

SMS Investigation into Apple's mobile ecosystem

Spotify's response to the CMA's invitation to comment (ITC)

A. OVERVIEW

1. The UK – with its particular combination of talent, ambition, culture, and, of course, world-famous music – has been hugely important to Spotify since its UK launch in 2008. Spotify is an innovative and popular service which has brought music and other audio content to millions, while at the same time giving a new lease on life to the music industry. Today, as one of Spotify's biggest research and development hubs, the UK is often where we experiment with our most innovative and exciting new products, including audiobooks in our Spotify Premium tier,¹ video-based learning courses,² and, most recently, AI DJ³ and AI Playlist.⁴
2. Spotify's success and ability to innovate in the UK is due in large part to the country's open, connected, and competitive economy. Exceeding £1 trillion, the UK's technology market is the largest in Europe and the third largest in the world.
3. Regulation in the UK should continue to encourage growth by protecting fair competition in digital markets. In the app store economy, effective and proportionate intervention is a key ingredient of fostering robust competition, new ideas, and a new generation of UK tech companies. It is needed to prevent super-dominant platforms, such as Apple, from stifling innovation and growth contributed by Spotify and other app developers and their ability to make substantial investments that benefit the UK economy. In particular, Apple imposes punitive requirements on certain categories of developers for access to its App Store, including (a) charging a commission of up to 30% of their in-app transaction revenues on iOS, and (b) banning app developers from telling users on iOS apps about purchasing options available to them outside iOS apps. These terms specifically target providers of digital content (notably companies that compete with Apple's own music streaming, film, television, and book services), leaving other developers with no fees or steering restrictions at all. Moreover, by preventing developers from communicating with users about offers and lower-priced alternative purchase options, Apple reaps billions in profits while millions of consumers are deprived of the benefits of choice, competitive pricing, and innovation (as more fully described in paragraph 5).⁵

¹ <https://newsroom.spotify.com/2023-10-03/audiobooks-included-in-spotify-premium/>.

² <https://newsroom.spotify.com/2024-03-25/spotify-tests-video-based-learning-courses-in-the-uk/>.

³ <https://newsroom.spotify.com/2023-05-16/ai-dj-uk-ireland-spotify-personalization/>.

⁴ <https://newsroom.spotify.com/2024-04-07/spotify-premium-users-can-now-turn-any-idea-into-a-personalized-playlist-with-ai-playlist-in-beta/>.

⁵ In its mobile ecosystems market study final report of 10 June 2022 ("**Mobile Ecosystems Final Report**"), the CMA found that Apple was "*highly profitable through the last 10 years*" and because of its high returns, combined with additional margins from its services business (which includes the App Store), Apple was "*able to earn at least £2 billion of profits in 2021 from their UK mobile business over and above what was required to sufficiently reward investors with a fair return*". See Appendix C, paragraph 98.

