
DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 968

1 October 2021

COMPETITION COMMISSION**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****GOOGLE LLC (USA)****AND****FITBIT INC. (USA)****CASE NUMBER: 2020SEP0045**

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the “Rules for the Conduct of Proceedings in the Competition Commission”, that it has approved the transaction involving the abovementioned firms subject to conditions as set out below:

1. On 29 September 2020, the Competition Commission (Commission) received notice of a small merger whereby Google LLC (USA) (Google) intends to acquire Fitbit Inc. (USA) (Fitbit). Post-merger, Google will control Fitbit.
2. The primary acquiring firm is Google, a wholly owned subsidiary of Alphabet Inc., a public company listed on the Nasdaq stock exchange. In South Africa, Google controls Google South Africa (Pty) Ltd (Google SA), Google Cloud South Africa (Pty) Ltd (Google Cloud SA) and ZA Asset Management (Pty) Ltd (ZA Asset Management).
3. Google is active in a wide range of areas, including online search, online advertising, other online services such as YouTube, Google Maps and Gmail as well as cloud computing services. In addition, Google maintains and develops the Android ecosystem which includes an open-source mobile Operating System (OS) and a suite of mobile apps and services.

4. Google's business in South Africa only relates to the provision of local support and marketing services internally for Google. It does not have any market-facing business in South Africa. Further, Google does not sell any wearable devices or hardware in South Africa.
5. The main products and services relevant to this transaction are Wear OS, Google Fit, The Play Store, Google Search and Google Ads.
6. The primary target firm is Fitbit, a public company incorporated in the United States of America and listed on the New York stock exchange. The shares of Fitbit are widely held and not controlled by any single firm or individual.
7. Fitbit develops, manufactures, and distributes wrist-worn wearable devices as well as smart scales, software and services designed to give its users tools to help them reach their health and fitness goals. The main products available in South Africa are fitness trackers, smartwatches, and the Fitbit mobile app.

Areas of overlap

8. The Commission considered the activities of the merging parties and found that the proposed transaction results in both horizontal and vertical overlaps. The Commission also found that the activities of the merging parties are complementary. The overlaps considered by the Commission are as follows:

Horizontal overlap

9. The Commission found that there are potential horizontal overlaps relating to the supply of (i) wrist-worn wearable devices and (ii) OS for wearable devices.

Vertical overlap

10. The Commission found that the proposed transaction also results in a vertical overlap in that Google's Wear OS is an input used in the production and supply of wrist-worn wearable devices (fitness trackers and/or smartwatches).

Complementarity between the activities of the merging parties

11. The complementarity between the activities of the merging parties occurs in the sense that:

- 11.1. Google owns and operates the Android operating system. Android is required by customers of wearable devices manufactured and supplied by Fitbit and its competitors. The Commission understands that for wrist-worn wearable device manufacturers (fitness trackers and/or smartwatches) to compete effectively, they require connection with smartphones that operate on Google systems (being Android). Google also operates various APIs that facilitate interoperability between wrist-worn wearable devices and smartphones or wrist-worn wearable devices and cloud services. These include Google Play and Bluetooth connectivity. Thus, the Android ecosystem and various APIs operated by Google are required by users of wrist-worn wearable devices to connect their smartwatches to their smartphones. Furthermore, the Android ecosystem and the APIs operated by Google are required by wrist-worn wearable device manufacturers to ensure that their devices are competitive.
- 11.2. Secondly, the Commission found that the data that is collected by wrist-worn wearable devices (fitness trackers and/or smartwatches), as supplied by Fitbit, also complements Google's fitness data offerings. That is, the data collected can enhance Google's offering to online advertisers and/or assist Google in providing digital health services.

The relevant markets

12. The Commission did not conclude on the relevant markets but for purposes of assessing the proposed transaction, the Commission considered the following:
 - 12.1. The national upstream market for the production and supply of OS for wrist-worn wearable devices,
 - 12.2. The national upstream market for the production and supply of OS for mobile devices (smartphones), and
 - 12.3. The national downstream market for the production and supply of wrist-worn wearable devices.

Competition Assessment

13. The Commission was concerned that as a direct result of the proposed merger, Google will:

Exclude Fitbit's competitors in the market for wrist worn wearable devices

14. The Commission was concerned that Google, as a dominant provider of the Android operating system for smart phones, will exclude competitors of Fitbit (suppliers of wrist wearable devices) from accessing its Android operating system, which is an important system for the functioning of their wrist wearable devices. The suppliers of wrist worn wearable devices rely on the Android operating systems for their wrist-worn wearable device to connect with a smartphone and this is critical for the functioning of the wrist worn-wearable device.

15. Android is dominant in the market. Bearing in mind the integral connectivity between smartwatches, companion apps to the wrist worn wearable device as well as smartphones, and given the significant market shares enjoyed by Android, the proposed merger will give Google the ability to exclude the competitors of Fitbit or frustrate the functionalities of the companion apps of Fitbit competitors from operating optimally on Android OS.

16. This will significantly alter the market structure for the supply of wrist worn wearable devices in SA and increase barriers to entry for potential entrants in the market.

Entrench its dominance in the online advertising and online search market

17. As a direct result of the proposed merger, Google would acquire (i) the database maintained by Fitbit (about its users' health and fitness); and (ii) the technology to develop a database similar to the one of Fitbit. The Commission was concerned that the acquisition of Fitbit's database may provide Google with an important advantage in online advertising markets and allow Google to entrench its dominance in the market.

Restrict access to health data collected by Fitbit

18. The concern here was that Google will be able to use Fitbit health data to enter the digital health market or other health markets and exclude other players or potential entrants in the market by restricting access to Fitbit health data.

19. Based on the above, the Commission found that the proposed transaction is likely to result in a substantial prevention or lessening of competition. To address these concerns, Google tendered conditions set out in **Annexure A** below, which the Commission accepted.

Public interest

22. There are no public interest concerns arising.

Conclusion and recommendations

23. The Commission approves the proposed transaction subject to conditions as outlined in “**annexure A**”.

ANNEXURE A**GOOGLE LLC (USA)****AND**

Click here to enter text.

