# QUSTODIO TECHNOLOGIES, S.L.U.

## ANSWERS TO THE COMPETITION & MARKETS AUTHORITY ('CMA')
## QUESTIONNAIRE CONCERNING THE DIGITAL MARKETS TASKFORCE
## 31 JULY 2020

To the attention of the CMA

Email: digitaltaskforce@cma.gov.uk

**1. ABOUT US**

Qustodio Technologies, S.L.U. ('**Qustodio'**), is a Spanish IT start-up, established in 2012, that develops leading parental control software solutions for families worldwide. Qustodio's software/app empowers parents to have greater visibility into all of their kids' online activity, including social networks, providing actionable intelligence for parents, that enables them to make quick decisions and take control over their kids' devices. Qustodio grew out of their team's experience developing consumer security software for major organizations worldwide, building rock-solid security solutions.

Qustodio provides parental controls on different operating systems that include Web Filtering, Time Limits, Device Use Monitoring and Application Blocking. Qustodio is designed to protect children from potential Internet hazards and establish healthy digital habits. It is currently available in eight languages and it is compatible with Windows, Mac, Android, iOS, and Kindle. Through app or browser-based management, Qustodio allows for a combination of multiple devices from different platforms (cross-platform) and multiple kid users into a single reporting dashboard.

Further information on Qustodio's activities may be found on the company's website: https://www.qustodio.com/en/company/

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## 2. A BRIEF SUMMARY OF OUR INTEREST IN THE CURRENT TASKFORCE

As is publicly known,[1] last April 2019 Qustodio filed a complaint against Apple for an abuse of a dominant position consisting in threatening with expulsion and blocking updates from our parental monitoring app within the Apple App Store, without objective justification.[2] Until then, parental monitoring apps had been peacefully operating in the market for several years without legal or technical impairment. Against this market trend, in June 2018 Apple changed its policy vis-à-vis parental monitoring apps and decided that some of them ought to be excluded from Apple's App Store and, thus, banned from acceding Apple devices. Back then, Apple's alleged motives for objecting to those apps related to the use of two technologies in a manner supposedly incompatible with Apple's App Store Review Guidelines. Some time later, only once the complaint to the European Commission had been filed, Apple raised unjustified privacy concerns. The European Commission is still assessing the complaint and yet to decide whether to open formal proceedings.

As a preliminary statement we would like to acknowledge the positive and thorough contribution of the CMA's study on digital platforms and online advertising.[3] It comes at a time when digital platforms are under scrutiny in a growing number of jurisdictions around the world. The combination of large data volumes, the emerging power of two-sided platforms and the creation of cloud-based systems pose numerous challenges on

[1] See i.a. https://appleinsider.com/articles/19/04/29/apple-says-it-removed-parental-control-apps-because-they-posed-privacy-risk; https://www.nytimes.com/2019/04/27/technology/apple-screen-time-trackers.html, https://mlexmarketinsight.com/insights-center/editors-picks/area-of-expertise/antitrust/apples-handling-of-parental-control-apps-draws-scrutiny-abroad-as-us-ramps-up-examination-of-big-tech and Mlex's news' extracts from 5 June 2019, 'Qustodio and Kidslox stand by Apple antitrust complaint in EU despite App Store changes' and 3 May 2019, 'Apple's defense on parental-control apps blends security with antitrust'.

[2] Kidslox, another app active in the parental monitoring market, joined the complaint. Some other operators supported the complaint confidentially but decided not to do so formally for fear of further retaliation.

[3] https://assets.publishing.service.gov.uk/media/5efc57ed3a6f4023d242ed56/Final_report_1_July_2020_.pdf (hereinafter, the 'CMA report').

the digital economy and the CMA report reflects a thoughtful and extensive analysis of the subject that will undoubtedly shed light on many of the doubts and concerns raised.

Against this background, we welcome this opportunity to give our opinion to the Taskforce on assessing whether digital platforms require a new competition approach. However, our contribution will be limited to answering those questions on which we can provide some insight based on our experience and contribute our bit to this complex analysis. In particular, we will illustrate many of our answers referring to our experience on the referred case against Apple.

