

RADIOCENTRE RESPONSE TO CMA INVITATION TO COMMENT IN ITS DESIGNATION INVESTIGATIONS INTO APPLE AND GOOGLE'S MOBILE ECOSYSTEMS

1. Summary

- 1.1. Radiocentre is pleased to have the opportunity to respond to the CMA's invitation to comment (ITC) published¹ on 23 January 2025 as part of its designation investigations into Apple and Google's mobile ecosystems under the Digital Markets, Competition and Consumers (DMCC) Act.
- 1.2. Radiocentre is the industry body for the UK commercial radio sector, which strongly supports the CMA's work in digital markets. We believe the new digital markets regime has the potential to support innovation and growth in the radio industry and the wider UK economy. In our view, the ITC is a good step in the right direction.
- 1.3. Radio in the UK remains an important and powerful medium. UK radio listeners are well served by a diverse mix of national, regional and local broadcasters, from commercial radio and the BBC, with 9 out of 10 of the adult population tuning in every week. Radio broadcasters make a significant public value contribution by providing listeners with a broad mix of music, trusted news, entertainment and companionship.
- 1.4. Commercial radio alone has 40 million listeners and is one of the UK's largest providers of news and information, broadcasting over 10,000 news bulletins weekly. The sector is also a significant contributor to the creative economy. Commercial radio is estimated to provide £683 million GVA to the UK economy, as well as supporting 12,340 jobs both directly and indirectly.
- 1.5. Radio broadcasters must be available where their audience listen, which is increasingly on devices within which voice assistants (VAs) are embedded, such as smart speakers, connected car infotainment systems, handsets, smart TVs and other devices. In the UK, 16% of radio listening is already via a smart speaker (and growing quickly) and a further 11% is via IP distribution (i.e. apps and websites). On commercial radio, adoption of smart speaker listening is even greater, with 20% of listening now via smart speaker. In the UK, significantly more listening of audio content is via a smart speaker (167 million hours) compared with apps and websites (113 million hours).² As a result, a significant proportion of radio broadcasters' revenues are directly dependent on VAs.
- 1.6. It is therefore vitally important that the CMA analyses the role of VAs, includes them within the scope of its designations, and includes measures in its conduct requirements that would ensure a level playing field for the radio industry.
- 1.7. It is clear to us that both Apple and Google enjoy substantial and entrenched market power and positions of strategic significance across the entirety of the activities that are in scope of the CMA's investigations. Several recent studies and the European Commission's Internet of Things sector enquiry provide evidence to support this point.³

¹ CMA Strategic Market Status Investigations into Apple and Google's mobile ecosystems, [Invitation to Comment](#), 23 January 2025

² [Rajar](#) (Q4 2024)

³ See, for instance, European Commission. Final report - sector inquiry into consumer Internet of Things (SWD(2022) 10 final), available at: https://competition-policy.ec.europa.eu/system/files/2022-01/internet-of-things_final_report_2022_en.pdf.

- 1.8. We welcome the proposed interventions in the ITC, such as measures that would:
- protect the interoperability of rival connected devices;⁴
 - prevent the pre-installing or self-preferencing of Strategic Market Status (SMS) firms' own apps;
 - prevent the leveraging of market power into adjacent activities;
 - prevent the use of counterparties' data when competing against them; and
 - ensure that counterparties were entitled to data about their own businesses.
- 1.9. The whole UK radio industry (commercial radio, BBC and community radio) welcomed Part 6 of the Media Act 2024, which provides guarantees (among other safeguards) relating to the findability of and unfettered access to Ofcom-licensed radio stations through voice-activated devices. We look forward to working with Ofcom as it consults on implementing this important new legislation. However, the Media Act does not solve all of the issues raised by VAs. It does not, for example, address the use of broadcaster data by SMS firms to improve their own radio-like products (or launch new products), nor does it require SMS firms to provide reasonable data to radio stations about their own commercial performance or audiences. It is clear that the legislative intent was for the implementation of the DMCCA -and not the Media Act- to address these issues.⁵ The CMA's digital markets regime is therefore very important to delivering better outcomes in the radio industry.

