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Issues Paper

App purchases by Australian consumers on mobile and handheld devices

December 2012

**Commonwealth Consumer Affairs Advisory Council
(CCAAC)**

Issues Paper:

**App purchases by Australian consumers on mobile and
handheld devices**

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The Treasury
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THE COMMONWEALTH CONSUMER AFFAIRS ADVISORY COUNCIL (CCAAC)

CCAAC Terms of Reference

CCAAC is an expert advisory panel, which provides advice to the Assistant Treasurer on consumer policy issues.

CCAAC's terms of reference are to:

- consider issues, reports and papers referred to it by the Minister and report to the Minister on their consumer policy implications, and in doing so take account of the need for well-functioning markets with confident consumers;
- identify emerging issues affecting Australian markets and consumers and draw these to the attention of the Minister; and
- when considering consumer policy issues, take account of their competition and other relevant economic implications.

Membership

The membership of CCAAC consists of:

- Mr Colin Neave AM (Chair);
- Ms Carolyn Bond;
- Professor Stephen Corones;
- Ms Lynda Edwards;
- Ms Deborah Healey;
- Mr Gordon Renouf;
- Dr Rhonda Smith;
- Mr Ray Steinwall; and
- Mr Peter Kell.

REQUEST FOR COMMENTS

The Commonwealth Consumer Affairs Advisory Council has developed this Issues Paper, *App purchases by Australian consumers on mobile and handheld devices* to seek public and stakeholder comments in relation to this issue. It is a downloadable version of the online Issues Paper available on the CCAAC website (<http://www.ccaac.gov.au>).

Responses are requested by 5:00pm on **Thursday, 31 January 2013** and can be submitted to:

CCAAC@treasury.gov.au

or

CCAAC Secretariat
c/- The Manager
Consumer Policy Framework Unit
Competition and Consumer Policy Division
Treasury
Langton Crescent
PARKES ACT 2600

Phone: 02 6263 2111

Fax: 02 6263 3964

Confidentiality

It will be assumed that submissions are not confidential and may be made publicly available on the CCAAC website (<http://www.ccaac.gov.au>). If you would like your submission, or any part of it, to be treated as 'confidential', please indicate this clearly. A request made under the *Freedom of Information Act 1982* for a submission marked confidential to be made available will be determined in accordance with that Act.

TERMS OF REFERENCE

On 5 November 2012, the Assistant Treasurer, the Hon David Bradbury MP, released the Terms of Reference for this inquiry.

The CCAAC will conduct an inquiry into the experiences of Australian consumers with downloading apps, including free and paid apps, and making in-app purchases, on mobile phone and handheld devices.

Under its terms of reference, CCAAC will examine the following matters as part of its inquiry:

- the characteristics, features and trends of app markets in Australia;
- consumer experiences when downloading and using such content, including when used by children;
- adequacy of the information being disclosed to consumers about the costs associated when downloading and using this content before and after it is downloaded;
- adequacy of existing measures to address any consumer concern, including the legal protections available to consumers, the adequacy of default settings to ensure consumers are making an active decision before incurring additional charges, the availability and ease of use of 'opt out' features, the adequacy of existing parental controls for app stores and how these controls are promoted to consumers, and any other industry initiatives; and
- actions that can be taken by consumers, industry and governments to help improve consumer experiences when making in-app purchases, including international approaches.

INTRODUCTION

Technology is evolving at a rapid pace opening new markets and creating new opportunities for consumers and business. Consequently, online markets associated with mobile and handheld devices are also expanding. These markets allow consumers to purchase digital apps such as music, movies, magazines, software programs and games. There are various options for downloading and using these apps and they can be downloaded free or purchased. Once the app is downloaded, an 'in-app' purchase may be required to access specific features or associated content.

Features and trends of apps markets

Advancements in technology and the increasing and widespread use of the internet have changed the way consumers make purchases. Technological advancements, particularly in relation to internet access speeds and wireless technologies, have created fast emerging online markets for consumers and businesses.

