

## CMA Mobile Ecosystems Study Scope Consultation

### Introduction

#### ***We need a properly functioning ecosystem to deliver 5G leadership***

The UK Government has ambitions for the UK to be a global leader in 5G – the next generation of mobile technologies and digital communications. This priority is set out in the 2019 Strategic Priorities issued by the Secretary of State to Ofcom<sup>1</sup>. The vision requires substantial new investment and innovation throughout the supply chain for the provision of mobile-based services. This means new applications, new devices, new networks, new services and new charging models for use by consumers and enterprises. It also requires a properly functioning end-to-end ecosystem.

#### ***There should be a joined-up approach to regulating digital markets, within and between regulators, and drawing on best practice from elsewhere.***

The Mobile Ecosystem study by the CMA should provide an important foundation for the future work of the Digital Markets Unit. The new regulatory requirements for firms designated as having Strategic Market Status will clearly impact the way that firms design and structure their mobile ecosystems, for example to prevent discrimination, self-preferencing and leveraging of market power from operating systems into other areas, and to ensure third parties have fair access to the data and interoperability needed to compete<sup>2</sup>.

We welcome the fact that the CMA plans for this market study to build on analysis already undertaken or underway by other competition authorities across the world

Another body of work that will be relevant is Ofcom's review of the mobile market<sup>3</sup>. It is opportune that both the CMA and Ofcom are undertaking market studies at the same time given the interdependencies throughout the mobile value chain.

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<sup>1</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/952627/SSP - as designated by S of S V2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952627/SSP_-_as_designated_by_S_of_S_V2.pdf)

<sup>2</sup> There are useful parallels to this work at the international level: in the EU policy makers are currently working on the text of the Digital Markets Act, a new regulation that will subject digital gatekeepers (including those that control mobile operating systems) to a number of prohibitions and obligations in their commercial practices and contractual relationships with third parties. In the US, there is a strong push at the Congressional level to tackle the market power of a small number of tech platforms, and the recent Executive Order from President Biden envisages new powers for the FTC to prevent dominant Internet platforms from behaviour that harms competition

<sup>3</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0021/218811/terms-of-reference-mobile-strategy.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0021/218811/terms-of-reference-mobile-strategy.pdf)

***Coordinated action is needed to ensure a level playing field***

The balance of power in the value chain has moved substantially in favour of those that operate over the top and, in the context of this study, the suppliers of the device operating systems, app stores and browsers, who have become de facto gatekeepers. Examples of this include:

- **Changes to operating systems / browsers.** These can have serious operational consequences for the connectivity markets and negatively impact end customers, yet are implemented unilaterally without agreement or negotiation. Unilateral action is possible due to the market power of the operating systems / browsers.
- **App stores.** The app stores have increasing power in the marketplace. Apple has strictly enforced policies in place for the checkout of purchases. The Google Play Store also requires developers to use the Google checkout for purchases. Google does allow “side loading”, where apps can be loaded to the device from outside the Play Store, but increasingly Google is steering users back to the Play Store.

This shift in market power means that market interventions that Ofcom may make as a result of its market review are at risk of being undermined by actions taken by players at the device / operating system / browser / app store level of the value chain. Ofcom and the CMA should therefore approach their market studies and remedies in close collaboration.

**Scope of the market study**

We would like to see the CMA taking an holistic approach to the market study, bringing together the work it has already done on online advertising and its investigation on Google Privacy Sandbox, as well as the current proposed scope and some additional areas of focus.

In terms of these additional areas of focus, we believe they should include:

- **The impact of increasingly closed operating systems**  
Network operators and service providers will also be prevented from competing to provide services currently or potentially offered to consumers and enterprises.
- **Net neutrality rules**  
Net neutrality/Open internet regulation was put in place on internet service providers (ISPs) when it was considered that they could be a risk to the fair functioning of the open internet – potentially acting as a bottleneck. However, much has changed since then. For this reason, Ofcom is considering the guidance for the application of net neutrality rules to ISPs post Brexit. Net neutrality rules have not kept pace with changes in the commercial context (in particular the market power of the gatekeeper platforms), technology or customer expectations. As they stand, they can deter or prevent a range of public benefit services being introduced that would require some level of network prioritisation. The inability to differentiate also has implications for new 5G services. However, any reform of net neutrality rules could be undermined if for

example device operating systems act as system controllers, on both the network and the wider internet.

The CMA should therefore expand its scope and consult with Ofcom to assess:

- How net neutrality rules influence the behaviour of companies in their engagement with one another.
- How net neutrality obligations could be applied at the market bottlenecks that exist today.

If this is not possible within the framework of the market study, the CMA should work separately with Ofcom on a cross-market review.

- **Explicit consideration of the network operator / service provider perspective**

Network operators and service providers are vulnerable to gatekeeper actions that change the way that device users access services. These actions can restrict or eliminate competitive opportunities for mobile network and service providers which would benefit customers. The risk and anticipation of further gatekeeper action of this nature also creates a climate of investment uncertainty for future network and service plans that may otherwise be considered, thereby restricting or preventing competition.

- **Network resilience**

Another issue that spans the CMA and Ofcom market studies is the issue of network resilience and how it is funded. The pandemic has brought into sharp focus the importance of well-functioning networks to all aspects of our lives. With the move to fibre in fixed networks bringing a dependence on mains power, plus the shift in consumer behaviour, the mobile network will increasingly be the network of last resort. This brings with it resilience requirements that will need to be funded by all those relying on it in the wider eco-system, not just the network operators.

- **The role of apps and access to the app stores in a 5G world**

The importance of mobile apps is growing. They can provide a simpler and better user experience online, for example when customers wish to add purchases to their account or when they want to manage their account and services. 5G is expected to result in an enormous uplift in connected devices. These devices are likely to be managed by apps, further entrenching their importance.

In light of this, the CMA should consider whether 5G increases the role of apps, making fair access to app stores and the examination of the role of voice assistants in the discoverability, visibility and findability of a consumer services<sup>4</sup> even more important.

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<sup>4</sup>. We note that the CMA did not reference the European Commission's Consumer Internet of Things sector inquiry, which similarly seeks to take a holistic and forward-looking ecosystem approach. The European Commission's preliminary report contains some insightful observations regarding disintermediation and the significant market status of providers of operating systems and voice assistants and the unique ability of general-purpose voice assistants to leverage more easily into adjacent markets, given their function as a portal to collect data and for consumers to access third party services. As regards operating systems updates, approvals of new apps and updates and app stores, the Commission's preliminary report also notes the concerns of providers of smart wearable devices.

Businesses that rely on the availability of their apps (including network operators) have insufficient power to negotiate or modify the terms set.

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All of which is to say that the CMA's ecosystem study is timely and in order to stay relevant regarding the problems it is seeking to uncover and solve, will need to have regard to a broad range of sources.