FITBIT INC. (USA)**CASE NUMBER: 2020SEP0045**

CONDITIONS

1. DEFINITIONS

- 1.1. “The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings, namely:
- 1.1.1. **“Access Permissioning”** means the auditable control of access rights to an Access Restricted Data Store.
- 1.1.2. **“Access Restricted Data Store”** means a strictly permissioned virtual data storage environment within Google that holds Measured Body Data and Health and Fitness Activity Location Data, separate from any dataset within Google accessible for use in or for Google Ads. If Google creates any dataset that stores Measured Body Data and/or Health and Fitness Activity Location Data together with another Google dataset, that dataset shall be treated either as an Access Restricted Data Store or as Temporary Logs.

- 1.1.3. **"Act"** means the Competition Act No. 89 of 1998 as amended;
- 1.1.4. **"Acquiring Firm"** means Google LLC;
- 1.1.5. **Affiliated Undertakings:** undertakings or firms controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.
- 1.1.6. **Android APIs** means the APIs, including any improvements or bug fixes, that Google licenses to Android OEMs without charge for access, either as part of AOSP or GMS for use by Android Smartphone App Developers with an Android App.
- 1.1.7. **"Android App"** means a mobile application designed to run on a compatible Android Smartphone;
- 1.1.8. **"Android Compatibility Definition Document"** means the document published at <https://source.android.com/compatibility/cdd> (or any successor site);
- 1.1.9. **"Android OEM"** means any actual or potential supplier of Android Smartphones, excluding the Parties.
- 1.1.10. **"Android Smartphone"** means a handheld device (as defined in the Android Compatibility Definition Document) running AOSP.
- 1.1.11. **"Android Smartphone App Developer"** means a third-party developer of an Android App.

- 1.1.12. **“AOSP”** means the open-source Android binary code available at <https://source.android.com> (or any successor site) or any successor open-source smartphone operating system.
- 1.1.13. **“API Development and Testing”** means the process by which Google develops and tests new versions of Android APIs, prior to their simultaneous release to Android Smartphone App Developers. For the avoidance of doubt, this may include Google’s use of a lead device to develop and test new software.
- 1.1.14. **“API User”** means any third party with a software application distributed or made available to South African Users that requests access to the Fitbit Web API or the Relevant Google API, meets the Privacy and Security Requirements, and agrees to the Fitbit Platform Terms of Service (where access is made available via the Fitbit Web API) or the Terms of Service and the Services User Data Policy (where access is made available via the Relevant Google API).
- 1.1.15. **“Approval Date”** means the date referred to in the Commission’s Merger Clearance Certificate;
- 1.1.16. **Audit Points:** the minimum data and information points detailed in Annex 3 that the Monitoring Trustee will audit on a regular basis.
- 1.1.17. **Auditable Individual Logs:** a list of all individuals that have accessed an Access Restricted Data Store or Temporary Logs and the date of that access.
- 1.1.18. **Auditable Service Logs:** a list of all Google Services that have access to an Access Restricted Data Store or Temporary Logs.
- 1.1.19. **Benchmark OEMs:** the 5 largest suppliers of consumer wrist-worn wearable devices that process the data types that qualify as Measured Body Data and/or Health and Fitness

Activity Location Data if processed by Google or Fitbit as measured in the Industry Report, excluding Fitbit, Google, and any Wrist-Worn Wearable Device OEMs using Wear OS and that provide developers with access to their health and wellness data solely through the Fitbit Web API or the Relevant Google API.

1.1.20. “**Commission**” means the Competition Commission of South Africa.

1.1.21. “**Companion App**” means a mobile app available for an Android Smartphone whose functionality includes but is not limited to pairing, notification bridging, and device management and settings for a Wrist-Worn Wearable Device.

1.1.22. “**Conditions**” means these conditions.

1.1.23. “**Confidential Information**” means any trade, business secrets, know-how, commercial or industrial information, intellectual property, or any other information of a proprietary nature that is not generally available to or known by others.

1.1.24. “**Core Interoperability APIs**” means Android APIs licensed as part of AOSP offering at least the functionality of Android APIs that currently exist in AOSP, including any improvements of those functionalities as a result of updates or bug fixes, that, when properly implemented by an Android OEM on an Android Smartphone, and with appropriate user consent, provide the means for a Third-Party Wrist-Worn Wearable Device (or, as appropriate, associated Companion App) to:

- a. Connect to the Android Smartphone via Bluetooth (or any successor technology), maintain such a connection, and transfer data between the Wrist-Worn Wearable Device and the Android Smartphone;
- b. Scan for any nearby Wrist-Worn Wearable Devices and/or make the Android Smartphone visible to those devices;
- c. Display and act upon notifications (including phone calls, text messages, and calendar events) from the Android Smartphone on the connected Wrist-Worn Wearable Device;
- d. Read, initiate, and reply to a text message sent to the paired Android Smartphone;

- e. Display controls for initiating, answering or declining phone calls on the paired Android Smartphone;
- f. Display, initiate, and edit calendar events on the paired Android Smartphone;
- g. Access and control the camera on the paired Android Smartphone;
- h. Access a geolocation sensor (e.g., GPS) on the paired Android Smartphone that is capable of providing geolocation coordinates;
- i. Control media playback on the paired Android Smartphone; and
- j. View and sync contacts stored on the paired Android Smartphone.

1.1.25. **“Data Protection System”** means the auditable set of requirements supervised by the Monitoring Trustee to ensure that Measured Body Data and Health and Fitness Activity Location Data to which a Google Service gains access is permissioned in a manner that prevents its use in or for Google Ads.

1.1.26. **“Data Separation”** means the auditable holding separate of Measured Body Data and Health and Fitness Activity Location Data from any dataset within Google accessible for use in or for Google Ads.

1.1.27. **Developer Documentation**” means information that Google makes generally available to facilitate the use of Android APIs, of the kind that is currently provided for existing APIs on developer.android.com (or any successor site) and <https://developers.google.com/android/> (or any successor site).

