Guardian Media Group NON-CONFIDENTIAL response to Competition and Markets Authority: "Mobile Ecosystems Market Study Interim Report"

About Guardian Media Group

Guardian Media Group (GMG) is one of the UK's leading commercial media organisations and a British-owned, independent, news media business. GMG is the owner of Guardian News & Media (GNM), the publisher of theguardian.com and the Guardian and Observer newspapers, both of which have received global acclaim for investigations, including persistent investigations into phone hacking among the UK press, the Paradise Papers and Panama Papers, Cambridge Analytica and the Pegasus Project. As well as being the UK's largest quality news brand, GNM has pioneered a highly distinctive, open approach to publishing on the web and it has achieved significant global audience growth over the past 20 years.

Introduction

We welcome the opportunity to provide a short response to CMA: Mobile Ecosystems Market Study Interim Report ("interim report"). The interim report finds that *"Apple and Google have each captured such a large proportion and volume of consumers in the UK that their ecosystems are, for practical purposes, indispensable to online businesses*[1]*.* That they are *"each able to act as gatekeepers to roughly half of UK consumers with mobile devices, and as a result can set the terms of access for providers of online content and services, whether through native apps or websites and web apps."*[2]

The interim report outlines[3] how different elements of the two main mobile ecosystems set policies that interact in ways that can negatively impact on consumers and businesses, principally to the benefit of Apple and Google. We are particularly concerned about the increasingly closed nature of Apple's 'walled garden', and the degree to which it is intermediating developer relationships with their users. The consequence of this intermediation is poor value for consumers, a worse customer experience, and an increasing financial and operational dependence of developers and content producers on Apple.

We look forward to contributing to the second half of the CMA's work as it further investigates this market. Even at this midway stage, however, we believe that it is clear that the issues identified by the CMA require urgent pro-competitive interventions in order to create fair and effective competition in key online markets. In principle, the CMA had two alternative routes to achieving that outcome:

- It would revisit the decision not to open a full market investigation, or;
- adopt a range of regulatory interventions, which would be predicated on the government delivering on its stated commitment to introduce legislation that would place the Digital Markets Unit (DMU) on a legislative footing[4].

The CMA has now ruled out the first option, on the basis that it expects to have additional regulatory powers in the foreseeable future. This now looks in doubt. As the outgoing CMA Chief Executive, Andrea Coscelli, noted at a recent select committee hearing,[5] despite the regulator concluding a landmark report on the online advertising market 18 months ago, in which it called for *"new powers ... to designate Google and Facebook as having strategic*

[1] Para 2.32
[2] Para 2.33
[3] Paras 7.113 - 7.117
[4] Para 9.12

[5] https://www.shropshirestar.com/news/uk-news/2022/02/01/watchdog-struggles-to-hire-lawyers-as-salaries-soar-in-private-sector/

market status [in order to] impose a code of conduct on them", the government has thus far failed to legislate for those powers, or set a date on which they will be introduced to Parliament. Although we acknowledge that extensive work is being done within Government and across regulators to prepare, this preparation will come to nothing without legislation to create the new powers required by the DMU. We believe that there is a clear and pressing need for the government to commit to publish legislation required to empower the DMU at the forthcoming Queen's Speech, such that legislation can be passed within the third term of this Parliament.

While a decision to proceed with a market investigation in the absence of new legal powers is evidently not the CMA's preferred option, clarity on the government's legislative intentions would at least enable the CMA to allocate resources in order to move this market study, and the previous market study conducted into the online advertising, to full market investigations, with the prospect of remedies being implemented through this route.

As the CMA identifies in its interim report[6], governments around the world are now moving to legislate to open up digital markets in ways that increase competition, empower consumers and drive broad based business growth. Without clarity on the UK government's legislative plans, there is a clear danger that the UK moves from a position of global leadership on this issue[7], to a position where it is left behind.