## 3. OUR VIEWS ON THE QUESTIONS FOR INPUT AND EVIDENCE

*Scope of a new approach*

1. **What are the appropriate criteria to use when assessing whether a firm has Strategic Market Status (SMS) and why? In particular:**

- **The Furman Review refers to 'significant market power,' 'strategic bottleneck', 'gateway', 'relative market power' and 'economic dependence':**

— **How should these terms be interpreted? How do they relate to each other? What role, if any, should each concept play in the SMS criteria?**

According to the reports consulted, these terms serve to designate market operators that constitute '*large platforms that operate a key gateway in one or more digital markets, with many dependent users on either side.*'[4] The 'bottleneck power' can be seen as '*a power to funnel users' attention that arises when consumers primarily single-home and rely upon a single service provider*' (e.g. most sites depend on Google to receive traffic hence saying Google is a

[4] See paragraph 3.69 of the Report of the Digital Competition Expert Panel, 'Unlocking digital competition' of March 2019 (available here https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785547/unlocking_digital_competition_furman_review_web.pdf (hereinafter, the 'Furman review').

bottleneck in internet traffic)[5]. The position as a 'competitive gateway' involves control over other parties' market access.

Also, as set out in these reports, that powerful negotiating position may enable the platform to harm consumers directly, lessening the quality of services and limiting the ability to negotiate of businesses that rely on such platform to survive.[6] The concept is actually equated with dominance.

Any of the above definitions confirms beyond doubt that Apple does have SMS in two manners, since it is both a marketplace and a company controlling essential technologies for the commercialization and execution of third-party apps. App providers are left with no other option than relying on Apple's willingness to provide interoperability information -with more or less transparency- in order to integrate their products into Apple hardware and software. In other words, the Apple's App Store is the only entry door to Apple devices; and third-party applications can only access those technical features of the devices that Apple allows them[7].

It may be worth highlighting the relevance and magnitude of this operator. 70% of the revenues arising from app stores worldwide correspond to the Apple's App Store and as of January 2018, more than 1.3 billion Apple products were actively in use worldwide. The company also has a high level of brand loyalty and is ranked as the world's most valuable brand.[8]

With these figures in mind, we would suggest looking at the following parameters to assess SMS:

(i) market power and/or market shares in the commercialization of technological devices (hardware);

[5] See footnote 6, page 3 of the Policy Brief on the 'Stigler Committee on Digital Platforms' of September 2019 (https://research.chicagobooth.edu/-/media/research/stigler/pdfs/policy-brief---digital-platforms---stigler-center.pdf) (hereinafter, the 'Stigler report').

[6] See paragraph 2.25 of the Furman review.

[7] This contrasts with Android devices, where applications publishers can access all device features

[8] See https://www.forbes.com/powerful-brands/list/

(ii) presence and market power and/or market shares in the commercialization of software/apps (secondary/related market or aftermarket, in competition law terms);

(iii) degree of market foreclosure as regards third-party access to secondary markets;

(iv) number of locked-in users, due to market foreclosure and brand loyalty;

(v) comparison with other similarly integrated operators in order to assess the indispensability and reasonability of market foreclosure decisions;

(vi) reservation to the manufacturer of key technical features that the manufacturer alone can take advantage of to the detriment of other actors in the digital platform- i.e. the combination of strength in the online platform and control of access to device features; and

(vii) ask for the opinion of data protection authorities when privacy concerns are raised.

- **Which, if any, existing or proposed legal and regulatory regimes, such as the significant market power regime in telecoms, could be used as a starting point for these criteria?**

In our opinion, neither the current SSNIP test nor proposals such as the SSNIQ test[9] are useful in the digital world. On the one hand, prices in a given digital market may not be important or even completely irrelevant for the most relevant digital giants because their revenues depend on other variables (i.e. advertising or hardware markets). On the other hand, quality is undoubtedly relevant for market success, but it is unspecific and heterogeneous as a factor to determine SMS with minimum legal certainty.

In our experience, the most relevant factor evidencing SMS should be linked to the **number of users**. When a significant number of users/buyers is **locked in** with certain hardware (due to brand loyalty, previous operation knowledge, etc.) or social network or whichever digital service, the operator controlling that first market has a significant power to determine users' further decisions in connected markets and ought to be carefully monitored.

