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Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



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.



Defence

No. VID 342 of 2022

Federal Court of Australia
District Registry: New South Wales
Division: General

Brett McDonald and another
Applicants

Google LLC and others
Respondents

*In response to the allegations in the Amended Statement of Claim filed 23 March 2023 (**Claim**), the First, Second and Third Respondents (**Respondents**) plead as follows. For the avoidance of doubt, each respondent pleads only to those allegations made against it. Terms defined in the Claim are adopted in this Defence unless the context indicates otherwise.*

PART I: PARTIES

The Applicants and Group Members

1. In answer to paragraph 1 of the Claim, the Respondents:
 - (a) admit that the proceeding is commenced as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) by the Applicants in their individual capacity and in a representative capacity;
 - (b) deny that Android Device Group Members or Android App Developer Group Members suffered loss or damage as alleged; and
 - (c) otherwise, do not know and therefore cannot admit the paragraph.
2. They admit the allegations in paragraph 2 of the Claim.
3. Paragraph 3 contains no substantive allegations against the Respondents. In response to that paragraph, the Respondents note:

Filed on behalf of	Google LLC (First Respondent), Google Asia Pacific Pte. Ltd. (Second Respondent) and Google Payment Australia Pty Ltd (Third Respondent)		
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- (a) the following paragraphs 4 – 173 are substantially taken from the Respondents’ Defence filed on 7 July 2022 in proceeding NSD190/2021 (*Epic v Google*);
- (b) order 4 of the orders made by Perram J on 6 April 2023 which states that the issues contained in paragraphs 4 – 174A of the Claim be heard separately from the other issues in the proceeding and be heard together with *Epic v Google*; and
- (c) notation 12 of those same orders which records that the parties have agreed that the Applicants and the group members they represent (except for those who have opted out) will be bound by all findings of fact, findings of law and mixed findings of fact and law made in the determination of the issues contained in paragraphs 4 – 174A of the Claim.

The Respondents

- 4. Paragraph 4 contains no substantive allegations against the Respondents. In response to that paragraph, they note the use of the defined terms “Google” and “Google Australia” in the Claim (which have not been adopted in this Defence). In this Defence:
 - (a) “**Google**” refers to Google LLC (including its predecessor Google Inc.) and its applicable related bodies corporate, unless otherwise specified; and
 - (b) “**Google Payment Australia**” refers to the Third Respondent.

Google LLC

- 5. They admit the allegations in paragraph 5 of the Claim.
- 6. They deny the allegations in paragraph 6 of the Claim.
- 7. In response to paragraph 7 of the Claim, they:
 - (a) admit the allegations in sub-paragraph 7(a);
 - (b) admit that Google LLC owns, develops and licenses to Original Equipment Manufacturers (**OEMs**) a range of proprietary apps including Google Play, Google Search, Google Chrome, Google Maps, Gmail and YouTube, together known as **Google Mobile Services**;
 - (c) say that Android includes tens of thousands of Application Program Interfaces (**APIs**) and other system components, including the Android APIs;
 - (d) say further that Google Play Services is a set of Software Development Kits (**SDKs**) that help developers of Android apps to build and add functionality to

their app, including connecting an app to other Google services (including Google Sign-In, Google Pay and Google Maps) via continually updated APIs;

- (e) admit the allegation in sub-paragraph 7(c); and
- (f) otherwise deny the allegations in paragraph 7.

Google Play Store and Google Play Billing

8. In response to paragraph 8 of the Claim, they:

- (a) admit that Google LLC owns and continues to develop Android;
- (b) admit that Google LLC developed and owns Google Play;
- (c) say that Google Play has an integrated billing system (**Google Play Billing**) for accepting payment for purchases of in-app digital content within apps downloaded from Google Play (**Google Play In-App Purchase**);

Particulars

1. Google Developer Program Policies, Payments, clause 2.

- (d) say further that, under the Google Play Developer Distribution Agreement (**DDA**), app developers are required to comply with the Google Developer Program Policies;

Particulars

1. DDA, clause 4.1.

- (e) say further that Google Play Billing is the means by which:
 - (i) applicable Google entities are able to securely, reliably and efficiently collect from app developers the Service Fees (defined in paragraph 11(f) below of this Defence) to which they are contractually entitled, to compensate Google for the valuable services provided through Google Play and Google's ongoing and extensive investment in the Google Play and Android ecosystems, that help attract users to Android Smart Mobile Devices (as defined in paragraph 35 of the Claim);
 - (ii) Google can ensure the trust and safety, security and a high-quality user experience for payments made between users and app developers in connection with apps downloaded via Google Play;

- (f) say further that, by reason of these matters, Google Play Billing is an important aspect of Google Play, including because it is a convenient and efficient means by which Google can ensure that Google Play has these features; and
 - (g) otherwise deny the allegations in paragraph 19.
9. In response to paragraph 9 of the Claim, they:
- (a) admit the allegations in sub-paragraphs 9(a) and (b);
 - (b) say that Android is an open-source mobile OS made available for free under an open-source licence by the Android Open Source Project, led by Google LLC; and
 - (c) otherwise deny the allegations in paragraph 9.
10. In response to paragraph 10 of the Claim, they:
- (a) admit the allegations in sub-paragraph 10(a);
 - (b) say that Android Market was launched in the United States and certain other countries on 22 October 2008 and in Australia in February 2009, and was rebranded as Google Play in early 2012;
 - (c) admit the allegations in sub-paragraph 10(c);
 - (d) do not know and cannot admit the allegation in sub-paragraphs 10(d) or 10(e); and
 - (e) otherwise deny the allegations in paragraph 10.
11. In response to paragraph 11 of the Claim, they:
- (a) say that Google Play Billing is an integrated billing system within Google Play used for accepting and facilitating the processing of payments for Google Play In-App Purchases, and provides users with a safe and trustworthy, high-quality and secure way to make purchases using a large variety of different payment methods, as well as to manage and monitor subscriptions, set budget controls and obtain refunds. It enables app developers who choose to generate revenue by charging to download the apps or access in-app digital content to collect payment for their apps and in-app digital content and ensures Google is able to reliably and efficiently collect the Service Fee (as defined in sub-paragraph 11(f) below) to which it is contractually entitled, where applicable, for the valuable services it provides to app developers and Android users through the Google Play and Android ecosystems;

- (b) say further that some types of content (including purchasing physical goods) are not purchased using Google Play Billing;
- (c) say further that app developers can use Google Play to distribute their apps without using Google Play Billing, for example if they do not monetise their app, sell in-app content via channels outside their apps, or monetise their app without charging for the apps or in-app content (e.g. by advertising);
- (d) say further that apps distributed by alternative means (not through Google Play) on Android devices do not use Google Play Billing;
- (e) refer to and repeat paragraph 8 above of this Defence;
- (f) say further that, as of 1 January 2022, app developers are charged a service fee of 15% on all subscriptions and, for all other in-app purchases, on their first US\$1 million of Google Play In-App Purchases in each year (upon enrolment), and up to 30% on any Google Play In-App Purchases exceeding US\$1 million in that year (**Service Fee**), and some developers are eligible for programs that reduce their service fee below 15%;

Particulars

1. DDA, clause 3.4.
 2. Google Developer Program Policy – “Service Fees”.
- (g) say further that most app developers pay no Service Fee to distribute their apps via Google Play and the Service Fee of 15% applies to substantially all app developers and Google Play In-App Purchases;

Particulars

1. 3% of app developers worldwide pay any Service Fee.
 2. 99% of app developers worldwide who pay any Service Fee qualify to pay a Service Fee of 15% or less.
- (h) say further that the applicable Google payment entity which is contractually entitled to recover Services Fees from app developers differs depending on the location of the app developer;

Particulars

1. For example, app developers in the United States, including Epic, enter into a Google Payments Agreement with Google Payment Corp., and app developers in Australia enter into a payment agreement with Google Payment Australia pursuant to the Google

Australia Public Disclosure Statement (as defined in paragraph 26(a)).

- (i) say further that the Service Fee is not charged simply for a “payment solution” and is not merely a fee for facilitating payment processing services; and
- (j) otherwise deny the allegations in paragraph 11.

Google Asia Pacific

- 12. They admit the allegations in paragraph 12 of the Claim.
- 13. They deny the allegations in paragraph 13 of the Claim.

Google Payment Australia

- 14. They admit the allegations in paragraph 14 of the Claim.
- 15. In response to paragraph 15 of the Claim, they:
 - (a) say that, for Google Play In-App Purchases where the Android user is located in Australia, Google Payment Australia has an agreement with the Android user that it will, inter alia, facilitate the processing of payments from the Android user to app developers through Google Play Billing (**Product Disclosure Statement**);
 - (b) say further that, for Google Play In-App Purchases where the seller is located in Australia, Google Payment Australia:
 - (i) has an agreement with the seller (as defined in the Product Disclosure Statement) that it will, inter alia, facilitate the processing of payments from buyers to the seller through Google Play Billing;
 - (ii) before remitting such payments to the seller, the applicable Service Fee is deducted;
 - (c) say further that the Service Fee is not merely a commission for the provision of payment processing services;
 - (d) refer to and repeat paragraphs 8 and 11 above of this Defence; and
 - (e) otherwise deny the allegations in paragraph 15.

Alphabet Inc.

- 16. In response to paragraph 16 of the Claim, they:
 - (a) say that, as at the date of this Defence, Alphabet Inc.’s market capitalisation is approximately USD1.3 trillion, but that this figure varies from time to time;
 - (b) admit the allegations in sub-paragraph 16(b);

- (c) say further that Alphabet Inc. and its related companies employ approximately 190,000 employees globally, including in Australia; and
- (d) otherwise deny the allegations in paragraph 16.

