

Complaint

IN THE MATTER OF

GOOGLE INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4499; File No. 122 3237**Complaint, December 2, 2014 – Decision, December 2, 2014*

This consent order addresses Google Inc.'s billing for charges incurred by children in apps that are likely to be used by children without having obtained the account holders' express informed consent. The complaint alleges that Google offers thousands of apps, including games that children are likely to play, and that in many instances, children can obtain virtual items within a game app that cost money for which Google bills parents and other adult account holders. The complaint further alleges that, in connection with billing for children's in-app charges, Google in many instances did not request a password or other method to obtain account holder authorization. The consent order requires Google to provide full refunds to Google account holders who have been billed by Google for unauthorized in-app charges incurred by minors, for a year following entry of the order. If Google's refunds total less than \$19 million, Google will remit any remaining balance to the Commission to be used for informational remedies, further redress, or payment to the U.S. Treasury as equitable disgorgement.

Participants

For the *Commission*: Jason Adler and Duane Pozza.

For the *Respondent*: Logan Breed, Wes Carson, Christine Habeeb, and Corey Roush, Hogan Lovells LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that Google Inc. ("Google" or "Respondent") has violated provisions of the Federal Trade Commission Act ("FTC Act"), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is a Delaware corporation with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043.

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2. Respondent has billed for charges related to activity within software applications (“apps”) consumers download to their mobile devices from Respondent’s app store.

3. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act.

RESPONDENT’S BUSINESS PRACTICES

4. Google offers thousands of apps for free or a specific dollar amount, including games that children are likely to play. In many instances, after installation, children can obtain virtual items within a game, many of which cost money. Google bills charges for items that cost money within an app—“in-app charges”—to the parent. Although the issue of unauthorized charges in kids’ apps had received media scrutiny before Google introduced in-app charges to its app store in March 2011, Google began billing for such charges without any password requirement or other method to ensure account holder authorization. In fact, just weeks after it began billing for in-app charges, Google began receiving complaints from parents and other consumers about being billed for unauthorized charges by children. Yet Google took no steps to require account holder involvement within an app prior to in-app charges being incurred by children until mid- to late 2012. Currently, in connection with billing for children’s in-app charges, Google only sometimes requests a parent’s Google password. In many instances, once the password is entered, Google begins a thirty-minute window during which purchases can be made by children without further action by the account holder. During this process, Google in many instances has not informed account holders that password entry would approve a charge or initiate a thirty-minute window during which children using the app can incur charges without further action by the account holder. Through these practices, Google often has failed to obtain parents’ informed consent to charges incurred by children. As a result, parents and other Google account holders have suffered significant monetary injury, with many thousands of consumers complaining about unauthorized in-app charges by children, and many consumers reporting hundreds of dollars in such charges.

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Background on Google Play Store

5. Google offers apps through its Google Play Store, a digital store preloaded on Android mobile devices. Apps provide a wide variety of mobile computing functionality, allowing users, for example, to browse the Internet, check the weather, or play games.

6. Google generally assigns each app it sells to at least one topical category, such as “Games” or “News & Magazines.” Google also groups apps by price, including the top “Free” apps and top “Paid” apps.

7. Google charges account holders for certain user activities within some apps. These in-app charges can range from \$0.99 to \$200 and can be incurred in unlimited amounts. In many instances, the apps containing in-app charges are games that children are likely to play.

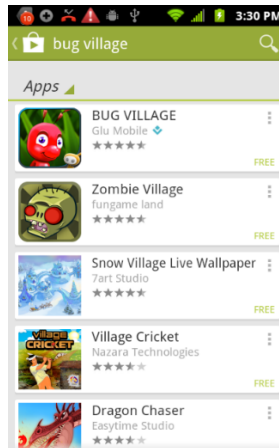
8. Account holders can associate their Google accounts with certain payment mechanisms such as a credit card, gift card, or mobile phone billing. In many instances, consumers set up such a payment mechanism prior to installing an app or incurring in-app charges. Google bills consumers’ Google accounts for Google Play store transactions and in-app charges, and retains thirty percent of all revenue, amounting to tens of millions of dollars. Google’s stated policy regarding refunds for in-app charges has been that refunds are at the discretion of the developer, and, as a matter of course, Google refers consumers seeking refunds to the app developer.

