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Financial Services Firm – Response to the CMA’s Invitation to Comment (ITC) on Strategic Market Status Investigations into Apple’s and Google’s mobile ecosystems

Executive Summary

1. Mobile devices play a fundamental role in the lives of the people in the UK, with online banking the third most popular use for mobile devices, and digital wallet usage increasing at a rapid rate. With mobile ecosystems being vitally important for people, businesses and the economy, it is critical there is a fair and competitive market which serves the interests of all and supports growth.

We welcome the CMA's investigation into mobile ecosystems given the critical role they play in how UK consumers lead their lives.

2. We welcome the CMA's investigations to determine whether Apple's and Google's activities within their mobile ecosystems should be designated as having Strategic Market Status (SMS) under the Digital Markets, Competition and Consumers Act (DMCCA). We welcome the CMA's recognition in its Invitation to Comment of the importance to UK consumers of receiving banking services via their mobile devices and the gatekeeper function Apple and Google play in respect to "access to...technology for making contactless payments store digital identity, through digital wallets", and the risk to the UK consumer in terms of innovation benefits as regards "contactless payments provided through digital wallets".

Payments are critical to a strong economy and digital wallets have dramatically increased convenience. The government's National Payments Vision recognises "innovation, competition and security" as essential pillars for the UK's payments landscape, but the supply of digital wallets is effectively closed to new entrants.

3. Digital wallets are highly valued by customers with the rapid growth in uptake reflecting the ease of use they provide customers and merchants, who both benefit from more completed payment journeys. Given digital wallet convenience, we expect customers to continue to adopt the technology at pace.

We consider Apple and Google to have substantial and entrenched market power with positions of strategic significance in relation to the CMA's identified digital activities.

4. We consider both Apple and Google meet the statutory requirements of SMS designation in relation to the activities identified by the CMA, whether viewed in isolation or, holistically by reference to section 3(3) DMCCA 2024.
5. We would highlight the following:
 - a) There is a significant dependency on Apple and Google for financial service providers given mobile banking is the third most popular activity on mobile phones and is clearly useful for customers and financial service providers.
 - b) Apple's restrictions on its Near-Field Chip (NFC) technology have to date meant that Apple users are only able to use Apple Pay. In its 2021 mobile ecosystems market study final report¹, the CMA clearly indicated that Apple's approach to, among other things, access (or lack thereof) to the NFC chip was anti-competitive, without a robust objective justification, and was clearly suitable for regulation under the DMCCA (and the CMA appears to have delayed, what we consider is, absolutely necessary regulatory intervention pending the DMCCA coming into force). While the EU has, including through competition law enforcement action, secured Apple's measures to open NFC requirements, this only extends to mobile rather than all devices. Further, although Apple has announced it will open the NFC in the UK, its commercial approach is only now being articulated.
 - c) Providers are dependent on being inside the Apple wallet if they want to reach customers using the digital wallet on their Apple devices.

¹ [CMA mobile ecosystems market study final report](#)

Strong wide-ranging interventions are required that can be adapted to future consumer behaviour.

6. There is a need to ensure open and effective competition across the UK economy, and to prevent the very real risk of exploitative and/or exclusionary conduct that both firms are clearly in a position to engage in (and have engaged as identified in previous and ongoing regulatory enforcement action and market studies/investigations).
7. We believe the following three key interventions are required:
 - a) **Opening up NFC technology on all devices for free** - this includes associated devices such as watches, tablets and future devices.
 - b) **Targeted conduct requirements to restrict the ability of Apple and Google to act preferentially towards their own functionality and applications.** This should include any further discriminatory conduct and should be actively monitored (with associated action taken) by the CMA. Any other Wallet should be able to integrate seamlessly into the customer experience - short cuts should open the preferred wallet, not just the Apple Wallet (e.g. double clicking the right-hand button on the iPhone opens the Apple Wallet).
 - c) **Regulators, including the CMA, should develop their understanding of the impact and scale of any harm being caused by Apple's market power, including** through assessment of the profitability of Apple Pay in the UK, which may well suggest supra-competitive profits are being earned. Certainly, steps should be taken to ensure that neither Apple nor Google are in a position to exploit their market positions through their fee structures (be that with business partners, third parties (such as app developers) or the ultimate consumer).
8. **The scope and use of digital wallets has already expanded further than payment services** including loyalty cards, digital identification, tickets and BNPL propositions. Firms that manufacture hardware and software have control over competition on their platforms. The CMA should consider appropriate interventions to ensure that they cover these expanding markets.
9. As we move to the future, there are risks that Apple and Google are able to further extend their market power from their mobile ecosystems to other areas (particularly through leveraging data) and interventions must be future proofed.
10. Big Tech's amalgamation of financial and non-financial data can undoubtedly be used to benefit UK consumers, where in the right hands and where made accessible in a manner that cultivates rather than strangles competition. We can, for example, envisage scenarios where this combined data can be used to increase access to financial services products, identify customer vulnerabilities and address consumer harms more quickly (e.g., fraud, gambling addiction). However, where one party (such as Apple) has market power including or through holding consumer data (be that as understood under the DMCCA or Chapter 2 CA98) and the disadvantages of data asymmetries impact disproportionately on another, such as financial services firms, this is likely to result in adverse (unfair and unnecessary) competition impacts which will ultimately have a knock-on, detrimental, effect on consumers (including the potential for consumer harm), competition and stability through limiting choice and the potential for innovation. As the European Court of Justice has noted "access to and use of personal data are of great importance in the context of the digital economy..." and "access to personal data and the fact that it is possible to process such data have become a significant parameter of competition..."².

