Coalition for APP FAIRNESS

CMA invitation to comment on its designation investigation into Google's and Apple's mobile ecosystems under the Digital Markets, Competition and Consumers Act

Response from the Coalition for App Fairness

February 2025

This document is the response of the Coalition for App Fairness (CAF) to the CMA's invitation to comment (ITC) published on 23 January 2025 in its mobile ecosystems designation investigations under the Digital Markets, Competition and Consumers (DMCC) Act. Please treat this response as relevant to both the Apple and the Google investigations.

CAF is an independent nonprofit organisation, representing over 80 companies including startups, independent and small developers, indie studios and popular apps, many of them based and operating in the UK.[1] CAF members are unanimous in our support for a strong, effective use of the CMA's powers and particularly the digital markets regime under the DMCC Act. The future of UK tech depends on an open and competitive marketplace where business can innovate and scale up, driving growth, innovation and productivity; and ensuring UK businesses and consumers can reap the benefits of competitive markets such as lower prices and consumer choice.

General points

CAF welcomes the DMCC Act. CAF strongly supports the CMA's focus on unlocking growth through competition policy, particularly in digital markets.

The UK's mobile app ecosystem is a critical growth engine, generating £74 billion in GVA (1.5% of UK GDP) and supporting over 400,000 jobs.[2] Additionally, mobile commerce through apps has reached £179 billion annually, demonstrating how deeply integrated apps have become in the UK economy.[3] However, this entire ecosystem is controlled by just two companies – Apple and Google – which impose rules that restrict UK innovation, including forcing the use of their payment systems with up to 30% fees, blocking competing app stores, restricting developer-customer communication, controlling access to device features, and using competitor data to launch rival products.

That is why our members unanimously support strong implementation of the DMCC Act: far from adding 'red-tape', this new regime will remove the barriers many of us face daily and unleash the competition required to drive innovation and investment.

The CMA is well-positioned to enforce the DMCC Act through its innovative regulatory approach. With targeted powers at its disposal, the CMA is uniquely positioned to stimulate UK economic growth while ensuring fair competition for startups and scale-up companies. We believe the DMCC regime will act as a model for other regulators to put growth at the heart of their activities (as it already is in Australia, for example).

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[1] List of current members available at: https://appfairness.org/members/.
[2] Deloitte, The App Economy in Europe, August 2022,cited by DCMS December 2022, available at: https://actonline.org/wp-content/uploads/220912_ACT-App-EU-Report.pdf.
[3] CMA, Mobile ecosystems market study final report, July 2022, page 10.

We therefore warmly welcome the CMA's announcement of investigations into whether Apple and Google hold Strategic Market Status (SMS) in mobile ecosystems, alongside consultation on potential Conduct Requirements (CRs). This represents a crucial opportunity to unlock growth by removing artificial barriers that currently restrict innovation and competition. The CMA has an unmatched understanding of mobile ecosystems markets, following its excellent 2022 market study report. The findings of that report remain just as true today and we encourage the CMA not to “reinvent the wheel” in the current investigations.

As will be discussed in more detail below, CAF supports the approach taken by the CMA in the ITC document, particularly as regards the scope of the investigation and the potential CRs that are listed. We look forward to engaging further with the CMA during these investigations, especially on the crucial details of the CRs.

ITC consultation questions

Do you have any views on the scope of our investigations and descriptions of Apple’s and Google’s mobile ecosystem digital activities?

We agree with the scope of investigation as set out in the ITC. Apple’s and Google’s mobile ecosystems activities are accurately described in the ITC.

Mobile operating systems, native app distribution (especially app stores) and browsers (including browser engines) each act as unavoidable gateways between users and businesses and they are closely linked to each other. It makes sense for the CMA to include all three products within the scope of its investigation. This will result in a proportionate and targeted investigation.