Installing an App from the Google Play Store

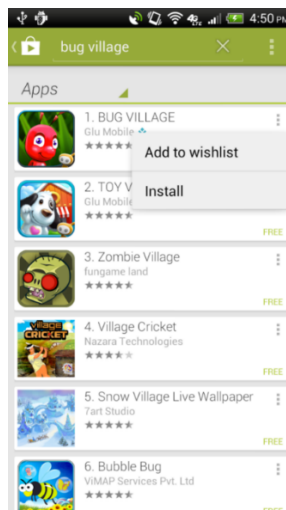
9. To install an app, a parent or other account holder must first locate it by searching for the app by keyword (*e.g.*, the name of the app) or by browsing the various categories within the Google Play Store. Whether an account holder searches for an app by keyword or browses a Google Play Store category, the results display as a scrollable list of rectangular tiles with specific information about each app (referred to herein as “App Cards”).

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10. Each App Card contains the app's icon and name, the name of the developer, the user rating, and, in the bottom right-hand corner, the price of the app: either "FREE" or a specific dollar amount. Directly above the app's price is an icon consisting of three vertical dots. An example of the App Cards that display when an account holder searches for an app called Bug Village appears below.



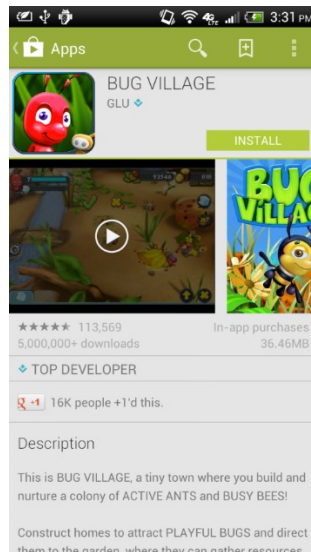
Clicking on the vertical dots on an app's App Card opens a popup menu containing links labeled "Add to wishlist" and "Install." An image of an expanded popup menu containing the links appears below.



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By clicking on the “Install” link, an account holder can begin the process of installing an app directly from the App Card, without receiving any information about in-app charges.

11. Alternatively, by clicking elsewhere on the App Card, an account holder can install the app through the app’s “product details page.” At the top of the product details page, Google displays a button labeled “INSTALL.” Google in many instances has displayed the product details page in the same format as the one below.



If an account holder scrolls through the product details page, certain information is available, including the app’s description and content rating (“Everyone,” “Low Maturity,” “Medium Maturity,” or “High Maturity”). As pictured above, Google displays the words “In-app purchases” in small print on the product details page. Prior to November 2013, Google did not display that language. Nowhere on the product details page does Google explain what “In-app purchases” are (including that they cost real money or how much) or that the account holder’s entry of the Google password will approve a charge and initiate a thirty-minute window during which children can incur charges without further action by the account holder.

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12. To initiate app installation, the account holder must either choose the “Install” link from the menu on the App Card or click the “INSTALL” button on the product details page. In both cases, Google displays a popup labeled “App permissions” (referred to herein as the “Permissions Popup”). The Permissions Popup lists various functions that an app may perform, including, for example, accessing information about battery usage or operating the device’s flashlight. At the bottom of the Permissions Popup is a button labeled “ACCEPT.” If an account holder clicks the “ACCEPT” button, the app is installed on the device. Until in or around March 2014, account holders could simply click “ACCEPT” to begin the app installation process without viewing any information about in-app charges.

