

Reference: 2021MAY0010 (Competition Commission Inquiry Into Online Intermediation Platform)

18 June 2021

Dear Competition Commission:

Microsoft is pleased to provide its response to the Commission's Request for Information ("RFI") of 21 May 2021 regarding online intermediation platforms that facilitate transactions between businesses and consumers for the sale of goods, services, and software. We have also attached a CC7 form designating confidential information provided in this response.

First, we note that Microsoft South Africa is a subsidiary of Microsoft that engages in field sales, and Microsoft South Africa does not handle data or financial information from Microsoft's online consumer platforms. Thus, Microsoft South Africa does not have information available to it to respond to much of this request. However, Microsoft South Africa did forward this request to Microsoft Corporation to try to help facilitate the voluntary provision of information to assist in this inquiry. Unfortunately, it has taken a substantial amount of time for this inquiry to reach the Microsoft Corporation because Microsoft South Africa is not responsible for these businesses and is unfamiliar with these types of requests. Thus, we have had a relatively small amount of time to gather the information you have requested.

Recognizing that you are working on a tight timeline for your work, we elected to provide you with as much information as possible within the time available to us. We believe that we have been able to provide you with all of the material information about our operations. Indeed, as described further below, Microsoft's participation in online intermediation platforms is very small compared to the major industry players. It is not a major source of revenue for Microsoft Windows and relatively few applications are distributed through it as opposed to distributing directly through the web or through a different channel. Further, Microsoft's online intermediation platform for Xbox consoles is part of a specialized ecosystem with unique properties that don't impact general online commerce. Of course, should you require additional information that is material to your review, please let us know and we can follow up. To avoid any unnecessary delays, please include Forrest Treat, Senior Corporate Counsel, CELA Competition Law Group, at ftreat@microsoft.com on the communication.

Microsoft Background and Business Activities

Microsoft is a global technology company that develops, licenses, and supports a wide range of software products, services, and devices. An overview of Microsoft's organizational, business, leadership, and subsidiary structure is available at <https://news.microsoft.com/facts-about-microsoft/>.

Our products include operating systems ("OSs"); cross-device productivity applications; server applications; business solution applications; desktop and server management tools; software development tools; video games; and training and certification of computer system integrators and developers. We also design, manufacture, and sell devices (including PCs, tablets, gaming and entertainment consoles, other intelligent devices, and related accessories) that integrate with our cloud-based offerings. We offer an array of services, including cloud-based solutions that provide customers with software, services, platforms, and content, and we provide solution support and consulting services. We also deliver relevant online advertising to a global audience.

Microsoft operates an online intermediation platform (as defined by the scope of the Commission’s RFI) called the Microsoft Store. The Microsoft Store has a number of functions that are not in scope for the Commission’s inquiry, such as first-party retail and business-to-business sales. The Microsoft Store also includes Microsoft’s software application (“app”) stores:

- The Microsoft Store for Windows and the Xbox Store for PC are app stores for the Microsoft Windows OS. They are similar in nature, except that the Xbox Store for PC is focused on video games for Windows OS. These stores are included with Windows and offer both first-party and third-party apps and games, as well as other products and services such as movies, music, TV, and subscriptions to other Microsoft services. They facilitate transactions between developers and consumers for apps that run on the Windows OS and in-app purchases.

Because Windows is an open OS, the Microsoft Store for Windows has low usage relative to other distribution methods for users to search for, discover, and download apps on Windows. Most Windows users obtain third-party apps either directly from their developers or publishers (such as through physical media or from the developer’s or publisher’s website) or through any of the numerous third-party app stores that distribute Windows apps, such as Valve’s Steam. Microsoft has no involvement in such transactions.

- The Xbox Store for Consoles is a software application store for Microsoft Xbox video game consoles. It is included as a feature of the Xbox console hardware, which is a special-purpose video gaming and entertainment device. The Xbox Store offers both first-party and third-party games and apps. The Xbox Store facilitates transactions between developers and consumers for apps and in-app purchases that run on Xbox consoles.

Like other video game consoles and many other special-purpose devices, the Xbox Store is the only app store available on Xbox consoles.

Because Xbox consoles are special-purpose entertainment devices, and games sold through the Xbox Store for Consoles can only run on Xbox consoles, transactions through the Xbox Store do not impact general online commerce.

Microsoft considers that these app stores are in scope for the Commission’s inquiry. The Microsoft Store also includes the Windows Phone Store, but Microsoft no longer offers a mobile operating system or smartphones. Microsoft announced in 2017 that it would no longer release new versions of mobile operating systems or offer smartphones, and deprecation was completed in 2019.