1.1.28. **“Developer Previews”** means a process by which Google makes forthcoming Android software available to Android Smartphone App Developers to facilitate their development of apps for an upcoming Android release.

1.1.29. **“EC Commitments”** means the commitments that Google have entered into vis-à-vis the European Commission in relation to the Merger.

1.1.30. **“Equivalent Data Type”** means a commonly defined and standardized consumer health and fitness data type sent to a supplier of consumer wrist-worn wearable devices from

sensors on such supplier's wrist-worn wearable devices or that is manually inputted into such supplier's apps usable with such devices.

- 1.1.31. **"First-Party Connected Scale"** means any consumer connected scale for measuring a user's weight developed or manufactured by Fitbit or Google, regardless of its branding, that collects or processes Measured Body Data and/or Health and Fitness Activity Location Data. For the avoidance of doubt, the definition does not capture devices that are not sold or otherwise provided to customers for everyday use.
- 1.1.32. **"First-Party Wrist-Worn Wearable Device"** means any consumer wrist-worn wearable device developed or manufactured by Fitbit or Google, regardless of its branding, that collects or processes Measured Body Data and/or Health and Fitness Activity Location Data. For the avoidance of doubt, this definition does not capture devices that are not sold or otherwise provided to customers for everyday use.
- 1.1.33. **"Fitbit"** means Fitbit Inc, a company incorporated under the company laws of United States of America.
- 1.1.34. **"Fitbit Account"** means a user account subject to the Fitbit Terms of Service and Fitbit Privacy Policy during the term of the Conditions.
- 1.1.35. **"Fitbit Other Device"** means any device developed or in development or manufactured by Fitbit at the Implementation Date that is not a First-Party Wrist-Worn Wearable Device or a First Party Connected Scale and that collects or processes Measured Body Data and/or Health and Fitness Activity Location Data, such as Fitbit Clips.
- 1.1.36. **"Fitbit Platform Terms of Service"** means the terms of service applicable to the Fitbit Platform available at: <https://dev.fitbit.com/legal/platform-terms-of-service/>, or any successor site, as may be updated from time-to-time, for instance to comply with changes to applicable privacy laws or regulations. Any updates to the Fitbit Platform Terms of Service following the Implementation Date specific to access to the Fitbit Web API will be consistent with the spirit of the Web API Access Commitment or Condition. Google will notify the Monitoring Trustee of changes to these Fitbit Platform Terms of Service ten days prior to their becoming effective, unless the change is urgent in which case Google will

notify the Monitoring Trustee as soon as reasonably practicable and no later than five days after such terms become effective.

- 1.1.37. **“Fitbit Service”** any product or service (including algorithms) operated by Fitbit at any time during the term of the Commitments or Conditions.
- 1.1.38. **“Fitbit Web API”** means Fitbit’s web-based API as described at <https://dev.fitbit.com/build/reference/web-api/> or any successor site that enables third-party applications and services to access and modify Fitbit users’ Supported Measured Body Data on their behalf subject to the Fitbit Platform Terms of Service.
- 1.1.39. **“GMS”** means Google’s proprietary software layer as licensed to OEMs for preinstallation on a compatible Android Smartphone.
- 1.1.40. **“Google”** means Google LLC, a company incorporated under the company laws of the United States of America or any Affiliated Undertakings of Google LLC.
- 1.1.41. **“Google Account”** means a user account (as described in account.google.com or any successor site) created subject to the Google Terms of Service and Google Privacy Policy and used during the term of the Commitments or Conditions.
- 1.1.42. **“Google Ads”** means any current or future Google Service providing search advertising, display advertising, and advertising intermediation, including advertising measurement, regardless of the property on which ads are displayed, including any Google owned and operated properties. For the avoidance of any doubt, any Fitbit Services providing search advertising, display advertising, and advertising intermediation developed, offered, or sold following closing of the Concentration or Implementation of the Merger would constitute Google Ads for the purposes of these Commitments or Conditions. Google Ads currently includes the following services: Google Ads (includes Google Display Network, Google Search Network, YouTube Ads, Gmail Ads), Google Marketing Platform (includes Display & Video 360, Search Ads 360, Campaign Manager, Google Analytics, Google Tag Manager, Optimize, Data Studio, Google Surveys), AdSense (includes AdSense for Search, AdSense for Shopping, AdSense for Content, AdSense for Games, AdSense for Video, AdSense for Domains), AdMob (includes Open Bidding), Google Ad Manager (includes Open Bidding, Network Bidding, Dynamic Ad Insertion), Authorized Buyers, Ad

Connector, Ads Data Hub, Google Hotel Ads, Google Shopping Ads, Local Inventory Ads, Manufacturer Center, Merchant Center, and Waze Local Ads.

- 1.1.43. **“Google or Fitbit Health and Fitness App”** means a Google or Fitbit web, mobile or wearable application used with either a Google Account or a Fitbit Account and designed to enable a registered user to measure, track, and manage their health and fitness using Measured Body Data and/or Health and Fitness Activity Location Data. As of the Implementation Date these consist of the iOS, Android, and WearOS versions of the Google Fit app and the iOS, Android, Amazon, and Windows versions of the Fitbit apps, including the Fitbit Coach and Fitbit Premium services.
- 1.1.44. **“Google Play Store”** means Google’s app store for Android Smartphones, available at: <https://play.google.com/store>, or any successor Google app store for Android Smartphones.
- 1.1.45. **Google Service:** means any product or service (including algorithms) operated by Google at any time during the term of the Commitments or Conditions. For the avoidance of any doubt, Google Services include any product or service Google may develop in the future, including via acquisitions, regardless of its branding.
- 1.1.46. **“Google Smartphone”** means an Android Smartphone that is developed or manufactured by Google.
- 1.1.47. **“Health and Fitness Activity Location Data”** means any data (including processed data and derived data) relating to identified or identifiable (as defined under applicable data protection laws) South African Users’ geolocation collected by a health and fitness activity tracking feature on Google or Fitbit Health and Fitness Apps (or any replacement or successor Google or Fitbit Health and Fitness Apps), where such geolocation data is collected and sent to Google or Fitbit from the First-Party Wrist-Worn Wearable Device, First-Party Connected Scale or Fitbit Other Devices. Annex 4 lists the data types that can qualify as Health and Fitness Activity Location Data at the Implementation Date. Annex 4 will be updated on a semi-annual basis, with the supervision of the Monitoring Trustee,

