

Mobile Ecosystems Interim Report CMA's Recommendations Regarding Mobile App Stores

The CMA's Mobile Ecosystems Interim Report ("[Report](#)") makes a number of recommendations to address the competition concerns about Apple and Google identified so far during the course of the CMA's market study. Of these, there are two broad categories of recommendations that appear to be relevant to cloud gaming; namely recommendations: (i) relating to restrictions on cloud gaming and related obligation to use Apple's and Google's payment processing systems for in-app purchases, and (ii) addressing distribution of native apps.

I. Recommendations regarding cloud gaming and payment systems for in-app purchases

A. Restrictions relating to cloud gaming

1. Recommendation - Distribution of native cloud gaming apps

The Report recommends that Apple and Google be required to allow cloud gaming service providers to distribute native apps in their respective app stores. For example, in relation to Apple it recommends that *"Apple should amend its policy of imposing restrictions on cloud gaming apps, so that cloud gaming service providers could offer apps which allow users to stream multiple different games without these games each needing a separate listing on the App Store."* The CMA is considering implementation of this remedy in a manner that enables Apple and Google to appropriately ensure security and quality.

The effectiveness of such a measure would hinge on the restrictions Apple is allowed to continue to impose purportedly to ensure security and quality, and on ensuring that other restrictions that have the indirect effect of preventing such cloud gaming apps from being offered.

In relation to the former, it is useful to recall the broader context for restrictions on cloud gaming apps to ensure security and quality. First, Apple does not limit other cloud services with interactive functionality, including audio-visual cloud services that include interactive content, like Netflix. Second, Apple allows other multi-game services into its App Store today. For example, Roblox is entirely populated with non-Apple approved third-party user-created games (many of which enable in-app purchasing). Third, Apple device users can currently use "remote desktop" functionality of games from another device (where that functionality is not constrained by similar restrictions). Fourth, Google allows native Android cloud gaming apps (including allowing them to be offered in its Play Store). Fifth, and relatedly, cloud services create less risk to devices and their functionalities, other apps and services or users, since only a "thin app" is downloaded to the device. Finally, it is important to emphasise that cloud gaming service providers have at least the same interest as Apple in ensuring security and quality. Users are their customers as much as they are Apple's, and they want to ensure that the user experience is such that their users continue to subscribe.

Against this background, Apple should not be permitted to implement restrictions or requirements that go beyond what is necessary to ensure security and quality. Apple should be able to enforce compliance with reasonable requirements by cloud gaming service (and other) app providers contractually, such that it has the ability to refuse to admit to, or to remove from, the App Store any app (including

cloud gaming service apps) that does not comply with these minimum necessary safety and security measures.

Finally, to ensure that Apple cannot indirectly use other elements of its policy to restrict the access to the App Store of cloud gaming apps, it will be important that the recommendation also require Apple to amend its policy of imposing restrictions on third-party games and cloud-based apps.

B. Restrictions related to payment systems for in-app purchases

1. Recommendation - Choice of in-app payment processing systems

The Report recommends that Apple and Google be required to “*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.*”

In essence, this recommendation seeks to address the negative effects of Apple and Google requiring app developers use the Apple/Google payment processing systems for in-app purchases, namely (1) preventing app developers from choosing lower cost or higher quality alternatives for processing payments for digital content; (2) disintermediating app developers from their users in relation to transactions; (3) distorting competition between Apple’s and Google’s own apps and rival apps; and (4) impeding the ability of users to switch between iOS and Android devices.

It is important that app developers be free to select the most appropriate payment processing systems for their apps and not be required to use the payment processing system offered by Apple or Google. Different payment processing systems offer different functionality, such that they may be more or less suitable for particular apps. For example, certain payment processing systems provide enhanced customer support; others facilitate efficient handling of returns and refunds; others facilitate efficient invoice/payment reconciliation through enhanced integration with developers’ systems; others support a broad range of channels (credit cards and alternative payment methods).

It will be important not to undermine the effect of the recommendation by only requiring that Apple and Google permit app developers to add alternative processing systems *alongside* their own payment processing systems for a number of reasons.

First, developers would need to re-code all of the games available to subscribers to add the Apple/Google-specific payment processing systems. Second, re-coding undermines the benefits that would otherwise flow from offering cross-platform cloud services. Third, while Apple and Google claim that app developers would be “free-riding” on their investments in their app stores if developers were to be permitted to use alternative payment processing systems, there is no basis for this claim, as both the Report and the ACM’s decision against Apple (recently upheld by the Rotterdam court) make clear. Further, to the extent that Apple or Google are entitled to remuneration in relation to in-app purchases, there is no need for their payment processing services to be used to ensure payment. Relatedly, Apple and Google must not be permitted to impose high transaction fees for in-app purchases that do not use their payment processing services as a way to deter developers from choosing alternatives. Given credit card processing fees and other costs, if Apple and/or Google are allowed to impose high fees even where an app developer uses a

third-party payment solution, app developers may end up having to charge users even more than 30% for transactions using a third-party payment solution or not recover all of the charges. Fourth, Apple and Google cannot justify a requirement to use their payment processing systems on security, privacy or safety grounds. Neither Apple nor Google have raised such concerns about alternative payment processing systems used by apps offering non-digital goods and services (bearing in mind that more than 85% of apps in the App Store offer non-digital goods and services).

