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Observations of Tile on the Statement of Scope of the CMA's Mobile Ecosystems Market Study

I. Introduction

The Competition and Markets Authority (“CMA”) published, on 15 June 2021, its Statement of Scope for the mobile ecosystems market study (the “Market Study”).¹ Tile welcomes the launch of this important and timely initiative, which it fully supports. In this submission, Tile shares with the CMA its comments on the Statement of Scope.

Tile is a software and hardware company that helps people find lost or misplaced items. It sells Bluetooth-enabled devices that attach to items like keys, wallets or purses, and it also embeds its finding software into third-party products. Tile-enabled devices are compatible with the Tile app, which provides a simple user interface that enables users to find their items. Tile introduced the idea of a “finding network” which allows everyone with the Tile app installed (regardless of whether they own a Tile device) to, securely and anonymously, help locate someone else’s Tile when the lost item is out of Bluetooth range of the owner.

Tile relies on the Apple and Google ecosystems to operate its business and offer consumers a valuable service. Tile must have both an iOS app and an Android app through which its users can find their Tiles or can help other people find their lost Tiles, through the Tile Network. Tile also needs access to technological features of the device for its Tiles to work with the users’ smartphones and help them find their lost or misplaced items.

Overall, we agree with the CMA’s approach to examine, within the context of this Market Study, a wide variety of issues linked to Apple and Google’s policies regarding their mobile ecosystems. We would, however, like to draw the CMA’s attention to two issues, often overlooked by regulators and competition authorities, which are of utmost importance for companies relying on these ecosystems, as well as consumers: first, the restrictive and harmful rules and practices adopted by companies like Apple around access of third-party companies to technological features of the device, and second, the effects of practices adopted by such firms on innovation. Tile believes that the Market Study is the appropriate vehicle for the CMA to assess how particularly Apple has used its control over the (various layers of its) mobile ecosystem to restrict its rivals’ business operations and innovation, to steal their successful products/services, and then compete with them on an unlevel playing field by adopting policies that favor its own products/services over those of its rivals.²

1 Competition and Markets Authority, “Mobile ecosystems market study: Statement of scope”, 15 June 2021.

2 In this submission, we bring examples from Apple’s anticompetitive and harmful conducts, as Tile has not (yet) experienced similar problematic conducts by Google.



II. The focus on mobile ecosystems is right

Tile fully supports the CMA's decision to look at mobile ecosystems as a whole, and not exclusively focus on a particular component of these ecosystems (e.g., only app stores). Apple and Google's market power across a range of relevant markets is the result of the control over a wide number of products/services that are tightly integrated. In addition, many of their conducts (and their effects) can only be properly understood in the context of the control Apple and Google have over their respective ecosystems, and the dependency of other companies not only on certain components of the ecosystem but on the ecosystem as a whole.

As explained above, so far regulators and competition authorities have taken a narrower view towards Apple and Google's practices, focusing on certain markets (and notably app distribution) and seeing them mostly in isolation from practices in other parts of the ecosystem. In other words, they have stayed away from adopting a wider view over the ecosystem business model Apple and Google adopt and how this affects other companies. This approach did not allow them to consider the cumulative effect Apple and Google's harmful practices have on companies relying on them. For example, Tile has suffered from a series of exclusionary and harmful conducts adopted by Apple, which were linked to Apple's control over each layer of its ecosystem, and which Tile has to endure because of the unavoidable role of the iOS ecosystem:

- Apple copied Tile's "finding network" (by launching the "Find My Network") and Tile's hardware (by launching the AirTag). Apple had previously sold Tile's hardware in its retail stores, worked with Tile on an integration between Tile and Siri, and had information about the Tile app which has been available on the App Store for many years. But this fruitful collaboration ended when Apple decided to compete with Tile by copying its product.
- Apple has introduced changes to iOS which undermined the functionality of the Tile app.
- Apple advantages its own app (a competitor of the Tile app) and services through default permissions / settings.
- Apple to date has refused to give Tile access to the U1 chip in its device, which is necessary for Tile to implement a technology that will improve its services and user experience. Apple only makes this chip available to its own hardware (the AirTag).
- Apple reserves user location data for its own competing services, granting access to companies like Tile only if it directs its customers to Apple's competing FindMy service to find lost items.