Incurring In-App Charges

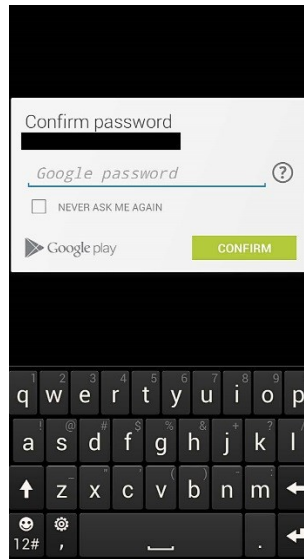
13. After an account holder installs an app, a user can incur in-app charges. In many instances—including in apps that children are likely to play and that are, for example, rated as “Everyone” or “Low Maturity”—these users are children. In many instances, parents have complained that their children could not and did not understand that their activities while playing the app could result in charges that cost real money.

14. When a user engages in an activity associated with an in-app charge (e.g., clicking on a button to acquire virtual treats for use in a game), Google displays a popup containing information about the virtual item and the amount of the charge (the “Charge Popup”). A child, however, can clear the Charge Popup simply by pressing a button labeled “CONTINUE.”

15. In many instances, once a user had cleared the Charge Popup, Google did not request any further action before billing the account holder for the corresponding in-app charge. In these cases, each time a child cleared the Charge Popup, Google billed the account holder for the in-app charge without obtaining his or her consent.

16. Not until mid- to late 2012 did Google begin requiring password entry in connection with in-app charges. A sample password prompt appearing within an app is below.

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As initially displayed, the password prompt does not contain any information about in-app charges. Once the account holder enters the Google password and presses “CONFIRM,” Google bills the in-app charge to the linked Google account. By default, entering the Google password and pressing “CONFIRM” also begins a thirty-minute window during which Google does not display the password prompt for subsequent in-app charges, allowing children to incur unlimited charges without password entry for thirty minutes. Regardless of the number or amount of charges incurred during this period, Google does not prompt for additional password entry.

17. In many instances, Google has not obtained an account holder’s informed consent before billing for in-app charges incurred by children. For example, in many instances, during the processes described in paragraphs 9 through 16, Google did not inform account holders that password entry begins a window during which users can incur unlimited charges without further action by the account holder.

Google Bills Many Parents for Unauthorized In-App Charges Incurred by Children

18. Many of the apps that charge for in-app activities are apps that children are likely to use. Indeed, many such apps are rated

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as “Everyone” or “Low Maturity” and are described or marketed as suitable for children, or are widely used by children.

19. Many of these games invite children to obtain virtual items in contexts that blur the line between what costs virtual currency and what costs real money. For example, the app Air Penguins asks children to “[j]ourney through the icy South Pole to help Air Penguin save his family from melting ice caps” and is replete with kid-friendly graphics of arctic animals such as penguins and polar bears. The game sometimes presents children with a screen selling polar bears, penguins, and various quantities of fish. The screen does not contain any dollar signs or other description of the real-money cost of any of the items. Buying polar bears and penguins costs virtual currency, but buying fish costs real money, with the largest quantity of fish (20,000) costing \$49.99.

20. Similarly, in the app Ice Age Village, children manage an ice-age habitat with instructions offered by characters from the animated “Ice Age” movies. The in-game “Shop” offers virtual items, each of which cost a certain amount of virtual currency (either “coins” or “acorns”). The price of each virtual item is displayed on green buttons that, when pressed, allow children to purchase the virtual items without any associated real-money charge. But another screen offers coins and acorns with similar green buttons that initiate real-money transactions. Children can obtain various quantities of acorns and coins for various amounts of real money, with the largest quantities (4,200 acorns or 2,100,000 coins) costing \$99.99.

21. Many consumers report that they and their children were unaware that in-app activities would result in real monetary loss. For example, a consumer whose children incurred unauthorized in-app charges in the Air Penguins app complained that he “did not realize that some ‘free games’ had buried ‘in app’ purchase opportunities” and that his “kids (ages 4 and 7) were told not to make any purchases, but apparently they did not realize they were spending my money. The purchases were not approved by me.” Another consumer, who “downloaded Ice Age Village to the delight of [his] son” but later learned that hundreds of dollars of in-app charges were made to his credit card, commented that “[k]ids do not know anything about money transactions with credit cards.”

