

NOTICE OF FILING

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A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 17

Rule 8.05(1)(a)

Further Amended Statement of Claim

VID 342 of 2022

Federal Court of Australia

District Registry: Victoria

Division: General

BRETT MCDONALD

First Applicant

DARK ICE INTERACTIVE PTY LIMITED (ACN 153 761 276)

Second Applicant

GOOGLE LLC (and others named in the Schedule)

Respondents

Amendments to Statement of Claim

This Further Amended Statement of Claim incorporates amendments previously made on 23 March 2023. The amendments to this Statement of Claim as denoted in underline and strikethrough were made on 15 December 2023.

Filed on behalf of	<u>Brett McDonald and Dark Ice Interactive Pty Ltd (Applicants)</u>
Prepared by	<u>Joel PhibbsPaul Zawa</u>
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PART I: PARTIES

Applicants and Group Members

1. This proceeding is commenced as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) by the Applicants and on behalf of all persons who at any time during the period from 6 November 2017 to 20 June 2022 (**Relevant Period**):
 - a. purchased:
 - i. an Android App (as defined in paragraph 7(c) below) on an Android Smart Mobile Device (as defined in paragraph 35 below) from the Australian Play Store (as defined in 7(b)(i)); and/or
 - ii. in-app digital content within such Android App; and

suffered loss or damage by reason of the conduct of the Respondents pleaded in the Originating Application and this Statement of Claim (**Android Device Group Members**);
 - b. supplied:
 - i. an Android App on Android Devices via the Australian Play Store; and/or
 - ii. in-app digital content within such Android App; and

suffered loss or damage by reason of the conduct of the Respondents pleaded in the Originating Application and this Statement of Claim (**Android App Developer Group Members**); and
 - c. were not, during any part of the Relevant Period, and are not, as at the date of this Application, any of the following:
 - i. a related party (as defined by s 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**) of any Respondent;
 - ii. a related body corporate (as defined by s 50 of the *Corporations Act*) of any Respondent;
 - iii. an associated entity (as defined by s 50AAA of the *Corporations Act*) of any Respondent;
 - iv. an officer or associate (as defined by s 9 and s 11 of the *Corporations Act*) of any Respondent;
 - v. a Justice or the Chief Justice of the Federal Court of Australia, or a Justice or the Chief justice of the High Court of Australia;
 - vi. a solicitor or barrister acting for the Applicant or Respondent;

- vii. an expert or professional adviser briefed in relation to this proceeding;
- viii. an employee or officer of a litigation funder providing funding for the proceeding;
or
- ix. an employee or officer of an insurer providing after the event insurance for any party to the proceeding,

(Group Members).

2. The:

- a. First Applicant purchased Android Apps and/or in-app digital content within Android apps on an Android Smart Mobile Device in Australia during the Relevant Period.

Particulars

- i. On 8 November 2017, the First Applicant purchased the Android App “Electrum Drum Machine/Sampler” for the price of \$1.29.
- ii. On 8 November 2017, the First Applicant purchased the Android App “Jasuto modular synthesizer” for the price of \$1.39.
- iii. On 9 November 2017, the First Applicant purchased the Android App “XCOM: Enemy Within” for the price of \$13.99.
- iv. On 21 November 2017, the First Applicant purchased the in-app digital content “Low-grade Daily Diamonds” within the Android App “Lineage 2: Revolution” for the price of \$14.99.
- v. On 22 November 2017, the First Applicant purchased the in-app digital content “High-grade Daily Adena” within the Android App “Lineage 2: Revolution” for the price of \$14.99.
- vi. On 22 November 2017, the First Applicant purchased the in-app digital content “Low-grade Daily Adena” within the Android App “Lineage 2: Revolution” for the price of \$4.49.
- vii. On 22 November 2017, the First Applicant purchased the in-app digital content “Grade S Rare Armor Box Bundle”

within the Android App “Lineage 2: Revolution” for the price of \$14.99.

- viii. On 26 November 2017, the First Applicant purchased the in-app digital content “340 Diamond” within the Android App “Lineage 2: Revolution” for the price of \$14.99.
- ix. On 18 December 2017, the First Applicant purchased the Android App “Threes!” for the price of \$4.16.
- x. On 20 June 2018, the First Applicant purchased the in-app digital content “Subscription: 1 Month” within the Android App “Feeld Dating: Meet Curious Kinky Couples & Singles” for the price of \$22.99.
- xi. On 7 July 2018, the First Applicant purchased the in-app digital content “Tinder Plus” within the Android App “Tinder” for the price of \$78.99.
- xii. On 20 July 2018, the First Applicant purchased the in-app digital content “Subscription: 1 Month” within the Android App “Feeld: Dating & Chat – Meet Couples & Singles)” for the price of \$22.99.
- xiii. On 20 August 2018, the First Applicant purchased the in-app digital content “Subscription: 1 Month” within the Android App “Feeld: Dating & Chat – Meet Couples & Singles)” for the price of \$22.99.
- xiv. On 24 December 2018, the First Applicant purchased the Android App “Beholder” for the price of \$6.99.
- xv. On 25 December 2018, the First Applicant purchased the in-app digital content “Unlock Full Version!” within the Android App “Plague Inc.” for the price of \$1.03.
- xvi. On 7 January 2019, the First Applicant purchased the in-app digital content “Bundle of Power Cores” within the Android App “MARVEL Strike Force” for the price of \$14.99.
- xvii. On 8 January 2019, the First Applicant purchased the in-app digital content “60 Unknown Cash” within the Android App “PUBG Mobile” for the price of \$1.49.

- xviii. On 8 January 2019, the First Applicant purchased the in-app digital content "Power Cores" within the Android App "MARVEL Strike Force" for the price of \$2.99.
- xix. On 16 February 2019, the First Applicant purchased the in-app digital content "Lifetime Membership" within the Android App "Pulse SMS (Phone/Tablet/Web)" for the price of \$15.99.
- xx. On 27 February 2019, the First Applicant purchased the Android App "Watch Face - Minimal & Elegant for Android Wear OS" for the price of \$1.99.
- xxi. On 4 March 2019, the First Applicant purchased the in-app digital content "Tinder Gold" within the Android App "Tinder" for the price of \$119.99.
- xxii. On 21 March 2019, the First Applicant purchased the in-app digital content "CLUB PASS" within the Android App "Tacticool - 5v5 shooter" for the price of \$6.99.
- xxiii. On 21 April 2019, the First Applicant purchased the in-app digital content "CLUB PASS" within the Android App "Tacticool - 5v5 shooter" for the price of \$6.99.
- xxiv. On 21 May 2019, the First Applicant purchased the in-app digital content "CLUB PASS" within the Android App "Tacticool - 5v5 shooter" for the price of \$6.99.
- xxv. On 21 June 2019, the First Applicant purchased the in-app digital content "CLUB PASS" within the Android App "Tacticool - 5v5 shooter" for the price of \$6.99.
- xxvi. On 6 July 2019, the First Applicant purchased the Android App "Roto Gears Watch Face for Android Wear" for the price of \$1.39.
- xxvii. On 21 July 2019, the First Applicant purchased the in-app digital content "CLUB PASS" within the Android App "Tacticool - 5v5 shooter" for the price of \$6.99.
- xxviii. On 21 August 2019, the First Applicant purchased the in-app digital content "CLUB PASS" within the Android App "Tacticool - 5v5 shooter" for the price of \$6.99.

- xxix. On 1 October 2019, the First Applicant purchased the in-app digital content “COD Points – Hardcore Pack” within the Android App “Call of Duty: Mobile” for the price of \$38.99.
 - xxx. On 1 October 2019, the First Applicant purchased the in-app digital content “COD Points – Hardcore Pack” within the Android App “Call of Duty: Mobile” for the price of \$38.99.
 - xxxi. On 24 March 2020, the First Applicant purchased the in-app digital content “Yearly subscription w/ 50% off first year (Localized)” within the Android App “The Mindfulness App: relax, calm, focus and sleep” for the price of \$35.00.
 - xxxii. On 24 March 2021, the First Applicant purchased the in-app digital content “Yearly subscription w/ 50% off first year (Localized)” within the Android App “The Mindfulness App: relax, calm, focus and sleep” for the price of \$69.99.
 - xxxiii. On 5 September 2021, the First Applicant purchased the in-app digital content “Duplicate Contacts Fixer and Remover Pro” within the Android App “Duplicate Contacts Fixer and Remover” for the price of \$1.99.
 - xxxiv. On 18 January 2022, the First Applicant purchased the Android App “Unified Remote Full” for the price of \$7.49.
- b. Second Applicant, Dark Ice Interactive Pty Limited, is a developer of Android Apps and in-app digital content within Android Apps. During the Relevant Period, its Android Apps and in-app digital content within Android Apps were distributed to Android Devices via the Australian Play Store.

Particulars

- i. Since the commencement of the Relevant Period, the Second Applicant has supplied the Pocket Cal/kj Android App via the Australian Play Store. While the Pocket Cal/kj Android App is free to download, it offers an in-app purchase of Pocket Cal/kj Plus at a price of \$4.49. The Pocket Cal/kj Android App was initially released on 13

March 2012 and the current version was released on 4 October 2022.

- ii. Since the commencement of the Relevant Period, the Second Applicant has supplied the Pocket Cal/kj Pro Android App via the Australian Play Store as a paid Android App. Its current price is \$1.99. The Pocket Cal/kj Pro Android App was initially released on 16 April 2012 and the current version was released on 15 January 2016.
3. The following paragraphs 4 to 173 are taken from paragraphs 15 to 29, 31 to 122, and 143 to 205 of the proposed Further Amended Statement of Claim ~~filed by~~ of Epic Games, Inc. and another against the Respondents in proceeding No. NSD190/2021, and are alleged at all material times during the Relevant Period. The amendments marked in paragraphs 4 to 173 below (1) in underlined text have been made by the Applicants in this proceeding to reflect the proposed ~~current~~ pleading in proceeding NSD190/2021; (2) in underlined green text have been made by the Applicants in this proceeding to reflect the Applicants' case.

The Respondents

4. The First Respondent (**Google LLC**), the Second Respondent (**Google Asia Pacific**) and the Third Respondent (**Google Australia**), are herein collectively referred to as **Google** except where expressly stated otherwise.

Google LLC

5. Google LLC:
 - a. is a company incorporated in Delaware in the United States;
 - b. is a foreign corporation within the meaning of the *Competition and Consumer Act 2010* (Cth) (**CCA**);
 - c. is able to sue and be sued in its corporate name; and
 - d. has as its ultimate holding company, Alphabet Inc., a company incorporated in Delaware in the United States with headquarters in California.
6. Google LLC is and, at all material times, was carrying on business in Australia.

Particulars

- i. The Applicants rely on ss 5(1)(g) and 5(2) of the CCA.
- ii. The Applicants refer to and repeat paragraphs 8–11, 86, and 96, 99, 99E, 99I, 99K, 106 and 109 below.

7. Google LLC relevantly:
- a. owns and licenses software to Original Equipment Manufacturers (**OEMs**), including the Android operating system (**Android OS** or **Android**);
 - b. owns and licenses Google Mobile Services to OEMs, which licence includes:
 - i. a bundle of closed-source, proprietary Google apps including the Google Play Store (**Play Store**), Google Search, Google Chrome, Google Maps, Gmail and YouTube (**Google Mobile Services Apps**);
 - ii. a Google proprietary software layer that provides background services, Software Development Kits and Application Programming Interfaces (**APIs**) for the integration of apps with Google's proprietary ~~cloud~~-services (**Google Play Services**); and

Particulars

- i. Google Play Services is regarded as a critical component of the Android ecosystem and is relied on by many app developers. Its main components are the Google Play Services Android Application Package (**APK**) and the Google Play Services client library.
 - ii. Without Google Play Services, many Android Apps could not function properly.
 - iii. Google Mobile Services Apps perform functions that were previously performed by open-source Android OS source code.
 - iv. The Google Mobile Services Apps and Google Play Services are listed in the Google Product Geo Availability Chart, as modified or updated by Google from time to time (**Geo Availability Chart**). See for example GOOG-PLAY-010847528.
- c. develops and offers other apps for Smart Mobile Devices written for Android for use on Android Smart Mobile Devices (**Android Apps**).

Google Play Store and Google Play Billing

8. Google LLC has developed and owns:
- a. the Android OS;
 - b. the Play Store; and

- c. Google Play Billing.
9. The Android OS:
- a. is a Mobile OS (as defined in paragraph 29 below) for smartphones and tablets;
 - b. is licensed by Google LLC to OEMs; and
 - c. is the Mobile OS installed on almost 100% of Smart Mobile Devices sold in Australia that use a licensed Mobile OS.
10. The Play Store:
- a. is itself an app developed by Google LLC;
 - b. was launched, including in Australia, in 2008;
 - c. distributes Android Apps on Android Smart Mobile Devices;
 - d. is pre-installed on over 90% of Android Smart Mobile Devices worldwide (excluding China) and on almost all Android Smart Mobile Devices in Australia; and
 - e. is used by consumers to download over 90% of Android Apps [REDACTED] [REDACTED] worldwide (excluding China) and [REDACTED] Android Apps [REDACTED] [REDACTED] in Australia.

Particulars

- i. GOOG-PLAY-AUS-00001205; [REDACTED] GOOG-PLAY-AUS-00001218.
- ii. [REDACTED]
GOOG-PLAY-AUS-00001216; [REDACTED] GOOG-PLAY-AUS-00001204.

11. Google Play Billing:
- a. is the payment solution that Google requires app developers and consumers to use, and is the only payment solution that Google permits app developers and consumers to use, for accepting and processing payments for purchases of digital content (including by way of subscriptions) in Android Apps distributed via the Play Store (**Play Store In-App Purchases**);

Particulars

- i. Digital content does not include physical products or services.

- ii. The Developer Program Policies prevent app developers from using alternatives to Google Play Billing for Play Store In-App Purchases.
 - iii. The Applicant refer to and repeats paragraphs 86, 90(g), 90(h), 91 and 95 below.
 - iv. Google Play Billing, as a payment solution, provides for, and facilitates, the acceptance and processing of payments from Android Smart Mobile Device Users for apps or in-app purchases. It does this by, among other things, providing for: the acceptance and collection of payments from Android Smart Mobile Device Users; all necessary engagements with credit providers, payment processors and financial institutions; the deduction and payment of any relevant fees or commissions; and the payment of the remaining balance to the app developer.
- b. is charged by Google Australia, or alternatively by Google LLC, Google Asia Pacific and/or Google Australia, at a 30% commission to app developers for Play Store In-App Purchases (or, in some limited circumstances, 15%).

Particulars

The Applicants refer to and repeat paragraphs 15, 90(f) and 96 ~~and 96A~~ below.

Google Asia Pacific ~~email~~

12. Google Asia Pacific:
- a. is a private limited corporation incorporated in Singapore;
 - b. is a foreign corporation within the meaning of the CCA;
 - c. is able to sue and be sued in its corporate name; and
 - d. has as its ultimate holding company, Alphabet Inc.
13. Google Asia Pacific is and, at all material times, was carrying on business in Australia.

Particulars

- i. The Applicants rely on ss 5(1)(g) and 5(2) of the CCA.
- ii. The Applicants refer to and repeat paragraphs 87, 96, and 10099, 99E, 99I and 99K below.

Google Australia

14. Google Australia:
- a. is a corporation that was duly incorporated in Australia, and a corporation within the meaning of the CCA;
 - b. is a subsidiary of Google LLC;
 - c. is able to sue and be sued in its corporate name;
 - d. has as its ultimate holding company, Alphabet Inc.; and
 - e. is a holder of an Australian Financial Services Licence under which it offers the Google Payments Service further described in paragraphs 96 and 96A below.
15. At all material times during the Relevant Period, Google Australia relevantly:
- a. accepted and facilitated the processing of payments for Play Store App Purchases and Play Store In-App Purchases in Australia; ~~and~~
 - b. charged a 30% commission to app developers for Play Store App Purchases and Play Store In-App Purchases in Australia (or, in some limited circumstances, 15%); ~~and~~

Particulars

The Applicants refer to and repeat paragraphs 90(f), 96~~x~~, 96A and ~~40099~~ below.

- c. entered into payments agreements with app developers, including Epic Games.

Particulars

The Applicants refer to and repeat paragraphs 96 and 96A.

Alphabet Inc.

16. Alphabet Inc:
- a. is one of the largest companies in the world by market capitalisation, with a market capitalisation of over USD1.5 trillion;
 - b. is headquartered in California; and
 - c. employs approximately 150,000 employees globally, including in Australia.

Google corporate structure and knowledge

17. Alphabet Inc. is the ultimate holding company of:
- a. Google LLC;
 - b. Google Asia Pacific; and

c. Google Australia.

18. Google LLC is a holding company of Google Australia.

PART II: APP DISTRIBUTION AND PAYMENTS

Smart mobile devices

19. Smartphones:

- a. are mobile telephone and computing devices;
- b. require an operating system (**OS**) to run to control the hardware and other software on the device;
- c. are powered by a rechargeable battery and, consistent with being portable, are not ordinarily connected to mains power during use;
- d. are generally operated using an integrated touchscreen;
- e. are generally sufficiently small in dimensions and weight that they are portable in a pocket or bag;
- f. can connect wirelessly to access internet and can connect to cellular networks;
- g. typically possess global positioning system (**GPS**) functionality;
- h. typically possess near field communication functionality;
- i. typically have integrated cameras; and
- j. in addition to making and receiving voice and video calls and sending and receiving messages, are capable of performing a range of functions, including but not limited to:
 - i. web browsing;
 - ii. sending and receiving email; and
 - iii. operating apps for smartphones and tablets.

Particulars

As between makes and models, smartphones vary in various respects, including size, weight, durability, screen size and quality, audio quality, camera quality and/or features, internet speed, computer processing power, memory, ease-of-use, casing quality and/or design, and additional multimedia offerings.

20. In 2021, there were approximately 20.6 -million smartphone users in Australia.

Particulars

According to ~~the most recently available~~ Statista data from 2017, projecting through to 2021.

21. Tablets:

- a. are mobile computing devices;
- b. require an OS to ~~run~~ control the hardware and other software on the device;
- c. are powered by a rechargeable battery and, consistent with being portable, are not ordinarily connected to mains power during use;
- d. are generally operated using an integrated touchscreen;
- e. sometimes possess voice and video call functionality;
- f. are smaller in dimensions and lighter than a laptop personal computer (**PC**) or desktop PC;
- g. can connect wirelessly to the internet and, in some cases, to a cellular network; and
- h. are capable of a range of functions, including but not limited to:
 - i. web browsing;
 - i. sending and receiving email; and
 - ii. operating apps for smartphones and tablets.

Particulars

- i. There is no industry standard definition of a tablet, but rather a spectrum of functionalities that devices in this category possess.
- ii. As between makes and models, tablets vary in various respects including size, weight, durability, screen size and quality, audio quality, camera quality and/or features, internet speed, computer processing power, memory, ease-of-use, casing quality and/or design, and additional multimedia offerings.

22. In 2021, approximately 53% of the Australian population used tablets.

Particulars

According to ~~the most recently available~~ Statista data from 2018, projecting through to 2021.

23. Smartphones and tablets are together referred to as "**Smart Mobile Devices**". Users of Smart Mobile Devices are referred to as "Smart Mobile Device Users".
24. There are functional differences between PCs, on the one hand, and Smart Mobile Devices, on the other.

Particulars

i. Laptop PCs:

- A. are generally larger in dimensions and heavier than Smart Mobile Devices;
- B. are generally less portable or capable of being used "on the go" than Smart Mobile Devices, and are not generally used to take photographs;
- C. generally require a keyboard and a mouse or trackpad for input;
- D. generally have a reduced battery life as compared to Smart Mobile Devices;
- E. generally cannot connect to the internet without an ethernet, a WiFi connection or a smartphone to facilitate the connection;
- F. typically do not have GPS functionality; and
- G. typically do not have near field communication functionality.

ii. Desktop PCs:

- A. are generally larger in dimensions and heavier than Smart Mobile Devices and Laptop PCs; and are not portable, in the sense of being easily carried in a pocket or bag; are not used to perform functions "on the go"; and are not generally used to take photographs, except of the user or the device's screen;
- B. generally require fixed power connections (not batteries) to operate;
- C. generally require a keyboard and a mouse for input;

- D. generally cannot connect to the internet without an ethernet, WiFi connection or a smartphone to facilitate the internet connection;
 - E. typically do not have GPS functionality; and
 - F. typically do not have near field communication functionality.
25. There are functional differences between gaming consoles, on the one hand, and Smart Mobile Devices, on the other.

Particulars

- i. Gaming consoles:
 - A. are generally single purpose devices that are used almost exclusively for gaming;
 - B. generally do not offer the same computing features as Smart Mobile Devices, such as the ability to make calls, take photographs and utilise GPS;
 - C. generally have different hardware components to Smart Mobile Devices;
 - D. in some cases require fixed power connections (not batteries) to operate (for example, in the case of the Xbox and the PlayStation);
 - E. in some cases require peripherals such as a screen for viewing and a controller for input (for example, in the case of the Xbox and the PlayStation) and generally do not support the use of a keyboard or mouse;
 - F. generally run on an OS that has a ~~have a limited~~ set of APIs that restrict software development to games and game-type software;
 - G. generally cannot connect to the internet without an ethernet or WiFi connection;
 - H. are generally large and heavy and not portable, in the sense of being easily carried in a pocket or bag or are less portable than Smart Mobile Devices; and

- I. are not connected to cellular networks.

Operating systems

26. An OS is a form of software that:
 - a. communicates with the hardware of the devices on which it is loaded;
 - b. provides functionality to those devices;
 - c. manages the memory of those devices;
 - d. facilitates the operations of those devices; and
 - e. may permit the installation and operation of other software programs (for example, apps for Smart Mobile Devices or desktop apps) on those devices.
27. Updates to an OS may be made available to users periodically.

Particulars

- i. Updates to an OS may be either installed automatically or installed manually at the election of the user.
 - ii. Updates to an OS are provided for various reasons, including to upgrade functionality, add additional features for users, correct technical errors and/or increase security (for example to better protect devices from viruses and malware).
28. PCs, gaming consoles and Smart Mobile Devices each require an OS to operate.
29. An OS for Smart Mobile Devices (**Mobile OS**) provides functionality to Smart Mobile Device users, facilitates the functionality of a Smart Mobile Device, and may permit the installation and operation of apps for Smart Mobile Devices.
30. A Mobile OS is necessary for a Smart Mobile Device to function and may support the following functions:
 - a. cellular connectivity;
 - b. bluetooth connectivity;
 - c. WiFi connectivity;
 - d. button controls;
 - e. touch and motion commands;
 - f. GPS;

- g. music playing capabilities;
- h. near field communication;
- i. camera and video recording;
- j. speech and face recognition; and
- k. voice recording capabilities.