2. The scope of the CMA's investigations

- 2.1. We support the scope of the CMA's investigations, which includes mobile operating systems, native app distribution and browsers.
- 2.2. We consider that connected devices (see paragraph 11 of the ITC) are an important part of mobile ecosystems and they should be a focus for the CMA in the current investigation. Devices such as smart speakers and vehicle infotainment systems are very relevant to the CMA's analysis. They play a significant role in maintaining Apple and Google's market power both in the potentially-designated activities and in downstream markets such as music services where those companies compete against other companies such as the operators of licensed radio stations. Including connected devices within the SMS designations will help to ensure that SMS firms cannot avoid the objectives of the conduct requirements by (purporting to) move conduct from a designated activity such as a mobile operating system to a connected device. It would clearly be unsatisfactory to impose measures on conduct that happens on a mobile phone, but not on the watch or vehicle infotainment system that is connected to it. We therefore welcome the CMA's

MTM - Smart Speaker Prominence - <https://getdigitalradio.com/wp-content/uploads/2021/10/Radiocentre-MTM-Smart-speaker-prominence-June-2020.pdf>; Frontier Economics - The Value Exchange between Smart Speaker Platforms and Radio <https://getdigitalradio.com/wp-content/uploads/2021/10/Frontier-Economics-for-Bauer-Media-Audio-The-value-exchange-between-voice-assistant-platforms-and-radio-broadcasters-August-2021.pdf>; and https://assets.publishing.service.gov.uk/media/653f90a6d10f35000d9a6b5f/Radio_over_voice_assistant_platforms_IA_-_Published_Version_2_.

⁴ We note, however, that, from the perspective of radio broadcasters, it is essential to improve the interoperability between the SMS firms' VAs and counterparties' own services and apps.

⁵ See, for instance, Media Bill committee stage (Commons) (2023), p. 182. Available at: https://publications.parliament.uk/pa/bills/cbill/58-04/0008/PBC008_Media_1st6th_Compilation_12_12_2023.pdf.

proposal in paragraph 71 of the ITC that it will look into the development of connected devices.

- 2.3. For similar reasons, it is important that VAs are included within the CMA’s analysis of mobile operating systems, and then also their designation under the DMCC Act. Google’s and Apple’s VAs should be seen as an integrated software element of operating systems. They are inherently linked to operating systems, and mobile ecosystems more widely. In fact, VAs are unavoidable and pre-installed parts of their respective mobile operating systems. An analysis of operating systems without considering VAs as a key access point would be incomplete.
- 2.4. In paragraph 71 of the ITC, where the CMA states that it proposes to investigate AI assistants, we encourage the CMA to include VAs in this workstream. This is because VAs are on the cusp of significant change as they incorporate new AI technology. Advances in AI and investment in AI computing power have led to rapid improvements in the capabilities of natural language understanding, and generative text voice and graphic responses. This has led digital firms to invest significant sums to build AI-powered LLMs, which are “trained” on vast data sets using data scraped from the Internet, to enhance their Virtual Assistants. Google,⁶ Amazon⁷ and Apple⁸ have all started to incorporate AI into their Virtual Assistants. The new technology will change how we interact with the Virtual Assistants in different ways, which include more engaging interactions, better language integration, generative responses, and deeper engagement in the platform’s ecosystem. The inclusion of VAs within the assessment will help the CMA to future-proof its designations as AI assistants develop.

3. VA providers’ harmful practices vis-à-vis radio broadcasters

- 3.1. VA providers engage in several harmful practices, which indicates their ability to set commercial conditions and terms unilaterally in a way that is detrimental to radio broadcasters and end users. These practices are outlined below.

