

Mobile Ecosystems Market Study
Response to Interim Report by Bauer Media Audio

This submission provides comments from Bauer Media Audio (“**Bauer**”) on the interim report for the mobile ecosystems market study (the “**Interim Report**”) published by the Competition and Markets Authority (“**CMA**”) on 14 December 2021.

I. Introduction

Bauer applauds the CMA’s ongoing work in digital markets. We generally welcome the Interim Report and strongly support the establishment of a new pro-competition regulatory regime for digital markets in the UK. For example, we agree with the following key findings:

- Google and Apple have created ecosystems around their mobile phones, meaning that when consumers purchase a mobile phone, they effectively enter either the iOS or the Android OS powered ecosystems. Due to the level of control retained by Google and Apple in these ecosystems, whereby they determine the conditions on which users can access content and content providers can access users, it is very difficult for competing ecosystems to emerge.¹
- Although security, quality of service and safeguarding personal data are important considerations, Google and Apple are enforcing certain rules upon business users based on these grounds that ultimately favour their own products and services to the detriment of business users of their mobile ecosystems.²
- The resultingly weak competition within and between Google and Apple’s mobile ecosystems leads to consumer harm by hindering innovation, allowing the possibility of charging prices that are above a competitive rate (and/or imposing unfair contractual terms), and preventing users from making effective choices within their ecosystems.³

However, this submission will focus on Google and Apple’s voice assistants (i.e., Google Assistant and Siri), which enable Google and Apple to strengthen their market power in their respective mobile ecosystems as well as allowing them to leverage them into new markets.

[X]

¹ Competition & Markets Authority, *Mobile Ecosystems Market Study Interim Report*, 14 December 2021, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1048746/MobileEcosystems_InterimReport.pdf (the “**Interim Report**”), page 6.

² *Ibid.*, paragraphs 2.76 – 2.79.

³ *Ibid.*, paragraphs 2.65 – 2.71.

We are disappointed that the CMA has not yet focused on voice assistants, despite the publication of new evidence, including the following:

- Bauer Media and other content service providers’ (such as the BBC) responses to the CMA’s consultation on the Statement of Scope accompanying the mobile ecosystems market study,⁴
- the recommendations contained within DCMS’ Radio and Digital Audio Report,⁵
- the European Commission’s preliminary sector inquiry findings into the consumer “Internet of Things” (“IoT”),⁶ (which were confirmed in the final report).⁷

We hope that the CMA will now assess this growing body of evidence in the second half of this market study.

II. Relevance of voice assistants to the Market Study

i. Issues raised by voice assistants

Our response to the Statement of Scope had presented various risks posed by the activities of Google and Apple in the supply of voice assistant software, which fall squarely within the scope of the Market Study [X]

Moreover, as the CMA will be aware, the UK Government published its Digital Radio & Audio Review Report on 21 October 2021.

⁴ Responses to Statement of Scope, “Submission to CMA by Bauer Media Audio regarding the importance of voice assistants” and “BBC comments on the CMA’s statement of scope regarding its mobile ecosystems market study”.

⁵ Department for Digital, Culture, Media & Sport, *Digital Radio and Audio review*, 21 October 2021, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1027206/Digital_Radio_and_Audio_Review_FINAL_REPORT_single_view.pdf (the “**Digital Radio & Audio Review Report**”).

⁶ European Commission, *Commission Staff Working Document: Preliminary report – sector inquiry into consumer Internet of Things*, 9 June 2021, SWD(2021) 144, available at: https://ec.europa.eu/competition-policy/system/files/2021-06/internet_of_things_preliminary_report.pdf (the “**Commission IoT Preliminary Report**”).

⁷ European Commission, Report from the Commission to the Council And the European Parliament: Final report - sector inquiry into consumer Internet of Things, 20 January 2022, COM(2022) 19, available at: https://ec.europa.eu/competition-policy/system/files/2022-01/internet-of-things_final_report_2022_en.pdf (the “**Commission IoT Final Report**”).

