



# CMA Mobile Ecosystems Market Study

## BT Response to CMA Interim Report

1. BT welcomes the CMA's interim report on its mobile ecosystem market study, which is an important step in establishing an effective pro-competitive regulatory regime for large firms engaged in digital activities.
2. In this response, we comment on two aspects of the CMA's interim report:
  - a) The impact of future technologies on the mobile ecosystem and the need to design any regulatory interventions to take account of such changes; and
  - b) The CMA's conclusions on strategic market status designation, and the evidence used to apply it to certain digital activities.

### **The impact of future technologies on the mobile ecosystem**

3. In our previous response to the CMA's Statement of Scope, we noted that the scope of the market study was focused on certain aspects of the mobile ecosystem as it operates *today*, and does not consider how *future* technologies might shape the mobile ecosystem.<sup>1</sup> We described one such technology, e-SIMs, which we believe could further entrench digital firms' market power in the mobile ecosystem, with potential harms to consumers.
4. 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.<sup>2</sup> The same is true of the mobile ecosystem with adjacent markets at risk of unfair competition.
5. We asked the CMA to consider in its market study how future technologies might affect competition in the mobile ecosystem, and the process by which it would adjust any interventions to reflect these market changes.
6. In its interim report, the CMA has not provided clarity on how future technologies within the mobile ecosystem might affect its interventions. Whilst the CMA has undertaken a thorough review of competition in certain parts of the mobile ecosystem today, it has not looked forward to how new technologies, some of which may be rolled out very quickly, might affect its conclusions.
7. As a consequence of the scope of its study, the CMA's proposed interventions are attempting to minimise consumer harms today, rather than preventing future harms, some of which may occur in the short-term. There is a risk that if the CMA does not consider the impact of future

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<sup>1</sup> [Response: BT Group PLC \(publishing.service.gov.uk\)](#) paragraph 31, p6.

<sup>2</sup> [Unlocking digital competition: Report from the Digital Competition Expert Panel \(publishing.service.gov.uk\)](#) paragraph 3.26, p88.

technologies, digital firms with market power may modify their business activities after interventions are put in place in a way that circumvents their effect, resulting in further consumer harm.

8. In our response to the Statement of Scope, we described how e-SIMs could result in a digital firm with market power over mobile handsets and operating systems presenting a choice screen to consumers for connectivity.<sup>3</sup> By controlling how the choice screen is presented, the digital firm could extract rent from connectivity providers, for example by setting a price for a network provider to appear on the choice screen that is well in excess of the cost of providing the choice screen. By reducing the ability of network providers to earn a fair return on network investment, this could ultimately harm connectivity providers' incentives to invest in mobile networks. The digital firm could also enter the connectivity market as a mobile virtual network operator (MVNO) and present its own connectivity service on the choice screen. This could provide it with incentives to self-preference its own connectivity, to the detriment of the competition and consumers in the long run.
9. We note that Virgin Media O2 described how another technology, Private Relay, also demonstrates the ability of a digital firm to set rules for how consumers interact with network providers.<sup>4</sup> Virgin Media O2 noted that the technology could prevent network providers from determining web-browsing habits, which means network providers could be prevented from developing new services for consumers using web traffic data.
10. Whilst the CMA cannot forecast what new technologies will develop in the mobile ecosystem, it can signal its intent to ensure new technologies (within a market where competition concerns have already been identified) are reviewed promptly. The new ex-ante regulatory regime to promote competition in digital markets provides the framework for considering these new technologies. Under this regime, firms with strategic market status (SMS) may be subject to a Code of Conduct and pro-competitive interventions. This regime could allow timely modifications to any Code of Conduct or pro-competitive interventions if appropriate.
11. More specifically, there is a case for the CMA to recommend to the DMU that certain new technologies are considered when designing any Code of Conduct, in addition to the activities already considered within the CMA's market study. By the time the DMU gains statutory powers, some of these new technologies may have emerged and been adopted by consumers, which would warrant the DMU reviewing the mobile ecosystem again, including which new technologies and activities should be brought into scope.
12. **Recommendation:** In its final report, the CMA should recommend to the DMU that it reviews the mobile ecosystem when it applies the ex-ante regulatory regime for SMS firms, and check whether any new technologies should be brought into scope. The CMA should also highlight in its final report any specific technologies the DMU should review at the time, such as e-SIMs and Private Relay.

### **SMS Designation**

13. Whilst SMS designation will be formally undertaken by the DMU once it has statutory powers, the CMA has set out its initial findings on which digital firms might have SMS within the mobile ecosystem. The CMA has provisionally found that Apple has SMS in relation to mobile devices and operating systems, native app distribution and browsers, and Google has SMS in relation to mobile operating systems, native app distribution and mobile browsers/browser engines.<sup>5</sup>
14. SMS designation is intended to be a mechanism for identifying firms with entrenched and substantial market power in at least one digital activity. SMS designation should take account of the future potential ability of those firms to exert their market power in ways that may harm

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<sup>3</sup> [Response: BT Group PLC \(publishing.service.gov.uk\)](#) section 2.2, p3-4.

<sup>4</sup> [Response: Virgin Media O2 UK Limited \(publishing.service.gov.uk\)](#)

<sup>5</sup> [Mobile ecosystems: Interim report \(publishing.service.gov.uk\)](#), paragraph 8.64 and 8.119, p414 and p425.

consumers. This mechanism should reflect the potential for new technologies to change how SMS firms exert their market power. An assessment of market power should leave room for changes in parts of the mobile ecosystem and changes to the way SMS firms exert their market power.

15. Because of the potential for such changes, SMS designation should be *broad*, so that it covers all the digital activities of an SMS firm that may result in consumer harm including those enabled by new technologies where harms can reasonably be predicted without intervention. If SMS is tied too narrowly to those activities that the DMU has competition concerns about today, then that would potentially preclude it from adapting the Code of Conduct for new technologies.
16. An SMS designation that stems from a particular set of digital activities, but applies to the entire firm, would mean the DMU would not have to undergo a fresh SMS designation, and could then more quickly adapt any Code of Conduct to take account of new technologies.
17. In assessing SMS as part of its market study, the CMA considered whether mobile handsets and mobile operating systems comprise the same digital activity. In making its assessment, the CMA considered the following features of the market:
  - a) Whether any other operating systems are available on the device;
  - b) Whether there are limitations on using other operating systems on the device; and
  - c) Whether in practice, users of the device choose to use another operating system.
18. We agree with the CMA's approach to considering whether mobile handsets and operating systems should be considered the same digital activity. If operating systems are either intrinsically tied to a handset or if in practice there are actual or perceived barriers preventing users from using a different operating system, the handset and operating system should be considered as one digital activity. If a firm has substantial and entrenched market power that gives the firm a strategic position in relation to this particular digital activity, then SMS should apply to the entire firm. This would allow the Code of Conduct to be adapted to address changes in how the firm supplies its mobile handsets and operating system based on new technologies.
19. **Recommendation:** The CMA should maintain its proposed conclusions on SMS in relation to mobile handsets and operating systems in its final report, and apply SMS broadly to the digital firm, so that future changes in the activity can be reviewed quickly without the need for a new SMS designation.
20. We would welcome the opportunity to assist the CMA with its market study, particularly on future technological changes that may be relevant to its review of the mobile ecosystem and its approach to SMS designation.