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Santander UK PLC response to Apple Mobile Ecosystem SMS investigation Invitation to Comment

Introduction

1. Santander UK plc ("**Santander UK**") welcomes the opportunity to respond to the CMA's Invitation to Comment for the Strategic Market Status ("**SMS**") investigation into Apple's and Google's mobile ecosystems, published on 23 January 2025 (the "**Consultation**").

2. Our response is limited to the CMA's Apple investigation. We have no comments on the CMA's proposals to designate Google as having SMS through its mobile ecosystem, or the proposed interventions into Google's activities.

3. [✂]. We would be happy to discuss any aspect of this response with the CMA: please direct any communications [redacted]

4. [✂]

5. [✂]

6. [✂]

7. [✂]

8. Our response suggests the following specific interventions [✂]:

    1. Use the final EC Commitments (as defined below) as a starting point to open up access to third-party digital wallets. However, these must be augmented with the following further specific measures to make them effective in enabling consumer choice and avoid [✂]. We explain why each is necessary later in the response:

        i. Provide third party app developers with access to the NFC through both: 1) hardware-based access through secure element; and 2) software-based access through Host Card Emulation ("**HCE**"), in either case free of charge as required by the EC Commitments. This is in light of the fact that there are currently two separate technical routes to access, which differ depending on jurisdiction, which limits competitors' commercial ability and incentive to develop a single global solution;[1]

        ii. Provide third-party app developers with access to all current and future biometric and other authentication features that are needed for frictionless and secure payments on an iPhone (including, for now, face or touch ID and passcodes);

        iii. Provide third party wallets with the ability to *accept* payments, rather than just make them via payment APIs;

[1] Access is offered via HCE for a fee in the European Union, whereas access to the secure element is available for a fee in other jurisdictions (currently Australia, Brazil, Canada, Japan, New Zealand, the U.K. and the U.S.). These are two different technical solutions.

iv. Provide ability for competing wallets to store and scan other items (besides payment cards);

v. Provide independent and prominent choice screen to allow competing wallets to be installed at the iOS setup, or during future updates; and

vi. Free use of the App Store as a distribution channel for competing wallets.

2. [✂]

3. Consider whether the chosen interventions are wide and flexible enough to cover the foreseeable future use cases for digital wallets (beyond payments).

9. We also urge the CMA to consider widening its investigation by considering whether designation would also be appropriate for : i) operating systems across Apple's current and future NFC-enabled devices (beyond iOS and iPadOS) such as Apple Watch and Apple Vision; and ii) Apple hardware. In addition to iPhones, Apple customers can make payments through Apple Watch (and technically iPads), and in future will likely want to make payments through new devices such as Vision Pro (and other devices yet to be developed). Customers value and expect interoperability across their devices. [✂]

10. We believe that conduct requirements, that are designed in parallel with Apple's SMS investigation, are the most timely and effective method for intervention and should be relied on rather than opening a separate Pro-Competitive Intervention ("**PCI**") investigation after designation.

11. Please see below our specific responses to the questions in the Consultation. The questions have been re-ordered to emphasise what we consider to be the most important parts of our response.

Specific responses

1. 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.

1.1. The CMA has proposed several interventions that, if implemented properly, will allow competition to emerge in digital wallets and contactless payments on Apple devices. We agree with the CMA's decision to prioritise this as a key area of focus in the first wave of activity under the new DMCC regime.

1.2. We have previously made submissions to various regulators [✂]. This includes responses to:

a. The European Commission's Invitation to Make Comments in relation to the commitments offered by Apple to settle the Commission's abuse of dominance investigation[2] (February 2024);

[2] Case AT.40452

b. The FCA's Call for Input on potential competition impacts from the data asymmetry between Big Tech firms and firms in financial services (January 2024);

c. [✂]; and

d. The joint PSR and FCA consultation on big tech and digital wallets (September 2024).[3]

Importance of digital wallets to our business

1.3. Mobile devices have become a key distribution channel for Santander UK's products. At the end of 2024, Santander UK has seen an [✂]% increase in active mobile customers over a five-year period, whilst active users of desktop banking have declined [✂]%. In the same period, the total number of logons to our mobile app has increased [✂]%, whilst desktop banking has declined [✂]%. [✂].