Platform Performance Information

Microsoft has provided available records for the last three years regarding relevant app store unique visitors, downloads, and revenues in South Africa as available in the ordinary course of business. **See Microsoft Response Attachment 1.** Microsoft considers that the key performance metrics that it uses to analyze these platforms frequently change depending on business priorities, but have in the past often included such metrics as:

- [REDACTED]
- [REDACTED]
- [REDACTED]

- [REDACTED]

Business Model and Relationships with Business Users

Microsoft's business model is detailed in its Annual Report for investors, available at <https://www.microsoft.com/en-us/Investor/annual-reports.aspx>. [REDACTED]

[REDACTED] However, Microsoft does provide robust resources focused on making it attractive and easy for developers to develop, submit, publish, and promote their apps in the Microsoft Store, available at <https://docs.microsoft.com/en-us/windows/uwp/publish/> and <https://www.xbox.com/en-US/developers>. Microsoft invests substantially in sales and marketing overall, and it reported over US\$19.5 billion in worldwide sales and marketing expenses (including personnel, advertising, trade shows, seminars, and other programs) in Fiscal Year 2020 across all of Microsoft's business operations. Microsoft does not track such expenses specifically related to app stores in South Africa in the ordinary course of business.

Microsoft's policies for developers are publicly available at <https://docs.microsoft.com/en-us/windows/uwp/publish/store-policies>. Microsoft charges a one-time registration fee to third-party developers for registering a developer account with the Microsoft Store. This fee schedule is publicly available at <https://docs.microsoft.com/en-us/windows/uwp/publish/account-types-locations-and-fees>. Microsoft also requires developers to sign the Microsoft App Developer Agreement, (the latest version of the App Developer Agreement is available at <https://query.prod.cms.rt.microsoft.com/cms/api/am/binary/RE4o4bH>). For app purchases and in-app purchases, Microsoft currently charges the following fees as detailed in Section 7 of the App Developer Agreement:

- Fifteen percent (15%) of Net Receipts for any Apps (and any In-App Products in such Apps, including) that are not listed in Section 6(b)(ii) below.
- Thirty percent (30%) of Net Receipts for: (a) all Apps and In-App Products acquired by Customers in the Microsoft Store on an Xbox console and billed to such Customers on a non-subscription basis; and (b) all Games (and In-App Products in Games) regardless of platform of acquisition.

On April 29, 2021, Microsoft announced that on August 1, 2021, it will reduce its fee to third-party developers for PC games sold in the Microsoft Store to 12%. That announcement is available at <https://news.xbox.com/en-us/2021/04/29/continuing-our-pc-gaming-journey-in-2021-and-beyond/>.

Microsoft also provides a number of offerings and tools for developers to attract customers, manage their apps, promote their apps, engage with customers, analyze performance, and other tools. These offerings and tools are detailed on Microsoft's developer sites at <https://docs.microsoft.com/en-us/windows/uwp/develop/> and <https://docs.microsoft.com/en-us/windows/uwp/gaming/e2e>.

Microsoft does not use its app stores to favor of its own first-party apps and services, and we believe that when developers on the world's most important digital platforms choose to use the platform's own app store, like the Microsoft Store on Windows, they should be confident that they will be held to the same objective standards as others, will face reasonable, competitive fees that reflect the value they

receive, and that the platform will not use its app store to tilt the playing field to its advantage. We recently distilled this approach in a set of principles published in October 2020, available at <https://blogs.microsoft.com/on-the-issues/2020/10/08/app-store-fairness-caf-interopability-principles/>.

Relationships with Consumers

Microsoft makes its standard Services Agreement, including for app stores, publicly available at <https://www.microsoft.com/en-us/servicesagreement/>. Microsoft makes its Microsoft Store Search Ranking Parameters publicly available in the Microsoft Store Digital Storefronts Disclosure Statement, available at <https://query.prod.cms.rt.microsoft.com/cms/api/am/binary/RWBJa1>.

Local Business Support

Microsoft has engaged in numerous programs to support developers in South Africa. For example, we recently partnered with the Gauteng Department of e-Government to upskill developers in Gauteng through an immersive program where selected individuals will work to learn basic skills in Microsoft Azure through the Microsoft Learn platform. More information about this program is available at <https://news.microsoft.com/en-xm/2021/03/09/partnering-to-train-3000-software-developers-in-gauteng-and-drive-youth-employability/>. Other initiatives include Microsoft 4Afrika (<https://www.microsoft.com/africa/4afrika/>) and Microsoft's launching of hyperscale Azure datacenters in Cape Town and Johannesburg (<https://azure.microsoft.com/en-us/blog/microsoft-opens-first-datacenters-in-africa-with-general-availability-of-microsoft-azure/>).

Sincerely,

Forrest Treat, Senior Corporate Counsel, CELA Competition Group

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