4. The digital markets regime under the Digital Markets, Competition and Consumers Act 2024 (**DMCCA**) gives the CMA the necessary tools to tackle significant issues impeding growth and innovation in the app store economy. For example, Conduct Requirements enable the CMA to tackle abuses with a flexible and nimble approach that focuses on "higher-level" outcomes, rather than prescriptive rules alone.⁶ These tools are particularly important in the case of Apple. Apple has a consistent history of delays and circumvention tactics when responding to regulatory interventions in various jurisdictions, as more fully detailed in answer to Question 6 of the ITC below. This history foreshadows that in the UK, Apple will seek to do what Apple has always done: look for indirect ways to maintain or replicate the same exorbitant fees and unfair restrictions that it imposes to businesses in the UK today. The CMA (through its digital markets regime) has the opportunity to finally oblige Apple to comply with the spirit and letter of laws intended to achieve competitive and innovative outcomes.
5. Without Apple's restrictive and anti-competitive App Store terms, Spotify and other developers would be able to innovate quicker and at a lower cost, to the benefit of users in the UK and globally. Successful alternative payment systems and app stores on iOS could exert competitive pressure on Apple to ensure its own App Store terms and in-app payment (**IAP**) solutions are efficient and competitive. This is all perfectly achievable without stifling incentives for Apple and other dominant platforms to innovate and compete. For example, in the absence of Apple's unfair restrictions, we would be able to:⁷
- (a) Be transparent with our users about where, how, and at what price they can buy our services, allowing them to make an effective and informed choice between all subscription options at their disposal. These options ultimately unlock more effective competition and better value for users. In the UK and around the world, Apple mandates that developers use Apple's IAP for in-app purchases of digital goods and services (for which Apple charges developers a commission of up to 30% of revenues, which Spotify and other music streaming services would be forced to pass on to users). Apple also forbids developers from giving users essential information that may direct them towards alternative, lower-priced means of purchase, including through "*buttons, external links, or other calls to action that direct customers to purchasing mechanisms*".⁸ These rules prevent us from communicating basic information within our app that would improve the user experience, including prices for (i) Premium subscription options for users of our free, ad-supported service, (ii) alternative, cost-saving subscription plans for existing Premium subscribers (including our Student, Duo, and Family plans and potentially other future

⁶ CMA194, Guidance on the digital markets competition regime set out in the Digital Markets, Competition and Consumers Act 2024, 19 December 2024 ("**DMCCA Guidance**"), paragraphs 3.28-3.30.

⁷ Further information on what we and other developers could do if we were unrestricted by Apple is available at: <https://www.timetoplayfair.com/why-this-matters/what-it-could-be/>.

⁸ Apple's App Review Guidelines, section 3.1.1(a).

innovative service tiers), (iii) win-back offers to users whose Premium plan recently ended, and (iv) Audiobooks and learning courses for all users.

- (b) Offer alternative in-app purchase solutions within the Spotify app on iOS devices other than Apple's IAP, which are more efficient and convenient for users on mobile devices than out-of-app payment options. Most of Spotify's paying users begin as users of the free tier, and, after realising how much they enjoy the service, they upgrade to Spotify Premium which offers quality enhancements. Today, the process is a frustrating one for users, as they cannot make those upgrades in-app. Using alternative IAP solutions would allow users to upgrade to Spotify Premium in-app and enable a more direct relationship between us and our customers compared to Apple's IAP, which disintermediates the developer from the user (e.g., we could deal directly with customers in relation to billing and queries about our service).
 - (c) Communicate innovative product enhancements and introduce new features without Apple standing in the way, and without having to resort to less effective and more costly marketing channels to connect users with the content they may want. For example, when we launched Audiobooks in 2022, we wanted to deliver a convenient and intuitive user experience to connect listeners with their favourite authors and introduce people to a form of storytelling they may never have tried. But Apple rejected our app updates which delivered that experience, forcing our engineers to create a complicated, confusing multi-step process that iOS users did not want or deserve.⁹
 - (d) Provide payment support services within our app, which would significantly improve the user experience. For example, if a subscription has not been purchased on Apple's IAP, Apple prevents us from allowing users to review or update their payment details in-app, even if they do not purchase additional content or modify their subscription. They cannot even update their credit card information if they need to replace a stolen card.
 - (e) Focus on innovative improvements to our apps, rather than spending millions globally to market to iOS users through far less effective channels, like emails and off-platform advertising.
6. Given the above, Spotify welcomes the opportunity to respond to the CMA's ITC, and its decision to prioritise investigating whether Apple should be designated as having Strategic Market Status (**SMS**) in relation to its key activities within its mobile ecosystem: (i) mobile operating systems, (ii) native app distribution, and (iii) mobile browsers and browser engines. Of these, native app distribution is the key pillar that the CMA must get right, as doing so will unlock significant competition and innovation benefits for UK businesses and consumers, and therefore for the UK economy.

⁹ For further details, see: <https://www.timetoplayfair.com/audiobooks/>.

