

ANNEXURE 4

SOFTWARE APPLICATION STORES

1. Introduction	277
2. Platform market definition	278
2.1. Product market	278
2.2. Geographic market	288
3. Structure and competitive dynamics findings	289
3.1. Leading platforms	289
4. Platform competition findings and recommendations	291
4.1. Apple's closed system	291
4.2. Default arrangements	293
4.3. Loyalty schemes	296
4.4. Commission fees and in-app payment (IAP) competition	299
5. Business user competition findings and recommendations	307
5.1. Commission fees on business users	307
5.2. Bypassing commission fees	312
5.3. Discoverability of local apps	312
6. Appendices	
6.1. Appendix A	319
Summary of General Court Judgment	
6.2. Appendix B	323
List of Submissions	

[1. Introduction]

1. The Final Report Annexure 4 of the Online Intermediation Platforms Market Inquiry (“this report”) takes into consideration all comments and submissions made by platforms, developers, users and other stakeholders to the Inquiry’s provisional findings and recommendations on software application stores (“app stores”).¹ This report provides

the Inquiry’s response to stakeholders’ comments on market delineation and market characterization; findings on the structure and competitive dynamics of the market; platform competition findings and recommendations; as well as business user competition findings and recommendations.

1 See OIPMI Provisional Report Chapter 4 and OIPMI Provisional Summary Report.

[2. Platform market definition]

2. Section 2 of Chapter 4 of the Online Intermediation Platforms Market Inquiry (OIPMI)'s Provisional Report ("the Provisional Report") provides a delineation of the app stores market in South Africa.² The said section considered the need that app stores seek to meet; the adoption and use of app stores in South Africa; and the interaction that mobile app stores have with other sales channels and online channels. This section of this report reviews comments on the Inquiry's provisional findings on the market characterisation and market definition of the app stores market in South Africa and concludes on the product and geographic market definitions.

2.1. Product market

2.1.1. Case precedence

a. Google Android: Appeal Case³

3. On 09 October 2018, Google LLC and its parent company Alphabet, Inc. ("the applicants") submitted an appeal application to the General Court of Justice to annul the European Commission (EC)'s decision of 18 July 2018 in case COMP/AT.40099.⁴ In support of the action, the applicants relied on six pleas in law, with the first plea alleging that the contested decision erred in its assessments of market definition and dominance. The applicants submitted that the decision erred in (1) finding Android dominant

and (2) finding Play Store dominant.⁵ On 14 September 2022, the General Court released its judgement on the matter.

4. The EC identified (1) the worldwide market (excluding China) for licensing of OSs (operating systems) and (2) the worldwide market (excluding China) for Android app stores.⁶ The EC found that Google held a dominant position on both markets and was, to an appreciable extent, able to behave on those markets independently of its competitors, its customers, and consumers.⁷ The EC took into account whether Apple poses any competitive constraint on Google, which it described as an indirect constraint and only on the level of users and app developers. The EC found that the limited constraint to be insufficient to call into question Google's dominant positions.⁸

Market for licensing of OSs for smart mobile devices

5. The EC did not include OSs for computers, OSs for mobile devices with limited functionality and non-licensable OSs. Further, the EC did not distinguish between OSs for smartphones or for tablets.⁹ The EC found that Google held a dominant position on the market for licensable OSs and relied on (i) Google's market share, (ii) its evolution over time, (iii) examination of barriers to entry and expansion, (iv) the lack of countervailing

² OIPMI Provisional Report, Chapter 4, page 4 to 29.

³ *Case T- 604/18 Google LLC and Alphabet Inc vs European Commission*. Appeal case before the Court of Justice. An appeal to the General Court against the European Commission's decision of 18 July 2018, Case no AT.40099.

⁴ <https://curia.europa.eu/juris/document/document.jsf?text=&docid=208802&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1991494> [Access date: 17 January 2023].

⁵ <https://curia.europa.eu/juris/document/document.jsf?text=&docid=208802&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1991494> [Access date: 17 January 2023].

⁶ Case T- 604/18, *Google LLC and Alphabet Inc vs European Commission*, para 120.

⁷ Case T- 604/18, *Google LLC and Alphabet Inc vs European Commission*, para 121.

⁸ Case T- 604/18, *Google LLC and Alphabet Inc vs European Commission*, para 122.

⁹ Case T- 604/18, *Google LLC and Alphabet Inc vs European Commission*, para 130.

power and (v) the fact that non-licensable OSs such as the iOS exercised an insufficient competitive constraint.¹⁰ Google submitted that the EC erred in its assessment of Google's position in the market by failing to properly consider the competition from non-licensable OSs such as Apple's iOS.¹¹ Google criticised the EC for having defined that market from the perspective of OEMs and not of users and app developers, who would take account of the competitive constraint exerted by Apple.¹²

6. The General Court found that the EC correctly found that the relative intensity of competition from Apple justified not extending the relevant market to all mobile OSs and excluding any competitive constraint exerted by non-licensable OSs from Google's considerable power on the market for licensable OSs.¹³ The General Court stated that the EC rightly considered the numerous obstacles that enabled the impact of the competitive constraint exerted by Apple on Google's market power to be limited.¹⁴ The obstacles considered included the SSNDQ (Significantly Small but Non-transitory Deterioration in Quality) test which showed that users and app developers of licensable OSs were not sufficiently sensitive to a deterioration in the quality of Android and, because of this indirect and insufficient constraint, non-licensable OSs did not belong to the same market as licensable OSs and the undertakings operating the former would not counterbalance Google's market power.¹⁵ The EC also considered user loyalty to their OS, the effect of Apple's pricing policy (especially for users with lower-end devices), the costs

involved in switching to another OS, and the behaviour of app developers.¹⁶

Market for Android apps

7. The EC considered the market for Android app stores which included all app stores for Google Android devices as well as app stores for other Android devices.¹⁷ The EC excluded a set of apps (including those that may be downloaded directly from the internet) that did not belong to the same market as an app store as well as app stores for other licensable OSs and app stores for non-licensable OSs.¹⁸ The EC then concluded that Google held a dominant position in the market for Android app stores with Play Store.¹⁹ The EC relied on Google's market shares, the quantity and popularity of downloadable apps and update functionalities, the obligation to use the Play Store in order to obtain Google Play Services, the existence of barriers to entry, the lack of countervailing buyer power of OEMs, and the insufficient competitive constraint from app stores for non-licensable mobile OSs.²⁰
8. The General Court acknowledged that the OS is a prerequisite for the functioning of a mobile device, the proper functioning and variety of available apps also depend on its quality.²¹ The General Court then established that the merits of the second part of the plea depend on the merits of the first part as it is not possible that a competitive constraint exercised by the App Store on the Play Store would differ in intensity from that exercised by iOS on Android.²² Google's arguments in support of the first part of the first plea were

10 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, para 131.

11 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, para 132.

12 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, para 134.

13 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, para 222.

14 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, para 222.

15 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, paras 174 and 175.

16 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, paras 182, 189, 199, 205, 215, and 221.

17 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, para 235.

18 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, para 235.

19 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, para 236.

20 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, para 237.

21 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, para 249.

22 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, para 252.

14. Google also claims that it is constrained by sideloading.³⁸ This is a view shared by a stakeholder who submit that the web is an alternative for developers looking to reach a general audience.³⁹ The stakeholder emphasizes that a game developer can make use of custom platforms or even create their own platform. The stakeholder also considered aggregators, such as Facebook, that connect people with information and other people as an option for developers that would prefer this method over marketplaces where one can transact directly.⁴⁰ Google submits that sideloading is a viable alternative for app developers as it only requires a 'one time approval' from Android users and the release of Android 12 makes downloading and updating apps from third party apps stores easier.⁴¹ Google also submits that it does not discourage users from sideloading and it only seeks to inform users of sideloading risks for device security given that it cannot impose Google Play's policies on sideloaded apps.⁴² Google submits that the warnings of risks associated with sideloading do not create barriers to entry and expansion for other developers given that users are able to override these by authorizing the download.⁴³
15. Apple submits that App Store competes with developers' websites and web apps to distribute and sell digital content.⁴⁴ Apple submits that it has always supported web apps which are meant to serve as viable and attractive options for developers who may not want to distribute their apps through an app store.⁴⁵ Apple cites the US District Court of the Northern District of California in Epic Games Inc which found that Epic Games failed to

prove that Apple is an illegal monopolist in control of the iOS platform.⁴⁶

2.1.3. The Inquiry's response

16. This section addresses the four main arguments raised by the leading platforms with regards to market definition, namely (a) that they receive competition from game consoles and PCs, (b) that they compete against each other, (c) that Google receives competition from other android platforms and (d) that they receive competition from sideloading.
17. App stores and apps are reliant on the OS running a specific device. Thus, conclusions on the assessment of competitive constraints between OSs would essentially be the same assessment for competitive constraints between app stores running on those OSs. This is a view supported by Huawei which submits that, "*the operating system is the foundation of the app ecosystem and an important factor in market competition, the customer base of each app store is not entirely independent.*"⁴⁷ These assessments, carried out in section 2.3 of the Provisional Report, were relied upon in the delineation of the market by the Inquiry.
- a. Competition from app stores on non-mobile OSs**
18. The Inquiry acknowledges that the platform market could be broad given that apps can generally be downloaded from a smartphone, computer, tablet, or other electronic devices. However, contrary to Apple's view, the Inquiry is of the view that a SSNIP test is not the appropriate test to use to assess whether

38 Google RPR1, page 78 para 5.4.

39 [REDACTED], RPR1 page 9.

40 [REDACTED], RPR1 page 9.

41 Google RPR1, page 86 para 5.25.

42 Google RPR1, page 87 para 5.27 and 5.28.

43 Google RPR1, page 87 para 5.30.

44 Apple RPR1, page 6 para 2.5.

45 Apple RPR1, page 9 para 2.16.

46 Apple RPR1, page 6 para 2.5.

47 Huawei RPR1.

these device categories compete within the same market. App stores run on a specific operating system; thus, it is not a matter of price but compatibility. These devices do not share the same operating systems, computers do not run on a similar operating system as smartphones. Even Apple's iPhone and iPad run on iOS while its MacBook and iMac run on MacOS. Their app stores are equally different. For example, a person owning an iPhone, iPad, and MacBook (i.e., using the same Apple ID) can download an app from on their phone and that app can automatically be accessible on their iPad without re-downloading but the same would not be found on the user's MacBook. The user would have to download a re-configured version of that app on the MacBook or may not even find the app on the MacBook app store. This is because iOS and MacOS, are different operating systems, and the app may not be compatible with MacOS. Mobiles app stores and PC app stores function differently. Apple itself has submitted that its efforts towards the establishment of the iPhone has been influenced by the desire to avoid user experiences with PC where malware, viruses, security, and interoperability have been a continuous challenge.⁴⁸

19. Thus, focus has been narrowed down to mobile app stores for the following reasons: (1) the most prominent ecosystems are in mobile devices where Apple App Store and Google Play Store are the most popular; (2) the main focus for consoles and PCs are gaming apps and these markets are relatively very small in South Africa,⁴⁹ furthermore, the overlap between console games and mobile games is

limited to casual games;⁵⁰ and (3) the majority of South African users access apps via mobile devices.⁵¹ Traffic share by platform in South Africa in June 2023 showed that mobile traffic is the largest with 76.15%, followed by desktop traffic with 22.53% and lastly tablet traffic with 1.32%.⁵² The Inquiry thus reiterates that it is unlikely that consoles and PCs significantly constrain app stores on mobile devices in South Africa, and thus, do not belong in the same market as mobile app stores.

20. Furthermore, the Inquiry found that other distribution channels (such as websites and web apps) do not exert sufficient competitive constraint against mobile app stores. Web apps are developed differently from mobile apps and are criticized for being slower than mobile apps; may not be as discoverable as mobile apps given that they are not listed in a specific database; their quality and security is not always guaranteed; and they do not work offline.⁵³ Additionally, conduct by leading mobile app platforms, through anti-steering policies and restrictive contractual agreements, have inhibited users from considering web apps or websites as viable options. This is discussed further in the later sections of this report.

21. Thus, the Inquiry has narrowed its assessment to mobile OSs and assessed competition between mobile app stores. This view is supported by a stakeholder which submits that all the other competing software storefronts are either significantly smaller or crowded out because of control of the OS ecosystem on mobile devices.⁵⁴

48 Apple RPR1, page 8 para 2.14.

49 [70-80] % of the total spend by consumers on games in South Africa is on mobile with only [30-40] % spent on consoles and PCs.

50 This is explained extensively in the OIPMI Provisional Report, Chapter 4, page 4 para 6.

51 Statista reported that in 2022, approximately 80% of the South African population accessed the internet via mobile devices. <https://www.statista.com/statistics/972866/south-africa-mobile-internet-penetration/#:~:text=In%202021%2C%2060.71%20percent%20of,amounted%20to%20over%2036.45%20million> [Access date : 29 March 2023]. Google also acknowledges that smartphone usage has increased significantly by 148% since 2016 in South Africa. Google Play, SOI, page 9, para 5.10.

52 <https://www.similarweb.com/platforms/south-africa/> [Access date: 20 June 2023].

53 <https://sagaratechnology.medium.com/mobile-apps-vs-web-apps-which-is-the-better-option-868106c88730> [access date: 29 March 2023].

54 [redacted]

b. Competition between app stores on licensable and non-licensable OSs

22. Android and iOS are the two most commonly used mobile OSs in South Africa. The Inquiry considered competition between Play Store (being the largest app store on Android) and App Store (being the only app store on iOS) to assess whether they belong in the same market, i.e., whether they exert sufficient competitive constraint against each other. The Inquiry also considered whether these app stores are dominant or hold sufficient market power and can, to an appreciable extent, behave independently of its competitors, its customers, and consumers in the market(s).
23. App Store and Play Store do not compete for OEMs (original equipment manufacturers) because an OEM (can either manufacture an Android device or an iOS device and cannot feasibly and timeously switch production between two. While there are several OEMs that manufacture android devices, being an open system, iOS devices are manufactured by Apple alone. iOS devices and Android devices do not fall under the same market as they differ in features and technology and cannot be substituted for another. Thus, Apple and Google have argued competition against each other from the lenses of app developers (competition for the market) and users (competition in the market).

