



CMA Mobile Ecosystems market study

BT Group response to Statement of Scope

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1 Introduction

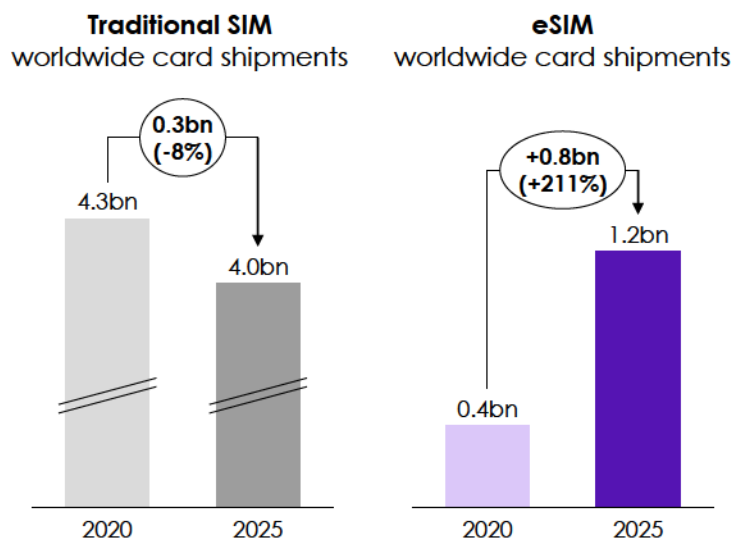
1. The CMA's market study into the mobile ecosystem is an important step in establishing an effective pro-competitive regulatory regime for large digital firms. In this response to the CMA's Statement of Scope, we comment briefly on the issues the CMA does not intend to focus on. The CMA is proposing to assess a set of core products, including mobile handsets, operating systems and applications, which includes app stores and browsers but excludes the closely adjacent market for the supply of mobile telecoms networks services.
2. Whilst the CMA is targeting existing concerns, any resulting interventions should be designed to be forward-looking and future-proof. The Furman report on digital competition noted that digital markets evolve quickly, and the scale of network effects mean a digital firm can quickly leverage market power across adjacent products. This is also true for the mobile ecosystem with adjacent markets at risk of unfair competition. Moreover, the CMA should regulate in such a way that future conduct analogous to that which it assesses warrants intervention today is caught by the Code(s) of Conduct where it derives from the same source of market power.
3. Given the dynamic nature of digital and telecommunications markets, developments in technology are likely to raise numerous new issues. The CMA should incorporate in its study such technological trends in order to ensure that any regulatory regime is flexible enough to adapt to these changes and address consumers harms if and when they occur.
4. In this response, we describe one such technology trend, the growth of e-SIMs, and how this could, in future, entrench (and indeed extend) digital firms' market power in the mobile ecosystem. We provide this as an example of why SMS designation should either be sufficiently broad to embrace future technological developments, or the DMU must be prepared to act very swiftly should concerns materialise with the risk that harm is harder to rectify once it has occurred. We appreciate that future concerns are, by definition, more uncertain and incapable of exact description. However, the strength of a Code of Conduct approach to regulation is its inherent adaptability to different contexts. For instance, what is 'fair' in the context of 'fair dealing' will be informed by the rationale for the conduct and its effects.

2 The potential impact of e-SIMs in the mobile ecosystem

2.1 What are e-SIMs?

5. e-SIMs integrate the SIM card¹ as a module built into a mobile device. The SIM is embedded in the device and can be configured to connect to different mobile networks without the need to remove and replace any physical SIM card used with the device. This means the SIM becomes reprogrammable and agnostic to the mobile network operator (MNO) or mobile virtual network operator (MVNO) and can be updated to connect to different networks as and when needed.
6. e-SIMs may bring tangible benefits to end users. The space inside a mobile handset is at a premium and the smaller size of e-SIMs allows phone manufacturers to add extra features, like more battery capacity or to enhance a phone's processing power with a faster central processing unit (CPU). e-SIMs may provide customers with greater choice in terms of mobile coverage and flexibility, improving the service they receive. They could also facilitate growth in the Internet of Things (IoT), where e-SIMs enable the growth of smaller connected devices because of their smaller size and lower energy requirements. ABI Research predicts that global shipments of e-SIMs will increase from 400m in 2020, to up to 1.2bn by 2025, as shown in Figure 1.