B. SPOTIFY'S RESPONSES TO THE ITC QUESTIONS

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

7. Spotify welcomes the CMA's decision to prioritise investigating Apple's mobile ecosystem with a focus on mobile operating systems, native app distribution, and mobile browsers and browser engines. Within these three areas, the CMA should focus on Apple's substantial and entrenched position in native app distribution (i.e., through its App Store), given (i) the fundamental role of app stores in intermediating millions of UK consumers' everyday interactions with the services they need and love, and (ii) the substantial and entrenched monopoly that Apple has in native app distribution on iOS.

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

8. Apple has substantial and entrenched market power in the digital activities referred to in the response to Question 1 above,¹⁰ especially in native app distribution.¹¹ In the UK, Apple's App Store is the only app store allowed on iOS devices and Apple's iOS faces limited (if any) competitive constraints from other mobile ecosystems.¹² This will remain the case indefinitely on iOS devices unless the CMA intervenes, as Apple sets the terms unilaterally and has no incentive to open up its 'walled garden' to competition.
9. First, in the UK, the App Store is the only route Apple allows for apps to be distributed on iOS devices.¹³ It is impossible for third parties to enter the market and challenge Apple's position. As a result, Apple – through its enforced monopoly – has complete control of access to the iOS platform itself.
10. Second, the App Store is a significant gateway for the provision of content and services to UK consumers. In paragraph 57 of the ITC, the CMA notes that "*on average [20-30]*

¹⁰ ITC, paragraphs 70-71; DMCCA, section 2(2)(a) and section 5; DMCCA Guidance, paragraphs 2.50-2.65. In this regard, the CMA found in its Mobile Ecosystems Final Report (paragraph 3.179) that Apple had "*substantial and entrenched market power in mobile operating systems*".

¹¹ As the CMA itself noted in paragraphs 4.184, 4.207, 4.210, and 4.211 of its Mobile Ecosystems Final Report, Apple has "*substantial and entrenched market power in native app distribution*".

¹² As the CMA notes in paras. 3.68, 3.119, and 3.123 of its Mobile Ecosystems Final Report, there is limited effective competition between iOS and Android devices, and Android devices do not impose a strong competitive constraint on Apple. The CMA also noted in paragraph 4.206 of its Mobile Ecosystems Final Report that "*the lack of competition faced by the App Store and Play Store allows them to charge above a competitive rate of commission to app developers*".

¹³ As the CMA notes in paragraph 57 of the ITC, "*Apple's App Store is pre-installed on iOS devices and is the only method for users to download native apps on iOS devices*". See also Section 8 of the European Commission's Decision of 3 March 2024 in *Case AT.40437 – Apple – App Store Practices (music streaming)*, in which Apple was found to hold a dominant position in the EEA on the market for the provision to developers of platforms for the distribution of music streaming apps to iOS users.

million users in the UK downloaded at least one app from the App Store in a given month in 2021". Indeed, nearly 90% of all listening on Spotify in the UK today happens on a mobile device.

11. Third, app developers are dependent on Apple and lack countervailing power. Music streaming apps such as Spotify cannot afford to be absent from the iOS environment as the majority of users use a single mobile platform ("single-home"). Spotify must offer its service where its users want to listen, and many Spotify users want to listen from an iOS device. In February 2025, over 68% of Spotify users in the UK accessed Spotify on an iOS device.
12. Apple's market power is also evidenced by the fact that Apple charges fees that bear no connection to market rates for payment processing. Apple charges a 30% fee for processing in-app purchases, while other payment processors generally charge less than 5% per transaction. Apple has overwhelming, coercive power and derives significant revenues from the App Store.¹⁴
13. Apple also has a clear position of strategic significance in respect of the digital activities referred to in the response to Question 1 above,¹⁵ in particular in respect of native app distribution. In this regard, Spotify considers that Apple meets all criteria set out in section 6 of the DMCCA, even though the CMA need only show that one or more of those criteria are satisfied.¹⁶

Question 4: 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.