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22. Many consumers complain specifically about the fact that Google billed for in-app activities without obtaining their consent. For example, a parent whose five-year-old son incurred over \$400 in unauthorized charges playing Bug Village stated “these multiple purchases were not approved by me.” Another parent called Google and complained that he thought his account had been hacked because he did not realize that his son had made unauthorized purchases while playing Tiny Monsters.

23. Google has received thousands of complaints related to unauthorized in-app charges by children in these and other games. In fact, in a June 2012 email, a Google product manager opined that “‘friendly fraud’ (unauthorized purchases by individuals you know) is the lead cause of chargebacks. For example, parents realize their kids have made a series of purchases and call the credit card company claiming those were unauthorized. Risk estimates that close to 80% of current chargebacks are driven by this specific issue.” Similarly, the notes for a February 2012 internal team meeting referred to a “high number of canceled orders for in-app billing” and explained that “these usually tend to be family fraud (kid takes phone and buys lots of food for virtual fish).”

24. Many children incur unauthorized in-app charges without their parents’ knowledge. Even parents who discover the charges and want to request a refund face a process that at least one member of the Google Play Support Team has described, in emails to consumers, as “confusing.” Indeed, as noted in paragraph 8 above, Google’s stated policy regarding refunds for in-app charges has been that all refunds are at the discretion of the app developer, and Google’s practice is to refer consumers seeking refunds first to the app developer. Consumers’ attempts to receive refunds through app developers have often been unsuccessful, with consumers reporting to Google that the app developer was uncooperative or did not respond.

VIOLATIONS OF THE FTC ACT

25. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

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26. Acts or practices are unfair under Section 5 of the FTC Act if they cause or are likely to cause substantial injury to consumers that consumers themselves cannot reasonably avoid and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

COUNT I**Unfair Billing of In-App Charges**

27. In numerous instances, Respondent bills parents and other Google account holders for children's activities in apps that are likely to be used by children without having obtained the account holders' express informed consent.

28. Respondent's practices as described in paragraph 27 cause or are likely to cause substantial injury to consumers that consumers themselves cannot reasonably avoid and that is not outweighed by countervailing benefits to consumers or competition.

29. Respondent's practices as described in paragraph 27 therefore constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a) and (n).

THEREFORE, the Federal Trade Commission this second day of December, 2014, has issued this complaint against Respondent.

By the Commission, Commissioner Wright recused.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Respondent named in the caption hereof, and Respondent having been furnished thereafter with a copy of a draft complaint that the

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Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with a violation of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45 *et seq*; and

Respondent and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), which includes a statement by Respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; and waives and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that Respondent has violated the FTC Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Google Inc. (“Google”) is a Delaware corporation with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043.
V.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

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ORDER**DEFINITIONS**

For the purposes of this order, the following definitions shall apply:

- A. “**Account Holder**” means an individual or entity, with a billing address in the United States, that controls an account to which Google may bill In-App Charges.
- B. “**Application**” or “**App**” means any software application that can be installed on a mobile device.
- C. “**Clear and Conspicuous**” or “**Clearly and Conspicuously**” means:
 - 1. In textual communications, the disclosure must be in a noticeable type, size, and location, using language and syntax comprehensible to an ordinary consumer;
 - 2. In communications disseminated orally or through audible means, the disclosure must be delivered in a volume, cadence, language, and syntax sufficient for an ordinary consumer to hear and comprehend them;
 - 3. In communications disseminated through video means: (1) written disclosures must be in a form consistent with definition 3.A and appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them, and be in the same language as the predominant language that is used in the communication; and (2) audio disclosures must be consistent with definition 3.B; and
 - 4. The disclosure cannot be combined with other text or information that is unrelated or immaterial to the subject matter of the disclosure. No other

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representation(s) may be contrary to, inconsistent with, or in mitigation of, the disclosure.