Google corporate structure and knowledge

- 17. They admit the allegations in paragraph 17 of the Claim.
- 18. In response to paragraph 18 of the Claim, they:
 - (a) say that Google Payment Australia is a wholly-owned subsidiary of Google International LLC, and that Google International LLC is a wholly-owned subsidiary of Google LLC; and
 - (b) otherwise deny the allegations in paragraph 18.

PART II: APP DISTRIBUTION AND PAYMENTS

Smart mobile devices

- 19. In response to paragraph 19 of the Claim, they:
 - (a) admit the allegations in sub-paragraphs 19(a), 19(b), 19(d), 19(e), 19(f), 19(g) and 19(i);
 - (b) admit that smartphones are powered by a rechargeable battery;
 - (c) say that smartphones manufactured in recent years typically possess near field communication functionality;
 - (d) say further that smartphones are typically capable of making and receiving voice and video calls, sending and receiving messages, and performing various computing functions including internet browsing, sending and receiving email, streaming video or music, playing games, and operating apps, including web apps;
 - (e) say further that the screen size of smartphones is typically sufficient to permit the operation of a range of gaming and non-gaming apps that also can be used on other computing devices such as tablets, PCs and/or gaming consoles; and
 - (f) otherwise deny the allegations in paragraph 19.
- 20. They do not know and cannot admit the allegations in paragraph 20 of the Claim.
- 21. In response to paragraph 21 of the Claim, they:
 - (a) admit the allegations in sub-paragraphs 21(a), 21(b), 21(d), 21(f) and 21(g);

- (b) admit that tablets are powered by a rechargeable battery;
 - (c) say that tablets are typically capable of making and receiving voice and video calls using voice over IP, sending and receiving messages, and performing various computing functions including internet browsing, sending and receiving email, streaming video or music, playing games, and operating apps, including web apps;
 - (d) say further that many tablets are capable of performing computing functions;
 - (e) say further that the screen size of tablets is typically sufficient to permit the operation of a range of gaming and non-gaming apps that also can be used on other computing devices such as smartphones, PCs and/or gaming consoles; and
 - (f) otherwise deny the allegations in paragraph 21.
22. They do not know and cannot admit the allegations in paragraph 22 of the Claim.
23. They note the use of the defined term “Smart Mobile Devices” in the Claim, and otherwise do not plead to paragraph 23 of the Claim because it contains no allegations against them. References to “**Smart Mobile Devices**” in this Defence should be taken to refer to and repeat paragraphs 19 and 21 above of this Defence.
24. In response to paragraph 24 of the Claim, they:
- (a) say that there are typically form factor differences between PCs, on the one hand, and Smart Mobile Devices on the other, such as their relative size, weight, portability and battery life;
 - (b) say further that such form factor differences do not necessarily prevent Smart Mobile Devices and laptop PCs from having certain equivalent functionality;
 - (c) say further that there has been, and continues to be, convergence between the functionality of Smart Mobile Devices and laptop PCs; and
 - (d) otherwise deny the allegations in paragraph 24.
25. In response to paragraph 25 of the Claim, they:
- (a) say that game apps (and some non-game apps) typically are able to be operated on a range of Smart Mobile Devices, laptop and desktop PCs and gaming consoles;
 - (b) say further that mobile gaming consoles, such as the Nintendo Switch and Steam Deck, provide equivalent functionality and portability to Smart Mobile Devices in relation to game apps (and some non-game apps); and

- (c) otherwise deny the allegations in paragraph 25.

Operating Systems

- 26. They admit the allegations in paragraph 26 of the Claim.
- 27. They admit the allegations in paragraph 27 of the Claim.
- 28. They admit the allegations in paragraph 28 of the Claim.
- 29. They admit the allegations in paragraph 29 of the Claim.
- 30. They admit the allegations in paragraph 30 of the Claim.

Android Smart Mobile Devices

- 31. In response to paragraph 31 of the Claim, they:
 - (a) admit that companies which design and sell Smart Mobile Devices are known as OEMs;
 - (b) say that Smart Mobile Devices are sold to end users by a range of suppliers including OEMs, mobile network operators and retailers; and
 - (c) otherwise deny the allegations in paragraph 31.
- 32. In response to paragraph 32 of the Claim, they:
 - (a) admit the allegations in paragraph 32 of the Claim; and
 - (b) say that there are mobile OSs available for pre-installation on Smart Mobile Devices by OEMs other than Android and Apple's iOS.
- 33. They admit the allegations in paragraph 33 of the Claim and say further that OEMs may also license an open-source mobile OS (like Android) and modify or further develop that mobile OS.
- 34. In response to paragraph 34 of the Claim, they:
 - (a) do not know and cannot admit the allegations in sub-paragraph 34(a);
 - (b) admit that Android is licensed by many OEMs and otherwise deny the allegations in sub-paragraph 34(b); and
 - (c) say that Android is installed on many, non-Apple Smart Mobile Devices sold in Australia, and otherwise deny the allegations in sub-paragraph 34(c).
- 35. They do not know and therefore cannot admit the allegations in paragraph 35 of the Claim.

Apps for Smart Mobile Devices

36. In response to paragraph 36 of the Claim, they:
- (a) admit the allegations in sub-paragraphs 36(a), 36(b) and 36(d);
 - (b) say that some native apps for Smart Mobile Devices facilitate access to web content, services and functionality on those devices, and otherwise deny the allegations in sub-paragraph 36(c);
 - (c) say further that web apps, particularly progressive web apps compatible with Android Smart Mobile Devices, can:
 - (i) utilise the features and functionality of Smart Mobile Devices, including by accessing the hardware of those devices; and
 - (ii) facilitate Smart Mobile Device user access to web content, services and functionality on those devices.
37. In response to paragraph 37 of the Claim, they:
- (a) say that native apps for Smart Mobile Devices must be developed for and compatible with the specific mobile OS on which they will be downloaded and run;
 - (b) admit the allegations in sub-paragraphs 37(c) and 37(d) insofar as they apply to native apps for Smart Mobile Devices;
 - (c) deny the allegations in sub-paragraphs 37(a), 37(b) and 37(d) insofar as they apply to web apps;
 - (d) say further that the same app can be, and often is, developed for more than one mobile OS and/or other platforms including PCs and gaming consoles; and
 - (e) otherwise deny the allegations in paragraph 37.
38. In response to paragraph 38 of the Claim, they:
- (a) say that Google LLC makes an Android SDK publicly available to app developers to enable them to create native apps for Android without requiring them to enter into the DDA; and
 - (b) otherwise do not know and cannot admit the allegations in paragraph 38.
39. In response to paragraph 39 of the Claim, they:
- (a) refer to and repeat paragraphs 37(a) and 37(d) above of this Defence;

- (b) say that web apps, other than progressive web apps, do not need to be developed for a specific mobile OS, but can be optimised for a specific mobile OS or a specific Smart Mobile Device;
- (c) say further that progressive web apps are a type of web app that utilises an advanced API to provide users with functionalities typically associated with native apps (such as home screen icons, the ability to send push notifications and offline functionality), without needing to be downloaded, and enhance cross-platform operability with little need for platform-specific development;
- (d) say further that streaming services available as apps and as web apps, including Nvidia GeForce Now and Xbox Cloud Gaming allow app developers to make gaming apps available to Smart Mobile Device Users without developing an app for a specific mobile OS; and
- (e) otherwise deny the allegations in paragraph 39.

40. In response to paragraph 40 of the Claim, they:

- (a) refer to and repeat paragraphs 36(c), 37(a), 37(d) and 39 above of this Defence;
- (b) say that there are available tools to assist developers to develop apps for multiple platforms (including Smart Mobile Devices, PCs and gaming consoles); and
- (c) otherwise admit the allegations in paragraph 40.

Android Apps for Android Smart Mobile Devices

41. They admit the allegations in paragraph 41 of the Claim.

42. In response to paragraph 42 of the Claim, they:

- (a) admit that Google LLC develops the well-known apps Google Play, Google Search, Google Chrome, Gmail, Google Maps and YouTube;
- (b) say that Google Search, Gmail, Google Maps and YouTube are accessible by web browsers;
- (c) say further that Google LLC licenses, and offers to license, the Android Apps it develops to OEMs for pre-installation on Android Smart Mobile Devices under a Mobile Application Distribution Agreement (**MADA**) entered into between Google LLC (including its predecessor, Google Inc.) and its affiliates, and the OEM;
- (d) say further that Google LLC licenses some of its proprietary apps to manufacturers of game consoles, PCs, smart televisions and streaming media players; and

- (e) otherwise deny the allegations in paragraph 42.
43. They admit the allegations in paragraph 43 of the Claim.
44. In response to paragraph 44 of the Claim, they:
- (a) refer to and repeat paragraphs 36(c), 37(a), 38(a) and 39(b) above in this Defence; and
 - (b) otherwise admit the allegations in paragraph 44.
45. In response to paragraph 45 of the Claim, they:
- (a) refer to and repeat paragraphs 36(c), 37(a), 39(b) and 39(c);
 - (b) say that app developers can and do develop applications for multiple types of devices, including Smart Mobile Devices, gaming consoles, PCs, and smart televisions to access Android users who use multiple devices (multi-home); and
 - (c) otherwise deny the allegations in paragraph 45.