In addition, the affordability of mobile devices has allowed consumers to access these markets almost anywhere and anytime. There are over 12 million internet subscribers in Australia (excluding mobile handset subscribers). Of these, 5.9 million subscribers are using mobile wireless connections.¹

The online apps market is a global market. It is estimated that there are 6 billion wireless cellular devices in the world, compared to 7 billion people.² The online apps market contains a huge selection of programs, including more than 1.5 million individual software titles and millions of music, magazine, book and movie titles.³

Apple iTunes, Google Play, Microsoft Phone and BlackBerry App World are the online app markets for Apple, Android, Microsoft and BlackBerry mobile and handheld devices.

The dynamic nature of technology and global presence of the online apps market means that apps are constantly changing, new apps are emerging and new features are being developed.

Apps can be downloaded as 'free' or 'premium' versions. The 'free' version has no upfront costs associated with downloading the app, while the 'premium' version does have an upfront cost. Once the 'free' or 'premium' app has been downloaded, in some instances, a payment may be required for the user to access extra functions, features or content. This is often referred to as an 'in-app purchase'.

The popularity of apps and in-app features for consumers (as well as software producers) can be attributed to the ease with which they are accessible and their relatively low cost. For example, a study by 24/7 Wall Street found the average price for an app to be US \$3.00.⁴

1 <http://www.abs.gov.au/ausstats/abs@.nsf/latestProducts/8153.0Media%20Release1Jun%202012>.

2 http://www.itu.int/ITU-D/ict/statistics/material/pdf/2011%20Statistical%20highlights_June_2012.pdf.

3 <http://www.apple.com/pr/library/2012/09/12Apple-Unveils-New-iTunes.html>;
<http://allthingsd.com/20120926/google-plays-675000-apps-have-been-downloaded-25-billion-times/>.

4 <http://247wallst.com/2010/01/13/apple-app-store-has-lost-450-million-to-piracy/>.

Consumer experiences

Purchasing and downloading apps is easy, convenient and accessible anywhere at any time. The low prices, simplicity of the software, specificity of the content, combined with their ease of access, make them an attractive purchase.

Apple, Google and other app market administrators, provide support to consumers in a number of ways. Generally, consumers can interact with these companies through their online support forums, via email, phone and sometimes face to face at representative stores. Consumers can also obtain information about apps from reviews by other users on the online app store, and from other online forums such as Whirlpool, blogs and technology sites.

The purchase of apps is generally accompanied by download and payment notifications. Nevertheless, their ease of access and general convenience may pose challenges for consumers. For example, a recent study in the UK found that only 7 per cent of users in the UK pay attention to terms and conditions when making online purchases.⁵ This is arguably very relevant to the app market which provides on-the-go access.

Some stakeholders have raised concerns that the way apps and in-app features are marketed or supplied may be confusing or misleading and could entice consumers (including children) to access in-app features without knowing they will incur costs. One concern raised is that despite certain apps being labelled as 'free', they may require a payment to continue using the program or to access specific features or content in the program. For example, games targeted at children can have options to purchase items within the app. In some instances, this has led to children incurring substantial purchases without a parent's knowledge.⁶ This concern equally applies to 'premium' apps which consumers have already paid to download and which may require further payments to fully use the app.

Some consumers have complained about the confusing language used when referring to the currency used to purchase in-app items. For example, the currency may take the form of diamonds, coins or other 'virtual' items. Consumers are also concerned with the relative ease with which items can be purchased by simply 'double tapping' on the device.⁷ This issue has been specifically raised in relation to Apple's iTunes market, which (prior to the iOS 4.3 operating system) allowed unlimited subsequent purchases for a further 15 minute period after the consumer had made the initial purchase.

Related question

How would you describe your experience of the app and in-app market generally, including your experiences when making app and in-app purchases?

5 <http://www.guardian.co.uk/money/2011/may/11/terms-conditions-small-print-big-problems>.

6 <http://www.abc.net.au/lateline/content/2012/s3592166.htm>.

7 <http://www.abc.net.au/news/2012-09-18/xenophon-moves-to-regulate-mobile-games/4268690>.

Adequacy of the information being disclosed before and after the app is downloaded

A key issue for consumers when making app and in-app purchases is the adequacy of information disclosed both before the download of the app, and within the app itself. The inadequate disclosure of information can make it difficult to ensure that a consumer has understood all the terms and conditions associated with making a purchase. Similarly, inadequate information disclosure increases the likelihood of unwanted purchases.

