STRATEGIC MARKET STATUS INVESTIGATIONS INTO APPLE'S AND GOOGLE'S MOBILE ECOSYSTEMS

MOZILLA SUBMISSION: RESPONSE TO CMA'S INVITATION TO COMMENT DATED 23 JANUARY 2025

Introduction

As a long-time supporter of a pro-competitive regulatory framework to address market power within digital markets, Mozilla welcomes the introduction of the Digital Markets, Competition and Consumers Act 2024 (the "DMCCA"). This new digital markets regime is a pro-business tool that, if deployed fully and effectively, has the potential to unlock growth and investment in the many UK businesses that either compete with, or rely on the entrenched tech incumbents. It could also bring many benefits to UK consumers - both directly through greater choice and transparency, as well as indirectly through the benefits of greater innovation and investment.

The CMA has led the way in this area with its detailed, thorough and evidence-based work to date, investigating and highlighting concerns in digital markets. It now has a significant opportunity to enact lasting change in key areas that have long suffered from lack of competition, resulting in harm to UK consumers, and holding back further innovation and investment. One such critical area is each of Apple's and Google's respective mobile ecosystems, as the CMA recognised in its Mobile Ecosystems Market Study ("MEMS"). The Final Report noted that through decisions made across their ecosystems, but particularly at the operating system level, Apple and (to a lesser extent) Google have been able to exert their control in other areas of the ecosystem to benefit their own products or services and restrict competition. Accordingly, a targeted set of effective and timely interventions will help to protect thousands of UK businesses reliant on these ecosystems, and help to unlock current bottlenecks to competition and growth.

One example of this is the influence that their control over iOS and Android (along with other factors) gives Apple and Google over mobile browsers and browser engines. This was explored in detail in the CMA's mobile browsers and cloud gaming market investigation ("MBMI") which at the time of writing is still ongoing. Mozilla has been directly locked out from providing its browser engine to iOS users, for example. The control exerted has had significant negative implications on the browser market - where each of Apple and Google have used their powerful positions to lock out and undermine competing browsers in different ways.

Given the level of these longstanding concerns, Mozilla's preference would be for the CMA to swiftly implement remedies under its Enterprise Act 2002 ("EA02") market investigation powers[1]. However, if the CMA is not minded to do so, we agree with the proposal in the MBMI Provisional Decision Report ("PDR") to recommend to the CMA Board that "*it considers imposing*

[1] MBMI PDR, https://assets.publishing.service.gov.uk/media/677f88c8d721a08c006655c8/Mozilla.pdf

appropriate interventions, such as those we have considered in this report." Mozilla submitted a second submission to the MBMI PDR[2], which focuses on each of the proposed remedies in the PDR (which it largely supports) and makes some suggestions which are intended to assist the CMA in adding to, refining and improving those remedies to ensure they are effective.

As part of this SMS investigation, Mozilla encourages the CMA to build on the work done on the MEMS and the MBMI and put in place a comprehensive set of targeted, specific, pro-consumer and pro-business interventions. Such interventions, as outlined below, should in Mozilla's view, primarily take the form of carefully designed conduct requirements tailored towards addressing specific harms that arise in each of Apple and Google's respective mobile ecosystems. In this submission, Mozilla outlines some of the interventions which would be effective, beneficial and proportionate. We note that this submission should be read alongside Mozilla's responses to the MBMI PDR.

Key interventions include, for example:

- opening up iOS to include browsers based on engines other than WebKit and providing alternative browser engines with equivalent access to iOS (including granting equivalent access to APIs used by Safari) - the detail of this remedy is key to ensuring competitors can genuinely offer and use alternative engines;
- requiring Google to grant equivalent access to APIs used by Chrome as well as other functionality such as browser data portability - ensuring a level playing field remains in the future;
- measures to support in-app browsing through interoperability and cross-app functionality - a growing and important access point for browsing; and
- specific obligations to prevent Apple and Google self-preferencing through their choice architecture - both preventing nudging/steering and enabling users to freely choose the services they want to use, where the design and specification of interventions is particularly critical.

Without a robust set of interventions such as those listed, competing businesses operating in mobile ecosystems in the UK may struggle to compete, let alone thrive. The CMA must recognise that where interventions are slow, lacking in sufficient specificity or ineffectively enforced, Apple and Google will be able to sidestep them. This outcome would lead to UK consumers continuing to miss out on innovation which arises from browser competition. For example, the WebKit restriction means that Mozilla cannot provide its own browser engine, Gecko, to iOS users. Just one example of the impact of this restriction affecting developers is that browser extensions are not available on Firefox on iOS and the thousands of developers - who create hundreds of thousands of browser extensions and themes on Mozilla Add-Ons - cannot reach Firefox users on iOS in the UK.

Mozilla would welcome the opportunity to discuss the formulation of these interventions with the CMA in further detail in due course.

[2] MBMI PDR, https://assets.publishing.service.gov.uk/media/677f88dd22a085c5ff5c04f2/Mozilla2.pdf

Mozilla's submission

Q1: Do you have any views on the scope of our investigations and descriptions of Apple's and Google's mobile ecosystem digital activities?

In Mozilla's view, there is a strong case for grouping the different digital activities together as a single digital activity of a 'mobile ecosystem' given the significant interlinkages between the various services (as is suggested as a possibility at paragraphs 68 and 69 of the Invitation to Comment ("ITC")).

Mozilla agrees with the CMA's statement in paragraph 5 of the s.11(1) Investigation Notice that each of the three activities described can be carried out in combination with one another to fulfil the specific purpose of facilitating interactions between users and providers of digital content and services on mobile devices in order to allow users to access, view and engage with such content and services on their mobile devices.

A typical 'user journey' when using their mobile device might involve accessing content or services via a native app and accessing other content or services through their browser, each of which is technically enabled by (and in fact cannot be separated from) the architecture of the underlying operating system. These services are therefore typically used in combination with one another, and each of these services is for the specific purpose for the delivery of content and services to users. While in theory, one could access content or services only through browsers, or only through native apps, in practice the vast majority of users use both; they are used in combination. At the point at which a native app or browser is used, they have to be used in combination with the operating system, and the nature of the operating system will affect how the underlying browser or native app is designed. Beyond the technical app or browser development perspective, what happens at the operating system level in terms of choice architecture also shapes the user's experience of browsers, app stores and native apps. Taking all of this together, it is in Mozilla's view necessary that, where the providers of the operating system are active in each of three areas which are the subject of this investigation (as Apple and Google are), the digital activity should be understood, analysed and regulated as a single digital activity and an ecosystem - rather than as three separate digital activities.

