

7 February 2022

## **Observations on the Interim Report of the CMA's Market Study on Mobile Ecosystems**

### **A. Introduction**

We are an online music streaming service that gives users access to millions of tracks and other audio content like podcasts.

We are heavily dependent on the Apple and Google mobile ecosystems and, in particular, these companies' app stores where prospective users can download our app.

Our general impression of the Interim Report is extremely positive as it offers a panoramic view of the various competition and regulatory issues associated with the lack of competition between, but also within these ecosystems. Each of Apple and Google controls app developers' access to approximately half of the UK population. As a result, app developers are at the mercy of Apple and Google, which take advantage of their market power to impose terms and conditions that would not be acceptable in the presence of competition.

The problem is amplified when these gatekeepers also offer services that compete with app developers downstream, such as Apple Music, which directly competes with us. Apple leverages its control over the iOS environment and its App Store to harm competitors of its proprietary music streaming service. However, business users of the App Store (i.e., app developers) cannot afford to be outside of the iOS environment, as they would lose access to tens of millions of consumers. The Apple App Store accounts for around 70% of total consumer spend on mobile apps, and is therefore of paramount importance for app developers.

While the Interim Report raise many important issues, we will focus our observations on two main challenges we face in our dealings with Apple: (i) the App Store Review process and (ii) the mandatory use of Apple's in-app payment system ("IAP") and the associated 30% commission. We will also share some observations on the interventions contemplated by the ACM to bring more competition in mobile ecosystems.

### **B. The Apple App Store review process**

We agree very much with the observations contained in the Interim Report regarding the App Store review process, which is opaque and chaotic. we regularly experience delays, with the approval of new versions of our apps being subject to 2-week approval time instead of 2-day approval time (as it is usually the case). These delays disrupt our business, preventing us from rolling out important new features for our users on time.

The challenge is that it is hard to explain why these delays occur. As the delays regularly appear unjustified, we are concerned that in some cases they are simply designed to harm a direct competitor. It is indeed true that Apple's total discretion over the review process gives

them the ability to create considerable friction in the operations of their rivals. Unless some degree of objectivity and neutrality is injected in the review process, free and fair competition against the very company responsible for reviewing its rivals will never be possible.

In any event, considering the very high fees that Apple charges to app developers selling digital goods or services (a 30% commission), we would have expected at the very least a better review service. Apple uses its market power to collect maximum revenues while minimize spending as illustrated by its huge margins on its services segment.

### **C. IAP and the 30% commission**

The most frustrating part of our relationship with Apple relates to the obligation imposed on developers of apps that sell digital goods or services (as interpreted by Apple at its sole discretion) to use Apple's in-app payment solution (IAP) and pay a 30% commission (reduced to 15% for subscriptions after one year).

#### **1. The obligation to use IAP**

The obligation imposed on us and other music streaming service providers to use IAP instead of the payment methods of their choice is extremely frustrating for the following reasons:

- First, there is no logical reason why this obligation is only imposed on apps that sell digital goods or services and, as observed in the Interim Report, the justifications given by Apple are not convincing. There is no reason why our company, a small app developer that is not yet profitable, should subsidize the presence of immensely profitable companies, such as Facebook or Amazon, on the App Store. But for payment processing, these companies use the exact same App Store services as we do. We further elaborate on this point below.
- Second, this obligation is subject to various (often arbitrary) exceptions that Apple seems to be making when it is subject to regulatory pressure or when it sees it is in its commercial interest. Apple could, of course, argue that we qualify as a "reader app" and could therefore decide to disable IAP from its app (without however the possibility to use another in-app payment system or a link that would allow users to buy a subscription outside the app given Apple's anti-steering rules). While the reader app rule can be taken advantage of by companies with strong brand recognition, such as Spotify, that is not the case for small app developers. Hence, we have been forced to continue to use IAP at a cost of 30%.
- Third, the mandatory use of IAP disintermediates us from our users, which has a series of damaging consequences for consumers. It, for instance, makes refunds more difficult, as the user has a billing relationship with Apple, not us; we are thus unable to assist users with refund requests, and are limited to referring them to Apple. It also prevents us to help our users, for instance, when their subscription renewal fail because of the expiration of the credit card that they entered in the IAP system. It also makes it harder for us to offer alternative, more flexible terms of payments to users or special offers. For instance, during Apple Music's launch period associated with a 3-month free "try and buy" offer, we were unable to propose a similar promotion, as it

was not supported by IAP. Instead, we could only provide users with 1-week or 1-month free “try and buy” offer.

