

Case 60015 – Apple – In-App Payment System

Statement regarding the CMA’s decision to close an investigation on the grounds of administrative priority

The Competition and Markets Authority (the ‘**CMA**’) has closed its investigation under the Competition Act 1998 (the ‘**Competition Act**’) in the above matter (the ‘**Investigation**’) on the grounds that it no longer constitutes an administrative priority for the CMA.

For the avoidance of doubt this does not constitute a decision by the CMA as to whether the Chapter II prohibition of the Competition Act (the ‘**Chapter II prohibition**’) is being or has been infringed.

The decision is addressed to Apple Inc., Apple (UK) Limited and Apple Europe Limited (together, ‘**Apple**’) and relates to the investigation into Apple’s In-App Payment System (‘**Apple IAP**’).

The CMA will continue to monitor Apple’s conduct in the market. Its decision to close the case on grounds of administrative priority does not prevent, pre-judge or fetter the CMA’s ability, if appropriate, to open an investigation under the Chapter II prohibition in future, or to take action in respect of the conduct considered as part of the Investigation under the powers it has now gained in the Digital Markets, Competition and Consumers Act 2024 (the ‘**DMCC Act**’) or its other tools. As explained below, the CMA considers that the use of its DMCC Act powers in particular may be more appropriate to assess and as necessary address the type of conduct considered as part of the Investigation.

Background

On 3 March 2021, the CMA opened the Investigation into the distribution of apps on iOS and iPadOS devices in the UK, in particular, the terms and conditions governing app developers’ access to Apple’s App Store (the ‘**App Store terms and conditions**’) and whether these infringed the Chapter II prohibition.

On 15 June 2021, the CMA launched a market study into mobile ecosystems in the UK assessing potential sources of harm to consumers within four broad themes, one of which was competition in the distribution of mobile apps (‘**MEMS**’).

After publication of an Interim Report on 14 December 2021, the CMA published a Final Report in MEMS on 10 June 2022.¹ The Final Report set out the CMA's findings, the concerns that it had identified, and its assessment of the range of potential interventions that could address them. The report also set out the action the CMA would be taking after the study had concluded.

That Final Report considered Apple's app store payment systems. It found that the App Store requires that certain in-app payments must be made using Apple IAP. For transactions which are handled by Apple IAP, Apple effectively acts as the seller of the relevant in-app purchase and has the contractual link to the consumer. Apple's rules require that apps which offer 'digital' content must exclusively use Apple's own systems. Conversely, apps which provide physical goods and services outside of the app cannot use this payment system and are able to use alternative payment service providers, such as PayPal. It found that most of the payments made using Apple IAP are subject to a 30% commission.

The Final Report summarised certain concerns that app developers had expressed to the CMA going beyond the payment of the commission fee and the level of that fee. Those harms were that:

- apps which are required to use Apple IAP do not have the benefit of competition between providers of payment systems (paragraph 6.136); and
- Apple acts as the direct seller in relation to Apple IAP transactions, with certain associated drawbacks (paragraph 6.137).

In addition, the Final Report identified that the requirements to use Apple's payment system (and pay the associated commission) for in-app payments on apps that compete downstream with Apple may raise additional concerns (paragraph 6.138).

Ultimately, the Final Report concluded that:

'6.139 We have identified a number of potential harms from Apple's ... requirements on certain developers to use their proprietary payment system to process in-app purchases for digital content, which could be avoided if app developers were able to choose their own payments service providers and transact directly with users. We consider that there would be viable alternative methods for Apple ... to collect a commission ... , while also allowing developers to choose alternative in-app payment mechanisms, which do not give rise to the potential harms to competition outlined above. It is not clear that these alternatives would be prohibitively costly or challenging to implement and it would appear that ... Apple ... have the ability to effectively enforce against

¹ MEMS Final Report ([Final report \(publishing.service.gov.uk\)](#)).

any requirements that they impose through the use of their app review processes.'

Since publication of the MEMS Final Report, the CMA's Investigation has focused on consideration of whether Apple's App Store terms and conditions as described in the MEMS Final Report constitute an infringement of the Chapter II prohibition.

The Digital Markets, Competition and Consumers Act 2024

The DMCC Act received royal assent on 24 May 2024 and will enter into force in due course.

The DMCC Act provides the CMA with new, more effective tools to address barriers to competition in digital markets. It gives the CMA the power to designate firms as having Strategic Market Status ('**SMS**') in relation to a digital activity. Part of the Government's rationale for the DMCC Act was the view that the existing competition framework was not set up to address effectively certain features of fast-moving digital markets that can lead to a small number of firms establishing entrenched and substantial market power.²

For firms that are designated as having SMS, the CMA is able to set requirements for how these firms should conduct themselves in relation to that activity (Conduct Requirements) or to intervene to address adverse effects on competition arising in relation to the digital activity (Pro-competition Interventions).