Competition interventions have failed to fully address the issues.

² [EUR-Lex - 62023CJ0021 - EN - EUR-Lex](#) at paragraph 56. The use of customer data by Big Tech is a recurring concern to regulators/courts as seen, for example, in the CJEU's decision in *Meta vs Bundeskartellamt Case C-252/21* and the CMA's investigation into Meta's use of data obtained through digital display advertising, [Decision to accept commitments](#).

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11. The UK must act now and quickly to avoid falling behind other economies (as is currently the case vis-a-vis the EU), risking enduring consumer harm and hampering the growth of multiple UK sectors which are increasingly reliant on big tech. Regulators need to move quickly and have an opportunity now to ensure that the UK approach improves on Apple's commitments to the benefit of UK consumers and UK growth and innovation.
12. Despite announcements that Apple will open the NFC in the UK, we do not consider this will be effective in opening up competition: there is an absolute need for regulatory intervention as a matter of priority.

Conclusion

13. We agree with the proposed designations for Apple and Google and ask for swift interventions to halt the substantial and entrenched market power in relation to digital wallets which we believe risks long term consumer harm, while potentially hampering growth for some UK sectors by preventing the creation of a level playing field.
14. These operators have effectively closed the digital wallet market to new operators and international interventions to date are either not replicated here on the same terms or are too restrictive to result in improved competition for the benefit of consumers. Strong, swift robust action by the UK authorities is needed to ensure the UK market works in the interests of consumers and businesses.

Answers to the Questions

Question 1: Do you have any views on the scope of our investigations and descriptions of Apple's and Google's mobile ecosystem digital activities?

- 1.1 **We consider it is evident that Apple's and Google's mobile ecosystems meet the statutory requirements of SMS designation** in relation to the CMA identified activities, whether in isolation or by reference to section 3(3) DMCCA 2024.
- 1.2 We are pleased the CMA has included digital wallets as part of the "mobile ecosystem" digital activities that it is investigating. We agree with paragraph 23 in the Invitation to Comment that *"overall mobile operating systems, app stores, and browsers each act as a gateway between consumers and the businesses that want to reach them online. Apple and Google are both key gatekeepers. As providers of the primary mobile operating systems in the UK, Apple and Google can make decisions affecting the type of features on a user's device that apps can access and utilise and... control which apps are pre-installed on device. The mobile operating system also acts as an intermediary... in respect of access to device hardware.... technology for making contactless payments and store digital identity, through digital wallets"*.
- 1.3 While the CMA is considering designating Apple and Google as having SMS in three digital activities, our response is largely focused on the first of these (operating systems) and the effect of this on competition in digital wallets. As a result, at this stage and in the limited time available, we have not made observations on the remaining two activities ii) native app distribution and iii) mobile browsers and browser engines.
- 1.4 We note the FCA and PSR has published correspondence with the CMA around the Invitation to Comment, welcoming reference to digital wallets as being in scope of the possible interventions. They also noted the significance of considering digital wallets in the light of the competition concerns and opportunities heard from stakeholders as part of their big tech and digital wallets call for information. We agree with the FCA and PSR on these points.
- 1.5 The CMA's 2021 mobile ecosystems market study final report concluded Apple's restrictions on competitors accessing certain hardware (i.e. contactless mobile payments technology) protects its services from competition and potentially restricts innovation. While Android does not restrict access to its technology, which in principle should result in a wider set of wallet choices being available, in reality there are few wallets available and most Android customers use Google Pay, given infrastructure access is necessary.
- 1.6 We observe the following in relation to digital wallets and Apple's and Google's mobile ecosystems:
 - a) **Digital wallets are fast becoming the default way to pay.** Given the convenience and ease of pass-through wallets for payments, we expect customers will continue to adopt the technology at pace, increasingly becoming a default behaviour.
 - b) **The scope and use of digital wallets has expanded further than payment services;** for example, loyalty cards, digital identification and tickets; as well as expanding into financial services to include lending such as BNPL propositions. Digital wallets fulfil a number of other services for consumers, for example: train tickets; loyalty/gift cards; health passes/insurance cards; ID; and even car keys. This bundling of services incentivises use and increases the value consumers attach to the wallet, further entrenching market position.
 - c) **Firms manufacturing hardware and software control consumer choice.** For propositions such as wallets, where the manufacturer can set wallets as a default for consumers, the manufacturer can readily assume that the vast majority of consumers will stay with the default. As such, digital wallets have become entrenched as the default option in the mobile ecosystems which they are pre-loaded onto and will require regulatory intervention to ensure consumers can benefit in an informed manner of potential alternatives that could better service their current/future needs.