A. Preferential control of data

i. Virtual Assistants use data in competition with radio broadcasters

- 3.2. VA providers use data generated or provided by radio broadcasters to strengthen their own position where they compete against them (e.g. VA providers offer radio-like services

⁶ Android Central 30 April 2024. Gemini becomes a more capable Google Assistant replacement with latest update <https://www.androidcentral.com/apps-software/gemini-gains-more-google-assistant-features>

⁷ “The [Alexa] team is now tasked with turning Alexa into a relevant device that holds up amid the new AI competition, and one that justifies the resources and headcount Amazon has dedicated to it. It has undergone a massive reorganization, with much of the team shifting to the artificial general intelligence, or AGI, team, according to the three sources. Others pointed to bloat within Alexa, a team of thousands of employees. Amazon plans to give Alexa an AI overhaul — and a monthly subscription price.” CNBC 20 May 2024. See: <https://www.cnbc.com/2024/05/22/amazon-plans-to-give-alexa-an-ai-overhaul-monthly-subscription-price.html>

⁸ “Apple’s Siri assistant just got its biggest-ever upgrade as part of iOS 18 – including new ChatGPT powers thanks to an OpenAI partnership and deep integration with supported iPhones, iPads and Macs. The new version of Siri, announced at WWDC 2024, is powered by Apple Intelligence, which gives the voice assistant features like ‘on-screen awareness’ to make it work better with apps.” Apple’s Siri assistant just got a massive AI upgrade with ChatGPT – here’s what’s new <https://www.techradar.com/phones/apples-siri-assistant-just-got-a-massive-ai-upgrade-with-chatgpt-heres-whats-new>

that compete with the services offered by radio broadcasters). This problem is magnified as a result of the VAs' ability to exploit data-driven advantages relating to their control over a vast amount of user data, which they can combine from across their mobile ecosystems in order to monetise in specific parts of their ecosystems. Relatedly, the use of data gathered by digital platforms from consumer activity when engaging with business users of those digital platforms has been found to raise competition concerns in several cases, including in the Amazon Marketplace case in the UK.⁹

ii. Virtual Assistant providers gather data and do not adequately share data required by business users that generate data

- 3.3. VAs play an important role in (a) gathering data on user behaviour, preferences and characteristics, and (b) supporting direct monetisation.
- 3.4. Vertically integrated platforms have access to a wide range of information about the users of VAs. However, a radio broadcasters' ability to access data relating to listening via a VA is very limited, despite efforts to engage with VA providers to gain access to such data.
- 3.5. For example, radio broadcasters are unable to gather (or otherwise obtain from VA) providers data (even at an aggregate level) on what voice requests end users are making or on issues experienced by end users. In addition, VA providers may not be willing to provide support to radio broadcasters wanting to collect data from listeners (in a GDPR compliant manner) when the radio station is reached by the listener via a VA. Such information would help radio broadcasters better understand their users and develop their product offering. VA providers also refuse to share any audience data that would enable radio broadcasters to understand consumption patterns (e.g., device breakdown data), bar anecdotal data that cannot be benchmarked against any other data. As a result, radio broadcasters are unable to make informed decisions on their commercial strategy (e.g., on which environments to prioritise/invest in). Radio broadcasters need more detailed data than is currently shared with them including total listening time, content listened to vs skipped, and types of devices and operating systems used.
- 3.6. The above must be considered against the radio broadcasters' reduced ability to collect data via their first-party integrations. This is because VAs are nudging radio operators towards including their stations in 3rd party aggregator services instead of having first-party radio integrations. First-party radio integrations allow broadcasters to gather more data than when VAs use 3rd party aggregator services. Moreover, only the largest radio broadcasters have the capability to invest in first-party integrations. As a result, the vast majority of radio broadcasters do not have such capability and therefore are unable to collect any meaningful data from VAs.
- 3.7. Moreover, VA providers do not share data with business users on how effective their VAs are at serving content in response to user commands. This data is essential to monitor how effective user commands are, and how platforms respond to them. Without further insight from the platforms, it is difficult for radio broadcasters to engage constructively to identify or resolve the routing issues.

⁹ The CMA accepted commitments in an investigation where it found that “Amazon’s access to and use of Non-public Seller Data could give rise to a competitive advantage for Amazon Retail which arises from its operation of the UK Amazon Marketplace rather than from competition on the merits.” CMA, [Decision to accept binding commitments under the Competition Act 1998 from Amazon in relation to conduct on its UK online marketplace](#), paragraph 4.7, November 2023.