Experience has shown that control of the operating system and other elements of the mobile ecosystem (as opposed to simply a position of market power in browser and browser engine markets) gives browser developers, including Apple and Google, a competitive advantage in browser and browser engine markets, whether that is through rules such as the WebKit restriction on iOS, or the use of prompts to use Chrome which appear at the point a user uses other Google products.[3] Similarly, Apple and Google's rules around their respective app stores (and how they implement those rules through their operating systems) can have knock-on effects on browser and browser engine markets. Grouping these activities together as 'mobile ecosystems' would reflect the reality that Apple and Google have market power across an

[3] See PDR, section 8, for example

ecosystem of products. Such market power is self-reinforcing - and it is clear from the outcome of the CMA's previous work on mobile ecosystems[4] and mobile browsers[5] that Apple's and Google's market power in one part of the ecosystem can be used to further their position in another part of the ecosystem.

If these activities are not grouped together as one digital activity, there is the real danger of an enforcement gap where, for technical reasons due to how particular digital activities have been defined, it may become difficult for the CMA to take enforcement action. Such an enforcement gap could manifest itself, for example, where operation of Apple's app store and/or the iOS operating system has an effect on mobile browser or mobile browser markets.

Mozilla recognises that there is scope, pursuant to s.20(3)(c) DMCCA for example, to put in place conduct requirements which prohibit the leveraging of market power in one activity (mobile operating systems) to increase its strategic position in another digital activity. However, as will become clear below, a large proportion of the conduct which causes harm at the browser and browser engine level is related to decisions made at the mobile operating system level or related to a design feature of the mobile operating system (not necessarily a result of leveraging market power). It is important to avoid a situation where the CMA has to rely on one particular conduct requirement focused on 'leveraging' to address many different types of harmful conduct, ranging from rules which browser engines are permitted on iOS to decisions on the use of choice screens and prompts on iOS. It would be simpler, lead to less duplication, and would provide greater legal certainty for both SMS firms and any third parties seeking to enforce the conduct requirements, if the activities of Apple and Google were grouped together into their respective 'mobile ecosystems'. This would still allow the CMA to supplement overarching conduct requirements putting in place general obligations or prohibitions (such as those related to self-preferencing or leveraging[6]), with tailored conduct requirements covering more specific types of conduct within different parts of the mobile ecosystem that might impact other parts of the ecosystem. One of the strengths of the DMCCA regime (relative to the EU DMA, for example) is that it allows for these more specific and tailored conduct requirements. Such a designation would ensure that the strengths of the regime are fully maximised.

Additionally, grouping together the activities as a mobile ecosystem provides greater flexibility that will enable the CMA to take into account future technological advances. Such changes could include, for example, the expansion and enhancement of AI-enabled tools which may in future change the way that users interact with their mobile devices.[7] Such products clearly fit within the scope of the term 'mobile ecosystem'; but may not as easily be captured in this round

[4] See, for example, paragraphs 6.260 to 6.265, Mobile ecosystems - Market study final report - GOV.UK
[5] See, for example, paragraphs 8.121 to 8.128, MBMI Provisional decision report - GOV.UK
[6] Mozilla's understanding is that, while s.20(3)(c) DMCCA relates to conduct related to a different digital activity, this would not prevent the CMA from putting in place a general conduct requirement focused on leveraging *within* the scope of one particular digital activity. For example, Mozilla envisages that a requirement for the designated firm not to use its position in one part of the mobile ecosystem to further its position in another part of the mobile ecosystem would fit within the scope of the permitted conduct requirements as set out at s.20(3)(b) or s.20(3)(h)..
[7] Paragraph 71(b) ITC suggests that the CMA seems to be well aware of this as a possibility.

of designations should the CMA choose to take a more narrow approach of defining several separate digital activities. This could have potentially serious consequences given the CMA may need to respond quickly to address potential competitive harms posed by these new technologies and integrations.

Q2: 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?

70(a): Mozilla agrees that the extent of any barriers to entry or expansion in mobile operating systems is relevant to the question of whether SMS tests are met. Mozilla notes that, while the CMA will of course need to review any new evidence in this regard, it will be already able to draw on a lot of helpful evidence from the MEMS and also its MBMI. However, our view is that there have not been any substantive changes since these investigations. Apple and Google retain control over mobile ecosystems with a vast number of users and, as noted in the MEMS, iOS's and Android's positions remain relatively stable and there remain inherent barriers to competition in operating systems.

70*(b):* Mozilla agrees that the competitive constraints as between Apple and Google in relation to mobile operating systems is a relevant factor to be considered as part of this investigation, in relation to the question of whether Apple and Google have SMS. Again, the CMA will already be able to draw on the extensive evidence and analysis from the MEMS and the MBMI.

However, when considering competitive constraints (and barriers to entry and expansion in mobile operating systems), these are (as appears to be stated in the ITC) questions relevant to the SMS tests; they are much less relevant when considering potential interventions.

This is because, among other things, the reasons that users might choose an iPhone vs an Android device are not necessarily tied to the relative merits of iOS and Android. Other factors likely to be relevant include pricing and the properties of the devices themselves (i.e. properties of an iPhone as compared to a Samsung or Huawei device, for example).[8] Thus, even if there were strong competition in the market for Apple versus Android phones, conduct as regards iOS and Android may not change (since Apple and Google would not be incentivised to change it), and aftermarkets, which include app stores and downstream application markets, need not become competitive.

Ultimately, Apple and Google's high shares of supply in the UK have been sustained and relatively stable for a long period of time[9]. There are also inherent network effects at play with mobile operating systems that will be very difficult to overcome. Therefore it is highly uncertain

[8] Research conducted for the CMA's Mobile Ecosystems Market Study in the Final Report shows the top five features that consumers considered to be most important when purchasing their iPhone are brand, price, operating system, compatibility with other personal smart devices, and security and privacy.
[9] For example, see Figure 3.3, Mobile ecosystems - Market study final report - GOV.UK.

whether any interventions (such as conduct requirements) which are seeking to drive competition in the area of operating systems will lead to any real change, or the kind of change that is needed in mobile ecosystem markets.