Paragraph 69 of the ITC discusses whether it would be more appropriate to make three separate designations for each of the two firms, or whether the three products should be grouped as a single digital activity. In our view, both approaches would work. The CMA would be fully justified if it wanted to group them together. They have substantially the same purpose, i.e. the operation of an integrated ecosystem for mobile devices, and they are carried out in combination to fulfil that purpose. They are so closely interlinked that in some circumstances it may be difficult to say whether conduct occurs within (e.g.) the app store or the operating system (or both). From our point of view, the key issue is whether grouping them together will make the CRs more straightforward to implement. It seems to us that grouping the products into a single designation may be the most logical and proportionate approach as certain CRs may apply to more than one of the three product groups. If the CMA defines its designations as widely as the evidence allows, this should reduce the risk of circumvention by the SMS firms because it will increase the CMA’s ability to revise the conduct requirements to cater for attempts at malicious compliance. Ideally, the CMA would try to avoid giving SMS firms the opportunity to move conduct to an activity that is arguably outside the scope of a designation but which still has anti-competitive effects.

Such circumvention is not merely a theoretical risk. For example, Google has tried to define Play Services as neither part of the operating system nor app distribution in its compliance plan under the EU’s Digital Markets Act. This risks the effectiveness of alternative app distribution via Play Services undermined. Similarly, Apple has attempted to justify its core technology fee as a fee for a variety of different things, depending on the regulatory point of attack: changing its

definition at will. These types of situations show why a key priority has to be not to allow conduct to fall into gaps between designations.

Apple and Google operate parallel monopolies because there are high barriers to switching for users. Developing apps for each of the two parallel monopolies costs developers a lot of money and resources, but they must do so in order to reach the users of both. Both Apple and Google wield great power over their ecosystems. For example, they can decide what apps are pre-installed, what apps are allowed to be downloaded onto devices, whether to approve app updates and the timing of updates, and what features those apps are allowed to offer. They function as unelected regulators that impose rules developers have no choice but to accept. They act as an intermediary that decides who gets access to device features such as digital wallets, technology for contactless payments, and the camera. They are in a position to hinder the development of AI products in mobile ecosystems. They set the rules to benefit themselves and not to benefit other businesses, consumers, or the British economy. We support the CMA's work on all of these issues.

Do you have any submissions or evidence related to the avenues of investigation set out in paragraph 70-72? Are there other issues we should take into account, and if so why?

We agree that the avenues of investigation set out in paragraphs 70 to 72 are the correct ones. Our strong view is that both Apple and Google hold positions of strategic market status for all three of the products under investigation. Each of the three product groups (and/or the three as a group) represents a digital activity with a link to the UK. Both Apple and Google clearly exceed the UK turnover threshold set out in the DMCC Act. They both have substantial and entrenched market power and a position of strategic significance. We believe the CMA will find that neither company faces sufficient competitive constraints in their provision of any of the three product groups. The CMA's proposed avenues of investigation are appropriate for confirming that this is the case.

We note that the CMA intends to commission a survey of smartphone users (paragraph 73). We applaud the CMA's thorough approach to evidence gathering. From our point of view, the findings of the 2022 market study still apply, and will continue to apply for the next five years, and we trust the CMA to keep its enquiries as proportionate as possible, bearing in mind the tight statutory deadline.

We see no current or future development that will reduce the two SMS firms' market power over the next five years. In particular, we do not expect the development of AI to reduce the two SMS firms' substantial and entrenched market power over the next five years. In fact, we expect it to entrench that market power further because they control the key access points at both the operating system level and the app level. If the UK wishes to benefit from the economic growth that AI promises, it needs to ensure competition and innovation can freely occur on a level playing field, and is not throttled by the two mobile ecosystem monopolies.

Which potential interventions should the CMA focus on in mobile ecosystems? Please identify any concerns relating to Apple's or Google's mobile ecosystems, together with evidence of the scale and/or likelihood of the harms to your business; or to consumers.

We agree with the CMA's proposal to consider interventions in parallel with the SMS assessment. This is good project management and all stakeholders are sufficiently informed at this stage of the relevant issues to be discussed. We encourage the CMA to impose the first full set of CRs in October, alongside the designation decisions, rather than allowing the timetable for CRs to slip, given the many years of harm to competition, consumers, and growth that have already occurred.

All of the suggested interventions in the ITC are appropriate to be implemented through CRs. It would be disappointing to reach the end of the current cases only for some of the necessary interventions to then be considered in a new PCI investigation. The problems in the mobile ecosystem sector are urgent and have been thoroughly investigated several times already. However, we would support *additional* measures to be implemented through pro-competitive interventions (PCIs), especially if the CRs failed to have an immediate and significant effect on market outcomes.