- D. **“Respondent”** or **“Google”** means Google Inc. and its successors and assigns.
- E. **“Express, Informed Consent”** means, upon being presented with options to provide or withhold consent, an affirmative act communicating informed authorization of In-App Charge(s), made proximate to an In-App Activity for which there is an In-App Charge and to Clear and Conspicuous disclosure of all material information related to the billing, including:
1. If consent is sought for a specific In-App Charge: (1) the In-App Activity associated with the charge; (2) the specific amount of the charge; and (3) the account that will be billed for the charge (e.g., the Google account); or
 2. If consent is sought for potential future In-App Charges: (1) the scope of the charges for which consent is sought, including the duration, devices, and Apps to which consent applies; (2) the account that will be billed for the charge; and (3) method(s) through which the Account Holder can revoke or otherwise modify the scope of consent on the device, including an immediate means to access the method(s).

Provided that in obtaining Express, Informed Consent, Google may rely on information provided by the App’s developer about the In-App Activity associated with the In-App Charge.

Provided also that the means of requesting the “affirmative act” and the disclosure of the information in definitions 5.A and 5.B above must be reasonably calculated to ensure that the person providing Express, Informed Consent is the Account Holder.

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Provided also that if Google obtains Express, Informed Consent to potential future In-App Charges as set forth in definition 5.B above, it must do so a minimum of once per account or mobile device.

- F. **“In-App Activity”** or **“In-App Activities”** means any user conduct within an App including the acquisition of real or virtual currency, goods, or services or other Apps.
- G. **“In-App Charge”** means a charge associated with In-App Activity billed by Google.
- H. **“Consumer Redress Period”** means the twelve (12) month period of time between the entry and the first anniversary of this order.

I.

IT IS FURTHER ORDERED that Google and its officers, agents, and employees, and all other persons in active concert or participation with it, who receive actual notice of this order, whether acting directly or indirectly, are restrained and enjoined for the term of this order from billing an account for any In-App Charge without having obtained Express, Informed Consent to Google’s billing that account for the In-App Charge. If Google seeks and obtains Express, Informed Consent to billing potential future charges for In-App Activities, Google must allow the Account Holder to revoke such consent at any time.

Provided that this section does not apply where Google does not control the user interface in which the In-App Charge is incurred.

Provided also that, where an Account Holder provides Express, Informed Consent to potential future In-App Charges at the account level, Google will provide, at least once before the first In-App Charge on a device, Clear and Conspicuous disclosure of the information in 5.B.

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II.

IT IS FURTHER ORDERED that Google shall provide full refunds to Account Holders who have been billed by Google for unauthorized In-App Charges incurred by minors as follows:

- A. Google shall provide prompt refunds to Account Holders for the full purchase price of any Eligible In-App Charge(s). For purposes of this Section II, an “Eligible In-App Charge” is an In-App Charge that the Account Holder indicates was: (1) paid by the Account Holder and incurred by a minor; (2) and was accidental or not authorized by the Account Holder; and (3) has not already been refunded. For purposes of this Section II.A, a “prompt” refund means a refund provided within the later of (1) thirty (30) days for a refund issued by check or ten (10) days for a refund issued by other means of a request for refund of an Eligible In-App Charge by the Account Holder; or (2) the completion of a fraud investigation. Google may decline a refund request for an Eligible In-App Charge only if it has sufficient credible evidence that the refund request is fraudulent. Google may process all refund requests through its customer service channels, which include a contact phone number and web form through which consumers may contact Google directly.
- B. Google shall refund no less than \$19,000,000 for Eligible In-App Charges pursuant to section II.A of this order, and such amount shall not constitute a penalty.
- C. Within thirty (30) days of the end of the Consumer Redress Period, Google shall provide the Commission with records sufficient to show the refunds requested and paid to Account Holders for In-App Charges during the Consumer Redress Period, and any requests that were denied under Section II.A of this order.
- D. If Google fails to refund \$19,000,000 pursuant to section II.B of this order, the balance of that amount

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shall be remitted to the Commission within forty-five (45) days of the end of the Consumer Redress Period.

