

11 August 2021

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600

By email: corporations.joint@aph.gov.au



CPA Australia Ltd
ABN 64 008 392 452

Level 20, 28 Freshwater Place
Southbank VIC 3006
Australia

GPO Box 2820
Melbourne VIC 3001
Australia

Phone 1300 737 373
Outside Aust +613 9606 9677
Website cpaaustralia.com.au

Dear Sir / Madam

Inquiry into mobile payment and digital wallet financial services – Responses to questions on notice

This letter sets out CPA Australia's responses to questions on notice arising from our appearance before the Parliamentary Joint Committee on Corporations and Financial Services on 27 July 2021.

If you have any queries, please do not hesitate to contact Dr. Jana Schmitz, Technical Advisor, Assurance and Emerging Technologies at CPA Australia on [REDACTED]

Yours sincerely

Dr Gary Pflugrath FCPA
Executive General Manager, Policy and Advocacy

Question 1: How do German regulators address competition and consumer protection issues related to 'big tech'?

The following is a summary of actions by the German Bundeskartellamt (Federal Cartel Office) to address competition and consumer issues related to 'big tech'.

Amendments to the German Competition Act

In January 2021, the 10th amendment to the German Competition Act (GWB Digitalisation Act) came into force. A new provision set forth in Section 19a of the GWB Digitalisation Act enables the market regulator (the Bundeskartellamt) to intervene earlier and more effectively, in particular in response to the practices of large digital companies.

The Bundeskartellamt can prohibit companies, which are of paramount significance for competition across markets, from engaging in certain anti-competitive practices. Examples of conduct which could be prohibited under the new provision include the self-preferencing of a group's own services, the "penetration" of non-dominated markets by way of non-performance based anti-competitive means, such as tying or bundling strategies, and creating or raising barriers to market entry by processing data relevant for competition.

Proceedings against Apple

In June 2021, the Bundeskartellamt initiated proceedings against Apple based on the amended competition law discussed above. The Bundeskartellamt has also initiated similar investigations against Facebook, Amazon and Google.

The Bundeskartellamt has indicated that it may assess specific practices of Apple in future proceedings. The authority has received various complaints against Apple relating to potentially anti-competitive practices. These include, a complaint from the advertising and media industry against Apple on restricting user tracking with the introduction of its iOS 14.5 operating system, and a complaint against the exclusive pre-installation of the company's own applications as a possible type of self-preferencing prohibited under Section 19a of the GWB Digitalisation Act.

App developers have also criticised the mandatory use of Apple's own in-app purchase (IAP) system and the 30 percent commission rate associated with this system. This complaint has much in common with the European Commission's ongoing proceedings against Apple for allegedly imposing restrictions on the streaming service Spotify and the preferencing its own services.

Consumer protection in mobile apps

The Bundeskartellamt undertook a review of consumer protection in mobile apps. It found the following issues for mobile end devices run on the Android or iOS operating systems:

1. Lack of information about data being accessed when using apps: For large numbers of apps, Bundeskartellamt found that users are not adequately informed of the extent to which third-party companies such as Facebook or Google obtain personal data and specifically are not informed what data are obtained from the use of apps. Neither the app descriptions in the app stores nor the privacy policies of the app publishers provide sufficient information about this. The Bundeskartellamt has indicated users should be able to search more selectively for consumer-friendly apps (e.g. without trackers or advertisements) via an improved app store search function.

2. Lack of transparency about contractual partners: The Bundeskartellamt found that consumers are not adequately informed about who they are contracting with when downloading an app. There is no clear guidance on whether to contact the app store operator or app publisher for warranty claims. Moreover, conditions of use, online help pages and presentations in app stores may contradict each other in these respects.
3. Lack of possibilities to control data processing: The Bundeskartellamt found that consumers' wishes for more control over the processing of their personal data are only rudimentarily addressed in iOS and Android operating system settings. Despite some innovations in the area of data protection, the Bundeskartellamt concluded there is much room for improvement, including consumers being able to effectively deny access to their data via apps and delete all non-system relevant apps.