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Competition and Markets Authority
25 Cabot Square
London
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browsersandcloud@cma.gov.uk

Reference: Mobile browsers and cloud gaming

Non-Confidential

Dear Sirs,

We write non-confidentially in response to your consultation on proposed market investigation reference (MIR) published online at the following web address:

https://assets.publishing.service.gov.uk/media/62a0d8ef8fa8f50395c0a0d4/Browsers_and_cloud_MIR_consultation_document_-_FINAL.pdf. We have written to you previously in relation to these matters.

We are a UK registered business providing real time data services in the web environment to B2C and B2B businesses operating in many sectors including retail, travel, insurance, finance, web service platforms, advertising, publishing, mobile networks, device recycling, and many more. We generate export revenues, employ 23 people, and pay all our taxes in the UK. We operate a commercial open-source business model which gives us a deep understanding of the digital market and Open Web. In summary we are a typical technology Small to Medium Enterprise (SME) of which the UK government have stated they wish to support and help grow.

We are a founding member of Marketers for an Open Web Limited (MOW) who have responded separately to the MIR. We fully support MOW's submission. In the interests of brevity, we do not repeat MOW's submission content in detail in this correspondence.

In this submission we highlight four aspects of the browser eco-system that as an Open Web organisation are particularly relevant to us.

1. Scope – the proposed MIR needs to be expanded to cover all devices and market participants.
2. Boundaries – the MIR needs to clarify the boundaries between a web browser and services.
3. Deals – the role certain deals have in the market, notably between Google and Apple.
4. Standards – the crucible for collusion between dominant companies is the W3C and IETF. As such the MIR needs to include standards bodies.

Scope - Devices

Changes in the operation of web browsers, whether deployed in mobile devices, TVs, laptop, or desktop computers, have a profound impact on the Open Web. We draw your attention to MOW's submission in relation to the need for the MIR to include browsers of all variants and avoid limiting to specific device categories. The word "mobile" must be dropped from the title and scope of the MIR if the MIR is to adequately identify competition issues in the market.

People do not use only mobile devices. Data collection and services involve all their devices. A people focused market investigation is needed.

Scope - Participants

The investigation needs to include more participants including Samsung and Microsoft.

Since the consultation was published Microsoft and Netflix have entered an agreement for advertising services¹. Microsoft provide the web browser Edge which is based on Google's Chromium browser engine. The ability to relate interactions across devices and platforms will be highly attractive to advertisers who seek to work with the largest and richest data sets. Microsoft and Netflix combined could exploit a vast data set in services such as search or web browsers.

Samsung utilise their dominance in TV, mobile, and tablets, to attract advertisers to their platform. The following is a quote from Andy Jones, Head of UK sales Samsung, from a presentation given to advertisers on 12th July 2022².

"Samsung has the ability to measure at the glass level and that takes away huge complexity within the CTV space. Because if you measure the glass that is where all viewing is taking place so no matter the device that is connected or the channel that is tuned in. So yes we can identify a Nintendo device that is being played but also the game that is being played. And we can use that data to serve ads on other mobiles and tablets within that Samsung household. We call that an audience extension product and it's very much a capability of our data set."

Samsung also uniquely provide a default browser used on their mobiles and tablets. Thus, Samsung have built a "data set" that is capable of knowing everything about the usage habits of "households" that use Samsung products or services irrespective of the service provider, TV broadcaster, or web site used. Control of the web browser is a component of this business model.

Whilst we have limited resources we do not know if others have developed similar capabilities to Samsung. Given the importance Samsung place on the "glass level" capability and our understanding of technology it seems reasonable to assume Apple and Google have similar capabilities even if they are not as overt about the data set created and how they exploit it. As Google have a business model that involves licencing services to others it is likely that they will offer similar services to TV vendors that lack the resources to develop such capabilities themselves. The CMA might wish to ask Google how they deliver related services to TV vendors and how this contributes to their overall data set.

By expanding the scope of the MIR the CMA will be able to assess if competition from organisations such as Samsung might address the concerns of the report. As the market moves quickly the CMA

¹ <https://about.netflix.com/en/news/netflix-partners-with-microsoft>

² <https://youtu.be/gJtSzqGeYY?t=3025>

would also be “ahead of the game” in understanding the likely future state models for the digital market across all devices. Addressing the following questions should be in scope of the MIR.

- Would an Amazon, Apple, Google, Microsoft, and Samsung dominated market be acceptable for competition?
- How would the CMA ensure advertisers were charged a fair and reasonable price to reach audiences given each platform would likely dominate within each household?
- Would society be better served if data sets were unbundled from platforms irrespective of the current dominance of the market participant?