Given the sheer number of smartphones in the UK, control over a major mobile operating system means that significant monetisation opportunities, including from app stores and from downstream application markets, would remain even if their market shares were to shift significantly. In other words, a marginal increase in competition in mobile operating systems is not likely to result in significant improvements to iOS or Android, as both would ultimately remain 'must have' for developers. This is particularly in a context, where as explained above, there could be factors other than the operating system itself which are relevant (and likely more relevant) to the consumer's decision on which device to purchase.

Certainly from the perspective of developers - the providers of applications (including mobile browsers) and software products (including mobile browsers) - iOS and Android are effectively separate critical key markets for developers to reach millions of UK users and this is highly unlikely to change in the foreseeable future.

Mozilla would therefore draw a distinction between:

(i) the question of whether Apple and Google have SMS, which is a question to which issues such as barriers to entry and expansion and competitive constraints in mobile operating systems are clearly relevant; and

(ii) the question of which interventions (conduct requirements or pro-competition interventions) are likely to be appropriate. Competition in mobile operating systems is much less relevant to these questions, and interventions targeted at lowering these barriers are unlikely to drive any immediate changes to how Apple and Google run their OSs which address current harms in browser and browser engine markets.

This is a distinction which the CMA appears to recognise, since it lists these under the heading of 'avenues of investigation relating to the SMS tests'.

70(c) Mozilla agrees that competitive constraints from third parties facing Apple's App Store, Safari and WebKit should be considered as part of this investigation. However, the CMA should not lose sight of the fact that because Apple controls iOS, it effectively controls the functionality of those third parties and their ability to act as an effective constraint, therefore has the ability to undermine the effectiveness of such competitive constraints from third parties.

For example, Apple's control of iOS has meant up until now, it has been able to insist on the use of WebKit as the only browser engine supported on iOS. This has had a negative impact on competition faced by Apple not only in browser engines (where Apple currently has a 100%

share on iOS) but also in mobile browsers (where Apple had an 88% share on iOS in 2024)[10] - because it significantly limits the ability of browsers to differentiate themselves.

In the context of app stores, Apple continues to prevent direct downloading via the web of apps through restrictions implemented via iOS (though it has recently been required to facilitate this in the EU due to EU Digital Markets Act). Again this shows the interlinkages within a mobile ecosystem; a decision taken at the operating system level directly restricts competition in other markets within the ecosystem.

70(d). Mozilla agrees that competitive constraints facing Google's Play Store, Chrome and Blink from third parties should be considered as part of this investigation. Again, the CMA should not lose sight of the impact that Google's control over Android has in terms of restricting the effectiveness of competitive constraints from third parties.

While alternative browser engines and direct downloads from the web are allowed on Android, the CMA previously noted in the PDR that there remain other more subtle ways that Google has been able to design the Android mobile ecosystem to preference its own products, including its Chrome browser, and restrict the ability for others to fairly compete.

71(a) Mozilla agrees that it will be important for the CMA to understand how legal and regulatory changes could impact Apple's and Google's business models. In particular, it will also be important for the CMA to look at what changes have already been put in place as a result of the EU Digital Markets Act, other similar digital markets competition regimes, and data protection legislation such as the EU GDPR, including understanding where SMS firms' compliance with existing regulation has been ineffective, which as a result has led to little changes in competition. Furthermore, the majority of changes introduced by Apple and Google in response to such regulations, have been limited to the relevant jurisdiction. Therefore there is no reason to believe that these will lead to changes in the UK.

71(b) As noted above, it is important for the CMA to consider how technological developments (in particular in relation to AI) could change the way mobile devices are used, and how mobile ecosystems deliver content and services to users. While the potential of such developments is a relevant factor in deciding how to approach the question of the scope of the designation, a possible threat of *future* technological disruption or competition from parties other than Apple and Google should not be used as a reason to avoid putting in place necessary remedies to address the current harm being caused *today* to competition and consumers. In fact, as explained above, these technological changes make it even more important for the CMA to designate Apple and Google in respect of the grouped digital activity of 'mobile ecosystem', to ensure they cannot leverage their existing power to undermine the ability for these types of changes to disrupt existing services, or are used to further entrench their own positions in mobile ecosystems.

[10] Table 3.4, MBMI Provisional Decision Report.

72. As outlined above, Mozilla supports grouping the digital activities together as 'Apple's mobile ecosystem' and 'Google's mobile ecosystem' respectively. If the CMA chooses to assess where Apple and Google have strategic market status in relation to each of the individual digital activities listed in the ITC, it will be critical to recognise that market power in one part of the ecosystem cannot really be understood without considering SMS firms' power in another part of the ecosystem.

Q4: 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.

Q5: Are the potential interventions set out above likely to be effective, proportionate and/or have benefits for businesses and consumers?

A. Introductory comments, and potential interventions in mobile operating systems

Mozilla has taken Qs 4 and 5 together. When discussing appropriate interventions, Mozilla will explain why it considers that they are effective, proportionate and will result in benefits for businesses and consumers.

As outlined above, Mozilla's view is that it would be somewhat artificial to impose remedies or interventions in relation to mobile operating systems separately from remedies in relation to app distribution and mobile browsers and browser engines. Given these areas are all interlinked, it would make most sense for interventions to be considered together as part of a package of remedies in relation to mobile ecosystems.

Also as outlined above, efforts to increase competition as between iOS and Android will be difficult, and will not be sufficient to address the problems in other areas of the mobile ecosystem that arise from Apple and Google's control over their respective operating systems. Increasing user switching between Apple and Google (providing significant scale is maintained by each) is in Mozilla's view, likely to have only limited effects on mobile browser and browser engine markets, for example.

Nevertheless, Mozilla agrees that, as is suggested by the CMA at paragraph 83(a) ITC, **measures that would provide for portability of data and apps across Android and iOS** (and necessary interoperability) could be an important part of any set of interventions in relation to mobile ecosystems. Such an intervention would be beneficial for consumers by making it easier to switch and help to achieve an open internet where individuals have effective choice and can shape their own experiences online - consistent with Mozilla's own mission.[11]

At least initially, the relevant interventions should be enshrined in the form of conduct requirements ("CR"s) so that these changes can be enacted as quickly as possible. Should it

[11] See for example, The Mozilla Manifesto.

transpire that CRs are not having the desired effects, the option would then be open to the CMA to open up a pro-competition intervention ("PCI") investigation, with a view to a remedies package which could supplement or replace the relevant CRs.

Mozilla also agrees that CRs should be put in place **preventing Apple and Google from restricting interoperability** as required by third party products and services (see paragraph 83((b)(i)).