Competition for the market

24. Apple and Google maintain that they compete for developers on price i.e., commission fees.⁵⁵ Apple submits that it aims to keep its platform attractive to developers by adjusting its commission downwards for various categories and is constantly

working to improve its App Store pricing.⁵⁶ Google submits that subsequently reducing its commission fees in response to Apple, which introduced a reduction in fees from 30% to 15% for businesses with an annual turnover of under \$1 million, is an indication of competition between the two.⁵⁷

25. The Inquiry disagrees that Apple and Google compete on commission fees. Since the inception of the App Store, Apple's attempt to improve its App Store pricing only became evident following complaints and litigation in several jurisdictions. Both Apple and Google were able to maintain a commission rate of 30% for many years due to the lack of any competitive constraints. Recent changes to the commission rates were due to complaints and investigations, these were not a result of competition. Apple was able to act independent from other app stores and unilaterally decrease its commission fee without fear of any rival retaliation. The Inquiry does not agree with Google that subsequently decreasing its commission fees after Apple decreased theirs is an indication of effective competition between the two. Google following suit may very well have been due to the risk of litigation as well. Further, there is no evidence to indicate that app developers switched from Google to Apple or that they stopped developing apps for Google following Apple's commission fee reduction. As such, Google and Apple do not compete on commission fees to attract app developers. The commission fees charged by app stores appear to be similar and developers generally distribute their apps on both Play Store and App Store as it allows them a larger customer base. This is confirmed by Google and Apple who submit that many developers list their apps on both Play Store and App Store and

55 Google RPR1, page 78 para 5.5.1.

56 Apple RPR1 page 7 para 2.10 and 2.11.

57 Google RPR1, page 78 para 5.5.1.1. Apple lowered its fee for in-app subscriptions of users who had been subscribed for more than a year to 15% in September 2017 and Google applied the same policy with effect from January 2018. Apple lowered rate for developers with net sales below \$1 million to 15% in January 2021 and Google followed suit on 1 July 2021.

that most popular apps are available on both platforms.⁵⁸ Huawei submits that more apps are available on most app stores and that hardware functions and app ecosystems form the basis for this.⁵⁹ Thus, App Store and Play Store are not substitutes, as developers do not make use of one in place of the other and their commission fees do not exert sufficient competitive constraints against each other.

26. Apple and Google submit that Play Store and App Store compete for developers and users on innovation and quality.⁶⁰ Google provided examples of some advancements made to their OSs to improve the stability and functionality of apps, and Apple explained some of its offerings to developers in the form of APIs.⁶¹ Apple and Google both submit that there is competition for developers in that they have had to develop and improve their respective app stores to attract app developers to their platforms and encourage existing app developers to invest in enhancing their apps.⁶² Google states that developers generally multi-home between Google Android and iOS and that this is an indication of effective competition between the two, Google cites the EU's Android Case decision in its defense.⁶³ Google emphasizes that the ease of multi-homing means that it needs to compete for developers' attention and make the necessary investments to do so.⁶⁴

27. Contrary to Google's flawed interpretation of the Android Case decision, the EU found no evidence that developers have considered switching from Play Store or App Store to another app store due to low quality or insufficient innovation. Investments on innovation and quality improvement are just

essential elements of app stores' business strategy and are not primarily motivated by competition. To benefit from network effects, app stores need to attract as many developers as possible so that they can in turn attract more users. Likewise, the fact that app developers operate on several OSs reinforces the finding that a deterioration in the quality of an app store would not stop the development of an app for that app store if that app store maintained a large user base. The Inquiry acknowledges that both Google and Apple offer the tools and features required by app developers to distribute apps to consumers in the best possible way.⁶⁵ However, this is not an indication of effective competition on app stores and their commission fees. These tools and features are limited to distribution on their own platforms and are, at the very least, platforms' best attempts to draw and retain as many developers as possible onto their app stores and enlarge their user base. However, developers tend to develop apps for both iOS and Android in order to reach a wide consumer base. Developers submit that it takes time and resources to develop and maintain custom versions of their apps for different app stores - especially if their apps make use of in-app purchases, so they are unlikely to support or publish their apps on all the different app stores,⁶⁶ mostly the prominent ones.

28. Apple and Google are of the view that developers multi-homing between Android and iOS is a sign of competition between the two and that they continuously compete for developer's attention.⁶⁷ However, this is not the case as developers do not find them to be substitutes given that they appeal to different

58 Google RPR1, page 81 para 5.8. and Apple RPR1 page 7 para 2.7.

59 Huawei RPR1.

60 Google RPR1, page 78 para 5.5.1. Apple RPR1 page 7 para 2.10.

61 Google RPR1, page 79 para 5.5.1.2. Apple RPR1, page 7 para 2.11.

62 Apple RPR1, page 7 para 2.10 and Google RPR1, page 79 para 5.5.1.2.

63 Google RPR1, page 81 para 5.7.

64 Google RPR1, page 81 para 5.8.

65 Apple RPR1 page 7 para 2.11 and page 17 para 4.5.2. Google RPR1 pages 83 and 84 para 5.14.

66

67 Apple RPR1 page 6 para 2.4. Google RPR1 page 81 para 5.8.

consumers i.e., consumers using an Android phone vs consumers using an iPhone, and would need to have their apps on both app stores to reach both groups of users. This is even made easier by Google's cross-platform tool which enables developers to produce versions of their apps that work on Android and iOS from a single codebase.⁶⁸

29. Thus, the Inquiry is of the view that app stores on different OSs do not constrain each other from a developers' perspective. This is confirmed by developers that further submit that (1) the excessive commission fees charged by app stores can be attributed to the inadequate competition between these app stores,⁶⁹ and (2) the non-negotiable payment mechanisms on Play Store and App Store are an indication of a lack of competition and clearly shows the app stores' dominance in the market.⁷⁰

Competition in the market

30. Apple argues that there is no consumer 'lock-in' because consumers can switch between iOS and Android.⁷¹ Both Apple and Google believe that consumers can and do switch with ease between different device ecosystems, particularly between iOS and Android, given how a customer owns a smartphone for typically 2 to 3 years.⁷² Huawei supports this view and submits that consumers can migrate from one ecosystem to another.⁷³ Apple submits that this ease of switching is the reason why Apple and other smartphone vendors invest in "switcher campaigns" to acquire users from their competitors.⁷⁴ Google

cites how Apple's "Move to iOS" app was downloaded more than [40-60] million times from Play Store between January 2020 and January 2022, and was used approximately [200-300] million times in the same period.⁷⁵

31. The Inquiry is of the view that each OS operates as a post-device purchase monopoly where users are locked into their device for several years without switching to a different OS. This view is supported by developers who submit that there is no significant competition between Play Store and App Store once a customer has purchased a particular device.⁷⁶ The Inquiry acknowledges that Apple, Google and other smartphone vendors have introduced switcher campaigns and released apps and tools that enable consumers to port their data seamlessly when they switch OSs,⁷⁷ however, this is only in the event that a consumer switches between OSs. Once a customer has purchased a device, essentially choosing an OS, the customer is locked in and is unlikely to switch between app stores for the duration of the contract. Factors such as the loyalty of users to their OS, the attributes of the device and the need to repurchase new apps are factors that inhibit users from switching to another OS.⁷⁸ This is confirmed by Apple which submits that, *"to the extent that Apple customers do not switch, that is because they are satisfied with the quality of the product."* Switching to another mobile OS requires the purchase a new device and the porting of information and apps can be a tedious exercise for users who would prefer to avoid this. Mobile devices, especially given Apple's pricing policy, are costly and

68 Google RPR1 page 81 para 5.7.

69

70

71 Apple RPR1, page 7 para 2.8.

72 Apple RPR1, page 7 para 2.8. Google RPR1, page 79 para 5.5.2.

73 Huawei RPR1.

74 Apple RPR1 page 7 para 2.8.

75 Google RPR1, page 80, footnote 201 and Google RPR1.1(c), page 18 para 50.2.1. Downloaded more than [redacted] from Play Store between January 2020 and January 2022, and was used approximately [redacted] in the same period.

76

77 Apple RPR1, page 7 para 2.7.

78 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, para 200.

consumers are unlikely to switch between OSs easily.

32. The Inquiry analysed Google’s submission and found that its data was based on “sessions” estimates from data.ai.⁷⁹ Sessions are quite different from actual use. Google shows no indication of whether the app was simply visited or was actually used to port data from Android to iOS. The Inquiry found that, in the period between 2020 to 2022, over 3 billion android devices were shipped compared to over 350 million iOS devices globally.⁸⁰ If [REDACTED] million android users attempted to port to iOS, as Google indicated,⁸¹ this would represent a very small fraction of existing iOS users, and an even smaller fraction of Android users world-wide. Apple’s launch of the “Move to iOS” app shows that switching was a source of concern, however, this also reflected that switching requires users to familiarize themselves with a new interface, making it necessarily more complex and uncertain. Thus, an attempt by Apple to make switching easier cannot be interpreted as meaning that switching was effective.⁸²
33. Thus, the Inquiry is of the view that app stores on licensable OSs and non-licensable OSs do not effectively compete against each other from a consumer’s perspective. Consumers are not sensitive to the quality of OSs and multiple factors determine a user’s choice.⁸³ Thus, while the quality of the OS might be an important factor, it is not the determining factor in the purchase of a new device.
34. In conclusion, app stores on licensable OSs and app stores on non-licensable OSs do not impose a competitive constraint on each

other and thus, do not belong in the same market.

c. Competition between app stores on Android

35. Google is of the view that the Inquiry has underestimated the extent to which other Android app stores exert competitive pressure.⁸⁴ Google submitted that it receives competition from third party Android app stores such as Galaxy Store that comes preinstalled in Samsung devices and are among the best-selling devices in South Africa.⁸⁵ Google further submitted that developers can negotiate preload deals with OEMs, offer downloads directly from their own websites or offer services on the web. Google submits that app stores also compete on non-price parameters such as the cost of being a developer for that app store, the safety and security of the app store, the average spend of the app store’s user, developer tools, the time span for app approvals and geographic markets where the app store distributes its apps.⁸⁶
36. The Inquiry is of the view that, although other Android app stores do belong in the same market as Play Store given that they are substitutable on an android device, these do not impose a significant competitive constraint on Play Store. Play Store can, to an appreciable extent, behave independently of its competitors, its customers, and consumers in the market for Android app stores. Play Store is quite dominant and is not constrained by competition from smaller players such as Samsung’s Galaxy Store. This is seen in Google’s market share and high revenues. Play Store revenue in 2020 reflected a [90

79 Google RPR1(c), page 18 para 50.2.1..

80 <https://www.demandsage.com/iphone-user-statistics/> [Access date: 09 February 2022]. <https://www.businessofapps.com/data/android-statistics/> [Access date: 09 February 2022].

3.33 billion in android devices and 354.5 million iOS devices globally.

81 Google RPR1, page 80, footnote 201 and Google RPR1.1(c), page 18 para 50.2.1.

82 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, para 204.

83 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, para 196.

84 Google RPR1, page 82 para 5.9.

85 Google RPR1, page 82 para 5.10.1.

86 Google RPR1, page 83 and 84 para 5.14.

-100] % market share while Galaxy Store only held [0 - 10] % share.⁸⁷ Google Other revenues amounted to \$29 billion in 2022, up from \$28 billion in 2021 and \$21 billion in 2020.⁸⁸

37. App developers support similar views on play Store's dominance. They emphasize that Play Store's dominance on Android devices was confirmed by studies and decisions carried out by various competition authorities.⁸⁹ The Inquiry accepts Google's argument that it competes with the Galaxy Store on non-price parameters such as tools offered to app developers, however, Galaxy Store is small as demonstrated by its revenue figures in South Africa and, contrary to Google's view,⁹⁰ it is a niche app store on its own admission.⁹¹

d. Sideloading

38. While Apple does not allow sideloading at all, it claims that it still receives competitive constraints from web apps.⁹² Apple states that such web apps provide an alternative to native apps and gave an example of Kingfisher Fruits, for South African developers, which is accessible through Safari, Apple's search engine.⁹³ However, even at the Inquiry's attempt, the Kingfisher web app failed to load due to 'too many redirects.' Apple's aim is for every app on Apple devices to be downloaded from the App Store, which makes its alleged support for web apps highly unlikely. Apple submits that *"even a single app downloaded from outside of the App Store could seriously*

*undermine the functioning of an app downloaded from the App Store because it would not have the same limitations on its rights and ability to access other functions."*⁹⁴

Once a user has downloaded the app from the App Store, the user has no incentive to visit the app or access its content via the web.

39. Google is of the view that Play Store is competitively constrained by third party websites and sideloading.⁹⁵ The Inquiry is of the view that Play Store is not constrained by sideloading and users who elect to download directly from developers' websites.⁹⁶ Google submits that only [REDACTED] % of devices in South Africa installed new apps from an "unknown source" in 2020.⁹⁷ However, there is no indication of whether these apps were free apps or paid apps, nor is the number of total apps sideloaded compared to the total number of downloads from the Play Store provided. A comparison of the two would allow one to gauge if these sideloaded apps did pose a competitive constraint on Play Store downloads. However, a percentage of devices would not reflect this.
40. Developers support the Inquiry's finding that sideloading does not currently serve as a competitive constraint on the distribution of apps through Play Store.⁹⁸ They submit that Google has placed a number of restrictions when users try to sideload and, in addition, sideloaded apps are not updated automatically and users have to manually

87 Having considered a separate market for the distribution of android apps. Play Store revenue share was calculated as [REDACTED], Galaxy Store was [REDACTED] and App Gallery was (0,88%) in 2020. App Gallery, although currently operating on its own operating system, was still operating on the android operating system in 2020.

88 US Securities and Exchange Commission, Form 10-k, Alphabet Inc, 2022, page 32. Play Store forms part of 'Google Other' within the Google Services reporting.

89 [REDACTED]
90 Google RPR1 page 83 para 5.12.

91 [REDACTED]
92 Apple RPR1, page 9 para 2.16.

93 Apple RPR1, page 9 para 2.16.

94 Apple RPR1, page 9 para 2.15.

95 Google RPR1, page 82 para 5.9.

96 OIPMI Provisional Report, Chapter 4, page 28 para 77.

97 Google Play RPR1, page 86 para 5.26.2. [REDACTED]

98 [REDACTED]

update them.⁹⁹ This disincentivises users from sideloading. Developers state that, “Apple and Google have spent more than a decade training users to download apps from app stores exclusively. As a result, app stores are now perceived to be the only viable means to distribute apps on mobile devices.” App developers further submit that side-loading warnings by Google prevent business users from bypassing excessive fees, thus essentially producing the same effects for app developers as Apple’s complete ban on sideloading.¹⁰⁰

41. Thus, the Inquiry is of the view that App Store is not constrained by web apps and Play Store is not constrained by sideloading or web apps either.

e. Conclusion on Product Market

42. The Inquiry has considered OSs and, the app stores they run on as one eco-system. Thus, an assessment of competition between OSs was made, which is essentially an assessment of competition between app stores given their dependence on a specific OS. The Inquiry found insufficient competition between OSs, thus insufficient competition between app stores.