14. Spotify welcomes the CMA's statement in paragraph 77 that it considers it to be "*important and appropriate to start considering potential interventions in parallel*" and "*from the outset of the mobile SMS investigation*". This is essential to avoid further delays, as only considering possible interventions following a designation decision would unfavourably delay the benefits to UK mobile ecosystem users, while giving Apple more room to maintain the status quo for as long as possible.
15. As mentioned in response to Question 1 above, the CMA should focus on Apple's substantial and entrenched position in native app distribution, given the fundamental

¹⁴ Apple does not disclose the total amount of revenue it makes from the App Store. However, according to Apple, USD 104 billion were billed through the App Store corresponding to sales of digital goods and services (including apps for music and video streaming, fitness, education, e-books and audiobooks, games, news and magazines, and dating services, among others) in 2022, up from USD 86 billion in 2020. Source: <https://www.apple.com/newsroom/pdfs/the-continued-growth-and-resilience-of-apples-app-store-ecosystem.pdf> and <https://www.apple.com/newsroom/pdfs/apple-app-store-study-2020.pdf>.

¹⁵ ITC, paragraph 72; DMCCA, section 2(2)(b) and section 6; DMCCA Guidance, paragraphs 2.66-2.75.

¹⁶ For example, Apple has clearly achieved a position of significant size or scale in respect of each digital activity within mobile operating systems for the purposes of section 6(a) of the DMCCA. In its Mobile Ecosystems Final Report, the CMA estimated that (a) Apple's iOS devices accounted for more than half of active smartphones in the UK in each year between 2015 and 2021 (paragraph 3.18), and (b) in 2021, Apple's App Store had [1-1.5] million apps developed by [500,000-600,000] native app developers (paragraph 4.17).

role of app stores in intermediating millions of UK consumers' everyday interactions with the services they need and love. We provide observations on potential interventions in native app distribution, as well as potential interventions in mobile operating systems, below.

16. Based on Apple's past behaviour in other jurisdictions, Spotify has well-founded fears that Apple will try to frustrate the goals of the UK's new digital markets regime through circumvention and "malicious compliance" at every turn. Apple will try to use its App Store fees as its main circumvention mechanism, as it has done in numerous other jurisdictions. It is crucial that the CMA keeps potential responses and retaliation from Apple in mind when considering possible interventions. Spotify is well placed to give details to the CMA about Apple's historical and ongoing resistance to compliance in response to antitrust scrutiny of its App Store (please see response to Question 6 below).

Potential interventions in native app distribution

17. The CMA should prioritise potential interventions with the aim of ending Apple's anticompetitive practices in native app distribution (ensuring positive outcomes for businesses and customers in the UK) in the following areas:
- (a) Apple's App Store fees,
 - (b) Apple's anti-steering rule,
 - (c) enabling alternative in-app payment solutions.

18. We consider each of these in turn below.

(a) Apple's App Store fees

19. In the UK, Apple continues to charge developers offering digital goods and services a commission fee of 30% of their sales.¹⁷ This commission fee is prohibitive and significantly erodes the low margins of music streaming services providers (as well as many other developers), compromising their ability to invest in an innovative and optimal customer experience. When we enabled Apple's IAP between June 2014 and May 2016, we were forced to pass on Apple's commission to our users, which resulted in UK consumers paying more for the same service, triggering numerous user complaints.
20. If Apple is designated as having SMS in mobile ecosystems, and to the extent that the CMA determines that imposing any fee for native app distribution is appropriate, the CMA should require any fees Apple charges to be fair and reasonable, and for Apple to refrain from renaming and restructuring its fees in order to maintain its supra-competitive rents, as it has attempted to do in every other jurisdiction that has

¹⁷ This fee drops to 15% if a user remains a paying customer for twelve or more consecutive months. If that user cancels their subscription and then later decides to become a paying subscriber again, Apple's fee goes back to 30% for each monthly subscription fee.

considered these issues, including the EU and the US. Such a requirement would be proportionate for the purposes of *inter alia* the fair dealing objective, in line with section 19(5)(a) of the DMCCA and paragraph 3.6(c) of the DMCCA Guidance.¹⁸