- Fourth, we have no access to transaction data for payments made through IAP, which we could use to improve our services and run credit card fraud tests. On the contrary, Apple has access to such data – including detailed data on the purchasing behaviour of our own customers. There is nothing preventing Apple from using such data to for example identify loyal customers and then selectively target them with offers. From a competitive standpoint, it is intolerable that Apple gains access to the commercially sensitive data of its competitors. It distorts the competitive process. Note that any suggestion by Apple that *in practice* it does not use this data to the advantage of Apple Music provides insufficient guarantees that this is the case. More on this issue below.
- Finally, IAP is a one-size-fits-all solution that does not meet our and our users’ needs. All app developers, whatever the nature of the products and services they offer, should be allowed to select the in-app payment solutions that best meet their needs and those of their users, or develop their own solution.

In short, the obligation for apps selling digital goods or services to use IAP is detrimental to competition and innovation, and to consumer welfare.

## 2. The 30% commission

Besides disintermediating us from our users, the obligation to use IAP comes with a 30% commission.

### ***Why the 30% commission is problematic***

As a starting point, it is important to note that music streaming services operate on very low margins, so when their costs increase, they are often forced to raise their prices. Apple is well aware that music streaming services generally pay approximately 70% of their revenue to content providers, leaving only 30% for all other operating expenses and margin – precisely the amount of the fee imposed in the App Store.

Thus, Apple forces rivals to either increase their prices for iOS users in order to cover the cost, or absorb that loss, thereby impacting or preventing their profitability. Apple Music, on the other hand, is not subject to such fees, and as such can charge a lower price. The 30% commission therefore squeezes Apple’s rivals by raising their costs.

### ***Why should we pay a commission?***

A fundamental question is why we and other apps selling digital goods and services (as interpreted by Apple) should pay a 30% commission.

Apple and app developers are in a relationship of mutual dependence. People buy Apple’s expensive devices among others because of the presence of a wide variety of apps. Even if

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Apple charged no commission to app developers, it would still maintain the App Store and invite app developers to distribute their apps through it as otherwise its iOS ecosystem would immediately collapse. Thus, the only reason why app developers have to pay a commission is because Apple holds gatekeeper power. That is fundamentally unfair.

Apple of course claims it is not the only platform to charge a commission and its commissions are in line with other platform, but this reasoning fails to convince for several reasons:

- First, Apple is in a unique position in that it does not need to charge a 30% commission to monetize its App Store. The App Store is monetized by the sale of expensive devices (which would be valueless without access to apps). Moreover, Apple charges a 99\$ annual developer fee, which considering the millions of app developers active on iOS generates an extremely large sum of money. Finally, Apple monetize its App Store through search ads, which is a fast-growing source of revenue. No other platform in the world is in that situation. In fact, most other platforms with commission-based models (e.g., OTAs, ecommerce platforms, etc.) are essentially dependent on their commissions to generate revenue.
- Second, the 30% commission rate has been set arbitrarily by Apple, as the latter faces no competition. The Interim Report is correct to observe that, despite its claims to the contrary, the Apple App Store is not subject to competitive constraints. Once again, this distinguishes Apple from other platforms with a commission-based model. OTAs for example compete with other OTAs, but also travel agents, tour operators and hotels themselves. The same is true for ecommerce platforms which typically compete with other platforms and brick-and-mortar shops. That is the reason why their commissions are typically lower.

Thus, Apple's arguments whereby depriving it from the ability to charge a commission would reduce its ability to invest in the App Store lack credibility. Apple needs the App Store to sell its expensive devices and the costs of the App Store are more than, fully covered by the 99\$ developer fee and its fast-growing search ads business. While competition authorities do not like to interfere with price-setting, it is questionable whether that approach in the present case where app developers face a company that is not subject to any market constraint would be the right one.

### ***What does the 30% commission cover ?***

Another question relates to what Apple is charging for with its commission. Apple has provided various explanations to justify its commission, such as that it provides distribution services, it gives app developers access to its user base, or it should be rewarded for the use of its intellectual property.

The trouble is of course that while *all* iOS app developers enjoy equal access to such services, *only* those apps that sell digital goods and services must pay a 30% commission. Now, the only difference between those apps that sell digital goods and services and those that do not

is that apps belonging to the first category have to use IAP. Thus, logic would suggest that Apple's 30% commission covers the cost of payment processing.

Apple has, however, vigorously denied that its commission covers in-app payment services (as in that case its 30% commission would appear vastly inflated compared to the 2-4% typical cost of payment processing), but the question of what its 30% commission covers remains.

Moreover, Apple has recently indicated in a statement that even in instances where dating app developers are authorized to use alternative in-app payment services or refer their users to outside payment means, it would continue to charge a commission.<sup>1</sup> Whether this commission will be subject to a discount (as the app developers will no longer use IAP for payment processing) is not clear yet.