43. Thus, given the above mentioned, the Inquiry concludes on the following product markets:
(1) the market for the distribution of iOS apps where App Store is a *de facto* monopoly and
(2) the market for the distribution of Android apps where Play Store is dominant.

2.2. Geographic market

44. The Inquiry considered that there are two relevant geographic markets. South Africa is one relevant geographic market given that
(1) each app store has a storefront specific to the users’ particular country which is what domestic consumers access and for which there may be country-specific pricing or curation¹⁰¹,
(2) there are country-specific app distribution and payment requirements¹⁰² and
(3) some of the app stores’ algorithms and search results take user location into consideration.¹⁰³

45. The other relevant geographic market is the global market as the essential design architecture is done at a global level, South African and other developers can make their apps available on a global scale, the attractiveness of an OS is based on its global and not just local reach, and the commission fees that are charged are set at a global level.

99 [REDACTED]

100 [REDACTED].

101 [REDACTED]

102 Utah et al, Case No. 3:21-cv-05227, filed 07 July 2021, page 26, para 74.

103 [REDACTED]

[3. Structure and competitive dynamics findings]

46. In addition to defining the market, the Inquiry considered the structure and competitive dynamics of the platform market in section 3 of the Provisional Report.¹⁰⁴ The Inquiry provisionally identified the leading platforms and considered competition between app stores and barriers to entry into the platform market. This section deliberates comments on the identified leading platforms.

3.1. Leading platforms

3.1.1. Platforms' views

47. The Inquiry provisionally identified Play Store and App Store as the leading platforms in the software app stores markets given, amongst other reasons, their predominant online consumer traffic, developer dependence on the stores, and their entrenchment in the market.¹⁰⁵ While Google does not dispute these findings in relation to Play Store, Apple is of a contrary view and has submitted a number of legal disputes¹⁰⁶, much of which are addressed in the Final Report and Decision. Apple submits that there is a low adoption of the iPhone in South Africa and cites the IDC data which illustrates that the iPhone holds a 3% share of the South African market for smartphones.¹⁰⁷ Apple explains that its main business is device sales, and that App Store came to life as an added

value to complement the iPhone.¹⁰⁸ Apple submits that the App Store cannot be thought

of as a separate entity with an economic life independent of devices and that there is no independent demand for the App Store that it is seeking to develop separately from devices.¹⁰⁹

3.1.2. Stakeholders' views

48. Developers submit that Play Store and App Store are indeed leading platforms in the app stores markets and that there are no alternatives to apps stores for consumers.¹¹⁰ They submit that alternatives to these stores are either completely excluded or limited due to the impediments created by the likes of Google to discourage consumers from using direct channels. One developer submitted that, for one of its portfolio brands that is offered on other app stores, the download numbers from those alternative app stores appear to be extremely low compared to App Store and Play Store.¹¹¹ Developers submit that they generally have no other option but to keep using these platforms despite their unfair treatment.¹¹² They fear that there might not be any alternative platforms in the near future and believe that regulation for fair treatment by current leading platforms would help developers to grow, produce new products and effectively innovate.¹¹³

3.1.3. The Inquiry's response

49. Smartphone devices differ in quality, features, and functionalities. A user who appeals to

104 OIPMI Provisional Report, Chapter 4, page 31 to 45.

105 OIPMI Provisional Summary Report page 4 para 19 and 20.1.

106 Apple RPR1, page 21 to 23.

107 Apple RPR1, page 23 para 5.6.

108 Apple RPR1, page 17 para 4.5.1 and page 18 para 4.5.5.

109 Apple RPR1, page 18 para 4.5.5 and 4.5.6.

110 [REDACTED]

111 [REDACTED]

112 [REDACTED]

113 [REDACTED]

more advanced features in a smartphone is different from one that would be satisfied with a smartphone with basic features. Affordability is also a factor given that the costs of these smartphones vastly differ in their prices. The cheapest 4G-capable smartphone in South Africa can start from as low as R549 and the cheapest iPhone in South Africa starts from R2999.¹¹⁴ However, the iStore (the biggest authorized distributor in South Africa) no longer sells the older iPhone models and the cheapest iPhone that a user can find in-store is R 8 999.¹¹⁵ R549 in the iPhone world can merely afford you one of the most basic iPhone covers at the iStore.¹¹⁶ Apple's market share in South Africa. Apple's market share cannot be compared to all smartphones in South Africa as that would not be a like-for-like comparison. Where a market for the distribution of smartphones is being considered, Apple's share should be compared against other premium smartphones in South Africa. The premium smartphone market captured 55% of the global smartphone market's revenue in 2022 and Apple is leading with 75% market share.¹¹⁷

50. The Inquiry is of the view that the share of devices, whilst in dispute, is not a relevant measure of Apple's influence in South Africa but rather its sales on the App Store. Even where a broad market for the distribution of mobile apps is considered, of which the Inquiry is of the view that the distribution

of iOS apps and android apps operate in separate markets, App Store's share would account for [30-40] % of the app store market in revenue.¹¹⁸ App developers are drawn to list on the App Store based primarily on the installed base of customers and the potential sales those represent. These sales are significant in terms of total software app store sales in South Africa given the high income of iOS device users. It is the sales potential that is the primary attraction for app developers, and South African app developers have consistently specified that they need to be on the App Store to reach a key demographic.¹¹⁹ That requirement is even more so when the global reach of the App store is considered. There are no other means to effectively target that installed base given that Apple does not permit side-loading or alternative app stores.

51. The Inquiry collated data, on all active pre-paid and post-paid smartphones in South Africa, from the most popular telecoms in South Africa and found a <10% market share for Apple.¹²⁰ However, this is not an accurate figure given that (1) some Android devices allow for double sim-cards and there may be a double counting of Android devices, (2) this compares the premium smartphone (i.e., Apple) to all smartphones and (3) the Inquiry has identified a 16% OS market share for iOS in South Africa.¹²¹

114 <https://mybroadband.co.za/news/smartphones/456375-cheapest-4g-smartphones-in-south-africa-starting-from-r549.html> [Access date: 29 March 2023].

<https://www.quickread.co.za/cheapest-iphone-in-south-africa/> [Access date: 29 March 2023].

115 <https://www.istore.co.za/iphone/iphone-se-2020> [Access date: 29 March 2023].

116 <https://www.istore.co.za/accessories/covers-screen-protectors> [Access date: 29 March 2023].

117 <https://www.news24.com/news24/tech-and-trends/premium-smartphone-revenue-rises-despite-overall-decline-in-smartphone-sales-new-report-says-20230322> [Access date: 29 March 2023].

<https://timesofindia.indiatimes.com/gadgets-news/premium-smartphone-market-apple-sets-new-record-these-are-the-other-companies-in-top-5/articleshow/92651468.cms> [Access date: 29 March 2023].

118 App Store revenue share was [30-40] % in 2020. Apple WS2, page 2, para 4. See footnote 98.

119 GW, WS1, page 6. Dr Z, WS1, page 4.

120 The Inquiry found a device market share for Apple. Vodacom WS2. Telkom WS1 and WS1.1. MTN WS2 and WS2.1. Cell C WS1.

121 Mobile OS share in South Africa 2022 | Statista [Access date: 12 April 2023].

[4. Platform competition findings and recommendations]

52. The Inquiry assessed the different issues that limit competition between app stores, and made provisional findings in this regard.¹²² These are the findings that informed the Inquiry's recommendations for platform competition.¹²³ This section considers comments from platforms and other stakeholders on these provisional findings and recommendations and provides responses to the same.

4.1. Apple's closed system

53. The Inquiry found that the complete exclusion of competing software app stores and side-loading by Apple impedes effective competition for commission fees.¹²⁴

a. Platform's view

54. Apple submits that its decision to centralise the distribution of native apps on iOS devices via the App Store does not restrict competition.¹²⁵ Apple submits that it has never allowed sideloading on the iPhone, and that this is a function that precedes the existence of the App Store, as it is driven by the goal to make the iPhone reliable and easy to use and seeks to ensure that users are not exploited.¹²⁶

55. Apple submits that the characterization of Apple as a monopoly ignores the reality that

app developers can use the App Store for app discovery and distribution while monetizing their service on different platforms.¹²⁷ Apple submits that there is a distinction between the distribution of native apps through the App Store and the distribution/monetization of content where numerous alternative channels exist in the latter.¹²⁸ Apple submits that alternative monetization approaches that app developers can pursue present a competitive constraint on App Store and that app developers have multiple options for distributing their content to users at no cost to them, while continuing to benefit from distribution through the App Store.¹²⁹ Apple emphasized that [80-90] % of all apps in South Africa pay no commission to Apple while the vast majority of those that do pay a commission are eligible to pay only 15% commission, and that [90-100] % of all apps in South Africa are free.¹³⁰

56. Apple prides itself on its App Store Review Guidelines, with which all developers must comply, and submits that these guidelines would be undermined if apps were sideloaded onto Apple's devices.¹³¹ Apple submits that it reviews approximately 100 000 new and updated apps each week and identifies thousands of copycat apps which are removed from the App Store.¹³² Apple submits that reviews are generally done

122 OIPMI Provisional Report, Chapter 4, page 45 para 123.

123 OIPMI Provisional Summary Report, page 53 para 146.

124 OIPMI Provisional Summary Report, page 53 para 146.1. OIPMI Provisional Report, Chapter 4, page 66 para 171.

125 Apple RPR1, page 8 para 2.12.

126 Apple RPR1, page 8 para 2.13 and 2.14.

127 Apple RPR1, page 11 para 2.26.

128 Apple RPR1, page 10 para 2.21.

129 Apple RPR1, page 10 para 2.22 and page 11 para 2.23.

130 Apple RPR1, pages 10 and 11, para 2.22.

131 Apple, RPR1, page 8 para 2.14.

132 Apple RPR1 page 9 and 10, paras 2.18 and 2.19.

within 48 hours and that most rejections are determined by issues that would negatively impact customer experience.¹³³

b. Stakeholders' views

57. Despite the stakeholders intervening in support of Apple,¹³⁴ app developers commend the Inquiry for finding that effective competition for commission fees is impeded by the complete exclusion of competing app store and sideloading by Apple.¹³⁵

c. The Inquiry's response

58. The Inquiry has not questioned Apple's decisions in respect of preventing side-loading or not permitting alternative software app stores on its devices. As such, the Inquiry has not sought to interfere with what Apple considers important aspects of the consumer experience and innovation in the device market. However, as a consequence of those decisions, there are no alternative forms of competitive pressure on the App Store's commission fees. This has led the Inquiry to conclude that Apple operates as a de facto post-device purchase monopolist, and it is this outcome that remains the concern of the Inquiry.

59. Web apps are limited to accessing content or the app via a web browser, however, users cannot directly download the app onto their devices. This limits competition to Apple's commission fees within the App Store given that the apps downloaded from the App Store can only be paid for using Apple billing services. Apple highlights the distinction between the distribution of apps

and distribution of content and indicates the options for monetization thereof. On Apple devices, this is made possible through the Multiplatform Rule which allows users to access content or credits acquired elsewhere from within the App Store. However, Apple requires that those items be made available as in-app purchases within the app and does not allow developers to redirect users to a purchasing method from within the app. Such anti-steering policies render the Multiplatform rule ineffective in disciplining commission fees within the App Store. The only developers that can benefit from the rule are large developers with enough marketing spend to advertise alternative payment options from outside the app.

60. The Small Business Plan ("SBP") was introduced in 2021. The plan may be available; however, the majority of South African developers are not benefiting from it. Only [10-20] % of the revenue that App Store derived from its top 50 South African apps were from apps that paid 15% commission while [80-90] % of the revenue was derived from apps that paid a 30% commission fee. This clearly shows that, although a vast majority in South Africa are eligible to pay 15% in commission, the bulk of App Store's revenue is derived from apps that pay a 30% commission fee.¹³⁶ This may be due to the fact that South African developers have not been effectively made aware of the SBP or the application process is not as straight forward as it should be.

61. The lack of competition from other app stores is observed in the financial performance of the App Store. Where only [0-10] % of apps pay commission fees, Apple still earns millions

133 Apple RPR1 page 10 para 2.19.

134 [REDACTED]

135 [REDACTED]

136 Apple WS5, paras 2 and 3. [REDACTED]

[REDACTED]

[R200 million – R250 million] in revenue from these.¹³⁷ Even with the Multiplatform Rule in place, bulk of its SA revenue is derived from in-app purchases followed by subscription apps, paid apps contribute the least towards Apple’s revenue.¹³⁸ It is the lack of price competition that allows App Store to earn significant revenues from the commission fees charged to app developers, far more than its costs. It is also the lack of price competition that, after decades of a stagnant 30% commission fee, Apple was able to independently lower its commission fee to 15% for developers with an annual turnover of less than \$1 million with no concern of retaliation from other app stores.

62. Although other jurisdictions have sought to ensure that Apple opens up its eco-system to sideloading and the installation of other App stores,¹³⁹ confirming the necessity for a change in Apple’s business model for pro-competitive reasons, the Inquiry has considered other remedies that can be implemented to address the lack of competition in commission fees. These are discussed in sub-section 4.4 of this report. The

4.2. Default arrangements

4.2.1. Findings on default arrangements

63. On open systems, the Inquiry provisionally found that the default arrangements of Google Play on Android devices have impeded competition from other android software app

stores, and entrenched Google Play as the near monopoly on android devices.¹⁴⁰ The Inquiry found that these default arrangements were enforced and monitored by Google’s Mobile Application Distribution Agreements (MADA)¹⁴¹ and Revenue Share Agreements (RSA).¹⁴²

a. Platform’s view

64. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹⁴³ Google submits that the practical effects of Play Store being set as the default app store are not clear given that users proactively choose which app store to download an app from by clicking on an app store’s icon as opposed to a browser where users click on a link to a website which the default browser then opens.¹⁴⁴ Google further submits that [REDACTED]
[REDACTED] and that, although Play Store is “undeletable,” it can essentially be disabled,¹⁴⁵ thus taking minimal space and becoming invisible to the user.¹⁴⁶ Google submits that Play Store cannot be fully deleted for multiple reasons, one being the fact that its installation ensures that a device can always be returned to a known functioning state through a “factory reset” in instances where a user wants to resell their device.¹⁴⁷

137 Apple WS2, page 2, para 4. [REDACTED]

138 Apple, WS5, page 5. [REDACTED]
[REDACTED]

139 See Regulation of the European Parliament and of the Council of 14 September 2022, Digital Markets Act (DMA) L 265/35 Article 6(4). The successful implementation of the DMA may yield benefits for South Africa should Apple implement these regulations on a global scale.