The review was commissioned by the Government in February 2020 with the objective of assessing likely future trends in listening and to make recommendations to Ministers on ways of strengthening UK radio and audio. The review was undertaken in consultation with a broad range of industry stakeholders, including Bauer Media.

The following recommendations are of particular relevance to the Market Study:

- The report concludes that *“the government needs to consider the introduction of regulation which (a) places radio on the same footing as TV in relation to carriage and prominence rules and which protects radio’s content and its ability to reach listeners, and (b) extends the role of the new Digital Markets Unit (DMU) regulatory framework to digital audio platforms in order to guard against types of ‘gatekeeping’ behaviour which may disadvantage the place of radio and its ability to reach audiences.”*⁸
- The report also calls for *“new legislation that makes clear that platform operators must not limit or restrict access to services or charge for carriage of UK audio services. Any such regulations should clarify that platforms that carry UK radio and audio services cannot mandate their own ad-tech solutions and must not insert or overlay sponsorship and advertising around UK radio or audio content without the prior express consent of the provider.”*⁹
- The report supports *“regulatory changes to ensure radio stations and radio and audio content can be easily found and discoverable by users of voice assistant platforms, including smart speakers and in-car infotainment systems”*. This includes *“ensuring that content is accurately and impartially routed to the listener and that content providers”*, *“providing for greater transparency by platforms about the algorithms which underpin the discoverability of broadcaster content”* and *“consideration of new powers to regulate prominence for radio in car dashboards.”*¹⁰
- The report recommends *“regulatory changes to allow UK radio and audio full access to data generated by their presence on connected listening platforms (this should deal with issues such as user consent that may be unduly used to justify withholding data on service usage).”* This includes: *“requirements on platforms to share all listening, performance and*

⁸ Digital Radio & Audio Review Report, paragraph 5.24.

⁹ *Ibid.*, Recommendation 24.

¹⁰ *Ibid.*, Recommendation 25.

commercial data generated with UK radio and audio in relation to the data generated from their presence on connected listening platforms (whether by skill/action or other arrangement) on regulated terms without any requirement for commercial agreements and without monetising such data in exchange for access”.¹¹

We would like to draw the CMA’s attention to the European Commission’s sector inquiry findings into the consumer IoT, now that the Commission IoT Final Report has been published (confirming the findings in the Preliminary Report). The inquiry has identified a wide range of concerns. Below we identify those issues that are of key relevance to Bauer Media, and the wider radio industry.

- The Commission Working Paper accompanying the IoT Final Report¹² reports that over half the sector inquiry respondents were creative content providers, including radio broadcasters.¹³ Respondents anticipate dramatic growth in consumer IoT services, including the audio-streaming market; the Commission specifically observes that “*radio is predicted to remain strong, but to shift from analogue and digital radio receivers to connected smart speakers*”.¹⁴ This is consistent with Bauer Media’s own market experience.
- Regarding the role of voice assistants and smart devices as intermediaries standing between users and providers of consumer IoT services, such as radio broadcasters:¹⁵
 - Respondents raised concerns that user relationships and user experiences were increasingly controlled by voice assistants and smart devices, to the detriment of service providers.
 - The Staff Working Paper cites specific concerns received from radio broadcasters over the role of voice assistants as “gatekeepers” to services on smart devices (“*radio broadcasters ... put forward similar concerns regarding voice assistants controlling the user’s experience, resulting in the loss of brand attribution or recognition, as well as the direct relationship with the user.*”)¹⁶

¹¹ *Ibid.*, Recommendation 26.

¹² European Commission, Commission Staff Working Document Accompanying the Document: Report From The Commission to the Council and the European Parliament Final Report – Sector Inquiry into Consumer Internet of Things, 20 January 2022, SWD(2022) 10, available at: https://ec.europa.eu/competition-policy/system/files/2022-01/internet-of-things_final_report_2022_staff_working_document_0.pdf (the “**Commission Working Paper accompanying the IoT Final Report**”).