Lastly, as set out in 83((b)(iii)), we also agree that there should be **requirements for Apple and Google to make changes to their choice architecture** in factory settings and device settings, to ensure that users can easily make informed choices about the services they want to use, select as their default and placed prominently on their device - including, but not limited to, setting their defaults. We consider this further below as part of interventions relating specifically to browsers below, but as the CMA will be aware much of the choice architecture presented to users is controlled by the operating system owner and therefore it will be important to ensure the requirements reflect this.

Furthermore, as will become apparent in the rest of this submission, a lot of harmful conduct is initiated at (or dependent on) the operating system level. Therefore, if the CMA did decide to designate 'operating systems' as a separate digital activity, any set of conduct requirements for operating systems should capture all of the remedies and interventions related to operating systems referred to in section B below (and in Mozilla's second response to the MBMI PDR).

B. Interventions in mobile browsers and browser engines

As regards the effects on mobile browsers and browser engines specifically, Mozilla notes that, in its MBMI PDR, the CMA provisionally decided that it should recommend to the CMA Board that, if a designation was made in relation to mobile ecosystems or mobile browsers and browser engines, the CMA should consider "imposing appropriate interventions, such as those considered in the provisional decision report."

Following the initial market study and subsequent market investigation, Mozilla advocated for remedies to be implemented using the CMA's Enterprise Act 2002 powers. This was supported by the evidence of an adverse effect on competition in mobile browsers and browser engines impacting many UK businesses and developers reliant on these key services. Nevertheless, the CMA now has an important opportunity to build on all the valuable work undertaken to date - and put in place a comprehensive package of specific targeted CRs to address and open up competition in browsers and ensure competitors like Mozilla can operate on a level-playing field with Apple and Google. We would urge the CMA to use this additional time to ensure that such interventions are carefully designed and tested before they are put in place.

Mozilla refers to its two responses to the MBMI PDR, in particular its second response, which focuses on potential remedies/interventions and strongly supports the implementation of many of the remedies suggested by the CMA in the MBMI PDR. In that response, Mozilla also

proposed some further remedies or interventions which may be appropriate in relation to mobile ecosystems.

As will be outlined below, many of these remedies or interventions are related to Apple and Google's use of operating system features, which reinforces the argument for a grouped 'mobile ecosystems' designation.

The WebKit Restriction and equivalent access to iOS and APIs used by Safari (paragraph 87(a)(i-ii) in the ITC)

As outlined in the MBMI PDR and Mozilla's responses to it, Apple's current restrictions preventing the use of alternative browser engines on iOS to Apple's version of WebKit plainly cause harm to Mozilla, and to competition in the relevant iOS markets. This is a good example of a decision taken at the operating system level which has significant knock-on ramifications across other markets within the iOS mobile ecosystem.

The most obvious harm caused by the WebKit restriction is the harm to competition in browser engines; since it directly prevents the other two major browser engines: Mozilla's Gecko and Google's Blink, from even being present within the iOS mobile ecosystem.

However, the WebKit restriction also significantly harms competition on iOS in mobile browsers. The CMA received submissions as part of the MEMS from browser vendors, including Mozilla, that because of Apple's insistence upon the use of WebKit as the browser engine on iOS, competing browsers are not able to offer as attractive or differentiated features to users of browsers on iOS. Indeed, two browser vendors submitted they do not even offer a mobile browser on iOS due to the lack of differentiation, and the extra costs involved.[12] Mozilla itself delayed its entrance into iOS by around seven years because of the requirement to use WebKit.

A more competitive mobile browser environment would provide consumers with greater choice, better browsers where continuous improvements are made, and ultimately encourage stronger growth and innovation that will benefit not only consumers but the many millions of businesses that rely on browsers as gateways to reach their customers. The benefits of increasing competitive pressure in these core services cannot be understated.

Generating greater investment and innovation in browsers/browser engines

Putting in place sufficiently clear and specific CRs which remove the WebKit restriction and provide for equivalent access for alternative browser engines would not only open up competition, but also in turn facilitate greater innovation and investment from competitors. Increasing the potential revenue pool available to Apple and Google's competitors in the UK would likely result in more investment into the UK market by those 'challenger' providers. It could also have the same impact on Apple, who would be forced to compete with other browsers on the merits of their products. The pressure to compete for new users (and retaining

[12] Paragraphs 5.47 to 5.49. Mobile ecosystems - Market study final report - GOV.UK

existing users) on the full merits of their respective browsers in the UK would create stronger incentives to innovate and to differentiate between competing browsers, than would otherwise be the case. As the CMA has noted: "*Weak competition in mobile ecosystems is acting as a brake on innovation across the sector, reducing incentives for Apple, Google, and potential competitors to invest*."[13]

The WebKit restriction also causes significant harm to users. The CMA notes at paragraph 5.50 of the final report in the MEMS: "*A large number of stakeholders made submissions that WebKit lags behind other browser engines in terms of the developer features it supports and its user-facing performance and capabilities*." This illustrates that iOS users continue to miss out on features which most likely would have been offered had WebKit faced competition from other browser engines.

Developers have also highlighted Apple's currently very weak incentives to invest in WebKit and Safari, with one developer noting that the "*lack of engine diversity means Safari does not have to prioritise fixing bugs and addressing issues developers have*" another noting that Apple "h*as been able to slow the development for so long without real competition pushing them to evolve the engine like the others*" and another stating that Apple has underinvested in the web[14]. This is consistent with the CMA's own analysis in the MEMS of the relative investments made in Blink and WebKit respectively.[15] These issues not only impact developers but ultimately impact UK businesses, many of which rely on a well-functioning website to generate and attract users to their services.

Offering greater browser choice

Even putting to one side the relative lack of functionality of, and investment into WebKit, the fact other browser engines are not supported on iOS causes harm to users by depriving them of the ability to choose a browser that they consider offers them the best experience overall. As the CMA noted at paragraph 5.72 of its mobile ecosystems market report: "*Users should be able to choose a browser which they consider offers the best combination of privacy and performance, as they can on Android.*" Delaying giving consumers such a choice through delaying the remedies package for several years would allow this consumer harm to go unaddressed for longer than is strictly necessary

Designing effective browser engine interventions

As the CMA provisionally concluded in the MBMI PDR (and as appears to be recognised by the CMA at paragraph 87(a)(i) of this ITC) removal of the WebKit restriction alone is not likely to be an effective remedy without being accompanied by a requirement for equivalent access to iOS to be provided and/or access to be provided on equivalent terms to that made available to

[13] MEMS Final Report, page 255
[14] Paragraph 5.50, *Ibid.*
[15] Paragraphs 36 to 40, Appendix F: browser engines - GOV.UK

WebKit and Safari (see Mozilla's submissions on Potential Remedy 1 in response the MBMI PDR).

