Google

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**CMA Mobile Ecosystems SMS Investigation**
**Google's Response to the CMA's Invitation to Comment (ITC)**

## A. Introduction

Android is currently the only example of a successful open-source mobile OS. Its open source design enables OEMs to use and adapt it to build high-quality, differentiated devices at scale. The consistent technical baseline that we steward enables developers to write an app once and run it across billions of compatible Android devices worldwide. Our deals with OEMs ensure a consistent out-of-the-box experience. Chrome, and its open source engine, Blink, offer a best-in-class experience for users and web developers. And Play, together with the multiple other distribution channels on Android, enable developers – large and small – to reach vast audiences for their apps. In the coming years, we anticipate other developers following Android's lead and introducing or growing their own mobile operating systems, as some are reportedly preparing to do.

The results speak for themselves. Android OS and its surrounding agreements have delivered tangible benefits for UK customers since we, together with the Open Handset Alliance, introduced Android in 2008. Today, Android generates over £9.9 billion in revenue for UK developers, supports over 457,000 jobs in the UK and gives customers a remarkable level of choice. By 2015, there were over 24,000 Android phone models from 1,300 phone manufacturers worldwide. By 2019, Android was powering the first 5g phones to come to market.

Today, Android remains at the forefront of innovation. The pace of innovation is only increasing. In the past six months alone, we have released new features such as 'private spaces' for sensitive apps, such as health or banking apps, with segregated data and notifications, and require an additional layer of authentication; 'theft protection' which contains a suite of proactive security features; 'listen to this page' in Chrome, which lets users hear web pages read aloud, with personalised adjustments to the speed, voice, and language used; and much more. We are also facilitating enhanced AI capabilities to improve users' experiences with their Android devices.

Android's successful track record of innovation has been achieved through an open, interoperable business model that offers users, developers, and OEMs unparalleled choice, including in the areas that the ITC identifies as relevant to mobile competition:

- ***Whether to switch devices.*** If users want to change from Android to non-Android devices, switching tools (including relevant APIs and functionalities) are readily available. The switching process is facilitated by Google's own first-party apps being available for use on iOS devices too.

- ***Which apps to preload.*** OEMs design, develop and sell their devices as they see fit, including which apps they want to preload. In the case of browsers, OEMs have installed a non-Chrome browser on 70% of UK Android devices. In the case of app stores, more than 50% of UK Android devices come with a non-Play app store preloaded.

- ***Which defaults to set.*** OEMs decide which apps they want to set as the default services out-of-the-box. For example, non-Google browsers are set as the default on approximately 60% of UK Android devices, and the CMA has already acknowledged that Google does not use "*its position as an operating system or mobile browser engine to favour Chrome*." The CMA found

that 80% of survey respondents were comfortable changing settings such as defaults on Android devices.

- ***Where to distribute.*** Developers promote and distribute their apps to users as they wish. For example, every Android browser (i) can prompt users to change their default browser; (ii) can use whichever browser engine the developer prefers; and (iii) can distribute through Play, sideloading, or third-party app stores (as well as securing preloads).

- ***How to monetise.*** Android developers have a variety of options when it comes to choosing their preferred monetisation option and their preferred partners and distribution channels. Play is one of these among many. It creates a safe and trusted environment where users are willing to pay for content from developers. Benefiting from Play's reputation for safety and reliability, developers can monetise by selling apps, subscriptions or in-app content, or other means. Play's service fee reflects the value developers get from Play as well the underlying investments in the Android ecosystem. And until developers themselves generate revenue from their Play-distributed apps, they do not have to pay any service fees at all.

- ***What functionalities to call on.*** Because Android is an open source operating system, it is inherently interoperable. Developers can call on Android features that they find useful, enabling them to offer useful tools to their customers. In the mobile browsers market investigation, the CMA provisionally found no adverse effect on competition in relation to access to functionality on Android. To take just one example, access to the NFC antenna on Android devices is open, meaning mobile wallet providers can let users make contactless payments from their phone.