- d) **Firms manufacturing hardware and software control who they partner with.** Apple, for instance, selects the product providers it partners with and the commercial terms on which it does so, without any of the competitive constraints (partner choice etc.) normally found in well-functioning markets. Providers are dependent on being inside the Apple wallet if they want to reach customers using the digital wallet on their Apple devices.

Question 2: Do you have any submissions or evidence related to the avenues of investigation set out in paragraph 70-72? Are there any other issues we should take into account, and if so why?

- 2.1 We are increasingly concerned regarding the lack of competition in digital wallets, the potential for long-term consumer harm, the impact on businesses who must utilise Apple or Google's digital wallet (as consumers demand this) on terms that do not fairly reflect the services provided, the significant almost impossible barriers to entry for an alternative wallet, all compounded by the scale and reach of these providers who are constantly adding and bundling services to further entrench their position.
- 2.2 As noted in our answer to question one, in the limited time available, we have focused on mobile operating systems rather than the competitive constraints in the App/Play store or browser engines.

Barriers to entry

- 2.3 We consider there are numerous significant and practically insurmountable barriers to entry, absent regulatory intervention, which effectively means the market is closed to other providers. Pass-through wallets clearly represent a valuable innovation however there are only two pass-through wallets for consumers to choose from, and limited prospects for successful new entrants.
- 2.4 The barriers to entry are firstly derived from the binary choice between two mobile ecosystems – either Apple or Google and their ability to control the main gateways in their respective ecosystems through which users access content. Once in the ecosystem and when it comes to digital wallets Apple in particular exercises absolute control in the form of technology restrictions that have precluded other wallets from being usable on their devices. Further design features within the mobile operating systems such as the requirement to set up a digital wallet as part of device set-up, or the double-click feature to access the providers' wallet with ease, are so intrinsically embedded in Apple's operating systems that even if the NFC technology is opened up on competitive terms, Apple's ability to make their wallet part of the factory settings and control the choice architecture will mean customers will still in effect be steered towards its products.
- 2.5 These entry level barriers are subsequently further compounded by the operator's business model of bundling services to reinforce customer behaviour and use, and over time reinforce the value that is attached to the service. For digital wallets this has taken the form of extending them beyond payment services to also store other items such as travel tickets, ID etc on both Apple's and Google's Wallet.
- 2.6 To compete with incumbent wallets a new provider not only needs to engage customers but also get its wallet accepted across a wide enough range of merchants. This is particularly important for online payments, where (in the absence of an alternative solution) each wallet option may be presented separately on the online checkout screen. Building that network is costly and difficult, itself a barrier to entry and Apple/Google benefit, accordingly, from pronounced incumbency advantages.
- 2.7 In summary, we consider the following to be barriers:
- a) **Self-preferencing and control of choice architecture**, pointing customers towards the mobile operator's products, making it at best difficult and at worst unfeasible for alternative wallet providers to attract new customers.

