



**EPC** | European Publishers Council

## European Publishers Council's comments on the CMA's mobile ecosystems market study interim report

The European Publishers Council ("EPC") is pleased to comment on the interim report of the Competition and Markets Authority on its mobile ecosystems market study (the "CMA Interim Report").

The EPC is a high-level group of Chairmen and CEOs of Europe's leading media groups representing companies which are active in news media, magazines, television, radio, digital marketplaces, journals, eLearning, databases and books.<sup>1</sup> The EPC includes leading UK media groups among its members, such as News UK, DMG Media, RELX, Pearson, and The Guardian. Taken together these groups employ thousands of journalists and other news media employees, and publish some of the most prestigious and widely read titles in the UK and the rest of the world.

The EPC and its members have reasons to be seriously concerned over the duopoly of Apple and Google in mobile ecosystems. As UK consumers spend an increasing amount of time reading news on their smartphones, each of Apple and Google has become a gateway that controls news publishers' access to approximately half of the UK population. By wedging themselves between news publishers and their readers, Apple and Google are able to set the rules of the game and impose abusive terms and conditions they could not in a competitive market. The result is a bad deal for consumers – higher prices for devices and apps, lower choice, and less innovation.

The CMA should be praised for conducting a thorough market study into the duopoly of Apple and Google in mobile ecosystems. Similar to its market study on online platforms and digital advertising, the CMA's mobile ecosystems market study has brought forward a wealth of evidence on how a handful of digital firms are harming competition and innovation to the detriment of UK consumers. This evidence should form the basis for bold interventions aimed at promoting competition to the benefit of consumers.

In this regard, the EPC regrets to see the CMA has decided against making a market investigation reference. While the EPC understands the CMA's preference to address the concerns it has identified through the new Digital Markets Unit ("DMU") regime, the latter is still not formally in place, and there is no guarantee it will be established anytime soon. The CMA has done an excellent work analysing markets, identifying features and practices

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<sup>1</sup> See <https://www.epceurope.eu/>.

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that harm competition, and suggesting the right remedies. We strongly encourage the CMA to now proceed to implementing solutions that benefit UK consumers.

In the remainder of this submission, we provide some high-level remarks on the CMA Interim Report, before discussing the CMA's proposed interventions.

### 1. High-level remarks on the CMA Interim Report

The EPC generally agrees with the findings in the CMA Interim Report. Each of Apple and Google have substantial and entrenched market power in the provision of mobile operating systems,<sup>2</sup> the distribution of native apps, as well as the provision of mobile browsers and browser engines, thus practically controlling all points through which content providers (including news and magazine publishers) can interact with consumers.

As the CMA correctly found on the basis of a wealth of evidence, Apple and Google face very limited competitive constraints at the level of **mobile devices and operating systems**. Put simply, users are generally very loyal and do not switch to a different operating system; coupled with the fact that users typically single home and buy replacement (instead of new) devices, this suggests there is limited user-driven competition between Apple and Google.<sup>3</sup> This is confirmed by the different price ranges at which Android and iOS devices are sold; the evidence collected by the CMA illustrates that Google and Apple cater for different customer groups, with different willingness to pay.<sup>4</sup>

Moreover, there are substantial switching costs dissuading users (and particularly iOS users) from switching to a mobile device with a different operating system.<sup>5</sup> Users wishing to replace their Apple device with an Android device face significant difficulties in transferring and managing on their new device subscriptions and in-app purchases performed through Apple's IAP payment system. Users can access such subscriptions on their new Android device only if they have previously linked their newspaper/magazine account with their Apple ID (as otherwise the news/magazine publisher has no way to match the user account to a subscription), yet Apple prohibits news/magazine publishers from requiring users to perform this link. In any event, even if a user can access their subscription on their new device, they are unable to upgrade, cancel, renew, or otherwise manage their subscription anywhere but on iOS. Apple confirmed the above, stating that "neither subscriptions bought through Apple IAP nor Google Play can be transferred to the other company's billing management system after switching."<sup>6</sup>

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<sup>2</sup> In the case of Apple, this is examined together with Apple's activity in the supply of mobile devices.

