



*Mobile ecosystems Market study interim report  
Comments from Yahoo EMEA  
February 2022*

**1. Introduction**

- 1.1. Yahoo is pleased to provide these comments on the CMA's analysis and the proposed next steps set out in the interim report. The report is a valuable contribution to understanding barriers to competition in mobile ecosystems.
- 1.2. We note that the CMA will continue its analysis during the second half of the study. We welcome the CMA's openness to feedback and to further evolving its thinking and potential remedies in the light of new evidence and comments from stakeholders.
- 1.3. The market study impacts our business at all levels. We provide here some high level comments and add further insights outside the scope of the requests for information to us. We expect to add to these comments during the second phase of the study.

**2. General comments**

- 2.1. The interim report sets out a thorough analysis of the structure and functioning of mobile ecosystems and relevant markets within them. In particular, it notes the growing complexity of assessing barriers to competition in digital markets caused by the growing number of intersecting commercial and regulatory issues. As a challenger in the UK digital market, our experiences align with what is described in the interim report.
- 2.2. Sections 7 and 8 sets out potential interventions and further work to be done in the second half of the market study. We broadly agree with the options set out under Remedy Areas 1-4 and the analysis that underpins them. The CMA should prioritise remedies which address the *source* of market power.
- 2.3. [CONFIDENTIAL: REDACTED]
- 2.4. The interim report suggests that the statutory DMU should decide what interventions it considers necessary within the proposed UK legislative framework for establishing a pro-competition regime for digital markets. While the DMU was established in pre-legislative form in April 2021, there is no clear timetable for introducing the legislation needed to give the DMU the necessary powers. A Bill would be introduced in 3rd session legislation at the earliest, delaying implementation of the new regime by a further 2-3 years (longer if the Bill is subject to pre-legislative scrutiny).
- 2.5. The second half of the market study must consider the potential consequences of waiting for the new regime. While conclusions reached through the course of this market study will assist the process of establishing and operationalising the new pro-competition regime, it is less clear that the evidence and analysis from the market study will on its own be useful input to the DMU's assessment of market power as there will undoubtedly be new evidence to consider by this

time. There is also the risk that firms with market power build on structures and behaviours of concern to further entrench market power and disadvantage competitors.

- 2.6. The CMA should therefore work closely with Government to prioritise and expedite the introduction of new legislation and provide clarity for stakeholders as to what action the CMA intends to explore in the meantime to avoid further restrictions to competition. In spite of over 3 years of detailed market study and evidence gathering from competing firms, there is still debate about the ultimate scope and design of the Bill and decisions made by Government and Parliament will impact the effectiveness of the approaches set out in sections 7 and 8.
- 2.7. Most importantly, the second half of the market study should consider intersections between competition policy and data protection regulation. Increasingly narrow interpretations of data protection law and proactive encouragement of new approaches which exceed what data protection law requires empowers firms with market power to set future standards - beyond those set by legislators - which only they can meet. This creates a moving target for competing firms and those who depend on their infrastructure as to what constitutes compliance with applicable law and could quickly become the overriding barrier to competition that is justified as a countervailing benefit.
- 2.8. This is worthy of specific reflection in the context of the remedies set out in section 7 and 8 as it paves the way for future data protection standards to be set by means other than the deliberation of national legislators and this would undermine the goal of ensuring that competing technologies are judged on their merits, independent of the actions of firms with market power. This will also have direct and indirect consequences for consumers in terms of investment in competing digital services and alternative revenue models for providers of such services.
- 2.9. The work of the Digital Regulation Cooperation Forum (DRCF) is particularly important in this regard. The relevant DRCF regulators - specifically the CMA and ICO - should ensure proactive engagement of firms across mobile ecosystems and greater transparency around when guidance with market impact is being developed.