The interim report sets out a range of remedy areas that have the potential to open up markets to greater competition and innovation. In the remainder of this brief submission, we focus on the CMA's proposed remedy area 4, principally because we believe that remedies in this area should be prioritised due to their potential to make the most significant difference to app developers and consumers in the short term.

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

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Restrict the potential for self- preferencing of Apple's and Google's own apps through requiring the payment of commissions from third-party apps active in sectors where Apple and Google also have their own first-party apps **Error! Bookmark not defined.**

Require Apple and Google to provide more transparency about their algorithms and in particular the factors that influence how apps are displayed on the app store. 6

[6] Paras 7.118 - 7.123

[7] https://www.gov.uk/government/publications/uk-g7-presidency-statement-digital-and-tech/uk-g7-presidency-statement-digital-and-tech

➢ *Interventions to address concerns with in-app payment systems*

We note the CMA's analysis that Apple's services revenue has grown substantially in recent years, with app store revenues 'representing 20-40%' of global services revenue in 2020. [8] Since the publication of the report, and at the end of a year in which Apple has introduced policy changes that have significantly undermined the ability for app developers to generate advertising revenues through the introduction of iOS 14.5, Apple has reported *"a new record"* for revenues generated through the App Store.[9]

[✂]

While the Apple CEO, Tim Cook, regails the App Store as an "economic miracle" for developers, as a recent Enders Analysis paper notes[10], the reality is that Apple has taxed developers - and ultimately consumers - to the tune of ~$100 billion in fees since 2018, on revenues of $260 billion. The CMA identifies that these unavoidable taxes on developers are enabling Apple to *"achieve very high margins and returns on capital employed… Apple's return on capital employed has been over 100% – a high figure in any sector."* Apple itself has claimed that its services *"gross margin was 72.4%"*.[11] We note the CMA's view that Apple and Google are likely to be charging above a competitive rate of commission to app developers, which will ultimately mean users paying higher prices for subscriptions and in-app purchases such as within games.

We observe that the burdensome fees levied on developers by Apple, has historically set the industry standard for where Google set fees for the Play Store. When previously asked by analysts whether the 30% tax on developers was the *"right long-term rate for Google Play"*, the Google CEO, Sundar Pichai, responded that 30% is the *"industry standard… but [it will] obviously, always adapt to where the market is."*[12] We were pleased that, during the course of the CMA's investigation, Google did adapt its fee structure, announcing[13] that it will move to decrease *"the service fee for all subscriptions on Google Play from 30% to 15%, starting from day one."*[14] While this halving of the levy on developers is clearly welcome, it remains far higher than the level of fees charged by third party payment providers […].

In recent months, Apple has moved to quell concern about the fees it levies on developers by reducing "*App Store commission to 15 per cent for small businesses earning up to $1 million per year*". [15] Industry analysis suggests[16]that while the reduced rate will be available to the vast majority of developers on the app store, those qualifying developers represent a very small percentage of Apple's total app store revenue. Indeed, in the US, analysis by Sensor Tower suggests that the *"**top 1 percent** of those who monetize their apps **accounted for 94 percent of the store's revenue**."*[17]

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8 Para 2.52

9 https://www.fool.com/earnings/call-transcripts/2022/01/28/apple-aapl-q1-2022-earnings-call-transcript/

10 https://mcusercontent.com/e582e02c78012221c8698a563/files/c056d2a7-7375-716d-2b45-2ddbbadb562f/Apple_s_record_quarter_iPhone_and_China_lead_the_way_2022_012_.pdf

11 Ibid

12 https://www.fool.com/earnings/call-transcripts/2019/02/04/alphabet-inc-goog-googl-q4-2018-earnings-conferenc.aspx

13 https://android-developers.googleblog.com/2021/10/evolving-business-model.html?m=1

14 https://www.google.com/url?q=https://android-developers.googleblog.com/2021/10/evolving-business-model.html?m%3D1&sa=D&source=docs&ust=1643975736065316&usg=AOvVaw1G0vhFQfJ2wcNIYV9Hl6Hz

15 https://www.apple.com/uk/newsroom/2020/11/apple-announces-app-store-small-business-program/

16 https://sensortower.com/blog/app-store-one-percent

17 https://sensortower.com/blog/app-store-one-percent

While the reduction in fees levied on smaller developers is welcome, a reduction in app store fees is essential for <u>all</u> developers, in order to drive lower prices and broad based growth across the app economy, rather than those fees being returned to Apple investors.