<sup>3</sup> CMA Interim Report, paras. 3.81-3.82.

<sup>4</sup> CMA Interim Report, paras. 3.84-3.89.

<sup>5</sup> CMA Interim Report, paras. 3.98 and following.

<sup>6</sup> CMA Interim Report, para. 3.118.

In addition, Google and Apple face very limited, if any, competition in the **distribution of native apps** within their respective ecosystems. First, Apple and Google’s app stores (the App Store and Google Play) are the only realistic distribution channels for developers wishing to reach iOS and Android users respectively. This is because alternative distribution channels (such as sideloading or third-party app stores) are either rarely used by consumers (this is the case for Android) or are altogether prohibited (this is the case for iOS).<sup>7</sup> While web apps could in the future allow developers to reach users outside Google and Apple’s app stores, in the current state of technology web apps are inferior and are thus not a realistic alternative to native apps.<sup>8</sup> As the CMA notes, Apple has reduced developers’ incentives to invest in web apps, as its WebKit browser engine – which all browsers on iOS devices have to use – provides limited support for web apps.<sup>9</sup> In this regard, it is rather ironic for Apple to point to web apps as a realistic distribution channel on iOS devices,<sup>10</sup> when its own conduct has reduced incentives to invest in web apps.

Furthermore, suggesting that Google Play and the Apple App Store constrain each other in the distribution of native apps would defy all commercial reality. Users would not respond to a hypothetical increase in the price of iOS apps by ditching their iPhone and purchasing an Android device, and vice versa. Users rarely switch to a mobile device with a different operating system and, as the CMA correctly observes, users have limited ability to compare the app store conditions on Android and iOS and thus limited ability to react to a hypothetical price increase in one ecosystem. At the same time, as consumers typically single home and do not switch, large app developers have no alternative but to multi-home, that is make their apps available on both Google Play and the App Store. Indeed, EPC members make their apps available on both app stores, since each of Google and Apple control approximately half of the UK population; in these circumstances, not being present in one of the two app stores would drastically limit the developer’s user base. This also means that app developers cannot exercise any meaningful competitive constraint on Apple and Google, as it would make no business sense to delist from one app store in response to a hypothetical price increase.

As the CMA observes, Apple and Google’s control over their mobile ecosystems allows them to set the ‘rules of the game’ for app developers wishing to reach UK consumers.<sup>11</sup> The EPC would like to comment on the three following issues which are of the most concern to its members, namely (a) the app review process, (b) the mandatory use of the app store’s proprietary payment system and (c) Apple’s App Tracking Transparency (“ATT”) framework.

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<sup>7</sup> CMA Interim Report, paras. 4.121-4.122.

<sup>8</sup> CMA Interim Report, paras. 4.130 and following.

<sup>9</sup> CMA Interim Report, paras. 4.131-4.132 and 4.182.

<sup>10</sup> CMA Interim Report, para. 4.128.

<sup>11</sup> CMA Interim Report, para. 6.362.

**(a) The app review process**

The app review process provides the app store operator with unique power over app developers, and can be used as a mechanism to advantage Apple and Google’s own apps or retaliate against app developers. Apple’s review process specifically suffers from a lack of transparency, as developers are given very limited feedback as to the precise steps they need to take to bring their apps in compliance with the rules. Worse, there are several instances of Apple reviewers interpreting and applying Apple’s rules in an arbitrary or inconsistent fashion. This results in severe disruptions of app developers’ business, and delays in the introduction of new app features to improve user experience.