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- b) **Network effects** requiring a new entrant to build acceptance in merchant checkouts for e-commerce, which requires a compelling and recognisable proposition with clear benefits to merchants (supply side), alongside getting customers to adopt their wallet.
- c) **Additional services within the wallet increases the frequency of customer use, further reinforcing customer use/adoption** for example, storage of tickets and digital identification.
- d) **Fees:** The effect of this is reduced/sub-optimal competition in financial services and a market whereby consumers do not benefit to the extent that they could do so (and could cause consumer harm).
- e) **Apple's restrictions on its NFC technology** mean it will be difficult to near impossible for other organisations to compete, essentially closing competition long-term.

Forward Looking Assessment

2.8 The provision of digital wallets is still relatively new. As we move to the future, we see risks in the following areas:

- a) Apple and Google are extending their market power from their mobile ecosystems to other areas. Bundling services in wallets, makes it easy for consumers to access additional offerings, cementing the attractiveness of wallets compounding the barriers to entry as it serves to further secure the incumbents substantial and entrenched market power.
- b) At this stage, pass through wallet providers have not sought to charge merchants. However, there is a possible future risk that wallet providers could additionally start charging merchants and/or consumers.

Question 3: 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.

3.1 We agree interventions should be applied to Apple's and Google's mobile ecosystems from conduct and pro-competition perspectives. The CMA should ensure any measures it implements are open and effective, drive competition, drive growth, and prevent the risk of exploitative and/or exclusionary conduct. It's worth highlighting that both firms have engaged in such exploitative and/or exclusionary conduct previously, as identified in previous and ongoing regulatory enforcement action and market studies/investigations.

3.2 In its Invitation to Comment, the CMA highlights a number of possible interventions. With specific reference to digital wallets, for which there is limited choice for customers at the moment, we agree:

- a) There should be requirements on Apple and Google that mean they cannot restrict interoperability by third-party products and services like digital wallets to function effectively and compete with Apple's and Google's own products and services.
- b) There should be requirements on Apple to make changes to rules or policies where necessary if current rules or policies prohibit third-party services like digital wallets from operating on iOS devices.
- c) There should be requirements for Apple and Google to enable users of mobile devices to make active and informed choices about the product or services they use and/or set as a 'default' service.

3.3 However, while these interventions are positive, they do not outline specific actions. We believe there are three key interventions/actions required which we expand on in response to question 4. These are: a) Opening up NFC technology on all devices for free; b) targeted conduct requirements to restrict the ability of Apple and Google to act preferentially towards their own functionality and applications; and c) Regulators, including the CMA, developing their understanding of the scale of any harm being caused by Apple's and Google's market power.

Question 4: Are the potential interventions set out above likely to be effective, proportionate and/or have benefits for businesses and consumers?

- 4.1 Given the significant barriers to entry for new wallet providers we have set out, as well as the limited choice options currently available for consumers, we see the potential for long-term consumer harm and a poorly functioning market absent targeted and sufficiently robust CMA interventions.
- 4.2 The pace of developments and adoption within the mobile ecosystem and in particular digital wallets means there is a need to act quickly to prevent wallet providers from further strengthening their market power and exploiting their position, as subsequent action may come too late, or the problem will be too large to resolve without wider costs.
- 4.3 Other jurisdictions, such as the EU and US, have recognised the above and taken/are taking action (e.g. the EU accepted commitments made by Apple to open the NFC for free and made these requirements). There must be strong coordination across regulators to ensure a level playing field in the UK markets. Without swift action, the UK is at risk of being left behind, including from an economic growth perspective, risking enduring consumer harm.
- 4.4 In respect of our three suggested interventions, to ensure they are effective, we expand further on the detail below:

- a) **Opening up NFC technology on all devices for free.** Apple's restrictions on its NFC technology have so far meant that Apple users must use Apple Pay. Android does not restrict access to its technology and in principle a wider set of wallet choices should be available, although in reality there are few wallets available, with most Android customers using Google Pay due to convenience, stemming from the ability for manufacturers of mobile ecosystems to act preferentially towards their own technology. There should be a level competitive playing field that allows competition on all devices.

It is not enough for Apple to voluntarily open the NFC. Even when the NFC is opened, without intervention, Apple will still have significant power and ability to influence, through commercial arrangements, choice architecture and by limiting functionality, whether there will be any competition with the Apple Wallet. To remove this commercial power and create a level playing field with less barriers to competition, the NFC must be opened for free and be subject to robust regulatory requirements.