We agree with the list of possible interventions in the ITC document. We support interventions that will address the weak competition that currently exists in mobile operating systems, native app distribution, and browsers. We support interventions that address the current leveraging of market power in mobile operating systems and native app distribution. We support interventions that address the exploitative practices that currently take place in native app distribution. These interventions need to be accompanied by specific and mandatory outcomes so that the success of the regime can be precisely measured.

In mobile operating systems:

- Measures that make switching between Android and iOS easier will help to spur competition between those operating systems. If there is competition between them, they will start to compete to offer fairer terms to developers and users.

- Measures that improve interoperability and ensure access for third-party services such as payments providers will reduce the SMS firms' ability to extend their market power into adjacent activities. CAF members will benefit from increased choice of services such as digital wallets.

- Measures that prohibit SMS firms from occupying default positions or being pre-installed on devices will reduce their market power and enable third parties to compete. Users will be more likely to pick products and services that better suit their needs, and businesses will have a greater incentive to innovate to meet the needs of different user groups. The CMA is correct also to focus on choice architecture because the provider of the operating system has many different ways in which to influence user behaviour to its own advantage (or the advantage of another SMS firm that is paying large sums to receive an advantage).

- Measures to provide independent cybersecurity companies with equal access to information and resources within the operating system. This would enable alternative security platforms for both device and app attestation to compete fairly with Apple and Google. Additionally, functionality that disables, hinders, or disadvantages alternative security solutions should be prohibited. These measures will promote greater transparency, foster competition and innovation in cybersecurity, and prevent a single point of failure by ensuring multiple independent security providers can contribute to mobile security.

In native app distribution:

- Measures that reduce Apple's and Google's ability to set the rules of the game with impunity will allow new features to be offered to users. One important measure not explicitly listed in the CMA's possible interventions is the need to allow app developers to communicate with their own users in whatever form they wish to, and without fees, for example by signposting to them better or cheaper ways to sign up and pay for services. This is not currently allowed, as part of Apple's desire to control the ecosystem and exclude competitors. More generally, developers should be allowed to define all aspects of the user experience (subject to baseline security and privacy considerations) rather than allow that to be dictated by the SMS firm.

- Measures that oblige SMS firms to allow alternative app stores are absolutely essential, but they are not sufficient on their own. The CMA must also make sure that the alternative app stores can compete on a level playing field with the SMS firm's own app store and without any additional friction in the user experience. The CMA should set specific outcomes as part of the CRs, for example it could state that a majority of downloads should be undertaken outside of the SMS firm's app store within two years of the CRs coming into force. Without measurable deliverables, it is too easy for the SMS firms to undermine the objectives of the CMA's interventions. The CMA should oversee this process with a high degree of granularity, and may find that it needs to give third-party app stores special advantages at first in order to help get them off the ground. Given the in-built advantages that the SMS firms' app stores benefit from, including brand recognition and the establishment of user habits over the course of many years, a level playing field may require some prominence is available to the third parties that is not available to the SMS firm's own product (for example, the CMA should consider whether they should be allocated a prominent location in the app store home page and search results page, and during the device set-up). The alternative app stores must also not be subject to a cost structure that means they cannot fully compete with the SMS firm, so the CMA should impose a requirement for charges (including advertising fees) to be fair and reasonable and closely related to the direct costs of providing the relevant service. SMS firms should not charge for access to the operating system. Alternative app stores must also not be subject to restrictive terms that hamper their ability to innovate. And SMS firms must be barred from imposing "scare screens" and other tactics to deter consumers from using alternatives.

- Measures that allow direct downloading are also essential, and must be allowed in addition to the alternative app stores. Direct downloading is already safely allowed on Macs and PCs, for example, so the security and privacy concerns should not be given undue emphasis. The CMA is correct to say that, although Google technically allows direct downloading, it undermines the practice very effectively through its choice architecture that includes so-called "scare screens". The CRs should address this issue by ensuring that there is no unnecessary friction in the user experience. There is no justification for developers or users to be charged by the SMS firm when an app is directly downloaded.

