BBC comments on the CMA's statement of scope regarding its mobile ecosystems market study

Executive Summary

We welcome the CMA's market study into the mobile ecosystems of Apple and Google. Whilst Apple and Google are important and valued partners of ours in ensuring that audiences can find and enjoy our content, we have highlighted some issues which the CMA should consider when finalising the scope of the market study.

We note that the CMA is open to identifying and exploring discrete issues that cut across different device types. We therefore suggest that the CMA consider extending the scope of the market study to include the following devices/areas:

- TV operating systems, and in particular the Android TV operating system given the speed at which Android TV is being deployed and the opportunities it is providing Google for defensive leveraging and leveraging into new sectors;
- In-car infotainment systems, where both Apple and Google are already in a position to extend their dominant positions in the mobile app ecosystems to other environments and devices.

As regards the themes, we are particularly keen to see themes 2 and 4 explored by the CMA. As the developer, operator and distributor of public service apps such as the iPlayer, BBC Sounds, BBC News and BBC Sport apps, we consider that theme 2 should be examined in some depth. We are concerned that Google and Apple are in effect creating walled gardens with their app stores and operating systems whereby their own apps and wider ecosystems have enormous advantages (in access to and hence ability to analyse data on consumer preferences, for example) whilst third party app developers such as the BBC are systematically and increasingly disadvantaged. [✂] For public service apps this has the effect of diminishing the impact of the investment of public funds in service of public policy goals such as delivering distinctive UK content to UK audiences. This is in a context where Ofcom has both reaffirmed the high value UK audiences place on UK PSB content and recognised the significant challenges which face the PSBs.[1]

We consider these themes could be extended to consider:

- how search functionality works within the Google and Apple app stores, as well as the issue of how third party content appears in Google and Apple's apps themselves;
- how pre-installation of Apple and Google's own apps has disadvantaged third party app providers [✂];
- the way in which Apple and Google's voice assistants reinforce Apple and Google's market power in mobile operating systems and allow Apple and Google to leverage their market power into new markets.

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[1] Ofcom's statement, Recommendations to Government on the future of public service media, 15 July 2021. See https://www.smallscreenbigdebate.co.uk/statement

We recognise that some of these issues may be investigated by the CMA as part of its Competition Act investigation into the Apple app store but clearly they may also be relevant to the market study. We agree with the wide range of remedies being considered by the CMA, and would simply add that whatever remedies are imposed should be paralleled by remedies relating to transparency. We are happy to elaborate on or discuss any of the points we have raised in this submission with the CMA if this would be of assistance.

Background

We note upfront that some of the issues we raise in these comments are also being considered as part of other reviews and initiatives, including in particular in Ofcom's statement on its recommendations to government on the future of public service media.[2] We support the CMA in considering these issues in the round, including through the Digital Regulation Cooperation Forum with regard to Ofcom and the ICO.

In addition to the decision on whether to launch a market investigation, we note that the market study is also being used to inform the establishment of the pro-competition regulatory regime. We assume that the market study will therefore inform both the legislation which will underpin the new pro-competition regulatory regime for the digital space as well as the exercise in due course of the new powers under the pro-competition regulatory regime. However, it would be helpful if the CMA could clarify this point further.

The comments below reflect the broad topics on which the CMA has asked for comments.

The CMA's description of the sector

In addition to the points which the CMA has set out in the statement of scope, we have some additional areas which we view as being important to consider as part of the scope of the market study. We have set these out below.

Comments on the proposed scope of the market study

The CMA says it is not considering the supply of desktop devices such as laptops and desktop computers. However, the statement of scope also indicates that the CMA does not rule out identifying and exploring discrete issues that cut across different device types. For instance, the CMA intends to look at both mobile and desktop devices when considering browser engines. We therefore propose that the CMA give consideration to other devices in light of the cross-cutting nature of some of the issues identified.

TV Operating Systems

A critical issue which cuts across different device types is the issue of self-preferencing, which also takes place on TVs using the Android operating system and in Apple TV. This element of the market study should be expanded to include TV services (Apple TV) and in particular the Android TV operating system. It seems clear that Android TV will increasingly be in a position to control a significant proportion of user journeys and to promote the wider suite of Google's services. Search results will evolve from presenting only the exact title match to presenting an audience searcher with results outside of their expectation. This offers an array

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[2] See Ofcom's statement referenced in footnote 1 above.

of opportunities to Android TV to control users' onward journeys – opening opportunities to preference services owned and monetised by Google (such as YouTube).