and at such other times as the Monitoring Trustee may reasonably request, to include other data types meeting the definition of Health and Fitness Activity Location Data introduced during the term of the Conditions. Health and Fitness Activity Location Data does not include (i) any data (including derived data) relating to identified or identifiable South African Users' geolocation collected by any apps or services other than Google or Fitbit Health and Fitness Apps (or any replacement or successor Google or Fitbit Health and Fitness Apps), including background geolocation data; or (ii) data collected from participating Google Accounts or Fitbit Accounts, as the case may be, operated by Google employees or Fitbit employees as part of internal Google Services or Fitbit Services testing or development, including to test compliance with these Conditions or any other commitment provided to a competition authority in relation to the Merger.

1.1.48. "**Implementation Date**" means the date occurring after the Approval Date, on which the Merger is implemented by the Parties.

1.1.49. "**Individual Level Access Documentation**" means a record of Google's approval process for applying Access Permissioning to individuals.

1.1.50. "**Industry Report**" means Global share of sales (excluding sales in the People's Republic of China) of wrist-worn wearable devices by volume over the most recent four quarters as measured by the most current IDC Worldwide Quarterly Wearable Device Tracker or, were IDC to suspend publication of this tracker, an equivalent industry report.

1.1.51. "**Measured Body Data**" means any data (including processed data and derived data) relating to identified or identifiable (as defined under applicable data protection laws) South African Users that measures and tracks the user's body functions, physical condition, fitness activities, nutrition or wellness, and similar functions, and that is sent to:

- a. Google or Fitbit, from sensors on First-Party Wrist-Worn Wearable Devices, First-Party Connected Scales, or Fitbit Other Devices; or

- b. Fitbit, having been manually inputted into a Fitbit Account through a Fitbit Health and Fitness App; or
- c. Google, having been manually inputted into a Google Account through a Google Health and Fitness App where such app is usable with First-Party Wrist-Worn Wearable Devices, First-Party Connected Scales, or Fitbit Other Devices.

Annex 4 lists the data types that qualify as Measured Body Data as of November 2, 2020. **Annex 4** will be updated on a semi-annual basis, with the supervision of the Monitoring Trustee, and at such other times as the Monitoring Trustee may reasonably request, to include other data types meeting the definition of Measured Body Data introduced during the term of the Conditions. Measured Body Data does not include data collected from participating Google Accounts or Fitbit Accounts, as the case may be, operated by Google employees or Fitbit employees as part of internal Google Services or Fitbit Services testing or development, including to test compliance with these Conditions or any other commitments provided to a competition authority in relation to the Merger. For the avoidance of doubt, and to avoid circumvention of the Ads Conditions, if Google or Fitbit knowingly and intentionally transmits Measured Body Data to a third party for the purpose of receiving such data back to use in or for Google Ads, such received data shall also constitute Measured Body Data.

1.1.52. **“Merger”** means the merger transaction notified to the Commission in terms of the Act under case number 2020Sep0045.

1.1.53. **“Monitoring Trustee”** means one or more natural or legal persons who are approved by the European Commission and appointed by Google, and who have the duty to carry out the functions specified in the EC Commitments for a Monitoring Trustee.

1.1.54. **Other Google Services:** any Google Service (such as Google Search, Google Maps, Google Assistant, and YouTube) other than:

- a. Any Google Service or Fitbit Service whose primary purpose is related to users’ health and fitness or healthcare;

- b. Common or shared Google infrastructure and internal systems, tools, processes, programs, and services (e.g., hosting, network infrastructure, security or any other internal tools (including Google Takeout), platforms and operating systems, backup storage, personnel, or support services (including customer support), payment processing, and fraud prevention, technical engineering support, security, and troubleshooting services);
- c. Sharing with or use by Google of Measured Body Data where reasonably necessary for Google to: (a) meet any applicable law, regulation, legal process, or enforceable governmental request; (b) enforce applicable terms of service, including investigation of potential violations; (c) detect, prevent, or otherwise address fraud, security, or technical issues; or (d) protect against harm to the rights, property or safety of Google, Google users, or the public as required or permitted by law.

1.1.55. **“Parties”** means Google and Fitbit.

1.1.56. **“Privacy and Security Requirements”** mean:

- 1.1.56.1. **Primary Purpose:** The primary purpose for requesting access and use of data must be related to users’ health and fitness or healthcare;
- 1.1.56.2. **Minimum and Proportionate Access:** The application or service must request only the minimum access to user data necessary to perform the functionality;
- 1.1.56.3. **User Notice:** The application or service must provide adequate notice to the user about their data being accessed and used, prior to such access and use;
- 1.1.56.4. **Express and Informed User Consent:** The application or service must obtain the user’s express and informed consent under applicable data protection laws;
- 1.1.56.5. **Purpose Limitations:** The application or service may only use and transfer data for the permitted purpose for which the API User obtained access to the data and only to the extent necessary, for security purposes, to comply with the applicable laws, or with express and informed user consent. The

application or service may not use or transfer the data for prohibited purposes, such as personalized advertising purposes, to determine creditworthiness, or provide the data to data brokers, advertising platforms, or other information resellers;