Android Smart Mobile Devices

31. Smart Mobile Devices are sold by manufacturers commonly referred to as OEMs.

Particulars

- i. OEMs sell Smart Mobile Devices directly to users or to Mobile Network Operators for re-supply to users.
- ii. According to the most recently available Statista data, Apple, Samsung, Huawei, Oppo, Google and Xiaomi collectively manufacture 95% of Smart Mobile Devices in Australia.

32. Smart Mobile Devices are sold by OEMs with a Mobile OS pre-installed.

Particulars

Globally (excluding China), users of Smart Mobile Devices can effectively only choose between devices that will run on one of two Mobile OSs, being either Android OS or Apple's OS for Smart Mobile Devices (**iOS**).

33. In order to obtain a Mobile OS for their Smart Mobile Devices, OEMs may:

- a. develop their own Mobile OS; or
- b. license a Mobile OS.

Particulars

- i. Apple has developed the iOS Mobile OS.
- ii. iOS is not available to be licensed for use by other OEMs.
- iii. The vast majority of OEMs have not developed their own Mobile OS and must choose a Mobile OS that can be licensed for installation on the Smart Mobile Devices they manufacture.

- iv. OSs developed for other electronic devices such as PCs and gaming consoles are not substitutes for a Mobile OS.

34. Android OS:

- a. is the only Mobile OS that is widely available for license by OEMs; and
- b. is licensed by OEMs, and installed on, at least 95% of Smart Mobile Devices that use a licensed Mobile OS worldwide (excluding China); and
- c. is the Mobile OS licensed by OEMs, and installed on, approximately 99% of Smart Mobile Devices that use a licensed Mobile OS in Australia.

Particulars

- i. GOOG-PLAY-005027814; [REDACTED]
[REDACTED] According to the most recently available Statista data.
- ii. [Not used] European Commission Decision, Case AT.40099 — Google Android, 18 July 2018 (Google Android Decision), [442]-[460].
- iii. OEMs that manufacture Smart Mobile Devices with Android OS pre-installed on their Smart Mobile Devices, including in Australia, include Samsung, Huawei, Oppo and Nokia.

35. Smart Mobile Devices with the Android operating system (**Android Smart Mobile Devices**):

- a. represent over 45% of all Smart Mobile Devices (including iOS Mobile Devices) in Australia in 2021; and
- b. are used by approximately 9 million users in Australia.

Particulars

- i. According to the most recently available Statista data as at September 2021.

ii. [REDACTED]
[REDACTED]

Apps for Smart Mobile Devices

36. Software comprising game and non-game applications (apps) for Smart Mobile Devices:

- a. are software applications that are developed for use on Smart Mobile Devices;

- b. can utilise the features and functionality of Smart Mobile Devices, including by accessing the hardware of the Smart Mobile Device;
- c. facilitate Smart Mobile Device Users' access to web content, services and functionality on those Smart Mobile Devices; and
- d. enhance and optimise the functionality of those Smart Mobile Devices.

Particulars

- i. Smart Mobile Device users can use a variety of apps for Smart Mobile Devices for a range of functions, including but not limited to: shopping; social networking; banking; health and fitness; interacting on social media; drafting, sending and receiving emails; newspapers subscriptions; video and music streaming; gaming; entertainment; editing documents; and facilitating the purchasing of services, such as food delivery and rideshare services.
 - ii. Apps for Smart Mobile Devices are optimised for the characteristics of those devices including by reduced text input, limited screen size, the convenience of touch-based interfaces or GPS capability.
 - iii. Apps for Smart Mobile Devices are designed to be used on-the-go so as to take advantage of the portability of such devices and are developed to utilise a small touchscreen interface.
37. An native app for Smart Mobile Devices:
- a. is designed to function on the specific Mobile OS on which it will be downloaded and run and must interact with that particular Mobile OS in order to function;
 - b. needs to be downloaded and installed onto a Smart Mobile Device;
 - c. appears as an "icon" or "button" on the Smart Mobile Device; and
 - d. generally needs to be updated from time to time, including to add new functions, to ensure compatibility with a Mobile OS, and to fix technical issues.
38. App developers who wish to develop an native app for Smart Mobile Devices that is compatible with a specific Mobile OS need access to that Mobile OS's Software Development Kit (**SDK**).

Particulars

- i. An SDK is a set of software development tools that provides an app developer with the ability to build a custom Smart Mobile Device app for a specific Mobile OS.
 - ii. SDKs generally include information concerning APIs that app developers use to create apps for a particular Mobile OS as well as programming tools, and instructions.
 - iii. APIs are sets of definitions and protocols which allow app developers to program their apps to access and make use of Mobile OS-provided functionality.
 - iv. At a practical level, APIs allow software applications to communicate with each other.
39. App developers who wish to develop an native app for a Smart Mobile Device that is compatible with more than one Mobile OS must therefore develop different versions of their app for each desired Mobile OS.
40. App developers who wish to develop Android Apps must develop a version of their app that is ~~coded specifically for~~ compatible with the Android OS.

40A. Android Apps only function on Android Smart Mobile Devices.

Android Apps for Android Smart Mobile Devices

41. Google LLC develops Android Apps.
42. Google LLC's Android Apps:
- a. include well-known apps which many users of Smart Mobile Devices want, ~~including~~ namely, the Play Store, Google Search, Google Chrome, Gmail, Google Maps and YouTube (these six Android Apps collectively comprise the Core Applications); and
 - b. may be licensed and pre-installed by OEMs on Android Smart Mobile Devices.

Particulars

The Applicants refer to and repeat paragraph 7 above and paragraphs 53, 53A and 68 below.

43. The vast majority of Android Apps are developed by app developers other than Google LLC.
44. In order to develop and write an Android App, app developers require access to the SDKs for Android OS.

Particulars

Google LLC makes an SDK for Android OS available to app developers to enable them to develop Android Apps.

45. App developer preferences follow and are a function of consumer preferences. App developers can only ~~gain access~~ distribute native apps to users of Android Smart Mobile Devices (**Android Smart Mobile Device Users**) by developing Android Apps and having those apps made available for installation on Android OS Smart Mobile Devices.

App stores for Smart Mobile Devices

46. App stores for Smart Mobile Devices are:
- a. apps that enable the download, installation and updating of other apps that are compatible with the Mobile OS on which the app store is used; and
 - b. generally available to users for free.
47. Through an app store, a user is generally able to:
- a. browse and search for an app;
 - b. select an app of choice;
 - c. purchase an app (if the app in question is a paid app);
 - d. download and install the selected app on their Smart Mobile Device;
 - e. update the downloaded and installed app; and
 - f. review the app.
48. App stores enable app developers to describe, distribute and promote their apps to users and update their apps.

Distribution of Android Apps

49. App developers -who develop an Android App and wish for it to be distributed to Android Smart Mobile Device Users, including in Australia, need to be able to:
- a. make the app available for ~~download and~~ installation on Android Smart Mobile Devices; and
 - b. update the app on Android Smart Mobile Devices.
50. There are three ways for an Android App to be installed ~~made available for download and installation~~ on Android Smart Mobile Devices:
- a. pre-installation on the Android Smart Mobile Device;

- b. ~~distribution downloading~~ through an app store that is installed on the Android Smart Mobile Device; and
- c. directly downloading the app from a website accessed through the internet browser on the Android Smart Mobile Device.

Pre-installation on an Android Smart Mobile Device

- 51. OEMs manufacture Smart Mobile Devices with some Android Apps pre-installed.
- 52. The number and range of Android Apps that are pre-installed on Smart Mobile Devices varies between different Android Smart Mobile Devices, depending on which OEM manufactures the Android Smart Mobile Device, the model of the device and the geographic region to which the device is supplied.
- 53. More than 90% of all Android Smart Mobile Devices sold worldwide (excluding China) have the Play Store pre-installed, alongside a selection of other Google Android Apps.

Particulars

- i. The Applicants refer to and repeat paragraph 10 above.
- ii. GOOG-PLAY-AUS-00001205; GOOG-PLAY-AUS-00001218 ~~Google Android Decision, [596] and [784].~~

53A. Almost all Android Smart Mobile Devices sold in Australia between December 2019 and September 2022 had the Play Store pre-installed, alongside a selection of other Google Android Apps.

Particulars

- i. The Applicants refer to and repeat paragraph 10 above.
- ii. GOOG-PLAY-AUS-00001205; GOOG-PLAY-AUS-00001218.

54. For the vast majority of app developers, the pre-installation of Android Apps is not a viable ~~alternative method of distributing distribution to the distribution of Android Apps through the Play Store.~~

Particulars

Section 4.52, CMA Mobile Ecosystems Study Interim Report published 14 December 2021.

Distribution through an app store

55. The Play Store:

- aa. is an app store for Android Smart Mobile Devices;
- a. distributes Android Apps on Android Smart Mobile Devices;
- bb. facilitates the updating of Android Apps on Android Smart Mobile Devices;
- b. is used by consumers to download over 90% of Android Apps [REDACTED] [REDACTED] worldwide (excluding China) and [REDACTED] Android Apps [REDACTED] [REDACTED] in Australia; and
- c. has approximately three million apps available for download on Android Smart Mobile Devices.

Particulars

- i. The Applicants refer to and repeat paragraph 10 above.
- ii. [REDACTED]
GOOG-PLAY-AUS-00001216; GOOG-PLAY-AUS-00001204, ACCC Digital Platform Services Inquiry (Interim Report No. 2 – App marketplaces) published March 2021 at p 4.
56. Alternative app stores for Android Smart Mobile Devices to the Play Store (**Alternative App Stores**) have been developed.

Particulars

- Examples include app stores developed by OEMs (such as Samsung's Galaxy Store) and app stores developed by others (such as the Amazon Appstore).
57. Currently, the vast majority of the Android Apps installed via download from an app store are downloaded from the Play Store rather than from an Alternative App Stores are not widely used by consumers to download Android Apps, including in Australia.

Particulars

- i. The Play Store accounts for over 90% of all Android Apps downloads [REDACTED] worldwide (excluding China), and [REDACTED] Android Apps [REDACTED] in Australia.
- ii. ACCC Digital Platform Services Inquiry (Interim Report No. 2 – App marketplaces) published March 2021 at p 3.

57A. There is no technical reason why Alternative App Stores could not be distributed via the Play Store.

Direct downloading of apps

58. A direct download of an app occurs when an app is downloaded directly onto a device from the internet using a web browser.

Particulars

A direct download is sometimes referred to as a "side-load".

59. Direct downloading of apps on Android Smart Mobile Devices:

- a. confronts the Technical Restrictions (as defined in paragraph 105 below) ~~in the Android OS~~; and

Particulars

The Applicants refer to and repeat paragraphs 67, 68(aa), 68(f), 68(g), 68(h), 68A, 68B, 69, 70, and 101–104 below.

- b. is not ~~widely~~ used by consumers in the vast majority of cases to download apps on Android Smart Mobile Devices, including in Australia.

Particulars

- i. ACCC Digital Platform Services Inquiry (Interim Report No. 2 – App marketplaces) published March 2021 at p 3.
- ii. ~~[Not used]The Play Store accounts for over 90% of all Android App downloads worldwide (excluding China).~~

Other types of apps

60. Further:

- a. web apps;
- b. non-Android (i.e. iOS) apps for Smart Mobile Devices; and
- c. apps developed for PCs and gaming consoles,
- are not substitutes for Android Apps.

Particulars

- i. Web apps have limited capabilities on Android Smart Mobile Devices and inferior functionality and performance when compared to Android Apps, including because they:

- A. run on web browsers;
 - B. need to be interpreted by a web browser;
 - C. are limited to a set of APIs available within a web browser;
 - D. are slower than Android Apps including because in order to run, the code needs to be interpreted (as opposed to native code, which is compiled). The process of interpreting adds overhead to each operation and can slow down the operation of the web app;
 - E. cannot call on certain native APIs on Android Smart Mobile Devices, including those that control the device hardware; and
 - F. are not suitable for some categories of apps.
- ii. iWeb apps which allow content to be streamed also have significant limitations when compared to Android Apps.
 - iii. Apps for Smart Mobile Devices that are not Android Apps (i.e. iOS apps) do not function on Android Smart Mobile Devices. Further, Android Smart Mobile Device Users are disincentivised to switch to iOS.
 - iv. Apps for PCs and gaming consoles do not function on Android Smart Mobile Devices. Further, PCs and gaming consoles are not substitutes for Smart Mobile Devices.

Payments for in-app purchases ~~of in-app content~~

61. The three principal ways app developers may obtain revenue from an app for a Smart Mobile Device are:
- a. charging users to download the app;
 - b. charging users for in-app purchases of digital content (including by way of subscriptions) or of physical goods or services supplied outside the app; and
 - c. advertising within the app.

Particulars

- i. In-app purchases include purchases by way of subscriptions.
 - ii. In-app purchases permit app developers to offer digital items or services for purchase by app users without the user having to leave the app to make the purchase.
 - iii. App developers may also offer in-app purchases of physical goods or services (such as food deliveries or transportation), without the user having to leave the app to make the purchase.
 - iii. For many app developers, in-app purchases represent their sole or major source of revenue and the ~~only~~most commercially ~~viable~~ desirable way of monetising their apps.
62. Where app developers offer in-app purchases, they require an in-app payment solution for accepting and processing payments.
63. App developers:
- a. can develop their own in-app payment solution; or

Particulars

Epic Direct Pay is- an in-app payment solution.

- b. can obtain an in-app payment solution from third parties.
- Particulars**
- i. Only payment solutions that are compatible with Android OS and that can therefore be integrated into Android Apps are available to app developers for Android in-app payment processing.
 - ii. Payment solutions providing in-app payment solutions for accepting and processing payments include Stripe, PayPal/Braintree and Square.
64. Payment solutions for accepting and processing payments for in-app digital content outside an Android App are not a substitute for payment solutions for accepting and processing payments for in-app digital content within an Android App.

Particulars

- i. App developers and users do not view payment solutions outside of Android Apps (i.e. on a website, over the phone or at a retail store) as interchangeable with in-app payment solutions.
- ii. App developers may not offer the same in-app digital content for sale both in-app and outside the app.
- iii. Users may not be aware of payment solutions outside Android Apps, including because of the OEM Restrictive Terms (as defined in paragraph 83 below) and the App Developer Restrictive Terms (as defined in paragraph 98 below).
- iv. Using a payment solution outside the app often requires the user to go through multiple steps. Users are more likely to purchase the in-app digital content if payment can be made without having to leave the app.
- v. Convenience is particularly important for in-app purchases, many of which are small or time-sensitive. Delay or other purchase "friction" may cause the user not to complete the purchase.
- vi. Users are more likely to stop engaging with an app if they have to leave the app or complete a number of steps to make a purchase.

In-app purchases of digital content within apps distributed through the Play Store (Play Store In-App Purchases)

65. Google requires app developers to use Google Play Billing for accepting and processing payments for Play Store In-App Purchases.

Particulars

The Applicants refer to and repeat paragraphs 86, 90(h), and 91–975 below.

66. There is no technical reason why Google cannot permit app developers to use alternative payment solutions, in lieu of Google Play Billing, for accepting and processing payments for Play Store In-App Purchases.

PART III: GOOGLE'S RESTRICTIVE AGREEMENTS WITH OEMS

MADA

67. At all relevant times, Google LLC has required any OEM who wishes to distribute an Android Smart Mobile Device with license and thereby use Google Mobile Services (including Google Mobile Services Apps and Google Play Services), and/or use the Android trademark, to enter into a Mobile Application Distribution Agreement (**MADA**).

Particulars

Google LLC's MADAs are generally not publicly available. The facts and matters set out below are based on the MADAs discovered to date in this proceeding. ~~Google Android Decision at [173] and the Amended Complaint in State of Utah and others v. Google LLC and others (Case No 3:21-cv-05227) (Attorney Generals' Amended Complaint) at [112]-[125].~~

68. The terms of Google LLC's MADAs ~~require~~ provide that:

- aa. OEMs may only distribute the Google Mobile Services Apps and Google Play Services on an "Android Compatible Device", being a device that complies with the "Android Compatibility Definition Document";

Particulars

For example, Xiaomi MADA 1 November 2017, clause 2.1 (GOOG-PLAY2-000456823).

- ab. OEMs may not distribute an Android Compatible Device unless the Google Mobile Services Apps, including the Play Store, and Google Play Services, have been pre-installed on that device, except as otherwise approved by Google in writing;

Particulars

For example, Xiaomi MADA 1 November 2017, clause 2.3(e) (GOOG-PLAY2-000456823).

- a. ~~If an OEMs may only distribute a device with~~ wishes to pre-install one or more Google Mobile Services Apps, ~~it must pre-install~~ if they make all of the Google Mobile Services Apps, including the Play Store available on that device;

Particulars

- ia. For example, Xiaomi MADA 1 November 2017, clauses 2.1, 4.4(a) (GOOG-PLAY2-000456823).
 - i. For example, in Australia, Google Mobile Services Apps that must be pre-installed ~~include~~ are the Core Applications, plus "Flexible Applications" such as Play Store, Gmail, Google Maps, YouTube, Google Drive, YouTube Music, Google Play Movies, Google Duo and Google Photos.
 - ii. Most consumers want and expect access to certain Google Mobile Services Apps on their Android Smart Mobile Devices.
 - iii. ~~Further particulars will be provided prior to trial.~~ The Core Applications and the Flexible Applications are identified in the Geo Availability Chart.
- b. OEMs must place the icons which give access to:
- i. the Google Search app;
 - ii. the Play Store; and
 - iii. a folder providing access to a collection of icons for the other Google Mobile Services Apps,
- on their Android Smart Mobile Device's default home screen (or, in the case of certain Samsung devices, in the 'device hotseat');

Particulars

- i. ~~Google Android Decision, [180]-[184].~~ For example, Xiaomi MADA 1 November 2017, clause 4.4(b) (GOOG-PLAY2-000456823).
- ii. The MADA entered into by Samsung (effective 1 March 2017) contained terms to the same effect but was amended to introduce different placement requirements for certain Samsung devices. Since 8 January 2018, Samsung's MADA has allowed it to remove all app icons (including all Google Mobile Services App icons) from the default home screen of the following devices: Galaxy S9,

Galaxy Note9 and Galaxy Fold. Where Samsung does so, a folder of pre-installed Google Mobile Services Apps must be placed in the first row of the application tray (accessed by swiping up from the bottom of the default home screen), and the Play Store must be placed in the 'device hotseat' (i.e., in the dock along the bottom row of the default home screen): Samsung MADA effective 1 March 2017, clause 3.3 (GOOG-PLAY2-000456679); and Amendments to the Samsung MADA (GOOG-PLAY-010683921; GOOG-PLAY-003604490; GOOG-PLAY-003604185; GOOG-PLAY-003604502.

- c. ~~[Not used] certain Google apps, including the Play Store, must be made undeletable;~~

Particulars

~~Attorney Generals' Amended Complaint at [112].~~

- d. ~~[Not used] OEMs must ensure that the Android Smart Mobile Devices they manufacture pass the Android Compatibility Test Suite;~~

Particulars

~~Google Android Decision, [176]-[179].~~

- e. (in the case of MADAs entered into before 2017) OEMs must not take any actions that may cause or result in the fragmentation of the Android OS; and

Particulars

~~Google Android Decision, [188].~~ Further particulars will be provided prior to trial.

- f. OEMs may not distribute an Android Compatible Device in a Territory without Google's written approval prior to the launch of each device model and OEMs must send the final software build of their devices, as well as test reports confirming the device passes the Android Compatibility Test Suite (CTS), to Google LLC for final approval;

Particulars

~~Google Android Decision, [179].~~ For example, Xiaomi MADA 1 November 2017, clauses 2.3(f), 4.8, 4.9 (GOOG-PLAY2-000456823).

g. OEMs may only distribute devices with Google Mobile Services (including Google Mobile Services Apps and Google Play Services) if their devices comply with the “GMS Requirements”, which include requirements:

i. to pre-install all Core Applications on the device, including the Play Store:

Particulars

i. For example, Xiaomi MADA 1 November 2017, clause 2.1 (GOOG-PLAY2-000456823).

ii. For example, GMS Requirements dated 3 September 2019, clause 2.2 (GOOG-PLAY4-006384709).

ii. to feature on the default home screen of the device, (i) the Google Search Widget, (ii) the Play Store app icon and (iii) a folder labelled 'Google' containing the Core Applications:

Particulars

i. For example, Xiaomi MADA 1 November 2017, clause 2.1 (GOOG-PLAY2-000456823).

ii. For example, GMS Requirements dated 3 September 2019, clause 3.1 (GOOG-PLAY4-006384709).

iii. that the device must pre-install the **GooglePackageInstaller** app, as a privileged app, in place of the default package installer available with the Android OS:

Particulars

i. A package installer is a system application that is responsible for handling the installation and uninstallation of apps on the device. The package installer confirms that an app that is attempting to install other apps has the permissions to do so, or has otherwise sought the consent of the user to install apps.

ii. For example, the GMS Requirements dated 3 September 2019, clauses 2.1 and 6.1 (GOOG-PLAY4-006384709).

iv. the Play Store must be placed in the Apps Menu and should be in the top level of the Apps Menu and may not reside within any folder on the Apps Menu;

Particulars

- i. For example, GMS Requirements dated 3 September 2019, clause 3.3 (GOOG-PLAY4-006384709).
- v. that a device running Android must replace the global 'Unknown Sources' setting with the 'Allow app installs' setting, which grants the 'REQUEST INSTALL PACKAGES' permission on a per app basis, allowing the granted app to provide other apps for installation. A device must not implicitly grant this permission to any pre-installed or downloaded third party apps that do not have a privileged installation permission (**unknown sources**);

Particulars

- i. For example, GMS requirements dated 3 September 2019, clause 6.4: GOOG-PLAY4-006384709.
- ii. A privileged installation permission allows an app to install other apps without first seeking user consent.
- iii. The install packages permission is a privileged installation permission.
- iv. The request install packages permission is not a privileged installation permission. it allows an app to request consent from the user to act as a source for the installation of apps.
- vi. that the device complies with the Android Compatibility Definition Document and passes applicable testing suites, including the CTS and the GMS Testing Suite (GTS).

Particulars

- i. For example, GMS Requirements dated 3 September 2019, clause 6.4: GOOG-PLAY4-006384709.
- h. the OEM's licence to distribute devices with Google Mobile Services is subject to the OEM being in compliance with an Anti-Fragmentation Agreement (as to which, see paragraph 69 below).

