

# CMA Mobile Ecosystems Market Study: Interim Report

## Response from DMG Media

1. This submission is the response of DMG Media to the CMA's interim report in its mobile ecosystems market study, published on 14 December 2021 (the "**Interim Report**"). DMG Media is the publisher of the Daily Mail, Mail on Sunday, Metro and i newspapers; MailOnline, metro.co.uk and inews.co.uk websites; and New Scientist magazine.
2. DMG Media has a keen interest in the CMA's work in the digital sector and in the success of the new Digital Markets Unit ("**DMU**"). In DMG Media's view, the Interim Report continues the CMA's impressive work. We encourage the CMA to move forward with its proposals as quickly as possible so that the existing situation of weak competition in key digital markets can be addressed.

### Introduction

3. As the CMA knows, news publishers such as DMG Media cannot access a significant proportion of their audiences without dealing with Google and Apple (and Facebook, which is not the subject of the current market study). These gatekeepers therefore hold substantial bargaining power and can unilaterally impose commercial terms on news publishers without variation.
4. DMG Media's websites do not charge readers for their online content. The costs of employing reporters, editors, photographers, video journalists, and running the website are paid for by selling advertising space alongside news articles. Yet, while online advertising continues to grow as news consumption has shifted from print to digital, news publishers have struggled to match the dramatic decline in revenue from their newspaper operations.
5. As the CMA rightly points out, Apple and Google control access to readers on mobile devices through their ownership of the operating systems and app stores, while they also compete in the downstream activity of news publishing with Apple News, Apple News+, and Google News Showcase. In the case of Apple, its control enables it "*to introduce policies and terms, such as App Tracking Transparency, which may operate to the detriment of ad-funded apps, and which push users towards apps which derive revenue from users having to make in-app purchases (in relation to which it is able to collect a commission)*" (paragraph 44<sup>1</sup>).

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<sup>1</sup> References to paragraph numbers in this submission are to the Interim Report.

6. British journalism needs the new DMU regime to redress the balance so that original journalism can continue to be produced, and all companies relying on digital platforms with strategic market status (“SMS”) to access their customers can feel more confident that their business models will not be undermined. In the modern world, most companies cannot escape their reliance on the SMS firms.
7. The Government first recognised the damage that anticompetitive practices by SMS platforms were causing to news publishers in the UK with the announcement of the Cairncross review in June 2018. Since then there have been reports from the Furman Review, the online platforms and digital advertising market study, the Digital Markets Taskforce report and the Government’s consultation on the DMU regime (which closed more than four months ago). A lot of excellent work has been done – much of which has been closely followed by other governments and regulators – and we applaud the decision to set up the DMU in advance of legislation. But the DMU will have no teeth until that legislation is in place. This must be pursued with urgency if the UK is to retain a sustainable and diverse news media industry.
8. Against this backdrop, we are disappointed by the CMA’s decision not to take matters into its own hands and launch a market investigation. Paragraph 9.12 states: *“We may, for example, revisit our present decision not to make a reference if the legislation required to bring the proposed new regime into force is not laid before Parliament for some time”*. It is now more than 18 months since the final report in the CMA’s previous market study into online platforms and digital advertising, which contained a very similar statement.<sup>2</sup> There is currently no timetable setting out when we can expect the Parliamentary process to start. In our view, it is therefore time for the CMA to recognise that its reliance on the Government for a timely solution has been misguided.
9. DMG Media agrees with much of the substantive analysis in the Interim Report, including the provisional findings that Apple and Google would satisfy the SMS test for their activities in browsers, app stores and operating systems (and, for Apple, its devices too). However, the rest of this submission will focus on some specific issues that most directly affect news publishers, which are assessed primarily under the CMA’s “Theme 4” and “Remedy Area 4”:
  - a. competition between app developers and the App Tracking Transparency (“ATT”) framework;
  - b. the harmful effects of ATT; and