- 1.1.56.6. **Security Requirements:** API Users are required to handle data securely in accordance with industry standard security requirements and practices. To ensure compliance with security requirements, Google may require third parties seeking to access Supported Measured Body Data to undergo standardized security assessments, for which API Users may incur a charge to be paid to the third parties conducting the security assessment.
- 1.1.57. **“Relevant Google API”** means the existing Google Fit APIs, described at: <https://developers.google.com/fit>, or any successor site, or a successor Google API that enables third-party applications and services to access and modify Measured Body Data subject to Google’s Terms of Service and offering substantially similar or increased functionality as the Fitbit Web API.
- 1.1.58. **“Service Level Access Documentation”** means a record of Google’s approval process for applying Access Permissioning to Google Services.
- 1.1.59. **“Service Level Access Map”** means a record of all of the Google Services with service-level access pursuant to clause 2.9.3.(iii) and the storage locations in Google (e.g., a Temporary Log) in which those services store Measured Body Data or Health and Fitness Activity Location Data they may have accessed.
- 1.1.60. **“Services User Data Policy”** means the user data policies applicable to the use of the Relevant Google API (e.g., the Google API User Data Policy available at <https://developers.google.com/terms/api-services-user-data-policy> and the Fit Developer Guidelines available at <https://developers.google.com/fit/overview>) as may be updated from time-to-time, for instance to comply with changes to applicable privacy laws or regulations. Any updates to the Services User Data Policy following the Implementation Date specific to access to the Relevant Google API must be consistent with the spirit of

the Web API Access Conditions. Google will provide the Monitoring Trustee on a semi-annual basis a list of the changes, if any, that have been made to the Services User Data Policy in the preceding six months.

1.1.61. **“Supported Measured Body Data”** means, as of the Implementation Date, Supported Measured Body Data consists of Measured Body Data collected from any global Google or Fitbit user (and not just from South African Users) and made available to third parties through the Fitbit Web API under the Fitbit Platform Terms of Service. Such data types are listed in Annex 6. The types of Measured Body Data that can constitute Supported Measured Body Data shall be updated pursuant to the Update Mechanism.

Supported Measured Body Data excludes:

- a. Data collected solely for the purpose of product testing or development for Google Services or Fitbit Services (including as part of healthcare partner collaborations or early access end user testing), health-related research efforts (such as clinical research studies), or to test compliance with these Conditions or any other commitment provided to a competition authority in relation to the Merger;
- b. Data subject to applicable health or privacy laws and regulations that Google or Fitbit may not lawfully make available to third parties under such applicable laws;
- c. Data exclusively made available to users as part of a paid service (such as Fitbit Premium);
- d. Data collected separately by Verily, Calico or other separately operated Alphabet companies as part of their separate business and product activities;
- e. Data collected from Google Services or Fitbit Services offered solely outside of South Africa.

1.1.62. **“Temporary Logs”** means a strictly permissioned, time-limited virtual dataset that contains Measured Body Data and/or Health and Fitness Activity Location Data that have been accessed by Google Services.

1.1.63. **“Terms of Service”** means the terms of service applicable to the use of the Relevant Google API available at: <https://developers.google.com/fit>, or any successor site, as may be updated from time to time, for instance to comply with changes to applicable privacy

laws or regulations. Any updates to the Terms of Service following the Implementation Date specific to access to the Relevant Google API must be consistent with the spirit of the Web API Access Conditions. Google will notify the Monitoring Trustee of changes to these Terms of Service ten days prior to their becoming effective, unless the change is urgent in which case Google will notify the Monitoring Trustee as soon as reasonably practicable and no later than five days after such terms become effective.

1.1.64. “**Update Mechanism**” means, following the Implementation Date, Measured Body Data either (i) of a type listed in **Annex 4** as of the Implementation Date; or (ii) of a type newly made available after the Implementation Date to users in a Google or Fitbit Health and Fitness App, will come to constitute Supported Measured Body Data if (i) such data meets the conditions of Supported Measured Body Data set forth above; and (ii) an Equivalent Data Type is made available to developers without charge through publicly documented APIs by at least 3 of the 5 Benchmark OEMs.

On a quarterly basis following the Implementation Date, Google will report to the Monitoring Trustee if a new data type meets the requirements in the preceding sentence. Such a data type will qualify as Supported Measured Body Data no later than one calendar year from the date of such reporting to the Monitoring Trustee, unless the data type met the requirements of the Update Mechanism within the first calendar year following the Implementation Date, in which case that data type will qualify as Supported Measured Body Data no later than two calendar years from the Implementation Date. Annex 6 will be updated on a semi-annual basis at the request of the Monitoring Trustee to include any additional types of Supported Measured Body Data that arose during that period.

1.1.65. “**South Africa**” means the Republic of South Africa.

1.1.66. “**South African User**” means a user that has during the period of the Conditions been (i) located in South Africa as determined by Google Account information or Fitbit Account information, as applicable, or (ii) located outside of South Africa according to Google Account information or Fitbit Account information, as applicable, but whose IP address

associated with use of Google or Fitbit Health and Fitness Apps, as applicable, has been located in South Africa for more than 30 consecutive days.

1.1.67. **“Third-Party Wrist-Worn Wearable Device”** a Wrist-Worn Wearable Device that is designed by the third party to pair with an Android Smartphone and/or Google Smartphone and that is developed or manufactured by a Wrist-Worn Wearable Device OEM.

1.1.68. **“Tribunal”** means the Competition Tribunal South Africa.

1.1.69. **“Wrist-Worn Wearable Device”** means any consumer wrist-worn wearable device that is compatible with an Android Smartphone and/or Google Smartphone and that processes data types that would qualify as Measured Body Data and/or Health and Fitness Activity Location Data if processed by Google or Fitbit. For the avoidance of doubt, this definition does not capture devices that are not sold or otherwise provided to customers for everyday use.

1.1.70. **“Wrist-Worn Wearable Device OEM”** means any actual or potential supplier of Wrist-Worn Wearable Devices other than the Parties.

2. CONDITIONS TO THE APPROVAL OF THE MERGER

Android API Condition

2.1. Google commits to making the Core Interoperability APIs available, without charge for access, under the same license terms and conditions that apply to all other Android APIs that Google makes available as part of AOSP and on a non-discriminatory basis, meaning without differentiating their availability or functionality depending on whether they are accessed by a First-Party Wrist-Worn Wearable Device or Companion App or a Third-Party Wrist-Worn Wearable Device or Companion App.