21. The CMA should seek to ensure that Apple's App Store fees (a) are fair when viewed against the costs of the services that the App Store provides to developers, and (b) prevent unjustified differentiation either among third-party developers (e.g., between physical and digital goods and services) or between third-party developer apps and Apple's own competing apps (e.g., Apple Music). This will require a concrete and objective understanding of the services Apple actually provides to developers and its underlying costs for providing those services. However, Apple has been notoriously resistant to calculating the cost of operating the App Store and - even in the context of court proceedings and other settings under oath - has hidden behind claims that it is impossible to calculate.¹⁹ It is simply not credible for a company with a market cap of c. US\$3.5 trillion to claim that it cannot calculate the cost of running its own app store, especially as, in recent years, its services division (which includes the App Store) is a major profit generator.²⁰ We expect that the CMA will need to require Apple to provide details about these costs.

(b) Apple's anti-steering rule

22. As mentioned above, in paragraph 5(a), Apple's App Store Review Guidelines prevent developers from giving users any information that Apple views as directing users towards alternative (out-of-app) means of purchase, including through "*buttons, external links, or other calls to action that direct customers to purchasing mechanisms*". Apple's restrictions prevent us from communicating with our users in the most effective way to reach them (i.e., in our iOS app) about offers available outside the app, leaving us unable to give users transparent access to the gamut of options available to them.
23. If Apple is designated as having SMS in mobile ecosystems, the CMA should require Apple to remove its anti-steering provisions (thus allowing developers to communicate openly with users within their apps free of charge) and to refrain from any conduct having the same or equivalent object or effect. This would mean

¹⁸ In relation to fair dealing, section 19(6) of the DMCCA outlines the objective that "*users or potential users of the relevant digital activity are— (a) treated fairly, and (b) able to interact, whether directly or indirectly, with the undertaking on reasonable terms.*" See also paragraph 3.6(a) of the DMCCA Guidance.

¹⁹ For example, Apple's Chief Financial Officer, Kevan Parekh, recently told the UK's Competition Appeal Tribunal in the context of ongoing proceedings under section 47B of the Competition Act 1998 (*1403/7/7/21 Dr. Rachael Kent v Apple Inc. and Apple Distribution International Ltd.*) that the profitability of the App Store cannot be "*estimated in a meaningfully accurate way*". See: <https://www.law360.com/articles/2285007/apple-cfo-challenges-app-store-profit-claim-in-1-5b-trial>.

²⁰ According to Apple's annual report for the fiscal year ended 28 September 2024, Apple's services division (which includes advertising, AppleCare, cloud services, digital content (including the App Store), and payment services) generated a gross margin of \$71.1 billion (up from \$60.3 billion in the previous year) and a gross margin percentage of 73.9% (up from 70.8% in the previous year). Apple's total gross margin for the same period was 46.2% (up from 44.1% in the previous year). In its Mobile Ecosystems Final Report (paragraph 4.191), the CMA estimated that the App Store's gross profit margin in 2021 was [75-100%].

prohibiting Apple from charging any fees relating to developers including a link in their app that directs users to alternative payment options outside the app. Such a requirement would be proportionate for the purposes of *inter alia* the open choices objective and the trust and transparency objective, in line with section 19(5)(b) - (c) of the DMCCA and paragraph 3.6(c) of the DMCCA Guidance.²¹

24. A growing number of jurisdictions around the world have attempted to regulate Apple's anti-steering provisions, including the Netherlands, the EU, Japan, and the US (see further the response to Question 6 below). In particular, and as the CMA notes in paragraph 37(a) of the ITC, the European Commission recently fined Apple over €1.8 billion for imposing anti-steering provisions on developers of music streaming services providers in the EEA (including the UK until 31 December 2020), as they amount to unfair trading conditions in breach of Article 102(a) TFEU.
25. Although we are still many steps away from a level playing field, we are beginning to see progress as a result of this decision. [Confidential]. The CMA should go further and (a) prohibit Apple from charging fees for transactions that happen outside of iOS apps; and (b) enable all app developers (not just music streaming services providers) to communicate such information with a link or a "buy button", which will enhance the customer experience.