In the absence of a reduction in fees, allowing app developers to use alternate payment providers to make app purchases and in-app payments could make a huge difference in the volume of fees paid to Apple. Based on a flat 30% fee would have seen Apple take $78 billion, or $6 billion in fees annually over the lifetime of the App Store. Using alternate payment providers such as credit card companies, whose fee are capped at 0.3% under the Interchange Fee Regulation,[18] would result in Apple generating $7.8 billion over the lifetime of the App Store, or $600 million annually. Such a reduction in fees could enable consumers to retain that money to spend elsewhere in the economy, or could be used by developers and content producers to invest further in products and services, and the people who create and build them.

We strongly agree with the CMA that allowing *"greater choice of in-app payment options would enable app developers to choose their own payment service provider and have a direct selling relationship with the user, rather than require them to exclusively use Apple and Google's own payment systems."*[19]

➢ *Allowing greater promotion of off-app payment options*

As the CMA notes above, using alternate payment options also enables developers to build a direct relationship with their audience. This is vital for a range of reasons, but fundamentally, a direct relationship with readers enables developers to build much better customer experiences for the user. This is essential, as more developers move away from an advertising funded model, to one that relies on ongoing direct payments.

We agree with the CMA finding that the rules and policies implemented by Apple and Google to intermediate the user from app developers can result in various harms, including consumers being *"unaware of the additional or alternative services they might be missing out on, or of the greater range of choices they could make. In other cases, they might attribute poor experiences online to app developers or content providers, when in fact they were a result of decisions made by Apple or Google."*

[✂]

The inability for GNM to know who our paying iOS subscribers are constrains our ability to provide high quality customer service support for iOS users who contact us directly, and also means that users are unable to take advantage of using their Guardian subscription on other platforms. For example, for the same price as a user pays for an IAP purchase that's only available on one device type, if those same users had subscribed directly on theguardian.com, they could enjoy access to multiple Guardian apps on multiple devices, as well as additional benefits of subscribing directly.

As well as a range of announcements, made in June 2021, that will reduce news publishers' ability to communicate with their readers[20], in October 2021, Apple announced that *"all apps that allow for account creation must also allow users to initiate deletion of their account from within the app."*[21] The requirement to allow in-app account deletion applies whether that

[18] https://www.psr.org.uk/publications/general/guidance-on-the-psr-s-approach-as-a-competent-authority-for-the-eu-interchange-fee-regulation-june-2020/

[19] Para 7.99

[20] https://www.niemanlab.org/2021/06/a-packed-set-of-apple-announcements-could-have-big-impacts-on-news-publishers-for-good-and-for-ill/

[21] https://developer.apple.com/news/?id=mdkbobfo & https://developer.apple.com/app-store/review/guidelines/#5.1.1

account was created directly via the developer's website (e.g. theguardian.com), or whether created via an IAP process. This creates an asymmetry, whereby Apple does not allow a choice of channel by which users can subscribe at account creation (with associated IAP fees if applicable), but then requires that developers allow deletion within the app, regardless of whether they created that account directly, or via IAP. This is a further example of the asymmetric rules that Apple imposes on developers.

In relation to the proposed anti-steering provisions, it is vital that the DMU is empowered to oversee the implementation of the removal of anti-steering provisions. For the remedy to be effective, developers should be able to communicate with users about the benefits of paying using alternative direct payment methods other than IAPs.

