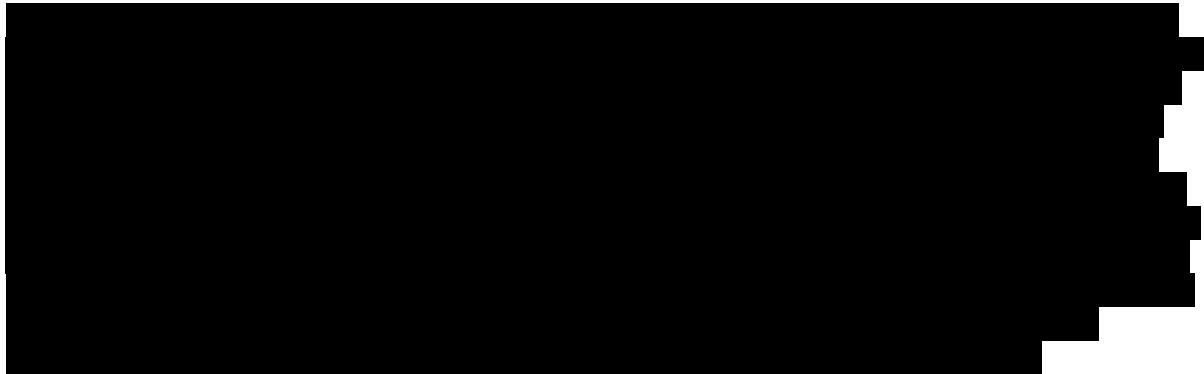


Response to CMA consultation on the interim report of the market study on Apple and Google's mobile ecosystems, 11 Feb 2022

Confidentiality/justification for redactions



Response to market study's potential remedies

We welcome the interim report in the market study into mobile ecosystems. Below we provide feedback on the potential remedies that have been identified in the interim report.



Remedy area 1: interventions relating to competition in the supply of mobile devices and OSs

We have not evaluated in detail the interventions relating to the supply of mobile devices and OSs [redacted]. However, we would note that the barriers to entry for rival providers of OSs are extremely high and remedies are unlikely to be swift. The remedies focused on switching between iOS and Android have the potential to be swifter, however, any remedies in this area must be carefully evaluated to ensure that they do not further damage competition in downstream app markets. We support opening up the payments markets for app stores, as discussed in remedy area 4, as this would benefit all app providers. However, measures to promote the availability or interoperability of Apple's own apps specifically, whilst intended to spur competition within the iOS/Android duopoly, could have the unintended consequence of giving further advantage to Apple's first party apps vis-a-vis competing third party apps - unless accompanied by other measures in remedy areas 2-4. Likewise any measures to facilitate migration of apps and data from iOS to Android devices must apply in a way that does not disadvantage third party apps vis-a-vis Apple or Google's own.

Remedy area 2: interventions relating to competition in the distribution of native apps

As noted in response to remedy area 1, the barriers to entering the mobile OS market are extremely high, with the result being that there are 2 major OS providers who each control the app stores that are the dominant distribution mechanism for apps in their respective and distinct markets. As noted in response to remedy area 4, this control enables the OS providers to find new ways to impose commissions on developers even if alternative in-app payment and off-app payment are allowed [REDACTED]

Accordingly, alternative app stores and/or side-loading may be levers to introduce increased competition in app store business models and commissions. We recognise that there are security implications of these approaches that would need to be considered. Furthermore, if new regulations drive a sudden opening of the app store market to side loading and new app store participants of varying reliability without extensive consumer education, there would be a period of market readjustment that would inevitably disrupt app distribution channels for a time. In addition to security concerns, this could complicate the marketing and consumer discovery of third party apps, and perversely benefit platforms that offer well known first party alternatives. For this reason, while alternative app stores and/or side loading warrant further study to understand where new and innovative solutions could address security considerations, until such solutions are developed we generally favour other interventions.