The Market Study, therefore, presents the right opportunity for the CMA to examine the wide variety of Apple's anticompetitive conducts, not limiting itself to the unfair App Store policies, but also looking at how Apple may harm rivals and stifle innovation to the detriment of consumers by, e.g., restricting access to or interoperability with technological features of its



devices, confiscating innovations from rivals and then using the scale of its ecosystem and dependencies of third parties to crush them.

III. The inter-related themes identified by the CMA

Tile agrees with the decision of the CMA to organize its work under four themes, i.e., “*competition in the supply of mobile devices and operating systems*”, “*competition in the distribution of mobile apps*”, “*competition in the supply of mobile browsers and browser engines*” and “*the role of Apple and Google in competition between app developers*”.³ These themes will allow the CMA to examine the main competition concerns arising in the various layers of mobile ecosystems. Tile also supports the CMA’s approach to examine a series of cross-cutting themes, such as the presence of barriers to entry and expansion, the control by Apple and Google of key access points to the ecosystem and the ability of these firms controlling the gateways to “*set the rules within which they and other market participants must operate, determining the parameters of competition within their ecosystems.*”⁴

Tile would also like to emphasize the need for the CMA to pay particular attention, during its assessment, to the following issues:

First, *the (lack of) interoperability with and/or access to technological features of Apple’s devices*. For example, Apple has refused to give Tile access to the U1 chip which would allow Tile to utilize Ultra-Wideband (“UWB”), a cutting-edge radio technology used for location and tracking. Apple only allows its own device, the AirTag, access to the U1 chip. Consequently, although Tile has developed a world-class augmented reality finding experience using UWB, it cannot bring this innovation to bear because Apple does not give it access to the U1 chip. Innovation is stifled, and consumers are harmed, as they are deprived from a more precise finding experience. In addition, Tile submits that it is of utmost importance that the CMA examines under what conditions interoperability with and/or access to such features is (or may be) allowed. For example, what has been often overlooked is the requirement imposed by Apple on third parties to sign agreements containing anticompetitive terms (and even guarded by NDAs) if they want to have access to or interoperate with Apple products. This Market Study provides the right opportunity for the CMA to examine such agreements, for example the MFi Agreement, which are non-negotiable and unilaterally imposed by Apple.

Second, *the role of innovation and how Apple may be using its control over the various components of the ecosystem to (i) steal innovation from its rivals or (ii) hinder innovation or (iii) allow innovation only on its terms*. For example, one of the key advantages of controlling a mobile ecosystem is that Apple can gather extremely valuable and commercially-sensitive information on the technologies and the innovative products/services developed by third

3 CMA, “Mobile ecosystems market study: Statement of scope”, paragraph 97.

4 See Id., paragraphs 99-102.



parties that are dependent on its ecosystem. Apple can – and does – use this information to develop its own competing products, services or features,⁵ which, when launched, will automatically gain huge scale. The CMA rightly indicates that it intends to “*explore concerns that Apple or Google could be using their position as operators of app stores (and their position in mobile OSs) to facilitate their expansion into different app categories and favour their own services over competing ones (potentially leading to the foreclosure of actual or potential competitors)*”,⁶ including by looking at the “*collection and use of commercial information on rivals that would facilitate Apple or Google’s expansion into different app categories – eg through their app review process or through their control over the in-app payments and the visibility it gives them over app-related transactions.*”⁷ However, the CMA should not only focus on Apple’s role as the operator of the App Store (or the mobile OS) as what allows it to gather such information. The CMA should look, more broadly, at how Apple’s control of each layer of the ecosystem and the ecosystem as a whole allows it to take advantage of other companies’ innovations. The examination of the agreements Apple imposes on third parties wishing to be available in or interoperate with the Apple ecosystem, e.g., the Apple Developer Program License Agreement and the MFi agreement, is important in this regard. In addition, the CMA should consider how, after having stolen its rivals’ innovation, Apple may then use the same control over (each layer of) the ecosystem to privilege its products/services to the expense of its rivals.