When considering interventions, it is essential that such interventions apply to devices connected to the mobile ecosystem. For instance, Apple's Wallet is embedded into other existing devices such as the Apple Watch and tablet as well as future devices. From a consumer convenience perspective, if any alternative Wallet is not also compatible with connected devices, the consumer will still be incentivised to use the Apple Wallet due to convenience. Therefore, if connected devices (which should also consider items such as smart rings) are not thoroughly considered and included in any intervention, a competitive barrier would remain in the ecosystem.

- b) **Targeted conduct requirements to restrict the ability of Apple and Google to act preferentially towards their own functionality and applications.** This should include any further discriminatory conduct and should be actively monitored (with associated action taken) by the CMA. Any other wallet should be able to integrate seamlessly into the customer experience.

Even if Apple does offer UK wallet providers free access to the NFC, this is unlikely to be sufficient to address the barriers to entry that exist today. Companies that manufacture the device or produce the operating system (or both) have the ability to control the choice architecture for products and services such as wallets, which can be set as a default with a reasonable expectation that the vast majority of consumers will stay with that default. There are examples that demonstrate powerful default effects that can lead to an incumbent capturing most of the market. The value of defaults is illustrated in browsers such as Internet

Explorer and Chrome, search engines and more, and by cases of big tech firms allegedly paying one another to maintain default status. Under such conditions, even large and well-known potential rivals will struggle to engage customers and encourage them to switch from a default big tech wallet without regulatory action.

Therefore, customers should be presented with choices over their wallet, and no wallet should come as a pre-loaded default, which utilises market power to incentivise customer choice. An example is that through the mobile ecosystem, Apple suggest to customers that their iPhone or iPad setup is not fully complete until the customer has set-up the Apple Wallet on the device.

Further, requirements on Apple should ensure it's as easy to access a customers preferred wallet as it is to access the Apple Wallet. On iPhones, double clicking the right-hand button acts as an inbuilt shortcut to the Apple Wallet. If convenient shortcuts in any form do not direct to the customers 'preferred wallet', the customer will still be incentivised to preference the Apple Wallet.

- c) **Regulators, including the CMA, should develop their understanding of the scale of any harm being caused by Apple's and Google's market power**, for example, through assessing the profitability of Apple Pay in the UK. This will help regulators determine the extent to which there is potential harm today from uncompetitive prices and whether further intervention is warranted. Depending on the outcome of the assessment, regulators would need to assess options to remedy any specific harm identified.

Question 5: What key lessons should the CMA draw from interventions being considered, imposed and/or implemented in relation to mobile ecosystems in other jurisdictions?

- 5.1 The restrictions on using Apple's NFC have to-date acted as a barrier to entry to competing wallet providers for point-of-sale solutions. There has been action in the EU to lift these restrictions and note the recent announcement that Apple will also make the NFC available in other jurisdictions. However, Apple's announcement to open the NFC may not deliver full/equal access for wallet providers.
- 5.2 To remedy these issues as a first step, Apple should be required to provide free access to its NFC, providing the basis of competition for pass-through wallets on Apple devices.
- 5.3 To date, we have seen no financial service provider show intent to launch a digital wallet to compete with Apple. However, in Europe, where access to the NFC is free, we have seen successful activity from Norwegian payment provider Vipps and Bizum, alongside an industry solution in Spain.
- 5.4 We are aware of the negative experience of app developers to past offers from Apple to "open up" its ecosystem (see for example Spotify's reaction to Apple's changes in response to the EU's Digital Markets Act.³ We also note that these terms are inferior to those offered by Apple in response to the European Commission's investigation into Apple Pay where Apple has offered competing wallet providers free access to the NFC.⁴
- 5.5 As the UK becomes a further outlier in terms of NFC access, it risks falling behind in terms of international competitiveness with investment directed towards non-UK countries which could be more profitable as a result.
- 5.6 Through the interventions the CMA is duly considering, it should ensure that not only are lessons and insights learned from other jurisdictions, but that it looks forward to future-proof against technological developments over the near and medium-term horizons. If the CMA does not consider future developments, there will always be a lag in regulatory action that provides for Apple, Google and wider big tech to utilise to their advantage.

³ [Apple's Proposed Changes Reject the Goals of the DMA – Spotify](#)

⁴ [European Commission Case AT.40452 – Mobile Payments](#)