their wearable to their doctor. From this data, a doctor may be able to determine any early indicators of a chronic disease, such as diabetes, in their patient. They may be able to put in place a plan to prevent such a disease or undertake early steps to limit the impact that it will have on the user.
 - **Tracking a patient's recovery** – once a patient receives treatment, for example a knee reconstruction, their doctor or physiotherapist may be able to track their recovery by following their progress. This may include sending exercises to a user's device or tracking the amount of activity or nutrition of a patient post operation. This may reduce the risk of any complications post-treatment and allow for quick and easy changes to a patient's recovery plan.
 - **Health studies** – health data collected from studies can be used to inform researchers of the potential effects of treatment plans for diseases, which may then be able to be implemented in the general population.
 - **Artificial Intelligence** – health data may be used to help develop, train or test algorithms which may assist the development of various tools, such as to assist or inform online diagnosis. For example, a software application may be developed to allow patients the choice to not see a doctor at first instance and may instead be able to insert their symptoms online and be provided with a treatment plan or told whether they need to go visit a doctor.

Nature of nascent data-dependent health services

94. The ACCC understands that these are fledgling markets, but with the potential for high growth in the near future. Current information also suggests that competitors in these markets are likely to be significantly advantaged if they have access to comprehensive data from wearable devices. The insights gained from such databases are differentiated and have additional value to what other conventional service providers in these markets are able to provide.

95. For instance:

- for advice to wearables users, access to a large store of historical health data, particularly longitudinal health data, may facilitate accurate predictions of the effect of certain behaviours, or patterns of behaviour, on health outcomes and of the efficacy of different kinds of intervention. For example, advice provided by such a data-holder might be higher quality, and delivered in a form more likely to result in sustained behavioural change. Improvements here may be important to other kinds of health services – for example in demonstrating to business customers or healthcare providers that a wearable-based solution is effective.
- in the case of business customers, the ACCC understands that a number of health insurance companies and employers in Australia and around the world have formed commercial partnerships with wearables providers. These partnerships are unique and distinct from any risk profiling or mitigation techniques that health insurers and employers have engaged in previously. The additional wide ranging data available on a user specific basis may allow for better insights into risk profiling and pricing and early intervention advice. Thus the increase in adoption of such partnerships.
- In the case of developing medical tools, a large robust set of historical health data from wearables and the analysis of this data may be instrumental for the development of diagnostics or prognostic tools. For example, by enabling holders of this data to analyse correlations between stress, weight, activity and sleep patterns to develop a software application or other medical tools to help predict, detect, or manage health problems like diabetes before they become chronic. The ACCC understands that such insights may not be possible with traditional clinical testing data.

96. The ACCC understands that Fitbit and Google, either through its business division Google Health or through related entities such as Verily, are active in, or potential entrants to these markets. In particular, the ACCC understands that Google has made significant advances in disease detection and in recent years its parent company Alphabet has filed a large number of patents in the healthcare industry.

97. Fitbit currently engages with employers, health plans, health systems, and researchers via its Fitbit Health Solutions business. For example, Fitbit currently partners with 70 of the Fortune 500,¹¹ as well as with a number of corporate wellness providers.¹² Some insurers (including in Australia)¹³ offer programs allowing policyholders to track activity using Fitbit devices to access rewards or discounts. Fitbit lists over 900 research studies in its online publication library.¹⁴

¹¹ <https://healthsolutions.fitbit.com/>

¹² <https://healthsolutions.fitbit.com/partners/>

¹³ <https://www.aiavitality.com.au/vmp-au/partners/fitbit#/about>,
<https://www.medibank.com.au/livebetter/rewards/earn/shop/>