Overall, Apple’s practices can only discourage companies relying on its ecosystem to invest, as their investment can be expropriated by Apple if the latter takes an interest in their innovation, with Apple then being able to advantage its own products/services while further harming the companies it stole the innovation from – and ultimately consumers. The Market Study represents an opportunity to shed light into such practices.

IV. Remedies

Tile considers that all the remedies that the CMA intends to explore as ways to address harms to competition within mobile ecosystems are appropriate.⁸ In particular, interventions

5 This practice has an industry-term: “Sherlocking”. See Reed Albergotti, “How Apple uses its App Store to copy the best ideas,” *The Washington Post*, 5 September 2019, available at <https://www.washingtonpost.com/technology/2019/09/05/how-apple-uses-its-app-store-copy-best-ideas/>.

6 CMA, Mobile ecosystems market study: Statement of scope, paragraph 140.

7 Id., paragraph 138.

8 These remedies are interventions that limit platforms’ ability to exercise market power, interventions to promote interoperability and common standards, consumer choice remedies and separation remedies. Id., paragraph 155.



that would limit Apple's ability to exercise market power are of utmost importance, as they would allow the *ex ante* regulation of Apple's conduct and would avoid the limitation of *ex post* enforcement (e.g., the fact that by the time a remedy is adopted *ex post*, after Apple has engaged in exclusionary and exploitative conduct abusing its market power, the rival Apple has harmed may be out of the market and the remedy may not be effective in restoring competition).

Moreover, consumer choice interventions are of utmost importance in ensuring that mobile ecosystems are fair and competitive, and that consumers are presented with a real choice, and that when they have chosen a third-party product/service, they are not nudged by Apple to switch to its own competing products/services. For example, Apple has a practice of making changes to the iOS that make it harder for third parties to obtain the necessary permissions to offer their services to consumers, while Apple has the necessary permissions on by default for its own services. Tile has been the victim of such practices: when Apple introduced iOS 13, it changed location settings and permissions for third-party apps, by removing the presentation of "Always Allow" upon first launch of the app and hiding it deep in settings. Once users enabled "Always Allow" for Tile, Apple sent frequent prompts nudging the user to turn it off. This denigrated Tile's functionality and user experience, as Tile needs continuous access to users' location in order to allow them to track and find their lost or misplaced items. By contrast, location sharing permissions for Apple's own app (Find My) are activated via Express settings during OS setup, are on by default and require users to go deep into their settings and enter their password to decline collection of location data by Apple. Such differentiated treatment that benefits Apple should be prevented.

Finally, separation remedies would be appropriate to address the conflict of interest that arises by Apple being at the same time the operator of the App Store or the provider of the OS and a competitor of third-party apps being distributed through the App Store or relying on the settings of the OS to function properly.

Tile believes that, in many instances, a combination of these remedies may be required to effectively prevent Apple from engaging in its anticompetitive and harmful practices.

Tile would like to note at this point that does not take issue with Apple competing with third-party app developers or companies. What Tile takes issue with is Apple doing so on unfair terms and in a way that distorts competition. Thus, the purpose of any remedies adopted should be to ensure that Apple, to the extent that it competes with third parties, does so on equal terms, without using its position as the operator of the App Store or control over the iOS or the mobile device to, *inter alia*, use competitive and commercially sensitive information obtained by app developers or companies relying on the iOS ecosystem to its advantage, or to self-preference its own apps or products.

V. Conclusion

Tile considers that this Market Study is an initiative of utmost importance in the efforts to ensure that mobile ecosystems work in a fair manner, to the benefit of competition and

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consumers. Tile remains at the CMA's disposal for any information that would be required during this assessment.