- ***Which apps to install.*** Users can tailor their device to their needs, whether through choosing how to download apps or setting their preferred apps as defaults for generic intents, e.g. opening a web link via the default browser. As the CMA's own evidence shows, UK Android users know that they can easily download a replacement browser - in fact UK Android users now frequently use 23 different browsers. Moreover, millions of users in the UK have already chosen their default browser from a choice screen.

All of these freedoms contribute to an Android ecosystem that supports innovation, choice, trust, and opportunities for Google, Android OEMs, and third-party developers to succeed. We support a DMCCA that maintains our ability to continue building on Android's success; enables us to sustain our investments in the UK; and allows all participants in the UK tech sector – big and small – to continue to innovate and thrive. Investment and innovation are not 'zero sum games'. New entry and product development can be encouraged and nurtured across large and small players at the same time. We understand that the CMA aims to maximise investment across-the-board in designated areas of SMS activity. We support that objective, which is a useful touchstone for evaluating potential interventions.

### B. Scoping SMS designations

SMS designations identify digital activities where firms have 'substantial, entrenched market power' and 'a position of strategic significance.' This is an expressly forward-looking approach that requires an assessment of how competition will develop over the next five years, including the possibility of new entrants – or current players expanding – during this period.

Android continues to face strong competition from iOS. Chrome faces strong competition from a variety of browsers on Android, including many new ones, as well as from Safari and other browsers on iOS. And Play faces competition from a variety of alternative app distribution channels on Android, such as different app stores, sideloading, preload agreements with OEMs, and PWAs. But Play also faces competition *beyond* Android, from iOS to PCs and consoles as well other devices where users can purchase content for apps and games that work across different devices.

Finally, the CMA will need to consider carefully and objectively the boundaries of any products that fall within the scope of a potential designation decision, as well as the open and customizable limits of Android, which gives OEMs extensive freedoms but necessarily places limits on Google's control. Many processes, such as preload decisions, are taken by independent OEMs who account for over 90% of the Android devices sold in the UK. As at least one OEM has stated to the CMA: "*Google has no authority to install multiple browser apps, implement the browser screen choice screen or adjust the home screen*", unless the manufacturer "*agrees to do so*". This is a fundamental difference with the vertically integrated iOS ecosystem, and it affects the extent of Google's control.

Our aspiration is for designation decisions that are well-considered, evidence-based, predictable, and stable so that we can plan and progress future product launches with a clear sense of where regulatory dialogue will be required.

### C. Recognising that interventions entail trade-offs

Our experience from digital regulation in other jurisdictions shows that interventions entail significant trade-offs and can produce adverse effects on third parties who are *not* the subject of potential SMS designations.

For example, setting strict conditions on what promotions we can seek for Google apps under agreements with OEMs may call into question the economic rationale for sharing revenues with those OEMs at all, which could harm OEMs who operate on thin margins. In turn, it may mean that OEMs have less funds to produce new and improved devices or that they increase device prices.

Similarly, enabling 'linkouts' might benefit certain app developers who want to channel purchases and payments outside of Play, but would harm end users who do not want (or typically cannot discharge) the responsibility of evaluating the safety profile of every APK that a developer may offer for download via a linked-out website. Users do not want to have to be constantly on guard for harmful apps. That would be a disturbing experience for any non-expert user, but particularly for individuals in vulnerable groups, who do not want to be on constant alert for linkouts that might lead to harmful sources. Directing users to potentially any website on the open Internet could take them to malicious or dangerous sites, outside the safe and trusted environment that has made Play a success. The result would be reduced user trust.

There is no way for Google to review *all* of the apps that could be downloaded onto an Android device from the open Internet. But if users were taken to a download link from a Play-distributed app, it is Play's reputation that's on the line. In turn, the increased risks associated with downloads may lead to users becoming reluctant to download apps at all; OEMs moving from thinking of Play as an asset to thinking of it as a security vulnerability; and, ultimately, OEMs reconsidering the benefits of producing Android devices at all, particularly as new OSs come to market.