¹⁴ <https://healthsolutions.fitbit.com/research-library/>

98. The merger parties have submitted that although they are present in health generally, each is focused on quite separate areas. Google submits that its business is focused on clinical facing tools, whereas Fitbit is focused on providing health related analysis for the benefit of its users. Therefore, it submitted that there is no current or potential competitive horizontal overlap.
99. First, the ACCC is concerned about both the loss of potential competition, as well the loss of any existing competition between Fitbit and Google in these fledgling markets. Whilst the two parties may not appear to be currently competing head to head, information available to the ACCC suggests that this may be likely in the future. In particular the ACCC considers that Google is likely to continue to grow its presence in these markets, with or without the proposed acquisition. It is also likely that Fitbit has the potential to grow in the supply of these services, whether organically or through partnership with a party other than Google. Therefore in the absence of the acquisition, and given that Fitbit is a leading source of this data, Google is likely to face stronger competition in these markets.
100. Second, the ACCC is concerned that the combination of the consumer data currently accessible to Google, its analytical capability and Fitbit's data, may result in Google developing a strong foothold in such emerging markets. Such a presence may make it commercially less attractive for potential providers to enter such markets, limiting the level of competition in these markets.

The importance of Fitbit's data

101. The ACCC understands that Fitbit's data has unique attributes. It is large, in depth and the nature of its customer base is such that it lends itself to having value for drawing health insights or for developing data-dependent healthcare solutions. Feedback from the market is that other wearable datasets are not as voluminous, reliable or broad as Fitbit's data.
102. The ACCC invites comments from market participants on its concerns in relation to the advantages that Fitbit data may provide Google's health business. In particular, market participants may wish to comment on the following:

- How useful the addition of health data of the kind held by Fitbit (heart rate, sleep, steps, etc.) is to the provision of health services?
- What types of health services would benefit from access to health data of the kind held by Fitbit and how will those health services benefit from access to this data?
- Are there alternative sources of health data available in the market? How unique is Fitbit's data relative to alternative sources of health data?
- Is there anything unique about Google, which makes the aggregation of Fitbit data with Google's data more likely to result in Google obtaining an advantage in the provision of health services?
- What may be the potential impact (if any) of Google obtaining such advantages on future entry and rivalry in the provision of health services?

Ad tech services

103. Based upon our inquiries to date, the ACCC's preliminary view is that the proposed acquisition may have the effect, or may be likely to have the effect, of substantially lessening competition in the supply of certain ad tech services.

Relevant markets

104. Separate and in parallel to its review of the proposed acquisition, the ACCC is currently conducting an inquiry into markets for the supply of ad tech services and digital advertising agency services (**the Ad Tech Inquiry**).¹⁵ That inquiry will consider a range of issues, including the extent of market power in markets for ad tech services.
105. While the ACCC has not reached a firm view of the boundaries of potential markets, the ACCC considers that there are likely to be multiple markets involving the supply of ad tech services. These markets provide for, or assist with, the automated buying, selling and delivery of digital display advertising services. As discussed above, display ads are distinct from search and classified ads and include advertising in banners or videos on webpages, in mobile apps, and alongside social media content.
106. Google is active across the entire ad tech supply chain, including in the supply of DSP services to advertisers and SSP services to websites. These services are highly dependent on accurate targeting of consumers, which is predominantly based on data and the ability to track and identify users across the internet and devices.
107. There are other competitors in this market including DSPs such as MediaMath, AppNexus, Adobe and Trade Desk, and SSPs such as PubMatic and Rubicon Project. However; estimates suggest that Google's share of demand side platform services and supply side platform services may be as high as 63 per cent, with the next largest competitor having a share as low as 8 per cent.¹⁶ In addition, no other competitors appear to have the broad coverage across the ad tech supply chain that Google does.
108. In recent years, the advertising sector's reliance on data has drastically increased, alongside the opportunity for advertisers to serve targeted ads in real time, taking into account factors such as individual user interests, browsing history, time, location, and website content. This programmatic approach to targeted advertising happens on an automated basis and relies on the provision of ad tech services.
109. The ACCC considers that Google already holds a significant position in ad tech services, with many of its competitors being much smaller in size and limited in their ability to provide as broad a range of services as Google. Google has developed detailed profiles of individual users, with information about particular

¹⁵ On 10 February 2020, the Australian Government directed the ACCC to hold an inquiry into the markets for the supply of digital advertising technology services and digital advertising agency services. The ACCC is required to provide an interim report on 31 December 2020 and a final report on 31 August 2021.