140 OIPMI Provisional Summary Report, page 53 para 146.2. OIPMI Provisional Report, Chapter 4, pages 46 to 56 paras 126 to 146.

141 [REDACTED]

142 [REDACTED]

143 Google RPR1, Page 84 para 5.18.

144 Google RPR1, page 85 para 5.21.

145 Google RPR1, page 85 paras [REDACTED] and 5.23.

146 Google RPR1, page 85 paras 5.23.

147 Google RPR1, page 85 paras 5.23.

b. Stakeholders' views

65. Developers submit that users should be presented with information detailing all default apps and settings and should thereafter be given a clear option to change these defaults.¹⁴⁸ Although some developers expressed contentment with Play Store's default arrangement, they submit that users are more likely to make use of the app store that comes as default and would consider developing for any other app store that comes as default on Android phones, even if it is not the Play Store.¹⁴⁹ They emphasise that they are likely to move their apps across to the app store with the biggest market share.¹⁵⁰ Developers submit that having an app store pre-installed comes at a huge advantage and default app stores are a highly effective way of ensuring that one's app is visible to the user given that platforms gain distribution this way.¹⁵¹

66. Developers also submit that they will continue to prefer and drive users to the app store which offer them the best revenue share. Developers place value in Google's RSAs as it currently offers the best revenue share.¹⁵²

c. The Inquiry's response

67. Google highlights that [REDACTED] but neglects to highlight incentives for the OEMs and developers that are attached to them,

i.e., effectively tying these benefits to the prerequisite of default arrangements. Google made it extremely hard for one to shun its agreements as OEMs and developers would stand to lose out on [REDACTED]

[REDACTED]¹⁵³ [REDACTED]
[REDACTED],¹⁵⁴ [REDACTED].¹⁵⁵

68. The Inquiry would like to highlight Google's contradictory submissions aimed at minimizing the effects of default arrangements as it has itself acknowledged that these requirements are essential in having one's app store predominantly utilized.¹⁵⁶ Behavioural economics indicates that consumers generally tend to have default bias and are therefore likely to stick to default settings.¹⁵⁷ This is known to developers and has influenced developers' decisions on which app stores to develop for.

69. The Inquiry has witnessed changes to the MADA over the years, this has been due to complaints and litigation against Google in several jurisdictions. These have [REDACTED] [REDACTED].¹⁵⁸ and unbundling of Google apps in its offering.¹⁵⁹ However, Google's dominance has already been entrenched. Google's default requirements assisted in its acquisition of a large consumer base and as evidenced above; this is the driving force that has made developers dependent on Play Store for the distribution of their apps.

148 [REDACTED]

149 [REDACTED]

150 [REDACTED]

151 [REDACTED]

152 [REDACTED]

153 [REDACTED]

154 [REDACTED]

155 [REDACTED]

156 [REDACTED] Google Android case, page 171, paras 780(1) and 787(2).

157 Kahneman, D., Knetsch, J., & Thaler, R. (1991). Anomalies: The endowment effect, loss aversion, and status quo bias. *Journal of Economic Perspectives*, 5(1), 193-206.

158 [REDACTED]

159 Google Android Case number 40099, filed on 18 July 2018, page 312, para 1394 to 1396. [REDACTED]

[REDACTED]

4.2.2. Recommendation to end default arrangements

70. The Inquiry recommended for an end to default arrangements for Google Play Store on Android devices.¹⁶⁰

a. Platform's view

71. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹⁶¹ Google submits that restricting OEMs' ability to install Play Store and/or place it prominently would reduce choice and lessen competition to distribute apps because it would deprive users the possibility to easily access a popular app store.¹⁶²

72. Google submits that this remedy would not be effective to address the concerns that the Inquiry has raised with regards to the lack of app store competition on Android devices.¹⁶³ Google emphasizes that it welcomes third-party app stores on Android mobile devices¹⁶⁴ and that there is no evidence that banning pre-installation of Play Store will ensure the installation of competing app stores instead of Play Store.¹⁶⁵

73. Google submits that this remedy would be disproportionate given that many OEMs will not be able to develop software that is capable of competing with the combined hardware and software offering of Apple devices¹⁶⁶ and

is likely to result in significant detriment to the consumer experience.¹⁶⁷

b. Stakeholders' views

74. Some developers agree with this recommendation and submit that these arrangements are of concern given that only a discerning user would install an app store of their choice while the majority would just accept the default app store.¹⁶⁸ Smaller platforms submit that, although it would be difficult to remove Play Store as default, it is technically feasible to implement in theory.¹⁶⁹ They believe that users should be awarded the option to choose an app store and this can be promoted through legislation at a national level.¹⁷⁰ However, smaller platforms are also of the view that prohibiting Google from having default status is expected to impact user experience and may result in user inconvenience.¹⁷¹ Developers submit that consumers will be frustrated because their new Android phone would not function as effectively as their previous one.¹⁷²

c. The Inquiry's response

75. The anti-competitive effects of Google's MADAs and RSAs are evident in Google's entrenched market power where consumer reliance and developer dependence on Play Store has already been established. The recommendation to end default arrangements was aimed at addressing its outcome on commission fees. However, this remedy may be ineffective given the risk of repercussions. First, it is unlikely to see

160 OIPMI Provisional Summary Report, page 54 para 152.3.

161 [REDACTED]

162 Google RPR1, page 104 para 5.89.

163 Google RPR1, page 105 para 5.92.

164 Google RPR1, page 104 para 5.91.

165 Google RPR1, page 105 para 5.92.

166 Google RPR1 page 105 para 5.95.

167 Google RPR1 page 105 para 5.96.

168 [REDACTED]

169 Samsung RPR1 page 2 para 2.1.2. Huawei RPR1.

170 Huawei RPR1.

171 Samsung RPR1, page 2 para 2.1.2.

172 [REDACTED]

consumers move away from the Play Store and would instead create the inconvenience where users would have to first search for it and download it. Second, Google may require OEMs to pay a license fee for Android OS and Google's apps as was the case for Google Search following the European Commission's (EC) enforcement action on Google's default status. Such actions may impact on the price of low-end Android smartphone devices to the potential detriment of digital access. There is also no evidence to indicate that other Android app stores are competing vigorously on commission fees, but have rather adopted a niche strategy in the face of Play Store dominance.¹⁷³

76. The Inquiry has considered other remedies to address the impeded competition on Google's commission fees as well as consumer choice.

4.3. Loyalty schemes

4.3.1. Findings on loyalty schemes

77. The Inquiry's Provisional Report found that the recently introduced Google Play Points Loyalty Scheme ("the scheme") leverages visibility and customer acquisition on the Play store to extract discounts from app developers to fund the scheme, which cannot be matched by competing stores lacking the leverage of Play Store.¹⁷⁴

78. The Inquiry highlighted three provisional issues with the scheme. Firstly, the Inquiry provisionally found that the scheme leverages

visibility and customer acquisition on Play Store by offering it to selected developers.¹⁷⁵ Secondly, the Inquiry provisionally identified that the scheme would extract discounts from app developers to fund it.¹⁷⁶ Thirdly, the Inquiry provisionally identified that competing stores are unlikely to match the scheme as they lack the leverage of Play Store.¹⁷⁷

a. Platform's view

79. Google submits that, although participation in the scheme is currently on an invitation and application-specific basis, it is open to all app developers.¹⁷⁸ Google submits that the scheme enrollment criteria are applied to individual apps, rather than to specific developers.¹⁷⁹ ■■■■■

■■■■■
■■■■■
■■■■■
■■■■■
■■■■■
■■■■■¹⁸⁰

On an application basis, developers are assessed based on a criteria which considers apps which: ■■■■■

■■■■■
■■■■■
■■■■■
■■■■■
■■■■■¹⁸¹

The scheme rewards user engagement with apps by enabling users who choose to sign up for the optional program to earn points for the ways that users use the Play Store.¹⁸² ■■■■■

■■■■■
■■■■■
■■■■■
■■■■■
■■■■■¹⁸³ ■■■■■
■■■■■

173 ■■■■■
174 OIPMI Provisional Summary Report, page 53 para 146.3. OIPMI Provisional Report, Chapter 4, pages 56 to 63 paras 147 to 162.
175 OIPMI Provisional Report, Chapter 4, page 62 para 160.
176 OIPMI Provisional Report, Chapter 4, page 63 para 161.
177 OIPMI Provisional Report, Chapter 4, page 63 para 161.
178 Google Play RPR1, page 89 para 5.38.
179 Google RPR1.1(c), page 18 para 46.1.1.
180 ■■■■■
181 ■■■■■
182 Google RPR1, page 88 para 5.35.
183 ■■■■■

[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted].¹⁸⁴
[Redacted]
[Redacted].¹⁸⁵

80. [Redacted]
[Redacted]
[Redacted].¹⁸⁶
[Redacted]
[Redacted]
[Redacted].¹⁸⁷
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted].¹⁸⁸
[Redacted]
[Redacted]
[Redacted].¹⁸⁹

81. Google submits that competing app stores such as Samsung and Apple operate similar schemes.¹⁹⁰ [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted].¹⁹¹

b. Stakeholders' views

82. Developers confirm that Google funds most of the Play Points.¹⁹² They submit that the scheme currently does give those apps in the program increased visibility.¹⁹³ They highlight that Huawei has had a similar program, Huawei Points, in App Gallery for a number of years.¹⁹⁴

83. Developers are, however, under the assumption that the Play Points program is being initially tested with a smaller pool of apps and games before being made available to all developers and are concerned that there might be a first-to-the-market aspect to it.¹⁹⁵ Developers fear that, once the program is opened to all developers to participate equally, the new developers would fall behind either on functionality, resources or even user engagement.¹⁹⁶ They fear that the scheme will only benefit those at the top by virtue of being awarded the opportunity to participate first.¹⁹⁷

84. Developers are opposed to Google running the program mainly on invitation and submit that Google should at least publish a criterion for invitation and award everyone the opportunity to meet that criterion.¹⁹⁸ Smaller platforms submit that loyalty programs should just be open to all developers to reflect the fairness of the platform.¹⁹⁹

184 [Redacted]
185 [Redacted]
186 [Redacted]
187 [Redacted]
188 [Redacted]
189 [Redacted]
190 Google RPR1 page 90 para 5.40.2.
191 [Redacted]
192 [Redacted]
193 [Redacted]
194 [Redacted]
195 [Redacted]
196 [Redacted]
197 [Redacted]
198 [Redacted]
199 Huawei, RPR1.

c. The Inquiry's response

85. It remains a concern for the Inquiry that no South African app developer participates in this program as it aims to increase user engagement with developers' apps and games on Play Store. [REDACTED]
[REDACTED]
[REDACTED].²⁰⁰ Given that revenue is a valued factor and only [0-10] % of apps on Play Store are paid apps with fewer earning substantial revenue,²⁰¹ many South African apps are set to fail to meet Google's set requirements for enrollment in the scheme. Furthermore, Google does not publish these requirements, which deprives many developers the incentive to increase their revenues to qualify to participate in the scheme and increase their user engagement to further increase their revenues. However, this can be addressed in the remedial action around support for app developers.
86. The Inquiry acknowledges that submissions on the Provisional Report have shed a different light on how the Google Play Points loyalty scheme is currently run. Nothing in the current design necessarily makes it irreplicable by other app stores given the prominent levels of funding by Google rather than developers. Loyalty schemes offered by smaller platforms may not be as attractive as Play Points given that other app stores do not have the same extensive user and developer base as Play Store. However, to date the Google Play Points has not been widely adopted in South Africa, with [0-10] % adoption, which implies that it is currently having minimal impact on consumer choice.²⁰²
87. The program was recently launched in South Africa and there is insufficient evidence

to determine its effects on competition. However, the rules along with the traction in the market may change in future and the Commission should revisit this were it to become significant.

4.3.2. Recommendation to prohibit exclusionary loyalty scheme design

88. The Inquiry recommended for the prohibition of exclusionary loyalty scheme design, including schemes that include only a subset of business users, and which are part or whole funded by business user funded discounts. Loyalty schemes should include all business users and be fully funded by the platform.²⁰³

a. Platform's view

89. Google submits that the remedy would not be justified given that the Inquiry's provisional findings on Play Points were based on a misunderstanding of the way the scheme works and how it is funded.²⁰⁴ It submits that the remedy would thus be ineffective given that it would not change anything since Play Points are not exclusionary and are not funded by business users.²⁰⁵ Google also submits that the remedy would be disproportionate given how prescriptive it is in terms of how a loyalty scheme ought to run and is of the view that the Inquiry should rather specify the features that should be excluded from loyalty schemes to address the alleged concern identified by the Inquiry.²⁰⁶

b. The Inquiry's response

90. Given the submissions on the findings, the Inquiry accepts these submissions and is not inclined to pursue this remedy in the present. If conditions change to the detriment

200 [REDACTED]

201 3% of apps are paid apps on Play Store.

202 Google RPR1, page 90 para 5.40.1.

203 OIPMI Provisional Summary Report, page 54 para 152.2.

204 Google RPR1 page 103 para 5.84.

205 Google RPR1 page 104 para 5.85.

206 Google RPR1 page 104 para 5.86.

of consumers and/or competition, then the Competition Commission of South Africa ('the Commission') will re-consider the appropriate remedial action to take.

4.4. Commission fees and in-app payment (IAP) competition

91. The Inquiry found that the lack of competition has resulted in excessive commission fees to the detriment of South African app developers, publishers and consumers of apps acquired through the SA storefront requiring in-app payments.²⁰⁷ As already established, these commission fees are not cost related and are not reflective of the costs incurred when running the app stores. The Inquiry is of the view that this is due to an abuse of market power where they charge excessive commission fees to the detriment of both customers (developers and publishers) and consumers (users). Excessive commission fees have been the subject of litigation in several jurisdictions stemming from complaints by large global developers. These jurisdictions have expressed the importance of in-app payment competition for app store purchases in the absence of competition from other app stores to allow for competition in commission fees. This section of the report considers comments from the public on the provisional findings and recommendations on commission fee levels and in-app payment.