(c) Alternative IAP solutions

26. In the UK, Apple continues to prohibit Spotify and other app developers from processing in-app payments through any means other than its own IAP solution. This is an unnecessary and illegitimate extension of Apple's market power into a separate market, and a form of compulsory bundling. It stifles competition and therefore the potential for more innovative and efficient processes which competition would foster. Therefore, it is likely to make costs faced by app developers, and ultimately consumers, higher than they would otherwise be, to the detriment of both consumers and the productiveness of the economy.
27. If Apple is designated as having SMS in mobile ecosystems, the CMA should require Apple to authorise the use of alternative IAP solutions (thus allowing developers to offer genuine alternatives to Apple's IAP) and to refrain from artificially disincentivising the use of such alternatives. Such a requirement would be

²¹ The CMA must impose Conduct Requirements for the purpose of one or more of the statutory objectives set out in section 19(5) of the DMCCA (i.e. fair dealing, open choices, and/or trust and transparency). In relation to the open choices objective, section 19(7) of the DMCCA states that "*users or potential users of the relevant digital activity are able to choose freely and easily between the services or digital content provided by the undertaking and services or digital content provided by other undertakings*". In relation to the trust and transparency objective, section 19(8) of the DMCCA states that "*users or potential users of the relevant digital activity have the information they require to enable them to— (a) understand the services or digital content provided by the undertaking through the relevant digital activity, including the terms on which they are provided, and (b) make properly informed decisions about whether and how they interact with the undertaking in respect of the relevant digital activity.*" See also paragraph 3.6(c) of the DMCCA Guidance.

proportionate for the purposes of *inter alia* the fair dealing objective, in line with section 19(5)(a) of the DMCCA and paragraph 3.6(c) of the DMCCA Guidance.²²

28. If choice is allowed, this must be in substance and not merely form. Apple must not be allowed to circumvent the CMA's intended outcome by imposing charges or other terms on app developers which choose to switch (or offer alternatives alongside Apple's IAP) that have the effect of deterring the use of IAP alternatives. To that end, any charges for use of the App Store would need to be fair, reasonable, and non-discriminatory between those app developers that only offer Apple's IAP and those that offer alternative IAP solutions. The CMA should also prohibit Apple from using "scare screens" and similar tactics that discourage consumers from making choices.

Potential interventions in mobile operating systems

29. Apple also has a history of providing preferential access to its own apps (e.g., by way of interoperability with other parts of the Apple ecosystem), which also distorts competition. The CMA should consider possible interventions relating to Apple leveraging its market power into adjacent activities, as set out in paragraph 83(b) of the ITC.

Question 5: Are the potential interventions set out above likely to be effective, proportionate and/or have benefits for businesses and consumers?

30. As the CMA notes in Box 5 of the ITC, the CMA must consider which Conduct Requirements within the permitted types set out in the legislation would be effective in achieving the CMA's aim and whether they would be proportionate.
31. On effectiveness, there is a much higher likelihood that the CMA will achieve its aims if it seeks to put in place outcome-focused Conduct Requirements, rather than focusing solely on prescriptive action-based Conduct Requirements. A combination of outcome-focused and action-focused requirements is likely to have greater success in bringing Apple's anti-competitive practices to an end and allow competition and innovation to flourish.
32. On proportionality, the CMA's envisaged interventions are proportionate, having regard to what the envisaged Conduct Requirements would intend to achieve (i.e., fair dealing, open choices, and/or trust and transparency). Outcomes matter more than prescriptive rules, but both will likely be necessary to restore effective competition (see our response to Question 6 below).
33. It is of course open to the CMA, once there is an SMS designation, to seek Pro-Competition Interventions as well as Conduct Requirements. In our view, a proportionate approach to address the abuses described above would involve first trying to tackle them through Conduct Requirements, and only if they are seen not to be effective, to seek more far-reaching measures that might then be necessary (such as Pro-Competition Interventions) to achieve operational or structural separation

²² See footnote 18 above.

between Apple and its IAP solution. In addition, the harms imposed by Apple have plagued UK start-ups and consumers for years. The CMA should use its tools to level the playing field as quickly as is reasonably possible.