- Measures that prevent the leveraging of market power from native app distribution to downstream activities will increase competition in those activities. CAF members should have the opportunity to choose the payment provider that best suits their needs, and

these alternative providers are likely also to be cheaper and more reliable than Apple or Google. The UK has a vibrant fintech scene that could be turbo-charged if they were given fair access to mobile ecosystems. CAF members, especially those members who compete directly with Apple or Google's first-party apps, would welcome the opportunity to reduce the amount of commercially sensitive information they are forced to give to their competitor. In any case, it will be important to impose measures that remove the SMS firm's ability to use non-public information for their own purposes.

- The prohibition of exploitative measures will also be an important aspect of the CRs because it will enable third parties to invest and grow. CAF members would welcome fair and transparent app review processes and FRAND access to app stores. We would welcome the removal of arbitrary rules and the opaque nature of the SMS firms' processes. Businesses who rely on the SMS firms' ecosystems to reach their users should clearly be given fair warning of planned changes to algorithms (e.g. ranking algorithms).

- We hope and expect that increased competition from alternative methods of downloading apps will have many benefits, one of which will be the reduction of SMS firms' 15% and 30% commission rates once they feel more competitive heat. The current commission rates are a significant impediment to innovation and growth and they represent a huge extraction of rents from UK businesses and consumers. The CMA should not underestimate the SMS firms' desire to protect these fees. We note that Apple recently disclosed that its commission averages only 5% in China.[4] We encourage the CMA to impose transparency requirements on SMS firms that oblige them to justify their fees with reference only to their direct costs. They should itemise their fees to show their counterparties precisely what services they are receiving for each fee and what the relevant costs of supply are. SMS firms should submit revenue and cost information for each product separately so that cross-subsidies and excessive profitability are straightforward to see. They should also submit revenue and cost information for each sector (e.g. gaming, dating, music, books etc). The CMA should publish its findings from these transparency obligations, bearing in mind that the detailed figures would presumably need to be redacted on grounds of commercial sensitivity. The CMA may also need to consider stronger measures towards the unconscionably high fees that currently exist.

- Measures to allow app developers to incorporate alternative cybersecurity solutions without restrictions. Additionally, bundling security features with app store taxes should be explicitly prohibited. This will enhance competition in mobile security, drive innovation by allowing developers to select best-in-class security solutions, and eliminate the risk of a single point of failure that arises when security is tied to app store access rather than being an independent function.

Mobile browsers and browser engines are not the primary focus for CAF's members, but we agree with the potential interventions listed and believe they will deliver benefits for businesses and consumers.

More generally, the CMA must impose strong anti-circumvention measures so that SMS firms must comply with the CRs. There is a long history of non-compliance in this area, including Apple's non-compliance with a ruling of the Dutch competition authority, with the Korean app

[4] https://app2top.com/news/study-app-store-revenue-in-china-in-2023-519-billion-274505.html.

store legislation, and with the EU's Digital Markets Act (with the outcome of the Commission's investigation pending), and the ongoing contempt of court proceedings in the US following the Epic Games litigation. There should be a general requirement to provide data that is reasonably requested by the SMS firm's counterparties, and to run effective complaints and appeals processes. There should be a significant increase in transparency, consultation and accountability for the decisions taken by these firms that act as quasi-regulators and who can make or break other businesses.

We look forward to discussing the detail of these measures with the CMA over the coming months.

Are the potential interventions set out above likely to be effective, proportionate and/or have benefits for businesses and consumers?

The CMA's potential interventions will be effective if the CMA implements them to the fullest extent. The CMA should bear in mind the difficulties encountered by the Dutch, Korean, EU and US authorities in achieving compliance with their decisions, legislation and judgments. This means that the CMA will need to be willing to supervise the detailed implementation and tweak the CRs regularly. The CMA must avoid any temptation to compromise to accommodate the objections of the SMS firms when designing the CRs. Given the significant, intractable problems in the mobile ecosystems sector, the CMA should worry more about under-enforcement than over-enforcement. It can then wind down some of its CRs more quickly, once a better competitive structure is established. For example, if the market reaches the point where alternative app stores have large market shares and the SMS firm's commission rates have tumbled due to the competitive constraint, the CMA may be able to remove certain transparency measures.