Therefore, any interventions under the DMCCA should be limited to those that can be confidently said – based on a firm evidential basis – to improve output, innovation, investment, consumer welfare and growth *overall*. That is consistent with the CMA's goal of "*driving growth*", and echoes the Government's steer.

### D. Developing an investigation roadmap early in the process

The ITC outlines a wide range of issues in terms of both the scope of possible SMS designations and potential conduct requirements. The ITC lists more than a dozen potential conduct requirements, many of whose objectives we already meet in view of Android's model – for example, enabling interoperability.

However, some of these conduct requirements threaten to unpick central pillars of Android's model; in particular, its openness which has been a key differentiator and growth contributor. This could damage Android's benefits for users, developers and manufacturers. Other requirements would – in users' minds – link Play's reputation and credibility to the safety and reliability of third-party stores and websites (which we cannot control), while undermining our ability to monetise the value of innovations we provide.

We urgently need clarity about which conduct requirements the CMA plans to prioritise so as to plan the future direction of our UK business and to ensure ample time to build for compliance. Keeping all of the issues open would undermine predictability and would prevent our teams from focusing on gathering relevant evidence on the issues that the CMA plans to prioritise.

We urge the CMA to develop a roadmap for the investigation that will see less viable or unnecessary conduct requirements excluded at an early stage – for example, identifying interventions that are costly to implement and do not appear to deliver tangible benefits to consumers or businesses.

### E. Focusing on tangible benefits for UK users, businesses and growth

Our commitment to choice and openness creates opportunities for innovation that other platforms do not allow. Several factors are relevant to the CMA's assessment of where it needs to act:

- Certain potential conduct requirements appear to focus on perceived concerns that are not supported by the evidence. For example, the CMA's Provisional Decision Report (**PDR**) in the mobile browsers market investigation acknowledges that feedback from third parties "*do[es] not evidence Google using its position as an operating system and mobile browser engine provider to favour Chrome*" (paragraph 5.128). Our response to the PDR shows how several other perceived concerns are likewise not supported by the evidence that the CMA identified.

- Possible consumer benefits will need to be weighed against unintended consequences. While potential benefits of intervention may be speculative, adverse or unintended consequences are often well-known and substantial. For example, unintended consequences could include losses for important but less vocal parts of the ecosystem, such as delayed product launches, and a worse product experience for smartphone users. Another unintended consequence could be loss of security, which would be a critical issue for the entire ecosystem.

- The CMA will work with "*international counterparts to minimise unnecessary duplication*" (CMA Provisional Approach, para. 1.6). A key question, therefore, is whether equivalent interventions

have brought benefits or downsides in other jurisdictions – if not, the CMA should focus attention elsewhere.

## F. Conclusion

Android has increased choice, reduced prices and democratised access to smartphones and apps. It has led to developers being able to build helpful and secure apps without having to pay upfront access costs. It has allowed manufacturers to build devices without the costs of building or sourcing an operating system for their phones to run on. It gives browser developers the freedom to use whichever engines and functionalities they think will create the best user experience. It is unique among operating systems - it is available for anyone to use and offers choice and opportunity to UK businesses, while protecting users from security and privacy threats.

The CMA's desire to understand our business better is reasonable and welcome - we produce products that are used by many UK consumers and businesses daily. We strongly believe that the CMA will be able to move quickly to focus this investigation and give us a clear and predictable path forward for the coming months. As with the CMA's assessment of Search, our contributions will be constructive and fact-based, and will demonstrate the innovation that our products bring to the UK.

We are committed to being a DMCCA-compliant partner in the UK's journey towards a more prosperous and inclusive digital future, and of the CMA as it now moves to build constructive and long-term regulatory relationships.