

Samsung Response to the Invitation to Comment

- (1) Samsung are grateful to have this opportunity to comment on the scope and general principles of the Apple and Google Mobile Ecosystems SMS investigation (Investigation) contained in the Invitation to Comment (ITC).
- (2) The interventions the CMA is considering applying to Google and Apple are likely to have a significant impact on the Samsung mobile device user experience. As such, Samsung will continue to work with the CMA and closely engage with the SMS investigation (whether via responses to information notices, meetings and/or roundtables with stakeholders as the CMA finds helpful) – as it has done so with the preceding Mobile Ecosystem market study (MEMS) and Cloud gaming and Mobile Browser market investigation (CGMB MI).
- (3) Samsung's contributions to the CMA's current SMS investigations will likely mirror and build upon those we made during the earlier investigations, including our recent responses to the CGMB MI remedies working paper (WP7) and provisional findings decision (PDR).
- (4) We have also already submitted a response to the ITC for the related SMS investigation into Google's General Search and Search Advertising activities, launched on 14 January 2025 (Search Investigation). This submission should be read in conjunction with that earlier ITC response as they both relate to end user experience and OEM choice architecture. Further, the impact of any possible interventions relevant to mobile ecosystems must be judged in the round, bearing in mind those under consideration for general search.
- (5) Our response below will primarily focus on the CMA's proposed interventions – in this instance, mainly in the area of mobile browsers (discussed in paragraphs 87 and 88 of the ITC), but also in the area of app distribution (paragraphs 85 and 86 of the ITC).
- (6) We have kept this initial submission relatively brief, but remain on hand to liaise further with the CMA – particularly as its thinking regarding the scope, technical implementation and intended impact of its possible interventions becomes clearer. We wish to address the following questions within the ITC which focus on the interventions under consideration:
 - A. *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.*
 - B. *Q5: Are the potential interventions set out above likely to be effective, proportionate and/or have benefits for businesses and consumers?*

As regards this Question 5, Samsung wishes to address the following

possible interventions:

- i. Weak competition in native app distribution - a requirement that prevents Google from making revenue share payments in return for certain additional requirements in relation to the Play Store e.g. setting it as default (paragraph 85(ii), ITC).
 - ii. Weak competition in mobile browsers - changes to choice architecture for browsers and a requirement that prevents Google from making payments to OEMs conditional upon the prominent display and specific default settings for Google Chrome on Android devices (paragraph 87(v) and (vi), ITC).
- C. *Q6: What key lessons should the CMA draw from interventions being considered, imposed and/or implemented in relation to mobile ecosystems in other jurisdictions?*

(7) While this Investigation covers both the Apple and Google mobile ecosystems, and their interaction, this submission focuses on the Google ecosystem as it is the one within which our devices operate.

A. Potential interventions for the CMA to focus on in mobile ecosystems

- (8) The bulk of this submission considers the specific impact on Samsung and consumers of possible interventions which the CMA is currently considering to remedy perceived issues in the market for mobile browsers - at least in so far as those are derived from Google's conduct and position as provider of Android, Play Store and Google Chrome). Renewed focus on this area is expected, given that this SMS investigation in mobile ecosystems, expressly including browsers, represented the core (provisional) recommendation arising from the earlier CGMB MI PDR.¹
- (9) At this initial juncture, conscious that this SMS investigation is broader in scope than the CGMB MI, Samsung nevertheless makes some initial comments on the other digital activity/ies which may be deemed to constitute part of Google's and Apple's mobile ecosystems and be subject to potential interventions.
- (10) First, we welcome the CMA's attention on switching between Apple iOS and Android, and on ensuring software and hardware interoperability between Apple's and Google's mobile ecosystems and third-party products and services (including the Galaxy wearables that Samsung produces, e.g., Galaxy Watch, Ring and Buds). In the limited time available, we have not commented on technological barriers and developments relevant to such interoperability. Suffice to say, as a third-party OEM and software provider which predominantly works within Google Android, we welcome efforts to remove artificial or unnecessary obstacles to switching between

¹ CMA MBCG MI Provisional decision report 22 November 2024, para 11.321

ecosystems, and to ensure that APIs are open by default.