Particulars

- i. For example, Xiaomi MADA 1 November 2017, clause 2.1 (GOOG-PLAY2-000456823).

68A. An Android Smart Mobile Device will not comply with the GMS Requirements or pass the applicable testing suites if an app that is pre-installed on the device with a privileged installation permission has not been approved by Google for the grant of a privileged installation permission.

Particulars

- i. The GTS includes a test known as the 'GtsInstallPackagesWhitelistDeviceTestCases'. An app pre-installed on a device and granted a privileged installation permission that has not been approved for inclusion on an 'allowlist' by Google will cause the OEM's device to fail the test.
- ii. Paragraph 68(f) above is repeated.

68B. At all material times, the Android Compatibility Definition Document referred to in the MADAs and the Anti-Fragmentation Agreements included requirements to the following effect:

- a. device implementations must permit a user to enable the installation of apps from unknown sources;
- b. device implementations must not install apps from unknown sources unless the app requesting the installation has declared a permission which enables the app to obtain the user's consent to install other apps and the user has granted the app the permission to install apps from unknown sources;
- c. device implementations should provide a user with the ability to grant or revoke permission to install apps from unknown sources on a per app basis, but the device may refuse to permit this provided an explanation is given to the user;
- d. device implementations must:
 - i. pass the CTS, using the final shipping software on the device; and
 - ii. correctly execute all applicable cases in the CTS verifier.

Particulars

Android Compatibility Definition Document, Section 4 (C-0-5 and C-0-6) and Section 10 (C-0-1).

Anti-Fragmentation Agreements

69. Further, at all relevant times, in order to distribute Android Smart Mobile Devices with Google Mobile Services, and/or use the Android trademark, pursuant to enter into a MADA

and gain access to Google Mobile Services, Google LLC has required OEMs to enter into an Anti-Fragmentation Agreement (**AFA**) or Android Compatibility Commitment (**ACC**) (together, **Anti-Fragmentation Agreements**).

Particulars

- i. Prior to around 2017, Google required OEMs to enter into an AFA as a ~~precondition to entering into~~ of exercising their rights under a MADA.
- ii. Since in or around 2017, Google ~~has required~~ requires OEMs to enter into an ACC or an AFA as a ~~precondition to entering into~~ of exercising their rights under a MADA.
- iii. ~~Google Android Decision at [170].~~ Paragraph 68(h) is repeated.
- iv. The Anti-Fragmentation Agreements which Google has entered into with OEMs include: Samsung AFA, 1 February 2019, (GOOG-PLAY2-000455989); Huawei AFA, 6 April 2015, (GOOG-PLAY-009603350); Sony AFA, 5 February 2014, (GOOG-PLAY-005706582); Motorola AFA, 30 June 2015, (GOOG-PLAY-001089669); LG AFA, 1 January 2011, (GOOG-PLAY-007942791); Huawei ACC, 10 October 2017, (GOOG-PLAY-001745435); OPPO ACC, 31 July 2017, (GOOG-PLAY-001745847); Xiaomi ACC, 28 September 2017, (GOOG-PLAY-000619007); Sony ACC, 12 October 2018, (GOOG-PLAY-005706233); Motorola ACC, 5 January 2018, (GOOG-PLAY2-000456884); Nokia ACC, 7 August 2017, (GOOG-PLAY-000618858); Vivo ACC, 17 July 2017, (GOOG-PLAY-000618455); OnePlus, 29 August 2017, (GOOG-PLAY-000416498); and LG ACC, 29 March 2018, (GOOG-PLAY-000619140).

70. Pursuant to the terms of the Anti-Fragmentation Agreements:

- a. ~~[Not used] OEMs are prevented from modifying the Android OS, which is supplied for free under the Android Open Source Project (AOSP) License, and are prevented from creating an **Android Fork** which does not comply with Google's technical standards, including the Android Compatibility Definition Document and the Compatibility Test Suite (together, known as the **Android compatibility tests**);~~

Particulars

- ~~i. An Android Fork is a modified version of the Android OS which is supplied under the AOSP License.~~
 - ~~ii. Although an Android Fork technically includes any modified versions of Android OS (i.e., versions that either do or do not comply with the Android compatibility tests), for the purposes of this pleading, the term Android Fork refers only to the modified versions of Android OS that do not comply with the Android compatibility tests.~~
 - ~~iii. An Android Smart Mobile Device that operates on an Android Fork does not fall within the definition of an Android Compatible Device (as that term is used in the Anti-Fragmentation Agreements).~~
- b. ~~[Not used] OEMs are required to comply with the Android compatibility tests, including implementing restrictions and warnings in the nature of the Technical Restrictions (as defined in paragraph 105 below);~~

Particulars

- ~~i. The Applicants refer to and repeat paragraphs 101-104 below.~~
 - ~~ii. Attorney Generals' Amended Complaint at [101]-[102].~~
- c. OEMs are prevented from distributing (in the case of OEMs subject to an AFA) or from manufacturing, or distributing or marketing (in the case of OEMs subject to an ACC) devices based on the Android OS Smart Mobile Devices that operate on an are not Android Compatible Devices, being devices that comply with the Android Compatibility Definition Document Fork;

Particulars

For example, Samsung AFA, 1 February 2019, clause 2.1(b) (GOOG-PLAY2-000455989); Nokia ACC, 20 August 2020, clause 2.1 (GOOG-PLAY-000620887).

- d. OEMs are prevented from distributing (in the case of OEMs subject to an AFA) or from developing, distributing or marketing (in the case of OEMs subject to an ACC) any software based on the Android OS that is not designed to run on Android Compatible Smart Mobile Devices that operate on an Android Fork;

Particulars

For example, Samsung AFA, 1 February 2019, clause 2.1(b) (GOOG-PLAY2-000455989); Nokia ACC, 20 August 2020, clause 2.1 (GOOG-PLAY-000620887).

- e. OEMs subject to an AFA are prevented from taking any actions that may cause or result in the fragmentation of the Android OS; and

Particulars

~~Attorney Generals' Amended Complaint at [101].~~ For example, Samsung AFA, 1 February 2019, clause 2.1(a) (GOOG-PLAY2-000455989).

- f. OEMs are prevented from (in the case of OEMs subject to an AFA) distributing an SDK derived from the Android OS or derived from Android Compatible Devices and participating in the creation of, or promotion in any way of, any third-party SDK derived from Android, or derived from Android Compatible Devices, or (in the case of OEMs subject to an ACC) distributing or marketing an SDK based on the Android OS to third parties, or participating in the development of such an SDK, save for their own internal use.

Particulars

~~Google Android Decision at [157].~~ For example, Samsung AFA, 1 February 2019, clause 2.1(c) (GOOG-PLAY2-000455989); Nokia ACC, 20 August 2020, clause 2.1 (GOOG-PLAY-000620887).

71. ~~[Not used] In order to comply with the Android compatibility tests, an OEM must ensure that the version of Android OS installed on their Smart Mobile Devices requires users to take steps to allow direct downloading of Android Apps outside the Play Store where such is not required for Android Apps downloaded from the Play Store.~~
72. ~~[Not used] The Anti-Fragmentation Agreements prevent OEMs from:~~
- a. ~~removing the Technical Restrictions on the Android OS; and~~
 - b. ~~allowing direct downloading of apps on Android Smart Mobile Devices without requiring users to take steps to allow direct downloading of apps outside the Play Store.~~

Revenue Sharing Agreements

73. At all relevant times, Google LLC has offered only OEMs who have entered into an Anti-Fragmentation Agreement and a MADA the opportunity to also enter into a Revenue Sharing Agreement (**RSA**) or Mobile Incentive Agreement (**MIA**) (together, **Revenue Sharing Agreements**).

Particulars

- i. Google LLC replaced RSAs with MIAs. The Applicants are not presently aware of when this occurred. The RSAs entered into by Google LLC include those particularised in paragraph 78.
 - ii. ~~Further particulars will be provided prior to trial. The MIAs entered into by Google LLC include those particularised in paragraph 79A.~~
74. Revenue Sharing Agreements give OEMs a "share" of Google's advertising and/or Play Store revenue derived from the Android Smart Mobile Devices the OEM manufactures.
75. Revenue Sharing Agreements incentivise OEMs to enter into Anti-Fragmentation Agreements and MADAs by reason of the fact that Revenue Sharing Agreements may only be entered into by an OEM who has entered into an Anti-Fragmentation Agreement and a MADA.
76. The terms of Google's Revenue Sharing Agreements ~~restrict~~ disincentivise OEMs from, in some cases, distributing an Android Smart Mobile Device with any pre-installed app that is substantially similar to the Play Store.

Premier Device Program

77. In 2019, Google LLC began offering OEMs the opportunity to enter into a new type of ~~Revenue Sharing Agreement RSA~~ (Premier Revenue Sharing Agreements RSAs) through a program known as the "Premier Device Program".
78. Under the Premier ~~RSAs Revenue Sharing Agreements~~, Google LLC offered participating OEMs who configure devices as "Premier Devices" incentives, including:
- a. a higher percentage of Google's search revenue earned on ~~covered devices~~ (**Premier Devices**), ~~in addition to percentage of the search revenue Google LLC already committed that is payable to OEMs who signed an ordinary Revenue Sharing Agreement in respect of other categories of devices;~~

- aa. a percentage of Google's revenue from Play Store transactions on Premier Devices, which is not payable in respect of other categories of devices; and
- b. For certain OEMs, including Oppo, other financial incentives such as monthly bonuses;
- c. ~~[Not used]for certain OEMs, including LG and Motorola, a payment of between 3-6% of "Play spend" incurred on Premier Devices.~~

Particulars

- i. The ~~exact terms of the Premier RSAs Revenue Sharing Agreements~~ entered into by OEMs under the Premier Device Program ~~vary, include:~~
 - A. Nokia RSA effective 1 December 2019 (GOOG-PLAY-000620282);
 - B. OnePlus RSA effective 1 February 2020 (GOOG-PLAY-000416604);
 - C. OPPO RSA effective 1 March 2020 (GOOG-PLAY-001745614);
 - D. Xiaomi RSA effective 1 March 2020 (GOOG-PLAY-000620638);
 - E. Vivo RSA effective 1 March 2020 (GOOG-PLAY-000620210); and
 - F. Sony RSA effective 1 April 2020 (GOOG-PLAY-005706436).
 - ii. ~~[Not used]Further particulars will be provided prior to trial.~~
79. The incentives offered to OEMs in the Premier RSAs Revenue Sharing Agreements referred to in paragraph 78 above are only payable in respect of revenue generated from Premier Devices, which are devices configured by the ~~were conditioned on OEMs that, among other things, meet the following requirements~~ agreeing:
- a. ~~not to distribute a Premier Device~~ must not include with any pre-installed app that is substantially similar to the Play Store, nor any launcher, over the air prompt or functionality that has the primary purpose of providing access to any service substantially similar to the Play Store;

- b. ~~[Not used]not to distribute a Premier Device pre-installed with an app that has APK installation rights (excluding any Google Mobile Services Apps), including an Alternative App Store;~~

Particulars

- ~~i. An APK is an Android OS specific file format used for the distribution and installation of Android Apps on Android Smart Mobile Devices.~~
- ~~ii. Android App stores, including the Play Store and Alternative App Stores, use APK files to distribute and install Android Apps on Android Smart Mobile Devices.~~
- c. ~~not to distribute a Premier Device that pre-installs an app other than must set the Play Store that is as the "default" app store or marketplace for apps and all other digital content (including subscriptions);~~
- d. ~~not to distribute a Premier Device that must only pre-installs an app that is not available on the Play Store, does not overlap with the functionality or features of the Play Store, and does not contain privileged install permissions;~~
- e. ~~the device must not be configured so as to allow the OEM or any third party not to introduce, promote or suggest Alternative App Stores to an Android Smart Mobile Device User; and~~
- f. ~~a Premier Device must have the Play Store icon placed on the default home screen to abide by other restrictive conditions on the types of apps that could be pre-installed on Premier Devices.~~

Particulars

- i. For example, Nokia RSA, 1 December 2019, clauses 5.1, 5.2, Attachment C & the Premier Device Program Requirements Document (GOOG-PLAY-000620282 & GOOG-PLAY2-000514127). The exact terms of the Premier RSA Revenue Sharing Agreements entered into by OEMs under the Premier Device Program vary.
- ii. By way of further example, the Premier RSA Revenue Sharing Agreement entered into by HMD Global, effective 1 December 2019 through 30 November 2022, provided that:

- A. application preloads "MUST NOT contain INSTALL_PACKAGES permissions" (section 3.7), which means that preloaded apps must not be able to install other apps, being an essential function of an app store. The Applicants to and repeat the particulars to paragraph 68(g)(v) above;
- B. pre-loaded apps "MUST NOT overlap with the following Google preloads in terms of the applications, features or functionality: ... Google Play": section 3.7;
- C. HMD Global would not include in any manner on a covered device "any Alternative Service, or any application, bookmark, product, service, icon, launcher, Hotword, Gesture, or functionality that has the primary purpose of providing access to any Alternative Service", and nor may it "introduce, promote, or suggest (including via over-the-air prompt) an Alternative Service to an End User": section 5.2. An "Alternative Service" was defined to include any "Alternative Play Service", which was in turn defined to mean "any service that is substantially similar to Google Play (as determined by Google in its sole discretion)";
- D. HMD Global's receipt of "Shared Net Play Transaction Revenue" and "Shared Net Ad Revenue" was conditioned on HMD Global maintaining compliance with the requirements of, relevantly, section 3: section 5; and
- E. pre-loaded apps that are permitted "MUST be available in Google Play": section 3.7.

79A. In 2020, Google LLC entered into MIAs with Motorola and LG, whereby each OEM is entitled to incentive payments, including monthly payments and bonuses.

Particulars

- i. Motorola MIA, 1 February 2020, clause 11.1 & Attachment A (GOOG-PLAY-008111867).

- ii. LG MIA, 1 April 2020, clause 11.1 & Attachment A (GOOG-PLAY-005706338).

79B. The incentives referred to in paragraph 79A above are payable to Motorola and LG in respect of revenue generated from Foundation Devices and Premier Devices, which are devices configured by the OEMs that, among other things, meet the following requirements:

- a. the Play Store icon must be placed on the default home screen;
- b. the device must not include any pre-installed app that is substantially similar to the Play Store, nor any other functionality that has the primary purpose of providing access to a service substantially similar to the Play Store;
- c. the device must not be configured so as to allow the Company or any third party to introduce, promote or suggest any service that is substantially similar to the Play Store; and
- d. any non-Google apps which the OEMs preload on the device must be available in the Play Store and must not contain privileged install permissions, except for an app store owned by the OEM or certain carriers.

Particulars

- i. Motorola MIA, 1 February 2020, clauses 4.1, 4.3, 5.1, Attachment D, item 1.6 & Attachment E (Incentive Implementation Requirements), section 3.6 (GOOG-PLAY-008111867 & GOOG-PLAY4-005450870).
- ii. LG MIA, 1 April 2020, clauses 4.1, 4.3, 5.1, Attachment D, item 1.8 & Attachment F (Incentive Implementation Requirements), section 3.6 (GOOG-PLAY-005706338).

80. The Premier Revenue Sharing Agreements referred to in paragraphs 77 to 79B above prevent OEMs from:

- a. discourage OEMs from pre-installing Alternative App Stores and other Android Apps on Android Smart Mobile Devices; and
- b. discourage OEMs from promoting Alternative App Stores to Android Smart Mobile Device Users;-
- c. discourage OEMs from pre-installing any Android App that is not available in the Play Store;
- d. incentivise OEMs to set the Play Store (rather than an Alternative App Store) as the "default" app store on Android Smart Mobile Devices; and

e. incentivise OEMs to place the Play Store icon on the default home screen of Android Smart Mobile Devices.

81. By May 2020, many of the world's largest OEMs had ~~agreed to Play Store exclusivity for configured certain most of their~~ new Android Smart Mobile Devices as Premier Devices or (in the case of Motorola and LG) Premier Devices or Foundation Devices, under ~~the Premier Revenue Sharing Agreements referred to in paragraphs 77 to 79B above~~ entered into as part of the Premier Device Program.

Particulars

- i. OEMs that agreed to Play Store exclusivity under the Premier Device Program included Motorola, LG, BBK (Oppo, Vivo, OnePlus), Xiaomi, HMD Global (Nokia), Sony and Sharp.
 - ii. After Google targeted Motorola and LG offering extra financial incentives, both OEMs committed nearly all (98% and 95% respectively) of their devices to the Premier Device Program via ~~Premier Revenue Sharing Agreements~~ the MIAs referred to in paragraph 79A above.
 - iii. The Chinese conglomerate BBK (Oppo, Vivo and OnePlus brands) designated around 70% of its new devices as Premier Devices under a Premier RSA Revenue Sharing Agreement.
 - iv. Other brands participating in the program included Xiaomi (40% of new devices committed as Premier Devices), HMD (100% of new devices committed as Premier Devices), Sony (50% of new devices committed as Premier Devices) and Sharp (50% of new devices committed as Premier Devices).
 - v. At least 200 million new devices have been covered by the Premier Device Program to date.
82. ~~[Not used]The OEMs who agreed to Play Store exclusivity under the Premier Device Program account for a material share of Android Smart Mobile Devices in Australia.~~
83. The matters referred to in paragraphs 67-~~80-82~~ above are collectively referred to in this pleading as the "**OEM Restrictive Terms**".

84. At all relevant times, including in relation to Australia, Google LLC, by imposing the OEM Restrictive Terms, prevented or hindered:-
- a. OEMs from distributing Android Smart Mobile Devices that do not comply with the Android Compatibility Definition Document or the GMS Requirements;
 - b. OEMs from distributing Android Smart Mobile Devices that do not have the Play Store pre-installed, with its icon placed on the device's default home screen (or, in the case of certain Samsung devices, in the 'device hotseat');
 - c. app developers from obtaining pre-installation or offering direct download of distributing Alternative App Stores or other Android Apps to Android Smart Mobile Device Users via pre-installation, direct download or through an Alternative App Store;
and
 - d. app developers from making Alternative App Stores equally discoverable by Android Smart Mobile Device Users relative to the Play Store.

Particulars

The Applicants refer to and repeat paragraphs 68, 68A, 68B, 70, 71, 72, 76, 79, 79B and 80 above.

85. Further, at all relevant times, including in relation to Australia, Google LLC, enforced the OEM Restrictive Terms.

PART IV: GOOGLE'S RESTRICTIVE AGREEMENTS WITH APP DEVELOPERS

The Google Developer Distribution Agreement

86. At all relevant times, Google LLC has required app developers that wish to distribute apps through the Play Store to enter into a Google Developer Distribution Agreement (**DDA**).

Particulars

- i. DDA, clause 2.1.
 - ii. The DDA governs the terms and conditions for distribution of apps through the Play Store.
87. Google Asia Pacific is the Google contracting entity in relation to Android Apps distributed through the Play Store in Australia and Google Asia Pacific is, pursuant to the DDA, appointed as the app developer's marketplace service provider to make the developer's apps available to Android Smart Mobile Device Users in Australia and various other countries.

Particulars

DDA, clause 2.1 & 3.1 (read together with the table hyperlinked in ~~that~~ clause 2.1).

87A. Google LLC is the Google contracting entity in relation to Android Apps distributed through the Play Store in the United States and various other countries, and Google LLC is, pursuant to the DDA, appointed as the app developer's agent to make the developer's apps available to Android Smart Mobile Device Users in the United States and various other countries.

Particulars

DDA, clauses 2.1 & 3.1 (read together with the table hyperlinked in clause 2.1).

88. Google LLC and Google Asia Pacific did not permit app developers to negotiate any of the terms of the DDA.
89. Google LLC and Google Asia Pacific may make changes to the DDA at any time.

Particulars

DDA, clause 15.1.

90. Pursuant to the terms of the DDA:
- a. app developers must agree not to use the Play Store to distribute or make available any product that has a purpose that facilitates the distribution of software applications for use on Android Smart Mobile Devices outside of the Play Store;

Particulars

DDA, clause 4.5.

- b. app developers are prohibited from using ~~customer~~-user information obtained via the Play Store to sell or distribute products outside the Play Store;

Particulars

DDA, clause 4.9.

- c. where Google LLC and/or Google Asia Pacific determines in its discretion that an app or portion of an app violates the DDA or an applicable policy, or may have an adverse impact on Google (including economic impact), Google LLC and/or Google Asia Pacific may:
- i. reject, remove, suspend, or limit the visibility of the app on the Play Store; and/or

- ii. suspend and/or bar the app or app developer from the Play Store or Android Smart Mobile Devices.

Particulars

DDA, clause 8.3.

- d. Google LLC and/or Google Asia Pacific could terminate the DDA for any reason on 30 days' written notice, or immediately upon written notice (or with 30 days' prior written notice if required by law) where:
 - i. the app developer breached any provision of the DDA or other agreement relating to the Play Store or the Android platform; and/or
 - ii. the app developer or its app posed a potential risk ~~for~~ of economic, reputational, or security-related harm to Google;

Particulars

DDA, clause 10.3.

- dd. Google LLC and/or Google Asia Pacific are authorised to give users refunds in accordance with the Play Store refund policies and may deduct the amount of those refunds from payments to the developer;

Particulars

DDA, clause 3.8.

- e. if app developers wish to offer Play Store In-App Purchases, the app developer must have a valid Payments Profile Account under a separate agreement with a Payment Processor and be approved by a Payment Processor for a Payments Profile Account;

Particulars

- i. DDA, clause 3.2.
- ii. "Payments Profile Account" is defined as a financial service account or profile provided ~~issued~~ by a Payment Processor to an app developer that enables ~~authorises~~ the Payment Processor to collect and remit payments on the app developer's behalf for "Products" distributed via the Play Store.
- iii. "Payment Processor" is defined as ~~an entity authorised~~ by a Google-affiliated entity providing ~~to provide services~~

that enable the app developer with a Payment Account to be paid for "Products" distributed via the Play Store.

- iv. "Products" are defined as software, content, digital materials, and other items and services as made available by app developers via the ~~Play Store~~ Google Play Console.
- f. app developers must pay Google Australia, or alternatively Google LLC, Google Asia Pacific and/or Google Australia, a fee of 30% on Play Store In-App Purchases with certain limited exceptions such as:
 - i. from 1 January 2018, the fee is was 15% for automatically renewing subscription products after the first year, and since 1 January 2022 the fee has been 15% for all subscription products; and
 - ii. since 1 July 2021, the fee is has been 15% for the first US\$1 million of earnings per year for app developers enrolled in the 15% service-fee tier; and
 - iii. since around 23 June 2021, Google has charged a lower fee for app developers who qualify under special programs.