2. Recommendation - Promoting off-app payment options

The Report recommends that Apple and Google be required to allow developers to refer app users to alternative payment processing systems outside their apps (*e.g.*, including a link to developer websites or another “call to action”). The difficulty will be ensuring that such a measure can be effective and that Apple and Google are not permitted to introduce unnecessary friction or difficulties that undermine the measure. Regardless, this recommendation will not be as effective as a requirement that Apple and Google permit app developers to choose the payment processing systems used by their apps.

3. Recommendation - Restrict self-preferencing

To ensure that Apple and Google do not impose commissions on third-party apps that compete with their own apps, the Report recommends that Apple and Google be required to: “*(i) allow apps to disable Apple’s and Google’s payment systems, so that any [in-app] payments would have to be made off-app; and (ii) relax the anti-steering rules in relation to those apps where they compete downstream, allowing those developers to steer customers to alternative off-app payment options where the developers are not obliged to pay commission to Apple and Google.*”

It will be important to require Apple and Google to take both of these steps. Such measures will be difficult to implement and monitor. The most effective measure to address the current in-app purchasing requirement will be to require Apple and Google to permit app developers to use the payment processing systems of their choice.

II. Recommendations regarding distribution of native apps

A. Restrictions on alternative app stores for iOS native app distribution

1. Recommendation - Access to alternative app stores for iOS

The Report recommends that Apple be required to allow alternative iOS app stores to be made available either through sideloading or by download via its App Store, in order to enhance user choice and increase competitive pressures on the App Store. Any such measure would need to require Apple to allow alternative iOS app stores to be downloaded from its App Store.

Apple claims that accepting alternative iOS app stores into the App Store would create security concerns for devices, other apps and the ecosystem more broadly. These concerns are overstated. First, Apple uses a narrow “capability model” for iOS native apps that effectively “containerises” each app, preventing each app from accessing elements of the ecosystem outside the specific app unless the user explicitly consents to a specific functionality being accessed (*e.g.*, location data or photographs being accessed). Second, cloud

game streaming apps represent an even more limited security risk than many other native apps. Third, as described above in relation to cloud gaming apps, Apple should be permitted to require that an alternative iOS app store comply with a minimum set of restrictions and requirements that are considered by the CMA to be necessary to ensure security and quality, and to contractually ensure compliance with those parameters. That said, it is important to ensure that Apple does not impose unnecessary and burdensome obligations on alternative app stores or app developers through the app review and approval process. Other app stores allow alternative apps to be distributed.

2. Recommendation - Sideloading of iOS apps

The Report recommends that Apple be required to allow sideloading of apps on to iOS devices, as is technically possible today with Android devices.

As noted above, requiring Apple to permit the distribution of cloud gaming apps and alternative app stores through the App Store is the better approach in relation to security, quality, discoverability and user experience. However, Apple should also be required to permit sideloading. The potential security issues associated with sideloading are overstated by Apple. Apple currently permits what amounts to the sideloading through Apple Enterprise Management (replacing the earlier Device Management system).⁶ As Apple Enterprise Management makes clear, security, privacy and quality of the iOS ecosystem can be preserved using measures that are less restrictive than an outright prohibition on sideloading.

3. Recommendation - Improve support for web apps

The Report recommends that Apple be required to offer improved support for web apps within its ecosystem, to increase the competitive constraint that web apps impose on app stores (both the App Store and the Play Store). It recommends that push notification, screen rotation and full screen capability functionalities should be introduced, as there are no security, privacy or other justifications for not supporting these functionalities in web apps.

There is no reason for web apps to not be able to offer the functionalities identified in the Report (and others). The challenge will be to frame the obligation in a manner that is sufficiently concrete and enforceable, while allowing for evolution over time. Further, any requirement that Apple improve support for web apps within its ecosystem must be supported by a requirement to remove restrictions on functionality or interoperability of web apps. Apple's security and privacy concerns about enabling web apps to be able to offer the functionalities addressed in the Report are not justified.

B. Alternative Android distribution channels

The Report notes that Google's Play Store dominates 90 to 100% of Android native app downloads across Android, Huawei Mobile Services and Fire OS devices, despite the availability of alternative distribution channels for Android apps. In that context it makes two recommendations regarding Android apps.

⁶ <https://www.manageengine.com/mobile-device-management/apple-ios-management.html>.

1. Recommendation - Access to alternative app stores through Play Store

The Report recommends that Google be required to make available third-party app stores on Play Store, to broaden user choice and access to alternative app stores. For the reasons set out in Section II.A.1, above, security, quality, and privacy objections to this recommendation can be addressed through app reviews and contractual obligations.

2. Recommendation - Facilitate sideloading

The Report finds that sideloading on Android devices involves an extended process and requires users to lower their security settings, irrespective of the risk posed by individual apps. It recommends requiring that Google make sideloading easier, including by limiting the steps required.

Such measures will need to limit the restrictions that Google can impose, whether because of security, privacy, user experience or other grounds. Finally, it will also be important to ensure that measures intended to facilitate user sideloading cannot be undermined by Google through contracts with OEMs.