- (11) As regards software, iMessage, Air Drop, and Quick Start, are core examples of apps within the Apple ecosystem which currently impose barriers on full interoperability with their Android counterparts. Hardware interoperability measures could include opening up digital wallets and NFC technology, and looking to ensure that third party wearables work as well on IOS as they do on Android, minimizing the mobile phone switching cost to consumers who wish to pair their new mobile device with their existing wearable devices.
- (12) Second, as explored further below, Samsung suggests the CMA exercise caution before focusing on sector-wide, indiscriminate interventions regarding app distribution and mobile browsers, at least in so far as such interventions relate to how app stores and browsers operate on third-party OEM Android devices, and are unlikely to materially address or effect Google's established market positions as regards these activities. Contrary to DMCCA Guidance, such intervention risks being "more onerous than its needs to be to achieve its intended aim"² and could adversely impact both third-party OEMs and challenger browsers without material consumer benefit.

B. Impact of potential interventions for businesses (including Samsung) and consumers

i. App Distribution (ITC Paragraph 85)

- (13) We turn first to the proposed interventions in relation to Google Play and app distribution. The potential measure described in paragraph 85(a)(ii), suggests imposing: "*A requirement that prevents Google from making revenue share payments in return for certain additional requirements in relation to the Play Store, e.g. setting the Play Store as the default app store and not preloading alternative app stores on devices.*"
- (14) We do not consider this intervention to be necessary, or applicable to Samsung devices. As noted in our response to the first MEMS RFI, Samsung Galaxy devices do not have a default app store.
- (15) When a user clicks on an advert or link they are typically given a choice screen offering both Galaxy Store and Google Play, together with an option to choose the app store for the present request, or for all future requests. The only nuance to this is that app installation links on third party websites are determined by the advertiser in question, who may offer both Galaxy Store and Google Play or only the latter. Samsung (and to the best of knowledge Google) do not have control over the advertiser's choice in this regard.

ii. Mobile Browsers (ITC Paragraph 87)

- (16) Turning to mobile browser interventions, it is important that the CMA takes

² CMA194 Digital markets competition regime guidance, para 3.33

care to consider the adverse and unintended consequences of its proposed interventions.

- (17) In paragraph 87(a)(v), the CMA proposes that Google makes "*changes to the choice architecture for browsers*". As noted in our response to the CGMB MI PDR (paragraphs 6-10), any such intervention should remain proportionate, effective, and focused on addressing the SMS firm's conduct and market position of concern - in particular by ensuring that any such choice architecture intervention:
- a. is limited to design decisions made by Google itself, as the potential SMS firm in question, as regards choice architecture within the exclusive control of its mobile ecosystem (powered by Android) - as opposed to extending this intervention to choice architecture within the discretion of third-party Android OEMs', particularly in circumstances where such third-party OEMs (including Samsung) are not themselves SMS firms.
 - b. does not inadvertently limit challenger browsers' ability to access device default positions in order to boost prominence and promote end-user engagement. To ensure CMA's choice architecture intervention is focused on curtailing "the SMS firm[']s ability to]...exploit consumers or business to undermine fair competition"³, it is important that this intervention does not actively encourage end-users to switch away from a challenger browser in circumstances when Google Chrome is not set as the default mobile browser. As the CMA is aware, one feature of Samsung Galaxy devices is that Samsung Internet Browser (SIB) is set as default browser, not Chrome.
- (18) Linked to the above, we note that extending choice-screen type remedies to Samsung devices could be ineffective in so far as it may well result in a stronger market position for Google Chrome (as also noted in paragraphs 16 and 17 of our PDR response). We consider increased usage of Chrome could result from the introduction of a choice screen because of:
- a. high existing rates of SIB and Chrome multi-homing on Samsung devices;
 - b. the possibility that a choice screen may lead to more users switching their default to Chrome where it is not currently set as default; and
 - c. the possible follow-on effect of placing this browser in the hot seat (if the CMA adopts this as part of any possible choice screen intervention).
- (19) The CMA has already acknowledged as part of its CGMB MI PDR that Chrome is

the main browser on Samsung devices with multi-homing and more usage measured in terms of duration, and that end user switching is primarily from SIB to Chrome due to familiarity.⁴

- (20) Paragraph 87(a)vi suggests that the CMA is considering as a further potential intervention: "*a requirement that prevents Google from making payments to OEMs and its licensing of its first-party apps and proprietary APIs conditional upon the prominent display and specific default-settings for Google Chrome on Android devices.*"
- (21) [Confidential remarks about arrangements between Samsung and Google.]
- (22) Finally, linked to the above, any intervention should be carefully considered alongside those proposed as part of the Search Investigation, particularly since mobile ecosystems points (including browsers) act as important access points by which consumers engage in search activities. It is essential for the CMA to judge the proportionality and effectiveness of its interventions under the DMCCA in the round - including by bearing in mind the aggregate impact on these interventions not only on SMS firms and their ecosystems, but also the OEMs and other business users which interact with them.
- (23) Unlike iOS devices where the device manufacturer and the OS provider are identical, for Android devices where the device manufacturer is separate from the OS provider (i.e. except for Google Pixel devices), the final decision authority for the device user experience (including whether to display the choice screen) lies with the device manufacturer who designs, develops, manufactures, and sells the Android devices, rather than with Google as the OS provider.