It will also be important for competition in browser markets that any remedy should provide for equivalent iOS access (as is available to Safari) to all browsers who do not decide to use an alternative browser engine, but instead continue to use Apple's version of WebKit (see Mozilla's submissions on Potential Remedy 2 in response to the MBMI PDR).

The effectiveness of this intervention will be dependent on the robustness of any transparency and enforcement mechanisms that are put in place - ensuring, for example, that additional unnecessary or restrictive conditions are not placed on competitors that deter or make entry in effect impossible. Mozilla notes that, even in the EU, where the WebKit restriction has been in theory removed as a result of the DMA, the Web Browser Engine Entitlement conditions Apple imposes on third party browser engines remain unworkable for Mozilla.[16] This underlines the need for any interventions in this area by the CMA to, as far as possible, pre-empt such tactics, and the CMA must also be robust to ensure that they are complied with and that they will result in real change in the UK mobile browser and browser engines competitive landscape. For example, a key metric for success in browser engines should be the actual entry of competitors.

Mozilla submits that carefully drafted CRs would be the most appropriate method of intervention to ensure the removal of the WebKit restriction and equivalent access. The detail of these CRs (including exactly what equivalent access should mean) is something that should be considered carefully with appropriate consultation with third parties.

A targeted set of CRs in this regard are a proportionate intervention. There is no justification for Apple to continue to have a blanket prohibition on alternative browser engines on iOS. Interoperability with competing engines can be achieved in a controlled and safe manner, through formulating and agreeing reasonable and proportionate conditions of access (consulted and agreed on with stakeholders). There is also no justification for Apple not providing such access on equivalent terms, or pursuant to a clear and transparent process (as discussed further in Mozilla's response to the MBMI PDR).

Introducing a robust, effective set of CRs related to alternative browser engine access on equivalent terms (including equivalent access to APIs used by Safari) would have clear benefits both for businesses and consumers. As explained above, such requirements could drive investment into providers of third party browsers or browser engines and incentivise Apple to invest more in its own product, and innovate to differentiate its product from competitors. Businesses and ultimately consumers would benefit from this investment and innovation, e.g., better performance in terms of bugs being addressed resulting in the smoother use of websites. These interventions would also provide a benefit to consumers in the form of user choice and agency; as noted above, users would be able to choose a browser which they consider offers the best combination of privacy and performance (for example), as they can on Android.

[16] https://www.theverge.com/2024/1/26/24052067/mozilla-apple-ios-browser-rules-firefox

Requirement for Google to grant equivalent access to APIs used by Chrome; other functionality (paragraphs 83(b)(i-ii), 87 in the ITC)

The CMA appears to consider that any differences in functionality on Android between Chrome and third party browsers were minimal and did not affect competition in mobile browsers (see 5.104 to 5.129 MBMI PDR). While this may or may not be the case now - this could clearly evolve and change at any time, should Google decide to change its approach.

In any case, in Mozilla's view, this does not mean that there is no need for a conduct requirement providing for timely access to any current and new functionality. This would clearly be in the interest of both competitors on Android and Android users. As noted in our response to Working Paper 7, granting equivalent access to Android APIs used by Chrome would be a workable remedy. It could be enforced much in the same way as an equivalent remedy in respect of iOS APIs used by Apple which would be a necessary part of equivalent access to iOS for alternative browser engines and browser engines using alternative versions of WebKit, as described in Mozilla's second response to the MBMI PDR focusing on remedies.

The CMA, when putting in place CRs under the DMCCA, should also consider whether other functionality beyond that available to Chrome may also facilitate greater choice and user switching. For example, unlike on desktop operating systems, there is currently no dedicated process for importing browser data (such as bookmarks, history, passwords etc.) on iOS or Android; this is not surprising since Safari is pre-installed and set to default on iPhones and iPads, and Chrome is often in the same position on Android. Such measures to make it easier and simpler to switch browsers, by addressing practical barriers such as the loss of people's browser data, could have a significant impact on competition.

In-app browsing (paragraph 87(a)(iii) in the ITC)

Mozilla welcomes the CMA's suggestion that a workable intervention in relation to in-app browsing ("IAB") might include:

- A requirement for Apple to provide interoperability with bundled engines for IAB; and

- A requirement to allow sufficient cross-app functionality to enable third-party browsers to provide IAB in native apps.

Once again, the fact that current barriers to IAB arise from decisions made by Apple in relation to the iOS operating system, illustrates that Apple leverages its power in operating systems to make decisions which negatively impact competition in downstream markets, such as browsers and browser engines. It reinforces the need for a grouped designation of a mobile ecosystem - and that this is the most sensible approach given that a decision in one area of the ecosystem (the operating system level) often has repercussions and negative effects in another area of the ecosystem.

Apple's current restrictions give it a monopoly on traffic from IAB, since the only IAB implementations available to app developers on iOS are WKWebView and SFSafari Controller. This has obvious negative impacts on competition in browsers and mobile browsers, since it drives traffic to Apple at the expense of its competitors. While Mozilla generally cannot monetise IABs, the remote tab IAB is nonetheless important, since it drives more engagement with Firefox by users, which in turn increases Firefox's market share as measured by site providers (who then invest more in Firefox compatibility) - generating benefits beyond IAB. Implementing IAB remote tab browsing is therefore important for Firefox (and other browsers with smaller market shares) in driving engagement with the browser and raising brand (and site provider/app developer) awareness and engagement.

Apple's self-preferencing restrictions on IAB also causes harm to consumers in that it does not honour the user's choice of default browser. As Mozilla submitted in its response to Working Paper 7 in the MBMI, people typically have low awareness and comprehension of which browser might be called upon for in-app browsing. This is supported by the Verian research commissioned by the CMA which found low user awareness or understanding of in-app browsers. Accordingly, it is reasonable for users to assume that links will open with the pre-installed default if it has not been changed, or with the chosen default if a user has made this choice. Using the pre-installed default browser despite the fact that a user has made an explicit choice to set an alternative default, does not respect user choice or align with user expectations. When people select a default browser - that is the browser they expect to be used for any automatic links or referrals (whether within an app or not).