Whilst Samsung and LG still have their own operating systems for TVs, it seems likely that many other manufacturers will shift to using Android. Already, one of the major TV manufacturers, Sony, has been using Android for some time and is also an early adopter of Google TV. Other TV manufacturers who have adopted the Android operating system include Vestel (including Hitachi and Toshiba), Panasonic, TCL and Phillips.

Android adoption is likely to increase as manufacturers can reduce their costs via this route whilst global players such as Google "may accept low, no or negative margins in supplying the OS to unlock/maintain value in another segment/adjacent market."[3] By 2023, as many as 60 to 80% of new TV sets sold may have an operating system owned by the tech giants (including Google, Apple, Facebook and Amazon).[4] The speed of the likely transformation is such that the CMA should add this to the areas it is investigating so as to be in a position to address the issue through a market investigation and/or through the pro-competition regulatory regime.

In-car infotainment systems

Similarly, beyond TVs, Apple and Google are able to extend their dominant positions in the mobile app ecosystem to other environments and devices. A good example of this is in-car infotainment systems, which now include the whole experience of navigation, entertainment and communications. Users can connect their mobile phones to the car's dashboard screen using Apple CarPlay and Android Auto in order to display and use apps which are already installed. Most new cars on the road now support Apple CarPlay and Android Auto. Although there is convenience for users in this arrangement, it allows Google and Apple to replicate their app ecosystem in cars without offering consumers the choice of an alternative. This situation is arguably set to intensify as embedded connectivity becomes more common in cars (i.e. consumers have a separate data package for their internet-enabled car meaning there is no need connect a phone). Google is moving rapidly into this space with its Android Automotive Operating System, forecast to be in about 60% of new vehicles in the next 5 years.[5] Indeed, by 2030, 36 million vehicles will ship with Android Automotive.[6] This will further extend the app ecosystem into cars, requiring car manufacturers to have Android app stores and developers to develop Android Automotive-compatible apps. Without any rules

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[3] Mediatique, Connected TV Gateways: review of market dynamics, August 2020.

[4] BBC and Digital UK analysis of TV manufacturer OS choice trends, based on Digital UK estimates of market share.

[5] As Harman Electronics, a US audio electronics subsidiary of Samsung, states: "A major trend in automotive is the market is the adoption of Android Automotive. Harman expects Android Automotive to reach a penetration of 60% of the automotive head unit operating system in five years. There are many reasons for this. Android is a modern operating system, deployed on billions of phones shipped annually. The phenomenal scale allows high level of investment at Android to maintain a robust roadmap, one which QNX or Linux will never be able to match. There are large number of developers that are familiar with Android, and the modern framework lowers the head unit total cost of ownership. And finally, there is an existing eco-system of 3rd party media and messaging applications, that can serve as a starting point for Android Automotive." See https://ignitedevelopers.harman.com/emergence-of-android-in-automotive

[6] ABI research, November 2020. See https://www.abiresearch.com/press/2030-36-million-new-vehicles-will-be-shipped-android-infotainment-systems/

about prominence or accessibility for third party apps and services, this has the potential to undermine the availability of live radio and threaten the ability of PSBs and commercial radio to compete with streaming giants such as Spotify and YouTube music (in circumstances where Google, for example, is incentivised to favour YouTube).

Comments on the themes identified

Themes 2 and 4 are the most relevant to the BBC, and we set out comments on these themes below.

Theme 2 – competition in the distribution of mobile apps

Theme 2 explores competition in the distribution of mobile apps, including whether Google and Apple use their position as owners of the main app stores to exploit consumers and app developers or entrench their market power in the distribution of mobile apps or elsewhere within their mobile ecosystem. As the developer, operator and distributor of apps such as the iPlayer, BBC Sounds, BBC News and BBC Sport apps, as well as a variety of BBC children's apps, we agree it is essential to explore this theme and make the following comments.