**(b) The obligation to use the app store’s proprietary payment system**

Apple and Google require app developers selling “digital” content to exclusively use the app store’s proprietary payment system (and pay a 30% commission on the transaction’s value), that is Apple’s IAP (In-App Purchase) and Google’s GPB (Google Play Billing). This results in considerable inefficiencies for both developers and users. As payments performed through IAP and GPB are handled by the app store, the app developer is unable to help its own customers on refunds and cancellation requests. This often results in user frustration, since consumers do not realize they have a billing relationship with the app store for a service provided by the developer.

Besides disintermediating app developers from their user base, the mandatory use of the app store’s payment system reduces consumer choice and eventually results in a worse user experience. App developers are forced to rely on the payment solution of the app store, which they cannot customize to fit their needs and the needs of their customers – for example to offer additional payment methods which are popular in certain regions (such as Klarna in the Nordics), provide different subscription options, or target promotional offers and discounts. Users miss out on choice and innovation which would exist if developers would purchase bespoke payment solutions from third parties such as Stripe.

Finally, Apple and Google prohibit developers from informing their users about off-app cheaper alternatives. These “anti-steering” provisions harm consumers, as they prevent them from making informed decisions on their purchases. This also explains why many news and magazine publishers, including EPC members, cannot in practice disable IAP for their iOS apps, even though in theory they can take advantage of the “reader” rule to do so. The “anti-steering” provisions prohibit news and magazine publishers from informing their users inside their apps about the possibility to purchase a subscription; more accurately, news and magazine publishers are not allowed to even mention the existence of a premium offering. In such a setting, if IAP is disabled, many users will never purchase a subscription, as they will not even know they can do so by navigating to the website of the news/magazine publisher. After all, many readers only read news and magazines on their mobile devices, and this is where they expect to be able to purchase a subscription.

### (c) Apple's ATT framework

The EPC and its members care deeply about user privacy. EPC members are responsible data controllers who comply with applicable privacy laws by offering full transparency, freedom of choice and control to their users, especially when it comes to targeted advertising. They do not need platforms or tech giants to wedge themselves into the relationship they have with their users by asserting the role of a “privacy regulator”. Apple’s ATT is a prime example of that.

Released in 2021, the ATT framework requires apps to show a specific prompt to request users’ permission for the app to “track” them, as defined by Apple to distinguish between collection of data within first-party and third-party properties. Without permission, the app cannot access the device’s Identifier for Advertisers (“IDFA”), which is used for digital advertising purposes (such as targeting and conversion measurement). Apple, on the other hand, does not consider it “tracks” users, and as a result does not display the ATT prompt for its own advertising activities. Instead, starting from September 2021, Apple displays a substantially different prompt seeking permission for personalised advertising (the “Personalised Ads prompt”), which states that “Apple does not track you”.

However, the CMA rightly observes that Apple’s extensive use of personal data for advertising purposes can qualify as “tracking”, as this term has been explained by the Information Commissioner’s Office in a recent opinion on online advertising.<sup>12</sup> In that regard, there is clearly an element of self-preferencing in Apple’s ATT policy changes, as Apple has deployed substantially different choice architecture for the Personalised Ads prompt compared to the ATT prompt. EPC expects the different choice architecture to result in different opt-in rates, and we encourage the CMA to collect information on the precise opt-in rates during the second half of its market study.

While the market developments are still unfolding, ATT has already had a significant negative impact on developers, since the low opt-in rates have reduced the effectiveness of in-app advertising. App developers selling in-app advertising, including EPC members, have already seen their ad revenue on iOS materially drop – in the case of one EPC member, by more than 50%. Apple’s advertising business, on the other hand, is experiencing a boom, with Apple Search Ads now being responsible for 58% of all app installs that result from ad clicks, up from 17% last year.<sup>13</sup> Apple may claim that its advertising business is very small,

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<sup>12</sup> CMA Interim Report, para. 6.243.