Figure 1 – Change in Traditional SIMs vs e-SIMs



Source: ABI Research

7. Some mobile device manufacturers have already started to integrate e-SIMs into their handsets, albeit still alongside a traditional SIM.² Over time, we expect more device manufacturers to deploy handsets solely with an e-SIM.
8. Mobile device manufacturers may be interested in leveraging the capability of e-SIMs to sell mobile connectivity. This is because:

¹ A smart card inside a mobile phone carrying the owner's unique identification number and personal data and preventing operation if removed.

² ABI Research (17 September 2018). [eSIM Smartphone Shipments to Exceed 400 Million by 2022, as Apple's New Smartphones Accelerate the Market Apple's XR, XS and XS Max devices bring eSIM Access to the Masses](#)

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- i) they are looking to build out their ecosystems to encompass a broader range of services, providing them with even greater access to customer data and creating loyalty to the ecosystem;
 - ii) diversifying into services allows device vendors to trade at a higher multiple of profit and sales which increases their valuation; and
 - iii) a strong service strategy offers steady cash flows from subscriptions as consumers of mobile handsets pay more for high-end devices but purchase less frequently as they expect them to last longer.
9. Examples of entry into mobile connectivity by technology companies include:
- (i) Google Fi, an MVNO service that uses e-SIM technology.
 - (ii) Rakuten has built its own mobile network in Japan, utilising a freemium model, signing up customers at low or no price and monetising through other services such as its shopping, content and online banking products. Rakuten believes that combining location data from the mobile network with a customer's retail habits could prove powerful in increasing customer loyalty and activity.³
 - (iii) Facebook has invested \$5.7bn in Indian mobile operator Reliance/Jio and intends to use Jio to drive adoption of WhatsApp for small business customers.
10. Entry into traditional telecommunications will likely rely on monetisation outside of telecommunications services. As described below, whilst this can drive consumer benefits, it may also provide the digital firm with incentives that do not ultimately benefit customers in the long run.

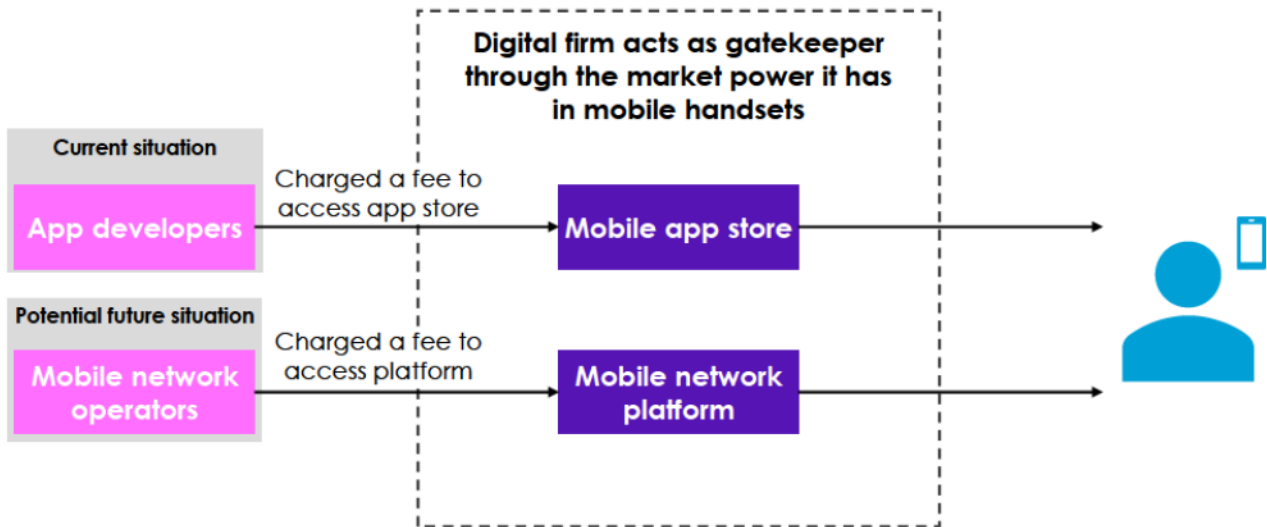
2.2 Growth of e-SIMs could entrench and extend market power within the mobile ecosystem

