REQUEST FOR CONFIDENTIAL TREATMENT

Browsers and Cloud Team
Competition and Markets Authority
25 Cabot Square
London
E14 4 QZ

21 July 2022

Dear Sirs and Madams,

Mobile Browsers and Cloud Gaming Consultation on Proposed Market Investigation: Response from Developer 1

As a social gaming company, our goal is to enable people to play wherever they are communicating online. This is technically possible today but is hampered by the policies of the main gatekeepers to protect their own market power and revenue.

For this reason, we strongly support the CMA's proposal to undertake a market investigation into mobile browsers and cloud gaming. The Final Report on Mobile Ecosystems showed a nuanced understanding of the complexity of the mobile ecosystem and the overwhelming control and reach of a few dominant players in the space. Given the debilitating impact of a few key players' anti-competitive policies, we are far from a well-functioning market, which harms consumers, small businesses, and innovation. From our own experiences as a browser-based gaming company, we believe further investigation into mobile browsers and cloud gaming will bring the inequities into even crisper focus.

In the software space where we operate, there are six material "ingredients" for a well-functioning market:

- **Discoverability** - Ability for potential customers to find your products and services and share them with others
- **Delivery** - Ability to deliver software code (the product) and services to consumers
- **Monetization** - Ability to build a sustainable business
- **Ecosystem Transparency** - Ability to observe what is and what is not working within the ecosystem, for example, which offerings are doing well and which are not, so participants can learn, innovate, and improve product offerings.
- **Interoperability** - Ability for products and services to operate throughout the ecosystem and not be limited to silos
- **Predictability** - Ability to understand the market and the rules so new and existing businesses are incentivized to invest in new technologies because they understand the landscape generally and can plan.

Apple and Google have been using their market power to materially erode each of these ingredients, making it harder for novel technologies and services to gain a foothold. We would encourage the CMA to further investigate the additional following issues:

1. Mobile browsers and mobile engines

- ***Suffocation of developers' abilities to reach new customers and provide a richer, interoperable experience.*** Apple specifically does not implement standard APIs, purposefully requires developers to build skins over WebKit for mobile web applications, and self-preferences API access for Safari. This limits developers' ability to reach more customers and provide more innovative, safer, and interoperable experiences. More specifically it would be helpful to understand the rationale behind and effect on the ecosystem of both:
    - Parity features for the web which Apple previously refused to support but does now in a manner that positions them to collect data the developer does not have access to, given the iOS implementation. For example, the Navigator Share API[1], a standard web API which Apple recently implemented after resisting for many years, allows developers to build in sharing to communication and social media platforms into their browser-based app. However, the data goes through Apple - the developer does not know where the content was shared, but Apple does, enabling them to track and research what works and what doesn't in the space. This is a relatively new implementation and it is not clear how Apple will crack down on its use if it doesn't like the effects, for example, reach, distribution and monetization outside the App Store.
    - Features that are NOT launched and standard APIs that are NOT supported or updated, that, if they were, would make the consumer experience richer with more choice. Examples include the Web Push API[2] and the Vibration API[3]. In other words, Apple is not supporting standard features on the web that would make it easier for developers to innovate and build better experiences, especially *across* operating systems, and communicate directly with their customers. If Apple did, they would lose sole access to valuable data and their market lock on consumers in the App Store.[4]
- **Stifling incentives to invest.** Apple in particular has created market dynamics that stifle the incentive for new and existing businesses to invest in building new technologies that may compete with Apple in a two-pronged approach. On the one hand, Apple creates material uncertainty for third party developers by changing (or threatening to change) rules and policies at any time, which makes it nearly impossible for third parties to offer services that their customers see as stable. At the same time, Apple offers its own solutions, which are stable because Apple creates the applicable rules, which are always in Apple's favor. This forces developers to "choose" Apple's services (sometimes directly, as with WebKit and sometimes indirectly because no other choices have materialized due to the instability of the ecosystem for third parties).