[9] See https://ec.europa.eu/jrc/sites/jrcsh/files/jrc106299.pdf, at page 8.

On the other side of the same market, when the manufacturer withholds access to (a) device technological features (that the manufacturer uses in its own competing applications), and (b) access to the digital market through control of publishing on the App Store (i.e. actually being in the market or not) there is "**lock-out**" of market players (application publishers).

We will again illustrate this point with our own experience. Regardless of Apple's market position in the global commercialization of different hardware products, the existence of more than 1.3 billion Apple products actively in use worldwide and the particular features of Apple devices and the iOS operating system make the commercialization of software compatible with Apple devices a product market in itself. Dominance -or otherwise, SMS- in that market is just evident since Apple controls 100% of access to and services allowed in its App Store marketplace. Apple is thus a monopolist in the App Store. To put it short:

(i) Apple's App Store is the only entry door to Apple devices;

(ii) there is no direct competition between Apple and Google's –or any other- app stores;

(iii) competition for end users does not serve to constrain Apple's market power for the management of Apple's App Store; and

(iv) Apple arrogates to itself a special responsibility to act as a security or "ethical" gatekeeper in the App Store.

In this connection, let us further recall that Apple's behaviour as a dominant company vis-à-vis its own App Store is currently under investigation in several jurisdictions.[10] Very recently, the European Commission opened formal antitrust investigations to assess whether Apple's App Store rules violate EU competition rules.[11] This

[10] See, in the US, *Apple Inc. v Robert Pepper:* https://www.supremecourt.gov/opinions/18pdf/17-204_bq7d.pdf. The French *Autorité de la concurrence* has fined Apple 1,2 billion euros for abuse of dominant position: https://www.autoritedelaconcurrence.fr/fr/communiques-de-presse/apple-tech-data-et-ingram-micro-sanctionnes. Besides, the Dutch Competition Authority (ACM) announced on 4 April 2019 the launch of an investigation into abuse of dominance by Apple in its App Store: https://www.acm.nl/en/publications/acm-launches-investigation-abuse-dominance-apple-its-app-store

[11] See https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1073 and https://ec.europa.eu/competition/antitrust/cases/dec_docs/40652/40652_142_3.pdf

investigation arises from two separate complaints filed by the music software operator Spotify and by an e-book and audiobook distributor, both concerning Apple's practices in its App Store vis-à-vis these competitors. In both cases, the European Commission has also opened formal antitrust investigations[12]. In parallel, the European Commission has also announced a formal antitrust investigation to assess whether Apple's conduct in connection with Apple Pay violates EU competition rules.[13] In addition to investigations for potentially abusive practices within its own App Store, the Italian Competition Authority has opened formal antitrust proceedings against Amazon and Apple Italia for suspected collusion in the form of agreements to ban online retailers not belonging to Apple's authorized reseller list from selling Apple products on the Amazon marketplace.[14]

On a final note, let us repeat it just once more: Apple is a monopolist and/or a dominant company and/or has SMS vis-à-vis its App Store. A monopolist of an irrelevant or too small app store would not be relevant for competition purposes. Conversely a monopolist that controls further digital decisions of 1.3 billion users should undoubtedly be relevant for competition authorities. This illustrates in our view that there is an **urgent need to link market shares and market definitions to the locked-in number of users**.

- **What evidence could be used when assessing whether the criteria have been met?**

Turnover, economies of scale and scope, network effects,[15] etc. are traditional and well-known concepts for competition authorities. Qustodio does not think that these concepts should be disregarded or substituted by new ones, because they may well deserve a relevant part in any competition analysis. However, the following two aspects should complement the analysis:

[12] See https://ec.europa.eu/competition/antitrust/cases/dec_docs/40437/40437_657_3.pdf

[13] See https://ec.europa.eu/competition/antitrust/cases/dec_docs/40452/40452_1000_8.pdf