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<sup>2</sup> The final report, paragraph 10.28, stated: *“We are optimistic that, following the report of the Taskforce, the government will be ready to take forward the necessary legislation for establishing the Digital Markets Unit in good time. If that turns out not to be the case, or if some of our recommendations are judged not to be well-suited to the emerging new regime, then the CMA will stand ready to take direct action of its own through a market investigation. The CMA will keep this option under review following the conclusion of the Taskforce.”* Available at: [https://assets.publishing.service.gov.uk/media/5fa557668fa8f5788db46efc/Final\\_report\\_Digital\\_ALT\\_TEXT.pdf](https://assets.publishing.service.gov.uk/media/5fa557668fa8f5788db46efc/Final_report_Digital_ALT_TEXT.pdf).

c. remedies.

### **Competition between app developers and the ATT framework**

10. We agree with the CMA's finding that *"Apple and Google are able to use their control over their app stores, operating systems and (in Apple's case) devices to set the 'rules of the game' for competition between app developers"* (paragraph 53). We agree with the CMA's concerns about opaque and inconsistent app review processes, changing rules, pre-installation of apps, the use of defaults, the ranking of app store search results, contractual terms that weaken app developers' intellectual property rights, and the use of app developers' commercially sensitive data to gain a competitive advantage and/or launch new products.
11. We particularly agree with the finding that Apple and Google have the ability and incentive to prioritise their own apps and third-party apps which depend on Apple's and Google's in-app payment systems (paragraph 6.119). This is clear in the news publishing industry where ad-funded publishers are being disadvantaged by ATT.
12. In our response to the initial statement of scope, we stated that the CMA should investigate the competitive effects of ATT in detail.<sup>3</sup> We are therefore pleased that the CMA has done so with a high level of rigour in Chapter 6 of the Interim Report.
13. In our response to the initial statement of scope, we also discussed Apple News in some detail (in Part II). Apple News is an important case study for Apple's use of 'privacy washing', in combination with other tactics such as the pre-installation of its own apps, to hand itself advantages in adjacent markets. We therefore encourage the CMA to specifically highlight Apple News as a case study in its final report.
14. Like the CMA, we are *"supportive in principle of market developments that promote greater control and choice for consumers in a way that is competitively neutral"* (paragraph 60). However, again like the CMA, we are:  
  
*"concerned that Apple may not be applying the same standards to itself as to third parties, and the design and implementation of the ATT prompt to users may be distorting consumer choices. Ultimately this may mean that Apple is able to entrench the position of the App Store as the main way of users discovering apps, may give an advantage to Apple's own digital advertising services, and could drive app developers to begin charging for previously free, ad-funded apps"* (paragraph 60).
15. We appreciate the clarity of the CMA's findings. For example, we agree with the CMA's finding that: *"Apple's own use of its users' personal data appears to us to be no less consistent with this explanation of tracking from the ICO than that of third-party app developers"* (paragraph 6.243). We also agree with the concern that: *"Apple has chosen a choice architecture for the ATT prompt that does not help consumers to make effective choices, in that it could unduly influence some consumers to opt out from data sharing in*

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<sup>3</sup> Submission dated 26 July 2021, available at:  
[https://assets.publishing.service.gov.uk/media/617aa2f28fa8f5297cc02c6a/DMG\\_Media.pdf](https://assets.publishing.service.gov.uk/media/617aa2f28fa8f5297cc02c6a/DMG_Media.pdf).