4.4.1. Commission fees

a. Platforms' views

92. Google submits that its business model involves charging a fee only in relation to paid

apps and paid in-app content and that there is no cross-subsidization between free and paid apps.²⁰⁸ Google submits that this model is fair because only developers who monetize their apps get charged and this benefits small developers the most.²⁰⁹ Google submits that an alternative approach that sees all developers being charged a fixed/flat-rate fee would impact smaller developers especially if they do not charge a fee for their apps or if no regard is given to their financial success.²¹⁰ Google believes that its current model provides the best value to developers and users.²¹¹

93. Google submits that its service fee is used to fund Google's investments in Play Store and Android.²¹² Google submits that its service fee funds Android, Play Store, app distribution in over 190 countries with personalized recommendations, new Android platforms, security of Android and Play Store ecosystem, developer tools and its billing systems.

94. Both Apple and Google submit that their commission fees reflect the value of the benefits that developers receive from their platforms and that these fees have decreased over time i.e., from 30% to 15%.²¹³ Apple submits that the primary justification for Apple's commission is the fact that the App Store facilitates a plethora of functions that must be in place, including technology, customer connection, and customer trust, to lead to an in-app purchase in the first place.²¹⁴ Google submits that Play Store and payment processors perform different functions, and that the fees they charge vary accordingly.²¹⁵ Google emphasizes that it facilitates the distribution of developed apps in a secure, trusted and well-managed environment that consumers

207 OIPMI Provisional Summary Report, page 53 para 146.4.

208 Google RPR1, page 92 para 5.44.3 and page 99 para 5.63.

209 Google RPR1, page 99 para 5.63.

210 Google RPR1, page 99 para 5.65.

211 Google RPR1, page 99 para 5.65.

212 Google RPR1, page 92 para 5.45.

213 Apple RPR1, page 12 para 2.29 and Google RPR1, page 96 para 5.57.

214 Apple RPR1.1(a), page 6 para 12.

215 Google RPR1 page 95 para 5.55.

trust and are willing to make purchases in.²¹⁶ Apple highlights that developers can avoid the commission entirely through the Reader Rule or Multiplatform Rule,²¹⁷ while Google speculates that the Inquiry relied on testimonies from local developers which, in its perspective, are contrary to the Inquiry's Business User Survey.²¹⁸ Google is of the view that its service fee is modest relative to the value that it provides.²¹⁹

95. Apple and Google submit that their commission fees are consistent with comparative platforms such as Amazon App Store, Samsung Galaxy Store, Microsoft Store, Sony PlayStation Store etc.²²⁰ They are of the view that these commission fees are at ordinary market levels. A summary of service fees charged by mobile app stores is provided below:

Table 4.1: Services fees for mobile app stores²²¹

Apple Store	Service fee
Google Play Store	30% (15% for the first \$1 million in revenue)
Apple App Store	30% (15% if less than \$1 million in revenue)
Huawei AppGallery	20% (education apps); 30% (gaming and other apps)
Samsung Galaxy Store	30% (or otherwise agreed upon)
Amazon Appstore	30%; 20% if revenue up to \$1 million in prior calendar year; 20% for video streaming subscriptions.

Source: publicly available information²²²

b. The Inquiry's response

96. Apple and Google have restricted the Inquiry from conducting the relevant tests to determine whether their commission fees are excessive as they have not provided the relevant financial information necessary to do so. Furthermore, they have not submitted alternative financial analysis to justify their fees. They submit that they do not record

costs related to running their app stores in South Africa and that such information is available on a global scale.²²³ The Inquiry has, therefore, relied on aggregated financial reports at company level. The Inquiry found that, Apple and Google's earnings continue to grow, and the App Store's operating margins remain extremely high at 70% at a global level,²²⁴ while Google's revenues increased by 65% between 2019 and 2021.²²⁵

216 Google RPR1 page 92 para 5.45.

217 Apple RPR1 page 12 para 2.30.

218 Google RPR1, page 98 para 5.61. The survey reported that 75% of developers submitted that the commissions charged by online platforms are fair, 25% found them to be "somewhat fair" and 0% found them to be "not fair." CC Survey conducted by Redflank, 2021.

219 Google RPR1, page 96 para 5.57.

220 Apple RPR1, page 11 and 12, para 2.29. Google RPR1 page 96 para 5.58.

221 OIPMI Provisional Report, Chapter 4, page 90 para 236 and Google RPR1, pages 96 and 97 para 5.58.

222 Available at <https://appleinsider.com/articles/16/06/08/apple-announces-it-will-offer-app-store-subscriptions-take-smaller-15-cut/>; <https://www.theverge.com/2017/10/19/16502152/google-play-store-android-apple-app-store-subscription-revenue-cut/>; <https://developer.apple.com/programs/video-partner/>; <https://developer.apple.com/apple-news/program/>; <https://techcrunch.com/2021/10/21/google-lowers-play-store-fees-to-15-on-subscriptions-apps-as-low-as-10-for-media-apps/>; <https://developer.apple.com/app-store/small-business-program/#:~:text=lt%20features%20a%20reduced%20commission,quality%20apps%20that%20customers%20love/>; <https://android-developers.googleblog.com/2021/03/boosting-dev-success.html>. [Access date: 20 April 2022]

223 Google Play RPR1.1(c), page 3 para 2. Apple WS1 page 4 para 14.5.

224 Apple SEC Form 10-k, 2021, pages 29 & 37.

225 Alphabet Inc SEC, Form 10-k, 2021, page 33.

for the convenience platforms provide them.²³³ However, this does not confirm their fairness.

4.4.2. In-app payment

a. Platforms' views

100. Google and Apple submit that in-app payment (IAP) enables them to efficiently collect commission on eligible developer sales.²³⁴ Google submits that its billing system, Google Play's Billing System (GBPS), is complementary to Play Store and has never been offered as a standalone product.²³⁵

Google submits that not only do physical stores offer a checkout counter, similar to what GPBS aims to achieve, but other digital stores such as Apple's App Store, PlayStation Store, Nintendo eShop, and the Xbox Games Store have also integrated distribution, content delivery and payment functionalities.²³⁶

101. Apple and Google submit that IAPs cannot be compared to other payment processing firms given the vast difference in the benefits they provide.²³⁷ They submit that their billing systems serve both user and developer where (1) users use a single set of payment details and are reassured that their payments are safe, which enables them to set budget controls and manage and monitor purchases,²³⁸ and (2); developers benefit from a secure and reliable process to collect payments for their apps and in-app content, and for managing refunds and customer complaints.²³⁹ Apple submits that the benefits of IAP towards consumer experience includes

a feature that allows parents to monitor their children's downloads and purchases; clear and conspicuous pricing; biometric authentication; email and purchase history; report a problem and refunds; restore purchase; subscription management and; fraud prevention.²⁴⁰ Apple submits that IAP allows for pricing flexibility where developers can set a local price for an app and the same price is automatically equalized in local currency across the App Stores' 175 storefronts around the world. Thus, opening developers to global services.²⁴¹

102. Both Apple and Google make use of their own billing systems in their respective app stores, Apple Pay and GBPS, and do not allow alternative billing systems within their platforms. Furthermore, they do not allow developers to steer users to an external platform for payment from within the app or app store. Google and Apple submit that it is a legitimate practice to adopt such anti-steering policies to safeguard the business model adopted and that there is nothing unusual about this setup.²⁴² Apple submits that the anti-steering rules simply prevent app developers from circumventing the requirement to use IAP and to pay Apple its commission where applicable.²⁴³

103. Apple submits that it does not restrict developers from engaging in general marketing activities or from communicating with individual users through email about payment methods outside of their iOS apps.²⁴⁴ Google submits that Play Store's Payments Policy allows developers to communicate with

233 Devson Software, RPR1.

234 Google RPR1 page 95 para 5.52. Apple RPR1 page 13 para 2.34.

235 Google RPR1 page 95 para 5.53.

236 Google RPR1 page 95 para 5.54.

237 Apple RPR1 page 13 para 2.35. Google RPR1 page 94 para 5.51.

238 Google RPR1 page 94 para 5.51.1. Apple RPR1 page 14 para 2.38.

239 Google RPR1 page 94 para 5.51.2. Apple RPR1 page 14 para 2.38.

240 Apple RPR1 page 13 and 14 para 2.36.1. to 2.36.8.

241 Apple RPR1 page 14 para 2.39.

242 Apple RPR1 page 13 para 2.34. Google RPR1 page 95 para 5.54.

243 Apple RPR1 page 15 para 2.42.

244 Apple RPR1 page 15 para 2.41.

users outside of the app and can advise users of alternative places to purchase content from there.²⁴⁵ Developers are, however, not allowed to make this communication from within the app stores, i.e., insert a link to their webpage from within the app stores which could lead to an alternative payment option online. Google submits that this is to prevent developers from free-riding and taking Play Store's benefits without paying a fee.²⁴⁶

b. The Inquiry's response

104. The Inquiry has not questioned the role and necessity of payment mechanisms on platforms. The Inquiry's concerns are the manner in which app stores run their in-app payment systems along with the commission fees charged, the lack of alternative systems on these platforms, and the anti-steering policies adopted which have proven to be anti-competitive and to the detriment of consumers.

105. The Inquiry agrees with Apple and Google that app stores and payment processors perform different functions and the fees charged should vary accordingly.²⁴⁷ Given the additional services provided by the platforms' IAP services, app stores should rightfully charge more than the 3% charged by other payment processors for their payment processing services alone.

106. Related to high commission fees, the prohibition of alternative IAP services on platforms has been the subject for litigation in several countries. Both Apple and Google have amended their anti-steering policies following subsequent regulation. Previously, Apple would not allow any communication with consumers on alternative payment

options, but now both Apple and Google allow developers to communicate with consumers through email and can advise users on alternative payment methods available. However, this requires developers to have access to consumer details which are not provided by App Store and Google's provision is only permissible for consumption only apps, i.e., apps delivering content that is only available outside of the app.²⁴⁸ This policy is quite restrictive of competition from alternative payment options. Thus, commission fees are not disciplined in any way.

107. Following a decision by the Japan Fair Trade Commission (JFTC), Apple now permits reader apps to provide an external link to their website for subscription and content. This policy is much more convenient for consumers given the ease of a direct link to a payment option, although one would still need to enter banking details which is not required in the App Store's IAP. However, this is still restrictive in that Apple only offers this for reader or consumption only apps which is defined in the policies of the application stores and subject to discretion,²⁴⁹ and neither Apple nor Google currently permit such links for apps that also make use of their IAP billing. Google offers User Choice Billing (UCB) which is also restrictive because, instead of effectively providing competition against GPBS and reduce commission fee, Play Store proceeds to add its own commission fee on transactions carried out on alternative payment systems. This removes the incentive for developers to consider other payment options, which is a 3-4% cost saving excluding charges from the alternative payment processor, and does not provide for effective competition. However, it

245 Google RPR1 page 97 para 5.59.

246 Google RPR1 page 97 para 5.59.

247 Google RPR1 page 95 para 5.55.

248 Google RPR1 page 97 para 5.59.

249 A South African private educational service providing digital content failed to have its app classified as a reader app on Apple, whereas on Google it has been allowed to be a consumption only app.

does grant developers to own the customer relationship which may be seen as a partial improvement for some developers.

4.4.3. Recommendation to end anti-steering provisions

108. The Inquiry witnessed that any attempt to enhance competition by introducing alternative in-app payment systems within app stores has been met with significant resistance from both Apple and Google. The Inquiry observed that providing for competing in-app payment systems will not solve the essential concern of high commission fees as other fees are levied and has instead recommended for a complete end to anti-steering provisions.²⁵⁰ Similar to Apple's Reader App Rule, this would involve the ability for apps to communicate an alternative external payment mechanism and provide a clickable link to make a payment from within the app stores.²⁵¹

a. Platforms' views

109. Apple submits that alternative in-app payment mechanisms may increase costs for app developers and negatively affect customer experience while impacting trust and security.²⁵² Apple submits that it would have to develop alternative ways to collect its commission if it were to be required to allow an alternative to Apple Pay and is convinced that an alternative or external payment option would be less efficient.²⁵³ Apple submits that this remedy risk, not only failing to meet the aim of increasing competition and consumer choice, but would reduce the existing choice

available to consumers while exposing them to privacy risk.²⁵⁴

110. Google submits that the remedy to end all anti-steering provisions is not justified given that Google has no payments monopoly on Android devices and does not prevent alternate app stores from having their own payment mechanism.²⁵⁵ Google further submits that this remedy would be ineffective as developers are already free to communicate with users outside of Play Store and that introducing clickable links within apps themselves might not materially increase awareness of other channels but rather add friction and worsen user experience.²⁵⁶ Google submits that the remedy is disproportionate as it would deprive it the opportunity to efficiently collect a service fee that it is entitled to charge in return for the range of services it provides to developers.²⁵⁷ Google submits that there are material risks associated with this recommendation which are not outweighed by any perceived benefits and that the Inquiry should weigh in the balance of the interest of users in a safe and secure payment environment, the need for Play Store to maintain its reputation as a safe app store, and the overall need for Google to be able to collect the service fee to fund continuous investments in the Android and Play ecosystems.²⁵⁸ Google submits that a prohibition on anti-steering provisions would undermine this balance.²⁵⁹ Google further emphasizes that allowing alternate billing systems to be used within Play Store would reduce efficiency and create scope for developers to avoid paying the fees they owe.²⁶⁰

250 OIPMI Provisional Summary Report page 53 para 147.

251 OIPMI Provisional Summary Report page 53 para 148.

252 Apple RPR1, page 13 para 2.35.

253 Apple RPR1, page 15 para 2.44.

254 Apple RPR1, page 15 para 2.25.

255 Google RPR1, page 102 para 5.77.

256 Google RPR1, page 102 para 5.79.

257 Google RPR1, page 102 para 5.80.

258 Google RPR1, page 103 para 5.80 and 5.81.

259 Google RPR1, page 103 para 5.83.

260 Google RPR1, page 95 para 5.52.

b. Stakeholders' views

111. Developers and smaller platforms support this recommendation.²⁶¹ However, developers raise concerns that this remedy would not achieve the desired results if Apple and Google will still charge a commission on purchases done outside the platforms,²⁶² as they have done alternative in-app payment options, or if there are additional "signup" or monthly fees levied on developers for making use of third-party payment providers.²⁶³ These concerns from developers are not misplaced given that Apple submits that if it were to be required to allow an alternative IAP, it would have to develop alternative ways to collect its commission that is owed contractually.²⁶⁴ Developers submit that the benefit of clickable links that redirect users to an external payment method is that app stores are unable to record or monitor those payments, however, if Apple and Google request a report on all transactions performed on the external alternative payment mechanism and then charge the developer a slightly-reduced fee then developers will have less incentive to redirect their users.²⁶⁵ Developers submit that they should be able to offer a "one click" solution which allows a user to simply click on the link and is able to process the payment in a seamless manner that looks essentially identical to the way a user would subscribe inside the app using Apple Pay or GPBS.²⁶⁶ Developers express that if the advantages of a platform's IAP are indeed significant then users, and developers alike, will remain dedicated to these IAP systems.²⁶⁷ Developers fear that there is little incentive for the customer to click through to developer's website from the app to make

payment and that this "hassle factor" will see the app store's own IAP being favoured by the majority of consumers.