- 2.2. Google commits not to degrade the Core Interoperability APIs by reducing their functionality to Third-Party Wrist-Worn Wearable Devices relative to First-Party Wrist-Worn Wearable Devices.
- 2.3. Google further commits:
 - 2.3.1. Not to discriminate against Wrist-Worn Wearable Device OEMs by withholding, denying, or delaying Wrist-Worn Wearable Device OEMs' access to functionalities of Android APIs that Google makes generally available to other Android Smartphone App Developers for use with an Android App.
 - 2.3.2. Not to discriminate between Wrist-Worn Wearable Device OEMs and other Android Smartphone App Developers in relation to changing, replacing, or retiring Android APIs.
 - 2.3.3. Not to discriminate between Wrist-Worn Wearable Device OEMs and other Android Smartphone App Developers in terms of the access it provides to Developer Previews.
 - 2.3.4. Not to discriminate between Wrist-Worn Wearable Device OEMs and other Android Smartphone App Developers in terms of the access it provides to Developer Documentation.
- 2.4. Google will not circumvent these requirements:
 - 2.4.1. By discriminating between Wrist-Worn Wearable Device OEMs and other Android Smartphone App Developers in terms of warnings, error messages, or permission requests displayed in Android Apps.
 - 2.4.2. Through conditions imposed on access to the Google Play Store by Wrist-Worn Wearable Device OEMs' Companion Apps (e.g., regarding the use of data gathered by the Wrist-Worn Wearable Device OEM or the use of Android APIs by the Third- Party Wrist-Worn Wearable Device).
- 2.5. For the avoidance of doubt, Google shall be permitted under these Conditions to:

- 2.5.1. Make available, exclusively for API Development and Testing purposes, in- development Android APIs internally within Google, or to certain third parties.
- 2.5.2. Develop features associated with first-party Google products, apps, or services, for use solely with a First-Party Wrist-Worn Wearable Device, or as part of a partnership with a third party, provided that the implementation of such features shall not impede in any way the functioning of Android APIs for Third-Party Wrist-Worn Wearable Devices. For the further avoidance of doubt, any third party shall remain free similarly to develop and make available features associated with their own first-party products, apps, or services, including for use solely on their own first-party Wrist- Worn Wearable Devices in a proprietary software layer. Nothing in these Conditions shall require Google to license versions of its first-party applications or services for preinstallation or download onto a Third-Party Wrist-Worn Wearable Device.
- 2.6. Google shall not be in breach of these Conditions in the event of any degradation of interoperability between an Android Smartphone and a Third-Party Wrist-Worn Wearable Device that is solely or primarily attributable to any acts or omissions of an Android OEM, Android Smartphone App Developer, or Wrist-Worn Wearable Device OEM.

Ads Condition

- 2.7. Google commits not to use any Measured Body Data or Health and Fitness Activity Location Data in or for Google Ads.
- 2.8. Google commits to maintain Data Separation.
- 2.9. Compliance with the commitments set out in paragraphs 2.7 and 2.8 above is to be achieved through a technical structure for data storage consisting of auditable technical and process controls, reflected in the following approach:
 - 2.9.1. **Fitbit Account data.** To the extent either Measured Body Data or Health and Fitness Activity Location Data is written to a Fitbit Account, and this data is not subsequently

transferred to a Google Account following the implementation of the merger, this data will not be available to Google Ads. Google commits to maintain existing separations that are in place as of the Implementation Date between (i) any data that is not transferred to a Google Account and (ii) any dataset or data storage within Google. For clarity, the foregoing does not prohibit Fitbit's use of Google solely as a data processor following the implementation of the merger, pursuant to a customary data controller to processor agreement, as permitted pursuant to the applicable data protection regulation or legislation.

2.9.2. Maintenance of an Access Restricted Data Store. Google will maintain a strictly permissioned virtual storage environment within Google. Measured Body Data and Health and Fitness Activity Location Data sent to Google (i) as part of any migration from a Fitbit Account to a Google Account, or (ii) having been collected using a Google Account from future First-Party Wrist-Worn Wearable Devices, First-Party Connected Scales or Fitbit Other Devices, will be stored in such an Access Restricted Data Store. Access to the compartment of Google's backend storage layer housing such an Access Restricted Data Store will be controlled through Access Permissioning.

2.9.3. Implementation of Access Permissioning to the Access Restricted Data Store. Google will restrict access to such an Access Restricted Data Store through Access Permissioning. Access Permissioning will apply to both individuals and Google Services and Fitbit Services that seek to access Measured Body Data or Health and Fitness Activity Location Data stored in the Access Restricted Data Store:

2.9.3.1. Individual level access: Google will limit individual-level Access Permissioning to an authorized, restricted group of personnel for engineering, product, and other related business activities, such as product development or improvement, research, and other service provision, maintenance, or enhancement work, excluding any uses in or for Google Ads. Google will require a fully documented compliance review and approval process for the grant of Access Permissioning. Google will log each access session in Individual Level Access Documentation, which will include at least the criteria set out in **Annex 1**.

- 2.9.3.2. **Service level access:** Google will limit Access Permissioning to Google Services or Fitbit Services that comply with the Data Protection System, thus excluding any uses in or for Google Ads. Any such access will be documented in Service Level Access Documentation, which will include, at least, the criteria set out in **Annex 2**. Google will log each Service that is granted access in Auditable Service Logs.
- 2.9.3.3. **Implementation of a Data Protection System.** To the extent that a Google Service accesses Measured Body Data or Health and Fitness Activity Location Data, Google will apply a Data Protection System to ensure Data Separation of the accessed data, reflected in the following approach:
- i. Measured Body Data and Health and Fitness Activity Location Data will either be stored in an Access Restricted Data Store or, if it is stored outside an Access Restricted Data Store, in Temporary Logs and subject to a retention and deletion plan supervised by the Monitoring Trustee. Measured Body Data or Health and Fitness Activity Location Data that a Google Service accesses as a result of an integration between a Google Service and the Fitbit Web API following the Implementation Date is subject to the requirements of Data Separation.
 - ii. Google will strictly permission these Temporary Logs to enable only access pursuant to paragraph 2.9.3 above. For the avoidance of doubt, the Temporary Logs will not be accessible to Google Ads
 - iii. Google will maintain a Service Level Access Map
- 2.10. The technical means by which Google achieves Data Separation may change over time to reflect evolving technologies and standards. Any changes will be subject to supervision by the Monitoring Trustee.
- 2.11. Google commits to present each South African User the choice to grant or deny use by Other Google Services of any Measured Body Data stored in their Google Account or Fitbit Account.