The availability of information when making app and in-app purchases can also be limited by technological constraints, such as the smaller screen size on mobile and handheld devices. Small screen sizes and limited memory or storage capacity can limit the amount of information that consumers have access to during a transaction, by limiting the amount of text that is displayed to a consumer.⁸

Recent media reports have highlighted the potential for consumers (particularly children) to make costly in-app purchases, with these costs incurred without the knowledge of the parent or guardian.⁹ The lack of awareness about the potential for these costs may be due to a number of factors, including the way in which information about app and in-app purchases is displayed and understood by consumers. This includes the information provided prior to the download/purchase of the app and within the app itself.

Consumers are usually provided information before the download or purchase of the app by the app's advertising and marketing. The description of the app may provide details about whether the app is a free, premium or 'freemium' app. 'Freemium' refers to a marketing concept where the download of the app is free but subscriptions or other purchasing of specific items may be required to unlock the app's full features. The description may also inform consumers about whether the app allows in-app purchases, what content can be purchased in the app and how in-app purchases are made.

Information about in-app purchases can also be provided in the Terms and Conditions by the distribution platforms (Apple and Google Play Store), or in user guidelines and support information. Similarly, information may be displayed within the app when making in-app purchases. For example, notifications may be displayed just prior to the making of an in-app purchase, asking the user to confirm their purchase; or information may be available via support/help functions.

However, recent media reports have highlighted that the information displayed to consumers about the difference between a 'free' and 'premium' app, and the availability and cost of in-app purchases could be made clearer and more accessible.

8 Kisieloveska-Lipman (2009), 'Pocket Shopping: International consumer experience of buying goods and services on their mobile phones'.

9 <http://www.abc.net.au/news/2012-09-17/kids-racking-up-huge-bills-on-mobile-games/4266632>.

Related questions

Do you usually read the terms and conditions, disclosures and other information to ensure you make an informed decision when downloading apps and making app and in-app purchases? If not, why?

Do you consider the information provided prior to purchasing apps and when making in-app purchases clear and easy to understand? What other methods would you consider helpful in ensuring that there is adequate disclosure of information?

Current protections available to consumers

A number of initiatives address consumers' concerns when purchasing and using mobile phone apps, including in relation to in-app purchases. These are maintained by both Australian governments and private businesses supplying goods and services in Australia.

There are laws that together form a legal framework for consumer protection in relation to mobile apps and in-app purchases. These laws include:

- the common law of contract, including in relation to the legal capacity for minors and children to enter into contracts;
- the law relating to electronic transactions (*Electronic Transactions Act 1999 (Cth)*);
- state and territory sale of goods laws (for example, *the Goods Act 1958 (Vic)*);
- state and territory laws relating to minors who enter into contracts (for example, *the Minors (Property and Contracts) Act 1970 (NSW)*);
- laws relating to pre-contractual conduct and disclosure obligations which may apply when accessing payment facilities on mobile devices (*National Consumer Credit Protection Act 2009 (Cth)*);
- the law protecting personal information that is collected by companies (*Privacy Act 1988 (Cth)*)¹⁰; and
- the national Australian Consumer Law (ACL).

The ACL is the principal consumer protection legislation in Australia and it applies in all states and territories and to all consumer transactions, including transactions made online or using a mobile device.¹¹

The ACL prohibits misleading or deceptive conduct and false or misleading representations by a supplier when they sell or advertise their products in Australia.¹² This includes prohibiting false, misleading or deceptive statements about the price of a product.

¹⁰ http://www.oaic.gov.au/publications/privacy_fact_sheets/Privacy-factsheet2_NPPs_online.pdf.

¹¹ The ACL is located in Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*.

¹² Sections 18 and 29 of the ACL.

The ACL regulators – which is made up of the Australian Competition and Consumer Commission (ACCC) and each state and territory fair trading agency – are responsible for enforcing the ACL. Consumers who have a complaint or concern about a product or supplier can contact the ACCC or their local fair trading agency. The ACL regulators work together to monitor compliance with the law, to conduct surveillance activities and to bring actions to enforce the law.