The CMA should publish targets for certain objectives such as the adoption of alternative app stores and direct downloading so that it can measure the level of success in restoring competition. If the targets are not met, this will be a sign that the CRs are too weak and/or the SMS firms are finding ways to undermine them, and the CMA will therefore know that it needs to act more strongly. The DMCC's promise will not be fulfilled if the CMA imposes elegantly drafted and legally-defensible CRs that do not actually move the dial in the real world.

There is no practical risk of the CMA's interventions being disproportionate to the objectives being pursued. This is because the potential benefits to businesses and consumers are so large compared to the costs that would be imposed on the SMS firms.

The ITC acknowledges that Apple and Google play an important role in protecting users' privacy, security and safety online. We agree that this is important, but we encourage the CMA not to overstate this role and not to allow the gatekeepers to use these issues to avoid or neuter the reforms that are essential for opening up competition in this sector. We strongly agree with the CMA's 2022 market study findings, which for example stated (Summary, page 17):

> "*We found there is likely to be significant scope for allowing more competition and removing or revising many of the current restrictions, without compromising safety, security or the privacy of people's data*."
>
> "*We are also concerned that privacy, security and safety decisions could be skewed by the interests of Apple and Google, which in essence often act as quasi-regulators in their*

roles as ecosystem stewards. Both companies have made important positive changes for consumers in this regard, and this is something we support. But in some cases we have found that Apple and Google are making decisions that could benefit their own services over others and mean that users may not make effective choices."

"*We support market developments that promote greater control and choice for consumers while also ensuring these are 'competition neutral', ie do not favour some companies over others. It is important that Apple and Google apply the same standards to themselves as to others.*"

What key lessons should the CMA draw from interventions being considered, imposed and/or implemented in relation to mobile ecosystems in other jurisdictions?

Globally, jurisdictions including the EU, United States, Japan, Germany, Italy, France, Australia, Brazil and Canada are considering how best to enact pro-competition digital regulation. These examples are illustrative of potential pitfalls, and solutions for unlocking growth via enforcement of the DMCC regime.

The precise approaches vary; in the US, ex-post antitrust legal challenges remain the main enforcement function; the EU's Digital Markets Act (DMA) imposes a standardised set of "dos and don'ts" across designated services, whereas the DMCC regime allows for tailored, company-specific CRs. However, whilst the precise approach varies, the behaviours targeted remain consistent, as a recent OECD Paper prepared for the G7 sets out.[5] A benefit of the DMCC is that it allows for tailored, company-specific CRs. If properly implemented, CAF's belief is therefore that the DMCC regime will allow the CMA to tailor interventions through targeted CRs that consider the unique characteristics of each designated platform's business model or are more amenable to rapid amendment if confronted with evasive and uncooperative gatekeepers. With strong implementation of the DMCC and continued support for the CMA's vital work, we believe the UK can cement its position as a global leader in fair and competitive digital markets, driving investment and innovation as a result.

As the CMA knows, the European Commission is currently investigating gatekeeper firms for non-compliance with the DMA. Neither Apple nor Google is currently in compliance with the DMA and the DMA's objectives are currently being undermined. We encourage the CMA to continue paying close attention to the Commission's work so that the CRs can benefit from the Commission's experience of dealing with malicious compliance. The DMA's implementation shows that the CRs will need to go into specific detail in setting the principles that must be followed, the outcomes that must be achieved, and the way in which these outcomes must be achieved. The SMS firms have strong incentives to interpret any ambiguity in their own favour. We encourage the CMA to work closely together with the Commission in their shared endeavours to inject some much-needed competition into mobile ecosystems.

We are confident that the CMA will skilfully use the flexibility of the DMCC regime to unlock growth in the mobile ecosystem sector.

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[5] Competition Policy in Digital Markets: The Combined Effect of Ex Ante and Ex Post Instruments in G7 Jurisdictions. OECD, October 2024, available at: https://www.oecd.org/en/publications/2024/10/competition-policy-in-digital-markets_554eb7d5.html.

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