Particulars

- i. DDA, clause 3.4 (read together with the document entitled "Service fees" hyperlinked in that clause) and / or the Google Australia Product Disclosure Statement (EPIC GOOGLE AUS 00001172; EPIC GOOGLE AUS 00001100; EPIC GOOGLE AUS 00001129).
- ii. ~~Prior to 1 July 2021, app developers were required to pay a fee of 30% on all Play Store In-App Purchases (except for subscriptions in respect of which the fee was reduced to 15% for any subscribers retained after 12 months). The special programs form part of the Play Media Experience Program and include the Living Room Accelerator Program, the Audio Distribution Accelerator Program, the Books and Comics Accelerator Program, the Transactional Video Accelerator Program and Subscribe with Google.~~

- g. all claims arising out of or relating to the DDA or the app developer's relationship with Google under the DDA will be governed by the laws of the State of California, excluding California's conflict of laws provisions. App developers agree to submit to the exclusive jurisdiction of the federal or state courts of the county of Santa Clara, California to resolve any legal matter arising from or relating to the DDA or the app developer's relationship with Google under the DDA, except that app developers agree that Google LLC and Google Asia Pacific will be allowed to apply for injunctive relief in any jurisdiction (**Jurisdiction Clause**);

Particulars

DDA, clause 16.8.

- h. app developers must comply with Google's Developer Program Policies (**Developer Program Policies**).

Particulars

DDA, clause 4.1.

91. Google's Developer Program Policies are set out in a document titled "Developer Program Policy".

Particulars

- i. The Developer Program Policies include the "Payments Policy" (Payments Policy) and are updated by Google LLC from time to time.
- ii. Since August 2020, there have been at least ~~eleven~~ eighteen versions of the Developer Program Policies, with effective dates of 12 August 2020, 1 October 2020, 21 October 2020, 16 December 2020, 20 January 2021, 1 March 2021, 5 May 2021, 1 September 2021, 1 December 2021, ~~48 December 2021 and 17 January 2022~~, 11 May 2022, 31 August 2022, 28 September 2022, 3 October 2022, 9 November 2022, 14 December 2022, 26 April 2023 and 31 May 2023.
92. Google did not permit app developers to negotiate any of the terms of the Developer Program Policies.
93. Google may make changes to the Developer Program Policies.
94. Pursuant to the terms of Google's Developer Program Policies for those transactions:

- a. app developers offering Play Store In-App Purchases must use Google Play Billing;

Particulars

- i. Payments Policy, clause 2. Prior to 20 January 2021, Google's Developer Program Policies ~~provided that app developers "offering products within" an app "downloaded on Google Play" must use Google Play Billing (subject to certain exceptions)~~required all gaming apps selling digital content to use Google Play Billing, even if that content could be used outside the app, but permitted non-gaming apps to use an alternative payment solution for purchases of digital content that might be consumed outside the app (such as a song that could be played on another device).
- ii. Effective 20 January 2021, Google amended its Developer Program Policies to provide that all Play Store distributed apps (including non-gaming apps)"~~requiring or accepting payment for access to in-app features or services, including any app functionality, digital content or goods"~~, are required to use Google Play Billing for purchases of digital content, even if that content might be consumed outside the app (subject to certain exceptions). Google gave app developers who already had an app on the Play Store until 30 September 2021 to comply with this change to its Developer Program Policies (which could be extended to 31 March 2022 on request).
- iii. ~~[Not used]Android Developers Blog "Listening to Developer Feedback to Improve Google Play" dated 28 September 2020.~~
- iv. ~~Android Developers Blog "Allowing Developers to Apply for More Time to Comply with Play Payments Policy" dated 16 July 2021.~~ Since 18 December 2021 (in respect of South Korea) and 26 April 2023 (in respect of India) Google has permitted app developers to use an alternative payment solution in those countries in addition to Google Play Billing (subject to various conditions). When a developer offers and a user selects such an

alternative payment solution, the "service fee" that Google charges for that transaction is 26%.

v. Since 19 July 2022, Google has permitted developers of non-gaming apps to use an alternative payment solution (without also having to offer Google Play Billing) in the European Economic Area (subject to various conditions). When a developer offers and a user selects such an alternative payment solution, the "service fee" that Google charges for that transaction is 27%.

vi. Since 1 September 2022, Google has permitted eligible developers of non-gaming apps to join its "User Choice Billing" pilot program and use an alternative payment solution in addition to Google Play Billing (subject to various conditions) in specified countries. When a developer offers and a user selects an alternative payment solution, the "service fee" that Google charges for that transaction is 26%.

- b. in the period from at least January 2021 in respect of new apps, and 30 September 2021 in respect of pre-existing apps (which could be extended to 31 March 2022 on request) an app distributed ~~by~~via the Play Store must not lead users to a payment method other than Google Play Billing (subject to certain exceptions);

Particulars

- i. ~~Payments Policy, clause 4, Developer Program Policies~~ effective 20 January 2021.
- ii. ~~[Not used]Android Developers Blog "Listening to Developer Feedback to Improve Google Play" dated 28 September 2020.~~
- iii. ~~[Not used]Android Developers Blog "Allowing Developers to Apply for More Time to Comply with Play Payments Policy" dated 16 July 2021.~~

- c. an app distributed via the Play Store must not:
- i. modify, replace or update itself using any method other than the Play Store's update mechanism;
 - ii. download executable code from a source other than the Play Store; or

- iii. allow users to install another app.

Particulars

Device and Network Abuse Policy.

95. Where Google LLC and/or Google Australia Pacific considers that an app developer or app has not complied with the terms of the DDA, including Google's Developer Program Policies, Google LLC and/or Google Australia Pacific may:
- a. reject, remove, suspend, or limit the visibility of the app from the Play Store;
 - b. suspend and/or bar the app and/or the app developer from the Play Store or Android Smart Mobile Devices; and/or
 - c. terminate the DDA.

Particulars

DDA, clauses 8.3 and 10.3.

Payments Agreement

96. Further, at all material times, Google LLC and Google Asia Pacific have required app developers who wish to offer Play Store In-App Purchases to enter into an agreement with Google Australia in respect of the use of Google Play Billing as the method of payment in Australia (**Payments Agreement**).

Particulars

- i. DDA, clause 3.2 as described at paragraph 90(e) above.
- ii. Document entitled "Product Disclosure Statement (Google Payment Australia Pty Ltd)".

~~96A. At all material times, the Payments Agreement between Epic Games and Google Australia included terms to the following effect:~~

~~the Google Payments Service is an online payment processing service that is designed to facilitate the processing of payments by a valid payment method accepted by Google Australia between purchasers (Buyers) and participating merchants (Sellers);~~

~~on registering to use and / or on using the Google Payments Service, both Buyers and Sellers will be bound by this PDS and the relevant terms of service as they apply to either a Buyer or a Seller using the Google Payments Service;~~

~~the Google Payments Service will process payments received from Buyers on the Seller's behalf;~~

~~Google Australia is a third-party service provider facilitating payment transactions under the Payments Agreement on behalf of the Seller and is not itself a party to any sale or payment transaction;~~

~~Google Australia may withhold payments or reverse payments where a Buyer makes a claim for a reversal or refund;~~

~~Google Australia may offset any payment obligation owed to a Seller against service fees or any other amounts owed by the Seller to Google Australia;~~

~~for Google Payment transactions on the Play Store, the Seller must pay the fees specified in the Terms of Service applicable to the Play Store.~~

~~Particulars~~

~~Google Australia Product Disclosure Statement (EPIC_GOOGLE_AUS_00001172; EPIC_GOOGLE_AUS_00001100; EPIC_GOOGLE_AUS_00001129, together the PDS) at the opening paragraph of Schedule 2, and cll 2.1, 3.1, 4.1, 5.2.7, 6.1.7, 6.1.8 and 8.1.4.~~

~~The Terms of Service applicable to Buyers and Sellers using the Google Payments Service are set out in Schedules 1 and 2 respectively of the PDS.~~

~~The fees "payable" in respect of Play Store transactions are as described in paragraph 90(f) above.~~

97. Google did not permit app developers to negotiate any of the terms of the Payments Agreement.

The App Developer Restrictive Terms

98. The matters referred to in paragraphs 86-97 are collectively referred to in this pleading as the "**App Developer Restrictive Terms**".

99. At all relevant times, including in relation to Australia, Google, by imposing the App Developer Restrictive Terms, prevented or hindereds app developers from:

- a. distributing or offering Alternative App Stores via the Play Store;
- b. distributing or offering Android Apps via the Play Store which facilitate the distribution of software applications for use on Android Smart Mobile Devices outside of the Play Store; and/or
- c. using ~~and~~ or offering payment solutions other than Google Play Billing for Play Store In-App Purchases.

Particulars

The Applicants refer to and repeat paragraphs 90(a), 94, 95, and and 96 ~~and 96A~~ above.

400. Further, at all relevant times, including in relation to Australia, Google enforced the App Developer Restrictive Terms.

~~d. failing to agree to Epic's request for in-principle approval to make EGS available on the Play Store~~

Project Hug Conduct

99A. From about August 2018 to April 2019, Google developed a proposal that was initially known within Google as "Project Bear Hug" and came to be known as "Project Hug".

Particulars

Project Hug later came to be known externally as the "Games Velocity Program" or "GVP" (insofar as it applied to gaming app developers) and the "Apps Velocity Program" or "AVP" (insofar as it applied to non-gaming app developers).

99B. During the period from about 9 to 19 April 2019, Project Hug was presented to and approved by the Google Business Council (**Business Council**).

Particulars

- i. The presentation to the Business Council is GOOG-PLAY-000559842.R.
- ii. The Business Council approval is recorded in GOOG-PLAY-000957447.

99C. Project Hug was initially targeted at 22 developers of Android Apps for gaming (the **Targeted Developers**).

Particulars

The Targeted Developers are identified at GOOG-PLAY-000559842.R, '9846.R (noting that Google there counted Activision Blizzard as two developers, not one).

99D. In April 2019 and at all material times thereafter:

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- a. Google projected that the Targeted Developers would collectively account for [REDACTED] or 31% of the amount spent by Android Smart Mobile Device Users on Android Apps and Play Store In-App Purchases during 2019;
- b. the Targeted Developers drove “disproportionate value to Google” relative to other app developers that distributed Android Apps via the Play Store;
- c. Google believed the Targeted Developers were “Beacons of the Ecosystem”;
- d. there was a material risk that the Targeted Developers would cease to distribute some or all of their Android Apps via the Play Store; and
- e. there was a material risk that the Targeted Developers would commence distributing some or all of their Android Apps via an Alternative App Store or otherwise outside the Play Store.

Particulars

For example, see: GOOG-PLAY-000559842.R; GOOG-PLAY-000957447; and GOOG-PLAY-003332817.R.

99E. From about April 2019 to July 2022, Google implemented Project Hug by entering into agreements known as “Games Velocity Program Agreements” (collectively, the **GVP Agreements**) with 20 of the Targeted Developers.

Particulars

- i. Noting that Google counted Activision Blizzard as two developers, not one.
- ii. Google entered into GVP agreements with the following app developers on or about the following dates: King, 28 August 2019 (GOOG-PLAY-000927611); [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED] Activision
Blizzard, 25 January 2020 (GOOG-PLAY-007273439)
and 20 April 2023 (GOOG-PLAY-012035922); [REDACTED]

[REDACTED]

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[REDACTED]
[REDACTED] Riot, 9 March 2020 (GOOG-PLAY-
000929031); [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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99F. The GVP Agreements include terms to the following effect:

- a. the app developer must release (or, in the case of King and, until April 2023, Activision Blizzard, must use reasonable endeavours to release) Android Apps on the Play Store at the same time as, or before, it releases the same app (i.e., an app of the same title) on any other mobile distribution channel;
- b. the app developer must ensure that the Play Store is not disadvantaged in terms of the quality and promotion of the developer's apps (except that the GVP Agreements with Activision Blizzard, King and Niantic did not contain this obligation);
- c. the app developer must ensure that the core content, features and functionality (or, in the case of Activision Blizzard, King and Niantic, that the core game content and quality) of their Android Apps released on the Play Store are the same on other mobile app stores (or, in the case of some app developers, other comparable platforms);
- d. the app developer must not remove any of its Android Apps from the Play Store unless required by law or in other limited circumstances specified in the agreements (except that the GVP Agreements with King, Niantic and [REDACTED] did not contain this obligation); and
- e. the app developer must make good faith efforts (or, in the case of Nintendo, reasonable efforts) to include their apps in pre-registrations, open betas, and other early access programmes on the Play Store (except that the GVP Agreements with Activision Blizzard, King, Niantic and [REDACTED] did not contain this obligation).

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Particulars

- i. The GVP Agreements are particularised in paragraph 99E above.
- ii. For example, see the GVP Agreement with Riot (GOOG-PLAY-000929031) at clauses 3A, 3B, 3B(i), 3C & 3F.

99G. The Business Council granted separate approvals for Google to enter into its GVP Agreements with Activision Blizzard, Riot and [REDACTED] and a partnership agreement with Supercell.

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Particulars

- i. The Business Council approved Google entering into the GVP Agreement with Activision Blizzard on about 18 December 2019 (GOOG-PLAY-011072240; GOOG-PLAY-006857918).
- ii. The Business Council approved Google entering into the GVP Agreement with Riot on about 20 February 2020 (GOOG-PLAY-007424789; GOOG-PLAY-007400474).
- iii. The Business Council approved Google entering into the GVP Agreement with [REDACTED] on about 4 June 2020 (GOOG-PLAY-004696368.R; GOOG-PLAY-000966343).
- iv. The Business Council approved Google entering into a partnership agreement with Supercell in about February 2022 (GOOG-PLAY-011354748; GOOG-PLAY-011932995).

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99H. In or about March 2020, the Business Council approved an extension of Project Hug to certain developers of non-gaming Android Apps.

Particulars

The Business Council approved the extension on or about 5 March 2020 (GOOG-PLAY-009894749).

99I. [REDACTED] Google has implemented that extension of Project Hug by entering into agreements known as “App Velocity Program Agreements” (collectively, the AVP Agreements) [REDACTED]

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Particulars

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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

99J. The AVP Agreements include terms to the following effect:

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a. [REDACTED]

b. the app developer’s Titles must have the same core content and features as are made available in the same app or service on platforms other than the Play Store;

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c. [REDACTED]

d. the app developer must not make exclusive content available on the same app or service as its Titles, on platforms other than the Play Store, unless it is not technically feasible to make such content available on the Android OS;

e. the app developer must make available to Play Store users the same SKUs or service tiers in each Title as are made available to users on other platforms;

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f. [REDACTED]

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g. [REDACTED]

Particulars

i. The AVP Agreements are particularised in paragraph 99I above.

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ii. For example, see the AVP Agreement with [REDACTED] [REDACTED] at clauses 4A, 4B, 4D.

99K. At all material times, including in relation to Australia, Google monitor~~ed~~^s compliance with and enforce~~d~~^s the GVP Agreements and the AVP Agreements.

99L. The matters referred to in paragraphs 99A to 99K above are collectively referred to in this pleading as the “**Project Hug Conduct**”.

99M. By reason of the Project Hug Conduct:

a. the app developers that signed a GVP Agreement or an AVP Agreement who would or may otherwise have removed their Android Apps from the Play Store and only distributed those apps to Android Smart Mobile Device Users from outside the Play

Store have not done so, and will not do so during the term of their GVP Agreement or AVP Agreement;

- b. the app developers that signed a GVP Agreement or an AVP Agreement have been discouraged from only distributing their Android Apps outside the Play Store;
- c. app developers who entered into a GVP Agreement launched their apps on the Play Store on the same day as they launched on other mobile distribution platforms (if any);

Particulars

GOOG-PLAY-002650994.R, slides 9-10.

- d. Alternative App Stores (including EGS and the Samsung Galaxy Store) ~~are~~were unable to differentiate themselves from the Play Store by offering content that ~~was~~is not available on the Play Store from app developers which had~~ve~~ signed a GVP Agreement or an AVP Agreement; and
- e. the app developers that signed an AVP Agreement have been discouraged from using or offering an alternative payment method for Play Store In-App Purchases besides Google Play Billing.

100. [Not used]

PART V: GOOGLE'S OTHER RESTRICTIVE CONDUCT

Technical restrictions

101. By requiring OEMs to assume and perform the contractual obligations pleaded in paragraphs 68(aa), 68(f), 68(g), 68(h), 68A, 68B and 70 above, and/or by reason of decisions made by Google LLC in the course of determining whether the OEM's devices have complied with the Android Compatibility Definition Document and the GMS Requirements, and have passed the CTS and the GTS to its satisfaction, Google LLC has imposed on all OEMs who wish to distribute Android Smart Mobile Devices with Google Mobile Services a requirement that the OEM must configure their Android Smart Mobile Device At all relevant times, Google LLC has configured the Android OS so that, if an Android Smart Mobile Device uUser attempts to directly download an app from an unknown source (including via their internet browser), the user is confronted with all or at least some of the following:
- a. a warning with words to the effect ~~that states~~ that the APK can harm their device and asks whether they wish to keep the APK anyway;
 - b. if the user indicates that they do wish to keep the app, the download commences and, after the APK is downloaded several additional steps, a statement that for their own

security their ~~device phone~~ is not allowed to install unknown apps on their Android Smart Mobile Device;

- c. an option to cancel the installation or to alter their device settings;
- d. if the user wants to proceed with the installation download, they must go to the settings for their Android Smart Mobile Device and alter their settings to allow the installation of "unknown apps";
- e. on navigating to the settings menu, another warning that their Android Smart Mobile Device is more vulnerable to attack by "unknown apps" and that by installing apps from this source the user agrees they are responsible for any damage to their device phone or loss of data that may result from the app; ~~and~~
- f. to proceed with the installation download of the app, the user must then toggle the setting to indicate that they wish to make the change to the default setting, ~~and the download then proceeds;~~ and
- g. the user is then presented with an installation confirmation prompt that asks the user whether they want to install the app, and once the user acknowledges the prompt and presses 'install' the installation proceeds.

Particulars

The precise text the user is confronted with as a result of each of the matters referred to in subparagraphs 101(a)-101(g) above can vary between OEMs, versions of the Android OS and, in instances of direct downloading, the browser through which the app is downloaded, depending, inter alia, on the determination made by Google LLC.

~~Screenshots of the steps referred to in this paragraph, as confronted by a user on various different Android Smart Mobile Devices and versions of Android OS Exhibit JJ-1 to the affidavit of Joy Jin affirmed on 31 March 2023.~~

102. By requiring OEMs to assume and perform the contractual obligations pleaded in paragraphs 60(aa), 68(f), 68(g), 68(h), 68A, 68B and 70 above, and/or by reason of decisions made by Google LLC in the course of determining whether the OEM's devices have complied with the Android Compatibility Definition Document and the GMS Requirements, and have passed the CTS and the GTS to its satisfaction pPrior to release of the Android 12 version of Android OS on 4 October 2021, Google LLC configured the

Android OS imposed on all OEMs who wished to distribute Android Smart Mobile Devices with Google Mobile Services a requirement that the OEM must configure their Android Smart Mobile Device so that:

- a. it was not possible to automatically update a ~~directly downloaded~~ apps downloaded from unknown sources; and
 - b. in order to update an ~~directly downloaded app~~ downloaded from an unknown source, the user had to repeat all or at least some of the steps summarised at paragraph 101 above.
103. Since the release of Google LLC configured the Android 12 version of Android OS, ~~so that directly downloaded apps downloaded from unknown sources~~ can be automatically updated subject to conditions which are not imposed on Android Apps distributed via the Play Store.
104. In some cases, Google LLC prevented direct downloading altogether. As a result of the matters pleaded in paragraphs 101 and 102 above, OEMs are prevented from:
- a. distributing Android Smart Mobile Devices without configuring those devices as pleaded in paragraph 101 above, such that:
 - i. all attempts to directly download an Android App, or to download an app from an Alternative App Store that is not pre-installed with a privileged install permission, will confront the restrictions pleaded in paragraph 101; but
 - ii. the restrictions pleaded in paragraph 101 will not apply to downloads from the Play Store; and
 - b. allowing direct downloading of apps or downloading of apps from an Alternative App Store that has not been approved by Google for pre-installation with a privileged install permission on Android Smart Mobile Devices without displaying warnings to users and requiring users to take steps to allow such downloading of apps outside the Play Store.

Particulars

- i. The Applicants refer to and repeat paragraphs 68(aa), 68(f) 68(g), 68(h), 68A, 68B, 70 and 101-102 above. Google LLC may prevent the installation of, prompt a user to uninstall, or forcibly remove an app from an Android Smart Mobile Device if it is deemed "harmful".
- ii. [Not used] If an Android Smart Mobile Device User has enrolled in Google LLC's "Advanced Protection Program" (APP), Google prevents any direct downloading of apps.

~~This means that apps cannot be distributed to Android Smart Mobile Device Users enrolled in APP except through the Play Store or another pre-approved, pre-installed app store (if available). Because app stores cannot be distributed through the Play Store, an Alternative App Store can only be made available to Android Smart Mobile Device Users enrolled in APP if it has been pre-installed on their device.~~

105. The matters referred to in paragraphs 101-104 above are collectively referred to in this pleading as the "**Technical Restrictions**".

Google App Campaigns

106. At all material times, Google LLC has offered to app developers a program called "Google App Campaigns".

107. The "Google App Campaigns" program allows app developers to promote their apps by placing advertisements on key Google advertising channels as part of a "Google App Campaign", including Google Search, YouTube, Discover on Google Search and the Google Display Network.

Particulars

Google App Campaigns include: App Campaigns; Discovery Campaigns; Display Campaigns; Hotel Campaigns; Local Campaigns; Search Campaigns; Shopping Campaigns; Smart Campaigns; Video Campaigns; and Call Campaigns.

108. The Google App Campaigns program is an important and efficient tool for app developers to promote their apps to consumers, including in Australia.

109. At all material times, in order for an app developer to access the Google App Campaigns program to promote an Android App, Google LLC has required the app to be listed on the Play Store.

Particulars

App developers who develop Android Apps that are not available on the Play Store are unable to participate in Google App Campaigns.

109A. By reason of the matters pleaded in paragraphs 107 to 109, developers of Android Apps who wish to participate in Google App Campaigns are required by Google to list their apps on the Play Store (and/or the Apple App Store) and Alternative App Stores are thereby

prevented from or hindered in differentiating themselves from the Play Store by offering apps that are not available on the Play Store.

