

## Your response

Google Play (**'Play'**) welcomes this opportunity to respond to Ofcom's consultation on the draft Regulation of Premium Rate Services Order ("**draft PRS Order**").

As a business focused on user trust and safety, Play inherently shares many of the same goals and values as Ofcom's draft PRS Order and complies with many of the provisions in our ordinary course of business. We have extensive policies and terms of service that apply to Play developers, including our Developer Program Policies and our Developer Distribution Agreement. Where developers violate these policies, we take appropriate action, including suspension or removal of apps or developer accounts.

In the past, we have engaged with the PSA to review the Code's provisions and discuss their applicability to Play's business. We are happy to engage with Ofcom in a similarly collaborative manner regarding the draft PRS Order in order to continue to serve our users in the UK via Direct Carrier Billing while maintaining a consistent and high quality experience for Play users and developers across the world.

We have conducted a review of the draft PRS Order and the Consultation document. Having completed that review, we consider Play has a range of safeguards that protect users and meet the outcomes of the draft PRS Order. Nevertheless, there are certain areas of the draft PRS Order which may apply to Play (and other intermediaries/app stores) and we would welcome clarification from Ofcom to ensure that the text of the final Order and Ofcom's expectations are clearly understood and achieve the objectives set out in the draft PRS Order.

Question	Your response
<p><b>Q5. Do you have any comments about our proposed approach to registration and registration exemptions in Part 2 of the draft PRS Order?</b></p>	<p><b>Relevant draft PRS Order provisions</b></p> <ul style="list-style-type: none"> <li>● Draft Article 11(4) now includes a new definition of “app store”, which means “an online facility by means of which a consumer can— (i) browse applications online, or (ii) download an application onto an electronic device”. Under draft Article 11(b), merchants operating through an intermediary app store can benefit from the same ‘app-store exemption’ from the requirement to register with Ofcom as existed under the PSA Code.</li> <li>● However, under draft Article 11(3)(a) and (4)(h) of the draft PRS Order the “app store” intermediary would now be required to collect and keep a “relevant record” of certain prescribed information in relation to those exempt merchants. This information includes: <ul style="list-style-type: none"> <li>“(i) the name of the merchant in question, including registered company name, number and trading name (if any),</li> <li>(ii) the brand name(s) (if any) of the controlled PRS provided by the merchant,</li> <li>(iii) the merchant’s address, including registered address if the merchant is a company, for the purposes of OFCO</li> <li>(iv) the name, job title, telephone number, and email address of the merchant’s generally authorised person (within the meaning given in article 10(1)(b)),</li> <li>(v) the email address of the merchant’s generally authorised person in respect of which the merchant has indicated to the relevant intermediary its willingness to receive notifications and documents transmitted by OFCOM in electronic form in accordance with section 395(5) of the Act, and</li> </ul> </li> </ul>

(vi) a specimen signature for the merchant’s generally authorised person.”

**Clarification requested**

- Play collects extensive information on developers when they undergo onboarding to publish and monetize on the Play Store. However, collecting some of the information required in draft Article 11(4)(h) would be a significant challenge for large app stores like Play and would require such app stores to change their global developer onboarding flows solely for purposes of compliance with this provision of the draft PRS Order.
- In particular, collecting the information listed in draft Article 11(4)(h)(iv)-(v) for each merchant’s “generally authorised person” would be difficult as the individuals that merchants use to create and manage their merchant accounts on app stores (and about whom said app stores may collect relevant contact information) may not necessarily be their “generally authorised persons” within the meaning of draft Article 10(1)(b). Additionally, collecting a “specimen signature” from each merchant’s “generally authorised person” would be highly challenging for large digital app stores that support thousands or even millions of merchants and that would not normally collect “specimen signatures” (particularly from “generally authorised persons”) in the ordinary course of business.
- Play seeks clarity on whether:
  - (a) it would be sufficient for app stores to collect and retain the information listed in Article 11(4)(h)(iv)-(v) from a merchant’s chosen individual representative for their relevant app store account who is responsible for managing that account, rather than from that merchant’s “generally authorised person” for the purposes of this Order under Article 10(1)(b); and
  - (b) if there are other forms of identification or information that app stores could keep in lieu of the “specimen signature” requirement.

This approach would still serve the objective of draft Article 11(4), which is to enable Ofcom to serve notifications or legal documents on such exempt merchants if needed,<sup>1</sup> but without requiring app stores to change their global merchant onboarding processes solely for purposes of this provision.

**Q11. Do you have any comments about our**

**Relevant draft PRS Order provisions**

<sup>1</sup> See paragraph 4.50 of the consultation document.

proposed requirements relating to vulnerable consumers in Part 6, Chapter 5 of the draft PRS Order?

- Draft Article 40 appears to prohibit all “*PRS providers*” (which we understand to include intermediary app stores) from undertaking any “*regulated activity*” until they have “*had regard to*” the interests of “*vulnerable consumers*” by taking “*reasonable and proportionate steps*” to identify potential risks to the interests of “*vulnerable consumers*” and provide for mitigation of the same.

**Clarification requested**

- We understand draft Article 40 does not require intermediary app stores to conduct a user-by-user assessment of whether an individual user is “*vulnerable*” during their interactions with app stores. We welcome Ofcom’s confirmation of the same. For the avoidance of doubt, it would not be technically or practically feasible for Play to conduct such an individual user-by-user assessment, and attempting to conduct such a user-by-user assessment would also raise significant user privacy concerns.
- The draft Order (and consultation document) does not detail what is meant by “*have regard to*” or what compliance with Article 40 looks like in practice for intermediaries/app stores. The provision of “*Regulated activity*” by an intermediary is also very broadly defined in Article 9(2) and 9(1) and 9(12) of the draft Order. The definition of “*vulnerable consumer*” also encompassess a very broad range of potential consumers, who have an extremely varied set of needs and circumstances.
- We would be grateful if Ofcom could confirm that its expectation of intermediaries /app stores under draft Article 40 is that they:
  - (i) establish and maintain reasonable and proportionate processes and/or policies that consider general identified risks to the categories of “*vulnerable consumers*” listed in draft Article 40 at suitable intervals (to be determined by the intermediary/app store itself);
  - (ii) try to mitigate any identified risks to those categories of “*vulnerable consumers*”; and
  - (iii) maintain written policies/procedures evidencing those processes/considerations.

If our above understanding accurately reflects Ofcom’s expectations under draft Article 40, we should be grateful if this could be clarified in the final text of Article 40 of the PRS Order.

Q21. Do you agree with our implementation period? Please state your reasons and provide evidence to support your view?

We would welcome further discussions with Ofcom on implementation timelines and allowing sufficient time for companies to make the necessary system and process changes to be able to comply with the new requirements once they are finalised.

**Next steps**

We look forward to continued discussions and collaborations with Ofcom, contributing to the development of effective regulation to preserve user trust and safety in provision of PRS.