A number of other Government agencies are also involved in aspects of app and in-app purchases. For example, the Telecommunications Industry Ombudsman provides a dispute resolution service for residential customers and small businesses who have a complaint about telephone or internet services supplied in Australia. The Australian Communications and Media Authority (ACMA) is also responsible for regulating broadcasting, the internet, radio communications and telecommunications.

In 2006, the Australian Guidelines for Electronic Commerce were released,¹³ which the CCAAC helped to develop. The principles in the Guidelines provide valuable guidance in a number of important areas where consumers' experience of electronic commerce (including apps) differs from the traditional retail environment and can help to improve consumer confidence in electronic commerce.

Apart from Government initiatives, there are a number of incentives for businesses to voluntarily seek to ensure an appropriate environment exists so that consumers are confident to make app and in-app purchases.

In this respect, there are a number of industry initiatives to assist consumers to better understand how to engage with mobile phone purchases. Telecommunications companies provide a number of guides for parents to help them manage the challenges of mobile phone technology, including how to set up controls on mobile devices and mobile phone apps.¹⁴

There are also a number of access controls and restriction options available to consumers to limit app and in-app purchases. These can be provided at the platform (for example, Apple or Android) or device level (for example, at the mobile phone or tablet level). For example, at the platform level, Apple's iTunes includes 'parental controls', which can be used to limit access to the iTunes store.¹⁵ Apple also allows a user to limit a family member's iTunes credit to a monthly 'iTunes Allowance'.¹⁶

At the device level, a user can limit their in-app purchases in both Android and Apple devices. However these restrictions are not the default settings when purchasing such devices. Apple's iOS 4.3 or later platforms also require users to enter their iTunes password before an in-app purchase can be processed. While Apple allows users to avoid needing to re-enter their password to make multiple purchases within a certain time period (that is, 15 minutes), users can reduce this time period. Google Play 3.1 also requires users to enter a PIN when making an app and in-app purchase.

13 http://archive.treasury.gov.au/documents/1083/PDF/australian_guidelines_for_electronic_commerce.pdf.

14 http://www.vodafone.com/content/index/parents/about_digital_parenting.html;

<http://exchange.telstra.com.au/2012/05/21/how-to-disable-in-app-purchases-from-ipad-iphone-ipod/>.

15 <http://support.apple.com/kb/ht1904>.

16 <http://support.apple.com/kb/HT2105#>.

Related questions

Are you aware of the various features of your handheld or mobile device that restrict/disable app and in-app purchases? If you are aware of these features, how effective do you consider these features?

Are you aware of your rights when making purchases under the Australian Consumer Law the role of the ACCC and state and territory fair trading agencies?

Actions that can be taken by consumers, industry and government to improve consumer experiences

A number of actions can be taken by consumers when making app and in-app purchases, as well as by industry and governments to support consumers. It was noted in the previous section that there are a number of settings, parental controls and 'opt out' features in hand-held devices. However, users need to actively enable these restrictions.

Industry can play an important role in providing consumers with information about whether an app involves making in-app purchases, as well as by providing guidance on the restrictions and controls available to limit/prohibit in-app purchases on different distribution platforms. Similarly, it is appropriate for app developers to provide information about whether their app includes in-app content purchases, and if there are associated costs.

In addition to the legal framework for consumer protection, governments also engage in research as well as complaints data collection to identify emerging issues. In a recent report by the US Federal Trade Commission (FTC) – 'Mobile Apps for Kids: Current Privacy Disclosures are Disappointing', the FTC raised concerns about the information displayed to consumers prior to downloading an app for children. While the report was focused primarily on the collection, use and sharing of personal information, the FTC report highlighted the lack of information available to parents prior to downloading mobile apps for their children, and has called on industry to provide greater transparency about their data practices.¹⁷

Related question

What features of the app market, if any, concern you? What actions do you think could be taken to improve consumers' experiences when making app and in-app purchases?

¹⁷ The US Federal Trade Commission, 'Mobile Apps for Kids: Current Privacy Disclosures are Disappointing', http://www.ftc.gov/os/2012/02/120216mobile_apps_kids.pdf.