110. The matters referred to in paragraphs 106–109A above are collectively referred to in this pleading as the "**Google App Campaigns Conduct**".

PART VI: GOOGLE OEM CONDUCT

111. ~~In July 2019, By about February 2020, Epic and OnePlus agreed had reached an in-principle agreement that Epic would provide OnePlus with a custom build of the *Fortnite* app that could operate on OnePlus 8 Series Android Smart Mobile Devices in exchange for OnePlus allowing “pre-installation” and updating of the Epic Games App on all compatible OnePlus 8 Android Smart Mobile Devices globally (via a software update) and providing a “silent’ installation flow which would ensure that users did not confront the Technical Restrictions when downloading the Epic Games App without security warnings or requiring users to take steps to direct download outside the Play Store (a “silent” install flow).~~

Particulars

ia. EPIC GOOGLE 01740916.

- i. The custom build included a state-of-the-art framerate of 90 frames per second (being the frequency at which consecutive images appear on the device's screen).
- ii. The "silent" install flow would allow users to access a stub link in OnePlus' Game Space portal, which prompts a download of the Epic Games App directly from Epic, without any Google security warnings or requests for permissions for the download.
- iii. In addition, the Epic Games App stub with the "silent" install flow could be pushed out to older, already released devices through regular software updates.

112. ~~In about March and April 2020, Google LLC rejected OnePlus' request for a waiver of the restrictions imposed under the Premier RSA between OnePlus and Google LLC, which would have allowed proposal to allow pre-installation and updating of the Epic Games App on OnePlus 8 Android Smart Mobile Devices without security warnings or requiring users to take steps to directly download the Epic Games App outside the Play Store, due to restrictions imposed under the Premier Revenue Sharing Agreement between OnePlus and Google LLC, except in respect of devices sold in India.~~

Particulars

- i. EPIC GOOGLE 00306716;
EPIC GOOGLE 00089922;
EPIC GOOGLE 00306896.
- ii. OnePlus RSA effective 1 February 2020, clauses 1.7, 1.9,
6.2(a) (GOOG-PLAY-000416604).

113. ~~[Not used] In rejecting OnePlus' proposal, Google LLC was concerned that the Epic Games App would have the ability to install and update multiple apps, bypassing the Play Store.~~
114. As a result of Google LLC's conduct, the agreement between Epic and OnePlus as described at paragraph 111 above did not proceed, other than in India, where users of certain OnePlus Android Smart Mobile Devices ~~Users can~~ could directly download the Epic Games App via the silent install flow.

Particulars

Pre-install and Licence agreement dated 26 May 2020,
Schedule 1.

115. ~~Between~~ In April 2019 and 2020, Epic entered into an agreement with LG for the pre-installation of Epic Games App (then known as the 'Epic Games Installer' or the 'Fortnite Installer') on the "+1" screen' of certain LG Android Smart Mobile Devices. ~~also approached LG as a potential OEM who could partner with Epic to develop and engineer a better solution for pre-installing the Epic Games App.~~

Particulars

Pre-Install and License Agreement between Epic Games,
Inc. and LG Electronics Inc. effective 1 April 2019
(EPIC GOOGLE 04686767).

- 115A. In late 2019 and early 2020, Epic requested that LG renew their agreement and transition the Fortnite Installer (which only facilitated the installation of Fortnite) to the Epic Games App (which would facilitate the installation of other Epic apps in addition to Fortnite).
116. In about April 2020, by reason of Google's conduct in offering and entering into a Revenue Sharing Agreement with LG, LG declined to renew its agreement with Epic or to agree to a pre-installation agreement with Epic which would have enabled frictionless pre-installation and updating of the Epic Games App on LG devices, ~~with LG expressly citing Google LLC's restrictions on pre-installation as an explanation.~~

Particulars

EPIC GOOGLE 02095719; EPIC GOOGLE 04683507;
EPIC GOOGLE 00308332; EPIC GOOGLE 02090193.

116A. In March 2019, prior to Google entering into a Revenue Sharing Agreement with Sony, Epic entered into an agreement with Sony for the pre-installation of the 'Epic Games Installer' on the "Plus One Screen" of certain Sony Android Smart Mobile Devices.

Particulars

EPIC GOOGLE 01419607.

116B. In about August 2019, Epic notified Sony that it wished to:

- a. transition from the Fortnite Installer to the Epic Games App;
- b. improve the install process by Sony according the Epic Games App a privileged install permission, such that Android Smart Mobile Device Users would not confront the Technical Restrictions when downloading the Epic Games App or other apps from within the Epic Games App.

116C. Following negotiations over the period September 2019 to February 2020, in February 2020 Sony declined to agree to pre-install the Epic Games App on Sony devices because Google refused to grant permission for Sony to grant the Epic Games App a privileged install permission on its devices.

117. Google LLC's conduct, as pleaded in paragraphs 112–116C above is referred to in this pleading as the "**Google OEM Conduct**".

PART VII: RELEVANT MARKETS**The Mobile OS Licensing Market**

118. At all relevant times, in the circumstances described at paragraphs 26-35 above, there was a market for the supply of licenses for Mobile OSs (**Mobile OS Licensing Market**).

Particulars

- i. The geographic dimension of the Mobile OS Licensing Market is described at paragraph 119 below.
- ii. The Mobile OS Licensing Market does not include the supply of any Mobile OS that is not available for licensing (such as iOS).

119. The Mobile OS Licensing Market is a market in Australia for the purposes of s 4E of the CCA in that the market in Australia forms part of a global market (excluding China).

The Australian Android Mobile App Distribution Market

120. At all relevant times, in the circumstances described at paragraphs ~~36–60~~5-117 above, there is a market or markets for the supply of services for the distribution of Android Apps to Android Smart Mobile Device Users (**Android Mobile App Distribution Market**).

Particulars

- i. The services consist of the provision of services to app developers enabling and/or facilitating app developers to reach, offer and provide Android Smart Mobile Device Users with Android Apps and associated updates and/or the provision of services to Android Smart Mobile Device Users enabling and/or facilitating Android Smart Mobile Device Users to be presented with and/or find, obtain and utilise Android Apps and associated updates.
- ii. The geographic dimension of the Android Mobile App Distribution Market is described at paragraph 121 below.

121. The Android Mobile App Distribution Market is a market in Australia for the purposes of s 4E of the CCA in that:

- a. its geographic dimension is limited to Australia; or
- b. the market in Australia forms part of a global market (excluding China),

(Australian Android Mobile App Distribution Market).

The Australian Android In-App Payment Solutions Market

122. At all relevant times, in the circumstances described at paragraphs ~~64–66~~5-117 above, there is a market for the supply of services to app developers for accepting and processing payments for the purchase of digital content –within an Android App (**Android In-App Payment Solutions Market**).

Particulars

- i. The services consist of the provision of services to app developers enabling and/or facilitating app developers to accept and process payments for the purchase of digital content (including by way of subscriptions) within an Android App.

- ii. The geographic dimension of the Android In-App Payment Solutions Market is described at paragraph 123 below.

123. The Android In-App Payment Solutions Market is a market in Australia for the purposes of s 4E of the CCA in that:

- a. its geographic dimension is limited to Australia; or
- b. the market in Australia forms part of a global market (excluding China),
(Australian Android In-App Payment Solutions Market).

PART VIII: GOOGLE'S CONDUCT IN CONTRAVENTION OF SECTION 46

Google's conduct in respect of Android App Distribution

Google's market power

124. At all relevant times, in relation to the Australian Android Mobile App Distribution Market:

- a. the Play Store:
 - i. was the largest and most popular app store for Android Apps, including in Australia;
 - ii. was pre-installed on over 90% of Android Smart Mobile Devices worldwide (excluding China) and on almost all Android Smart Mobile Devices in Australia; and
 - iii. was used by consumers to download over 90% of ~~apps on Android Smart Mobile Devices~~ Android apps [REDACTED] worldwide (excluding China), and [REDACTED] Android Apps [REDACTED] in Australia;

Particulars

- i. The Applicants refer to and repeat paragraphs 10, 53, 53A and 55 above.
- ii. GOOG-PLAY-AUS-00001205; GOOG-PLAY-AUS-00001218.
- iii. [REDACTED]
GOOG-PLAY-AUS-00001216; GOOG-PLAY-AUS-00001204.
- b. Alternative App Stores do not materially constrain the Play Store because:
 - i. they were not widely used, including in Australia;

- ii. by reason of the OEM Restrictive Terms, the Play Store ~~is~~was preinstalled on the default home screen of Android Smart Mobile Devices (or, in the case of certain Samsung devices, in the 'device hotseat');
- iii. they ~~are~~were currently poor substitutes for the distribution of apps through the Play Store for both app developers and Android Smart Mobile Device Users because they:
 - A. ~~are~~were not available for download from the Play Store;
 - B. ~~are~~were less discoverable than the Play Store;
 - C. ~~are~~were pre-installed with a privileged install permission on substantially fewer (if any) Android Smart Mobile Devices;
 - D. unless pre-installed with a privileged install permission, ~~are~~were disadvantaged by the fact that users must overcome the Technical Restrictions before downloading both the Alternative App Store and apps within the Alternative App Store;
 - E. offered significantly fewer apps and have significantly fewer users; and/or
 - F. ~~are~~were precluded or constrained from differentiating themselves from the Play Store by reason of the Google App Campaigns Conduct, the terms of the Revenue Sharing Agreements pleaded in paragraphs 79 and 79B above and the terms of the GVP Agreements and AVP Agreements pleaded in paragraphs 99F and 99J above;

Particulars

The Applicants refer to and repeat paragraphs 57, 67-70, 76, 79, 79B, 80, 84-85, 86, 90(a), 90(h), 91, 92(c), 95, 99, 99A-99M, 101-102, 104 and 109A above.

- c. direct downloading of apps on Android Smart Mobile Devices ~~does~~not materially constrain the Play Store because direct downloading:
 - i. confronted the Technical Restrictions ~~in the Android OS, which deterred or discouraged~~ Android Smart Mobile Device Users from direct downloading by making direct downloading a lengthy, complex, and intimidating process, resulting in a poor user experience, relative to downloading apps from the Play Store, and for this reason, ~~deterred or discouraged~~ app developers from distributing their apps by way of direct downloading; and
 - ii. was not widely used, including in Australia;

Particulars

The Applicants refer to and repeat paragraphs 59, 67, 68(aa), 68(f), 68(g), 68(h), 68A-68B, 69-70 and 101-104 above.

- d. pre-installation of Alternative App Stores and/or Android Apps ~~does~~ not materially constrain the Play Store because for the vast majority of app developers, the pre-installation of Android Apps was not a viable alternative method of distribution to the distribution of Android Apps through the Play Store;

Particulars

- i. The Applicants refer to and repeat paragraph 54, 79, 79B, 80, 81, 84(c), 85, 112, 116, and 116C above.
- ii. Pre-installed non-Google apps comprised a small minority of Android Apps installed on Android Smart Mobile Devices.
- dd. Google ~~had~~ a substantial degree of power in the Mobile OS Licensing Market (as pleaded in paragraph 128(a) below);
- ddd. the matters pleaded in 7(a) ~~and~~ 8(a) above are repeated;
- e. Google LLC ~~can and does~~ could and did ~~refuse to licence~~ requires OEMs who wished to pre-install any of the Google Mobile Services Apps, including any of the popular Core Applications ~~Google apps~~, and Google Play Services on Android Smart Mobile Devices or otherwise ~~required~~ desired access to Google Play Services, unless they ~~to~~ agreed to the OEM Restrictive Terms which:
- i. required OEMs to pre-install the Play Store and place it on the default home screen of Android Smart Mobile Devices (or, in the case of certain Samsung devices, in the 'device hotseat');
- ii. ~~prevented~~ required OEMs ~~from~~ to impose the Technical Restrictions, such that:
- A. all attempts to directly download an Android App, or to download an app from an Alternative App Store that was not pre-installed with a privileged installed permission, ~~will~~ would confront removing the Technical Restrictions on the Android Smart Mobile Devices;
- B. ~~allowing direct downloading of apps on Android Smart Mobile Devices without requiring users to take steps to allow direct downloading of apps~~

~~outside the Technical Restrictions~~ ~~will~~would not apply to downloads from the Play Store;

and for OEMs who wished to "share" in Google's advertising and/or Play Store revenue derived from the Android Smart Mobile Devices the OEM manufactures, the Revenue Sharing Agreement terms pleaded in paragraphs 79 and 79B above, ~~prevented OEMs from, in some cases:~~

- C. discouraged OEMs from pre-installing Alternative App Stores on Android Smart Mobile Devices;
- D. discouraged OEMs from pre-installing any Android App that competes with any Google Mobile Services App, including the Play Store; and
- E. discouraged OEMs from promoting Alternative App Stores; and
- F. discouraged OEMs from pre-installing any Android App that is not available in the Play Store.

Particulars

The Applicants refer to and rely on the whole of the OEM Restrictive Terms, individually and cumulatively, and further refers to and repeats paragraphs 67, 68(aa), 68(f), 68(g), 68(h), 68A, 68B, 69, 70, 79, 79B, 80, 84-85 and 101-104 above.

- f. Google LLC, by imposing and enforcing the OEM Restrictive Terms, prevented or hindered app developers from obtaining pre-installation or offering direct download of Alternative App Stores or other Android Apps on Android Smart Mobile Devices;

Particulars

The Applicants refer to and repeat paragraph 84 above.

- g. Google ~~can and does~~could and did LLC and Google Asia Pacific ~~required~~ app developers who wished to distribute Android Apps to Android Smart Mobile Device Users via the Play Store to agree to the App Developer Restrictive Terms, which:
 - i. prevented app developers from distributing or offering Alternative App Stores via the Play Store;
 - ii. prevented app developers from distributing or offering Android Apps via the Play Store which facilitate the distribution of software applications for use on Android Smart Mobile Devices outside of the Play Store;
 - iii. contained the Jurisdiction Clause;

and for app developers who wished to offer Play Store In-App Purchases, Google LLC, Google Asia Pacific and Google Australia:

- iv. required app developers to use Google Play Billing for accepting and processing payments; and
- v. required app developers to pay a fee of 30% in Australia to Google Australia (or, in some limited circumstances, 15%);

Particulars

The Applicants refer to and rely on the whole of the App Developer Restrictive Terms, individually and cumulatively, and further refers to and repeats paragraph 99.

- h. Google LLC, Google Asia Pacific and Google Australia ~~are~~were able to and ~~did~~refuse to supply app distribution services to developers except on ~~did not permit app developers to negotiate~~ the App Developer Restrictive Terms;

Particulars

The Applicants refer to and repeat paragraphs 86-88, 90(h), 92, 95, 96, and 97, and 99 above.

- hh. Google has entered into the GVP and AVP Agreements, which imposed the restrictions and had~~ve~~ the effects pleaded in paragraphs 99F, 99J and 99M above;

Particulars

The Applicants refer to and repeat paragraphs 99E-99M above.

- i. Google LLC imposed the Technical Restrictions on Android Smart Mobile Devices ~~via the Android OS~~ which prevented or hindered users from:
 - i. directly downloading apps on Android Smart Mobile Devices; and
 - ii. automatically updating apps directly downloaded on Android Smart Mobile Devices;

Particulars

The Applicants refer to and rely on the whole of the Technical Restrictions, individually and cumulatively.

- j. ~~[Not used]the Google App Campaigns program is was an important tool for app developers to promote their apps to consumers, including in Australia;~~

Particulars

~~The Applicants refer to and repeat paragraph 108 above.~~

- k. Google LLC engaged in the Google App Campaigns Conduct, which required app developers of Android Apps who wished to access the Google App Campaigns program to promote an Android App, to list the app on the Play Store;

Particulars

The Applicants refer to and repeat paragraph 109-109A above.

- l. The OEM Restrictive Terms and the App Developer Restrictive Terms, as well as the Google App Campaigns Conduct and the GVP and AVP Agreements, created barriers to entry and expansion in the development of Alternative App Stores;

Particulars

The Applicants refer to and rely on the whole of the OEM Restrictive Terms, individually and cumulatively, and the App Developer Restrictive Terms, individually and cumulatively, as well as the Google App Campaigns Conduct and the GVP and AVP Agreements, individually and cumulatively.

- m. OEMs did not have substantial countervailing power to Google in respect of the OEM Restrictive Terms and app developers did not have substantial countervailing power to Google in respect of the App Developer Restrictive Terms;

Particulars

- i. The Applicants refer to and repeat paragraphs 88, 92 and 97 above.
- ii. Further particulars will be provided prior to trial.
- n. app stores for non-licensable Mobile OSs, such as iOS, and app distribution channels to PCs and gaming consoles were not substitutes for the distribution of Android Apps; and

Particulars

The Applicants refer to and repeat paragraph 60 above.

- o. web apps were not substitutes for the distribution of Android Apps;

Particulars

The Applicants refer to and repeat paragraph 60 above.

- p. the Play Store ~~iswas~~ highly profitable and the financial resources of Google and its parent Alphabet Inc. ~~arewere~~ larger than those of most corporations in the world;
- q. Google ~~iswas~~ able to and ~~didoes~~ set a supra-competitive commission (i.e., its 30% “service fee”) which ~~iswas~~ unconstrained by the conduct of competitors and ~~hads~~ been essentially unchanged for years; and
- r. Google ~~hads~~ a substantial degree of power in the Australian Android In-App Payment Solutions Market (or, alternatively, the Australian Play Store In-App Payment Solutions Market as defined in paragraph 132B below).

Particulars

The Applicants refer to and repeat paragraphs 126, 132A(a) and 132B below.

125. ~~[Not used]At all material times, in the circumstances described at paragraph 124 above, Google LLC and/or Google Asia Pacific had a monopoly or near-monopoly and did not face any, or any material, competitive constraints in the supply of services for the distribution of Android Apps to Android Smart Mobile Device Users in the Australian Android Mobile App Distribution Market.~~
126. By reason of the matters pleaded at paragraphs 124-125 above:
- a. Google LLC;
 - b. Google Asia Pacific; and/or
 - c. Google Australia,
- had or together ~~had~~ ~~ve~~ a substantial degree of power in the Australian Android Mobile App Distribution Market.

Particulars

The Applicants also refer to and rely on s 46(3) of the CCA.

Google's conduct in respect of Android App Distribution

127. Google LLC and/or Google Asia Pacific and/or Google Australia has each engaged in the following conduct in trade or commerce:
- a. Google LLC required OEMs, who wished to ~~pre-install~~ distribute an Android Smart Mobile Device with any of the popular Google Mobile Service aApps, including any of the popular Core Applications, and Google Play Services, on Android Smart Mobile Devices or otherwise ~~required~~ desired access to Google Play Services, to

agree to the OEM Restrictive Terms pleaded in paragraphs 68 and 70 above, which and thereby:

- i. requires OEMs to pre-install the Play Store on the default home screen of Android Smart Mobile Devices (or, in the case of certain Samsung devices, in the 'device hotseat');
- ii. ~~[Not used] prevented OEMs from:~~
 - A. ~~removing the Technical Restrictions on the Android Smart Mobile Devices; and~~
 - B. ~~allowing direct downloading of apps on Android Smart Mobile Devices without requiring users to take steps to allow direct downloading of apps outside the Play Store;~~

and for OEMs who wished to "share" in Google's advertising and/or Play Store revenue derived from the Android Smart Mobile Devices the OEM manufactures, ~~prevented OEMs from, in some cases:~~

 - C. ~~pre-installing Alternative App Stores on Android Smart Mobile Devices;~~
 - D. ~~pre-installing any Android App that competes with any Google Mobile Services App, including the Play Store; and~~
 - E. ~~promoting Alternative App Stores.~~

Particulars

~~The Applicants refer to and rely on the whole of the OEM Restrictive Terms, individually and cumulatively.~~

- aa. Google LLC has ds imposed the Technical Restrictions, and has ds thereby prevented OEMs from allowing downloading of apps on Android Smart Mobile Devices from outside the Play Store (or an Alternative App Store approved for a privileged install permission by Google LLC) without displaying warnings to users and requiring users to take steps to allow such downloading to take place.

Particulars

The Applicants refer to and repeat paragraphs 59, 67, 68(aa), 68(f), 68(g), 68(h), 68A, 68B, 69-70, 101-104 above.

- aaa. Google LLC require ds OEMs who wish to obtain a higher "share" of Google's search revenue and a share of Google's Play Store revenue derived from the Android Smart Mobile Devices the OEM manufactures to comply with the Revenue Sharing Agreement terms pleaded in paragraph 79 or 79B above, and thereby:

- i. discouraged OEMs from pre-installing Alternative App Stores in Android Smart Mobile Devices;
- ii. discouraged OEMs from pre-installing any Android App that competes with the Play Store, or that is not available in the Play Store; and
- iii. discouraged OEMs from promoting Alternative App Stores.

Particulars

The Applicants refer to and repeat paragraphs 78-80 above.

- b. Google LLC and Google Asia Pacific required app developers who wished to distribute Android Apps to Android Smart Mobile Device Users via the Play Store to agree to the App Developer Restrictive Terms pleaded in paragraphs 87, 87A, 90, 94 and, 96 and 96A, above which, and thereby:
 - i. prevented app developers from distributing or offering Alternative App Stores via the Play Store;
 - ii. prevented app developers from distributing or offering Android Apps via the Play Store which facilitate the distribution of software applications for use on Android Smart Mobile Devices outside of the Play Store; and
 - iii. imposed~~contained~~ the Jurisdiction Clause;

Particulars

The Applicants refer to and rely on the whole of the App Developer Restrictive Terms identified in subparagraph (b), individually and cumulatively.

- c. ~~Google LLC, Google Asia Pacific and Google Australia required app developers who wished to offer Play Store In-App Purchases to agree to~~ By the App Developer Restrictive Terms, which Google Australia, or in the alternative Google LLC, Google Asia Pacific and/or Google Australia have:
 - i. required app developers to use Google Play Billing for accepting and processing payments for Play Store In-App Purchases; and
 - ii. required app developers to pay a fee of 30% in Australia to Google Australia (or, in some limited circumstances, 15%); and
 - iii. required app developers to enter into a Payments Agreement with Google Australia in respect of the use of Google Play Billing as the method of payment in Australia,

thereby ensuring that Google Australia, or in the alternative Google LLC, Google Asia Pacific and/or Google Australia, had~~ve~~ been able to impose and derive supra-competitive commissions in connection with the distribution of Android Apps and/or the provision of Google Play Billing, which ~~are~~~~were~~ unconstrained by the conduct of competitors and which had~~ve~~ been essentially unchanged for years;

Particulars

The Applicants refer to and rely on the whole of the App Developer Restrictive Terms pleaded in paragraphs 86, 90(e), 90(f), (90h), 94(a), 94(b), and 96-97 above, individually and cumulatively.