In terms of how the powers under the DMCC Act will complement the CMA's other tools – including Chapter II of the Competition Act – the CMA will consider which of its tools is most suited to the issue it is seeking to address.³

No decision has yet been taken as to the digital activities or firms that will be investigated by the CMA for possible SMS designation once its DMCC Act powers are in force. We will consider the potential concerns identified in MEMS and the Investigation alongside other relevant concerns relating to digital markets in taking any such prioritisation decisions in due course.

² See Overview of the CMA's provisional approach to implement the new Digital Markets competition regime 11 January 2024 ([Overview of the CMA's provisional approach to implement the new Digital Markets competition regime \(publishing.service.gov.uk\)](#)), paragraph 3.2.

³ See Overview of the CMA's provisional approach to implement the new Digital Markets competition regime 11 January 2024 ([Overview of the CMA's provisional approach to implement the new Digital Markets competition regime \(publishing.service.gov.uk\)](#)), paragraph 7.12.

Prioritisation assessment under the Competition Act

The CMA has reviewed the appropriateness of the continuation of the Investigation under Chapter II of the Competition Act given recent developments, including in particular the forthcoming availability to it of the new powers provided to it by the DMCC Act. As set out above, the CMA has closed the Investigation under the Competition Act on the grounds that it no longer constitutes an administrative priority.

The CMA has regard to its published Prioritisation Principles at certain points in the life cycle of a project, when deciding whether it still warrants the continued commitment of resources. The CMA generally prioritises according to the strategic significance and impact of the work balanced against the risks and resources involved, and whether the CMA is best placed to act.⁴ As part of this, the CMA keeps under review the tools it uses to deliver anticipated benefits, and – as noted above – which is best suited thereto.⁵

The CMA wants to achieve real-world impact for the people it serves.⁶ This includes ensuring digital markets are competitive, as identified in the CMA's Annual Plan 2024-2025 as an area of focus.⁷ The CMA considers that the App Store terms and conditions remain an area of strategic significance in terms of prioritisation.

However, the CMA is conscious that this is a fast-moving area in which app store operators are adjusting their offerings in many jurisdictions to reflect product and technological developments, as well as regulatory interventions globally. In this context, a more holistic consideration of Apple's rules in this area alongside the wider commercial terms in its App Store offering is likely to be most effective in achieving meaningful, timely impact where appropriate. In this context, the CMA is mindful that:

- enforcement under the Competition Act would, if progressed, potentially take a significant period of further time, involving the issuing of a statement of objections and consideration of representations from Apple before a final decision could be taken;
- should the CMA continue the Investigation and find an infringement, any directions issued at the end of the Investigation to seek to promote

⁴ CMA Prioritisation Principles 30 October 2023 CMA188 ([Prioritisation Principles \(publishing.service.gov.uk\)](#)), paragraphs 2.1 and 2.2.

⁵ CMA Prioritisation Principles 30 October 2023 CMA188 ([Prioritisation Principles \(publishing.service.gov.uk\)](#)), paragraph 3.13.

⁶ CMA Prioritisation Principles 30 October 2023 CMA188 ([Prioritisation Principles \(publishing.service.gov.uk\)](#)), paragraph 3.5.

⁷ CMA Annual Plan 2024-2025, Figure 4: [Annual Plan 2024 to 2025 - GOV.UK \(www.gov.uk\)](#).

competition in the market, would relate specifically to the conduct covered by the infringement decision, and thus potentially be less able to take account of Apple's wider activities in mobile ecosystem markets; and

- the CMA will soon have the option to consider firms' conduct in digital markets under the DMCC Act framework instead. Any use of such powers in relation to matters covered by the Investigation would be subject to the CMA prioritising an investigation into whether Apple has SMS in relation to a relevant digital activity, and making such a designation finding. As noted, no decisions have yet been taken in this regard. However, were it to do so, the nature of the CMA's DMCC Act powers may enable any concerns identified to be addressed in a more timely, holistic and flexible manner than would likely be possible within the current Competition Act investigation.

Conclusion

For the reasons set out above, the CMA has closed its Investigation under the Competition Act on the grounds that it no longer constitutes an administrative priority for the CMA.

The CMA's decision to close the Investigation should not be understood to imply that the CMA considers that the concerns identified in the MEMS Final Report were unfounded or have ceased to exist. Nor is the CMA making a decision as to whether there has been an infringement of the Chapter II prohibition.

This decision does not affect any other action that the CMA may wish to take in relation to Apple's conduct in this area in the future.

Competition and Markets Authority

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