1.4. Customers are increasingly using digital wallets to initiate payments both for face-to-face payments at point of sale, and also for ecommerce payments. Face-to-face payment growth is driven by the convenience of being able to use a mobile device which the customer will typically have to hand at all times, rather than a traditional plastic card which they might not always carry. In addition, digital wallets have the added convenience of supporting customer authentication via biometric authentication rather than needing to enter a PIN, and they now have the ability to make off-battery payments (e.g. passing through TFL ticket barriers even when the phone's battery is empty). Ecommerce growth is driven by the convenience of not needing to find and enter card details to complete a transaction, but instead being able to complete the payment initiation through one click. Digital wallets are also able to auto-populate information like address details.

1.5. [✂].

1.6. [✂].

Impacts of Apple's conduct

1.7. Apple has historically refused to grant third parties with access to the NFC antenna for the purposes of making contactless payments. [✂]. It has also made Apple Pay functionality a "must have" for banks wishing to retain their customers [✂]. We set these out below.

Competition harms

i) **Foreclosure – lack of competing wallets:** Apple has prevented competing digital wallets from being able to offer contactless point-of-sale payments via the NFC antenna. Given the proportion of UK (and worldwide) smartphone users that consistently stay within the Apple mobile ecosystem, and given the importance of contactless payments on mobile devices to those customers, the lack of access to this functionality has made it unviable for third party wallets to emerge. The decision

[3] CP24/9

by Apple to foreclose competitors has stifled innovation in this vital emerging market, to the detriment of iPhone users.

ii) [✂].

iii) [✂].

iv) [✂].

v) **Self-preferencing:** Apple controls the entire customer journey on the only digital wallet available on its mobile devices. This limits the ability of third parties to direct customers to other related services. This currently only impacts banks offering payment services through Apple Pay but, as described below, the impact will expand further to other products and sectors as digital wallets grow in functionality and importance.

1.8. Allowing third parties to develop competing wallets would largely address these issues. [✂]. We set out below our views on the necessary interventions to allow this to happen.

Other consumer harms

1.9. [✂]. While this is not strictly within scope of the DMCC regime, we believe it will be still be of interest to the CMA given its consumer protection role, and also to the FCA within its sector regulation remit. [✂]:

i) [✂].

ii) [✂].

iii) [✂].

iv) [✂].

v) [✂].

1.10. [✂]. If competing digital wallets were allowed to emerge, banks would be able to launch their own digital wallets which contain necessary protection features, or they could work with third-party wallets that would be willing to work with banks in the design of the proposition to ensure adequate safeguards are included.

Apple's strategic decision to fragment NFC access

1.11. On 11 July 2024 the European Commission accepted commitments by Apple to open access to the NFC antenna to third parties through HCE technology for free, following identification of preliminary concerns in its investigation into Apple Pay (the "**EC Commitments**").

1.12. Apple subsequently announced in August 2024 that in various non-European jurisdictions (including Australia, Brazil, Canada, Japan, New Zealand, Switzerland, the UK and the US) it will make access available to the secure element of the NFC for a fee.[4] [✂].

1.13. As a point of principle, Apple is therefore offering two different levels of access in different jurisdictions: i) free access to the NFC antenna through HCE technology (in Europe); and ii) access to the NFC Secure Element, but subject to excessive fees (in the jurisdictions listed at footnote 3). In our view, to allow flexibility and in light of the competing propositions that are already emerging, the CMA should compel Apple to offer both means of access, in both cases for free, as is required by the EC Commitments.

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

2.1. We believe that the EC Commitments provide a strong foundation for providing third parties with access to the NFC antenna. However, they need to be strengthened with further measures to be effective, and to overcome the reality of consumer behaviour and biases, and the scale and impact of Apple's interconnected ecosystem.

2.2. [✂].

2.3. [✂].

2.4. [✂].

<u>The CMA's proposals</u>

2.5. The CMA has indicated three proposed interventions related to digital wallets in paragraph 83(b) of the Consultation:

1. **Interoperability**: Requirement not to restrict interoperability as required by third-party products and services to function effectively and compete with Apple's own products and services;

2. **Rules and policies**: Requirement to make changes to rules or policies that prohibit certain third-party services from operating on iOS devices; and

3. **Default choice architecture**: Requirement to make changes to choice architecture in factory settings or subsequent device settings in order to enable users of mobile devices to make active and informed choices about the product or services they use and/or set as a "default" service.