- E. All funds paid to the Commission pursuant to section II.D of this order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, at the Commission's sole discretion, for informational remedies regarding In-App Charges by children or consumer redress and any attendant expenses for the administration of any redress fund. Any money not used for such purposes shall be deposited to the United States Treasury. Google shall have no right to challenge the Commission's choice of remedies under this Paragraph.
- F. Google shall provide an electronic notice to any Account Holder who has made an In-App Purchase prior to entry of the order. Google shall send such notice within fifteen (15) days after entry of the order. The electronic notice shall include a subject line relating to the content of the notice and contain the following information, disclosed in a Clear and Conspicuous manner and in writing: (1) that refunds are available for Account Holders that have been billed for In-App Charges incurred by minors that were not authorized by the Account Holder, (2) that such refunds are available until the end of the Consumer Redress Period, and (3) instructions regarding how to obtain refunds pursuant to section II.A of this order, including means of contacting Google for a refund. Google shall send the notice to the current or last known email address for the Account Holder.
- G. Sections II.A and II.B of this order shall be effective beginning on the date that the order is entered, and will terminate at the end of the Consumer Redress Period.

III.

IT IS FURTHER ORDERED that Respondent and its successors and assigns for five (5) years after the date of issuance

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of this order, shall maintain and upon request make available to the Federal Trade Commission business records demonstrating their compliance with the terms and provisions of this order, including but not limited to:

- A. All complaints from United States consumers conveyed to Respondent, or forwarded to Respondent by a third party, that relate to the conduct prohibited by this order and any responses to such complaints;
- B. Refund requests from United States consumers related to In-App Charges, and refunds paid by Respondent related to In-App Charges; and
- C. Records necessary to demonstrate full compliance with each provision of this order.

IV.

IT IS FURTHER ORDERED that Respondent and its successors and assigns shall deliver a copy (written or electronic) of this order to all current and future principals, officers, and corporate directors, and to all current and future managers, employees, agents, and representatives who have supervisory responsibility regarding the design of the platform in which Account Holders incur In-App Charges and those who implement that design. For the duration of the Consumer Redress Period, Respondent and its successors and assigns shall deliver a copy (written or electronic) of this order to all current and future employees who have responsibility for providing refunds to consumers in connection with this order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

V.

IT IS FURTHER ORDERED that Respondent and its successors and assigns shall notify the Commission within fourteen (14) days of any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other

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action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VI.

IT IS FURTHER ORDERED that Respondent or its successors and assigns shall, ninety (90) days after entry of the order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order. Within ten (10) business days of receipt of a written notice related to this order from a representative of the Commission, Respondent shall submit an additional compliance report setting forth the manner and form in which Respondent has complied with this order.

VII.

This order will terminate on December 2, 2034, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years; and
- B. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed

Analysis to Aid Public Comment

and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal. Respondent may seek modification of this order pursuant to 15 U.S.C. § 45(b) and 16 C.F.R. 2.51(b) to address relevant developments that affect compliance with this order, including, but not limited to, technological changes and changes in methods of obtaining Express, Informed Consent.

By the Commission, Commissioner Wright recused.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an agreement containing a consent order from Google Inc. (“Google”).

The proposed consent order has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

Google bills consumers for charges related to activity within software applications (“apps”) that consumers download to their mobile devices from Google’s Google Play store. This matter concerns Google’s billing for charges incurred by children in apps that are likely to be used by children without having obtained the account holders’ express informed consent.