¹³ The Commission Working Paper accompanying the IoT Final Report, paragraph 103.

¹⁴ *Ibid.*, paragraph 153.

¹⁵ The Commission IoT Final Report, paragraph 47.

¹⁶ The Commission Working Document accompanying the IoT Final Report, paragraphs 476-477.

- A related issue was raised over access to user data. Some respondents claimed that due to the intermediation of voice assistants and smart device operating systems they do not have consistent and immediate access to relevant data on the use of their own services.¹⁷ This can prevent service providers from customising their user offering to compete effectively with others.
- Separate concerns were expressed over the impact of default settings, the pre-installation of proprietary applications and use of prominence settings that favour selected applications/content. These features can restrict consumers’ ability to discover content. The Commission concludes that providers of services that are pre-installed, set as a default or otherwise given prominence likely gain important competitive advantages relative to others (with favoured services often owned by the leading smart device providers (i.e., Amazon, Apple, Google)).¹⁸

In Bauer’s view, the issue is approaching a tipping point. A recent report by Frontier Economics commissioned by Bauer¹⁹ underlines that, [§<]

We are, therefore, disappointed with the fact that the CMA has not analysed the critical and growing role played by voice assistants in mobile ecosystems, except for the occasional glimpse of issues that the CMA could have explored in further detail.²⁰

The market study is already wide-ranging, so on one level it is understandable that, having left voice assistants out of its initially planned workstreams, the CMA does not wish to expand its inquiry to include voice assistants. However, the CMA has flexibility about how much detail to go into during its market study, and the inclusion of voice assistants would not necessarily require significant additional work. The CMA’s work could focus on the ability and incentive for voice assistants to harm competition, without the need to undertake detailed analysis of its likely effects at this stage.

¹⁷ *Ibid.*, paragraph 495; The Commission IoT Final Report, paragraph 42.

¹⁸ *Ibid.*, paragraphs 440 – 469; The Commission IoT Final Report, paragraph 45.

¹⁹ [§<]

²⁰ For example, the Interim Report gives an example of how voice assistants act as gatekeepers, which could become even more important if and when voice assistants represent the access point for a large proportion of online activity: “[W]e understand that Apple’s and Google’s voice assistants – Siri and Google Assistant – which are integrated with the operating system, will always revert to using Safari and Chrome respectively, regardless of the choice of default browser the user has made for their device” (paragraph 7.64).

This would follow the same guiderails as much of the CMA’s analysis in this market study and its previous digital advertising market study, so the theoretical framework is already established. The remedies in Chapter 7 of the Interim Report could readily be applied to voice assistants, so the failure to take account of them in this market study would be a missed opportunity for the CMA to protect the radio industry from the risks identified above and elsewhere.

Given that voice assistants surely need to be considered by the CMA (or DMU) at some point in the next year or so (in line with DCMS’ Digital Radio & Audio Review Report), it would seem most efficient to include this analysis within the current market study where it would fit so neatly. An analysis of mobile ecosystems would be incomplete without looking properly at where the sector is heading, and voice assistants are a major part of that future.

The development of voice assistants is undoubtedly at a relatively early stage compared with (e.g.) search engines, social media platforms or app stores. However, this, coupled with the growing body of evidence set out above, is a good reason why the CMA should start its work now. It would be hugely disappointing for the DMU to wait until the voice assistant markets have tipped, and/or downstream competitors have been weakened or excluded, before issuing a report lamenting that fact and finding that effective remedies are difficult to implement at that stage.

ii. *Categorisation of voice assistants*

Google Assistant and Siri are seldom mentioned throughout the 445 pages of the Interim Report. In Figure 2.2, which provides an illustration of how central some connected devices within mobile ecosystems are to the scope of the Market Study, smart speakers and voice assistants are grouped together.²¹ As discussed in our submission to the Statement of Scope, voice assistants are software applications that provide capabilities for oral dialogue with a user in natural language. This software is installed on a variety of hardware products including smart speakers. Voice assistants are not, however, the same as the hardware into which they are integrated.