112. PlayStore did not provide data on the number of users that have selected to make use of an alternative payment method as opposed to GPBS since the inception of the User Choice Billing (UCB) program.²⁶⁸ This is information that Play Store must be privy to given that they still need to charge an 11% commission fee on apps where users selected to make use of an alternative payment system. The Inquiry is of the view that the number of users that opted for an alternative payment system could be quite negligible.

c. The Inquiry's response

113. The Inquiry agrees that alternative in-app payment systems would not assist in disciplining app stores' commission fees as evidenced in other jurisdictions where these are permitted. Thus, an end to anti-steering policies and inclusion of an external link would introduce competition against the app stores' billing systems where they cannot charge an additional commission fee for payments. The Inquiry does not see how this would deprive app stores from collecting their commission fee, as Google argues, as this is just an inclusion of consumer options and not a requirement for app stores to remove their billing systems from the platforms.

114. Both Apple and Google pride themselves in their app review guidelines and processes and assures users that every app on the platform has been thoroughly vetted and

261 [Redacted]
262 [Redacted]
263 [Redacted]
264 Apple RPR1 page 15 para 2.44.
265 [Redacted]
266 [Redacted]
267 [Redacted]
268 [Redacted]

is safe. Thus, the risk and security concerns presented by both Apple and Google are contradictory to that fact. These external links will only be provided by apps that they have vetted and approved to operate on their platforms.

115. The Inquiry's recommendation was designed to address the lack of competitive constraints on the commission fees. This may be redundant if other remedies are effective. The Inquiry has observed the impact of different remedial actions being applied in different countries in making its assessment of what is both reasonable and practicable, but also likely to bring about a more competitive outcome. The EEA, as did the remedial action determined in the *Epic-Apple* case, has pursued the anti-steering provisions in the Digital Markets Act (DMA). The broader support for this recommendation not only indicates that it is both a practicable and reasonable remedy, but also potentially a comprehensive solution on its own. The DMA remedy is in response to similar findings as the Inquiry. The DMA also considers it necessary to add an additional requirement which is that there is a broader application of consumption only apps that are not limited to those defined by the app stores themselves. For instance, Apple restricts what app categories may fall within reader apps and it is fairly narrow and selective, e.g., e. educational apps are excluded from the list but magazines are included. As the DMA is in response to the same findings, this addition is most likely prudent.

[5. Business user competition findings and recommendations]

116. The Inquiry assessed practices of the leading platforms that may affect the ability of app developers to compete on these platforms and made provisional findings in this regard. This section of the final report provides responses to comments from stakeholders on these findings and their related recommendations.

5.1. Commission fees on business users

5.1.1. Findings on commission fees on business users

117. The Inquiry found that inadequate app store competition results in excessive commission fees, reducing domestic app developer incentives and higher pricing of global apps to South African consumers.²⁶⁹

a. Stakeholders' views

118. Developers submit that platforms with higher commission fees place significant pressure on the viability of their business and this could lead to higher prices by developers to ensure their businesses remain viable.²⁷⁰ Alternatively, losing 15% of their revenues to the app stores may weaken the resources available to engage in more innovation or development of the apps. However, some developers submit that Huawei App Gallery levies a 10% transaction fee on direct-carrier billing transactions and a 4% transaction fee on card purchases, in addition to their 15% or 30% revenue share whereas Play Store covers

these transaction fees themselves from their 15% revenue share.²⁷¹ These developers submit that they would rather pay a 15% commission fee than manage their own app payments such as handling end-users' cards getting declined, end-users' cards expiring, cancellation of subscriptions, refunds etc.²⁷²

119. Small platforms submit that they would not be able to cover their costs if they are forced to charge a lower commission fee.²⁷³ They do not earn sufficient revenue compared to the likes of Play Store which is able to offer an incentive for paid ads given its large consumer base and provide massive discounts while still earning exorbitant profit margins.

120. Developers submit that they are forced to charge the same fee across different platforms regardless of the payment mechanism.²⁷⁴ Users that pay using a credit card on the website pay the same amount as those that pay in-app using the app stores' IAP despite the fact that it costs the developer considerably more in commission fees for a user to purchase the app via an app store. Developers that have tried to price differently on their website compared to app stores have received massive backlash from unhappy customers due to the differences in prices.²⁷⁵ Developers submit that the difference in pricing left users that bought their app via the app stores disgruntled because they paid more than those that bought the app from the website and did

269 OIPMI Provisional Summary Report, page 59 para 169.1.

270 [REDACTED]

271 [REDACTED] <https://developer.huawei.com/consumer/en/doc/00002> [Access date: 29 March 2023].

272 [REDACTED]

273 [REDACTED]

274 [REDACTED]

275 [REDACTED]

not receive any additional offerings for the extra 30% that they were charged.²⁷⁶ Given the anti-steering rules, which hinder effective communication with users, developers eventually had to align all their prices to the higher pricing dictated by app stores. This is indicative of how high commission fees by app stores do harm consumers, including those that use additional distribution channels. For a relatively small developer in South Africa, these high commission fees can be very disincentivizing.

121. Developers submit that they are not free to set prices as they please and are restricted by app stores' lists of pre-set prices or "tiers" to choose from.²⁷⁷ These developers submit that the tier structures appear unappealing to users and are designed to force developers to select higher price tiers which are displayed in a much more appealing way than the lower price tiers.²⁷⁸

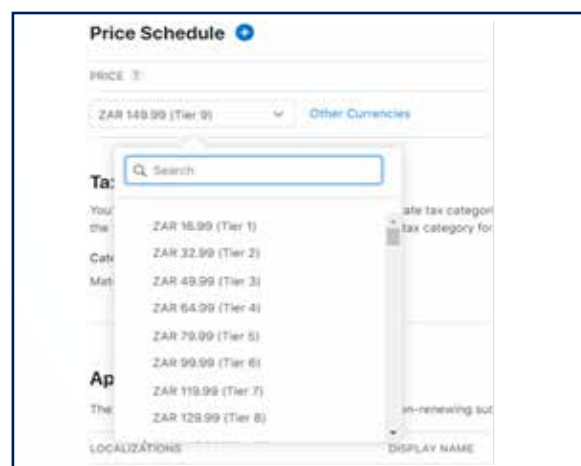
b. The Inquiry's response

122. Developers' willingness to pay current commission fees does not justify a steep and non-cost related commission fee, and the app stores' rationale for prohibiting alternative IAP services on platforms is still not clear. The Inquiry is of the view that commission fees should be set at reasonable levels. While the SBP may bring some form of relief to the majority of South African developers, enabling them to temporarily achieve higher revenues, these developers will eventually have to succumb to a 30% commission fee once they reach the \$1 million threshold, even at the slightest.²⁷⁹ This will leave such developers in a worse position as the increase in their sales would not offset the sudden doubling of the commission rate. This will cut their profit by another 15% and is likely to see them back under the SBP in the

subsequent year where they fail to achieve +\$1 million in revenue.

123. The Inquiry is also of the view that app stores' pricing systems are quite restrictive as they are set in the form of tiers and do not account for discounts where developers may wish to price differently across different storefronts. Developers set a price, limited to the tiers offered by the app stores, in their local currency and the same price is converted to the relevant currencies across the various store fronts. This subjects lower-income countries to high app prices from global developers who have had to set their app price with the 30% commission fee in consideration. Furthermore, for certain developers who wish to price lower, the lowest possible tier forces them to charge higher than they would have opted to. The Inquiry submits that developers should be allowed to set prices under a more flexible price-setting system and that localized app pricing, which would allow for different prices to be set per country/storefront, should be offered to developers for the benefit of users in lower-income countries. An example of App Store price tiers is shown below:

Figure 5.1: App Store Price Schedule



Source: Submission by developer²⁸⁰

276 [REDACTED]
 277 [REDACTED]
 278 [REDACTED]
 279 [REDACTED] slightly exceeded the \$1 million threshold in 2022 and was disqualified from the SBP in 2023.
 280 [REDACTED]

[REDACTED]

129. Google submits that this remedy is not workable given that it would require ongoing monitoring and review to ensure that the fee is set at the appropriate level and does not distort competition.²⁹⁴ Google is of the view that competition regulators typically lack the information needed to determine prices and adjust them as needed in real time (as a market would).²⁹⁵ Google submits that any order set to impose a particular fee model on Google Play would make the Commission a global outlier in antitrust enforcement in a world where no other regulator worldwide has set to determine what the Play Store service fee model should be.²⁹⁶

130. Google submits that this remedy could have other unintended side effects in that it could result in worse outcomes and higher prices for South African consumers.²⁹⁷ Google explains that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].²⁹⁸
Google submits that [REDACTED]

[REDACTED]

[REDACTED].²⁹⁹ Google further submits that reducing its service fee would dampen its incentive to keep innovating, investing in and improving the Play Store since the fee cap would restrict any returns on such investments.³⁰⁰ Google submits that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].³⁰¹

b. Stakeholders' views

131. Smaller platforms submit that commission fees should not exceed the industry standard of 30%.³⁰² They argue that smaller app stores have not achieved sufficient scale, like the leading platforms, and may not be able to cover their costs if a standard 10% commission fee for all app stores is implemented.³⁰³ They submit that they should be allowed to independently determine a reasonable commission rate to charge based on circumstances specific to their respective app stores.³⁰⁴

132. While some developers are grateful for the reduction of commission fees to 15% they, however, believe that 10% would be a fair

293 [REDACTED]

294 Google RPR1 page 107 para 5.106.

295 Google RPR1 page 106 para 5.98.

296 Google RPR1 page 107 para 5.107.

297 Google RPR1 page 108 para 5.108.

298 [REDACTED]

299 [REDACTED]

300 Google RPR1 page 108 para 5.108.5.

301 [REDACTED]

302 [REDACTED]

303 [REDACTED]

304 [REDACTED]

as compared to other countries³²⁰ and has left South African developers, with much less resources to compete, at a disadvantage.³²¹

a. Platform's views

143. Both Google and Apple submit that they provide sufficient support to local developers.³²² Despite the Inquiry's provisional recommendation for additional support, both have not made suggestions of additional support to South African developers. Google argues that it offers a variety of tools to SMEs and HDPs, assisting them with on-boarding and generating sales.³²³ Apple submits that it supports SMEs and HDPs all over the world through its SBP.³²⁴ Apple states that, [REDACTED]

[REDACTED]
[REDACTED]³²⁵ and [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].³²⁶

144. Google disagrees with the Inquiry in that SA developers remain undiscoverable due to the lack of SA-specific policies/ support mechanisms and provides News24 as an example of one of the South African apps which have been discovered and used by South African consumers.³²⁷ Google submits that it provides a local app discovery feature and top chart results are shown on a country-specific basis.³²⁸ Google states that app rankings in South Africa are made on a national basis. Google submits that a developer can increase discoverability by building an app and recommending to

others as word-of-mouth is often critical to an app's success.³²⁹

b. The Inquiry's response

145. The Inquiry has not disputed that Apple and Google do provide SME and HDP support and have done so in the past years. The Inquiry highlights that the existing tools and measures have not been effective in assisting South African developers improve their discoverability on the platforms. This is due to the fact that the current model of these platforms tends to favour large developers with strong financial backing, of which few of the South African developers can compare. South African developers are hindered from competing effectively due to features of the market and App Store design.

146. Google could only give reference to one South African app when elaborating on the range of South African apps which were discovered and used in South Africa.³³⁰ News24 is not a good example in this context given that (1) the Inquiry's concern is with paid apps, (2) it is an app that provides news relevant to South Africans and is more likely to be used by South Africans and (3) it is one of the few apps owned by a large group with sufficient financial backing for marketing and promotions.³³¹ Although app rankings on the Play Store do consider a user's location, platforms' search results largely feature popular global apps that have previously achieved large download volumes.³³² While word-of-mouth can be an efficient way to help your app get discovered on platforms, this requires financial resources, which

320 OIPMI Provisional Report, Chapter 4 page 97 para 254.

321 OIPMI Provisional Report, Chapter 4 page 96 para 251.

322 Google RPR1 page 100 para 5.70. Apple RPR1 page 28 para 10.4.

323 Google RPR1 page 100 para 5.71. Google submitted examples of such tools in response to the Inquiry's Further Statement of Issues.

324 Apple RPR1 page 28 and 29 paras 10.4 and 10.6.

325 Apple Engagements on Provisional Report and Proposed Remedial Actions dated 14 December 2022, para 3.1.

326 Apple Engagements on Provisional Report and Proposed Remedial Actions dated 14 December 2022, para 3.2 and 3.3.

327 Google RPR1, page 101 para 5.72.

328 Google RPR1 page 101 para 5.73.

329 Google RPR1 page 101 para 5.75.

330 Google RPR1 page 101 para 5.72 Google identified News24, a subsidiary of the Naspers Group.

331 News24 is owned by the multinational media company, Naspers.

332 [REDACTED]

majority of South African developers do not have compared to global developers.

147. Apple could only refer to the SBP in its commitment towards the support of SA developers. Although the SBP was not primarily implemented to assist South African developers,³³³ local developers could benefit from the reduced commission fees. Local developers have submitted that reduced commission fees allow them to use their cost savings on improving their apps and marketing them.³³⁴ However, this has not been sufficient in improving the discoverability of many South African apps on the App Store. Apple supports developers in other countries through corporate social investments³³⁵ but does not award South African developers the same courtesy despite the revenues it earns from them.