First, Google and particularly Apple have introduced blanket rules from which we as app developers have to spend a great deal of time and effort negotiating exemptions in order to ensure that we can meet our public service remit set for us in the BBC Charter, particularly around the duty to ensure that BBC content and services is available in a range of convenient and cost effective ways which are available or might become available in the future.[7] [✂]

Second, there has been a sustained move by Apple and Google to implement more restricted privacy settings. Whilst there may be good intentions behind this, there is evidence this is going beyond what is strictly required by GDPR and privacy law, with the result that this has undermined the effective operation of our apps. We note that the CMA and ICO are actively coordinating efforts as regards addressing the risks of large vertically integrated firms interpreting data protection law in ways which may undermine competition.[8]

In the latest round of restrictions from Apple, they have raised the issue of tracking users across different apps. In summary, Apple have updated their definition of tracking and are in effect creating a walled garden in which they can continue to track users whilst third party apps cannot. We are also concerned about similar moves by Google concerning third party cookies – the privacy sandbox – which are already under investigation by the CMA. Apple's approach is reflective of their shift of focus towards the provision of services which in turn increases the importance for them of increasing the commercial utility of the data derived from the use of their services at the expense of third parties' ability to use such data. [✂]

The upshot of all this is that our marketing and audiences team's ability to judge the effectiveness of our content and marketing activities is significantly impaired. This adversely affects ability to meet our public purposes to reach underserved audiences.[9] In particular,

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[7] Clause 61, Agreement Between Her Majesty's Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation, December 2016
[8] CMA and ICO joint statement of 19 May 2021 on competition and data protection law:
https://www.gov.uk/government/publications/cma-ico-joint-statement-on-competition-and-data-protection-law
[9] [✂]

while Apple and Google are able to gain an in-depth insight into audience behaviour in their ecosystems - across their own and all third party services - and provide personalised services and content, the lack of data we receive inhibits our development of services, as well as the commissioning and creative decisions around BBC content. For example, we do not know whether certain functionality and routes to content are working or being adopted by audiences. Clearly, not knowing how popular the BBC's programmes and services are when accessed via these platforms means that the BBC cannot make optimal decisions about where to place resources and to serve audiences.

Finally, we believe theme 2 could usefully be extended to consider how search functionality works *within* the Google and Apple app stores. [✂] Beyond this, the CMA should also consider the related issue of how third party content appears in Google and Apple's apps. [✂]

Theme 4 – the role of Apple and Google in competition between app developers

Theme 4 looks at the role of Apple and Google in competition between app developers, including where Apple and Google are a downstream competitor as well as app store and operating system provider. Again, we support the CMA's investigation of this theme and make the following comments.

First, [✂]

Second, as with theme 2, we suggest that the CMA extend the scope of this theme to TV operating systems. For instance, the CMA should investigate the prominence of Google Assistant and YouTube in TVs with the Android operating systems. [✂]

Finally, and in conjunction with the point above, we suggest that the CMA extend the scope of the market study to include the way in which Apple and Google's voice assistants reinforce Apple and Google's market power in mobile operating systems and allow Apple and Google to leverage their market power into new markets. For instance, Siri and Google Assistant are allowing Apple and Google to penetrate the infotainment systems market as set out above (voice assistants being critical in an in-car setting) and Google Assistant plays an increasingly important role in discoverability of content on TV sets given the expansion of the Android operating system, with which Google Assistant is automatically provided (again, as set out above).

The range of potential remedies

We agree with the wide scope of remedies, including requiring Apple and Google not to favour their own downstream apps/services and in the most extreme cases mandating operational separation. [✂] Whatever remedies are imposed should be paralleled by remedies relating to transparency, as one of the major issues we face (and as alluded in some of the comments above) is a lack of transparency about *how* decisions are being made on the surfacing and consumption of our content.

The CMA should also focus on data-related remedies, given the issues which organisations such as the BBC have in securing access to data from Apple and Google on the performance

of our own services on their platforms. In particular, at the minimum, we suggest that remedies are explored which mandate Apple and Google to share in real-time via API:

- all non-identifiable personal user data including age, location, gender, etc. (disaggregated at individual level, but without a unique identifier);
- all non-identifiable personal interaction data such as views, clicks, frequency of use and other sentiment data (such as 'cursor hover time', 'likes' and star ratings or user journeys, but avoiding data which could allow for reverse engineering of personal ID, such as user comments) alongside user records.

Overall, the CMA should focus on increasing user choice (and the third party product development, operation and distribution which supports this) and ensuring a level playing field, for example, by leaving the choice of defaults to the user.

The CMA's proposed approach to evidence gathering

The approach to evidence gathering which the CMA proposes appears to be reasonable and proportionate. We would be happy to elaborate on or discuss any of the points we have raised in this submission with the CMA if this would be of assistance.

26 July 2021