*a way that is inconsistent with their preferences. We are also concerned that Apple is not applying the same standards to itself as to third parties when it comes to seeking opt in from consumers for personalised advertising” (paragraph 6.248, and see also paragraphs 6.261 to 6.262).*

### **The harmful effects of ATT**

16. As the CMA might expect, we have been closely monitoring the effects of ATT on our business. We can therefore help the CMA to update the figures quoted in paragraph 6.265.
17. As predicted, the availability of Apple’s Identifier for Advertisers (“IDFA”) has been greatly affected by ATT. After ATT was introduced last year, the availability of IDFA dropped initially in May/June from [x<] % to [x<] %. This was followed by a further drop of [x<] over the course of the next six months. We are currently averaging [x<] % IDFA availability across all ad requests.<sup>4</sup>
18. When ATT first rolled out, we saw a lower CPM (i.e. the price paid per 1,000 ad impressions) across the ad requests generated on iOS versions 14.5 and above. There was an (arguably counterintuitive) increase in CPMs across iOS 14.4 and below, which we believe was due to an increase in ad spend in the run-up to the end of the second quarter, plus there was some additional value attributed to impressions with IDFA, which were becoming increasingly scarce. However, when Q3 2021 began, and buyers’ campaigns were being renewed and reviewed, we saw a more general decline in CPMs across iOS. We believe that, by this point, buyers were optimising away from all iOS inventory, rather than just optimising away from iOS requests with no IDFA.
19. Subsequently, we have seen the depressed iOS pricing continue. For example, our revenues on iOS were [x<] % lower in Q4 2021 compared to Q4 2020. We worked very hard during this period to make up for the iOS shortfall. We did see an increase in Android revenues as a result, but this increase did not at all make up the shortfall experienced in iOS.
20. DMG Media is not alone in experiencing damaging drops in revenue due to the introduction of ATT. Facebook owner Meta reported in its latest financial results that it expected ATT to cost it \$10 billion in 2022.<sup>5</sup>
21. For the avoidance of doubt, DMG Media has not been given the special tracking privileges that Apple has reportedly given to certain large platforms to enable user-level identification.<sup>6</sup> We would argue that this type of discriminatory treatment is precisely what the DMU regime should curtail.

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<sup>4</sup> We have used worldwide figures. The available UK figures are less useful because they include MailOnline’s direct sold ads, which add noise to the data. The UK effects of ATT are believed to be similar to the worldwide effects. The granular data are also available if that would be helpful to the CMA and we are happy to engage with the CMA to produce further data.

<sup>5</sup> <https://www.reuters.com/technology/facebook-owner-meta-forecasts-q1-revenue-below-estimates-2022-02-02/>

<sup>6</sup> See e.g. <https://www.ft.com/content/69396795-f6e1-4624-95d8-121e4e5d7839>.

22. Some news publishers will not be able to cope with revenue reductions of this magnitude, so the CMA is correct to highlight that ATT could drive them to radically change their business models. Other news publishers may choose to cut costs, which will mean a reduction in the quality of journalism available to consumers. Either way, the consequences would be to the detriment of consumers and the democratic process.
23. Paragraph 6.301 lists some of the consumer harms arising from ATT. We would encourage the CMA to explicitly list the harm to democracy of news publishers by either reducing their quality or moving behind paywalls and reducing the amount of reliable journalism that is freely available to citizens.<sup>7</sup>

### Remedies

24. We support measures that increase the competition faced by Apple and Google, such as measures that enable competing app stores and payments providers to thrive, and measures that improve user choice. However, simply removing the rules that reserve certain activities to Apple and Google may not be sufficient to kick-start competition. The DMU will need to be intimately involved in the choice architecture of the remedies, and Apple and Google may need to actively help competitors interoperate with their ecosystems. The concept of “equitable interoperability” (paragraph 7.19) seems entirely correct to us because smaller players cannot hope to compete with Apple and Google without a level playing field.
25. We believe the CMA is considering some promising remedies that could help news publishers to serve their readers better, for example:
- a. The reduction in Apple and Google’s ability to provide their own apps with a competitive advantage through **pre-installation** and being set as the default option (paragraph 7.83).