App stores for Smart Mobile Devices

46. In response to paragraph 46 of the Claim, they:
- (a) admit that app stores for Smart Mobile Devices, including Google Play, allow users to easily browse, search for, access reviews on, purchase (if necessary), download and install apps (including updates) compatible with the mobile OS of their Smart Mobile Device;
 - (b) say that Android users can also download, install and update native apps for Android Smart Mobile Devices via direct download from a website accessed through the internet browser on their Android Smart Mobile Device;
 - (c) say further that Google Play also offers users features including managing subscriptions, parental controls in respect of apps, curated discovery of apps and app ratings;
 - (d) say further that Google Play offers app developers a distribution channel through which they can connect with billions of users, the technical infrastructure to host, distribute and update apps globally, extensive datasets and APIs, app development, quality control, analytics and testing tools and payment-related services including Google Play Billing;
 - (e) admit the allegations in sub-paragraph 46(b); and
 - (f) otherwise do not know and cannot admit allegations in paragraph 46.
47. In response to paragraph 47 of the Claim, they:

- (a) admit the allegations insofar as an app is available in the user's region;
- (b) say that Google Play facilitates Android users' discovery and download of relevant and high-quality apps, lowering Android user search costs; and
- (c) otherwise deny the allegations in paragraph 47.

48. In response to paragraph 48 of the Claim, they:

- (a) say that Google Play provides app developers with the opportunity to describe, distribute and promote their apps to Android users and to update their apps, among other features, greatly assisting app developers by making their apps discoverable to millions of Android users at low cost;
- (b) do not know and cannot admit the extent to which other app stores provide app developers with the opportunity to describe, distribute and promote their apps to Android users and to update their apps; and
- (c) otherwise deny the allegations in paragraph 48.

Distribution of Android Apps

49. In response to paragraph 49 of the Claim, they:

- (a) say that app developers can distribute Android apps to Android users via pre-installation on Android Smart Mobile Devices by OEMs without the need for download and installation of the app by the Android user;
- (b) say further that web apps and gaming apps made available through game streaming services do not need to be downloaded onto an Android user's mobile device or updated on an Android user's mobile device in order to be used on an Android Smart Mobile Device;
- (c) say further that app developers can and do make changes to Android apps without requiring users to download an update (known as a "hot fix" or "server driven update"), provided that, for apps distributed via Google Play, the change complies with the DDA and Google Developer Program Policies; and
- (d) otherwise deny the allegations in paragraph 49.

50. In response to paragraph 50 of the Claim, they:

- (a) admit that sub-paragraphs 50(a), 50(b) and 50(c) describe three ways in which an app can be installed on an Android Smart Mobile Device;
- (b) say that Android Smart Mobile Devices can access apps in other ways including via web apps, gaming apps made available through streaming services (such as

Nvidia GeForce Now, Xbox Cloud Gaming, and Steam Link) streaming or apps distributed via file transfer without the need for downloading and installing the app via an app store, internet browser, or pre-installation; and

- (c) otherwise deny the allegations in paragraph 50.

Pre-Installation on an Android Smart Device

51. In response to paragraph 51 of the Claim, they:

- (a) admit that OEMs can design and sell Smart Mobile Devices with some Android apps pre-installed;
- (b) say that OEMs have discretion over whether or not they pre-install Android apps on Android Smart Mobile Devices they design and sell; and
- (c) otherwise deny the allegations in paragraph 51.

52. They admit the allegations in paragraph 52 of the Claim.

53. In response to paragraph 53 of the Claim, they:

- (a) admit that many of the Android Smart Mobile Devices sold worldwide (excluding China) have Google Play pre-installed, along with other Google Android apps;
- (b) say that many of the Android Smart Mobile Devices sold worldwide (excluding China) also have other app stores pre-installed in addition to Google Play; and
- (c) otherwise deny the allegations in paragraph 53.

54. They deny the allegations in paragraph 54 of the Claim.

Distribution through an app store

55. In response to paragraph 55 of the Claim, they:

- (a) admit that one means by which Android apps can be distributed to Android Smart Mobile Devices is Google Play;
- (b) do not know and cannot admit sub-paragraph 55(b);
- (c) say that apps are successfully distributed on Android Smart Mobile Devices outside Google Play through other Android app stores (including EGS which is pre-installed by certain OEMs), through downloading from the internet and by means of direct access through web apps; and
- (d) otherwise deny the allegations in paragraph 55.

56. In response to paragraph 56 of the Claim, they:

- (a) admit the allegations in the paragraph;

- (b) say that app stores other than Google Play are pre-installed on Android Smart Mobile Devices by OEMs;
- (c) say further that app stores other than Google Play (including the Epic Games App) can be directly downloaded onto Android Smart Mobile Devices; and
- (d) say further that there are many app stores other than Google Play that distribute Android apps (**Alternative App Stores**).

57. In response to paragraph 57 of the Claim, they:

- (a) say that Alternative App Stores are readily available to, and widely used by, consumers to download Android apps, including in Australia;
- (b) say further that app developers could (and do) use Alternative App Stores to make available their apps to consumers, and there are no material barriers to app developers doing so;
- (c) say further that, if app developers used Alternative App Stores to make available their apps to consumers, consumers would not experience any material barriers to obtaining those apps by that means;
- (d) say further that the Applicants have not identified any reason why app developers could not use Alternative App Stores to make apps available to consumers;
- (e) say further that the Claim obscures the true nature of the issues in the proceedings, and the proper counter-factual, and is embarrassing and liable to cause a waste of time; and
- (f) otherwise deny the allegations in paragraph 57.

Direct downloading of apps

58. In response to paragraph 58 of the Claim, they:

- (a) say that direct downloads of an app can occur when an app is downloaded directly onto an Android Smart Mobile Device from the internet using a web browser;
- (b) say further that direct downloads can also occur by transferring the app from a PC or a Smart Mobile Device onto an Android Smart Mobile Device, such as via Bluetooth or a USB-C cable; and
- (c) otherwise deny the allegations in paragraph 58.

59. In response to paragraph 59 of the Claim, they:

- (a) refer to and repeat paragraphs 101 to 105 below of this Defence;

- (b) say that direct downloading is widely used by consumers to download Android apps;
- (c) say further that direct downloading is an available means for app developers to make its Android apps available to consumers;
- (d) deny that Android contains the “Technical Restrictions” as defined in the Claim on sideloading of apps; and
- (e) otherwise deny the allegations in paragraph 59.

Other types of apps

60. In response to paragraph 60 of the Claim, they:

- (a) say that web apps, non-Android (including Apple’s iOS) apps for Smart Mobile Devices and apps developed for PCs and gaming consoles (including gaming apps for PCs and gaming consoles that are accessible on Android Smart Mobile Devices via a streaming service such as Xbox Cloud Gaming, Nvidia GeForce Now, and Steam Link) are substitutes for Android Apps;
- (b) say further or alternatively that web apps, non-Android (including Apple’s iOS) apps for Smart Mobile Devices and apps developed for PCs and gaming consoles provide a close competitive constraint on Android apps; and
- (c) otherwise deny the allegations in paragraph 60.

Payments for in-app purchases of in-app content

61. In response to paragraph 61 of the Claim, they:

- (a) say that app developers have at least the following ways of obtaining revenue from native apps for Smart Mobile Devices:
 - (i) charging users to download the app;
 - (ii) displaying advertisements within the app;
 - (iii) charging users for in-app purchases of premium features, additional content, subscriptions or digital goods;
 - (iv) selling physical content and/or services via the app;
 - (v) users paying the app developer outside the app for content that can be accessed and/or consumed within the app; and
- (b) otherwise deny the allegations in paragraph 61.

62. In response to paragraph 62 of the Claim, they:

- (a) refer to and repeat paragraphs 8 and 11 above of this Defence insofar as app developers wish to offer Google Play In-App Purchases;
- (b) say that app developers who sell, outside their app, content that can be accessed and/or consumed within the app do not need an in-app payment solution;
- (c) otherwise do not know and cannot admit the extent of the requirement alleged in paragraph 62; and
- (d) otherwise deny paragraph 62.

63. In response to paragraph 63 of the Claim, they:

- (a) say that paragraph 63 is vague and embarrassing, as no relevant context or circumstances are defined;
- (b) refer to and repeat paragraphs 8 and 11 above of this Defence;
- (c) say further that the payment solutions offered by Stripe, PayPal/Braintree and Square are not equivalent to Google Play Billing; and
- (d) otherwise deny the allegations in paragraph 63.

64. In response to paragraph 64 of the Claim, they:

- (a) refer to and repeat paragraphs 61(a) and 62(b) above of this Defence; and
- (b) otherwise deny the allegations in paragraph 64.

Play Store In-App Purchases

65. In response to paragraph 65 of the Claim, they:

- (a) refer to and repeat paragraphs 8, 11 and 62(b) above of this Defence; and
- (b) otherwise deny the allegations in paragraph 65.

66. In response to paragraph 66 of the Claim, they:

- (a) refer to and repeat paragraphs 8, 11, 62(b) and 63(c) above of this Defence;
- (b) say that the reference to “no technical reason” is vague and embarrassing;
- (c) under cover of that objection, say further that permitting app developers to use alternative payment methods or systems to Google Play Billing would have the potential to adversely affect, among other things:
 - (i) the security and privacy of data contained on Android Smart Mobile Devices, including in relation to payments;

- (ii) the trustworthiness, safety and quality of the user experience on Android Smart Mobile devices, including in relation to in-app payments for digital content;
- (iii) the ability of applicable Google entities to securely, reliably and efficiently collect from app developers the Service Fees to which they are contractually entitled;
- (d) say further that Google Play Billing is not simply a payment solution but is an important integrated part of the services that Google supplies to app developers to connect them with Android users, and that existing alternative payment solutions are not substitutes for Google Play Billing; and
- (e) otherwise deny the allegations in paragraph 66.