- d. Google LLC, Google Asia Pacific and Google Australia did not permit app developers to negotiate the App Developer Restrictive Terms;

Particulars

The Applicants refer to and repeat paragraphs 88, 92 and 97 above.

- e. Google LLC enforced the OEM Restrictive Terms, by ~~refusing to allow engaging in the Google OEM Conduct pleaded in paragraphs 112, 116, and 116C above~~ ~~OnePlus and LG to allow pre-installation and updating of the Epic Games App globally on those OEMs' devices without security warnings or requiring users to take steps to directly download outside the Play Store;~~

Particulars

The Applicants refer to and repeat paragraphs 85 and 112-116C above.

- f. Google LLC, by imposing and enforcing the OEM Restrictive Terms, including by engaging in the Google OEM Conduct, prevented or hindered app developers from obtaining pre-installation or offering direct download of Alternative App Stores or other Android Apps;

Particulars

The Applicants refer to and repeat paragraphs 84-85 and 112-117C above.

- g. Google LLC, Google Asia Pacific and Google Australia enforced the App Developer Restrictive Terms;

Particulars

The Applicants refer to and repeat paragraph ~~400~~99 above.

- h. Google LLC enforced the App Developer Restrictive Terms against Epic by:
 - i. suspending Epic's publishing status on the Play Store;
 - ii. removing *Fortnite* from the Play Store; and
 - iii. refusing to allow Epic to offer Epic Direct Pay for any Play Store In-App Purchases (including in-app purchases made in the *Fortnite* app distributed through the Play Store on Android Smart Mobile Devices); and
 - iv. failing to agree to Epic's request for in-principle approval to make EGS available on the Play Store.
- i. Google LLC, Google Asia Pacific and Google Australia, by imposing and enforcing the App Developer Restrictive Terms, prevent or hinder app developers from:
 - i. distributing or offering Alternative App Stores via the Play Store;
 - ii. distributing or offering Android Apps via the Play Store which facilitate the distribution of software applications for use on Android Smart Mobile Devices outside of the Play Store; and
 - iii. ~~from~~ using and offering payment solutions other than Google Play Billing for Play Store In-App Purchases;

Particulars

The Applicants refer to and repeat paragraph ~~99–100~~ above.

- j. Google LLC imposed the Technical Restrictions on ~~Android Smart Mobile Devices via the Android OS~~ which prevented or hindered Android Smart Mobile Device ~~u~~Users from:
 - i. directly downloading of apps on Android Smart Mobile Devices; and
 - ii. (until the release of the Android 12 version of Android OS on 4 October 2021) automatically updating apps directly downloaded on Android Smart Mobile Devices;

Particulars

The Applicants refer to and rely on the whole of the Technical Restrictions, individually and cumulatively.

- k. Google LLC engaged in the Google App Campaigns Conduct which required app developers of Android Apps who wished to access the Google App Campaigns program to promote an Android App, to list the app on the Play Store.

Particulars

The Applicants refer to and repeat paragraph 109-109A above.

- l. Google LLC and Google Asia Pacific engaged in the Project Hug Conduct.

Particulars

The Applicants refer to and repeat paragraphs 99A to 99K above.

128. Further, at all material times Google LLC, Google Asia Pacific and/or Google Australia engaged in the conduct pleaded in paragraph 127 above in circumstances where:
- a. Google LLC, Google Asia Pacific and/or Google Australia had ~~and had~~ a substantial degree of power in the Mobile OS Licensing Market, given:
- i. the matters pleaded in paragraphs 7(a), 8(a), 9, 29, 30, 32, 33 and 34 above;
- ii. it ~~is~~was not commercially feasible or advisable for OEMs to distribute Smart Mobile Devices without pre-installing a Mobile OS on the device;
- iii. the vast majority of OEMs outside China ~~did~~e not develop their own OS, and accordingly, must license a Mobile OS from a third party such as Google;
- iv. the vast majority of OEMs ~~did~~e not consider it commercially feasible or advisable to distribute Smart Mobile Devices (outside China) without any of the Google Mobile Services;
- v. Google ~~did~~e not permit OEMs to distribute Smart Mobile Devices (outside China) with any of the Google Mobile Services (including any of the Core Applications), except on Android Compatible Devices (being devices that comply with the Android Compatibility Definition Document) and subject to the OEM Restrictive Terms;
- vi. the vast majority of OEMs who licensed a Mobile OS outside China had ~~ve~~e accepted and ~~are~~were bound by the OEM Restrictive Terms;
- vii. the Android OS ~~is~~was installed on almost all Smart Mobile Devices that use a licensed OS worldwide (excluding China) and almost all Smart Mobile Devices that use a licensed OS in Australia;

- viii. alternative licensable OSs for Smart Mobile Devices ~~did~~ not have the capacity to support most existing native apps for Smart Mobile Devices, which capacity Smart Mobile Device Users regard as essential, or at least as valuable;
- ix. there ~~are~~were significant barriers to entry, namely:
- A. there ~~are~~were significant costs associated with developing a Mobile OS;
 - B. any new alternative licensable Mobile OS would ~~have~~ required a large number of app developers to develop apps compatible with that OS in order to attract Smart Mobile Device Users;
 - C. any new alternative licensable Mobile OS would ~~have~~ required a large number of Smart Mobile Device Users in order to entice developers to develop apps compatible with that OS;
 - D. persuading large numbers of app developers and Smart Mobile Device Users to adopt a new alternative licensable Mobile OS ~~is~~would have been very difficult, particularly because a dominant licensable OS, supported by a substantial network of app developers and Smart Mobile Device Users, already existed; and
 - E. the OEM Restrictive Terms, especially the terms of the Anti-Fragmentation Agreements pleaded in paragraph 70 above;
- x. there has been no material successful market entry in recent years. Microsoft (with the Windows Mobile OS) has tried to enter the market, but failed; and
- xi. Google ~~is~~was highly profitable and the financial resources of Google and its parent Alphabet Inc. ~~are~~were larger than those of most corporations in the world.

Particulars

- i. ~~[Not used]Google Android Decision, [442]-[496].~~
 - ii. The Applicants refer to and repeat paragraphs 34–35, 67–85 and 124–125 above.
 - iii. The Applicants also refer to and rely on s 46(3) of the CCA.
- b. Google LLC, Google Asia Pacific and/or Google Australia had~~s~~ engaged in some or all of the conduct pleaded at paragraph 127 above in circumstances where, having regard to s 46(3) of the CCA, Google LLC, Google Australia Pacific and/or Google Australia had a substantial degree of power in the Mobile OS Licensing Market the Australian Android Mobile App Distribution Market and the Australian Android In-App

Payment Solutions Market (or, alternatively, the Australian Play Store In-App Payment Solutions Market as defined in paragraph 147 below).

Particulars

- i. The Applicants refer to and repeat paragraph 126 above and paragraphs 147A(a) and 147B below.
- ii. The Applicants also refer to and rely on s 46(3) of the CCA.

129. But for the conduct described at paragraph 127-128 above, or any part of that conduct, Google LLC, Google Asia Pacific and/or Google Australia would likely have faced:
- a. the threat of entry by competitors in the Australian Android Mobile App Distribution Market;
 - b. effective competitive constraints from existing or new Alternative App Stores or alternative app distribution methods; and/or
 - c. effective competition in the Australian Android Mobile App Distribution Market from Alternative App Stores or alternative app distribution methods and/or from app developers using or offering payment solutions other than Google Play Billing to other app developers ~~and/or to Android Smart Mobile Device Users;~~
 - d. the threat of entry by competitors in the Australian Android In-App Payment Solutions Market (or, alternatively, in the Australian Play Store In-App Payment Solutions Market defined in paragraph 147B below); and/or
 - e. effective competition in the Australian Android In-App Payment Solutions Market (or, alternatively, in the Australian Play Store In-App Payment Solutions Market as defined in paragraph 147B below) from other payment solution providers or app developers offering payment solutions other than Google Play Billing for accepting and processing Play Store In-App Purchases.

Particulars

The Applicants refer to and repeat paragraphs 56, 57A, 63, 66, 99M and 112, 114, 115A and 116A-116B above.

130. Competition in the Australian Android Mobile App Distribution Market and/or in the Australian Android In-App Payment Solutions Market (or, alternatively, the Australian Play Store In-App Payment Solutions Market defined in paragraph 147B below) of the kind referred to at paragraph 129 above would or would likely have led to pro-competitive benefits including:

- a. increased quality, innovation and choice in respect of the distribution of Android Apps to Android Smart Mobile Devices;

Particulars

- i. Absent some or all of the OEM Restrictive Terms, the App Developer Restrictive Terms and the Technical Restrictions, Alternative App Stores (including a version of the EGS that would distribute Android Apps) would have competed with the Play Store;
- ii. Alternative App Stores would have innovated, including by:
 - A. curating the apps available on competing stores;
 - B. providing more reliable or a different form of app reviews;
 - C. providing different marketing or promotion;
 - D. providing different means of search or discovery;
 - E. offering different pricing models;
 - F. providing community or social features;
 - G. providing different check-out methods or payment processors;
 - H. providing better security;
 - I. providing better privacy options;
 - J. providing better parental controls; and
 - K. operating across multiple platforms.

- aa. increased substitution in respect of the distribution of Android Apps to Android Smart Mobile Device Users;

Particulars

- i. Absent Google's conduct pleaded in paragraph 127 above, there would be more Alternative App Stores, app developers would be more inclined to make their apps available on such stores, users would be more likely to discover and visit them, and such Alternative App Stores

would be more capable of distributing Android Apps in place of distribution via the Play Store.

- ii. If Alternative App Stores were available on the Play Store, they would be more readily discoverable by Android Smart Mobile Device Users and users would not confront the Technical Restrictions when downloading such Alternative App Stores, or their apps.
- iii. If the Technical Restrictions were removed or modified, Alternative App Stores could be directly downloaded and thereafter the distribution of Android Apps via those Alternative App Stores could occur in similar fashion to the Play Store, without confronting the Technical Restrictions.
- iv. Alternative App Stores could make themselves more readily discoverable by securing deals with OEMs for pre-installation, for promotions and/or to feature on a device's default home screen.
- v. Alternative App Stores could more easily differentiate themselves from the Play Store by offering content that is not available on the Play Store from app developers which have signed a GVP Agreement or an AVP Agreement.

- b. increased quality, innovation and choice in respect of apps available on Android Smart Mobile Devices;

Particulars

- i. App development would have been encouraged as app developers would not have faced the uncertainty of being excluded from the Play Store due to, among other things, the DDA, the Developer Program Policies or the exercise of Google's discretion.
- ii. Non-Google Android Apps would have been less disadvantaged by the pre-installation of Google's own Android Apps, pursuant to the OEM Restrictive Terms, including as pleaded at paragraphs 68(aa)–68(eh) above.

- i. Google would have been incentivised to enhance search and discoverability functionality within the Play Store;
 - ii. Google would have been incentivised to offer app developers and Android Smart Mobile Device Users greater customer service, including in relation to the handling of complaints and refunds;
 - iii. Google would have been incentivised to improve the app review process, including in relation to the time between an app being submitted for review and made available on the Play Store;
 - iv. Google would have been incentivised to improve the DDA and the Developer Program Policies, in relation to fairness, transparency and equal enforcement;
 - v. Google would have been disincentivised to preference its own Android Apps within the Play Store and app review process, including those that compete with non-Google Android Apps also available within the Play Store; and
 - vi. Google ~~is~~would have been incentivised to lower the prices it charges app developers; and
 - vii. Google ~~is~~would have been incentivised to enhance its service offering to app developers, including data sharing and analytics.
- f. lower barriers to switching by permitting multi-platform app stores that would have made it easier for Smart Mobile Device users to switch between Mobile OSs; and
- g. the pro-competitive benefits pleaded in paragraph 145 below.
131. Further, the conduct described at paragraph 127-128 above, or any part of that conduct, had the effect or likely effect in the Australian Android Mobile App Distribution Market of:
- a. foreclosing or hindering alternative methods of Android App distribution including Alternative App Stores;
 - b. decreased quality, innovation and choice in respect of the distribution of apps to Android Smart Mobile Devices;
 - c. decreased quality, innovation and choice in respect of apps available on Android Smart Mobile Devices;
 - d. inflating commissions paid by app developers to app distributors for purchases of Android Apps and digital content within Android Apps by Android Smart Mobile Device Users;
 - e. inflating prices paid by Android Smart Mobile Device Users for purchases of Android Apps and digital content within Android Apps;

- f. distorting competition between Google LLC's own Android Apps and non-Google Android Apps;
- g. enabling Google to exercise market power without competitive restraint so as to impose supra-competitive commissions in relation to the distribution of Android Apps and/or the provision of Google Play Billing; which ~~are~~was unconstrained by the conduct of competitors and had~~ve~~ been essentially unchanged for years;

Particulars

The Applicants refer to and repeat the particulars to paragraph 130(c) above.

- h. disincentivising Google to enhance search and discoverability functions within the Play Store;
 - i. disincentivising Google to offer app developers and Smart Mobile Device Users greater customer service, including in relation to the handling of complaints and refunds;
 - j. disincentivising Google to improve the app review process, including in relation to the time between an app being submitted and made available on the Play Store;
 - k. disincentivising Google to improve the DDA and the Developer Program Policies, in relation to fairness, transparency and equal enforcement;
 - l. allowing Google to preference its own Android Apps by requiring pre-installation on Android Smart Mobile Devices, including those that compete with non-Google Android Apps;
 - m. allowing Google to preference its own Android Apps within the Play Store and app review process, including those that compete with non-Google Android Apps also available within the Play Store; and
 - n. higher barriers to switching by precluding multi-platform app stores that would make it easier for Smart Mobile Device users to switch between Mobile OSs.
132. The purpose, effect or likely effect of the conduct pleaded at paragraph 127-128 above, or any part of that conduct, including by reason of the matters referred to in paragraphs 128-131 above, was to substantially lessen competition in the Australian Android Mobile App Distribution Market and/or the Australian Android In-App Payment Solutions Market (or, alternatively, the Australian Play Store In-App Payment Solutions Market defined in paragraph 147B below).

Particulars

- i. The purpose can be inferred from:
 - A. the OEM Restrictive Terms;
 - B. the App Developer Restrictive Terms
 - C. the conduct of Google LLC in enforcing and/or giving effect to some or all of the OEM Restrictive Terms;
 - D. the conduct of Google LLC, Google Asia Pacific and/or Google Australia in enforcing and/or giving effect to some or all of the App Developer Restrictive Terms;
 - E. the imposition of the Technical Restrictions, in circumstances where the Technical Restrictions are not necessary to protect the security of Android Smart Mobile Devices;
 - F. the Google App Campaigns Conduct;
 - G. the Google OEM Conduct;
 - H. a series of projects undertaken by Google LLC (together, the **Google Projects Conduct**), as particularised in paragraph (ii) below:-
 - I. the Project Hug Conduct.
- ii. ~~Since at least 2014, The purpose can also be inferred from Google LLC's adoption adopted of the following strategies and projects since at least 2014:~~
 - A. "Project Gabby", which aimed to ~~impede the ability of prevent app developers (including social media companies) to from distributing Android Apps on the Play Store which develop apps which facilitated the distribution of other Android Apps outside of the Play Store;~~
 - AA. Amendment to the DDA (Clause 4.5) Project Gabby commenced in or around September 2014, and involved Google amending the DDA and MADAs.

~~Google amended the DDA to prevent app developers from using the Play Store to distribute or make available any apps which had a purpose that facilitated the distribution of software applications and games for use on Android Smart Mobile Devices outside the Play Store (section 4.5). Prior to that time, clause 4.5 permitted the distribution, on the Play Store, of Android Apps which facilitated the distribution of other Android Apps outside of the Play Store, provided this was not the "primary purpose" of the app (for example, if the app was a social media app which also facilitated the distribution of other apps) Google amended the MADAs to require OEMs to place an icon giving access to the Play Store on the default screen of their Android Smart Mobile Devices;~~

- B. the "*Fortnite* Task Force", an internal task force, created in or around ~~July-August~~ 2018 in response to Epic communicating to Google LLC its decision to launch *Fortnite* on Android Smart Mobile Devices outside the Play Store. Google LLC identified this as a "contagion risk", being a risk of more app developers distributing their apps outside the Play Store (**Contagion Risk**). ~~The aim of the Fortnite Task Force was to influence Epic and OEMs so as to prevent the installation of the "Fortnite Installer" outside the Play Store.~~ In or around July 2018, Google LLC made an offer to Epic for a cross-product partnership if Epic released *Fortnite* on the Play Store (**Epic Special Deal**). Google LLC formulated a number of contingency plans including: approaching a minority shareholder of Epic to either buy its shares in Epic or join with the shareholder to buy 100% of Epic; ~~and preventing or severely restricting direct downloads onto Android Smart Mobile Devices to prevent Epic launching Fortnite outside of the Play~~

Store. Epic rejected the Epic Special Deal shortly after it was offered;

- C. "Project Hug" (see paragraphs 99A to 99M above), now referred to as the "~~Games Velocity Programs~~", launched in April 2019 as a further response to the Contagion Risk. ~~The aim of Project Hug was to limit the opportunity for app developers to distribute apps outside the Play Store. Google LLC entered into agreements with over 20 app developers considered by Google LLC to be most at risk of distributing apps outside the Play Store. Google LLC made payments totaling over US\$100 million and provided other in-kind services for the app developers' agreement not to distribute apps outside the Play Store;~~
- D. "Project Banyan", ~~conceived of~~ commenced in around January 2019 and sought to persuade Samsung to get out of the app store business or at least to reduce the competitive threat posed to the Play Store by the Samsung Galaxy Store. Google LLC offered to provide back-end infrastructure (including billing support) for apps distributed via the Samsung Galaxy Store. Under this arrangement, apps, although hosted on the Samsung Galaxy Store would be "served" by Google's back-end infrastructure, (including billing support from Google Play Billing), allowing Google to capture revenue from in-app purchases. Google LLC offered to make certain payments to Samsung. Google LLC also sought Samsung's commitment to pre-install the Play Store on the default home screen of Samsung devices alongside the Samsung Galaxy Store. ~~After negotiations stalled,~~ Project Banyan was subsequently terminated;
- E. "Project Agave", commenced in July 2019 to reduce the competitive threat posed by the Samsung

Galaxy Store. The Applicant does not know whether Google reached an agreement with Samsung as part of Project Agave.

iii. The effect or likely effect of the conduct is demonstrated by the matters referred to at paragraphs 80, 84, 99, 99M, 101-102, 104, 109A, 114, 116, 116C, 128 and 129–131.

iiia. The effect or likely effects of the conduct included substantially hindering substitution between Alternative App Stores and the Play Store as a platform through which Android Apps are distributed by app developers and obtained by Android Smart Mobile Device Users.

iiib. The effect or likely effects further included securing and maintaining the Play Store's position as the dominant channel for the distribution of Android Apps to Android Smart Mobile Device Users, such that it accounted for the vast majority of Android Apps [REDACTED] [REDACTED] worldwide (excluding China) between [REDACTED] and [REDACTED] Android Apps [REDACTED] in Australia, between [REDACTED]

iiic. The effect or likely effects further included ensuring that Google Australia, or in the alternative Google LLC, Google Asia Pacific and/or Google Australia, have been able to impose and derive supra-competitive commissions in connection with the distribution of Android Apps and/or the provision of Google Play Billing, which are unconstrained by the conduct of competitors and have been essentially unchanged for years.

iv. Further particulars will be provided after discovery prior to trial.

133. Further and alternatively to paragraphs 124–132 above, there ~~is and~~ was at all material times a market in Australia for the supply of services for the distribution of Android Apps apps and native apps written for iOS to Smart Mobile Device Users (the **Mobile App Distribution Market**), and at all relevant times for the purposes of Part IV of the CCA:

- a. Google LLC, Google Asia Pacific and/or Google Australia had a substantial degree of power in the Mobile App Distribution Market by reason of the matters pleaded at paragraphs 124–~~125~~ above;
- b. Google LLC, Google Asia Pacific and/or Google Australia's conduct, as pleaded in paragraphs 127–~~128~~ above, had the purpose, effect or likely effect of substantially lessening competition in the Mobile App Distribution Market, by reason of the matters pleaded in paragraphs 128 to 132 and subparagraph (a) above.

Particulars

The Applicants refer to and rely on Part IV of the CCA, including s 46(3).

134. The Mobile App Distribution Market was a market in Australia for the purposes of s 4E of the CCA in that:
 - a. its geographic dimension was limited to Australia; or
 - b. the market in Australia formed part of a global market (excluding China),
(the **Australian Mobile App Distribution Market**).

Contraventions

135. By reason of the matters pleaded at paragraphs 124–132 above, Google LLC, Google Asia Pacific and/or Google Australia has contravened s 46(1) of the CCA.
136. Further or alternatively to paragraph 135 above, by reason of the matters pleaded at paragraphs 12–131 and 133–134 above, Google LLC, Google Asia Pacific and/or Google Australia has contravened s 46(1) of the CCA.
137. In the alternative to paragraphs 135 and 136 above, Google Asia Pacific was involved in Google LLC's contraventions pleaded at paragraphs 135 and 136 above, within the meaning of s 75B(1)(a) and/or (c) and/or (d) of the CCA. Specifically, at all material times, Google Asia Pacific has:
 - a. aided, abetted, counseled or procured Google LLC's contraventions pleaded at paragraphs 135 and 136;
 - b. been knowingly concerned in Google LLC's contraventions pleaded at paragraphs 135 and 136; and/or
 - c. conspired with Google LLC in respect of Google LLC's contraventions pleaded at paragraphs 135 and 136.

Particulars

- i. Google Asia Pacific has:
 - A. acted jointly or in concert with Google LLC in furtherance of a common purpose to impose and enforce anti-competitive restrictions;
 - B. engaged in the conduct pleaded at paragraphs 65, 87-88, 92, 96-97, 99A-99K, 124(g), 124(h), 124(hh) and 127-128. Google Asia Pacific thereby has jointly participated in Google LLC's contraventions;
 - C. been concerned in Google LLC's contraventions with knowledge of the facts pleaded above giving rise to the contraventions. Google Asia Pacific's knowledge is to be inferred in circumstances where, inter alia, both Google LLC and Google Asia Pacific are wholly owned subsidiaries of Alphabet Inc. and Google Asia Pacific engages in the conduct pleaded at 65, 87-88, 92, 96-97, 99A-99K, 124(g), 124(h), 124(hh) and 127-128 above.
- ii. Further particulars may be provided prior to trial.