The Commission’s proposed complaint alleges that Google offers thousands of apps, including games that children are likely to play, and that in many instances, children can obtain virtual items within a game app that cost money. Google bills parents and other adult account holders for items that cost money within

Analysis to Aid Public Comment

an app—“in-app charges.” In connection with billing for children’s in-app charges, Google in many instances did not request a password or other method to obtain account holder authorization. Currently, in connection with billing for children’s in-app charges, Google only sometimes requests a parent’s Google password. In many instances, once the password is entered, Google begins a thirty-minute window during which purchases can be made by children without further action by the account holder. During this process, Google in many instances has not informed account holders that password entry will approve a charge or initiate a thirty-minute window during which children using the app can incur charges without further action by the account holder. The Commission’s proposed complaint alleges that, through these practices, Google often has failed to obtain parents’ informed consent to charges incurred by children, which constitutes an unfair practice under Section 5 of the FTC Act.

The proposed order contains provisions designed to prevent Google from engaging in the same or similar acts or practices in the future. Part I of the proposed order requires Google to obtain express, informed consent to in-app charges before billing for such charges, and to allow consumers to revoke consent to prospective in-app charges at any time. As defined in the proposed order, express, informed consent requires an affirmative act communicating authorization of an in-app charge (such as entering a password), made proximate to both an in-app activity for which Google is billing a charge and a clear and conspicuous disclosure of material information about the charge. Under the definition, the act and disclosure must be reasonably calculated to ensure that the person providing consent is the account holder (as opposed to the child). The proposed order would require the disclosure to appear at least once per mobile device.

Part II of the proposed order requires Google to provide full refunds to Google account holders who have been billed by Google for unauthorized in-app charges incurred by minors, for a year following entry of the order. If Google’s refunds total less than \$19 million, Google will remit any remaining balance to the Commission to be used for informational remedies, further redress, or payment to the U.S. Treasury as equitable disgorgement. To effectuate refunds, Google must send an

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electronic notice to its consumers that clearly and conspicuously discloses the availability of refunds and instructions on how to obtain such refunds. Within 30 days of the end of the one-year redress period, Google must provide the Commission with records of refund requests, refunds paid, and any refunds denied.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III of the proposed order requires Google to maintain and upon request make available certain compliance-related records, including certain consumer complaints and refund requests, for a period of five years. Part IV is an order distribution provision that requires Google to provide the order to current and future principals, officers, and corporate directors, as well as current and future managers, employees, agents, and representatives who participate in certain duties related to the subject matter of the proposed complaint and order.

Part V requires Google to notify the Commission of corporate changes that may affect compliance obligations within 14 days of such a change. Part VI requires Google to submit a compliance report 90 days after entry of the order. It also requires Google to submit additional compliance reports within 10 business days of a written request by the Commission. Part VII is a provision “sunsetting” the order after 20 years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order’s terms.

Complaint

IN THE MATTER OF

**VERISK ANALYTICS, INC.;
INSURANCE SERVICES OFFICE, INC.;
AND
EAGLEVIEW TECHNOLOGY CORP.**COMPLAINT AND FINAL ORDER IN REGARD TO ALLEGED
VIOLATIONS OF SECTION 5 OF THE FEDERAL TRADE COMMISSION
ACT AND SECTION 7 OF THE CLAYTON ACT*Docket No. 9363; File No. 141 0085**Complaint, December 16, 2014 – Decision, December 19, 2014*

The complaint alleges that the acquisition of EagleView Technology Corporation by Verisk Analytics, Inc. would have anti-competitive effects in the market for rooftop aerial measurement services and reports for insurance purposes in the United States. The Order dismisses the Complaint because the parties abandoned the transaction.

Participants

For the *Commission*: Michael E. Blaisdell, Alex Bryson, Rebecca P. Dick, Ashley Masters, Terry Thomas, and Cathlin Tully.

For the *Respondents*: Joel Cohen, Davis Polk & Wardwell LLP; Ward C. Laracy, McCarter & English, LLP; Paolo Morante, DLA Piper LLP.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission (the “Commission”), having reason to believe that Respondents Verisk Analytics, Inc., Insurance Services Office, Inc. (together, “Verisk”), and EagleView Technology Corporation (“EagleView”) (collectively, “Respondents”) have executed an agreement pursuant to which Verisk will acquire the assets of EagleView, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and which if consummated may substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the