Designing an effective IAB intervention

In terms of what kind of interventions might be appropriate, the first step is to remove any technical barriers on iOS which prevent third party browsers being used to enable IAB on iOS. It will also be important to ensure Apple allows app developers to have the choice of the WebKit, Blink or Gecko browser engines when developing IAB (as is envisaged in Potential Remedy 3 of the MBMI PDR). Mozilla also agrees with the CMA's suggestion at 87(a)(iii) that equivalent interoperability and cross-app functionality will be an important part of any solution; since without this app developers may still be incentivized to implement IAB using WebKit and/or Safari. Such cross-app functionality could include, for example, the sharing of resources in relation to data and memory between the IAB and the corresponding mobile browser to ensure that user experience is not compromised.

As outlined above, honouring user choice should also be an essential part of any intervention/s related to IAB. This could be done through for example, making users aware that they are using an IAB, and which browser they are using for the implementation of IAB. Users could be presented with the choice of defaulting to their default browser for IAB on first use of IAB within a particular native app (even if the relevant version of the default browser is the WebKit version, because of the app developer's choice to use WebKit for IAB).

Indeed, as submitted in Mozilla's response to Working Paper 7 in the MBMI, in general, Mozilla considers that information remedies are a necessary element to address not only the harm to browser competition which has occurred in mobile ecosystems, but also the impact on user expectations and habituation created by a lack of choice over many years, which may be linked to very low levels of user awareness. As such, Mozilla supports remedies which aim to increase user awareness and understanding of IAB (as envisaged by Option B5 in Working Paper 7: "*A requirement for Apple and Google to make users aware of being in an IAB by implementing changes to the interface or implement disclosures*"). For example, this could work either by way of an information screen for third party content in an IAB and/or a different in-app browsing interface. In either scenario, the precise remedy would need to be carefully crafted and thoroughly tested to ensure it did not create unnecessary friction or confusion.

Mozilla considers that these interventions could be appropriate as a set of CRs under the DMCCA, and would welcome the opportunity to engage further on this issue. Mozilla's understanding is that the CMA has the power to run tests and trials prior to the setting of CRs or after these have been put in place, to refine the intervention.

The benefits to consumers is that user choice would be honoured and the user experience of IAB would also be improved, as alternative browser options to Apple's IAB would be available. Mozilla also believes such an intervention would be proportionate, given it aligns with the wider objectives of the digital markets regime relating to trust and transparency.

Choice architecture (paragraphs 83(b)(iii) and 85(a)(v) in the ITC)

Choice architecture, specifically how Apple and Google design what is presented when a user has to make a choice between competing options, should be a key area of focus for the CMA in designing appropriate interventions.

Where a company controls an operating system, it can design choices for users that impact across the mobile ecosystem. This design can, in a range of ways from the overt to the subtle, preference the company's products or preserve the status quo (also in effect self-preferencing).

This is a concern whether the design feature is implemented at the operating system level (e.g. in Google's case, at the Android level through system updates) or at some other level of the mobile ecosystem (e.g. for example, Google's design of choice architecture on Chrome). Ultimately these design choices are interrelated and self-reinforcing. One might see, for example, a decision on how to present the choice of default browser screen on Android being linked to the use of prompts for resetting the user's default browser, which is itself linked to decisions about when and how choice screens are presented during system updates. This is another reason why the activities which are the subject of this investigation should be grouped together as one designated activity: mobile ecosystems.

There are many aspects of the current choice architecture within mobile ecosystems which cause harm to competitors and to users. To take one example, as the CMA noted at paragraph

8.135 of the MBMI PDR, on iOS there was no central point in the device settings menu where users can change their default browser,[17] nor is there a way of searching on iOS to find which page they should navigate to in order to change the default browser. Instead, until recently, users were forced to navigate to each browser's own settings page to change their default browser. This fact has been highlighted by industry commentators.[18]

Difficulty switching default browsers, is likely to be frustrating to users who, having decided to switch their default browser, may be confused about how to do so, unable to follow through with this choice or face challenges in doing so. The unnecessary friction is a harm in itself (given the additional time and effort involved), and there is an additional harm if the user 'gives up' on the process of switching default.

Unnecessary user friction in switching defaults is also, of course, incredibly harmful to Apple's competitors, including Mozilla, because the ultimate effect is that fewer users will change their default browser. According to user research carried out as part of Mozilla's 2022 'Five Walled Garden' report, only 42% of UK participants in the research reported knowing how to change their default browser and only 24% of UK participants in the research reported ever changing the default browser on their smartphone (the lowest of all the countries surveyed).[19] This highlights both the importance of operating system default settings for browser competition and the challenges UK consumers face changing their browser defaults. It is therefore critical that operating system providers like Apple provide easily accessible default settings which are intuitive for people to exercise their choice and streamlined so that it is as easy as possible for them to do so.

The CMA noted at paragraph 8.263 of the MBMI PDR that Google uses default browser prompts, for example at the point of a user using one of Google's other applications, such as Gmail or Google Maps, to nudge users to switch back to Chrome after users have made their decision to set a mobile browser other than Chrome as default. This is something experienced by users who have selected a different browser from the operating system provider's pre-installed browser and occurs across platforms - including on Windows.[20]

This not only likely causes annoyance to many users, but where such a 'nudge' is successful in convincing a user to switch their default browser, it also causes harm to providers of alternative browsers (who are at a further disadvantage as they are not able to leverage their position in other services to push people towards their browser to the same extent). In the MBMI PDR the CMA recognised the harm that such prompts cause. At paragraph 11.280 the CMA suggests that prohibiting these prompts should form part of the measures taken to implement potential

[17] Apple introduced a default apps menu in the settings in iOS 18.2; however, the effectiveness of this menu is not yet clear given it now takes *more* steps for a user to change their default browser than previously.
[18] See, for example, Apple's one weird trick to stop you changing your default browser - Open Web Advocacy.
[19] Pages 14 to 15, Five Walled Gardens, Mozilla Research Report
[20] https://research.mozilla.org/browser-competition/over-the-edge-the-use-of-design-tactics-to-undermine-browser-choice/

remedies 5f and 6d (a requirement for Apple and Google to ensure that the frequency of default browser prompts and notifications is limited across multiple access points). This example illustrates how interventions could take the form of more general overarching conduct requirements, but which are supplemented by more specific conduct requirements and/or accompanying guidance notes (i.e. providing examples of particular types of prompts which are prohibited).