[14] See https://agcm.it/media/comunicati-stampa/2020/7/I842

[15] See paragraphs 424 *et seq.* of the Bundeskartellamt Decision on the administrative proceedings against *Facebook* on 6 February 2019 (https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Entscheidungen/Missbrauchsaufsicht/2019/B6-22-16.pdf?__blob=publicationFile&v=5) (hereinafter, the 'Facebook case') and page 3, section II.1 of the Stigler report

— User-based market shares: As stated in the Facebook case, '*price competition is not only about the amount of a monetary payment but also about the conditions the other side of the market considers when choosing a service and assessing the price charged. In these cases, user data are to be considered as payment for a service or as a contractual condition serving to maintain a price of 0*'[16]. In this regard, user-based market shares would be indicative of market power of the marketplace (the more active users the marketplace had, the greater its power).

As previously stated, the fact that there are 1.3 billion Apple products active worldwide is indicative of the power of this operator, bearing in mind that Apple's App Store is the only entry door to such Apple devices.

— High and increasing returns of the use of third-party data: a great example of this on the parental monitoring apps market is that on the basis of the knowledge acquired and best practices copied from the best-performing operators in the market, Apple has developed a new technology software solution and effectively locked-out several competing applications for more than a year.

Apple launched a service that competes with our Qustodio's app and secured its market presence, thereby leveraging its gatekeeping role and/or dominance in its App Store into a connected market. While this could have been done impeccably competing on the merits, this was not the case of Apple's practice which included unjustified expulsion threats from the App Store and discriminatory practices precluding competitors' essential technical updates and feature upgrades. Qustodio and other parental monitoring app providers are unable to compete as equals: Apple's Screen Time is shipped and enabled by default; cannot be removed from the device; uses exclusive technologies only accessible to Apple; and is for free.

In any event, this being the second stage of a potential abuse analysis, it is beyond doubt that Apple's behaviour was only possible because of two factors: (i) a

[16] See paragraph 376 *et seq*. of the Facebook case

significant number of locked-in users; and (ii) deep inside knowledge of a huge amount of commercially sensitive data from third parties and (iii) complete control over access to device technologies and discriminatory use of the App store acceptance criteria.

2. **What implications should follow when a firm is designated as having SMS? For example:**

- **Should a SMS designation enable remedies beyond a code of conduct to be deployed?**

Regulation (EU) 2019/1150 of the European Parliament and the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services ('Platform to business regulation')[17] establishes several regulatory obligations for digital platforms in order to ensure transparency, non-discrimination and fairness of their business transactions. These measures are mainly:

— a ban on certain unfair practices such as unexplained account suspensions;
— an obligation to have plain an intelligible terms and advance notice for changes;
— an obligation to disclose the main parameters used to rank goods and services on the site;
— an obligation to disclose any advantage the platform may give to its own products over others and what data these products collect, how they use it and how such data is shared with other business partners they have;
— setting up an internal complaint-handling system to assist business users; and
— providing businesses with more options to resolve a potential problem through mediators.

[17] See https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R1150&from=EN

Based on our experience, the obligation to adopt dispute resolution mechanisms may be useful and avoid time-consuming and costly litigation between digital giants and smaller app developers.

Likewise, a code of conduct as the one proposed by the CMA may have a positive impact on this ex ante regulatory regime. However, both the code of conduct or any other ex ante regulatory measures shall require monitoring and enforcement. As recommended by the Furman review, a Digital Markets Unit should be created and given a remit to use tools and frameworks to support greater competition and consumer choice[18] and in this respect it should have the corresponding powers to enforce legally binding decisions and penalties for contraventions of the measures adopted.[19]

An example that illustrates the need for these measures on an ex ante basis is the Amazon probe of the German Bundeskartellamt initiated following numerous complaints from third-party sellers concerning certain Amazon abusive practices. These consisted of the unilateral exclusion of liability to its own benefit, the termination and blocking of sellers' accounts, the court of jurisdiction in case of disputes, the handling of product information, among other issues. The proceedings are now terminated but Amazon has been ordered to amend its terns if business for sellers on its online marketplace.[20]

- **Should SMS status apply to the corporate group as a whole? Should the implications of SMS be confined to a subset of a firm's activities (in line with the market study's recommendation regarding core and adjacent markets)?**

Given the characteristics of digital platforms such as marketplaces with SMS and their option to leverage their position into downstream markets, Qustodio considers that the implications of that status should be extended to digital platforms' entire ecosystem.