11. The growth of e-SIMs could further entrench, and indeed extend, the position of any digital firm with market power in the mobile ecosystem. If a digital firm that derives market power through its mobile handsets chooses to provide mobile services using e-SIMs, it may be able to leverage market power into the adjacent mobile market. In this scenario, the digital firm could bundle services in its primary market with mobile services (delivered through e-SIMs).
12. The development of e-SIMs could also allow the digital firm with market power to act as a gatekeeper between MNOs and end customers. We see this as similar to the relationships that the CMA is already considering in its market study, including between app developers and end customers, where a digital firm might act as an essential gatekeeper. The CMA describes the intermediation of the relationship between consumers and developers and potential restrictions in the services developers are able to offer. e-SIMs could enable both intermediation and disintermediation.⁴

³ Financial Times (17 November 2020). [Rakuten pioneers new retail route into telecoms](#).

⁴ CMA (15 June 2021). [Mobile ecosystems market study](#). Para 140.

Figure 2 – Digital firms can act as gatekeepers to mobile operators, similar to how they act as gatekeepers for app developers



13. One of the themes of the CMA's study is competition in the distribution of mobile apps. As Figure 2 shows, app developers currently access their end customers principally by supplying their apps through mobile app stores. The mobile app store acts as a gateway to the end customer, and if end customers principally access such services through mobile devices, the app developer may have no alternative to using the mobile app store. App developers typically pay a fee to mobile app stores to supply their app.
14. The growth in e-SIMs may create similar competitive dynamics. e-SIM operates by providing customers with a choice of mobile connectivity provider on the device. See for example, the screen on a mobile handset offering such a choice below in Figure 3.

Figure 3 – Choice screen on a mobile handset enabled by e-SIMs



15. The customer selects the provider of choice and is then taken to that providers' landing page to complete sign up. The device vendor determines which connectivity provider appears on the choice screen and in what order. Moreover, the device vendor has other means of steering customers to a particular provider, for instance advisor recommendations or in its marketing literature.

2.3 The anticompetitive effects that may arise through the growth of e-SIMs

16. As described above, the growth of e-SIMs could mean digital firms in the mobile ecosystem act as gatekeepers between MNOs and end customers.
17. If a digital firm with market power in its primary market (e.g. mobile handsets) chooses to provide mobile services using e-SIMs, it may be able to leverage market power into the adjacent mobile network services market. In this scenario, the digital firm could bundle services in its primary market with mobile services (delivered through e-SIMs). Bundling mobile services with services in other adjacent markets could provide the digital firm with incentives that do not ultimately benefit customers in the long run.
18. For example, the digital firm could structure its bundle in a manner that promotes the services in its primary market, with less focus on mobile services. Such a bundle may promote a mobile handset and accessories, with connectivity included as a supplementary benefit within the headline price. Consumers purchasing such a bundle may then be able to exercise less choice on mobile services, including on network coverage and customer service.
19. Moreover, where a device vendor has market power, e-SIMs may enable it to make positioning on the choice screen (and whether a network provider appears at all) conditional on a range of factors: how much a telecoms operator is willing to pay; whether a telecoms operator is willing to accept terms on issues such as provision of data about its customer base; and whether the operator promotes the handset vendor's additional services. This may distort customer choice.
20. The digital firm could present itself as a price-comparison agent, asking its customers to select their preferred mobile network based on a limited range of comparison factors or based on its own commercial considerations (such as whether it has received payments for preference). Whilst this could help the tech firm minimise its mobile network costs, the customer would not be able to exert its preferences over the quality of the network, along dimensions such as network coverage, quality of service, and speed. In this regard, the tech firm's incentives may be inconsistent with consumers' long-term interests in improving quality of service.
21. This misalignment in incentives may lead to consumer harms over time, as MNOs will not be able to compete effectively on the quality of service, rendering investment in the network less profitable. In a market where Ofcom is currently seeking to promote investment in 5G networks, bundling practices by global tech firms that encompass mobile could hinder MNOs' ability to invest.
22. Aside from such harms arising from unfair bundling of services across the mobile ecosystem, digital firms that act as gatekeepers could also directly impose unfair terms on MNOs.
23. For example, digital firms could impose high prices on mobile network operators to access the platform on their mobile handsets or demand data unrelated to the services provided. In instances where the digital firm has market power, the MNO may have no choice but to accept these terms in order to compete against its rivals.
24. The CMA is expecting to analyse whether this dynamic occurs in the relationship between app developers and mobile app stores, where app developers pay a fee to the app store to access end customers. A similar analysis may be needed for mobile network services if the growth in e-SIMs results in digital firms acting as gatekeepers for MNOs.
25. Finally, there is a further potential consumer harm if the digital firm also acts as a mobile virtual network operator (MVNO) in competition with the MNOs that use its own platform. In such instances, the digital firm may have an incentive to foreclose rival MNOs (either by only offering