¹⁶ <https://www.datanyze.com/market-share/dsp-65>

user's search history, browsing, location and other items of demographic and personal information relating to the individual. This data, as well as other factors have assisted Google's position in the provision of these services.

110. ACCC is concerned that, despite Google's public statement, it will, in the future, have the incentive to:

- seek to supplement its existing data on individual users with Fitbit data, and/or
- use aggregate information from the Fitbit data in order to ascertain further insights about the preferences of user groups that have particular attributes or improve the accuracy of its current attributions for such groups.

The addition of Fitbit's data will likely strengthen Google's position in the supply of DSP services

111. Some market participants have submitted that certain wearables data is unique, particularly compared to other data sources such as smartphones, credit card spending patterns and data collected from website cookies. The data from wearables includes metrics that cannot be captured as accurately, or in some cases at all, by other means. These metrics include heart rate, heart rate variability, sleep activity and oxygen saturation.

112. The ACCC understands that these distinct data points may enable analysis that delivers unique insights about users, for example health patterns or behavioural traits.

113. In addition to these foreseeable insights, the ACCC has also heard concerns regarding further insights that could be gained through, for example:

- correlations between Fitbit's data and Google's pre-existing database,
- broader applications of the insights gained about individual users to a larger group of users.

114. These correlations are likely to be useful for targeted advertising and therefore the provision of DSP services. For example, post-acquisition it is likely that Google will be able to even more effectively target advertising to consumers with health-related issues, or interests in particular fitness products. These correlations may also allow Google's SSP/ad-exchange services to send out more detailed (and hence more valuable) requests for bids from DSPs in respect of those customers.

115. Google submits that the Fitbit data would have very limited use in targeted advertising, as it represents only a very small portion of the overall population accessing online ads, and is only relevant to ads for health and fitness products. Of which, Google also submits, there are multiple other available datasets which convey this information in more meaningful ways, such as consumers browsing history and app access.

116. In addition to the usefulness of wearable data in general, the ACCC understands that Fitbit's data is particularly valuable and also unique. Market participants have pointed to a number of factors (for example, an excellent time series) that differentiates Fitbit's data from competing wearables.

117. The ACCC understands that as the time series of a dataset like Fitbit's increases, further more useful correlations can be drawn between changes in the data series over time. For example, the longer a time series a dataset has, the easier it is to establish a baseline to draw comparisons against instances that deviate from the baseline. The ACCC notes that Fitbit itself advertises on its website that it holds one of the largest databases of validated health data in the world, with over 181 billion hours of heart rate, 9 billion nights of sleep, 457 billion minutes of exercise, 175 trillion steps and 10 million added female health tracking data.¹⁷
118. The ACCC also understands that Fitbit's dataset may be significantly more accurate than other wearable providers, as both Fitbit's sensors and sensor analysis software is generally considered to be superior to many other wearables.
119. Competitors to Google in the supply of ad tech services have submitted that data equivalent to that held by Fitbit is currently not available from third parties. Further, other potential sources are likely to have reliability issues which would likely make them considerably less useful than Fitbit's.
120. The ACCC is concerned that the proposed acquisition may eliminate an important source of potential competition for Google in the supply of certain ad tech services including, in particular DSP services. Google has market power in the supply of certain ad tech services, which is underpinned by considerable data advantages it holds over its rivals. The proposed acquisition will likely increase this advantage. This in will likely have the effect of reducing the commercial incentives for existing suppliers to 'take on' Google, as well as reduce the commercial incentive for new entry. Thus Google's position of market power will be entrenched.
121. The proposed acquisition also eliminates the prospect that current rivals of Google will partner, or otherwise enter a commercial arrangement, with Fitbit to use its health and fitness data to improve their offerings to advertisers and intermediaries. This concern is heightened by the unique characteristics of the Fitbit data.
122. The potential for the proposed acquisition to lessen competition in the supply of certain ad tech services including, in particular DSP services, is increased by the scope for Google to handicap (some) rivals in the supply of wearables. As noted below, Google controls some key inputs necessary for the viability of certain wearables suppliers to compete in the supply of wearables, including Wear OS, Google Maps, Google Play Store, and/or the Android smartphone operating system. To the extent Google uses this control to handicap (some) rivals in the supply of wearables, it may reduce the opportunities for providers of ad tech services to team up with rival suppliers of wearables to access health and fitness data that may be comparable to the Fitbit data.
123. The ACCC invites comments from market participants on its concerns that Google acquiring Fitbit will likely result in a substantial lessening of competition in the supply of certain ad tech services, and in particular DSP services. In particular market participants may wish to comment on the following:

¹⁷ <https://healthsolutions.fitbit.com/whyfitbit/>

- How useful the addition of health data of the kind held by Fitbit (heart rate, sleep, steps, etc.) is to the provision of targeted advertising?
- Are there alternative sources of health data available in the market? How unique is Fitbit's data relative to alternative sources of health data?
- What may be the potential impact (if any) of Google obtaining such advantages on future entry and rivalry in the provision of ad tech services?

Issues that may raise concerns: ability and incentive for Google to foreclose competing wearables producers

124. As stated in the ACCC's *Merger Guidelines*, the ACCC is concerned where a combined entity has the ability and incentive to use its position in one market to foreclose rivals in another market in a way that lessens competition.¹⁸
125. Whilst Google does not currently manufacture a wearable, Google does currently provide a number of inputs into the wearables market. Post-acquisition Google will become a competing manufacturer of wearables. The ACCC is concerned that this may alter Google's incentives in distributing or providing access to a number of its existing products used by other suppliers of wearables. At this stage, the ACCC is concerned about rival wearables continuing to have access on the same terms to Wear OS, Google Maps, the Google Play store and interoperability with Android phone software. The ACCC is particularly concerned about these products, given that Google likely holds market power in the supply of each of them.

Foreclosure of access to Wear OS, Google Maps, the Google Play Store and interoperability with Android phone software

Wear OS

126. Google currently licenses its wearable operating system (Wear OS) to a number of wearable manufacturers. The ACCC understands that for some of these manufacturers Wear OS is a critical part of their product offering.
127. The ACCC's preliminary view is that Google would have the ability to foreclose access to Wear OS. Information from market participants indicates that development of a proprietary wearable operating system would be prohibitively expensive for many competing wearable manufacturers currently using Wear OS.
128. Whilst there are alternative licensable systems available, market feedback indicates they are not to the same standard as Wear OS. There are also a number of alternative non-licensable systems, such as Apple's WatchOS and Samsung's Tizen. However the ACCC understands that these are not available to other third party wearable manufacturers. Therefore, without continued access to Wear OS, competing wearable manufacturers may find it difficult to continue to supply devices to the market.

¹⁸ ACCC, *Merger Guidelines 2008* (updated 2017), paragraph 5.22.

129. Google does not currently charge for access to Wear OS, rather the ACCC understands that the value in providing Wear OS is to make the Android ecosystem more attractive to consumers. In addition, the ACCC understands that Google also gains access to the data that is collected by devices running Wear OS. The collection of this data is of potential benefit to Google, and the ACCC will need to weigh this potential benefit when considering Google's incentives to foreclose access to Wear OS.