[18] See page 5 of the Furman review, section 'Our Proposals'
[19] See paragraph 2.47 of the Furman review.
[20] See https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Pressemitteilungen/2019/17_07_2019_Amazon.pdf?__blob=publicationFile&v=4

Again, Qustodio's complaint against Apple illustrates this point. Apple controls 100% of its App Store (the marketplace) and has full control on interoperability conditions and technology (gatekeeping role). It can therefore advantage itself in the event it decides to design and commercialise new software solutions. These solutions are often set by default in Apple devices, they are offered for free, pre-activated and cannot be deleted. In this way, by gaining control of certain adjacent markets (e.g. hardware devices, consumer software solutions…) platforms can both control the entry points to their core markets and provide native technical features and services not made available to competitors while at the same time gather consumers' attention and data which can in turn feed the magnitude of its ecosystem.[21] The existence of that feedback loop is proof that SMS status should apply to the subset of firm's activities embedded in the ecosystem.

3. **What should be the scope of a new pro-competition approach, in terms of the activities covered? In particular:**

    - **What are the criteria that should define which activities fall within the remit of this regime? Views on the solution outlined by the Furman Review (paragraph 2.13) are welcome.**

Other than acknowledging the benefits of clear ex ante regulation and positively considering any regulatory tools that help authorities identify the risks of SMS, Qustodio would only add that it is important to take into account situations where the operator controls both the digital platform and the commercialization of the device that is the underlying facility or product (i.e. hardware ownership). With this in mind, there is clear differences between Apple and Google for example, since Google hardware is competing with other players and there are multiple device manufacturers using the same operating system, whereas Apple's hardware is the only alternative as regards Apple devices.

[21] See Paragraph 56 *et seq* of the CMA report.

4. **What future developments in digital technology or markets are most relevant for the Taskforce's work? Can you provide evidence as to the possible implications of the COVID-19 pandemic for digital markets both in the short and long term?**

We will limit our response to the market for parental monitoring apps. As the Covid-19 pandemic continues, kids are spending more time online, not only for entertainment but also for schooling purposes and often without their parents' supervision. Although we have not experienced a significant increase in the number of users as a direct result of the pandemic, we anticipate a moderate but steady surge in the number of users in the coming months and years. The pandemic has accelerated a pre-existent market trend and digital software solutions for parental monitoring are becoming a necessary service for an increasing number of families. This obviously reinforces the timeliness of our competition concerns and evidences the urgent need to closely monitor digital platforms with gatekeeping roles.

*Remedies for addressing harm*

5. **What are the anti-competitive effects that can arise from the exercise of market power by digital platforms, in particular those platforms not considered by the market study?**

As widely shared by most commentators and available studies, the exercise of market power by digital platforms can result in numerous anti-competitive effects, mainly increases in prices paid by advertisers and third-party app providers resulting in higher final prices of goods and services, lower privacy protection, lower product diversity, lack of transparency, problems of democracy or creation of market barriers through unequal access to native technical features and user data.

As far as Qustodio is affected, we would stress concerns on the immense potential for abuse when operators with SMS play a double role as (i) gatekeepers of a marketplace; and (ii) competitors offering software solutions to consumers through the platform.

First, the mere fact that there is no obligation imposed on the gatekeeper to correct unequal access to technology and information due to its dual nature creates the risk that the marketplace confers an anticompetitive advantage to its own services. The

marketplace operator may decide to deny or grant a greater or lesser degree of interoperability information and access to independent service providers, knowing that such information is an essential requirement for the services to work properly.