As explained in Mozilla's second response to the MBMI PDR, other harmful design practices include decisions as to when and how choice screens are displayed and the rules about when a default browser can be placed in the dock/hot-seat. These examples are, of course, not exhaustive of the types of the design features within the Apple and Google mobile ecosystems that can cause harm to competitors and users. There are many other such design features embedded throughout their respective mobile ecosystems.

It is clear therefore that many aspects of the existing choice architecture within mobile ecosystems cause harm to both competition and to users. Choice architecture is a multi-layered area, where some of the harms are driven by quite specific design choices. Mozilla therefore envisages an intervention which will include more general requirements on key points of principle regarding choice architecture (for example, avoiding any design practices which tend to self-preference Apple or Google's products) and specific conduct requirements relating to particular design features (for example, how choice screens are deployed and how they should look, and the specifics of how, when and how frequently different kinds of prompts are used, which can have a significant impact on user choice[21]).

An example of a more general requirement might be a requirement for Apple and Google to avoid using any design features which could result in self-preferencing their own products. This general, high level obligation is broad enough to capture a range of different design features, without the need to be too prescriptive and identify an exhaustive list of all such design features.

That said, it would nevertheless be helpful for this to be accompanied by a range of more specific obligations, including, by way of example:

- Prohibiting any design features within the mobile ecosystem (i.e. whether within the OS or the browser) that suggest the SMS firm's browser is part of the 'recommended settings' or any similar feature or use of language which would suggest there are technical or security related benefits to selecting the SMS firm's browser as the default browser, or that the SMS firm's browser (or any other services) will operate more effectively with the operating system.

- Prohibiting presenting the SMS firm's product in a way which is more visually appealing to users than other options (for example through the use of colour or font). The requirement could provide that such features should be uniform across the various

[21] See Akesson, Luca, Petrie and Amlani (2023), 'Can browser choice screens be effective? Experimental analysis of the impact of their design, content and placement', a report by Mozilla

choices.

- Prohibiting pre-selection of choices for users, for example, where a choice is presented by way of a tick box choice screen, having one box already pre-ticked.

Mozilla submits that there could be an overarching conduct requirement to allow and technically enable users to easily change default settings within each of the SMS firm's key services e.g., operating system, virtual assistant or web browser. The concept of being able to change default settings easily should be broad enough to capture a range of different choice architecture practices which do *not* make it easy to change defaults.

This could then be supplemented by more specific conduct requirements, and supporting guidance notes to the conduct requirements, which could detail, for example, minimum baseline expectations over when choice screens should be shown, how often they should be shown and in what format they should be shown. These could provide for, for example, choice screens to be shown at the point of device setup and subsequently following system updates.[22] Codifying such additional detail in the form of CRs and guidance notes would save businesses, SMS firms and the CMA time and effort in avoiding protracted discussions and extensive compliance work.

These are just some examples of interventions that Mozilla submits would be both necessary and proportionate to deal with choice architecture related harms. Mozilla refers to its discussion of potential interventions in its response to the MBMI PDR (document two), in which Mozilla outlines several other potential interventions which it supports, many of which the CMA itself suggested as potential remedies in the MBMI PDR. This includes, but is not limited to:

- A requirement for Apple and Google to ensure pre-installation of one or multiple alternative browsers on device set-up.

- A requirement for Apple and Google to ensure the placement of a default browser selected by the user in the 'application dock/hotseat'.

- A requirement for Apple to make adaptations to the user journey for changing default mobile browser.

[22] Existing evidence on choice screens shows that the specifics of the design content and placement matter. Mozilla previously conducted rigorous experimental research on precisely this topic. When the specifics of the choice screen are set in the way that users prefer then the users are more likely to choose browsers' that are 'independent', not owned by the incumbent operating system or device manufacturer. Details can make a large difference, e.g., being shown the choice screen at device set-up instead of when users first click on the pre-installed, default browsers leads to a large increase in the choice of independent browsers. Users have clear preferences for how they would like choice screens to be presented and choice screens improve user satisfaction, in multiple dimensions, without increasing how long it takes to set up a device. See Akesson, Luca, Petrie and Amlani (2023), 'Can browser choice screens be effective? Experimental analysis of the impact of their design, content and placement', a report by Mozilla

- A requirement for Apple to share information on default browser settings with browser vendors.

- A requirement for Apple and Google to ensure that a user's choice of default browser is always followed across all browsers access points.

- A requirement for Apple and Google to allow users to uninstall the Safari browser app on iOS and the Chrome browser app on Android devices.

This is not intended to be an exhaustive list but instead to be illustrative of the type of beneficial additional interventions that should be under consideration. Indeed, the nature of choice architecture means that different harmful design practices are likely to emerge as mobile ecosystems evolve, and it will therefore be a challenge for the CMA to design a set of conduct requirements which are comprehensive enough to capture all future scenarios. That challenge, however, is not a reason to use PCI investigations instead, as these would be potentially even more static, and would simply cause further delay in implementation, yet the same implementation issues may still emerge. Mozilla submits that the best approach in relation to choice architecture is therefore to put in place a set of conduct requirements (combining both general and specific obligations) which are as comprehensive as possible, while recognising that compliance, enforcement (and potentially accompanying guidance) may evolve as the market and services develop over time.

Mozilla strongly considers that trialling and testing of certain remedies (such as choice screens) is likely to be helpful and informative in making these interventions as effective as possible. Such trialling and testing could be accommodated as part of the process of designing CRs, as well as subsequent trialling and testing once the initial set of CRs are in place.

The benefits of choice architecture for users have been outlined above, but can be summarised as honouring their choice and potentially enhancing their browsing experience. A suite of CRs in relation to choice architecture is a proportionate remedy; there is no justification for the same of the self-preferencing design choices made by Apple and Google respectively, and these kinds of design issues do not have a bearing on the security of the operating system. To deal with another potential objection: designed in the right way, they will not compromise user experience, to the contrary, they will improve it.

[✂]

Q6: What key lessons should the CMA draw from interventions being considered, imposed and/or implemented in relation to mobile ecosystems in other jurisdictions?