PART III: GOOGLE'S AGREEMENTS WITH OEMS

MADA

67. In response to paragraph 67 of the Claim, they:

- (a) say that OEMs are not required to enter into a MADA with Google LLC in order to licence Android;
- (b) say further that OEMs are free to pre-install apps and app stores with similar functionality to the free suite of Google Mobile Services (including Google Play) on devices subject to a MADA;
- (c) say further that one reason Google introduced MADAs in 2009 was to encourage OEMs to pre-install a suite of useful and safe Google apps so that their Android Smart Mobile Devices would be more competitive against vertically-integrated OEMs offering devices with pre-installed proprietary mobile OSs and mobile apps, including Apple, Windows, Symbian, Windows Mobile and Blackberry, whose devices offered a range of basic functionality expected by consumers "out of the box", thereby:
 - (i) lowering barriers to entry for OEMs to compete against vertically integrated rivals that offered their own pre-installed app suites, such as Apple and Windows;
 - (ii) lowering barriers to entry for app developers because increased competitiveness of Android Smart Mobile Devices would provide them with access to a broader base of Android users; and
- (d) otherwise admit the allegations in paragraph 67.

68. In response to paragraph 68 of the Claim, they:
- (a) say that OEMs are not obliged under the MADA to pre-install any Google Mobile Services on Android Smart Mobile Devices which they design and sell;
 - (b) say further that, if an OEM wishes to pre-install a Google Mobile Service on an Android Smart Mobile Device, the MADA requires the OEM to:
 - (i) pre-install on the device all “Google Applications” specified in Google’s MADA with that OEM;
 - (ii) place the Google Search app, Google Play and a folder providing access to 13 other Google Mobile Services apps on the home screen of the device (which utilise three of typically up to 24 icon spaces available on the home screen of the device);
 - (c) say further that Google Mobile Services apps can be disabled, removing their icon from view and preventing them from being opened;
 - (d) say further that the terms of MADAs require OEMs to ensure that Android Smart Mobile Devices they design and sell pass the Android Compatibility Test Suite;
 - (e) say further that the terms of some MADAs require OEMs not to take actions that may cause or result in the fragmentation of Android, which is defined by reference to the Android Compatibility Definition document;
 - (f) say further that the terms of MADAs require OEMs to send the final software build of their Android Smart Mobile Devices to Google LLC to verify compliance with the MADA;
 - (g) rely upon the terms of the MADAs for their full meaning and effect; and
 - (h) otherwise deny the allegations in paragraph 68.

Anti-Fragmentation Agreements

69. In response to paragraph 69 of the Claim, they:
- (a) say that Google LLC has entered into an Anti-Fragmentation Agreement or Android Compatibility Commitment with some OEMs (together, AFAs);
 - (b) rely upon the terms of the AFAs, and the MADAs for their full meaning and effect; and
 - (c) otherwise deny the allegations in paragraph 69 of the Claim.
70. In response to paragraph 70 of the Claim, they:

- (a) say that the AFA typically defines “fragmentation” as a device which does not comply with the Android Compatibility Definition document or does not pass the Android Compatibility Test Suite;

Particulars

1. See, for example, the AFA between Google LLC and Samsung Electronics Co., Ltd effective 1 February 2019, Recital B, cl. 1.2, cl. 2.1(a), cl. 2.1(b).
- (b) say further that AFAs limit fragmentation of Android to the benefit of app developers by reducing or eliminating the need to develop various versions of Android Apps that are compatible with each OEM’s Android Smart Mobile Devices via baseline compatibility requirements;
 - (c) say further that these baseline compatibility requirements ensure that Google’s products and services function properly on Android Smart Mobile Devices;
 - (d) say further that AFAs typically require OEMs not to take any actions that may cause or result in the fragmentation of Android, except as authorised by Google LLC in writing;
 - (e) say further that AFAs permit OEMs to (and many OEMs do) design and sell hardware or software with extensive modifications to Android, including to the font colour, layout and content of security warnings, so long as the device affected, or the device on which the software affected is installed, still complies with the Android Compatibility Definition document and passes the Android Compatibility Test Suite;
 - (f) say further that some AFAs permit OEMs to design and sell “Exempt Devices” that do not comply with all aspects of the Android Compatibility Definition document;
 - (g) say further that the AFAs typically require OEMs not to distribute a SDK derived from Android or “Android Compatible Devices” (as defined in the AFAs), or participate in creating or promoting any such third party SDK;
 - (h) rely upon the terms of the AFAs for their full meaning and effect; and
 - (i) otherwise deny the allegations in paragraph 70.

71. In response to paragraph 71 of the Claim, they:

- (a) say that any additional steps necessary for direct downloading are legitimate and proportionate steps to protect users against the risk of downloading malicious and/or unsafe files;
- (b) say further that OEMs can and do alter the steps to be taken to allow direct downloading;
- (c) rely upon the terms of the AFAs for their full meaning and effect; and
- (d) otherwise deny the allegations in paragraph 71.

72. In response to paragraph 72 of the Claim, they:

- (a) refer to and repeat paragraphs 70 and 71 above of this Defence;
- (b) deny the Technical Restrictions as defined in the Claim;
- (c) rely upon the terms of the AFAs for their full meaning and effect; and
- (d) otherwise deny the allegations in paragraph 72.

Revenue Sharing Agreements

73. In response to paragraph 73 of the Claim, they:

- (a) admit that Google LLC has offered, and continues to offer, OEMs that have entered into a MADA and AFA the opportunity to enter into a Revenue Sharing Agreement or Mobile Incentive Agreement (together, RSAs);
- (b) rely upon the terms of the RSAs, which vary between OEMs, for their full meaning and effect; and
- (c) otherwise deny the allegations in paragraph 73.

74. In response to paragraph 74 of the Claim, they:

- (a) admit that, under the RSAs, certain OEMs may choose to configure some of their devices to enable them to be paid a higher percentage of Google's search advertising revenues and/or Google Play transaction revenues derived from Android Smart Mobile Devices which the OEM designs and sells;
- (b) rely upon the terms of the RSAs for their full meaning and effect; and
- (c) otherwise deny the allegations in paragraph 74.

75. In response to paragraph 75 of the Claim, they:

- (a) say that OEMs do not require financial incentives to enter into AFAs and MADAs;
- (b) say further that RSAs are not necessary for OEMs to enter into AFAs or MADAs;

- (c) rely upon the terms of the RSAs, AFAs and MADAs for their full meaning and effect; and
- (d) otherwise deny the allegations in paragraph 75.

76. In response to paragraph 76 of the Claim, they:

- (a) say that an OEM that has entered into an RSA can choose whether to configure a device to meet the Premier Device Program Requirements (Premier Device);
- (b) say further that only a small proportion of devices are under an RSA restriction concerning the pre installation of third party app stores;
- (c) rely upon the terms of the RSAs for their full meaning and effect; and
- (d) otherwise admit paragraph 76.

Premier Device Program

77. In response to paragraph 77 of the Claim, they:

- (a) say that in December 2019 Google updated some of its RSAs to introduce different tiers that an OEM could choose when configuring its devices (including a “Premier Device Program”); and
- (b) otherwise deny the allegations in paragraph 77.

78. In response to paragraph 78 of the Claim, they:

- (a) refer to and repeat paragraphs 76 and 77 of this Defence;
- (b) rely upon the terms of the RSAs for their full meaning and effect; and
- (c) otherwise deny the allegations in paragraph 78.

79. In response to paragraph 79 of the Claim, they:

- (a) refer to and repeat paragraphs 76, 77 and 78 of this Defence;
- (b) rely upon the terms of the RSAs for their full meaning and effect; and
- (c) otherwise deny the allegations in paragraph 79.

80. In response to paragraph 80 of the Claim, they:

- (a) say that the allegation in paragraph 80 does not distinguish between the obligations that apply to each individual OEM nor between devices that the OEM has designated as Premier Devices and devices that the OEM has not designated as Premier Devices;
- (b) rely upon the terms of the RSAs for their full meaning and effect; and

- (c) otherwise deny the allegations in paragraph 80.
81. In response to paragraph 81 of the Claim, they:
- (a) say that the allegations are vague and embarrassing and liable to be struck out;
 - (b) refer to and repeat paragraphs 77, 78, 79 and 80 above of this Defence; and
 - (c) under cover of that objection, otherwise deny the allegations in paragraph 81.
82. In response to paragraph 82 of the Claim, they:
- (a) say that the allegations are vague and embarrassing and liable to be struck out;
and
 - (b) under cover of that objection, deny the allegations in this paragraph.
83. In response to paragraph 83 of the Claim, they:
- (a) refer to and repeat paragraphs 67 to 82 above of this Defence;
 - (b) note the use of the defined term “OEM Restrictive Terms” in the Claim; and
 - (c) otherwise do not plead to paragraph 83 because it contains no allegations against them.
84. They deny the allegations in paragraph 84 of the Claim.
85. In response to paragraph 85 of the Claim, they:
- (a) refer to and repeat paragraphs 67 to 82 above of this Defence; and
 - (b) otherwise deny paragraph 85.

PART IV: GOOGLE'S AGREEMENTS WITH APP DEVELOPERS

The Google Developer Distribution Agreement

86. In response to paragraph 86 of the Claim, they:
- (a) admit that app developers who wish to distribute apps through Google Play must enter into the DDA;
 - (b) say that app developers enter into the DDA with the applicable Google entity based on where they have selected to distribute their apps; and

Particulars

1. DDA (current version), clause 2.1.
- (c) otherwise deny the allegations in paragraph 86.

87. In response to paragraph 87 of the Claim, they:
- (a) say that, insofar as app developers wish to distribute apps through Google Play to Android users in Australia, they enter into the DDA with Google Asia Pacific; and
 - (b) otherwise deny the allegations in paragraph 87.
88. In response to paragraph 88 of the Claim, they:
- (a) refer to and repeat paragraph 89 below of this Defence; and
 - (b) otherwise deny the allegations in paragraph 88.
89. In response to paragraph 89 of the Claim, they:
- (a) refer to and repeat paragraph 86(b) above of this Defence and admit that the applicable Google entity may make changes to the DDA at any time;
 - (b) say that Google updates the DDA from time to time, including in response to developer feedback;
 - (c) say further that the applicable Google entity must give at least 30 days' notice of any changes to the DDA, except changes required by law;
 - (d) say further that any changes to the DDA cannot be retrospective;
 - (e) say further that app developers may terminate the DDA if they do not wish to agree to notified changes; and
 - (f) otherwise deny the allegations in paragraph 89.