In addition, Apple is wielding its unilateral control and application of the marketplace acceptance criteria to its own benefit: privacy, security, transparency of applications, all of which are beneficial to consumers, but whose sole one-sided interpretation by Apple in acceptance to the marketplace enables it to be discriminatory. As stated in the CMA report, '*by virtue of this position, large platforms such as Google and Facebook increasingly appear to be acting in a quasi-regulatory capacity in relation to data protection considerations, setting the rules around data sharing not just within their own ecosystems but for other market participants.*'[22] It also recognises that firms that accumulate large amounts of data sometimes *'use data protection regulations (…) as a justification for restricting access to valuable data for third parties, while retaining it for use within their ecosystems, thereby consolidating their data advantage and entrenching their market power.*'[23]
The biggest concern is that such platforms have an incentive to interpret data protection rules and regulations in a way that entrenches their own competitive advantage. They may not consider whether third parties comply with such rules and regulations, but just argue privacy concerns as a systematic and fit-for-all justification that is not truly related to protecting 'personal' data but impairing third-party competition and preventing access to their ecosystem.

Second, in the particular market of parental control solutions the gatekeeper position may be used to determine how lenient or strict a parental monitoring software must be or to decide on other ethical matters that should not be for the platform to decide. It should be parents, faced with an array of different and GDPR-compliant software solutions, who decide on the best parental monitoring solution for them.

Parental monitoring is a rapidly growing market, and forcing Apple's parental monitoring solution (Screen Time) into the market may guarantee further sales of Apple devices (cross-platform solutions are systematically impaired by Apple). Apple's

[22] See Paragraph 47 of the CMA report.

[23] See Paragraph 46 of the CMA report.

interest may not be in the parental monitoring market itself, but in forcing families to choose Apple for all of their devices. In other words, Apple's behaviour excludes from the market cross-platform parental monitoring solutions, thus forcing parents to acquire Apple devices for their children. This reinforces lock-in effects, allows the digital giant to control even more data of a given individual and/or family and, more dramatically, it may allow substituting both ethical and commercial free choices just by eliminating options and individual freedom.

**6. In relation to the code of conduct:**

- **Would a code structure like that proposed by the market study incorporating high-level objectives, principles and supporting guidance work well across other digital markets?**

*Ex ante* solutions are sound and welcome. A code of conduct as the one proposed may well help developing a common conscience of the ethical and commercial limits to be imposed on digital platforms. However, Qustodio feels the need to caution against the use of such code of conduct as an easy justification or excuse for anticompetitive practices. In other words, formal adherence to a code of conduct should have no relevance or otherwise unnecessarily delay ongoing antitrust investigations.

- **To what extent would the proposals for a code of conduct put forward by the market study, based on the objectives of 'Fair trading', 'Open choices' and 'Trust and transparency', be able to tackle these effects? How, if at all, would they need to differ and why?**

These objectives might serve as general guidance to improve the ability of market participants to make informed decisions or reduce the ability of platforms to overstate the quality and effectiveness of the services and metrics offered or increase market trust[24] and to prevent self-preferencing actions.

[24] See paragraph 55, CMA report.

**7. Should there be heightened scrutiny of acquisitions by SMS firms through a separate merger control regime? What should be the jurisdictional and substantive components of such a regime?**

Yes, and the relative scarcity of merger precedents in digital markets[25] confirms this. There seems to be broad consensus that simply focusing on turnover is not enough to identify the magnitude of an operation. There should be a change in the threshold for merger review, basing it on the transaction value or other criteria that allow regulators to scrutinise multi-million transactions between digital platforms and start-ups. Furthermore, when an acquisition involves a dominant platform, authorities should shift the burden of proof and require the company to prove that the acquisition will not harm competition.[26]

We fully adhere here to the opinion expressed in the Furman review that instead of a voluntary regime, digital companies having SMS should make the CMA aware of every intended acquisition. Moreover, it stated that it would be wise to amend the standard 'more likely than not' merger test[27] to allow the so-called balance of harms (i.e. only blocking a merger when it is expected to do more harm than good).[28]

Another proposed mechanism that we would consider pertinent is the introduction the European Union's SIEC test: would the merger "significantly impede effective competition" by creating or strengthening a dominant position?[29]

**8. What remedies are required to address the sources of market power held by digital platforms?**

[25] See the Decision on the acquisition by Motorola Mobility Holding (Google Inc.) of Waze Mobile Limited in November 2013 (https://assets.publishing.service.gov.uk/media/555de2cfed915d7ae2000027/motorola.pdf).

