

Coalition for Open Digital Ecosystems *Comments on the CMA's SMS investigation into Apple's Mobile Ecosystem*

On 23 January 2025, the Competition and Markets Authority (“**CMA**”) initiated an investigation under section 9 of the Digital Markets, Competition and Consumers Act (“**DMCCA**”) to determine whether Apple should be designated with Strategic Market Status (“**SMS**”) in relation to their activities within its mobile ecosystem.

This contribution is made on behalf of the Coalition for Open Digital Ecosystems (“**CODE**”) in the context of the CMA's invitation to comment on its SMS investigation into Apple's mobile ecosystem (“**the Invitation**” or “**CMA's Invitation**”).¹

1. Introduction

CODE brings together companies sharing a commitment to four core principles, namely: (i) opening up digital ecosystems through cross-industry collaboration; (ii) promoting seamless connectivity and interoperable systems to fuel innovation; (iii) empowering consumers to choose devices and services with ease; and (iv) nurturing an environment of open access.

CODE's membership includes various tech companies of very different sizes, activities, origins and business models.² CODE members, however, share the conviction that open digital ecosystems are better for businesses, consumers and society.

CODE is committed to making a meaningful contribution to the pursuance of openness and interoperability by working together with industry players, civil society and public bodies to exchange ideas, encourage and promote research, and support open standards and interoperability.

CODE believes that Apple should be designated as having SMS in relation to the digital activity/ies referred to as the Mobile Ecosystem Services,³ and encourages the CMA to impose simple and effective Conduct Requirements (“**CR**”) to prevent Apple from continuing to hinder third-party interoperability with iOS and iPadOS.⁴

¹ CMA's Invitation available here: https://assets.publishing.service.gov.uk/media/67911997cf977e4bf9a2f1aa/Invitation_to_comment.pdf. The CMA's Invitation is joint for its separate investigations concerning Apple's and Google's mobile ecosystems. This contribution is only made in the context of Apple's mobile ecosystem investigation. See the CMA's strategic market status investigation into Apple's mobile ecosystem, available at: <http://www.gov.uk/cma-cases/sms-investigation-into-apples-mobile-ecosystem>.

² See <https://www.opendigitalecosystems.org/>. CODE members are Flywallet, Garmin, Google, Honor, Lynx, Meta, Motorola, Nothing, Opera, Qualcomm, Vodafone and Wire. CODE is an open coalition and any company that subscribes to CODE's core principles is welcome to join.

³ The CMA considers that the three digital activities to which the SMS investigation relates, namely: (i) mobile operating systems; (ii) native app distribution; and (ii) mobile browser and browser engine, may be treated as a single digital activity (para. 5 of Apple's Notice under section 11(1) of the DMCCA).

⁴ According to the CMA, “[w]e consider it important and appropriate to start considering potential interventions in parallel with our work on whether to designate Apple [...]”, para. 77 of the CMA's Invitation to Comment.

CODE believes that such a designation will help contribute to the Government's growth agenda by affording UK businesses the opportunity to innovate, compete and reach scale on a more level playing field. While increasing competition and choice for consumers. The CMA is particularly well-placed to contribute to achieving these objectives.⁵

2. Interoperability: Key to Openness, Choice and Security

CODE believes that a key benefit of designating Apple as an SMS firm can be to help open up the broader mobile ecosystem by providing effective and secure interoperability between Apple's mobile ecosystem and third-party products.

Interoperability⁶ promotes innovation, diversity, choice, fairness and contestability: consumers should be free to choose the products and services that best suit their needs and preferences, independently of considerations of the OS the device connects with, and to switch between different OSs without foregoing the benefits of products they already own. Similarly, interoperability can dramatically increase use cases and the addressable market for digital products and services, in turn incentivising investment and innovation. Interoperability builds bridges, connects digital ecosystems, harnesses positive network effects, and prevents lock-in.

In CODE's view, design choices of new products must not be constrained by the particular characteristics of certain digital ecosystems, or the idiosyncratic preferences of a digital ecosystem gatekeeper. This is particularly the case where there are well established industry protocols and technologies for interoperability, which enables connectivity and switching in a way that is safe, secure and continues to incentivise platform innovation. The pre-existing level of openness of the OS and the extent to which secure technologies exist to enable interoperability are crucial points when assessing the need for and nature of any regulatory intervention. This is because an OS that is open by design, e.g., through being open source and providing relevant APIs is inherently more open and "interoperable" than those designed to operate as closed systems (such as iOS/iPadOS).⁷

Apple devices are notoriously not open or interoperable by design. On the contrary, Apple designed its iOS, iPadOS and MacOS ecosystems as a closed "walled garden",⁸ reserving

⁵ See the Department for Business & Trade open consultation on "Strategic steer to the Competition and Markets Authority" published on 13 February 2025, available at: <https://www.gov.uk/government/consultations/draft-strategic-steer-to-the-competition-and-markets-authority/strategic-steer-to-the-competition-and-markets-authority>. The DMCCA features among the "harnessing tools" through which "[t]he CMA can support growth and investment". The document also states that "[t]he CMA should use the new DMCCA Digital Market Competition regime flexibly, proportionately and collaboratively to unlock opportunities for growth across the UK digital economy and the wider economy".