Particulars

1. DDA (current version), clause 2.1.

90. In response to paragraph 90 of the Claim, they:
- (a) say that, in relation to sub-paragraph 90(a) of the Claim, apps available on Google Play are vetted for pirated apps, phishing attacks, inappropriate content and harmful malware; that Google could not subject the apps available on third-party app stores to the same quality, safety and security checks that it applies to stand-alone apps, and therefore if Google allowed third party app stores to be available through Google Play, it could no longer provide users with the same quality, safety and security that users and developers have come to expect of content accessed via Google Play;
 - (b) refer to and repeat paragraphs 11 and 86(b) above of this Defence;

- (c) rely upon the terms of the DDAs for their full meaning and effect; and
 - (d) otherwise deny the allegations in paragraph 90.
91. They admit the allegations in paragraph 91 of the Claim.
92. In response to paragraph 92 of the Claim, they:
- (a) refer to and repeat paragraph 93 below of this Defence; and
 - (b) otherwise deny the allegations in paragraph 92.
93. In response to paragraph 93 of the Claim, they admit that Google LLC updates the Google Developer Program Policies from time to time, including in response to developer feedback.
94. In response to paragraph 94 of the Claim, they:
- (a) refer to and repeat paragraphs 8 and 11 above of this Defence;
 - (b) rely upon the terms of the Google Developer Program Policies for their full meaning and effect; and
 - (c) otherwise deny the allegations in paragraph 94.
95. In response to paragraph 95 of the Claim, they:
- (a) refer to and repeat paragraph 86(b) above of this Defence;
 - (b) admit allegations in paragraph 95 insofar as they apply to the applicable Google entity; and
 - (c) otherwise deny the allegations in paragraph 95.

Payments Agreement

96. In response to paragraph 96 of the Claim, they:
- (a) refer to and repeat paragraph 15(b) above of this Defence;
 - (b) refer to and repeat paragraph 86(b) above of this Defence and say that, insofar as app developers are located in Australia, the applicable Google entity requires those app developers who wish to offer Google Play In-App Purchases to enter into an agreement with Google Payment Australia that facilitates the processing of payments from Android users through Google Play Billing;
 - (c) rely upon the terms of the DDAs for their full meaning and effect; and
 - (d) otherwise deny the allegations in paragraph 96.
97. In response to paragraph 97 of the Claim, they:

- (a) say that the allegations are vague and embarrassing because they do not identify when the Respondents are said to have engaged in the relevant conduct; and
- (b) under cover of that objection, deny the allegations in paragraph 97.

The alleged App Developer Restrictive Terms

98. In response to paragraph 98 of the Claim, they:

- (a) refer to and repeat paragraphs 86 to 97 above of this Defence;
- (b) note the use of the defined term “App Developer Restrictive Terms” in the Claim but say that they rely upon the full meaning and effect of the terms of the relevant agreements; and
- (c) otherwise do not plead to paragraph 98 because it contains no allegations against them.

99. In response to paragraph 99 of the Claim, they:

- (a) refer to and repeat paragraphs 86 to 97 above of this Defence;
- (b) admit that the DDA prohibits app developers from distributing or offering via Google Play:
 - (i) Alternative App Stores; or
 - (ii) Android apps that facilitate the distribution of software applications for use on Android Smart Mobile Devices outside of Google Play;
- (c) say further that:
 - (i) because Google cannot ensure the safety and security of the apps that third-party app stores make available, permitting distribution of third-party app stores through Google Play would subvert an important purpose of Google in designing and operating Google Play, which is to ensure that it is a high-quality, safe and secure environment for users;
 - (ii) this aspect of the DDA assists with ensuring a high-quality, safe and secure environment for Android users, which is a feature that contributes to the competitiveness of Android and Google Play against Apple iOS and other mobile OSs;
- (d) say that app developers have a range of means for distributing apps to Android users apart from Google Play, including through pre-installation on Android Smart Mobile Devices, Alternative App Stores and sideloading;

- (e) refer to and repeat paragraphs 8, 11, 62(b), 62(c) and 90(a) above of this Defence; and
 - (f) otherwise deny the allegations in paragraph 99.
100. In response to paragraph 100 of the Claim, they:
- (a) refer to and repeat paragraphs 86 to 97 above of this Defence;
 - (b) say that the allegations are vague and embarrassing because they do not identify any relevant conduct or how it is alleged the Respondents have enforced relevant terms of the DDA; and
 - (c) otherwise deny the allegations in paragraph 100.

PART V: GOOGLE'S OTHER CONDUCT

Alleged Technical Restrictions

101. In response to paragraph 101 of the Claim, they:
- (a) say that Google LLC has configured Android with certain default security features so that, with default configuration, if an Android user attempts to directly download an app, before the app is installed:
 - (i) the Android user will see an OEM-configurable warning and be given an option to cancel the installation;
 - (ii) the Android user will need to change a default setting in the security settings on their device to permit the installation of new apps by the app the user is using to download the new app (for example, a web browser);
 - (iii) once the Android user has changed that security setting, they will not see the OEM-configurable warning again when using the same app to download new apps;
 - (b) say further that these security features are legitimate and proportionate steps to:
 - (i) protect Android users against the risk of downloading malicious or unsafe files, including by ensuring that consumers are aware of the risk and need to make an election to proceed notwithstanding that risk;
 - (ii) protect OEMs and applicable Google entities from liability for claims in relation to malicious or unsafe files that could be downloaded onto an Android Smart Mobile Device;
 - (c) say further that OEMs are able to and do configure these default security features and have complete control over the language and structure of the warnings and

security settings screen on Android Smart Mobile Devices they design and sell;
and

(d) otherwise deny the allegations in paragraph 101.

102. In response to paragraph 102 of the Claim, they:

(a) say that, before the release of Android 12 version of Android on 4 October 2021, apps and app stores downloaded by an Android user via, e.g., their internet browser, required action by the Android user in order to update;

(b) say further that OEMs are able to pre-install apps on Android Smart Mobile Devices they design and sell that can be automatically updated; and

(c) otherwise deny the allegations in paragraph 102.

103. In response to paragraph 103 of the Claim, they:

(a) admit that the Android 12 version of Android facilitates apps downloaded via an internet browser to be automatically updated provided the Android user has activated the “install unknown apps” permission in their device’s settings;

(b) say that a directly downloaded app can only automatically update if the developer of that app has enabled this functionality and meets baseline technical requirements; and

(c) otherwise deny the allegations in paragraph 103.

104. In response to paragraph 104 of Claim, they:

(a) say that Android users have the option to enrol in the Google Advanced Protection Program (APP), which provides Android users with extra protection from targeted online attacks and security risks such as phishing attempts and potentially harmful apps, prevents direct downloading of apps and displays a security warning if the Android user attempts to do so. Users can unenroll from the APP at any time and the APP does not prevent app installations from verified Alternative App Stores; and

(b) otherwise deny the allegations in paragraph 104.

105. In response to paragraph 105 of the Claim, they:

(a) refer to and repeat paragraphs 101 to 104 above of this Defence;

(b) note the use of the defined term “Technical Restrictions” in the Claim, which is not an accurate description of any relevant security features; and

- (c) otherwise do not plead to paragraph 105 because it contains no allegations against them.

Google App Campaigns

- 106. They admit the allegations in paragraph 106 of the Claim.
- 107. They admit the allegations in paragraph 107 of the Claim.
- 108. In response to paragraph 108 of the Claim, they:
 - (a) say that the Google App Campaigns program is one means by which app developers can promote their apps to Android users, including in Australia;
 - (b) say further that Google App Campaigns is one means by which app developers can promote their apps on Google's properties, such as YouTube and Search;
 - (c) say further that Google App Campaigns allow app developers to advertise their apps through multiple Google advertising channels without creating separate campaigns for each app channel; and
 - (d) otherwise do not know and cannot admit the allegations in paragraph 108.
- 109. In response to paragraph 109 of the Claim, they:
 - (a) say that app developers can create an app campaign for apps listed on Google Play and Apple's App Store;
 - (b) say further that app developers can create an app campaign for apps registered to launch on Google Play, which are not yet available for download via Google Play; and
 - (c) otherwise admit the allegation in paragraph 109.
- 110. In response to paragraph 110 of the Claim, they:
 - (a) refer to and repeat paragraphs 106 to 109 above of this Defence;
 - (b) note the use of the defined term "Google App Campaigns Conduct" in the Claim; and
 - (c) otherwise do not plead to paragraph 110 because it contains no allegations against them.

PART VI: GOOGLE OEM CONDUCT

- 111. They do not know and cannot admit the allegations in paragraph 111 of the Claim.
- 112. They deny the allegations in paragraph 112 of the Claim.

113. They deny the allegations in paragraph 113 of the Claim.
114. In response to paragraph 114 of the Claim, they:
- (a) deny the allegations in relation to “Google LLC’s conduct”; and
 - (b) otherwise do not know and cannot admit the allegations in paragraph 114.
115. They do not know and cannot admit the allegations in paragraph 115 of the Claim.
116. They do not know and cannot admit the allegations in paragraph 116 of the Claim.
117. In response to paragraph 117 of the Claim, they:
- (a) refer to and repeat paragraphs 111 to 116 above of this Defence;
 - (b) note the use of the defined term “Google OEM Conduct” in the Claim; and
 - (c) otherwise do not plead to paragraph 117 because it contains no allegations against them.