148. Both Apple and Google have offered country-specific initiatives in other countries and very few to none in South Africa. Thus, the Inquiry has made country-specific recommendations aimed at assisting South African developers improve their discoverability and visibility on app stores.

5.3.2. Recommendation for SA-specific curation of local apps

a. Platforms' views

149. Apple disagrees with the Inquiry's approach and submits that it would be unlawful and inappropriate for the Inquiry to require the implementation of measures specifically to support South Africans.³³⁶ Apple considers these recommendations as a "one-size-fits-all" approach and that such an approach might hinder Apple from formulating appropriate measures to assist HDP and SME developers.³³⁷ Apple submits that this approach bundles it with other firms, some of which are already well-established in South Africa, and would more likely undermine competition and consumer welfare given how overly transparent and uniform the approach is.³³⁸ Apple submits that the approach runs the risk of chilling competition, dynamism and investment in the sector.³³⁹ Apple disagrees on an approach that sees Apple implementing measures specifically to support South Africans.³⁴⁰

150. Google submits that, with respect to the importance of showcasing opportunities for local developers, Play Store provides a local app discovery feature and the top chart results are shown on a country-specific basis.³⁴¹ Google submits that app rankings in South Africa are, therefore, made on a national basis and not on an Africa-wide scale as highlighted by the Inquiry in the Provisional Report.³⁴² For this reason, amongst others, Google expresses its reservations with this recommendation. Google submits that this

333 [Redacted]
334 [Redacted]
335 [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

<https://www.apple.com/ie/newsroom/2021/09/apple-expands-naples-developer-academy-creating-new-opportunities-for-european-entrepreneurs/>. [Access date: 02 July 2023]

Apple has recently announced that its upcoming test labs in six cities around the world will give developers an opportunity to experience and develop apps for its new product launch, the Vision Pro. These cities include Cupertino, London Munich, Shanghai, Singapore, and Tokyo. <https://www.thenationalnews.com/business/technology/2023/06/25/apple-to-open-labs-to-help-developers-create-experiences-for-new-vision-pro-headset/?outputType=amp>. [Access date: 02 July 2023]

336 Apple RPR1, page 29 para 10.8.

337 Apple RPR1, page 29 para 10.7.

338 Apple RPR1, page 29 para 10.7.

339 Apple RPR1, page 29 para 10.7.

340 Apple RPR1, page 29 para 10.8.

341 Google RPR1, page 101 para 5.73.

342 Google RPR1, page 101 para 5.73.

recommendation would not be justified because (1) Play Store's 'Top Charts' are already national in scope, (2) Google already promotes local apps and (3) Google also has a set of tools from which SMEs and HDPs can benefit.³⁴³

151. Google also highlighted concerns with the workability of this proposal given that relying on a developer having a South African address could be open to abuse as this does not prove whether an app has actually been developed in South Africa.³⁴⁴ Google submits that 'local apps' would need to be carefully defined in a way that is both practical and meaningful to address the Inquiry's concern.³⁴⁵

b. Stakeholders' views

152. The concern on accurately identifying South African apps is shared by some developers that submit that some global companies develop apps for South Africans and these apps are promoted to South Africans with the assumption that they are South African based.³⁴⁶ Certain developers also submit that South African developers were previously not allowed to have a merchant account on Play Store and were forced to start companies in eligible countries (such as in the UK) in order to distribute apps on Play Store. They submit that, even though they are now eligible for a merchant account on Play Store, migrating their companies back to South Africa has proven to be too much of a hassle and have opted to continue operating through the UK.³⁴⁷

153. The recommendation for the SA-specific curation of local apps is supported by smaller platforms³⁴⁸ and local developers alike.³⁴⁹ These developers submit that they have apps on Play Store that would not get discovered organically and would otherwise have to spend money on Google Ads campaign to promote these apps and get them noticed.³⁵⁰ Developers submit that platforms are currently flooded and users only get sight of the top ten apps when conducting a search.³⁵¹ Apart for apps that have paid for ad promotions, these top apps are normally apps with the most downloads and/or views, thus a section with apps relevant to the area/local community would play a huge role in empowering SMEs and HDPs in South Africa.³⁵² Local developers emphasise the need for the effective and efficient functionality of this recommendation as prominence and visibility is of importance.³⁵³ Developers are of the view that this can be easily implemented given that platforms would not necessarily need to change but can have the curation within the actual platforms by way of a filter or a tab which allows one to see local apps only.³⁵⁴ Developers submit that platforms can make it part of their marketing campaigns where local developers that published the apps are made known to local users.³⁵⁵

154. A stakeholder, however, questions the practical value of SA-specific curation of local apps and submits that the origin of an app developer is already indicated on platforms and that the vast majority of consumers and businesses are not concerned with the origin

343 Google RPR1, page 109 para 5.109 and 5.110.

344 Google RPR1, page 109 para 5.111.

345 Google RPR1, page 109 para 5.111.

346 [REDACTED]

347 [REDACTED]

348 [REDACTED]

349 [REDACTED]

350 [REDACTED]

351 [REDACTED]

352 [REDACTED]

353 [REDACTED]

354 [REDACTED]

355 [REDACTED]

of an app that they seek via a platform.³⁵⁶

c. The Inquiry's response

155. The Inquiry agrees that concerns on accurately identifying a South African app are valid, but none of which neither Google nor Apple would lack the ability and resources to effectively address.

156. Curation has grown in sophistication and in the number of sub-categories to accommodate the vast number of apps within the broad categories. Competition in the app stores is global and as much as the South Africa storefront has apps from across the world alongside local apps, local app developers can make their apps available on storefronts in many other countries. Local app developers must therefore compete through curation for visibility and discoverability both at home and abroad. Thus, although Apple and Google have other measures in place to support small businesses, country specific curation of local apps would be additionally be more effective.

157. Neither the Apple App Store nor the Google Play Store has local curation of apps despite the hundreds of millions in revenue generated from South Africa each year. Local apps may have particular relevance for domestic consumers, but the lack of local curation means this would not be a factor in the editorial process, with global apps served up instead. The result is that competition from domestic apps is impeded, and consumers are not well served.

158. The Inquiry acknowledges that platforms do make the country origin of certain apps public, however, this does not assist in the discoverability and visibility of these apps and does not function as effectively as the local curation of apps would. The usage of these locally curated apps would remain at

the discretion of users. The importance is for local users to at least know that these apps exist and that local developers do develop similar apps to global apps. This will provide local developers with an opportunity to fairly compete with large global developers for local users and be discovered. The Inquiry promotes the "support local businesses" campaign and has made this recommendation to that effect. Developers have submitted that they themselves would consider downloading apps in support of local businesses as opposed to big international companies, provided that a legitimate way of explicitly indicating the app's country of origin is made available on the app stores.³⁵⁷

159. With regards to Apple's view on the Inquiry's recommendations, the Inquiry does not consider it unlawful to support local app developers as the current design of the store and its operations hinder their effective competition. Moreover, Apple does support developers in other countries already through corporate social investments. If Apple does not like the one-size-fits all approach, then the Inquiry would welcome a proposal from Apple as it has done for all other intermediation platforms. Unfortunately, no such proposal has been received, nor has there been any constructive engagement on the remedy. Thus, the Inquiry is forced to make its own determination.

5.3.3. Recommendation for free promotional credits for SA apps

160. Due to the majority of South African developers' insufficient resources to participate in paid promotion services and effectively compete on platforms, the Inquiry has made a recommendation for free promotional credits to assist South African developers promote their apps on platforms.

a. Platforms' views

356 [REDACTED]
357 [REDACTED]

161. Firstly, Google submits that this remedy would not be justified given that the Inquiry has not made a case for privileging South African apps over other jurisdictions and would be unfair to developers in other countries.³⁵⁸ Both Apple and Google raised concerns [REDACTED].³⁵⁹ Google submits that this would unduly advantage SA apps over local apps if those SA apps are being sold outside of South Africa.³⁶⁰

162. Secondly, Google submits that the remedy would not be workable and creates challenges from an implementation perspective as it is unclear (1) whether this proposal is intended to apply only to South Africa or globally, (2) the amount of credits that would be provided, and (3) how the Inquiry proposes to define a South African developed app.³⁶¹ Lastly, Google submits that the remedy would not be effective given that promotional credits are generally limited in time and are not intended to boost engagement on a long-term basis.³⁶²

163. Apple submits that it, [REDACTED].³⁶³

b. Stakeholders' views

164. The recommendation for promotional credits is supported by smaller platforms that submit that platforms need to provide marketing support to app developers in South Africa.³⁶⁴ Developers welcome this recommendation and submit that free promotional credits would help improve the visibility of their apps on the app stores, especially to the South African audience.³⁶⁵ They submit that this will form part of a bigger marketing plan for local apps to be more discoverable.³⁶⁶ Some developers raised concerns on the implementation of this recommendation given that free offerings are not always valued and that some developers may not take full advantage of the promotional credits.³⁶⁷ These developers submit that these free promotional credits should be awarded to businesses that are making a certain amount of revenue weekly or monthly. They emphasized the need for one to qualify for these promotional credits as opposed to granting them to any and/or every South African developer.³⁶⁸

c. The Inquiry's response

165. The Inquiry considers that there are good reasons for providing greater support for local app developers given the revenues earned, the application store design and dominance which govern who wins and who loses. Such reasons may be unique to South Africa but even if not, the fact that Google may need to provide support in other developing countries should not determine whether it is required in South Africa or not. The Inquiry is of the view that these

358 Google RPR1 page 109 paras 5.112 and 5.113.

359 Google RPR1 page 110 para 5.117. Apple Engagements on Provisional Report and Proposed Remedial Actions dated 14 December 2022.

360 Google RPR1 page 110 para 5.117.

361 Google RPR1 page 109 and 110 paras 5.114 to 5.116.

362 Google RPR1 page 110 para 5.118.

363 Apple Engagements on Provisional Report and Proposed Remedial Actions dated 14 December 2022.

364 [REDACTED]

365 [REDACTED]

366 [REDACTED]

367 [REDACTED]

368 [REDACTED]

remedies are practicable and reasonable for application stores as the remedies make use of existing features of the application stores and are unlikely to be costly to implement, especially relative to the revenues that these stores make in South Africa. They are unlikely to result in material unintended consequences.

166. The Inquiry is open to discuss and agree on the workability of this remedy with Apple and Google where a criterion for qualifying South African developers and the value of credits provided are clarified.

[6. Appendices]

6.1. Appendix A - Summary of General Court Judgment

1. On 09 October 2018, Google LLC and its parent company Alphabet, Inc. (“the applicants”) submitted an appeal application to the General Court of Justice to annul the European Commission (EC)’s decision of 18 July 2018 in case COMP/AT.40099.³⁶⁹ In support of the action, the applicants relied on six pleas in law, with the first plea alleging that the contested decision errs in its assessments of market definition and dominance. The applicants submit that the contested decision errs in (1) finding Android dominant and (2) finding Play Store dominant.³⁷⁰ In the Provisional Report, the Inquiry adopted a similar approach to defining the market as the EC. Thus, the judgement of the General Court is of importance in establishing the provisional findings of the Inquiry.
2. The EC identified (1) the worldwide market (excluding China) for licensing of OSs and (2) the worldwide market (excluding China) for Android app stores.³⁷¹ The EC found that Google held a dominant position on both markets and was, to an appreciable extent, able to behave on those markets independently of its competitors, its customers, and consumers.³⁷² The EC took into account whether Apple poses any

competitive constraint on Google which it described as an indirect constraint and only on the level of users and app developers, which it found to be insufficient to call into question Google’s dominant positions.³⁷³

a. Market for licensing of OSs for smart mobile devices

3. The EC did not include OSs for computers, OSs for mobile devices with limited functionality and non-licensable OSs. Further, the EC did not distinguish between OSs for smartphones or for tablets.³⁷⁴ Similar to the arguments it made to the Inquiry, Google submitted that the EC erred in its assessment of Google’s position in the market by failing to properly consider the competition from non-licensable OSs such as Apple’s iOS.³⁷⁵ Google criticizes the EC for having defined that market from the perspective of OEMs and not of users and app developers, who would take account of the competitive constraint exerted by Apple.³⁷⁶ The EC found that Google held a dominant position on the market for licensable OSs and relied on (i) Google’s market share, (ii) its evolution over time, (iii) examination of barriers to entry and expansion, (iv) the lack of countervailing power and (v) the fact that non-licensable OSs such as the iOS exercised an insufficient competitive constraint.³⁷⁷

369 <https://curia.europa.eu/juris/document/document.jsf?text=&docid=208802&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1991494> [Access date: 12 February 2023].

370 <https://curia.europa.eu/juris/document/document.jsf?text=&docid=208802&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1991494> [Access date: 12 February 2023].

371 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 120.

372 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 121.

373 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 122.

374 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 130.

375 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 132.

376 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 134.

377 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 131.

The competitive constraint exerted by non-licensable OSs

4. The General Court found the various items of evidence relied on by Google that Apple exerts a competitive constraint to be insufficient and agreed with the EC that competitive constraint from the users and app developers' perspective was not only indirect but also insufficient.³⁷⁸ Google also claimed that the size of its investment in Android and the parallel innovations of Android and iOS are evidence of vigorous competition with Apple.³⁷⁹ The General Court, as did the EC, found that these investments are attributable to the fact that Android was an essential element of Google's strategy for responding to the challenge of the shift of the mobile internet and the parallelism of innovation was not as regular as Google claimed.³⁸⁰ The General Court relied on the EC's finding that some of the pre-2011 updates of Apple's iOS were only intermediate updates to maintain the OS and the slowdown in Android updates from 2011, aligning with those of the iOS, was probably accounted for by the fact that Google acquired significant market power from that date, enabling it to keep Android versions in place longer without having to invest as much in updating them as in the past.³⁸¹ The General Court supported the EC for having placed the alleged innovation race between Android and iOS over 2008 to 2011 in context, where only three successive version of iOS had been developed compared with seven for Android.³⁸² The General Court stated that the EC correctly concluded that the decrease in the frequency of Android updates from 2011

was capable of substantiating the existence of Google's market power, rather than reflecting the competitive constraint exerted by Apple.³⁸³

The SSNDQ test

5. The EC envisaged the possibility of a deterioration in the quality of Android in order to assess Google's position on the market for licensable OSs.³⁸⁴ The General Court found the SSNDQ test to constitute relevant evidence for the purpose of defining the relevant market, given that competition can take place in terms of quality and innovation, and also to verify whether Google was constrained by competition from Apple, which was outside the market.³⁸⁵ The General Court submitted that, contrary to Google's argument, a precise quantitative standard of degradation of quality of the target product cannot be a prerequisite for the application of the SSNDQ test, and that all that matters is that the quality degradation remains small, albeit significant and non-transitory.³⁸⁶ The General Court stated that the EC correctly considered the quality degradation of Android by means of the SSNDQ test.³⁸⁷ The EC indicated that users and app developers of licensable OSs were not sufficiently sensitive to a deterioration in the quality of Android and, because of this indirect and insufficient constraint, the EC found that non-licensable OSs did not belong to the same market as licensable OSs and the undertakings operating the former would not counterbalance Google's market power.³⁸⁸

378 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Paras 146 and 146.