As the market moves quickly relative to regulation these future state questions need to be within the scope of the MIR.

Boundaries

Two layers can be used to understand modern web browsers. The boundary between them is the essence of the competition issues the CMA are wrestling with. These layers are:

- **Facilitating** interaction between Open Web services and people. For example; facilitating viewing news articles, booking a flight, watching a video, or online banking.
- **Bundled services** that go beyond those needed for facilitation. For example; wallets containing commonly used payment methods, advertising which funds many free and essential services, sign in services.

A web browser that cannot display images would be of little practical value for most Open Web services. But a web browser that does not contain a built-in sign in service and does not interfere with a plurality of available sign in services that people and Open Web service providers can choose would still facilitate interactions between people and Open Web service providers whilst enabling competition among sign in service providers that do not also manufacture a web browser. People and Open Web service providers would be free to select the vendors they wished to use, rather than be restricted by the web browser manufacturers choice.

A web browser that facilitates lawful data sharing between multiple Open Web service providers would enable people and service providers to choose the data to share under different conditions. Such a web browser might differentiate in the facilitation of data sharing by providing an audit capability to enable people and law enforcement agencies to identify unlawful data sharing. Such a feature in the facilitation layer would be highly pro-competitive and support privacy laws. Thus, a web browser manufacturer would compete at the facilitation layer but not by bundling additional services.

Thus, the problem the CMA are investigating relates to the boundaries between the facilitation layer and bundled services that could otherwise be provided by Open Web service providers if the browser manufacturer were not to interfere with them or mandate the use of their own bundled service.

Google’s Privacy Sandbox seeks to interfere with an open market for advertising services by bundling advertising features in the web browser via proposals such as Topics and Fledge, and by removing features such as the User Agent string or so-called third-party cookies from the web browser which

would otherwise enable choice for all and support competition. They justify this using a flawed privacy argument which you have already rejected with the ICO³ and is not in dispute.

The outcome we seek from the CMA MIR is a path towards a clear definition and regulation concerning these layers, ideally removing bundled services from the web browser entirely having defined the boundary between facilitation and Open Web services. Figure 1 shows the current and future state.

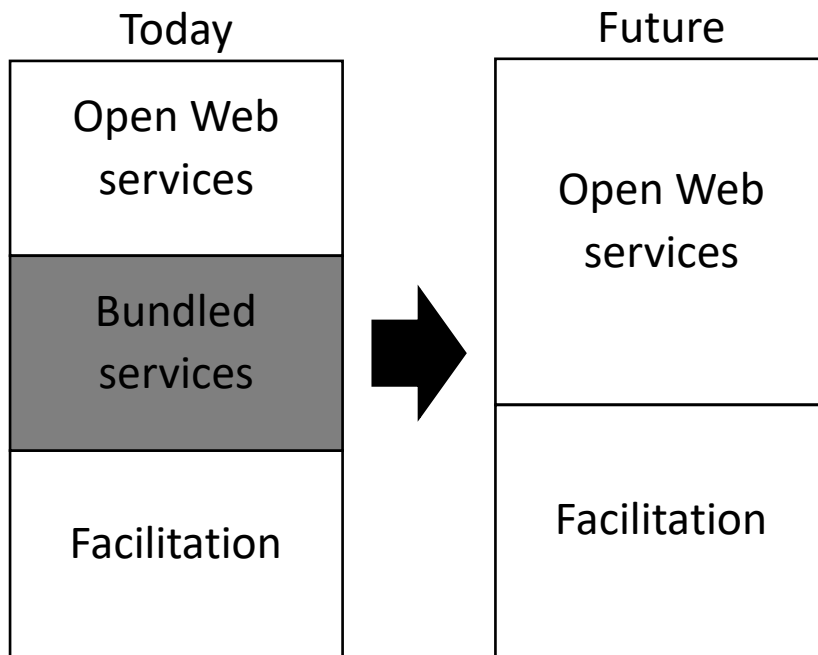


Figure 1 - Web browser layers - removed bundled services not needed for facilitation

Anything else enables the web browser manufacturer to favour their own services over Open Web services. This single remedy would address many other competition and privacy issues. The importance should not be underestimated.

Boundaries – Progressive Web Apps (PWA)

You have likely received many submissions related to PWAs. We will not repeat a description of their role or why they are considered important by web developers.