PART VII: RELEVANT MARKETS

The alleged Mobile OS Licensing Market

118. In response to paragraph 118 of the Claim, they:
- (a) refer to and repeat paragraphs 26 to 35 above of this Defence;
 - (b) say further that the allegations in paragraph 118 are vague and embarrassing because there is no proper articulation of:
 - (i) the relevant demand for licences for mobile OSs;
 - (ii) the scope of the relevant demand-side substitutability in relation to licences for mobile OSs;
 - (iii) the scope of the relevant supply-side substitutability in relation to licences for mobile OSs;
 - (iv) the identity and nature of relevant close competitive constraints in relation to licences for mobile OSs;
 - (c) under cover of that objection, say further that:
 - (i) in addition to the matters described in paragraphs 29 to 30 of the Claim, a mobile OS is a multi-sided computing platform for Smart Mobile Devices that connects an OEM (or multiple OEMs), app developers and users;
 - (ii) attracting users to Smart Mobile Devices using a particular mobile OS requires, among other things, a wide range of high-quality apps available

- for that mobile OS, and an OEM (or multiple OEMs) who design and sell desirable Smart Mobile Devices using that mobile OS;
- (iii) attracting developers to develop apps for a particular mobile OS requires, among other things:
 - (1) a significant number of users with Smart Mobile Devices using that mobile OS;
 - (2) a convenient and efficient means of distributing apps to those users; and
 - (3) insofar as a mobile OS is licensable, characteristics that give developers confidence that OEMs will not modify the mobile OS in ways that would require them to develop versions of their apps for each modified version of the mobile OS;
 - (iv) attracting OEMs to design and sell Smart Mobile Devices utilising a particular mobile OS requires, among other things, a wide range of high-quality apps available for that mobile OS to attract users, and a large number of Android users who are prepared to purchase Smart Mobile Devices using that mobile OS;
 - (v) there is close competition between suppliers of mobile OSs (whether licensable or not) for OEMs, app developers and users, by reason of, among other things, paragraphs 118(c)(i) to (iv) above of this Defence, including because of the inter-relationship of competition for OEMs, developers and users;
 - (vi) further or alternatively, there is close competition between suppliers of Smart Mobile Devices that use different mobile OSs, by reason of, among other things, paragraphs 118(c)(i) to (iv) above of this Defence;
 - (vii) further or alternatively, non-licensable mobile OSs impose a close competitive constraint on the supply of licences to mobile OSs, by reason of, among other things, paragraphs 118(c)(i) to (iv) above of this Defence;
 - (viii) given that Apple's iOS is a significant competitor to Android, defining a market for present purposes in a way that includes Android and other mobile OSs that are licensed but excludes Apple's iOS fails to reflect the competitive conditions relevant to mobile OSs;
 - (ix) competition in relation to mobile OSs is dynamic in nature, continually evolving and characterised by rapid innovation; and

(d) otherwise deny the allegations in paragraph 118.

119. In response to paragraph 119 of the Claim, they:

(a) refer to and repeat paragraph 118 above of this Defence; and

(b) deny the allegations in paragraph 119.

The alleged Android Mobile App Distribution Market

120. In response to paragraph 120 of the Claim, they:

(a) refer to and repeat paragraphs 36 to 60 above of this Defence;

(b) say further that the allegations in paragraph 120 are vague and embarrassing because there is no proper articulation of:

(i) the relevant demand for services for the distribution of Android apps to Android users (Android app distribution services);

(ii) the scope of the relevant demand-side substitutability in relation to those services;

(iii) the scope of the relevant supply-side substitutability in relation to those services;

(iv) the identity and nature of relevant close competitive constraints in relation to those services;

(c) under cover of that objection, say further that:

(i) services for the distribution of apps (including Android apps) to users of Smart Mobile Devices are two-sided transaction platforms that connect app developers with users;

(ii) attracting app developers to an app distribution service requires, among other things, an app distribution platform with access, or potential access, to a significant number of users;

(iii) attracting users to an app distribution service requires, among other things, an app distribution platform with access to a range of high-quality apps and a user experience that is not inferior to other app distribution services;

(iv) there is potential for users of Smart Mobile Devices (who often multi-home) and app developers to substitute between app distribution services, and many in fact do so notwithstanding that app developers may need to configure apps separately for use on any given platform;

- (v) by reason of paragraphs 118(c), 120(c)(i), 120(c)(ii), 120(c)(iii) and/or 120(c)(iv) above of this Defence, there is close competition between Android app distribution services, non-Android app distribution services, and internet browser based distribution of apps, for app developers and users, including because of competitive constraints on both sides of the platform;
- (vi) the closest competitive constraint faced by suppliers of app distribution services for a particular mobile OS (including Google Play and Apple's App Store) is the supply of other app distribution services (for that or any other mobile OS) because of the importance of the range and quality of apps for competition between mobile OSs;
- (vii) further or alternatively, non-Android app distribution services and internet browser based distribution of apps are a close competitive constraint on the supply of Android App distribution services;
- (viii) further or alternatively, by reason of, among other things, paragraphs 19, 21, 24, 25, 120(c)(i), 120(c)(ii), 120(c)(iii) and/or 120(c)(iv) above of this Defence, there is close competition between Android and non-Android app distribution services and app distribution services for other devices including PCs and/or gaming consoles for app developers and users;
- (ix) further or alternatively, app distribution services for other devices including PCs and/or gaming consoles are a close competitive constraint on Android and non-Android app distribution services;

Particulars

1. Android and non-Android app distribution services closely compete with, or are closely constrained by, at least the following app distribution services:
 - a. app distribution services on PCs;
 - b. app distribution services on gaming consoles; and
 - c. web-based app distribution services (including streaming services).
- (x) competition in relation to app distribution services is dynamic in nature, continually evolving and characterised by rapid innovation;
- (d) say further that:

- (i) the appropriate market for the purpose of analysis in relation to the distribution of gaming apps, such as Fortnite, or the receipt of revenue from those apps is not necessarily the same as the appropriate market for the purposes of analysis in relation to the distribution of other types of apps or the receipt of revenue from those apps;
 - (ii) the Claim is vague and embarrassing because it pleads market and competition issues at an abstract and inappropriate level of generality whilst pleading conduct that concerns Fortnite;
 - (iii) it is inappropriate to require the Respondents to plead to paragraphs alleging markets and competition at a level of generality that does not match the conduct pleaded in the Claim; and
- (e) otherwise deny the allegations in paragraph 120.

121. In response to paragraph 121 of the Claim, they:

- (a) refer to and repeat paragraph 120 above of this Defence; and
- (b) otherwise deny the allegations in paragraph 121.

The alleged Android In-App Payment Solutions Market

122. In response to paragraph 122 of the Claim, they:

- (a) refer to and repeat paragraphs 61 to 66 above of this Defence;
- (b) say further that the allegations in paragraph 122 are vague and embarrassing because there is no proper articulation of:
 - (i) the relevant demand by app developers for the supply of services for accepting and processing payments for the purchase of digital content (including by way of subscriptions) within an Android app separately from the supply of Android app distribution services;
 - (ii) the scope of the relevant demand-side substitutability in relation to those services;
 - (iii) the scope of the relevant supply-side substitutability in relation to those services;
 - (iv) the identity and nature of relevant close competitive constraints in relation to those services;
- (c) under cover of that objection, say further that:

- (i) Google Play Billing is a billing system integrated within Google Play for Google Play In-App Purchases, and is not offered for supply on a separate basis for use in transactions via alternative app distribution services;
 - (ii) app distribution services for Smart Mobile Devices, PCs and/or gaming consoles typically include an integrated billing system for in-app purchases;
 - (iii) a user of an Android app can purchase in-app content in other ways;
 - (iv) further or alternatively, by reason of sub-paragraphs 120(b)(i), 120(b)(ii) and 120(c) above of this Defence, the supply of services for accepting and processing payments for the purchase of digital content within Android apps is closely constrained by non-Android app distribution services (including their integrated billing systems) and internet browser based distribution of apps (including their integrated billing systems);
 - (v) further or alternatively, by reason of sub-paragraphs 120(b)(i), 120(b)(ii) and 120(c) above of this Defence, the supply of services for accepting and processing payments for the purchase of digital content within Android apps is closely constrained by app distribution services for devices other than Smart Mobile Devices including PCs and/or gaming consoles (including their integrated billing systems);
- (d) refer to and repeat paragraph 120(d) above; and
 - (e) otherwise deny the allegations in paragraph 122.

123. In response to paragraph 123 of the Claim, they:

- (a) refer to and repeat paragraph 122 above of this Defence; and
- (b) otherwise deny the allegations in paragraph 123.