<sup>13</sup> CMA Interim Report, para. 6.286.

but its aggressive expansion suggests the contrary,<sup>14</sup> and industry analysts predict it could grow to the \$7 billion-to-\$10 billion-a-year range by fiscal 2023 or 2024.<sup>15</sup>

Besides benefiting Apple's advertising business, the CMA is correct to observe that the ATT framework has broader competitive implications. By undermining app install ads as a discovery channel for apps, ATT reinforces App Store's position as the most important discovery channel on iOS, solidifying Apple's gatekeeping status in app distribution. Moreover, by reducing developers' ad revenue, ATT undermines the ad-funded model of numerous apps, putting pressure on app developers to start charging users – in which case Apple will obtain a 30% commission.

The EPC and its members are strong proponents of user privacy, and believe that users should be empowered to make informed and meaningful choices. However, this does not mean Apple can use privacy as a smokescreen to unfairly advantage its downstream activities and solidify its market power. Apple should play by the same rules, and not hold itself to a lower standard through choice architecture.

## **2. Proposed interventions**

The CMA's market study has brought forward a wealth of evidence on how the duopoly of Apple and Google is harming competition and consumers. As stated in the introduction, this evidence should form the basis for bold interventions aimed at promoting competition to the benefit of consumers. In that respect, the CMA has identified several potential measures to address the source of Apple and Google's market power, but also to address the harms to competition and consumers resulting from the exercise of such market power. These measures have in principle the potential to address the serious concerns identified in the Interim Report, and the EPC strongly encourages the CMA to proceed to the stage of implementation. The EPC now comments on the proposed measures, with a focus on those that matter most for its members.

### **(a) Remedy area 1**

Under remedy area 1 the CMA is considering interventions to inject competition in the supply of mobile devices and operating systems. The EPC is in favour of measures to reduce the switching costs that discourage consumers from switching between operating systems, such as measures to enable iOS users to migrate their apps and data to Android devices. The EPC notes that allowing users to make in-app payments to their app developers directly would make it possible for users to seamlessly transfer and manage their subscriptions (or other purchased content) across their new device, thus lowering an important barrier to

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<sup>14</sup> See e.g. Mark Gurman, *Apple Pushes Second Ad Slot to App Store, Expanding Business* 4 May 2021, Bloomberg, <https://www.bloomberg.com/news/articles/2021-05-04/apple-pushes-second-ad-slot-to-app-store-expanding-business>.

<sup>15</sup> Eric J. Savitz, *Apple's Advertising Business Is Bigger Than You Think. It Could Get Bigger Still*, Barron's, 3 August 2021, <https://www.barrons.com/articles/apples-advertising-business-is-bigger-than-you-think-it-could-get-bigger-still-51628004419>.

switching. Such a measure would have the added benefit of simultaneously addressing the harms related to the mandatory use of Apple and Google’s proprietary payment systems.

### **(b) Remedy area 2**

Under remedy area 2, the CMA is considering interventions to unlock competition in the distribution of native apps. In the case of iOS devices, this would involve an order on Apple to allow alternative distribution channels, such as alternative app stores and/or sideloading, potentially complemented by additional measures to ensure users would not be unduly discouraged from using these channels.

The CMA notes that these interventions have the potential to deliver significant benefits, such as exposing the incumbent app store operators to competitive constraints,<sup>16</sup> which in turn is expected to lead to lower prices for developers and consumers, greater choice, and higher innovation. Even so, the CMA cites the potential security and privacy risks raised by Apple if third-party app stores and sideloading were allowed on iOS devices. Apple has also argued that these measures could lead to developers free riding on its investments on iOS.

**Security and privacy:** Apple’s concerns can be addressed in a relatively straightforward manner. Apple could introduce a certification system that would scan software for malware, and which would function similar to the existing notarization process used on MacOS for software downloaded through the web. Apple has not explained why a similar system could not be used on iOS. To the extent such a system would need to be complemented by human review, it would be up to Apple to add such an element. Suggesting that allowing alternative distribution channels would be devastating for security and privacy is simply not plausible.