Remedy area 3: interventions relating to competition in the supply of mobile browsers and browser engines

We have not evaluated or commented upon all the remedies in area 3. In general we support making it easier for users to change their default settings. [REDACTED]

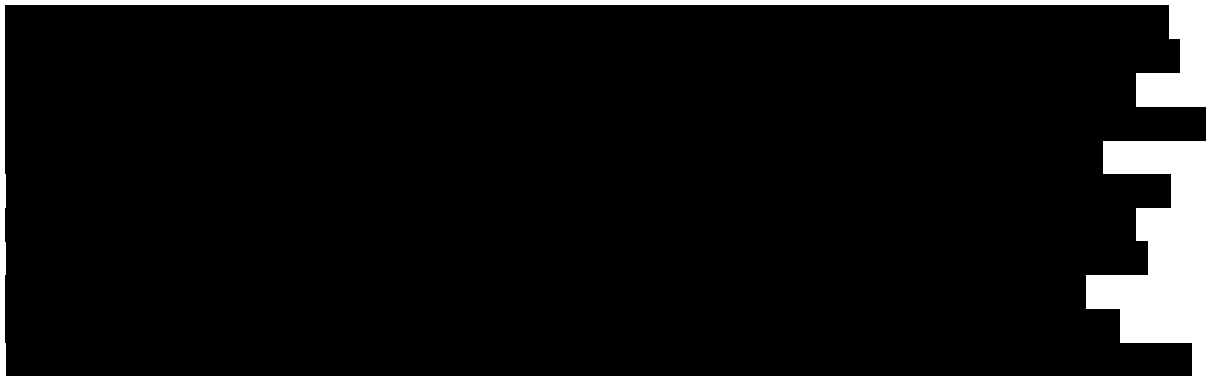
We also recognise the increasing importance of browsers [REDACTED] and believe their importance will increase with the increasing prevalence of web apps [REDACTED]

[REDACTED] browser providers (most notably Chrome and Safari) can control the availability and functionality of web apps [REDACTED] Facilitating competition in the browser market is helpful but not if it results in an environment that requires developers to build for multiple different environments for web apps, therefore looking further into web app functionality makes sense. [REDACTED]

Remedy area 4: interventions relating to the role of Apple and Google in competition between app developers

Interventions to address harm to competition through the operation of app stores

Ensuring that Apple and Google are not able to restrict third party access to hardware and software unreasonably (7.81-7.82)



Reducing the ability of Apple and Google to provide their own apps with a competitive advantage through pre-installation and being set as the default option (7.83)



Requiring fair and transparent app review processes (7.84-7.86) and requiring fair and transparent review processes elsewhere in the ecosystems (7.87)

The proposals for consistent, transparent, fair, reasonable and non-discriminatory app review processes are critically important to having visibility into whether the app market is operating properly. It will be important that the rules are crafted very carefully with the input of developers and that they also address the issue of timeliness so that delays cannot be imposed to competitively disadvantage developers. Finally, app review processes should be auditable and a regular audit requirement should be imposed on the first party app store providers to rebuild trust in the operation of these marketplaces. [REDACTED]

Requiring Apple and Google to provide more transparency about their algorithms especially factors that influence app store rankings (7.88)

We support the proposals for greater transparency in ranking algorithms and the factors that influence ranking and display. It is especially important that app store providers are not able to self preference by using data or ranking tools that are not open to competitors. [REDACTED]

Requiring Apple and Google to not unreasonably share info from one part of their business (app store/app review) to their app development business (7.89)

We agree that there is a strong case to ensure that information from the app store or app review process should not be shared to the app development business. This is akin to not only setting the rules of the game and competing in it, but also seeing every other team's game plan every week. Such data separation is harder to monitor than operational or structural separation and we would welcome engagement with developers on how effective regulatory oversight of such separation could be ensured.

Requiring consistent treatment of own apps and third party apps for privacy purposes (7.90)

A requirement for consistent treatment of first and third-party apps for privacy purposes is an important principle. [REDACTED]

[REDACTED] Regulatory engagement with developers will be important to identify areas where differential privacy treatment is used for self-preferencing and to ensure that any solutions protect consumer interests as well as competition in the market.