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

Google's conduct in respect of Android App Distribution

Google's alleged market power

124. In response to paragraph 124 of the Claim, they deny that the “Australian Android Mobile App Distribution Market” exists and:

- (a) refer to and repeat sub-paragraph 10(d) and 10(e) above of this Defence, and otherwise deny the allegations in sub-paragraph 124(a);

- (b) say that the matters pleaded in sub-paragraph 124(a) of the Claim, if correct, are not indicia of market power and distract from the correct analysis of market power;
- (c) deny the allegations in sub-paragraph 124(b);
- (d) refer to and repeat paragraph 59 above of this Defence and otherwise deny the allegations in sub-paragraph 124(c);
- (e) deny the allegations in sub-paragraph 124(d);
- (f) say further that the allegations in sub-paragraph 124(e) and (f) are vague and embarrassing, because they do not identify:
 - (i) the OEMs with which Google LLC enters into contracts containing the alleged “OEM Restrictive Terms” or the extent to which contracts with those OEMs contain any or all of those alleged terms;
 - (ii) the agreements, and the clauses of those agreements, that are alleged to contain each of the terms described in sub-paragraphs 124(e)(i) and 124(e)(ii)(a) to 124(e)(ii)(E); or
 - (iii) how the alleged OEM Restrictive Terms would prevent or hinder app developers from obtaining pre-installation or offering direct download of other Android apps (as opposed to Alternative App Stores) on Android Smart Mobile Devices, under cover of that objection, refer to and repeat paragraphs 67 to 84 above of this Defence and otherwise deny the allegations in sub-paragraph 124(e);
- (g) refer to and repeat paragraphs 8(c), 8(d), 11(c), 11(d), 11(f), 15(b) and 86 to 97 above of this Defence and otherwise deny the allegations in sub-paragraph 124(g);
- (h) refer to and repeat paragraphs 88, 92 and 97 above of this Defence and otherwise deny the allegations in sub-paragraph 124(h);
- (i) refer to and repeat paragraphs 101 to 104 above of this Defence and otherwise deny the allegations in sub-paragraph 156(i);
- (j) refer to and repeat paragraph 108 above of this Defence and otherwise deny the allegations in sub-paragraph 124(j);
- (k) refer to and repeat paragraph 109 above of this Defence and otherwise deny the allegations in sub-paragraph 124(k);
- (l) deny the allegations in sub-paragraph 124(l);

- (m) say further that Google's contractual arrangements with OEMs and app developers:
 - (i) enabled the creation of a viable and secure ecosystem where OEMs receive for free an open-source OS, a fully-featured app store with secure billing mechanism and a suite of baseline apps;
 - (ii) foster intra-platform competition by enabling OEMs to customise their devices and earn revenues from offering promotional pre-installation opportunities to app developers and lowering the cost of entry for OEMs to launch a Smart Mobile Device;
 - (iii) address fragmentation problems that plagued earlier open-source OSs by providing app developers with a low-cost, stable, high-quality mobile platform on which they can achieve broad distribution of their apps;
 - (iv) allow Android to compete with more restrictive ecosystems (including Apple's iOS) and provide a comparable consistent and safe "out of the box" experience;
- (n) deny the allegations in sub-paragraph 124(m); and
- (o) refer to and repeat paragraphs 60 and 120(c) above of this Defence and otherwise deny the allegations in sub-paragraphs 124(n) and 124(o).

125. They deny the allegations in paragraph 125 of the Claim.

126. They deny the allegations in paragraph 126 of the Claim.

Google's alleged conduct in respect of Android App Distribution

127. In response to paragraph 127 of the Claim, they:

- (a) say that the allegations in sub-paragraph 127(a) are vague and embarrassing, because they do not identify:
 - (i) the OEMs with which Google LLC enters into contracts containing the alleged "OEM Restrictive Terms" or the extent to which contracts with those OEMs contain any or all of those alleged terms; or
 - (ii) the agreements, and the clauses of those agreements, that are alleged to contain each of the terms described in sub-paragraphs 127(a)(i) and 127(a)(ii)(a) to 127(a)(ii)(E); and

under cover of that objection, refer to and repeat paragraphs 67 to 84 above of this Defence and otherwise deny the allegations in sub-paragraph 127(a);

- (b) refer to and repeat paragraphs 98 to 109 above of this Defence and otherwise deny the allegations in sub-paragraph 127(b);
 - (c) refer to and repeat paragraphs 8(c), 8(d), 11(c), 11(d), 11(e), 11(f), 15(b) and 86 to 97 above of this Defence and otherwise deny the allegations in sub-paragraph 127(c);
 - (d) refer to and repeat paragraphs 88, 92 and 97 above of this Defence and otherwise deny the allegations in sub-paragraph 127(d);
 - (e) refer to and repeat paragraphs 85 and 111 to 117 above of this Defence and otherwise deny the allegations in sub-paragraph 127(e);
 - (f) refer to and repeat paragraphs 84, 85 and 111 to 117 above of this Defence and otherwise deny the allegations in sub-paragraph 127(f);
 - (g) refer to and repeat paragraphs 100 above of this Defence and otherwise deny the allegations in sub-paragraph 127(g);
 - (h) deny the allegations in sub-paragraph 127(h);
 - (i) refer to and repeat paragraphs 86 to 97 and 99 to 100 above of this Defence and otherwise deny the allegations in sub-paragraph 127(i);
 - (j) refer to and repeat paragraphs 101 to 105 above of this Defence and otherwise deny the allegations in sub-paragraph 127(j);
 - (k) refer to and repeat paragraph 109 above of this Defence and otherwise deny the allegations in sub-paragraph 127(k); and
 - (l) otherwise deny the allegations in paragraph 127.
128. In response to paragraph 128 of the Claim, they:
- (a) deny the allegations in paragraph 128, including the existence of the “Mobile OS Licensing Market”; and
 - (b) say that paragraph 128 does not plead any material facts to support the allegation that Google LLC, Google Asia Pacific and/or Google Payment Australia has a substantial degree of power in the alleged Mobile OS Licensing Market, and the pleading clearly is deficient and embarrassing in this regard.
129. In response to paragraph 129 of the Claim, they:
- (a) deny that the “Australian Android Mobile App Distribution Market” exists and otherwise deny the allegations in paragraph 129;

- (b) say that at all relevant times Google Play (including Google Play Billing) faces, and has faced, effective competitive constraints from existing and potential Android app distribution services, non-Android app distribution services, and internet browser based distribution of apps; and
- (c) refer to and repeat paragraphs 127 and 128 above of this Defence and say further that, to the extent Google LLC, Google Asia Pacific and/or Google Payment Australia has engaged, or engages, in the conduct alleged at paragraphs 127 and 128 of the Claim, not engaging in that conduct would be likely to reduce the competitiveness of Android and Google Play against other mobile OSs and app distribution services.

130. In response to paragraph 130 of the Claim, they:

- (a) refer to and repeat paragraph 129 above of this Defence;
- (b) say that the Applicant has not identified any basis for the assertion in paragraph 130(a) that, in the absence of the “OEM Restrictive Terms, the App Developer Restrictive Terms and the Technical Restrictions”, Alternative App Stores could compete with Google Play, noting that there is already competition from Alternative App Stores and nothing pleaded by the Applicant relates to any discouragement of such stores;
- (c) say further that the Applicant has not identified any basis for the assertion in paragraph 130(b) that app development is somehow discouraged, noting that app development is vibrant, healthy and competitive;
- (d) in relation to paragraph 130(c), say further that the Applicant has not identified an appropriate level of commission that should be payable to Google, or identified a competitive level of commission, or identified what part of the Service Fees are said to be “supra-competitive”;
- (e) otherwise deny the allegations in paragraph 130; and
- (f) say further that, if apps distributed via Google Play were permitted to offer an alternative payment system to Google Play Billing for Google Play In-App Purchases, the app developer may still be charged the Service Fee, or an amount not materially less than the Service Fee, on all Google Play In-App Purchases, to support Google’s ongoing investments in the Google Play and Android ecosystems.

131. In response to paragraph 131 of the Claim, they:

- (a) refer to and repeat paragraphs 56(b), 99, 127, 129 and 130(c) above of this Defence;
 - (b) say that the matters pleaded in paragraph 131 of the Claim make no sense because there is competition on the Android platform between Alternative App Stores and Google Play, and nothing identified by the Applicant inhibits that competition, such that none of the matters pleaded in paragraph 131 logically follows from any of the pleaded conduct, and the Claim is embarrassing in this regard; and
 - (c) otherwise deny the allegations in paragraph 131.
132. They deny the allegations in paragraph 132 of the Claim.
133. In response to paragraph 133 of the Claim, they:
- (a) refer to and repeat paragraphs 124 to 132 above of this Defence;
 - (b) say that the allegation of a “Mobile App Distribution Market” is vague and embarrassing because there is no proper articulation of:
 - (i) the relevant demand for services for the distribution of apps to Smart Mobile Device users;
 - (ii) the scope of the relevant demand-side substitutability in relation to those services;
 - (iii) the scope of the relevant supply-side substitutability in relation to those services;
 - (iv) the identity and nature of relevant close competitive constraints in relation to those services; and
 - (c) under cover of that objection, deny the allegations in paragraph 133.
134. In response to paragraph 134 of the Claim, they:
- (a) refer to and repeat paragraph 133(b) above of this Defence; and
 - (b) otherwise deny the allegations in paragraph 134.

Contraventions

135. They deny the allegations in paragraph 135 of the Claim.
136. They deny the allegations in paragraph 136 of the Claim.
137. They deny the allegations in paragraph 137 of the Claim.
138. They deny the allegations in paragraph 138 of the Claim.

