



competition commission
south africa

Media Statement

For Immediate Release

22 December 2020

Competition Commission conditionally approves the Google/Fitbit merger

The Commission has conditionally approved the proposed merger whereby Google LLC (USA) (Google) intends to acquire Fitbit Inc. (USA) (Fitbit). This is a global merger, notified in several jurisdictions, including the EU, USA, Australia, Canada and Japan.

Google is active in a wide range of areas, including online search, online advertising, other online services such as YouTube, Google Maps and Gmail as well as cloud computing services. In addition, Google maintains and develops the Android ecosystem which includes an open-source mobile Operating System (OS) and a suite of mobile apps and services. Google's business in South Africa relates to the provision of local support and marketing services internally for Google. Google does not sell any wearable devices or hardware in South Africa. The main products and services relevant to this transaction are Wear OS, Google Fit, The Play Store, Google Search and Google Ads.

Fitbit develops, manufactures and distributes wrist-worn wearable devices and smart scales as well as software and services designed to give its users tools to help them reach their health and fitness goals. The main Fitbit products available in South Africa are fitness trackers, smartwatches and the Fitbit mobile app.

The Commission found that the proposed transaction is likely to result in a substantial prevention or lessening of competition. The Commission was concerned that as a direct result of the proposed merger, Google will:

(1) Exclude Fitbit's competitors in the market for wrist-worn wearable devices

As a direct result of the proposed merger, Google will be able to exclude competing suppliers of wrist-worn wearable devices from accessing its Android operating system for smartphones. Android is a dominant mobile operating system and, unlike the Apple ecosystem, it is not vertically integrated into the production of wrist-worn wearable devices prior to the merger. This makes Android an important input for third party smartwatch manufacturers that compete with Fitbit. Bearing in mind the integral connectivity between smartwatches, companion apps to the wrist worn wearable device as well as smartphones, and given the significant market shares enjoyed by Android, the proposed merger will give Google the ability to exclude competitors of Fitbit or frustrate the functionalities of competitors' companion apps from operating optimally on Android OS.

This will significantly alter the market structure for the supply of wrist worn wearable devices in SA and increase barriers to entry for potential entrants in the market.

(2) Entrench its dominance in the online advertising and online search market

As a direct result of the proposed merger, Google would acquire (i) the database maintained by Fitbit (about its users' health and fitness); and (ii) the technology to develop a database similar to that of Fitbit. The Commission was concerned that the acquisition of Fitbit's database may provide an important advantage in online advertising markets to Google and allow Google to entrench its dominance in the market.

(3) Restrict access to health data collected by Fitbit

The Commission was concerned that, as a direct result of the proposed merger, Google will be able to use Fitbit's health data to enter the digital health market or other health services markets (for example the market for health insurance) and exclude other players and potential entrants in the market by restricting access to health Fitbit health data.

To alleviate all these concerns, Google has tendered the following conditions:

Android API conditions

Google commits to making access to the Android Operating System available, without charge for access and on a non-discriminatory basis, under the same license terms and conditions that currently apply, to all competing manufacturers of wrist-worn wearable devices. Google will not differentiate or degrade the availability or functionality of access to its operating system depending on whether it is accessed by a Fitbit or a competing manufacturer.

Specifically, Google commits:

- not to discriminate against any Wrist-Worn Wearable Device manufacturers by withholding, denying, or delaying access to the Android functionalities that Google generally makes available to other Android Smartphone App Developers for use with an Android App.
- Not to discriminate between Wrist-Worn Wearable Device manufacturers and other Android Smartphone App Developers in relation to changing, replacing, or retiring Android APIs.
- Not to discriminate between Wrist-Worn Wearable Device manufacturers and other Android Smartphone App Developers in terms of the access it provides to Developer Previews.
- Not to discriminate between Wrist-Worn Wearable Device manufacturers and other Android Smartphone App Developers in terms of the access it provides to Developer Documentation.

Advertisement conditions

Google commits to maintain Data Separation between the Fitbit data and Google's existing data and not to use any Measured Body Data or Health and Fitness Activity Location Data from Fitbit in, or for, Google Ads. Further, Google commits to present each South African User the choice to grant or deny use by Other Google Services (excluding Google Ads) of any Measured Body Data stored in their Google Account or Fitbit Account.

Web API conditions

Google will allow third parties that currently access Fitbit's data to continue to have access to users' health and fitness data through the Fitbit Web API, without charging for access and subject to user consent.

These conditions are for a period of 10 years and are in line with what is offered in other jurisdictions. The conditions will be monitored by an independent Trustee who will have the necessary skills, competencies, and technical abilities to monitor these conditions.

“This merger affirms the need for regulatory interventions in digital markets. Regulatory authorities need to look closely at mergers and acquisitions in these rapidly changing markets, particularly when large global technology firms that operate across multiple jurisdictions are involved. The remedies we have agreed ensure that the transaction does not raise barriers to new entrants in the wearable technology and nascent health data markets. In that way we would be assured of inclusive growth and equal distribution of wealth in rapidly growing digital markets,” says Competition Commissioner Tembinkosi Bonakele.

[ENDS]

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