379 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 148.

380 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 150.

381 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 150.

382 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 151.

383 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 151.

384 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 174.

385 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Paras 177 and 178.

386 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 180.

387 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 181.

388 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Paras 174 and 175.

User loyalty to OS

6. The EC considered user loyalty as a relevant parameter for ruling out the possibility of substantial switching by users to another OS in the event of a small deterioration in the quality of Android.³⁸⁹ Contrary to Google's argument, who attributes loyalty to be a function of the quality of Android, the General Court found the EC fully entitled to rely on the loyalty of users to Google's OS in order to assess the scope of the competitive constraint exerted by Apple.³⁹⁰ The EC found that user loyalty could not be attributable to the quality of the OS alone.³⁹¹ First, the high degree of user loyalty to Android could also be accounted for by the difficulties users encountered in porting personal data or by the need to repurchase apps.³⁹² Second, Google's efforts to respond to user demand reflects the strategy of any undertaking wishing to innovate and respond to its users' needs, it is not solely due to the risk of those users switching to another OS.³⁹³ Third, the EC found evidence that revealed switching to another OS, however, the extent of this was limited.³⁹⁴ In the period between 2013 and 2015, only 16% of users of Apple mobile devices previously used an Android device and 82% of Android device users remained loyal to Android when making a new purchase in 2015.³⁹⁵ The EC found that many users did switch to Apple at the end of 2015, however, it was because of the launch of a new smart mobile device with new features.³⁹⁶

The sensitivity of users to the quality of the OS

7. Google argued that quality was the determining factor in consumer choice and that users were sensitive to any deterioration in the quality of Android.³⁹⁷ The General Court supported the EC's finding that, with multiple factors determining a user's choice, it was unlikely that a deterioration in the quality of Android would lead users to switch from a device operating on a licensable OS to a device operation on a non-licensable OS.³⁹⁸ Although the EC did indicate that the OS was an important factor in the choice of a smart mobile device, the EC also found that there are other factors taken into account by users.³⁹⁹ The EC found other determining factors such as the brand or model of the mobile device, the cost, ease of use, network and carrier.⁴⁰⁰ The EC found that many users of licensable OSs used devices running older versions of Android, i.e., in May 2017, only 7.1% of users had a device operating on the latest version of Android, although that version had been available since October 2016.⁴⁰¹ The EC found that a very small portion of users indicated that they had switched to Apple device because of the OS quality and brand. Thus, while the quality of the OS might be a crucial factor, it was not the determining factor in the purchase of a new device.⁴⁰²

389 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 182.

390 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Paras 182 and 189.

391 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 184.

392 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 184.

393 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 185.

394 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 186.

395 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 186.

396 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 187.

397 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 190.

398 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 199.

399 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 193.

400 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 196.

401 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 198.

402 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 196.

The cost of switching to another OS

8. The EC found that factors such as the loyalty of users to their OS, the attributes of the device and the need to repurchase new apps were factors inhibiting users from switching to another OS.⁴⁰³ This is a finding supported by the General Court, which submits that switching to another mobile OS could lead to additional cost, constituting a further barrier to users switching to Apple.⁴⁰⁴ The General Court acknowledges that users may spend little on apps compared to the cost of a mobile but stated that however small that additional cost was, it could not be avoided and it did constitute a barrier to users switching.⁴⁰⁵ The EC also found that Apple's launch of an app to facilitate the move from Android to iOS did show that switching was a source of concern, however, this also reflected that switching requires users to familiarize themselves with a new interface, making it necessarily more complex and uncertain. Thus, an attempt by Apple to make switching easier cannot be interpreted as meaning that switching was effective.⁴⁰⁶

The effect of Apple's pricing policy

9. The General Court found that the EC was correct to conclude that Apple's pricing policy constituted a barrier to switching for the vast majority of Android device users and that, although this may not be a concern for users of higher-end devices, these users' switching still depended on their loyalty to their OS.⁴⁰⁷

The behaviour of app developers

10. The General Court stated that the EC did not err in its assessment and finding that app developers would not switch from Android in the event of a small deterioration in the quality of that OS.⁴⁰⁸ The EC found that the lack of switching by users in the event of a small deterioration in the quality of Android implies a lack of switching on the part of app developers.⁴⁰⁹ The General Court acknowledged that Android was the most widely used platform, therefore app developers had every interest in targeting the large majority of users.⁴¹⁰ Likewise, the fact that app developers were operating for several OSs reinforced the finding that a deterioration in the quality of Android would not have stopped the development of an app for Android.⁴¹¹

b. Market for Android apps

11. The EC considered the market for Android app stores which included all app stores for Google Android devices as well as app stores for other Android devices.⁴¹² The EC excluded a set of apps (including those that may be downloaded directly from the internet) that did not belong to the same market as an app store as well as app stores for other licensable OSs and app stores for non-licensable OSs.⁴¹³ The EC then concluded that Google held a dominant position in the market for Android app stores with the Play Store.⁴¹⁴ The EC relied on Google's market shares, the quantity and popularity of downloadable apps and

403 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 200.

404 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 205.

405 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 203.

406 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 204.

407 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 215.

408 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 221.

409 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 216.

410 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 218.

411 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 220.

412 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 235.

413 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 235.

414 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 236.

update functionalities, the obligation to use the Play Store in order to obtain Google Play Services, the existence of barriers to entry, the lack of countervailing buyer power of OEMs, and the insufficient competitive constraint from app stores for non-licensable mobile OSs.⁴¹⁵

12. The General Court acknowledged that the OS is a prerequisite for the functioning of a mobile device, the proper functioning and variety of available apps also depend on its quality.⁴¹⁶ The General Court then established that the merits of the second part of the plea depend on the merits of the first part as it is not possible that a competitive constraint exercised by the App Store on the Play Store would differ in intensity from that exercised by iOS on Android.⁴¹⁷ Google’s arguments in support of the first part of the first plea were rejected as being unfounded, confirming that there is insufficient competition for Android from Apple’s iOS, resulting in Google’s arguments in support of the second part of the first plea to not being upheld.⁴¹⁸

6.2. Appendix B - List of Submissions

Submission made by	Stakeholder type	Submission full name	Submission date	Report shorthand Reference
██████████	Developer	Response to Provisional Report	12 September 2022	██████████ RPR1
██████████	Developer	Response to Follow-up to Provisional Report	30 September 2022	██████████ RPR1.1(a)
██████████ ██████████	Developer	Response to Provisional Report	03 August 2022	██████████ ██████████ RPR1
██████████ ██████████	Developer	Response to Follow-up to Provisional Report	03 March 2023	App Developer Studio RPR1.1 (a)
Apple	Platform	Response to Provisional Report	26 August 2022	Apple RPR1
Apple	Platform	Response to Follow-up to Provisional Report	17 September 2022	Apple RPR1.1(a)
Apple	Platform	Response to RFI5	21 October 2022	Apple WS5
Apple	Platform	Engagements on Provisional Report and Proposed Remedial Actions	14 December 2022	Apple Engagements on Provisional Report and Proposed Remedial Actions
Apple	Platform	Comments on Section 78 Regulations	17 March 2023	Apple Comments on Section 78 Regulations

415 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 237.

416 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 249.

417 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 252.

418 Case T- 604/18, Google LLC and Alphabet Inc vs European Commission, Para 253.

Submission made by	Stakeholder type	Submission full name	Submission date	Report shorthand Reference
Apple	Platform	Engagements on Provisional Report and Proposed Remedial Actions	13 June 2023	Apple Engagements on Provisional Report and Proposed Remedial Actions
Apple	Platform	Engagements on Provisional Report and Proposed Remedial Actions	14 July 2023	Apple Engagements on Provisional Report and Proposed Remedial Actions
Cell C	Telecom	Response to RFI1	20 September 2022	Cell C WS1
██████	Developer	Response to Provisional Report	18 August 2022	██████ RPR1
Federal Trade Commission	Stakeholder	Meeting with the Federal Trade Commission	12 October 2022	Federal Trade Commission VM1
██████	Developer	Response to Provisional Report	24 August 2022	██████ RPR1
██████	Developer	Response to Provisional Report	24 August 2022	██████ RPR1.1(a)
Google	Platform	Response to Provisional Report	02 September 2022	Google RPR1
Google	Platform	Response to Follow-up to Provisional Report Tranche 1	14 October 2022	Google RPR1.1(a)
Google	Platform	Response to Follow-up to Provisional Report Tranche 2	25 October 2022	Google RPR1.1(b)
Google	Platform	Response to Follow-up to Provisional Report Tranche 3	28 October 2023	Google RPR1.1(c)
Google	Platform	Response to Follow-up to Provisional Report Tranche 4	02 November 2022	Google RPR1.1(d)
Google	Platform	Response to RFI5 Tranche 1	14 December 2022	Google WS5 (a)
Google	Platform	Response to RFI5 Tranche 2	22 December 2022	Google WS54 (b)
Google	Platform	Meeting with Google	19 September 2022	Google VM1
Google	Platform	Meeting with Google	08 November 2022	Google VM2
Google	Platform	Meeting with Google	14 December 2022	Google VM3

Submission made by	Stakeholder type	Submission full name	Submission date	Report shorthand Reference
Google	Platform	Meeting with Google	11 January 2023	Google VM4
Google	Platform	Meeting with Google	03 February 2023	Google VM5
Google	Platform	Meeting with Google	10 February 2023	Google VM6
Google	Platform	Meeting with Google	29 March 2023	Google VM7
Google	Platform	Meeting with Google	06 April 2023	Google VM8
Google	Google	Engagements on provisional report and proposed remedial actions	11 August 2022	Google, Engagements on provisional report and proposed remedial actions.
Google	Google	Engagements on provisional report and proposed remedial actions	19 September 2022	Google, Engagements on Remedial actions.
Google	Google	Engagement on Proposed Remedial Actions	04 November 2022	Google Email on Proposed Remedial Actions
Google	Google	Engagements on provisional report and proposed remedial actions	08 November 2022	Google, Engagements on Remedial actions.
Google	Google	Engagements on provisional report and proposed remedial actions	14 December 2022	Google, Engagements on Remedial actions.
Google	Google	[REDACTED]	14 December 2022	[REDACTED].
Google	Google	Google letter in response to questions from the Panel	09 January 2023	Google response letter
Google	Google	Engagements on provisional report and proposed remedial actions	11 January 2023	Google, Engagements on Remedial actions.
Google	Google	[REDACTED]	25 January 2023	[REDACTED].
Google	Google	Engagements on provisional report and proposed remedial actions	03 February 2023	Google, Engagements on Remedial actions.
Google	Google	Engagements on provisional report and proposed remedial actions	10 February 2023	Google, Engagements on Remedial actions.
Google	Google	[REDACTED]	08 March 2023	[REDACTED].

Submission made by	Stakeholder type	Submission full name	Submission date	Report shorthand Reference
Google	Google	Engagements on provisional report and proposed remedial actions	29 March 2023	Google, Engagements on Remedial actions.
Google	Google	Response to further Request for information	03 April 2023	Cover letter
Google	Google	████████████████████ ██████████	03 April 2023	██████████ ██████████
Google	Google	Engagements on Remedial Actions	06 April 2023	Google, Engagements on Remedial actions.
Google	Google	████████████████████ ██████████	08 April 2023	██████████ ██████████
Google	Google	Engagements on Remedial Actions	12 May 2023	Google, Engagements on Remedial actions.
Google	Google	Google Covering Letter	03 March 2023	Google covering letter
Google	Google	████████████████████ ██████████	03 March 2023	██████████ ██████████
Google	Google	Response to further Request for information	08 March 2023	Cover letter
Google	Google	████████████████████ ██████████	08 March 2023	██████████ ██████████
Google	Google	Google response to information requested and update.	13 March 2023	Response letter.
Google	Google	Response to Remedial Actions	19 June 2023	Google, RRA1
Google	Google	Engagements on Google's response to Remedial Actions	23 June 2023	Google, Engagements on Google's response to remedial actions.
Google	Google	Response to Remedial Actions	12 July 2023	Google, RRA 2
Huawei	Platform	Response to Provisional Report	25 August 2022	Huawei RPR1
IESA	Developer	Response to Provisional Report	09 September 2022	IESA RPR1
Japan Free Trade Commission	Stakeholder	Response to Provisional Report	29 August 2022	Japan Free Trade Commission RPR1
Japan Free Trade Commission	Stakeholder	Response to follow-up to Provisional Report	30 August 2022	Japan Free Trade Commission RPR1.1(a)
██████████	Developer	Response to Provisional Report	18 September 2022	██████████ RPR1

Submission made by	Stakeholder type	Submission full name	Submission date	Report shorthand Reference
██████████	Developer	Meeting with Match Group	30 August 2022	██████████ VM1
██████████	Developer	Response to Follow-up to Provisional Report	24 March 2023	██████████ RPR1.1(a)
██████████	Developer	Response to Provisional Report	07 September 2022	██████████ RPR1
MTN	Telecom	Response to RFI2	09 September 2022	MTN WS2
MTN	Telecom	Response to Follow-up to RFI2	01 November 2022	MTN WS2.1
Samsung	Platform	Response to Provisional Report	24 August 2022	Samsung RPR1
Samsung	Platform	Response to Follow-up to Provisional Report	14 September 2022	Samsung RPR1.1(a)
Telkom	Telecom	Response to RFI1	20 September 2022	Telkom WS1
Telkom	Telecom	Response to Follow-up to RFI1	03 November 2022	Telkom WS1.1
██████████ ██████████	Developer	Response to Provisional Report	24 August 2022	██████████ RPR1