**Freeriding:** App developers bring tremendous value to Apple’s ecosystem, which Apple benefits from through the high prices it charges users for its iPhones. App developers are not free riding. The CMA correctly notes that Apple would have greater incentives to invest and innovate if it were exposed to competition.<sup>17</sup>

### **(c) Remedy area 4**

Under remedy area 4, the CMA is considering interventions relating to the role of Apple and Google in competition between app developers.

First, the CMA considers interventions to address Apple and Google’s ability to harm competition through the operation of their app stores. The EPC is in favour of the measures put forward by the CMA, as they have the potential to level the playing field between app store operators and rival apps. Among others, it is crucial that Apple and Google conduct a **fair and transparent app review process**, where they do not discriminate between their own apps and rivals. App review should be accompanied by **meaningful feedback** that

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<sup>16</sup>CMA Interim Report, para. 7.49.

<sup>17</sup>CMA Interim Report, para.7.60.

allows developers to identify the changes they need to make to bring their app in compliance with the rules.

In addition, Apple and Google should be required to consistently treat their own apps and third-party apps for privacy purposes. As regards the **ATT framework** in particular, Apple should not hold itself to a lower standard, but should instead display the same ATT prompt in order to engage in personalized advertising. Moreover, users should be able to make fully effective decisions, and developers should be allowed to share with users the value generated by their data; developers should thus be able to offer incentives (e.g. discounts, special offers) to users that opt in the ATT prompt.

Second, the CMA considers interventions to address concerns with in-app payment systems. Specifically, the CMA considers allowing **greater choice of in-app payment options**, so that users can select for example whether to pay through the app store's payment solution (IAP/GPB) or an alternative solution selected by the app developer. Such an intervention would deliver significant benefits, as it would address the harms arising from the mandatory use of IAP/GPB: among others, app developers would be able to assist their customers in managing their subscriptions, offer flexible and alternative payment methods, and provide targeted discounts.

Even so, the CMA has heard concerns from Apple and Google that any intervention providing users with greater choice would have significant security implications, and would make it impossible for app store operators to collect a commission on sales of digital content. Again, these are concerns that can be addressed in a relatively straightforward manner.

- There is no reason to believe alternative payment systems do not guarantee the same level of security as that provided by IAP/GPB. After all, we understand that Apple and Google rely on external payment service providers to have user payments processed. In any event, users have for years performed payments for “physical” goods or services through alternative payment solutions, without this raising security concerns.
- There are alternative methods to calculate and collect a commission. As the CMA notes, these alternatives could include reporting obligations coupled with audit rights, or Application Programming Interfaces (APIs) notifying transactions to app store operators. After all, both Apple and Google have indicated they will allow Korean developers to use their own payment solution while still charging a commission, which strongly suggests there are alternative methods to collect a commission.

The CMA is also considering requiring Apple and Google to drop or limit their **anti-steering provisions**, so that developers would be able to promote inside the app external payment options (e.g. on the developer's website). The EPC is in favour of such a measure, as it



would allow users to make informed decisions. However, having users navigate to an external website typically creates friction and a bad user experience. For this reason, the CMA should prioritize the first measure discussed above, namely offering users the option to select their payment solution inside the app.

Finally, the CMA is considering **separation measures** to address the risk of Apple and Google leveraging their market power into app development, including data separation (internal firewalls), operational separation, and structural separation. The EPC is in favour of separation remedies, as they would help address the risk for conflicts of interests arising from Google and Apple's dual role as app store operators and app developers. However, data separation measures are likely to prove hard to enforce and monitor. For this reason, the CMA should prioritize **operational separation** measures.

### **3. Conclusions**

The CMA Interim Report provides a rare glimpse into how the duopoly of Apple and Google in mobile ecosystems stifles consumer choice and innovation. The EPC strongly encourages the CMA to act on the findings of its market study, and implement targeted measures to promote competition to the benefit of UK consumers.