C. Key lessons for the CMA to draw from interventions being considered, imposed and/or implemented in relation to mobile ecosystems in other jurisdictions

- (24) As noted in our response to WP7 and the PDR, it is important that any interventions implemented by the CMA are consistent with the outcomes in Europe arising from the operation of the Digital Markets Act (DMA), or at least that there is no unnecessary regulatory misalignment between them. A failure to impose coherent interventions would run the risk of applying disproportionate costs not only to Google (as a possible SMS firm), but also to Android OEMs that have to amend device choice architecture and commercial arrangements to facilitate Google's DMCCA compliance. This risks causing confusion or detriment to consumers and other end users. (We refer the CMA to paragraphs 14 and 15 of our response to the PDR, where we made these points at greater length.)
- (25) We would also emphasise that Google's compliance efforts under the DMA are limited to implementing a browser choice screen on devices where

⁴ Paras. 8.197, 8.202 8.206 and 8.226 PDR

Google Chrome is currently set as the default browser. As explored above, the interventions envisaged by the CMA - at least as articulated in the PDR - could arguably extend beyond this DMA compliance measure and indiscriminately to all Android OEMs, requiring them to take action. The exact scope of browser choice architecture changes envisaged in paragraph 87(a)(v) of the ITC is (understandably) not articulated in detail at this initial stage. However, were the CMA to explore such an expanded intervention under its SMS investigation and related CRs, this would constitute a point of significant divergence between approaches taken under the DMA and DMCCA (in addition to raising questions of proportionality and effectiveness).

- (26) For completeness, we note that the Commission may impose fairly specific obligations on Apple under the DMA in respect of iOS and Android software and hardware compatibility and interoperability. These will be relevant to the operating system digital activity, and the interventions considered in paragraph 83 of the ITC. Consistency of approach between regulators is key to minimise the burden on consumers and other businesses, and to ensure that the remedies work well in practice. Divergent requirements could stymie and even thwart this opportunity.

Conclusion

- (27) We hope that this summary of our initial position, based on a reading of the ITC and investigation notice, is helpful.
- (28) At this preliminary stage, Samsung wishes to register concerns that the CMA's possible mobile browser interventions as described in the ITC - restricting Google's and OEM's ability to enter into commercial arrangements and the imposition of new choice screens (at least in so far as they go materially beyond that which is already available in the UK or the EU) - could have unintended consequences and/or result in a disproportionate, negative impact on businesses and, in turn, consumers.
- (29) Particularly in light of parallel SMS investigations, without careful coordination and testing, such CMA interventions may go further than required in order to open up the search and browser markets and yield the consumer benefits the DMCCA is ultimately designed for.
- (30) Samsung welcomes the CMA's acknowledgement of market developments, including earlier regulatory intervention affecting choice architecture in the UK and EU, as well as technological advances which may material shape/alter consumer choices and preferences going forward.
- (31) We also welcome the parallel focus on mobile operating systems and native app distribution. While Samsung is involved in app distribution, and relies on the Android operating system, the proposed interventions have less immediate impact on Samsung than do those in the area of mobile browser.

We would nonetheless like to stress that the distribution of apps on Samsung devices is open, thanks to Galaxy Store, and the possibility of side-loading, subject to appropriate user safeguards.

- (32) We acknowledge that the ITC specifically asks for supporting qualitative and quantitative data.⁵ We have omitted this from this initial submission in the interests of time, and on the basis that Samsung will continue to engage with CMA going forward as regards the provision of relevant data as helpful (including in response to information notices, etc.).
- (33) In due course, Samsung looks forward to engaging further with the CMA further to support in the identification of well-balanced, effective and proportionate interventions which are in line with the principles of the DMCCA.

⁵ Invitation to Comment, paragraph 90 and footnote 62.