Requiring Apple not to unreasonably restrict cloud-based streaming apps (7.92)

See comments in relation to remedy area 2 above.

Interventions to address concerns with IAP systems

Allowing greater choice of in-app payment options (7.99-7.101)

Allowing app developers to offer alternative payment processing and have a direct selling relationship with their users would benefit both the market in alternative payment systems

and the market in apps. Savings to developers resulting from more competitive payment processing fees could be reinvested in product innovation and user experience (UX).

Beyond improved innovation and UX, consumers would also benefit from choice in payment provision for instance by being able to utilise an option where they accrue loyalty points or other benefits. However, we see a gap in the proposed remedies that could undermine the benefits to the market in apps from opening up the payments market. That is the continued ability of Apple and Google to seek disproportionate fees for the use of app stores.

The study discusses the means by which Apple and Google can continue to apply commissions on alternative payment mechanisms and references Google's intention to do so (at a similarly high level) in response to the Korean legislative change. Likewise Apple last week announced its intent to do the same in response to the ruling of the Netherlands' Authority for Competition and Markets. Whilst we recognise that there are costs involved in the running of the stores and some compensation is fair, the unreasonable level of commissions for app distribution

are dictated not by the lack of competition in the payments market (although as discussed below that absolutely needs to be addressed) but the duopoly in the provision of app stores and mobile OSs.

Whilst we recognise that the CMA is not focused on price regulation, we believe the second half of the study should consider alternative means to tackle unreasonable commissions and to prevent them simply migrating outside of app stores to be applied at OS or other levels. Leaving the problem of unreasonable commission levels to be corrected only via the remedies intended to spur new entrants into the OS market is insufficient. Furthermore, leaving this loophole will undermine the other benefits of opening up the payments market - developers are less likely to use alternative payment mechanisms if the vast bulk of the commission remains the same and there is price competition only on a tiny part of it and consumers will not feel the benefit of the savings that developers could pass on if they were paying commissions determined by a functioning market. As mentioned in response to remedy area 2, we would welcome the second part of the study looking further into how alternative app stores might operate in a way that is secure, does not disadvantage third party apps and does not involve the alternative app stores being punitively levied by Apple and Google. More urgent however is the need to consider alternative and swifter means to ensure that any non-payment processing elements of commissions are proportionate and

Allowing greater promotion of off-app payment systems (7.102-7.103)

Allowing greater promotion of off-app payment options is another important measure to introduce competition and consumer choice into the app distribution and payments markets for both iOS and Android.

This issue is interrelated with the cancellations/refunds issue raised in paragraph 6.145-6.147

Restricting the potential for self-preferencing of Apple and Google’s own apps through requiring the payment of commissions from third party apps active in sectors where Apple and Google have their own apps (7.104-7.105)

[REDACTED] It is not clear to us whether the proposed remedy in 7.104 is proposed as an alternative or in addition to those in 7.99 and 7.102. It is also unclear whether the proposal is that competing third party apps using off-app payment options would be obliged to pay no commission to Apple and Google, or just no payment processing fee. If the latter, the loophole outlined above (in relation to greater choice of in-app payment options) remains. Finally, it is unclear to us, in the event that option (i) (i.e. allowing competing apps to disable Apple and Google’s payment systems) was pursued as a remedy, why payments would have to be made off-app. Our understanding is that there is no technical blocker to preclude alternative payment processing *in-app* in this scenario. [REDACTED]

[REDACTED]

Separation remedies to address leveraging of market power into app development

Data separation (Apple and Google can’t share commercially sensitive data internally and build it into their technical design or commercial arrangements) (7.108)

As discussed above in relation to paragraph 7.89 we believe there is a strong case for data separation between Apple and Google’s app store and app store review processes on the one hand and their app development businesses on the other. Data separation warrants further study to consider if there are additional areas where it would help to address anticompetitive behaviour. [REDACTED]

[REDACTED]

Operational separation (Apple and Google must run their app development process independently, and treat all apps consistently) (7.109-7.111)

We have not evaluated this option.