- *Requirements for a fair and transparent app review process*

We are pleased that the CMA has recognised that *"Apple and Google are able to exercise the market power of their app stores through their processes for reviewing which apps can be listed on their app stores."* We agree that *"the app review process for the App Store and Play Store provides an incentive or ability for Apple and Google to confer an advantage over their own apps and services and, more widely, can mean uncertainty and increased development costs for app developers."*

Our experience of app review guidelines is that developers can spend a significant amount of time and money designing and building an experience to meet opaque requirements or guidelines that can be interpreted differently by different app reviewers within those businesses. In addition to the opacity of the requirements and guidelines, app developers are unable to interact with the app store's review team before investing the time and resources required to build a product. Such interaction would reduce a lot of the headache that is currently experienced as a result of repeated rejections in the review process.

[✂]

We agree with the preliminary findings of the CMA in relation to the consumer and business harms caused by the opaque developer review process.[22] The wide degree of discretion conferred by the app review guidelines creates a lack of consistency in decision making, resulting in: a high degree of uncertainty for businesses; potential delays in the availability of innovative products and services that benefit consumers; and higher prices for consumers as a result of the resources required to being products to market.

- *Restrict the potential for self- preferencing of Apple's and Google's own apps through requiring the payment of commissions from third-party apps active in sectors where Apple and Google also have their own first-party apps*

The CMA identifies various ways in which both Apple and Google have the opportunity to self-preference the development and use of the first party apps in which they have a commercial self interest. [✂]

As the CMA notes, the app store gateway position held by Apple and Google means that third party apps are not competing with native apps on fair terms. We are pleased that the CMA finds that "*Apple and Google do, in our view, have the ability and financial incentive to increase the discoverability of apps on their app stores from which they extract commission."* We note that Apple has suggested that the prominence of first party apps such as Apple News, is due to 'a 'cold start boost' "applied to all apps with no user engagement data, including new third-party apps and Apple's first-party apps, to make them more easily discoverable, as

[22] Paras 6.74-6.77

otherwise they could only be found through navigational searches."[23] Despite being launched in 2015, and having been reviewed by over 2000 people, with average user ratings of just 2.4 stars out of 5 stars, Apple News continues to feature prominently in searches for news in the App Store. We note that in January 2022, despite this poor feedback, Apple News was reported as the most frequently used news app in the UK, with an audience of 13.2 million users, reaching 26.5% of all internet users.[24]

[✂]

- ➢ *Require Apple and Google to provide more transparency about their algorithms and in particular the factors that influence how apps are displayed on the app store.*

We agree with the CMA's *"preliminary view ...that Apple and Google have an incentive to prioritise first-party apps, especially those that are monetised, or third-party apps which depend on Apple's and Google's proprietary in-app payment systems, as the increased use of these apps would lead to a direct financial gain."* We note that the CMA suggests that this is a particular concern in relation to Apple.

We agree that app store ranking can have huge implications for the number of downloads an app can achieve. This is why, after all, app developers are willing to pay increasing costs to access advertising on Apple's app store, which has a highly lucrative revenue stream. News reports in October 2021 suggested that Apple had *"tripled its market share in the six months after it introduced privacy changes to iPhones that obstructed rivals, including Facebook, from targeting ads at consumers."*[25] Our experience suggests that a sudden change which affects the ranking and placement would have a direct and potentially significant impact to revenues.

We therefore welcome this proposed remedy. We also believe that remedies proposed that would allow alternate payment systems in iOS apps, and which remove the 'anti-steering' provisions from developer guidelines, could help to remove the incentive to prioritise certain apps within app stores. Again, no single intervention proposed by the CMA in remedy area 4 will open up the market, but we believe that the combination of proposals by the CMA stands a good chance of doing so.

As we note in the introduction to this submission, we look forward to contributing to the second half of the CMA's work as it further investigates this market, and would be happy to discuss any of the above information in more detail.

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7th February 2022

[23] Para 6.108
[24] https://pressgazette.co.uk/most-popular-news-apps-apple-news-mail-online/
[25] https://www.ft.com/content/074b881f-a931-4986-888e-2ac53e286b9d