Google Maps

130. Google Maps is utilised by third party wearable manufacturers in their offerings to consumers, particularly in circumstances where they are providing route tracking for fitness. The ACCC understands that the provision of Google Maps for this service is very important, as its functionality is superior to rival providers such as Bing Maps. The ACCC is concerned that post-acquisition Google may have the incentive to frustrate access to Google Maps, in order to decrease the quality of the product of rival wearable manufacturers, and thus encourage consumers to purchase a Google wearable.

Interoperability with Android phone software

131. Many wearable manufacturers rely on interoperability between their wearables and the operating systems of mobile phones. This interoperability allows for various functions, but is critical in particular in the delivery of:
- data into phone based apps, particularly fitness apps
 - notifications to the user, including calls, messages and emails
 - ability of the user to reply to notifications, through message or voice
 - voice activated assistants.
132. Google currently effectively controls the Android software used for many non-Apple smartphones. Although there are some alternative operating systems to Android, it is currently positioned as the market leading alternative to Apple's iOS with approximately half of the smartphones in Australia currently operating using Android.
133. The ACCC is concerned that post-acquisition Google may have the incentive to restrict certain functionality between wearables and Android smartphone operating systems to wearables produced by Google. In particular, the ACCC has heard concerns that Google could restrict the ability of non-Google wearables to send and receive calls, messages and emails. The ACCC is concerned that this would likely encourage Android consumers to favour Google wearables and significantly impact the ability of non-Google wearables to compete.
134. As with Wear OS, Google does not currently charge for the use of Android software. The ACCC understands that much of the value is, once again, in the collection of data from devices that use the Android operating system.

Assessment of incentive to foreclose

135. As stated in the ACCC's *Merger Guidelines*, a firm is unlikely to exercise its ability to foreclose unless profitable to do so, which will depend on the nature of

competition in each of the relevant markets and the particular means available to foreclose rivals.

136. The ACCC is concerned that the combined Google Fitbit will have an incentive to maximise the sale of its own branded wearables, by engaging in the aforementioned foreclosure strategies against rival wearable manufacturers. The ACCC is considering the extent to which a combined Google Fitbit would be able to increase the value to its wider business by foreclosing other wearable manufacturers. Such value increase could include:
- a. Increased profits to Google by selling more of its branded wearables at the detriment of rival wearable manufacturers.
 - b. Increased ability to expand its operations in related data reliant markets, such as health or certain ad tech services. The foreclosure of competing wearable manufacturers may prevent these providers from, in the future, either entering these related markets themselves, or providing access to their data streams to other potential competitors.
137. The ACCC is considering the extent to which any such increase in profits or overall benefits to Google's business would offset any loss of income from a reduction in wider adoption of Google's Wear OS operating system, Google Maps or the threat of consumers switching away to a non-Android eco-system. In this respect, the ACCC notes that, outside of Google Maps, many of these products provided by Google are not charged for in a conventional way. Instead of charging licensing or access fees, Google appears to rely on the value of the user data provided through wider adoption of Android software or Wear OS.

Potential impact of foreclosure on the wearables market

138. In turn, the ACCC is considering the extent to which foreclosure will impact overall competition in the supply of wearables. Fitbit is currently a significant supplier by volume of wearables in Australia and New Zealand. Other prominent providers are Apple, Samsung, Xiaomi, Garmin and Huawei.
139. Although it may seem that there are a significant number of competing manufacturers, the ACCC is concerned that some of the potential foreclosure avenues, particularly restrictions in Android interoperability and access to Google Maps may impact a wide range of wearable manufacturers, even if they do not rely on Wear OS to run their wearables.
140. The ACCC considers that the loss of even a small competitor can have a significant impact. The ACCC is aware that some manufacturers focus on particular segments of customers, and that their foreclosure may result in a consumer loss. For instance some manufacturers may focus on particular design aspects partnering with fashion brands, while others may focus on innovating with sensors and fitness support in order to capture high performance athletes.
141. The ACCC invites comments from market participants on its concerns in relation to the potential for foreclosure of access to important technology inputs:
- Google's likely incentive to foreclose or discriminate against wearables competitors in the supply of related technology services