2.6. We agree that those are important measures which can be effective in allowing competition in digital wallets to take off, provided they are implemented correctly - with strong regulatory backing. We set out below our views on this this can be achieved, and would welcome the opportunity for a face-to-face meeting with the CMA to explain the consumer behaviours and expectations that make all the measures below so critical:

[4] NFC & SE Platform for Secure Contactless Transactions - Support - Apple Developer

i) **Interoperability**: This intervention must include equal access to all hardware and software features that are needed by third parties to compete on a level playing field with the Apple Wallet. We consider this to include:

   i. Implementing the EC Commitments in full, with the augmentations below, which are designed to cover clear gaps that have undermined their effectiveness.

   ii. Access to the NFC antenna through the secure element as well as via HCE: The final Apple Commitments provide access to the NFC antenna through software HCE only. Third party app developers therefore cannot access the hardware "secure element" on the phone. This is insufficient because the secure element has extensive security safeguards consistent with Europay, Mastercard and Visa ("**EMV**") standards. For instance, it does not make payment card information available to merchants accepting the card payment. Instead, the merchant just received tokenised information. In addition, access to the secure element allows payments to be made when a device has run out of battery. This is possible because the payment credentials are securely stored in the hardware secure element.

   Absent regulatory intervention, Apple Wallet will remain the only wallet with access to this important feature. This would likely dissuade customers from switching and Apple would retain an important competitive advantage.

   iii. Access to biometric authentication features: This needs to include all current and future hardware and software needed for frictionless and secure payments, including (for now) face or touch ID and passcodes.

   iv. Ability to *accept* payments: The final Apple Commitments only remove restrictions against third-party developers accessing the NFC antenna for the purpose of *making* payments. Apple is not required to make available the acceptance of payments on iPhones. By contrast, Apple Wallet allows customers to both make and receive payments. Should an EU developer want their wallet to receive payments, they would need to continue to use the Apple Pay gateway to capture payments, at excessive cost. To enable competition in mobile wallets, Apple should be required to open access to its NFC capabilities and/or provide payment acceptance APIs in accordance with EMV standards.

   v. Wallet access to other cards stored on the Apple device (with customer consent): The Apple Wallet allows customers to store not only debit and credit cards in their wallet (to make payments) but also other cards such as their driving license, transit cards, event tickets, loyalty cards and membership cards. This allows customers to replicate their physical wallet in Apple Wallet. Third-party developers need to be able to offer customers the option to store such documents on their applications and then scan them in a contactless manner to provide a true competitor to the Apple Wallet. This requires those other items to have access to the NFC antenna (as QR codes offer a less seamless alternative). Access to the NFC antenna (and the other hardware and software features mentioned above) should not just be made available for

contactless payments. They should also be available for scanning these other types of documents.

Whilst technically a QR code could provide an alternative mechanism to the NFC antenna in terms of a customer's ability to use the digital card, the NFC antenna is significantly more streamlined and efficient for customers, and is likely to be a "must have" in future as customer's expectations for digital wallets evolve.

Without a similar ability to replicate a wallet and offer the scanning ability for other broader cards, a third party's competing mobile wallet application is likely to be significantly less attractive than Apple Wallet.

vi. Include all Apple devices that include the NFC antenna for payments: In addition to iPhones, Apple customers can make payments through Apple Watch (and technically iPads), and in future will likely want to make payments through new devices such as Vision Pro (and other devices yet to be developed). Customers value and expect interoperability across their devices. Unless the Commitments allow access to the interconnected Apple ecosystem, Apple will retain an insurmountable competitive advantage versus a limited mobile wallet. Third Parties will not be able to offer customers the same payment experience as Apple Pay. Recognising the scope of the current SMS designation investigation, we have included some thoughts on the scope of the SMS designation in the response to Q1 below and would be happy to elaborate if helpful.

ii) [✂].

iii) **Default choice architecture**: We note that final Apple Commitments make it easier for users to switch their default wallet provider in the iPhone settings. While this is helpful and necessary, we do not believe that this is sufficient on its own to overcome Apple's advantages arising from Apple Pay being set as the factory default wallet in the first place. We believe that it is also necessary to have a prominent and impartial choice screen at the initial iOS setup, for phones that are sold after the interventions take effect, or at the next iOS update for existing phones.

The switching process should entail automatic detection of cards (and other items) currently stored in Apple Wallet and facilitate an efficient transfer to the chosen solution.

[✂].

Further possible interventions

2.7. In addition to the proposed interventions above, the CMA could consider also taking action to address the data imbalances between Apple and financial services firms that have been explored by the FCA through its Call for Input into the potential competition impacts from

the data asymmetry between Big Tech firms and firms in financial services.[5] Section 20(3)(b)/(f) of the DMCC allow the CMA to impose conduct requirements in this area.

2.8. [✂].