138. In the alternative to paragraphs 135 and 136 above, Google Australia was involved in Google LLC and/or Google Asia Pacific's contraventions pleaded at paragraphs 135 and 136, within the meaning of s 75B(1)(a) and/or (c) and/or (d) of the CCA. Specifically, at all material times, Google Australia has:

- a. aided, abetted, counseled or procured Google LLC's and/or Google Asia Pacific's contraventions pleaded at paragraphs 135 and 136;
- b. been knowingly concerned in Google LLC's and/or Google Asia Pacific's contraventions pleaded at paragraphs 135 and 136; and/or
- c. conspired with Google LLC and/or Google Asia Pacific in respect of Google LLC's and/or Google Asia Pacific's contraventions pleaded at paragraphs 135 and 136.

Particulars

- i. Google Australia has:
 - A. acted jointly or in concert with Google LLC and/or Google Asia Pacific in furtherance of a common

purpose to impose and enforce anti-competitive restrictions;

- B. engaged in the conduct pleaded at paragraphs 15, 96–97, 124(g) and 127–128 above. Google Australia thereby has jointly participated in Google LLC and/or Google Asia Pacific's contraventions;
- C. been concerned in Google LLC and/or Google Asia Pacific's contraventions with knowledge of the facts pleaded above giving rise to the contraventions. Google Australia's knowledge is to be inferred in circumstances where, inter alia, Google Australia, Google Asia Pacific and Google LLC are wholly owned subsidiaries of Alphabet Inc. and Google Australia engages in the conduct pleaded at paragraphs 15, 96–97, 124(g), 124(h) and 127–128 above.

ii. Further particulars may be provided prior to trial.

Google's conduct in respect of Android In-App Payment Solutions

Google's market power

139. At all relevant times, in relation to the Australian Android In-App Payment Solutions Market:

- a. Google LLC, Google Asia Pacific and/or Google Australia had a substantial degree of power in the Australian Android Mobile App Distribution Market (and, alternatively, the Australian Mobile App Distribution Market) and/or the Mobile OS Licensing Market;

Particulars

The Applicants refer to and repeat paragraphs 126, 128(a) and 133(a) above.

- b. Google LLC, Google Asia Pacific and Google Australia ~~can and do~~ can and do ~~refuse to distribute required app developers who wished to distribute Android Apps to Android Smart Mobile Device Users via the Play Store and to which offered Play Store In-App Purchases via the Play Store unless the developer of the Android App to agree~~ refuse to distribute required app developers who wished to distribute Android Apps to Android Smart Mobile Device Users via the Play Store and to which offered Play Store In-App Purchases via the Play Store unless the developer of the Android App to agree ds to the App Developer Restrictive Terms, which:
 - i. required app developers to use Google Play Billing for accepting and processing payments for Play Store In-App Purchases; and

- ii. required app developers to pay a fee of 30% on Play Store In-App Purchases ~~in Australia to Google Australia~~ (or, in some limited circumstances, 15%) with certain limited exceptions;

Particulars

The Applicants refer to and repeat paragraphs 86, 90(e), 90(f), 90(h), 94(a), 95 and 99 above ~~rely on the whole of the App Developer Restrictive Terms,~~ individually and cumulatively.

- bb. At all relevant times, in relation to the Australian Android In-App Payment Solutions Market by reason of sub-paragraph (b) above and because the Play Store ~~is~~ **iswas** used to download the vast majority of Android Apps [REDACTED] worldwide (excluding China), and [REDACTED] Android Apps [REDACTED] [REDACTED] in Australia, Google Play Billing ~~is~~ **iswas** the dominant in-app payment solution for digital content purchased within Android Apps;
- c. Google LLC, Google Asia Pacific and Google Australia did not permit app developers to negotiate the App Developer Restrictive Terms;

Particulars

The Applicants refer to and repeat paragraphs 88, 92 and 97 above.

- cc. by reason of sub-paragraph (b), there ~~is~~ **iswas** a significant barrier to entry, in that no alternate provider of in-app payment solutions ~~could~~ **couldan** provide its services to app developers in respect of Play Store In-App Purchases (save in the limited circumstances referred to in paragraph 94 above);
- d. Google LLC, Google Asia Pacific and Google Australia enforced the App Developer Restrictive Terms;

Particulars

- i. The Applicants refer to and repeat paragraph ~~40099~~ above.
- ii. Google LLC enforced the App Developer Restrictive Terms against Epic Games by removing *Fortnite* from the Play Store in Australia and by refusing to allow Epic to offer Epic Direct Pay for any Play Store In-App Purchases;

- e. [Not used].
- f. app developers did not have substantial countervailing power to Google LLC, Google Asia Pacific or Google Australia in respect of the App Developer Restrictive Terms;

Particulars

The Applicants refer to and repeat paragraphs 88, 92 and 95 above.

- g. ~~app developers and users did not view the availability of alternative~~ payment solutions outside of Android Apps as does not materially constrain Google interchangeable with in-app payment solutions;

Particulars

The Applicants refer to and repeat paragraph 64 above.

- h. for app developers that relied on in-app purchases of digital content, other forms of app monetisation were not commercially ~~viable~~ desirable;

Particulars

The Applicants refer to and repeat the particulars to paragraph 61 above.

- i. payment solutions for non-licensable Mobile OSs, such as iOS, were not substitutes for Android payment solutions; ~~and~~

Particulars

The Applicants refer to and repeat the particulars to paragraph 63 above.

- j. Google Australia, and alternatively Google LLC, Google Asia Pacific and/or Google Australia, were able to and ~~hide~~ charge supra- competitive prices to app developers for Google Play Billing which ~~are~~ were unconstrained by the conduct of competitors and ~~had~~ been essentially unchanged for years; and

Particulars

- i. Google Australia, and alternatively Google LLC, Google Asia Pacific and/or Google Australia, charged a fee of 30% through Google Play Billing for Play Store In-App Purchases (or, in some limited circumstances, 15%).

- ii. Epic's EGS charged a 12% fee for in-app purchases when the app developer chooses to use Epic Direct Pay for in-app purchases.

k. Google LLC and Google Asia Pacific engaged in the Project Hug Conduct.

Particulars

The Applicants refer to and repeat paragraphs 99A-99M above.

140. ~~[Not used]At all material times, in the circumstances described at paragraph 139 above, Google LLC, Google Asia Pacific and Google Australia together had a monopoly or near-monopoly and did not face any, or any material, competitive constraints in the supply of services to app developers for accepting and processing payments for the purchase of digital content (including by way of subscriptions) within an Android App in the Australian Android In-App Payment Solutions Market.~~
141. By reason of the matters pleaded at paragraphs 139–140 above:
- a. Google LLC;
 - b. Google Asia Pacific; and/or
 - c. Google Australia;

had a substantial degree of power in the Australian Android In-App Payment Solutions Market.

Google's conduct in respect of Android In-App Payment Solutions

142. Google LLC, Google Asia Pacific and/or Google Australia has engaged, -in the following conduct in trade or commerce in the Australian Android In-App Payment Solutions Market:
- a. Google LLC, Google Asia Pacific and Google Australia required app developers who wished to distribute Android Apps to Android Smart Mobile Device Users via the Play Store and to offer Play Store In-App Purchases to agree to the App Developer Restrictive Terms pleaded in paragraphs 90(b), 90(e), 90(f), 90(h), 94(a), (94(b), and 96 and 96A above which, and thereby:
 - i. required app developers to use Google Play Billing for accepting and processing payments for Play Store In-App Purchases; and
 - ii. required app developers to pay a fee of 30% (or, in some limited circumstances, 15%), on Play Store In-App Purchases ~~in Australia to Google Australia;~~

- iii. require app developers to enter into a Payments Agreement with Google Australia in respect of the use of Google Play Billing as the method of payment in Australia;
- iv. prevent app developers (including Epic) and other payment solutions providers from offering to other app developers payment solutions other than Google Play Billing for accepting and facilitating Play Store In-App Purchases; and
- v. prevent Android Smart Mobile Device Users from using payment solutions other than Google Play Billing for Play Store In-App Purchases.

Particulars

The Applicants refer to and rely on the whole of the App Developer Restrictive Terms, individually and cumulatively.

- b. Google LLC, Google Asia Pacific and Google Australia did not permit app developers to negotiate the App Developer Restrictive Terms;

Particulars

The Applicants refer to and repeat paragraphs 88, 92 and 97 above.

- c. Google LLC, Google Asia Pacific and Google Australia enforced the App Developer Restrictive Terms referred to in paragraphs 90(e), 90(f), 90(h), 94(a), 94(b) and 96 and 96A, including against Epic;

Particulars

- i. The Applicants refer to and repeat paragraph 127(h) above.
- ii. Google LLC enforced the App Developer Restrictive Terms against Epic by removing *Fortnite* from the Play Store in Australia, ~~and~~ by refusing to allow Epic to offer Epic Direct Pay for any Play Store In-App Purchases and by failing to agree to Epic's request for in-principle approval to make EGS available on the Play Store.
- d. Google LLC, Google Asia Pacific and Google Australia charged supra-competitive prices to app developers for Google Play Billing.

Particulars

The Applicants refer to and repeat the particulars to paragraph 139(j) above.

e. Google LLC and Google Asia Pacific engage in the Project Hug Conduct.

Particulars

The Applicants refer to and repeat paragraphs 99A-99K above.

143. Further, at all material times Google LLC, Google Asia Pacific and/or Google Australia engaged in the conduct pleaded in paragraph 142 above in circumstances where:

- a. Google LLC, Google Asia Pacific and/or Google Australia had a substantial degree of power in the Australian Android Mobile App Distribution Market (and, alternatively, the Australian Mobile App Distribution Market);

Particulars

The Applicants refer to and repeat paragraphs 126 and 133(a) above.

- b. Google LLC, Google Asia Pacific and/or Google Australia had a substantial degree of power in the Mobile OS Licensing Market and/or the Australian Android In-App Payment Solutions Market.;

Particulars

The Applicants refer to and repeat paragraphs 128(a) and 141 above.

- c. ~~[Not used]Google LLC, Google Asia Pacific and/or Google Australia engaged in some or all of the conduct pleaded at paragraph 142 above in circumstances where Google LLC, Google Asia Pacific and/or Google Australia had a substantial degree of power in the Australian Android Mobile App Distribution Market and the Mobile OS Licensing Market (and, alternatively, the Australian Mobile App Distribution Market).~~

144. But for the conduct described at paragraph 142–143 above, or any part of that conduct, Google LLC, Google Asia Pacific and/or Google Australia would likely have faced:

- a. the threat of entry by competitors in the Australian Android In-App Payment Solutions Market;
- b. effective competitive constraints from existing and new Android payment solutions for digital and non-digital content; ~~and/or~~
- c. effective competition in the Australian Android In-App Payment Solutions Market, from other payment solution providers ~~for accepting and processing payments for digital content within an Android App other than Google Play Billing for accepting and processing Play Store In-App Purchases;~~

- d. the threat of entry by competitors in the Australian Android Mobile App Distribution Market (and alternatively, the Australian Mobile App Distribution Market); and/or
- e. effective competition in the Australian Android Mobile App Distribution Market (and alternatively, the Australian Mobile App Distribution Market) from Alternative App Stores or alternative app distribution methods and/or from app developers using or offering payment solutions other than Google Play Billing to other app developers.
145. Competition in the Australian Android In-App Payment Solutions Market and/or the Australian Android Mobile App Distribution Market (and, alternatively, the Australian Mobile App Distribution Market) of the kind described in paragraph 144 above would or would likely have lead to pro-competitive benefits including:
- a. increased quality, innovation, ~~and~~ choice and substitution in payment solutions; ~~and~~

Particulars

- i. But for the App Developer Restrictive Terms, would-be competing payment solution providers would have been able to offer payment solutions other than Google Play Billing. This would have spurred innovation, better service ~~and~~ lower prices and switching between providers.
- ii. There was app developer demand for alternative payment solutions, including demand from Epic.
- iii. Absent Google's App Developer Restrictive Terms, existing Android payment solutions would have been offered to app developers for processing payments for Play Store In-App Purchases.
- iv. Innovations would have included, for example:
 - A. alternative payment methods/means to pay for Play Store In-App Purchases – which Google did not offer – such as Bitcoin or other crypto currencies etc;
 - B. rewards points to users;
 - C. enhanced speed;
 - D. enhanced data analytics;
 - E. enhanced security and fraud prevention;

- F. enhanced privacy features;
- G. enhanced parental controls;
- H. enhanced checkout features; and
- I. multi-platform payment solutions.

v.b. lower prices for payment solutions; and/or

c. the pro-competitive benefits described in paragraph 130 above.

146. Further, the conduct described at paragraph 142 above, or any part of that conduct, had the effect or likely effect in the Australian Android In-App Payment Solutions Market of:

- a. foreclosing alternative payment solutions for accepting and processing payments for Play Store In-App Purchases;
- b. decreased quality, innovation and choice of payment solutions;
- c. inflating prices for such payment solutions; and
- d. decreased quality, innovation and choice for app developers and users of Android Apps.

147. The purpose, effect or likely effect of the conduct described at paragraphs 142–143 above, or any part of that conduct, including by reason of the matters referred to in paragraphs 143–146, was to substantially lessen competition in the Australian Android In-App Payment Solutions Market and/or in the Australian Android Mobile App Distribution Market (and, alternatively, the Australian Mobile App Distribution Market).

Particulars

- i. The purpose can be inferred from:
 - A. the App Developer Restrictive Terms;
 - B. the conduct of Google in enforcing and/or giving effect to some or all of the App Developer Restrictive Terms;
 - C. the Google App Campaigns Conduct; ~~and~~
 - D. the Google Projects Conduct; and
 - E. the Project Hug Conduct.
- ii. The effect or likely effect is demonstrated by the matters at paragraphs 99(c), 99, 99M, 142(a) and 145–146 above.

- ii. The effects or likely effects included that Google Play Billing ~~is~~was the sole payment solution used for accepting and facilitating Play Store In-App Purchases (save in the limited circumstances referred to in paragraph 94 above).
- ii. The effects or likely effects further included that app developers who offered Play Store In-App Purchases ~~are~~were forced to pay Google “service fees” that ~~are~~were not charged to other app developers who make Android Apps available on the Play Store.
- ii. The effects or likely effects further included that app developers who offered Play Store In-App Purchases ~~are~~were forced to pay Google Australia, alternatively Google LLC, Google Asia Pacific and/or Google Australia, supra-competitive prices which ~~are~~were unconstrained by the conduct of competitors and which ~~had~~ve been essentially unchanged for years.
- iii. Further particulars may be provided prior to trial.

147A. Further and alternatively to paragraphs 139-147 above, in the circumstances described in paragraphs 5-117 above, there ~~is~~was a market for the supply of services to app developers for processing and accepting payments for Play Store In-App Purchases (**Play Store In-App Payment Solutions Market**), and at all relevant times for the purposes of Part IV of the CCA:

- a. Google LLC, Google Asia Pacific and/or Google Australia ~~had~~s a substantial degree of power in the Play Store In-App Payment Solutions Market by reason of the matters at paragraph 139 above;
- b. Google LLC, Google Asia Pacific and/or Google Australia's conduct, as pleaded in paragraph 142 above, ~~had~~s the purpose, effect or likely effect of substantially lessening competition in the Play Store In-App Payment Solutions Market, by reason of the matters pleaded in paragraphs 143-147 and subparagraph [(a)] above.

Particulars

- i. The services supplied in the Play Store In-App Payment Solutions Market consisted of the provision of services to app developers enabling and/or facilitating app

developers to accept and process payments for Play Store In-App Purchases.

- ii. The geographic dimension of the Play Store In-App Payment Solutions Market is described at paragraph 147B below.
- iii. The Applicants refer to and rely on Part IV of the CCA, including s 46(3).

147B. The Play Store In-App Payment Solutions Market ~~is~~was a market in Australia for the purposes of s 4E of the CCA in that:

- a. its geographic dimension ~~is~~was limited to Australia; or
- b. the market in Australia ~~forms~~eds part of a global market (excluding China),
(the Australian Play Store in-App Payment Solutions Market).

Contraventions

148. By reason of the matters described at paragraphs 139–147 above, Google LLC, Google Asia Pacific and/or Google Australia has contravened s 46(1) of the CCA.

149. In the alternative to paragraph 148 above, Google Asia Pacific was involved in Google LLC's contraventions at paragraph 148 within the meaning of s 75B(1)(a) and/or (c) and/or (d) of the CCA. Specifically, at all material times, Google Asia Pacific has:

- a. aided, abetted, counseled or procured Google LLC's contraventions at paragraph 148;
- b. been knowingly concerned in Google LLC's contraventions at paragraph 148; and/or
- c. conspired with Google LLC in respect of Google LLC's contraventions pleaded at paragraph 148.

Particulars

- i. Google Asia Pacific has:
 - A. acted jointly or in concert with Google LLC in furtherance of a common purpose to impose and enforce anti-competitive restrictions;
 - B. engaged in the conduct pleaded at paragraphs 65, 87–88, 92, 96–97, 99A-99K, 139–140 and 142–143 above. Google Asia Pacific thereby has jointly participated in Google LLC's contraventions;

C. been concerned in Google LLC's contraventions with knowledge of the facts pleaded above giving rise to the contraventions. Google Asia Pacific's knowledge is to be inferred in circumstances where, inter alia, Google Asia Pacific and Google LLC are wholly owned subsidiaries of Alphabet Inc. and Google Asia Pacific engages in the conduct pleaded at paragraphs 65, 87–88, 92, 96–97, 99A-99K, ~~139–140~~ and 142–143.

ii. Further particulars may be provided prior to trial.

150. Further or alternatively to paragraph 148 above, Google Australia was involved in Google LLC and/or Google Asia Pacific's contraventions at paragraph 148 within the meaning of s 75B(1)(a) and/or (c) and/or (d) of the CCA. Specifically, at all material times, Google Australia has:

- a. aided, abetted, counseled or procured Google LLC's and/or Google Asia Pacific's contraventions at paragraph 148;
- b. been knowingly concerned in Google LLC's and/or Google Asia Pacific's contraventions at paragraph 148; and/or
- c. conspired with Google LLC and/or Google Asia Pacific in respect of Google LLC's and/or Google Asia Pacific's contraventions pleaded at paragraph 148.

Particulars

i. Google Australia has:

- A. acted jointly or in concert with Google LLC and/or Google Asia Pacific in furtherance of a common purpose to impose and enforce anti-competitive restrictions;
- B. engaged in the conduct pleaded at paragraphs 15, 96–97, ~~139–140~~ and 142–143 above. Google Australia thereby has jointly participated in Google LLC and/or Google Asia Pacific's contraventions;
- C. been concerned in Google LLC and/or Google Asia Pacific's contraventions with knowledge of the facts pleaded above giving rise to the contraventions. Google Australia's knowledge is to be inferred in

circumstances where, inter alia, Google Australia, Google Asia Pacific and Google LLC are wholly owned subsidiaries of Alphabet Inc. and Google Australia engages in the conduct pleaded at paragraphs 15, 96-97, 139–140 and 142–143 above.

- ii. Further particulars may be provided prior to trial.

PART IX: GOOGLE'S EXCLUSIVE DEALING (SECTION 47)

151. By the App Developer Restrictive Terms pleaded in paragraphs 90(e), 90(f), 90(h), 94(a), 96 and 99J(g) above, Google LLC and Google Asia Pacific supplied, or offered to supply, to app developers services for the distribution of Android Apps to Android Smart Mobile Device Users via the Play Store, on condition that app developers would not acquire payment solutions for accepting and processing payments for Play Store In-App Purchases from any person that competed, or but for Google's conduct would have, or would be likely to have, competed with Google LLC, Google Asia Pacific and/or Google Australia by providing payment solutions other than Google Play Billing for accepting and processing payments for Play Store In-App Purchases.

Particulars

The Applicants refer to and repeat paragraphs 86, 88, 90(h), 92, 96 and 94–97 above.

152. Google LLC and Google Asia Pacific's conduct pleaded at paragraph 151 above had the purpose, effect or likely effect of substantially lessening competition in a market in Australia consisting of:
- a. the Australian Android In-App Payment Solutions Market (or, alternatively, the Australian Play Store In-App Payment Solutions Market);

Particulars

- i. The Applicants refer to and repeat paragraph 147 above and the particulars to that paragraph.
 - ii. Further particulars may be provided prior to trial.
- b. further or alternatively, the Australian Android Mobile App Distribution Market (and, alternatively, the Australian Mobile App Distribution Market).

Particulars

- i. The Applicants refer to and repeat paragraph 132 and 133 above and the particulars to that paragraph.
 - ii. Further particulars may be provided prior to trial.
153. By reason of the matters pleaded at paragraphs 151–152 above, Google LLC and/or Google Asia Pacific has contravened s 47(1) of the CCA.
154. In the alternative to paragraph 153 above, Google Asia Pacific was involved in Google LLC's contraventions pleaded at paragraph 153 above, within the meaning of s 75B(1)(a) and/or (c) and/or (d) of the CCA. Specifically, at all material times, Google Asia Pacific has:
- a. aided, abetted, counseled or procured Google LLC's contraventions pleaded at paragraph 153;
 - b. been knowingly concerned in Google LLC contraventions pleaded at paragraph 153; and/or
 - c. conspired with Google LLC in respect of Google LLC's contraventions pleaded at paragraph 153.

Particulars

- i. Google Asia Pacific has:
 - A. acted jointly or in concert with Google LLC in furtherance of a common purpose to impose and enforce anti-competitive restrictions;
 - B. engaged in the conduct pleaded at paragraphs 15, 65, 87, 99I-99J, 124(g), 124(h), 124(hh), 127–128, 142–143 and 151 above. Google Asia Pacific thereby has jointly participated in Google LLC's contraventions;
 - C. been concerned in Google LLC's contraventions with knowledge of the facts pleaded above giving rise to the contraventions. Google Asia Pacific's knowledge is to be inferred in circumstances where, inter alia, both Google LLC and Google Asia Pacific are wholly owned subsidiaries of Alphabet Inc. and Google Asia Pacific engages in the conduct pleaded at

paragraphs 15, 65, 87, 99I-99J, 124(g), 124(h), 124(hh), 127–128, 142–143 and 151 above.

ii. Further particulars may be provided prior to trial.

155. Google Australia was involved in Google LLC's and/or Google Asia Pacific's contraventions pleaded at paragraph 153 above, within the meaning of s 75B(1)(a) and/or (c) and/or (d) of the CCA. Specifically, at all material times, Google Australia has:

- a. aided, abetted, counseled or procured Google LLC's and/or Google Asia Pacific's contraventions pleaded at paragraph 153;
- b. been knowingly concerned in Google LLC's and/or Google Asia Pacific's contraventions pleaded at paragraph 153; and/or
- c. conspired with Google LLC and/or Google Asia Pacific in respect of Google LLC and/or Google Asia Pacific's contraventions pleaded at paragraph 153.