Google's conduct in respect of Android In-App Payment Solutions*Google's alleged market power*

139. In response to paragraph 139 of the Claim, they deny that the “Australian Android In-App Payment Solutions Market” exists and:
- (a) refer to and repeat paragraphs 124 to 126 and 133 above of this Defence and otherwise deny the allegations in paragraph 139(a);
 - (b) refer to and repeat paragraphs 11, 15(b) and 86 to 97 above of this Defence and otherwise deny the allegations in sub-paragraph 139(b);
 - (c) refer to and repeat paragraphs 88, 92 and 97 above of this Defence and otherwise deny the allegations in paragraph 139(c);
 - (d) refer to and repeat paragraph 100 above of this Defence and otherwise deny the allegations in sub-paragraph 139(d);
 - (e) deny the allegations in sub-paragraph 139(e);
 - (f) refer to and repeat paragraph 64 above of this Defence and otherwise deny the allegations in sub-paragraph 139(f);
 - (g) refer to and repeat paragraph 61 above of this Defence and otherwise do not know and cannot admit the allegations in sub-paragraph 139(g);
 - (h) refer to and repeat paragraphs 61 and 122(b) above of this Defence and otherwise deny the allegations in sub-paragraph 139(h);
 - (i) deny the allegations in sub-paragraph 139(i); and
 - (j) say that the comparison identified in sub-paragraph 139(j) is an inappropriate comparison, because the Service Fee is not merely a fee for facilitating payment processing services and EGS does not pay any commission to Google for the valuable services provided through Google Play.
140. They deny the allegations in paragraph 140 of the Claim.
141. They deny the allegations in paragraph 141 of the Claim.
142. In response to paragraph 142 of the Claim, they deny the existence of the “Australian Android In-App Payment Solutions Market” and:
- (a) refer to and repeat paragraphs 11, 15(b) and 86 to 97 above of this Defence and otherwise deny the allegations in sub-paragraph 142(a);
 - (b) refer to and repeat paragraphs 88, 92 and 97 of this Defence and otherwise deny the allegations in paragraph 142(b);

- (c) refer to and repeat paragraph 100 above of this Defence and otherwise deny the allegations in sub-paragraph 142(c);
 - (d) in relation to paragraph 142(d), say that Epic has not identified an appropriate level of commission that should be payable to Google, or identified a competitive level of commission, or identified what part of the Service Fees are said to be “supra-competitive”, and otherwise deny the allegations in sub-paragraph 142(d); and
 - (e) otherwise deny the allegations in paragraph 142.
143. In response to paragraph 143 of the Claim, they:
- (a) refer to and repeat paragraphs 124 to 126 and 133 above of this Defence and otherwise deny the allegations in sub-paragraph 143(a);
 - (b) refer to and repeat paragraph 118(c) above of this Defence and otherwise deny the allegations in sub-paragraph 143(b); and
 - (c) refer to and repeat paragraph 142 above of this Defence and otherwise deny the allegations in sub-paragraph 143(c).
144. In response to paragraph 144 of the Claim, they:
- (a) deny that the “Australian Android Mobile In-App Payment Solutions Market” exists and otherwise deny the allegations in paragraph 144;
 - (b) say that, at all relevant times, Google Play (including Google Play Billing) faces, and has faced, effective competitive constraints from existing and potential Android app distribution services (including their integrated billing systems), non-Android app distribution services (including their integrated billing systems), and internet browser based distribution of apps (including their integrated billing systems), and app distribution services for other devices including PCs and/or gaming consoles (including their integrated billing systems);
 - (c) refer to and repeat paragraphs 142 and 143 above of this Defence and say further that to the extent Google LLC, Google Asia Pacific and/or Google Payment Australia has engaged, or engages, in the conduct alleged at paragraphs 142 and 143 of the Claim, not engaging in that conduct would be likely to:
 - (i) reduce the competitiveness of Android and Google Play against other mobile OSs and app distribution services; and

- (ii) still result in app developers paying the Service Fee, or an amount not materially less than the Service Fee, on all Google Play In-App Purchases.

145. In response to paragraph 145 of the Claim, they:

- (a) refer to and repeat paragraph 144 above of this Defence;
- (b) otherwise deny the allegations in paragraph 145; and
- (c) say further that if apps distributed via Google Play were permitted to offer an alternative payment system to Google Play Billing for Google Play In-App Purchases, the app developer still would be charged the Service Fee, or an amount not materially less than the Service Fee, on all Google Play In-App Purchases, because the Service Fee is how Google supports its ongoing investments in the Google Play and Android ecosystems.

146. In response to paragraph 146 of the Claim, they:

- (a) refer to and repeat paragraphs 142, 144 and 145(c) above of this Defence; and
- (b) otherwise deny the allegations in paragraph 146.

147. They deny the allegations in paragraph 147 of the Claim.

148. They deny the allegations in paragraph 148 of the Claim.

149. They deny the allegations in paragraph 149 of the Claim.

150. They deny the allegations in paragraph 150 of the Claim.

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

151. In response to paragraph 151 of the Claim, they:

- (a) refer to and repeat paragraphs 11, 15(b) and 86 to 97 above of this Defence;
- (b) say that under the DDA, the applicable Google entity supplies Google Play to app developers, which is a service for the distribution of Android apps to Android users;
- (c) say further that Google provides additional services, including the provision of the Android ecosystem;
- (d) say further that the pleading of the “condition” in this paragraph is vague and embarrassing, because it fails to identify the specific terms that constitute the alleged condition;
- (e) say further that, insofar as it is alleged that the condition related to any person that “but for Google’s conduct would, or would be likely to, compete with” Google

LLC, Google Asia Pacific and/or Google Payment Australia, the pleading is embarrassing, because a likely competitor is not an element of exclusive dealing within the meaning of s 47(2)(d) of the *Competition and Consumer Act 2010* (Cth);

(f) under cover of those objections, say further that there is no person who offers, or who would offer, a service for accepting and facilitating the processing of payments for Google Play In-App Purchases that also would collect the Service Fee for the applicable Google entity; and

(g) otherwise deny the allegations in this paragraph.

152. They deny the allegations in paragraph 152 of the Claim.

153. They deny the allegations in paragraph 153 of the Claim.

154. They deny the allegations in paragraph 154 of the Claim.

155. They deny the allegations in paragraph 155 of the Claim.

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

Google's alleged OEM Restrictive Terms

156. In response to paragraph 156 of the Claim, they:

(a) say that the allegations are vague and embarrassing, because they do not identify:

(i) the OEMs with whom Google LLC enters into contracts containing the alleged "OEM Restrictive Terms" or the extent to which contracts with those OEMs contain any or all of those alleged terms; or

(ii) the agreements, and the clauses of those agreements, that are alleged to contain each of the terms described in sub-paragraphs 156(a) to 156(d);

(b) refer to and repeat paragraphs 67 to 84 above of this Defence; and

(c) otherwise deny the allegations in paragraph 156.

157. They deny the allegations in paragraph 157 of the Claim.

158. They deny the allegations in paragraph 158 of the Claim.

159. They deny the allegations in paragraph 159 of the Claim.

160. In response to paragraph 160 of the Claim, they:

- (a) say that the allegations are vague and embarrassing, because they fail to identify which of the Respondents is said to have entered into contracts containing the alleged “App Developer Restrictive Terms” and with which app developers;
 - (b) under cover of that objection, refer to and repeat paragraphs 11, 15(b) and 86 to 97 above of this Defence; and
 - (c) otherwise deny the allegations in paragraph 160.
161. They deny the allegations in paragraph 161 of the Claim.
162. They deny the allegations in paragraph 162 of the Claim.
163. In response to paragraph 163 of the Claim, they:
- (a) say that the allegations are vague and embarrassing, because they fail to identify:
 - (i) which of the Respondents is said to have given effect to the alleged “App Developer Restrictive Terms” and the conduct by which they did so; or
 - (ii) the contract or contracts, and app developers with whom those contracts were made, containing the alleged “App Developer Restrictive Terms” that were given effect to;
 - (b) under cover of that objection, refer to and repeat paragraphs 11, 15(b) and 86 to 97 above of this Defence; and
 - (c) otherwise deny the allegations in paragraph 163.
164. They deny the allegations in paragraph 164 of the Claim.
165. They deny the allegations in paragraph 165 of the Claim.
166. They deny the allegations in paragraph 166 of the Claim.

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

167. In response to paragraph 167 of the Claim, they:
- (a) refer to and repeat paragraphs 168 to 170 below of this Defence; and
 - (b) otherwise deny the allegations in paragraph 167.
168. In response to paragraph 168 of the Claim, they:
- (a) refer to and repeat paragraphs 127, 142, 151, 156, 158, 160 and 163 above of this Defence; and
 - (b) otherwise deny the allegations in paragraph 168.

169. In response to paragraph 169 of the Claim, they:
- (a) say that the allegations are vague and embarrassing because they do not identify which of the Respondents engaged in the relevant conduct or held the relevant intention;
 - (b) under cover of that objection:
 - (i) say further that Google LLC endeavours to make Google Play competitive with other app distribution services (including those for other devices including PCs and/or gaming consoles) and internet browser based distribution of apps, and attractive to app developers and users;
 - (ii) say further that “Epic Direct Pay” would breach the DDA and the Google Developer Program Policies, and that Google LLC refused to permit any version of Fortnite containing it to be distributed via Google Play;
 - (iii) refer to and repeat paragraph 11 above of this Defence;
 - (iv) refer to and repeat paragraphs 106 to 109 and 112 to 116 above of this Defence; and
 - (v) otherwise deny the allegations in paragraph 169.
170. In response to paragraph 170 of the Claim, they:
- (a) say that the allegations are vague and embarrassing because they do not identify which of the Respondents engaged in the relevant conduct or held the relevant intention;
 - (b) under cover of that objection:
 - (i) refer to and repeat paragraphs 88, 92 and 97 above of this Defence; and
 - (ii) otherwise deny the allegations in paragraph 170.
171. They deny the allegations in paragraph 171 of the Claim.
172. They deny the allegations in paragraph 172 of the Claim.
173. They deny the allegations in paragraph 173 of the Claim.

PART XII: CAUSATION, LOSS AND DAMAGE

Android App Developers

174. They deny the allegations in paragraph 174 of the Claim.
- 174A. They deny the allegations in paragraph 174A of the Claim.

174B. They deny the allegations in paragraph 174B of the Claim.

Android Device Consumers

174C. They deny the allegations in paragraph 174C of the Claim.

174D. They deny the allegations in paragraph 174D of the Claim.

175. They deny the allegations in paragraph 175 of the Claim.

176. They deny the allegations in paragraph 176 of the Claim.

177. They deny that the Applicants and Group Members are entitled to any of the relief claimed in the Amended Originating Application.

Date: 5 May 2023



Signed by Simon Johnson
Lawyer for the Respondents

This pleading was prepared by Corrs Chambers Westgarth and settled by Cameron Moore SC, Robert Yezerski and Christina Trahanas.

Certificate of lawyer

I, Simon Johnson, certify to the Court that, in relation to the defence filed on behalf of the Respondents, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 5 May 2023



Signed by Simon Johnson
Lawyer for the Respondents