The distinction between smart speakers and voice assistants is important because of the increasingly central role played by voice assistants in mobile ecosystems. In Figure 2.2, voice assistants are ranked third in how significant they are to the focus of the Market Study, in the same rank as smart speakers and smart home technology devices, and behind wearables (e.g., watches and earphones) and mobile devices. This central role is one of the main findings of the Commission’ sector inquiry into the consumer IoT. In her statement on the initial findings of the Consumer IoT sector inquiry,

²¹ Interim Report, page 47.

Executive Vice-President Margrethe Vestager referred to the “*central role that voice assistants play in the interconnection of different smart devices and services*“, and considered that “*it is precisely because the Internet of Things is developing fast that we need to ensure it does so in a competitive way*“, as there are “*indications that some practices that we know too well may lead to tipping and to the emergence of gatekeepers*“.²² In her statement accompanying the final report, Ms Vestager concluded that “*this is a market with high barriers to entry, a few vertically integrated players and concerns about access to data, interoperability or exclusivity practices amongst others. We are confident that the sector inquiry's findings will provide guidance on the Commission's future enforcement and regulatory activity. We are also hopeful that it will stimulate companies to pro-actively address those concerns.*”²³

Categorising voice assistants as connected devices detracts from the critical role played by voice assistants in mobile ecosystems. Notably, unlike the other examples of connected devices in the Interim Report, voice assistants are not accessory devices that are “added-on” at the discretion of the user to increase the capability of the mobile device he or she owns. Both Google Assistant and Siri come pre-installed within smartphones, tablets, computers, smart speakers, smart watches and smart TV operating systems by Google and Apple. Although it is possible to de-activate them by changing the factory settings of the device, it is impossible to uninstall Google Assistant or Siri from these devices. In other words, voice assistants are more than just connected devices as they are practically unavoidable parts of Google and Apple mobile ecosystems.

iii. *Voice assistants as gateways for many businesses*

Voice assistants are vital ways of accessing end users for many business users that provide functionalities to voice assistants (also known as “commands” or “skills”). While our submission on the Statement of Scope focused on their ability to play music on streaming services or provide access to radio stations, which largely overlap with the main functions of smart speakers (and may thus result in confusion between the two), voice assistants provide many more gateway services that allow end users and business users offering voice-based functionalities to interact, such as:

- providing information from Wikipedia or IMDb;
- playing videos, TV shows or movies on TVs and streaming from e.g., Netflix;

²² European Commission, “Statement by Executive Vice-President Margrethe Vestager on the initial findings of the Consumer Internet of Things Sector Inquiry” (Press release, 9 June 2021), available at: https://ec.europa.eu/commission/presscorner/detail/e%20n/speech_21_2926.

²³ European Commission, “Commission publishes final report on consumer Internet of Things sector inquiry” (Press Release, 20 January 2022), available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_402

- online shopping;
- ordering food;²⁴
- calling for a ride;²⁵
- reading audiobooks; and,
- making holiday plans or checking the status of a flight.²⁶

The CMA states that it is primarily interested in connected devices that “*serve to insulate Apple or Google from competition; or, where Apple and Google may use their gatekeeper positions to give a competitive advantage to their own apps and services in such downstream markets.*”²⁷ As discussed in more detail in our submission to the Statement of Scope and as demonstrated by our analysis in Section III of this submission on the application of the SMS designation test to Google Assistant and Siri, their respective voice assistants may serve as a central (and growing) method of protecting their positions and providing them with a competitive advantage in various downstream markets.

[X]

²⁴ [X]

²⁵ [X]

²⁶ [X]

²⁷ [X]