⁶ Fn. 183 of CMA's DMCCA Guidance: "Interoperability refers to the ability of different devices, applications, systems and platforms to communicate with each other and exchange information and data effectively".

⁷ See CMA's Invitation, at para. 14, comparing Apple's "tightly integrated" operating system and "Android which is available on an open-source basis".

⁸ This is widely acknowledged. See, e.g. the European Commission's case AT.40437, *Apple - App Store practices (music streaming)*, of 4 March 2024, para. 100.

itself the ability to decide to a large extent how, when and with whom it would interoperate, and also arbitrarily awarding itself a significant technical and competitive advantage relative to third parties.

For example, Apple has frequently chosen to support full, effective interoperability between its own devices based on non-standardised proprietary technology when secure standardised technologies are available and are successfully implemented by others. Apple's design choices ultimately harm UK businesses and consumers, and undermine fair competition, contrary to the aims of the DMCCA regime and any CR intervention thereunder.⁹ Moreover, they do so without enhancing security.

For example, CODE members have experienced a number of interoperability issues with Apple devices, including the issues relating to the following:

- Bluetooth seamless out of box detection and set up;
- Seamless, high speed connectivity and file sharing;
- Voice assistants (“**VAs**”) and AirPods;
- Payments apps;
- Interacting with notifications, including on a wearable;
- AirPlay casting and receiving;
- Wearable ecosystem APIs; and
- “Find My” functionality.

In addition, only when mobile operating systems are interoperable with mobile connectivity standards can it be ensured that consumers and app developers have full access to the next generation of connectivity services. High-quality next-generation mobile connectivity services will complement existing fixed fiber networks, and create opportunities for service/business model innovation across the ecosystem, supporting the digital society and underpinning growth in the digital economy.

All of this is particularly concerning in circumstances such as those surrounding Apple's ecosystem, where Apple itself is a supplier of various connected devices beyond its iPad and iPhone mobile devices. Its closed ecosystem in combination with the tight control it exerts over how, when and with whom its OSs interoperate, allows Apple to award itself a competitive advantage in those markets to the detriment of innovation, consumers and third parties.¹⁰

⁹ See, e.g., DMCCA Guidance, paras. 2.18 and 3.24.

¹⁰ See CMA's Invitation, para. 11 (“[connected devices] *may be relevant to our analysis where their use may strengthen Apple's [...] core position in mobile ecosystems or where Apple [...] could be in a position to give a competitive advantage to their own apps and services in such related markets*”).

The failure by Apple to support effective interoperability ultimately harms UK users' ability to choose freely and easily products that best suit their needs and quashes the emergence of new technologies. The European Commission has recognised these issues, including the importance of instigating hardware interoperability (CMA's **Q6**).¹¹

3. Imposing CRs on Apple is Proportionate to the DMCCA Objectives

The CMA is empowered to impose CRs alongside any SMS designation.¹² CODE understands that among the potential measures the CMA would contemplate for Apple include requirements:

- *“not to restrict interoperability as required by third-party products and services (such as rival browsers, digital wallets and connected devices)”;*¹³
- *“to make changes to rules or policies where necessary if its current rules or policies prohibit certain third-party services from operating on iOS devices (such as rival wallets)”;*¹⁴ and
- *“to make changes [...] to make active and informed choices about the product or services they use and/or set as a ‘default’ service”.*¹⁵

As the CMA's investigation progresses, it may determine that this would more effectively be achieved through crafting a positive obligation e.g., “to ensure” interoperability (and likely specifying concrete steps that this will entail).

CODE welcomes the CMA's readiness to investigate whether the adoption of CRs is warranted from the date of designation. For example, Apple's closed ecosystem and lack of effective interoperability of iOS and iPadOS with third-party devices is an important area requiring a thorough assessment, including assessing “key lessons” (CMA's **Q6**) from intervention being considered in other jurisdictions such as the European Commission

¹¹ In its two sets of preliminary findings issued in the context of two ongoing European Commission's proceedings that specifically concern Apple's interoperability obligations under the EU Digital Markets Act (“**DMA**”) (see fn. 16 below).