- 3.8. In view of the above, SMS firms that provide VAs must be (a) prevented from using data sourced from their different services to compete with radio broadcasters, and (b) required to share data with radio broadcasters.

B. Self-preferencing that goes beyond the safeguards established in the Media Act

- 3.9. The Media Act establishes safeguards ensuring that VAs do not self-preference their own radio-like services in response to a voice command. However, the Media Act does not tackle other forms of self-preferencing.
- 3.10. It is well understood that digital platforms engage in various types of anti-competitive self-preferencing. The vertically integrated nature of the leading VA providers enables self-preferencing, which is often achieved via default settings and pre-installations.
- 3.11. Moreover, the VA providers' control over the algorithms that determine how end user commands are addressed means they are able to present content to end users in a way that defaults the choice towards specific content, including their own. They are therefore able to influence user choice strongly, as most end users are not presented with a range of potential responses on a screen. Relatedly, VA providers do not provide transparency around how the search ranking algorithms work, making it difficult to assess accurately how these routing choices are made. Where the VA providers' first-party services are delivered to end users instead of the radio broadcasters' content, the radio broadcasters' reach, and therefore ability to contest VA services, is clearly reduced.
- 3.12. VA providers must be prevented from self-preferencing their own services in ranking (and related indexing and crawling). Where self-preferencing concerns ranking, a forward-looking definition of "ranking" must be adopted similar to that laid down in the EU's Digital Markets Act. That Act (see Article 2(22)) defines ranking broadly to cover any form of "relative prominence" granted by a gatekeeper to its own services, including in cases where only one result is presented or communicated. This often applies to VAs, especially when being used to listen to the radio.

C. Interoperability between the SMS firms' VAs and counterparties' own services and apps

- 3.13. Vertically integrated VA providers offer radio-like services that compete with the services offered by radio broadcasters. As a result, they have the incentive to limit interoperability in order to support the profitability of their first-party services.
- 3.14. Lack of (or poor) interoperability has led to radio broadcasters experiencing significant issues with end users' commands either being wrongly interpreted (for example, not finding the content requested by the end user) or being incorrectly routed via an aggregator. This must be considered in conjunction with the lack of transparency governing the VA providers' ranking algorithms.
- 3.15. In addition, content is often delivered to end users via an aggregator, rather than directly. Radio broadcasters are not able to assess under what conditions the VA will deliver the content via an aggregator. This method of delivery, which is based on indirect interoperability with the VA, impacts the profitability of UK radio broadcasters. In turn, this impacts their ability to invest in the services they offer and remain competitive. Also, indirect interoperability results in less data being shared with radio broadcasters. This

constrains a broadcasters' ability to develop their own services or monetise user data through advertising. This is particularly problematic as broadcasters compete with VA providers in the provision of content and advertising.

- 3.16. In view of these practices, VAs must be required to provide to radio broadcasters direct interoperability with the VAs.

D. VA providers control the relationship with end users

- 3.17. VA providers exercise control over the end user relationship, which makes it more difficult for radio broadcasters to actively engage with their audiences, for example by being able to control the way in which consent is acquired to use data. For example, end users may have an account with the business user (such as a radio broadcaster) where their personal information and any account settings are held. Without the ability for end users to 'log in' to their account or otherwise provide consent, radio broadcasters are unable to reflect that information in the experience delivered to the end user. Radio broadcasters are concerned that GDPR restrictions cited by digital platforms as legal or technical barriers to obtaining end user consent in fact disguise commercial motives.
- 3.18. This issue can be addressed through a requirement similar to the anti-circumvention rule that is established in Article 13(5) of the EU's Digital Markets Act. This provision provides that: *"Where consent for collecting, processing, cross-using and sharing of personal data is required to ensure compliance with this Regulation, a gatekeeper shall take the necessary steps [...] to enable business users to directly obtain the required consent to their processing [...]. The gatekeeper shall not make the obtaining of that consent by the business user more burdensome than for its own services."*

ABOUT RADIOCENTRE

Radiocentre is the industry body for commercial radio. We work on behalf of more than 50 stakeholders who represent over 90% of commercial radio in both listening and revenue.

www.radiocentre.org

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