its own service, or by designing the choice architecture on the mobile screen to steer a customer to its own service), lowering competition and ultimately creating a risk of higher prices for mobile network services for end customers. This form of self-preferencing behaviour is already the subject of the CMA's theme on the distribution of mobile apps, and may also be appropriate for mobile network services depending on the growth in e-SIMs.

2.4 The Code of Conduct proposed by the CMA could address some of these consumer harms

26. In its statement of scope, the CMA has listed various categories of potential remedies, including a Code of Conduct limiting a digital firm's ability to exercise market power, pro-competitive interventions to lower digital firms' market power, consumer choice interventions and separation remedies.
27. If the growth of e-SIMs results in digital firms acting as gatekeepers for MNOs, this suite of remedies may also be appropriate for preventing consumer harms in the market for mobile network services.
28. In particular:
 - a) a Code of Conduct may become necessary to prevent the digital firm from imposing unfair terms or unfair pricing on MNOs. For example, a Code could prevent digital firms from requesting data from MNOs that is unrelated to the provision of the services involved.
 - b) A Code of Conduct could also require the digital firm to be transparent in the way that it bundles services across the mobile ecosystem and beyond, so that end customers can understand the relative value of different services they are buying. Adjacent services are often offered heavily discounted or free to encourage customers to remain loyal to the ecosystem and core products of that ecosystem.
 - c) In the event that a digital firm supplies mobile network services as an MVNO on the same platform as other MNOs, the Code of Conduct could prevent that digital firm from unduly favouring their own downstream services.
29. The list of potential remedies the CMA has identified for consideration in the mobile ecosystem are appropriate and may also be needed in other parts of the mobile ecosystem as technology evolves. SMS should be designated broadly to cover all conduct that relate to an entity's market power. Doing so will mean that regulation can be more easily adapted over time based on technological developments, including the growth in e-SIMs.
30. Our proposed approach to designating SMS is consistent with the approach the CMA took in its digital advertising market study, where it identified Google and Facebook as having SMS based on *all* of its activities in the digital advertising value chain. In that study, the CMA recognised the ability of the SMS firm to leverage market power across different parts of the digital advertising value chain, and the same is likely to be true in the mobile ecosystem.

2.5 The regulatory regime should be set up to be future-proof

31. The design of a new pro-competitive regulatory regime for large digital firms is an opportunity for the CMA to set in place a long-term framework that supports innovation and provides good consumer outcomes. Recognising the reality of future technological developments will ensure the regime is designed flexibly, so that different parts of the mobile ecosystem can be regulated effectively.

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32. We believe the CMA should monitor the markets on an ongoing basis including on the basis for feedback from market participants and adjust regulation as required.
33. We would welcome the opportunity to meet with the CMA during its market study, to discuss future technological changes that may be relevant to its review of the mobile ecosystem. For any questions, please contact [REDACTED] or [REDACTED].

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