2.12. The commitment set out in paragraph 2.11 above is without prejudice to, and should not be interpreted based on, any privacy or data protection laws or regulations, and does not come under the jurisdiction or purview of any privacy or data protection regulators.

Web API Access Condition

2.13. Google commits to maintaining access, subject to user consent consistent with applicable laws and without charge for access, to Supported Measured Body Data for API Users subject to the following conditions:

2.13.1. API Users' continued compliance with the Fitbit Platform Terms of Service (where access is made available via the Fitbit Web API) or the Terms of Service and the Services User Data Policy (where access is made available via the Relevant Google API).

2.13.2. API Users' continued compliance with the Privacy and Security Requirements.

2.13.3. Google can terminate access for violation of these requirements where Google has established such a violation or temporarily suspend access where Google has a reasonable belief of violation of such requirements. Google will notify the termination or suspension to the Monitoring Trustee within 14 days and indicate the reason for the termination or suspension.

2.14. Access may be provided through: (i) the existing Fitbit Web API (conditioned on the user whose Supported Measured Body Data are being accessed using a Fitbit Account); or (ii) the Relevant Google API (conditioned on the user whose Supported Measured Body Data are being accessed using a Google Account).

2.15. Following the Implementation Date and during the term of the Conditions, Measured Body Data types may be added into the scope of Supported Measured Body Data, as set forth in the Update Mechanism.

3. GENERAL PROVISIONS

- 3.1. Google commits to apply the Conditions in South Africa for a period of ten years from the Implementation Date.
- 3.2. Google shall notify the Commission of the Implementation Date in writing within 10 days of the Implementation Date.
- 3.3. The Conditions shall be interpreted in a manner that is consistent with the EC Commitments, as interpreted by the European Commission, and with reference to the explanatory materials provided by the Parties to the Commission and to the European Commission prior to the Approval Date.
- 3.4. Google shall be permitted under these Conditions to take steps to: (a) meet any applicable law, regulation, legal process, or enforceable governmental request; (b) detect, prevent, or otherwise address fraud, security, or technical issues; (c) improve user privacy or security; or (d) protect against harm to the rights, property, or safety of Google, Google users, or the public as required or permitted by law.
- 3.5. The Commission may, during the final year of the initial ten-year period decide to extend the duration of paragraphs 2.7 to 2.10 of the Ads Commitments and any associated clauses or definitions that relate to these paragraphs of the Conditions, by up to an additional ten years having justified the necessity for such an extension.

4. MONITORING COMPLIANCE WITH THE CONDITIONS

- 4.1. Google shall annually submit a report to the Commission confirming compliance with paragraph 2 of these Conditions. Such reports must be lodged promptly after each anniversary of the Implementation Date for a period of ten years, or such extended period as envisaged by the extension in clause 3.5.

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- 4.2. The report referred to in 4.1 shall be accompanied by an affidavit attested to by a duly authorised Google representative confirming accuracy of the annual report and full compliance of these Conditions in the year to which the report relates.
- 4.3. The Commission may request any additional information from Google which the Commission from time to time deems necessary for the monitoring of compliance with these Conditions.
- 4.4. Notwithstanding what is stated in the EC Commitments, Google shall grant the mandate to the Monitoring Trustee for monitoring compliance with these Conditions in South Africa.
- 4.5. The Commission will be entitled to request from the Monitoring Trustee, by sending a written notice to Google at the same time, that the Monitoring Trustee:
- 4.5.1. provide to the Commission a written report, sending Google a non-confidential copy at the same time, within fifteen working days after the end of each six-month period so that the Commission can assess whether the Conditions are being complied with in South Africa; and
- 4.5.2. provide to the Commission copies of reports concluded and submitted to the European Commission, but only insofar as such reports are relevant to the Commission assessing Google's compliance with the Conditions.
- 4.6. For the avoidance of doubt, any report obtained by the Commission from the Monitoring Trustee shall:
- 4.6.1. be subject to the Commission confirming in writing that it will protect and not disclose any confidential information according to law;
- 4.6.2. only be used by the Commission for purposes of assessing Google's compliance with the Conditions; and

4.6.3. not, without Google's consent, be shared with any persons, entities, regulators or departments outside of the Commission (whether based in South Africa or elsewhere). This provision applies equally to any non-confidential reports obtained from the Monitoring Trustee.

4.7. Google shall provide and shall cause its advisors to provide the Monitoring Trustee with all such cooperation, assistance and information as the Monitoring Trustee may reasonably require performing its tasks related to these Conditions. At any time, it plans to start processing data that it reasonably considers qualifies as Measured Body Data or Health and Fitness Activity Location Data, Google shall provide the Monitoring Trustee with a proposed updated **Annex 4**.

5. APPARENT BREACH

5.1. In the event that the Commission receives any complaint in relation to non-compliance with the above undertaking or otherwise determines that there has been an apparent breach of any of the Condition by Google, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

6. VARIATION OF THE CONDITION

6.1. Google may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended, in exceptional circumstances. Should a dispute arise in relation to the variation of the conditions, Google shall apply to the Competition Tribunal, on good cause shown, for the conditions to be lifted, revised or amended, in exceptional circumstances.

6.2. "Good cause" shall have its normal meaning as interpreted under the common law, save that 'good cause' shall additionally mean that the circumstances giving rise to the Merging Parties' request in terms of this condition 6.1 shall require that the circumstances could not reasonably have been foreseen by the Merging Parties at the time of the Competition

Commission's approval of the Merger and that the circumstances cannot reasonably be mitigated or addressed in another manner. "Good cause" must be premised on facts arising subsequent to the Approval Date.