European Union

The European Union's DMA has been the most significant piece of legislation worldwide to date in digital markets regulation. The DMA provides strong foundations and learnings for any other

jurisdiction looking to introduce a digital markets regime. While it has resulted in beneficial changes which improve fairness and contestability in EU digital markets, it is also evident that there are improvements that can be made to ensure effective pro-competitive results are achieved from such regulations and that the benefits can be felt by consumers from the outset. Moreover, the DMA's relatively rigid obligations mean that the precise drafting of the requirements in Article 5 and 6 can be critical to its effectiveness.

Importantly, however, the European Commission (the "EC") has shown it has been willing to use these powers and actively investigate non-compliance[23], demonstrating that there is full support for the regime to be effective and the EC is serious about enforcing compliance. We consider that the CMA should be ready and willing to enforce compliance. A key way to drive real change will be to ensure there is a credible threat of timely, targeted and robust enforcement.

There have been opportunities for engagement by interested third-parties with the relevant EC case teams responsible for the enforcement of the DMA which are a critical part of ensuring effective and participatory regulation. There should be clear and open lines of engagement between particular case teams and key interested stakeholders - including companies of all sizes, researchers and civil society.

As regards the specific obligations set out in the DMA, the CMA's ability to tailor its requirements to particular SMS firms will be critical in determining the DMCCA's effectiveness. This difference in approach means that the drafting of obligations in the DMA is, by necessity, intended to be as broad and comprehensive as possible with a view to capturing a range of conduct entered into by different gatekeepers.

While obligations must continue to be effective as technologies develop, as noted above, the breadth and high-level nature of the obligations of the DMA is somewhat double-edged. It means that gatekeepers and potential competitors have sometimes very different interpretations of those obligations; there is significant scope for gatekeepers to argue that some forms of conduct were not intended to be captured by the relevant DMA obligation or that a narrow / ineffective solution is compliant. This means that whether certain conduct is likely to be non-compliant may only become clear following precedent having been set through EU enforcement decisions, which necessarily takes time.

The ability for the CMA to set more tailored, targeted requirements specific to each gatekeeper is therefore an opportunity, in that it allows the CMA to more explicitly identify and design requirements that target the specific harmful conduct by each gatekeeper. This means that it should be easier to identify and enforce against any non-compliance at a more granular level. There is an opportunity to put in place specific conduct requirements, supported by sufficiently detailed accompanying guidance, describing the types of situations intended to be captured by the conduct requirement. This will decrease ambiguity, and increase legal certainty - beneficial for all parties including UK businesses that need to plan and understand the impact of this

[23] See, for example, Commission opens non-compliance investigations against Alphabet, Apple and Meta under the Digital Markets Act.

regulation on their businesses. While we recognise there is a balance to be struck - and there is a risk requirements become overly prescriptive, not leaving sufficient room for nuance and maneuver, Mozilla submits that this risk can be mitigated by close (and ongoing) dialogue between interested stakeholders, the SMS firms and the CMA. This risk can also be mitigated by putting in place both the conduct requirements themselves (at a general level as well as containing specific examples), alongside more detailed accompanying guidance notes which can seek to capture some of those nuances.

Mozilla's view is that an appropriate balance to strike would be to set up two layers of conduct requirements:

(i) broadly worded overarching requirements, such as requirements for the relevant SMS firm to easily enable change of default, uninstallation of apps for example, or in prohibitions on self-preferencing or leveraging; supplemented by

(ii) more specific sub-requirements setting out specific obligations or illustrative specific kinds of harmful conduct which are prohibited. This could include for example, specific practices of the relevant SMS firm in relation to choice architecture (such as avoiding pre-ticked boxes in a choice screen, for example).

Mozilla observes that there is a countervailing benefits exemption available under s.29 DMCCA and that this kind of exemption is not a feature of the EU DMA regime. Mozilla submits that arguments as to countervailing benefits need to be scrutinised carefully and the framework in s.29 should be applied in a way which does not make enforcement of the UK regime less efficient or less robust than regimes in other jurisdictions.

Other digital markets regimes which are yet to take effect

Mozilla's understanding is that while the Japanese Act for Promotion of Competition for Specified Smartphone Software (APCSSS) has received approval from the Japanese legislature, the provisions are not currently in force, and may not come into force until December 2025 (at the latest).

Many obligations in the APCSSS are similar to those under the EU DMA, including provisions which cover data and fair dealing, the offering of choice screens to users, making it easy to switch defaults, a requirement to allow alternative browser engines and obligations regarding interoperability. Mozilla notes that there appears to be some consensus among Japan and the EU on many of the requirements and that this is something which the CMA should have in mind when setting its obligations for each of Apple and Google, as discussed above.

While there are certain exceptions referred under the APCSSS where designated operators will not have to comply with the obligations, it is unclear to Mozilla what the scope of those exceptions will be in practice, how detailed any scrutiny by the JFTC of any claim that an exception applies, and how often and readily the JFTC will grant exceptions. In Mozilla's view

for a regime to be truly effective, the granting of exceptions should be limited to exceptional cases, where it is truly necessary and proportionate to the stated aim, which itself should be limited to extremely serious security-related reasons which might relate to the integrity of hardware or the operating system. The onus should be on the SMS firm to justify these exceptions and evidence will need to be provided. This is the approach typically taken by the European Commission under the DMA, and Mozilla submits that this is the approach the JFTC and the CMA should also adopt in practice, even if the detail of what specific exceptions are available might differ somewhat from the DMA).

At the time of writing, the Australian government is consulting on a new digital competition regime to be enforced by the ACCC, and issued a proposal paper in December 2024.[24]

At present, the Australian government is envisaging that certain key obligations will be set out in primary legislation, with more detailed obligations applicable to particular digital platform services set out in secondary legislation. While the UK's approach is different, there are some similarities insofar as there is also scope for detailed conduct specific requirements under the UK regime. As is clear Mozilla's submission above, Mozilla supports a 'two layer' approach when setting these tailored conduct requirements; a layer of higher-level, broad conduct requirements applicable to each SMS firm, and a more specific set of conduct requirements dealing with more specific types of conduct relevant to that SMS firm, supported by accompanying guidance which might list examples of particularly problematic conduct.

The Australian government is also consulting on whether to introduce a countervailing benefits exemption. The proposal paper notes that there 'should be a high threshold' for granting any such exemption, and the paper also contemplates that there should be measures put in place to 'reduce the risk of vexatious applications.' These are factors which the CMA should have in mind when dealing with future countervailing benefits exemption applications under the DMCCA. In particular, it will be important to ensure that such applications do not become a delaying tactic used by SMS firms.

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[24] Proposal paper: A new digital competition regime