- The extent of alternative options available to Google’s wearables competitors if faced with foreclosure or discrimination with respect to important inputs or related services to the supply of wearables

Issue unlikely to raise concerns: removal of potential competition in the supply of wearables

142. The ACCC is also considering the loss of innovation that may arise from acquisition.
143. Fitbit is currently a well-known and trusted wearable brand, which has over the past ten years developed a strong base of users. It has developed its own operating system, and has a reputation for producing wearables which are superior in accuracy and performance to those of its competitors. Fitbit also has a strong consumer record for data privacy protection, which consumers appear to value.
144. The ACCC is continuing to explore this point and consider relevant information but considers it likely that, in the absence of the proposed acquisition, Google would have entered the wearables market organically within the short to medium term. In recent years Google has been expanding its hardware business and released smartphones, smart speakers, ear buds and Google Glass. The ACCC understands that in the recent past Google has also acquired a number of other smaller wearable related businesses including WIMM and Chronologics, which likely indicates Google’s intentions to develop its own device. The ACCC also points to regular press speculation, prior to Google’s acquisition of Fitbit that Google was looking to develop its own smart watch.

Issue unlikely to raise concerns: impact on search and search advertising

145. Based on inquiries to date, the ACCC’s preliminary view is that the proposed acquisition is unlikely to substantially lessen competition in the supply of search services or the supply of search advertising services.

Search services

146. User data that Fitbit acquires and has access to is distinct from search data, which Google uses to refine and improve its search algorithms. While the proposed acquisition may provide Google with access to a set of user data collected from wearables, it is unlikely that access to this type of data would have a significant impact on Google’s search services offering to consumers.
147. The ACCC also notes that Google already has access to a large amount and wide range of search data. Given its position as a significant supplier of search services in Australia, it would likely continue gathering this type of search data, and this is unlikely to change as a result of the proposed acquisition.

Search advertising services

148. Similar to the above, search data that is valuable to the provision of search advertising is distinct from the type of user data that Fitbit acquires and has access to – that is, search data predominantly consists of search queries

conducted by users and the search results subsequently clicked on. Whilst additional user data may be of some incremental benefit, this is unlikely to significantly change Google's search advertising offering to customers.

149. As such, while the proposed acquisition may provide Google with access to a unique and substantial dataset that may improve the targeting capabilities of its advertising services (including its ad tech services), the ACCC's preliminary view is that Fitbit's data is unlikely to significantly impact Google's supply of search advertising services.

Issue unlikely to raise concerns: overlap in mobile payment services

150. Based on its inquiries to date, the ACCC's preliminary view is that the proposed acquisition is unlikely to substantially lessen competition in relation to the supply of mobile payment services.
151. The parties are competitors in this area, with Fitbit offering Fitbit Pay on some of its wearables and Google offering Google Pay on android devices. However, the ACCC has found that numerous other wearable manufacturers have their own mobile payment systems, including Apple, Samsung and Garmin, with Fitbit's market share being relatively low.
152. The ACCC has also found that, assuming there is competition at the wearables level, i.e. there are alternative wearable manufacturers, development of a mobile payment system is not particularly difficult or expensive. Therefore, the ACCC does not consider that a reduction in the number of mobile payment systems of its own account would be likely to result in a substantial lessening of competition.

ACCC's future steps

153. The ACCC now seeks submissions from market participants on the issues identified in this Statement of Issues and on any other points that may be relevant to the ACCC's assessment. Submissions are due by 10 July 2020 and should be emailed to mergers@acc.gov.au.
154. The ACCC intends to publicly announce its final view by 13 August 2020. However the anticipated timeline may change in line with the *Informal Merger Review Process Guidelines*. A Public Competition Assessment for the purpose of explaining the ACCC's final view may be published following the ACCC's public announcement to explain its final view.