PWAs are an excellent example of a set of capabilities that would sit within the facilitation layer of the web browser and would enable all manner of services to be provided on top of them. The CMA have likely received ample explanation in support of these benefits.

The theory is that as one web browser manufacturers falls behind in offering these facilitation services then people must have the choice to switch to other web browser manufacturers that can compete at the facilitation layer, in particularly PWAs. This provides an incentive for web browsers

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/987358/Joint_CMA_ICO_Public_statement_-_final_V2_180521.pdf “There is no explicit reference to the distinction between first-party and third-party data in data protection law”

to invest and innovate at the facilitation layer. It is for these reasons we support arguments for Apple to remove web browser and engine restrictions from iOS.

However opening iOS to multiple browser manufacturers and browser engines must also be accompanied with a removal of restriction on the bundled services that web browser manufacturers provide. Otherwise in a world where there are only three browser engines, Apple users and Open Web service providers will merely be swapping one set of restrictions for another.

Deals

From a purely economic perspective Apple have little incentive to invest in their Safari and WebKit web browser. Unlike Google who invest in Chrome and Chromium Apple do not have a direct advertising business today which enables them to justify the significant investment in browser technology. In fact, Apple would prefer service providers to abandon the Open Web and use their iOS platform and app store where they can unilaterally set the rules and pricing. Others have theorised Apple deliberately under invest in the web browser to drive this outcome. This is not a new or novel observation.

There is a risk that regulator intervention might persuade Apple to abandon WebKit and build Safari on Google's Chromium. Google already pay Apple over \$15bn per annum to be the default search engine and provider of other services in Apple products. What would stop Google and Apple reaching a similar arrangement for the web browser?

The MIR needs to be sufficiently broad to consider this possibility and define remedies.

Standards

IETF and W3C are the crucible for collaboration between web browser vendors. Any MIR will be woefully incomplete if it does not include in scope the role of the standards bodies relevant to web browser competition.

Web browsers have been in lock step concerning their position on Open Web privacy at W3C and IETF. Mozilla are largely funded by Google⁴. We consider Mozilla a proxy that advances arguments that benefit Google amplifying Google's arguments.

This practice at W3C and IETF amounts to a cartel agreement concerning control and access to data which favours browser manufacturers. When a representative from our organisation highlighted the lack of evidence to support the web browsers and W3C position⁵, highlighted the competition impacting implications of which the CMA now recognise and the lack of alignment to the W3C's own inadequate antitrust guidelines⁶, and argued for alignment to laws not definitions from a small group of self-appointed engineers⁷, our representative was banned from debate in the W3C's Technical Architecture Group (TAG) by the chair who is employed by Samsung. Our representative was repeatedly sanctioned by W3C General Counsel for raising matters of competition⁸.

⁴ <https://www.androidheadlines.com/2020/08/mozilla-firefox-google-search>

⁵ <https://github.com/w3ctag/security-questionnaire/issues/83>

⁶ <https://www.w3.org/Consortium/Legal/2017/antitrust-guidance>

⁷ <https://w3ctag.github.io/privacy-principles/>

⁸ <https://github.com/w3ctag/security-questionnaire/issues/83#issuecomment-750596556> | <https://github.com/w3c/w3process/issues/469#issuecomment-750603706>

The position advocated by Samsung in relation to privacy on the web directly helps Samsung's advertising business as Samsung have the means to circumvent the web privacy principles they advocated via their control of the "glass" as evidenced earlier in this letter.

The position of W3C's General Counsel speaks to an organisation that is not fit for purpose and continues to operate as if it's still 1999. The world has moved on, there are only 3 browser engines, and the web is used by 5bn people and growing.

Our experience of the W3C is that they are more concerned about people taking offence from a well-reasoned and rational argument that openly seeks to debate the full range of issues than preserving competition on the Open Web. This should be deeply concerning to all regulators.

The scope of the MIR must encompass understanding the role of standards bodies in competition with a particular emphasis on IETF and W3C.

Summary

We therefore request that the scope of the MIR encompasses the following.

1. Devices other than mobiles.
2. All web browser manufacturers with a consideration of future consequences.
3. Recommending a boundary for the facilitation of interactions (aka interoperability) and services that are provided without restriction by a plurality of Open Web service providers.
4. Methods of restricting deals between Apple and Google that are anti-competitive or stifle innovation.
5. The role of standards bodies including the IETF and W3C.

We have kept this submission brief and would be delighted to discuss any aspect in more detail should you wish.

Yours sincerely,

James Rosewell – CEO 51Degrees – for self and 51Degrees