¹² See, DMCCA Guidance, para. 3.39 and fn. 128.

¹³ CMA's Invitation, para. 83(b)(i).

¹⁴ CMA's Invitation, para. 83(b)(ii).

¹⁵ CMA's Invitation, para. 83(b)(iii).

investigations of the same conduct by Apple.¹⁶ However, it is having to take a pragmatic approach, identifying a subset of issues to focus on when in principle Apple should have proactively ensured interoperability from March 2024.

Such a line of action would be warranted under the DMCCA (CMA's **Q4**). Pursuant to section 19(5) DMCCA, the CMA may only impose CRs if doing so is proportionate to achieving one or more of the following objectives: (i) fair dealing;¹⁷ (ii) open choices;¹⁸ and (iii) trust and transparency.¹⁹ All of these conditions are met in respect of Apple with the second objective being particularly relevant; allowing users to “*choose freely and easily between the services or digital content provided by the undertaking and services or digital content provided by other undertakings*” (CMA's **Q5**). CODE believes that imposing interoperability CRs on Apple would also be fully in line with the CMA's Prioritisation Principles, i.e., appropriate CRs would not only fit in with the above objectives, but would also have a substantial positive impact on UK consumers and the CMA is best placed to act to remedy these harms.²⁰

Apple will, as it has done in other jurisdictions, invoke privacy, security and integrity concerns as an excuse to maintain its closed, “walled garden” ecosystem. While CODE recognises that system integrity and security are legitimate interests that merit appropriate and proportionate protection, Apple has frequently exaggerated these considerations.

Importantly, in the experience of CODE's membership, there is no fundamental trade-off between open interoperable systems and safety and security and respect for privacy when it comes to basic interoperability of mobile devices. The notion that open systems are

¹⁶ The CMA's Invitation expressly mentions Apple's ongoing Specification Proceedings opened by the European Commission to ensure that Apple, a gatekeeper under the DMA, complies with Article 6(7) DMA. The European Commission will come to a final decision in these proceedings by 20 March 2025. See Commission Decision of 19 September 2024 in case [DMA.100203](#) Apple - Operating systems - iOS - Article 6(7) - SP - Features for Connected Physical Devices and Commission [Proposed Measures](#) of 18 December 2024 in case DMA.100203. See also Commission Decision of 19 September 2024 in case [DMA.100204](#) SP - Apple - Article 6(7) - Process and Commission [Proposed Measures](#) of 18 December 2024 in case DMA.100204.

¹⁷ See section 19(6) DMCCA: “*the fair dealing objective is that users of potential users of the relevant digital activity are (a) treated fairly, and (b) able to interact, whether directly or indirectly, with the undertaking on reasonable terms*”.

¹⁸ See section 19(7) DMCCA: “*the open choices objective is that users of potential users of the relevant digital activity are able to choose freely and easily between the services or digital content provided by the undertaking and services or digital content provided by other undertakings*”.

¹⁹ See section 19(8) DMCCA: “*the trust and transparency objective is that users or potential users of the relevant digital activity have the information they require to enable them to (a) understand the services or digital content provided by the undertaking through the relevant digital activity, including the terms on which they are provided, and (b) make properly informed decisions about whether and how they interact with the undertaking in respect of the relevant digital activity*”.

²⁰ The approach adopted by the European Commission factors in as a relevant element the pre-existing openness of the OSs as a key element when assessing the level of interoperability. The European Commission has also placed emphasis on the relevance of effective hardware and software interoperability for consumers. If the CMA does not also address these issues, there is a clear and present risk that a regulatory lacuna will be created, leaving consumers and businesses in the UK worse off than those in the EU.

inherently less secure than their closed counterparts is a common misconception, based on the flawed principle that closed systems are always more secure simply because their inner workings are hidden. True security should not depend on secrecy but on the robustness of the security mechanisms themselves. By being open, systems can build greater trust with users and stakeholders, who can verify security measures directly.

Notably, in the case of the DMA obligation, the interoperability mandated extends only to functionality that Apple makes available to its own first party hardware and software, and, in many cases, does not involve access or data flows beyond those already available to third parties in some form.

For example, Apple has frequently chosen to support full, effective interoperability between its own devices based on non-standardised proprietary technology when secure standardised technologies are available and are successfully implemented by others.

CODE invites the CMA to adopt CRs to prevent Apple from restricting consumers from freely and easily choosing the products and services that best meet their needs.