Particulars

i. Google Australia has:

- A. acted jointly or in concert with Google LLC and/or Google Asia Pacific in furtherance of a common purpose to impose and enforce anti-competitive restrictions;
- B. engaged in the conduct pleaded at paragraphs 15, 96–97, 124(g), 124(h) and 151 above. Google Australia thereby has jointly participated in Google LLC and/or Google Asia Pacific's contraventions;
- C. been concerned in Google LLC and/or Google Asia Pacific's contraventions with knowledge of the facts pleaded above giving rise to the contraventions. Google Australia's knowledge is to be inferred in circumstances where, inter alia, Google Australia, Google Asia Pacific and Google LLC are wholly owned subsidiaries of Alphabet Inc. and Google Australia engages in the conduct pleaded at 15, 96-97, 124(g), 124(h) and 151 above.

ii. Further particulars may be provided prior to trial.

**PART X: GOOGLE'S CONTRACTS, ARRANGEMENTS AND UNDERSTANDINGS
SUBSTANTIALLY LESSEN COMPETITION (SECTION 45)**

Google's OEM Restrictive Terms

156. ~~By the OEM Restrictive Terms, in trade or commerce, Google LLC has entered and continues to enter into a contract, or contracts, with OEMs containing the OEM Restrictive Terms, which included provisions that~~ pleaded in paragraphs 68, 68B, 70, 79 and 79B above, which terms:

- aa. ~~had~~ had the effects pleaded in paragraphs 80, 84, 101, 104, 114, 116 and 116C and 127(f):
- a. required OEMs to pre-install the Play Store on the default home screen of Android Smart Mobile Devices (or, in the case of certain Samsung devices, in the 'device hotseat');
 - b. prevented OEMs from distributing Android Smart Mobile Devices which:
 - i. ~~[Not used]removing the Technical Restrictions on Android Smart Mobile Devices; and~~
 - ii. do not require users to confront the Technical Restrictions when allowing direct downloading of apps on Android Smart Mobile Devices without requiring users to take steps to allow direct downloading of apps from outside the Play Store (or an Alternative App Store approved for a privileged install permission by Google LLC);
 - c. required for OEMs who wished to obtain a higher "share" of in Google's search revenue advertising and/or Play Store revenue derived from the Android Smart Mobile Devices the OEM manufactures, prevented OEMs from, in some cases to comply with the Revenue Sharing Agreement terms pleaded in paragraph 79 or 79B above, and thereby:
 - i. discouraged OEMs from pre-installing Alternative App Stores on Android Smart Mobile Devices;
 - ii. discouraged OEMs from pre-installing any Android App that competes with any Google Mobile Services App, including the Play Store, or that is not available in the Play Store; and
 - iii. discouraged OEMs from promoting Alternative App Stores;

Particulars

The Applicants refer to and rely on the whole of the OEM Restrictive Terms, individually and cumulatively.

- d. prevented or hindered app developers from obtaining pre-installation or offering direct download of Alternative App Stores or other Android Apps.

Particulars

The Applicants refer to and repeat paragraphs 84-85, 114, 116 and 116C above.

157. The provisions referred to at paragraph 156 above had, individually or cumulatively, the purpose, effect or likely effect of substantially lessening competition in the Australian Android Mobile App Distribution Market (and, alternatively, in the Australian Mobile App Distribution Market).

Particulars

- i. The Applicants refer to and repeat paragraphs 132 and 133 above and the particulars to that paragraph.
- ii. Further particulars may be provided prior to trial.

158. Further, Google LLC gave effect to the provisions referred to in paragraph 156 above.

Particulars

The Applicants refer to and repeat paragraph 85 above and the particulars to that paragraph.

159. By reason of:

- a. paragraphs 156–157; or
- b. further, or alternatively, paragraphs 156–158,

Google LLC has contravened s 45(1) of the CCA, including by reason of s 45(4).

Google's App Developer Restrictive Terms

160. By the App Developer Restrictive Terms, in trade or commerce, Google ~~has entered and continues to enter~~ into ~~a contracts, or contracts,~~ with app developers ~~(such as Epic)~~ containing the App Developer Restrictive Terms, ~~which included provisions that~~ pleaded in paragraphs 87, 87A, 90, and 94-96A above, and the terms of the GVP Agreements and the AVP Agreements pleaded in paragraphs 99F and 99J above which terms:

- aa. ~~had~~ the effects pleaded in paragraphs 98-99, 99M, 127(c) and 127(i) above;

- a. restrained app developers from distributing or offering Alternative App Stores via the Play Store;
- b. restrained app developers from distributing or offering Android Apps via the Play Store which facilitate the distribution of software applications for use on Android Smart Mobile Devices outside of the Play Store;
- c. restrained app developers from using any payment solution for accepting and processing payments for Play Store In-App Purchases, other than Google Play Billing; and
- d. enabled Google to charge supra-competitive prices to app developers in connection with Google Play Billing, which ~~are~~were unconstrained by the conduct of competitors and had ~~ve~~ been essentially unchanged for years.

Particulars

The Applicants refer to and rely on the whole of the App Developer Restrictive Terms pleaded in paragraphs 90, 94, 96A, 99F and 99J, individually and cumulatively.

161. The provisions referred to at paragraph 160 had, individually or cumulatively, the purpose, effect or likely effect of substantially lessening competition in the Australian Android Mobile App Distribution Market (and, alternatively, in the Australian Mobile App Distribution Market).

Particulars

- i. The Applicants refer to and repeat paragraphs 132 and 133 and the particulars to that paragraph.
- ii. Further particulars may be provided prior to trial.

162. The provisions referred to at paragraph 160 had, individually or cumulatively, the purpose, effect or likely effect of substantially lessening competition in the Australian Android In-App Payment Solutions Market (or, alternatively, in the Australian Play Store In-App Payment Solutions Market).

Particulars

- i. The Applicants refer to and repeat paragraph 147 and the particulars to that paragraph.
- ii. Further particulars may be provided prior to trial.

163. Further, Google gave effect to the provisions referred to in paragraph 160.

Particulars

- i. On 13 August 2020, Google LLC removed *Fortnite* from the Play Store, including in Australia. Google LLC has also refused to allow Epic to offer Epic Direct Pay for any Play Store In-App Purchases and has failed to agree to Epic's request for in-principle approval to make EGS available on the Play Store.
- ii. The Applicants refer to and repeat paragraphs 99I00, and 99K above.

164. By reason of:

- a. paragraphs 160–162; or
- b. further, or alternatively, paragraphs 160–163,

Google LLC, Google Asia Pacific and/or Google Australia has contravened s 45(1) of the CCA, including by reason of s 45(4).

165. In the alternative to paragraph 164 above, Google Asia Pacific was involved in Google LLC's contraventions pleaded at paragraph 164 above, within the meaning of s 75B(1)(a) and/or (c) and/or (d) of the CCA. Specifically, at all material times, Google Asia Pacific has:

- a. aided, abetted, counseled or procured Google LLC's contraventions pleaded at paragraph 164;
- b. been knowingly concerned in Google LLC's contraventions pleaded at paragraph 164; and/or
- c. conspired with Google LLC in respect of Google LLC's contraventions pleaded at paragraph 164.

Particulars

- i. Google Asia Pacific has:
 - A. acted jointly or in concert with Google LLC in furtherance of a common purpose to impose and enforce anti-competitive restrictions;
 - B. engaged in the conduct pleaded at paragraphs 65, 87, 99A-99I, 124(g), 124(h), 124(hh), 127–128 and 132–133 above. Google Asia Pacific thereby has jointly participated in Google LLC's contraventions;

C. been concerned in Google LLC's contraventions with knowledge of the facts pleaded above giving rise to the contraventions. Google Asia Pacific's knowledge is to be inferred in circumstances where, inter alia, both Google LLC and Google Asia Pacific are wholly owned subsidiaries of Alphabet Inc. and Google Asia Pacific engages in the conduct pleaded at paragraphs 65, 87, 99A-99I, 124(g), 124(h), 124(hh), 127–128 and 132–133 above.

ii. Further particulars may be provided prior to trial.

166. Further or alternatively to paragraph 164 above, Google Australia was involved in Google LLC's and/or Google Asia Pacific's contraventions pleaded at paragraphs 164 within the meaning of s 75B(1)(a) and/or (c) and/or (d) of the CCA. Specifically, at all material times, Google Australia has:

- a. aided, abetted, counseled or procured Google LLC's and/or Google Asia Pacific's contraventions pleaded at paragraphs 164;
- b. been knowingly concerned in Google LLC's and/or Google Asia Pacific's contraventions pleaded at paragraphs 164; and/or
- c. conspired with Google LLC and/or Google Asia Pacific in respect of Google LLC's and/or Google Asia Pacific's contraventions pleaded at paragraph 164.

Particulars

i. Google Australia has:

- A. acted jointly or in concert with Google LLC and/or Google Asia Pacific in furtherance of a common purpose to impose and enforce anti-competitive restrictions;
- B. engaged in the conduct pleaded at paragraphs 15, 96, 124(g), 124(g), 127–128 and 142–143 above. Google Australia thereby has jointly participated in Google LLC and/or Google Asia Pacific's contraventions;
- C. been concerned in Google LLC's and/or Google Asia Pacific's contraventions with knowledge of the facts pleaded above giving rise to the

contraventions. Google Australia's knowledge is to be inferred in circumstances where, inter alia, Google Australia, Google Asia Pacific and Google LLC are wholly owned subsidiaries of Alphabet Inc. and Google Australia engages in the conduct pleaded at paragraphs 15, 96, 124(g), 124(h), 127–128 and 142–143 above.

ii. Further particulars may be provided prior to trial.

Google's OEM Restrictive Terms and App Developer Restrictive Terms

166A. Further or in the alternative to paragraphs 157, 161, and 162, the provisions referred to at paragraphs 156 and 160 above together (or in any combination) have the effect or likely effect of substantially lessening competition in:

- a. the Australian Android Mobile App Distribution Market (and, alternatively, in the Australian Mobile App Distribution Market); and/or
- b. the Australian Android In-App Payment Solutions Market (or, alternatively, in the Australian Play Store In-App Payment Solutions Market).

Particulars

- i. The Applicants refer to and repeat paragraphs 132, 133 and 147 above and the particulars to those paragraphs.
- ii. Further particulars may be provided prior to trial.

166B. By reason of:

- a. paragraphs 156, 160 and 166A; or
- b. further, or alternatively, 156, 158, 160, 163 and 166A,

Google LLC has contravened, ~~and continues to contravene,~~ s 45(1) of the CCA, including by reason of s 45(4).

PART XI: GOOGLE'S UNCONSCIONABLE CONDUCT (SECTION 21)

167. The conduct of Google LLC, Google Asia Pacific and/or Google Australia referred to in this Part XI at all material times was conduct in trade or commerce in connection with the supply, or possible supply, of:

- a. services to OEMs for the licensing of ~~the Android OS,~~ Google Mobile Services, including in Australia;

- b. services to app developers for the distribution of Android Apps to Android Smart Mobile Device Users, including in Australia;
 - c. services to app developers for payment solutions for accepting and processing payments for the purchase of digital content (including by way of subscriptions) within an Android App, including in Australia; and
 - d. services to consumers for the distribution of Android Apps from app developers, including in Australia.
168. Google LLC, Google Asia Pacific and/or Google Australia engaged in the conduct pleaded at paragraphs 127, 142, 151, 156, 158, 160 and 163 above.
169. Further, Google LLC, Google Asia Pacific and/or Google Australia has intentionally:
- a. prevented the EGS from being made available to Android Smart Mobile Device Users on Android Smart Mobile Devices in Australia, or made such use impracticable;
 - b. ensured that the Play Store was the primary method of distribution of Android Apps to Android Smart Mobile Devices in Australia, including by imposing and enforcing the OEM Restrictive Terms, the App Developer Restrictive Terms, and/or the Technical Restrictions, and/or engaging in the Google App Campaigns Conduct and/or the Google OEM Conduct;
 - c. prevented Epic Direct Pay from being available for Play Store In-App Purchases, including in *Fortnite*, in Australia;
 - d. ensured that Google Play Billing is the only payment solution available for Play Store In-App Purchases, in Australia;
 - e. prevented Android Smart Mobile Device Users in Australia from paying a reduced amount for in-app purchases of digital content using Epic Direct Pay in the version of *Fortnite* distributed on the Play Store;
 - f. engaged in the Google App Campaigns Conduct, the Google Projects Conduct and the Google OEM Conduct; and
 - g. prevented or hindered app developers from seeking remedies in Australian courts and/or under the CCA and/or the Australian Consumer Law (**ACL**) in respect of the conduct by Google that is referred to in this pleading; ~~and~~
 - h. ~~removed the Fortnite app from the Play Store, including in Australia, as pleaded in paragraph [140] above.~~

170. The conduct of Google LLC, Google Asia Pacific and/or Google Australia described at paragraphs 168 and 169 constituted a system of conduct or pattern of behaviour within the meaning of s 21(4) of the ACL, and occurred in circumstances where:
- a. Google had a superior bargaining position to that of app developers, ~~including Epic;~~
 - b. Google took advantage of that superior bargaining position to engage in the conduct;
 - c. Google required app developers to enter into non-negotiable, standard form contracts that Google may unilaterally amend; and
 - d. the conduct was not reasonably necessary to protect Google's legitimate business interests.
171. By reason of the matters pleaded at paragraphs 167–170, Google LLC, Google Asia Pacific and/or Google Australia has engaged in conduct that was, in all the circumstances, unconscionable in contravention of s 21(1) of the ACL.
172. In the alternative to paragraph 171, Google Asia Pacific was involved in Google LLC's contraventions pleaded at paragraph 171 within the meaning of s 232(1)(c), (e) and/or (f) and/or s 237 of the ACL. Specifically, at all material times, Google Asia Pacific has:
- a. aided, abetted, counseled or procured Google LLC's contraventions pleaded at paragraph 171;
 - b. been knowingly concerned in Google LLC's contraventions pleaded at paragraph 171; and/or
 - c. conspired with Google LLC in respect of Google LLC's contraventions pleaded at paragraph 171.

Particulars

- i. Google Asia Pacific has:
 - A. acted jointly or in concert with Google LLC in engaging in the conduct pleaded in paragraphs 168–170 above;
 - B. engaged in the conduct pleaded at paragraphs 168–170 above. Google Asia Pacific thereby has, jointly participated in Google LLC's contraventions;
 - C. been concerned in Google LLC's contraventions with knowledge of the facts pleaded above giving rise to the contraventions. Google Asia Pacific's knowledge is to be inferred in circumstances where,

inter alia, both Google LLC and Google Asia Pacific are wholly owned subsidiaries of Alphabet Inc. and Google Asia Pacific engages in the conduct pleaded at paragraphs 168–170 above.

ii. Further particulars may be provided prior to trial.

173. Further or alternatively to paragraph 171, Google Australia was involved in Google LLC's and/or Google Asia Pacific's contraventions pleaded at paragraph 171 within the meaning of s 232(1)(c), (e) and/or (f) and/or s 237 of the ACL. Specifically, at all material times, Google Australia has:

- a. aided, abetted, counseled or procured Google LLC's and/or Google Asia Pacific's contraventions pleaded at paragraph 171;
- b. been knowingly concerned in Google LLC's and/or Google Asia Pacific's contraventions pleaded at paragraph 171; and/or
- c. conspired with Google LLC and/or Google Asia Pacific in respect of Google LLC's and/or Google Asia Pacific's contraventions pleaded at paragraph 171.

Particulars

i. Google Australia has:

- A. acted jointly or in concert with Google LLC and/or Google Asia Pacific in engaging in the conduct pleaded in paragraphs 168–170 above;
- B. engaged in the conduct pleaded at paragraphs 168–170. Google Australia thereby has jointly participated in Google LLC's and/or Google Asia Pacific's contraventions;
- C. been concerned in Google LLC and/or Google Asia Pacific's contraventions with knowledge of the facts pleaded above giving rise to the contraventions. Google Australia's knowledge is to be inferred in circumstances where, inter alia, Google Australia, Google Asia Pacific and Google LLC are wholly owned subsidiaries of Alphabet Inc. and Google Australia engages in the conduct pleaded at paragraphs 168–170.

ii. Further particulars may be provided prior to trial.

PART XII: CAUSATION, LOSS AND DAMAGE

Android App Developers

174. At all material times during the Relevant Period, the conduct of Google LLC, Google Asia Pacific and/or Google Australia, referred to at Part VIII (s 46), Part IX (s 47), Part X (s 45) and Part XI (s 21) (individually or in combination, the **Contravening Conduct**) caused the commissions paid by the Second Applicant and Android App Developer Group Members to Google for purchases of Android Apps and/or in-app digital content within Android Apps by Android Device Group Members to be materially higher than the commissions that would have existed had the Contravening Conduct not occurred.

Particulars

The Second Applicant

i. During the Relevant Period, the Second Applicant paid a commission to Google for all purchases by Android Device Group Members of the Pocket Cal/kj Pro Android App and/or in-app digital content within the Pocket Cal/kj Android App. Since the commencement of the Relevant Period, the commission was charged at a rate of 30%.

ii. But for the Contravening Conduct, the commissions paid to Google by the Second Applicant for purchases of the Pocket Cal/kj Pro Android App and/or Pocket Cal/kj Plus in-app digital content within the Pocket Cal/kj Android App during the Relevant Period would have been in the range of ~~510%-1520%~~ with a midpoint of 15% (**Counterfactual Commissions**): Expert Report of Derek James Holt dated 1 November 2023 (EXP.MCDO.001.0001), Affidavit of Paul Edward Zawa dated 5 August 2022, PEZ1, p. 1534, Preliminary Expert Report by Derek James Holt dated 10 May 2021.

Android App Developer Group Members

iii. But for the Contravening Conduct, the commissions paid to Google by Android App Developer Group Members for purchases of Android apps and/or in-app digital content within an Android app made by Android Device Group Members during the Relevant Period would have been the Counterfactual Commissions: Expert

~~[Report of Derek James Holt dated 1 November 2023 \(EXP.MCDO.001.0001\), Affidavit of Paul Edward Zawa dated 5 August 2022, PEZ1, p. 1534, Preliminary Expert Report by Derek James Holt dated 27 July 2021.](#)~~

iv. Further particulars will be provided following the completion of discovery, subpoenas and expert evidence.

174A. By reason of the matters set out in paragraph 174 above, the commissions paid by the Second Applicant and Android App Developer Group Members to Google for purchases of Android apps and digital in-app digital content by Android Device Group Members were artificially inflated during the Relevant Period by the Contravening Conduct.

174B. By reason of the matters set out in paragraphs 174–174A, the Second Applicant and the Android App Developer Group Members have suffered loss and damage by the Contravening Conduct.

Particulars

- i. The loss and damage suffered by the Second Applicant is the difference between the commissions it paid to Google in respect of purchases by Android Device Group Members of the Pocket Cal/kj Pro Android App and the Pocket Cal/kj Plus in-app digital content within the Pocket Cal/kj Android App and the Counterfactual Commissions, less the proportion of commissions that the Second Applicant passed on to Android Device Group Members.
- ii. The loss and damages suffered by Android App Developer Group Members is the difference between the commissions which they paid to Google for purchases of Android Apps and digital in-app digital content by Android Device Group Members and the Counterfactual Commissions, less the loss and damage suffered by Android Device Group Members.
- iii. Further particulars will be provided following expert evidence.

Android Device Consumers

174C. Further, at all material times during the Relevant Period, the Contravening Conduct caused the purchase price of Android apps and/or in-app digital content within an Android

app paid by the First Applicant and Android Device Group Members to be materially higher than the price that would have existed had the Contravening Conduct not occurred.

Particulars

The First Applicant

- i. But for the Contravening Conduct, the purchase price paid by the First Applicant for the purchases set out in the particulars to paragraph 2(a) above would have been lower in the range of 40%-60% of the Counterfactual Commission (**Pass Through prices**): Affidavit of Paul Edward Zawa dated 5 August 2022, PEZ1, p. 1534, Preliminary Expert Report by Derek James Holt dated 27 July 2021.
- ii. Further particulars will be provided following expert evidence.

Android Device Group Members

- iii. But for the Contravening Conduct, the purchase price paid by Android Device Group Members for purchases of Android apps and/or in-app digital content within an Android app paid during the Relevant Period would have been the Pass Through prices: Affidavit of Paul Edward Zawa dated 5 August 2022, PEZ1, p. 1534, Preliminary Expert Report by Derek James Holt dated 27 July 2021.
 - iv. Further particulars will be provided following expert evidence.
175. By reason of the matters set out in paragraph 174C -above, when the First Applicant and Android Device Group Members purchased Android Apps and/or digital content within Android Apps during the Relevant Period, the price of Android Apps and/or digital content within Android Apps (including purchases of Android Apps distributed via the Play Store and Play Store In-App Purchases) they acquired had been artificially inflated by the Contravening Conduct.
176. By reason of the matters set out in paragraphs -174C–175, the First Applicant and Android Device Group Members have suffered loss and damage by the Contravening Conduct.

Particulars

- i. The loss and damages suffered by the First Applicant and Android Device Group Members is the difference between the prices at which they purchased Android Apps and/or digital content within Android Apps during the Relevant Period and the Pass Through prices that would have prevailed had the Contravening Conduct not occurred.
- ii. Further particulars will be provided following the completion of discovery, subpoenas and expert evidence.

177. The Applicants and Group Members seek the relief set out in the accompanying Amended Originating Application.

Date: ~~23 March 2023~~ 15 December 2023



Signed by ~~Paul Zawa~~ Joel Phibbs

Lawyer for the Applicants

This further amended pleading was prepared by Nicholas De Young KC, ~~Kate Burke~~ and Daniel Preston of counsel.

Certificate of lawyer

I, ~~Paul Zawa~~ Joel Phibbs, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~23 March 2023~~ 15 December 2023

A handwritten signature in black ink, appearing to read 'Joel', is written over a light yellow rectangular background.

Signed by ~~Paul Zawa~~ Joel Phibbs

Lawyer for the Applicants

Schedule

No. 342 of 2022

Federal Court of Australia

District Registry: Victoria

Division: General

Respondents

Second Respondent: Google Asia Pacific Pte. Ltd. (200817984R)

Third Respondent: Google Payment Australia Pty. Ltd. (ACN 122 560 123)