Beyond payments

2.9. Our response is largely focused on payments. Digital wallets will have wider implications beyond payments though. We have described some of the foreseeable use cases in the Annex to this response. It is likely that digital wallets will develop to become critical infrastructure that banks (and companies in many other sectors) will need access to in order to distribute their products. [✂].

2.10. [✂].

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

3.1. [✂].

EU experience shows dangers of relying on static remedies

3.2. It is notable that the EC chose to address the competition issues caused by Apple's foreclosure strategy through investigation commitments, rather than through the *ex ante* conduct requirements placed on Apple as a designated gatekeeper under the Digital Market Act. [✂].

3.3. In addition, the Apple Commitments are "locked" for a period of 10 years - subject to the possibility of a review following a change of circumstances. Given that these are fast-moving markets, with significant changes expected in the near term (as set out in our response), it is not ideal to have to run a lengthy change-of-circumstances assessment following each market change.

3.4. By comparison, the CMA would face similar issues if it chooses to address competition harms in digital wallets through a PCI. Not only would that delay CMA intervention by at least 9 months as a separate investigation would be needed (that could only begin following Apple's designation), it would also suffer from the same inflexibility as is seen with the Apple Commitments. [✂].

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

4.1. The CMA is proposing to designate Apple as having SMS in the provision of mobile operating systems, native app distribution and mobile browser services. [✂].

4.2. [✂].

Other operating systems

[5] https://www.fca.org.uk/publication/call-for-input/potential-competition-impacts-data-asymmetry-between-big-tech-firms-and-firms-financial-services.pdf

4.3. The scope of "mobile operating system" set out in paragraph 52 of the consultation document only includes iOS and iPadOS. [✂].

4.4. In addition to iPhones, Apple customers can make payments through Apple Watch (and technically iPads), and in future will likely want to make payments through new devices such as Vision Pro (and other devices yet to be developed). Customers value and expect interoperability across their devices. Unless the Commitments allow access to the interconnected Apple ecosystem, [✂].

Hardware

4.5. Under Section 2 DMCC, designation can only be made in relation to "digital activities". These are defined in Section 3 as including: 1) provision of services on the internet, 2) provision of digital content and 3) any activity carried out for the purposes of 1 or 2. One of the main motivations for Apple entering hardware markets is because this provides them with control over a vital channel for internet-connected services and digital content. Provision of hardware could therefore also arguably be classed as a "digital service".

4.6. [✂].

4.7. [✂].

5. 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?

5.1. Following on from our responses to Q1 above, if the CMA decides to widen the investigation to also consider designation for supply of other operating systems and/or hardware, the CMA would need to also expand the avenues of investigation in paragraphs 70 to also cover these activities.

5.2. We otherwise do not have any comments on the proposed avenues of investigation in paragraphs 70-72.

Annex
Consideration of future wider uses of digital wallets beyond payments

The focus of regulators to date has been on pass-through and staged digital wallets, with a focus on payment mechanisms.[6] We believe, however, that digital wallets will develop in the future to become the key interface to access a wider variety of financial services, and other areas as well. We believe that they will be able to:

1. Incorporate other functions besides payments, including storing loyalty cards or tickets for events or travel.

2. Expand further into financial services with future Open Finance and Smart Data schemes to turn into a one-stop portal for a person's entire financial services needs, allowing them to compare and transact in current accounts, savings, mortgages, insurance and investments.

3. Be incorporated in, or develop into, "super-apps" such as WeChat in China, which consolidate and replace multiple diverse services, such as messaging, payments, banking, government services, telecoms, transport and utilities supporting both individual and business needs.

4. Be integrated into ecommerce marketplaces.

5. Become an interface through which governmental services can be accessed, e.g. by acting as a form of digital identification.

6. Act as a store of value or information for a number of digital assets, including traditional financial products and services, digital assets such as cryptocurrencies, CBDCs, NFTs and other digital assets stored on emerging networks such as the new Regulated Liabilities Network.

The future of digital wallets is therefore reasonably foreseeable given the clear trajectory of consumer behaviours/ expectations and technological developments. As consumers become increasingly multi-banked, with different financial products held with multiple providers (often with multiple equivalent products such as current accounts), and as they also hold other digital assets such as cryptocurrencies, NFTs or other digital assets, there will be a real role to play for digital wallets or apps that consolidate all of these stores of value into a single place. A consumer simply will not want to handle 30 financial apps where technology allows integration. The value of digital wallets will be enhanced, compared to other distribution channels, by features such as biometric ID.

[6] See, eg, https://www.fca.org.uk/news/press-releases/psr-fca-launch-joint-call-information-big-tech-digital-wallets (July 2024)