[1] See https://developer.mozilla.org/en-US/docs/Web/API/Navigator/share
[2] See https://developer.mozilla.org/en-US/docs/Web/API/Push_API
[3] See https://developer.mozilla.org/en-US/docs/Web/API/Vibration_API
[4] See https://infrequently.org/2022/06/apple-is-not-defending-browser-engine-choice/

- ***Advertising.*** While we are trying to build revenue models that do not depend on advertising, we share the CMA's concerns that Apple and Google will use their power in mobile browsers and browser engines to further strengthen their positions in advertising *and beyond by limiting/effectively prohibiting alternative monetization options*. In particular, current policies already limit the ability for developers to innovate on non-ads based revenue models, like subscriptions, memberships, and in-game purchases, forcing them to turn to advertising to build sustainable revenue which further entrenches the incumbents.

2. Cloud Gaming

- ***Inability to offer apps with consolidated offerings within the App Store (the ban on app stores within the App Store).*** This restriction impacts gaming developers doubly. First, game developers cannot offer their own branded app with all their games in one place – developers have to build games in WebKit, which is clunky, and submit them one by one to the app store. Second, browser-based games cannot be offered within third party platforms, such as LINE, Snapchat, Facebook/Meta on mobile (this is not the case on desktop). Of note, this policy is inconsistently applied - Apple allows Roblox to offer a single app in the App Store which offers multiple experiences within the single app.

  But Apple's policies reach beyond the app store: Apple has used its market power to pressure large platforms that want to offer these novel gaming experiences to remove them under threat of not being allowed to update their own apps in the app store, even for security patches.[5] This is known in the industry as being "thrown in jail."

  Similar to the "privacy and security" arguments, Apple claims "user confusion" to support its "no app stores in the app store" policy. The "user confusion" argument is another masquerade to prohibit features that threaten Apple's market hold and have nothing to do with being an app store within an app store. For example, Apple uses the "user confusion" argument to:
  - Frustrate the ability to deliver games where players want to play by prohibiting adding games into communication apps, for example preventing Facebook/Meta from adding games into the composer for text messages.
  - Frustrate the ability for participants in the ecosystem to learn by refusing to allow access to information which could be used for business intelligence which can be used by market participants to guide development of new technologies, services, and products. For example, while Apple allows information about relative app popularity to be discovered, analyzed, and published on business intelligence aggregation sites like App Annie and Sensor Tower, Apple forbids gaming and cloud gaming apps (including Facebook, Snapchat, LINE, and other social apps) to recommend apps to users or list them in predictable ways. In addition to limiting discoverability of new apps, this also prevents the market from achieving ecosystem transparency, both of which are aforementioned critical aspects of a well-functioning market for mobile applications.

[5] While not related to payment options, the recent situation between Kakao and Google over Kakao's implementation of a third party payment option in-app is similar: https://en.yna.co.kr/view/AEN20220713006700320

This impacts developers' ability to (1) understand consumer preferences in our market through which games they play and (2) build and maintain alternative own business intelligence sites focused on cloud gaming app stores. These companies struggle to obtain information which Facebook wants to share publicly, but which Apple forbids under the pretense that sharing such information inside the Facebook app would be an "app store within the App Store" and thus cause user confusion. The result is that no developers are able to learn what is working in the market, and thus they are unable to guide their own product development and investment plans.

- ***Complete ban on monetization outside the App Store.*** Currently Apple does not allow browser-based games to receive revenue through third party payment vendors, an app's own payment system (for example, Facebook's payment system), ***or*** *Apple's own payment system* ***on web or mobile***. The only way browser-based games are currently able to monetize on iOS is through an app in the App Store, which is clunky, has high drop off, and is not the consumer's preference of where to engage and play. Most consumers who download and purchase through the App Store app do not return - they engage with the game on the platform where they are socializing/communicating. Apple claims this is to protect consumers from fraud, however, Google allows game developers to use Google's payment solution on web and mobile and there have not been fraud issues.
- ***Enforcement by the platforms.*** As mentioned above, Apple in particular enforces its policies inconsistently. In addition, through the forced review process for apps, it can find myriad ways to reject (or delay) an app which it doesn't like. This means that even if on the surface the platforms look to be making compromises and changing policies publicly, what is important to understand is how many apps that are taking advantage of more open policies are actually "passing" app review with those features intact. This threat of Apple's reaction also causes developers to self-censor and it therefore chills innovation. Understanding the app review process and statistics, and also its chilling effect, will be important for the CMA to design enforcement mechanisms that allow innovation to flourish.

We are grateful for the opportunity to submit our perspectives and thank you for your consideration.

Best regards,

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