[26] See page 12 of the Stigler report and paragraph 3.101 of the Furman review.

[27] The current test is to decide whether a concentration is more likely than not to imply a substantial lessening of competition.

[28] See paragraph 3.88 of the Furman review.

[29] See paragraph 3.104 of the Furman review.

- **What are the most beneficial uses to which remedies involving data access and data interoperability could be put in digital markets? How do we ensure these remedies can effectively promote competition whilst respecting data protection and privacy rights?**

In order to address the sources of market power of digital platforms, in particular, regarding app stores, commentators propose a wide variety of data-related pro-competitive interventions,[30] such as increasing consumer control over data; mandating interoperability; mandating data mobility and open standards between services; mandating third-party access to data; or banning default interventions.

As far as Qustodio is concerned, the following measures seem commercially sensible:

— Mandating interoperability to overcome network effects: mandating an open but also a common API to device features would help eliminate market barriers and allow the entry of new competitors while preventing potential abusive behaviours.
— Mandating third-party access to data where data is valuable in overcoming barriers to entry and expansion and privacy concerns can be effectively and legally managed (e.g. consumer behaviour data in order to allow targeting for marketing purposes). In such cases, personal data would be excluded unless aggregated or anonymised.
— Mandating data mobility and open standards between services.[31]
— Mandating data separation/data silos where data has been collected by platforms through the leveraging of market power (e.g. prohibit the use of data in adjacent markets when the platform had access to such data due to its gatekeeping role).
— Emphasising consumer control over data above platform control thereof. As previously illustrated, Apple's recurrent allegation to forbid third-party access to (non-personal) data relates to privacy. Against this general allegation, proof should be required of the platform that the actual user made an informed choice

[30] See paragraph 85 of the CMA report.

[31] See paragraph 2.17 of the Furman review.

regarding the use of their data by the platform or any other third-party operator. Digital platforms should not be given a pseudo-regulatory role regarding privacy concerns because they incur in an evident conflict of interests.

— Banning the platforms' ability to secure default positions (e.g. Screen Time as a free and set by-default option that cannot be deleted from Apple devices).

- **Should remedies such as structural intervention be available as part of a new pro-competition approach? Under what circumstances should they be considered?**

Qustodio has no comments on this.

**9. Are tools required to tackle competition problems which relate to a wider group of platforms, including those that have not been found to have SMS?**

- **Should a pro-competition regime enable pre-emptive action (for example where there is a risk of the market tipping)?**

Yes, but without impairing enforcement and/or delaying antitrust proceedings. See above.

- **What measures, if any, are needed to address information asymmetries and imbalances of power between businesses (such as third-party sellers on marketplaces and providers of apps) and platforms?**

See above (questions 6 and 8).

- **What measures, if any, are needed to enable consumers to exert more control over use of their data?**

Ban on the use of the so-called 'dark-patterns', design interfaces in manipulative ways (e.g. pre-selecting choices, highlighting or hiding buttons, etc.), providing a realistic choice to consumers not to share their data, prohibiting firms to take advantage of consumer behavioural biases… (see answer to question 5) and requiring platforms to

comply with the code of conduct and other measures such as the ones proposed in question 2.

- **What role (if any) is there for open or common standards or interoperability to promote competition and innovation across digital markets? In which markets or types of markets? What form should these take?**

See above (question 8).

**Procedure and structure of a new pro-competition approach**

10. **Are the proposed key characteristics of speed, flexibility, clarity and legal certainty the right ones for a new approach to deliver effective outcomes?**

Qustodio has no comments on this.

11. **What factors should the Taskforce consider when assessing the detailed design of the procedural framework – both for designating firms and for imposing a code of conduct and any other remedies – including timeframes and frequency of review, evidentiary thresholds, rights of appeal etc.?**

Qusotdio has no comments on this.

12. **What are the key areas of interaction between any new pro-competitive approach and existing and proposed regulatory regimes (such as online harms, data protection and privacy); and how can we best ensure complementarity (both at the initial design and implementation stage, and in the longer term)?**

Qustodio has no comments on this.