As the CMA is well aware, the choice architecture that accompanies this type of remedy will need to be overseen by the DMU, and frequently revised. The pre-installation of Apple News is particularly distortive to competition and requires special treatment. Apple News is integrated into the iOS operating system and can be accessed without clicking from the home screen because users just need to swipe right to access it. Users are not asked what news service they would prefer to access in this way. Readers of (e.g.) MailOnline or The Guardian might like their preferred news app to be accessed in this way rather than Apple News with its frequent nudges to upgrade to the premium Apple News+ subscription service (which is currently £9.99 per month). Another aspect of Apple News is the notifications of news stories by default. Again, users should be asked what news notifications they want.

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<sup>7</sup> The DCMS/BEIS consultation on the DMU regime (July 2021) raised the issue of whether the interests of “citizens” should be included in the DMU’s objectives. We responded that “citizens” should be explicitly included, but in any case the interests of both “consumers” and “citizens” are best served by a vibrant and high quality news industry.

- b. A requirement for **consistent treatment** of own apps and third-party apps for privacy purposes (paragraph 7.90).

It seems to us obvious that a level playing field would be beneficial for competition. We recommend that the CMA/DMU becomes as involved in Apple's privacy initiatives as it is planning to do for Google's Privacy Sandbox proposals.

- c. A requirement for Apple to provide **equivalent attribution capabilities** to third parties as it offers to users of its own advertising services, in order to level the playing field between Apple's and third parties' advertising services (paragraph 7.91).

As the CMA knows, attribution is an important part of advertising. There is no obvious harm to users in making sure Apple's competitors can compete on a level playing field in this area.

- d. Intervening in the design of the **ATT prompt** to enhance the privacy benefits by providing more effective and informed choice to users (paragraph 7.91).

We agree with the CMA that the current ATT prompt does not allow users to make well-informed decisions, and developers should be able to share with their users the value of their data, by for example offering incentives to users that opt into the ATT prompt. Apple currently takes a stance that scares users into a decision, rather than helping them to understand that efficient advertising pays for the production of news, without which the quality of the journalism would drop and/or news services would have to charge readers directly. Again, this area requires granular oversight by the DMU.

26. We generally support the CMA's other remedy ideas too. They will contribute overall to a more competitive industry, which is to be welcomed.

27. However we must reiterate our concern that the DMU cannot function properly as a regulator without statutory powers, and we cannot wait for ever for the promised Competition Bill, while with each month that passes the tech platforms further cement their control of online advertising, and wreak further damage on the news publishing industry.

28. We note that the CMA's Chief Executive Andrea Coscelli very recently tol the House of Commons Business, Energy and Industrial Strategy Committee that he too would like to see legislation as soon as possible, but appeared to be preparing for the possibility that would not happen:

*'The reason I'm quite happy with the situation is that we have our existing powers, so the people we have in the unit today are [helping to prepare] the legislation, but also they are working on our existing cases, using our existing powers and achieving results by doing so...*

*'[It's] very hard to suddenly have £20 million and be told that we should just go out and recruit 250 people to set up a new unit," and it makes sense to tackle such a challenge over time.*

29. He said the DMU currently has 50 of those staff members and expects to hire another 10 this year, but the rest of the funds will come after the legislation is sufficiently advanced. He acknowledged the need to designate the platforms with strategic market status and impose codes of conduct on them, but said the CMA is now having to consider using existing powers instead, with all the risks that would entail:

*'Internally, we think these powers are very much Plan B, it's slower and there is a risk that we will end up spending years in litigation, which is what has happened historically with antitrust cases. So the trade-off between intervening and not intervening, and dedicating resources is quite different with our existing powers than what we would like to do with the new powers. So that's the problem we have at the moment'*

30. Recent history is littered with examples – jet engines, nuclear power, computers, and the world wide web itself - where pioneering British work has been allowed to languish, while others have developed and exploited it.

31. The CMA cannot allow that to happen to the brilliant work it has done on analysing how the tech platforms monopolise digital advertising and mobile eco-systems, and how that market dominance could be dismantled and competition restored.

**DMG Media**  
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