A further illustration that Apple's 30% has no connection with economic reality is that it is subject to a variety of exceptions. For instance, Apple has introduced an exception for premium subscription video entertainment providers such as Amazon Prime Video where the commission is reduced to 15%.<sup>2</sup> Why music streaming is treated differently is hard to understand.

We also note that starting 1 January 2022, Google will apply a maximum commission of 15% for *all* subscriptions on Google Play. Although Apple claims that it is constrained by Google, it has not yet made a similar announcement.

Moreover, Google [announced](#) that new rates of 10% recognizing "industry economics of media content verticals" will be applicable to some specific digital services such as ebooks and on-demand streaming services where content costs account for the majority of sales.<sup>3</sup> This clearly states that Apple's 30% commission has no connection with economic reality.

### 3. Interventions

We provide below our comments on the potential interventions considered by the CMA in the Interim Report that are directly relevant to our business.

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<sup>1</sup> See [Distributing dating apps in the Netherlands](https://developer.apple.com/support/storekit-external-entitlement/), available at <https://developer.apple.com/support/storekit-external-entitlement/> ("dating apps that are granted an entitlement to link out or use a third-party in-app payment provider will pay Apple a commission on transactions.")

<sup>2</sup> In his written responses to the US Congress, Tim Cook submitted that Apple has in place a "Video Partner Program for Apple TV," in which case it charges a reduced commission of 15%. See Tim Cook's Responses to Questions for the Record from the Honorable David N. Cicilline, Chairman, Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary, 14 September 2020, available at <https://docs.house.gov/meetings/JU/JU05/20200729/110883/HHRG-116-JU05-20200729-QFR054.pdf>, page 7.

<sup>3</sup> See <https://android-developers.googleblog.com/2021/10/evolving-business-model.html>.

***Remedy area 1: interventions relating to competition in the supply of mobile devices and operating systems***

For the reasons explained above, we would like to support interventions that would require Apple and Google to “allow users to make in-app payments to their app provider directly or allow greater choice of third-party payment providers, which might make transferring subscriptions between iOS and Android devices more straightforward.”

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

*Interventions designed to address Apple’s and Google’s ability to harm competition through the operation of their app stores*

We support interventions designed to ensure a “**fair and transparent app review process**,”<sup>4</sup> including requirements for Apple and Google to do more to:

“(i) ensure a consistent application of their relevant app developer guidelines; (ii) ensure a sufficient level of transparency over the reasons for any rejection of an app, or any requirement to make changes to an app as a condition of approval; and (iii) ensure that they deal with developers and device manufacturers on fair and reasonable terms, and do not unduly discriminate between or apply different standards to app developers.”<sup>5</sup>

For reasons explained above, Apple’s opaque and chaotic review process has caused obstructions to the operation of our business. It is therefore important to impose on Apple to treat app developers fairly and reasonably, but also in a neutral manner so as to prevent Apple to use its review process to distort competition.

Given that we directly compete with Apple and Google we also support an intervention that would require Apple and Google to “*not unreasonably share information from one part of their business (the app store or app review process) to their app development businesses.*”<sup>6</sup>

These above-mentioned interventions could be based on some form of functional separation (see remedy area 6) between the App Store and the commercial exploitation of its apps by Apple in order to ensure that the app review process is carried out in a neutral manner and that there is no data leakage between the App Store and Apple other commercial operations.

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

We support an intervention to “*prevent Apple and Google from unreasonably restricting the choice of in-app payment services available to developers and users.*”<sup>7</sup> Indeed, “**greater**

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4 Id., paragraph 7.84.

5 Id., paragraph 7.85.

6 Id., paragraph 7.89.

7 Id., paragraph 7.98.

**choice of in-app payment options**” should be allowed, enabling 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’s and Google’s own payment system.*”<sup>8</sup>

A second intervention considered by the CMA relates to the “**greater promotion of off-app payment options**,” which would “*require Apple and Google to allow developers to refer users within an app to alternative ways to pay content and subscriptions outside of the app, for example allowing them to provide a link to where prices are lower on a website.*”<sup>9</sup> We support this intervention, which would allow app users to take advantage of better prices on the web.

The CMA should, however, ensure that Apple and Google are not allowed to disincentivize app developers from taking advantage of any intervention that the CMA would undertake by introducing various forms of frictions, e.g., making the use of alternative payment systems or the offering of off-app payment options inconvenient.

For that reason, we would like to suggest that the CMA imposes an obligation on Apple and Google to apply “*fair and non-discriminatory general conditions of access for business users to its software application store*” analogous to what is currently found at Article 6(k) of the European Commission proposal for a Digital Markets Act.

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8 Id., paragraph 7.99.

9 Id., paragraph 7.102.