7. CORRESPONDENCES

All correspondences in relation to these conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

Annex 1 – Data Points Google Will Document With Respect To Individual Access

1. Individual's name
2. Individual's Google ID
3. Individual's role
4. Confirmation that individual is not in a reporting line related to Google Ads
5. Reason for Individual receiving access
6. Date of access

Annex 2 – Data Points Google Will Document With Respect to Service-Level Access

1. Name of Google Service receiving access (e.g., Assistant)
2. List of data types from Annex 4 the Google Service can access from the ARDS
3. Reasons for Google Service receiving access
4. Start date of access
5. The Google Service's compliance proposal for adhering to the Data Protection System.
This proposal will include at a minimum:
 - a. An explanation of the process through which the Google Service will ensure that accessed Measured Body Data and Health and Fitness Activity Location Data will be stored in an Access Restricted Data Store or, if it is stored outside an Access Restricted Data Store, will be stored in Temporary Logs
 - b. Type of storage location of such relevant data accessed by such a Google Service (e.g., in an ARDS, or Temporary Log(s))
 - c. An updated version of the Service Level Access Map that accounts for any new storage of Measured Body Data or Health and Fitness Activity Location Data as a result of the new service level access

- d. The Google Service's retention and deletion plan with respect to the accessed Measured Body Data and Health and/or Fitness Activity Location Data
- e. If such a service creates Temporary Logs, the documentation will include a link to the Google Service's individual access documentation for such relevant Temporary Logs.

Annex 3 – List of Minimum Audit Points

1. All individuals appearing in Auditable Individual Logs appear in Individual Level Access Documentation
2. All Individual Level Access Documentation provides a reason for access unrelated to Google Ads
3. At the time of access, no individual with a reporting line running into Google Ads appears in Auditable Individual Logs. Google will provide the Monitoring Trustee with the reporting lines up to the Google CEO for all individuals appearing in Auditable Individual Logs drawn directly from Google's Human Resource systems at the Monitoring Trustee's request
4. All Google Services appearing in Auditable Service Logs appear in Service Level Access Documentation
5. All Service Level Access Documentation provides a reason for the service receiving access that is unrelated to Google Ads
6. All Service Level Access Documentation includes an adequate Google Services' compliance proposal as described in Annex 2
7. No Google Ads service appears in Auditable Service Logs
8. Following the Control Date, no Google Service has access to the Fitbit Web API or, if a service does, Google has provided to the Monitoring Trustee appropriate Service Level Access Documentation for that service prior to its gaining access. Google will provide the Monitoring Trustee with a list of all services having access to the Fitbit Web API drawn directly from Fitbit's systems at the Monitoring Trustee's request.

Annex 4 - Indicative list of current data types that can qualify as Measured Body Data and Health and Fitness Activity Location Data (as of 02 November 2020)

Data Type	Measured Body Data	Health and Fitness Activity Location Data
Heart rate	x	

Heart rate variability	x	
Cardio fitness score	x	
Time in heart rate zones	x	
Resting heart rate	x	
VO2 max values	x	
Electrocardiogram	x	
Breathing rate	x	
Height	x	
Stride length	x	x ¹
Weight ²	x	
Body mass index	x	
Body fat percentage	x	
Steps	x	
Distance	x	x ³
Floors	x	
Altitude	x	
Calories	x	
Basal Metabolic Rate (BMR) calories	x	
Activity name	x	
Activity minutes (duration)	x	
Activity calories	x	
Activity distance	x	
Activity steps	x	
Activity floors	x	
Activity altitude	x	
Activity heart rate	x	
Activity speed	x	
Activity GPS		x
Lightly active minutes	x	
Moderately active minutes	x	
Sedentary minutes	x	
Very active minutes	x	
Active zone minutes	x	

¹ When a Fitbit user tracks a run using Activity GPS, Stride Length is updated automatically. Stride Length thus may be partially derived from Activity GPS, which qualifies as Health and Fitness Activity Location data.

² Includes "weight" that is part of the user's profile information.

³ "Distance" is calculated by multiplying "steps" by "stride length", and therefore may include input derived from "activity GPS", which qualifies as Health and Fitness Activity Location Data.

Swimming (length, stroke style)	x	
Activity pace	x	
Menstrual cycle log	x	
Menstrual cycle dates	x	
Birth control log	x	
Average period stats	x	
Sleep log (e.g. date, duration)	x	
Sleep efficiency ⁴	x	
sleep stages	x	
sleep score	x	
blood glucose	x	
water intake	x	
food log item	x	
favorite foods	x	
Food log item nutritional information (e.g. calories, macronutrients)	x	
Estimated oxygen variation	x	
Blood oxygen saturation (SpO2)	x	
Electrodermal activity responses	x	
Body temperature	x	
Sickness symptoms log	x	
skin temperature variation	x	
meditation minutes	x	
mood reflection	x	
stress management score	x	
Fitbit coach workouts (e.g. workout duration, calories burned)	x	
Fitbit coach achievements	x	
Badges derived from Measured Body Data or Health and Fitness Activity Location Data	x	
Trophies derived from Measured Body Data or Health and Fitness Activity Location Data	x	

⁴ Fitbit has not collected Sleep Efficiency since 2017. The Fitbit Web API nevertheless still calculates the data type (based on other sleep data) and it remains available to third parties.

Annex 5 – Indicative List of Supported Measured Body Data (as of November 2, 2020)

Supported Measured Body Data
heart rate
time in heart rate zones
resting heart rate
Weight
Height
body mass index
body fat percentage
Steps
Distance
Floors
Altitude
basal metabolic rate (BMR) calories
Calories
activity name
activity minutes (duration)
activity calories
activity speed
activity pace
activity steps
activity floors
activity altitude
activity heart rate
activity distance
lightly active minutes
moderately active minutes
sedentary minutes
very active minutes
swimming (length, stroke style)
sleep log (e.g. date, duration)
sleep stages (e.g. timestamp, length)
sleep efficiency
water intake
food log item
favourite foods
food log item nutritional information (e.g. calories, macronutrients)