34. As regards benefits for businesses and consumers, such interventions will bring short term as well as more long-term benefits: for example, as a result of improved competition. If (a) developers are free to communicate to users within their apps free of charge, with no new fees for transactions that happen outside of iOS apps, (b) in-app payment solutions are permitted, and (c) Apple's App Store terms are reasonable, and non-exclusionary, without (d) Apple circumventing or minimising the use of these new options, the combination of these different outcomes will unlock significant competition and innovation benefits for UK businesses and consumers.

Question 6: What key lessons should the CMA draw from interventions being considered, imposed and/or implemented in relation to mobile ecosystems in other jurisdictions?

35. Apple is subject to a myriad of compliance obligations and regulatory interventions globally, particularly concerning its mobile ecosystems and the operation of its App Store.
36. In respect of Apple's "anti-steering" restrictions, some jurisdictions have imposed obligations to allow developers to "steer" customers to their own websites:
- (a) the European Commission's Digital Markets Act (**DMA**) mandates that Apple allow developers, free of charge, to communicate and promote offers, including under different conditions, to their customers, and to conclude contracts with those customers. Similarly, the European Commission adopted a decision on 4 March 2024 which prohibited Apple from imposing Anti-Steering Provisions on music streaming service providers, and any other act or conduct which has the same or equivalent object or effect as that infringement.
 - (b) in the US, a pivotal ruling by the U.S. District Court for the Northern District of California in the *Epic Games v Apple* case resulted in a permanent injunction against Apple's "anti-steering" provisions. These actions enable customers to access alternative purchasing mechanisms beyond Apple's own IAP system and permit developers to engage with customers through voluntary communication channels established via account registration.
 - (c) in Japan, the Japan Fair Trade Commission accepted voluntary measures from Apple ensuring that developers of "reader apps" can include in-app links to their websites.
37. In respect of Apple's requirement for developers exclusively to use Apple's proprietary IAP, some jurisdictions have required Apple to allow, in various ways, "choice of payment system":
- (a) in the Netherlands, the Authority for Consumers & Markets required Apple to permit dating app developers to select their payment systems and incorporate references to external payment systems for in-app purchases.

- (b) South Korea's Telecommunications Business Act prohibits Apple from mandating the use of its proprietary payment systems for in-app purchases.
38. However, Apple's historical and ongoing resistance to compliance with such regulatory interventions serves as a cautionary tale. Apple's consistent approach of minimising effective compliance and maintaining the *status quo* for as long as possible, whether by circumventing some or all the rules imposed on it, deploying "malicious compliance" tactics, or effectively refusing to comply altogether, is a pattern that the CMA should take into account when considering possible interventions (should Apple be designated with SMS as a result of the CMA's investigation). Indeed, in the US, Apple is currently subject to court proceedings related to its App Store rules.
39. We set out below examples of the circumvention tactics that Apple has deployed in other jurisdictions (which are designed to arbitrarily maintain or increase uncertainty, Apple's fees, and friction for developers and/or users). This will enable the CMA to realise the urgency of applying the more principles-based UK digital markets regime so as to minimise the risk of such behaviour.
- (a) *Apple amends its fees in ways that disincentivise use of alternatives to Apple's IAP***
40. The main way that Apple seeks to limit the impact of any interventions on its anti-competitive conduct relating to the App Store is to create economic disincentives for developers to take advantage of alternatives, like Apple's opt-in "entitlements" to choice of payment system and steering.
41. For example, in the Netherlands and the US, Apple charges developers who wish to link out or use an alternative payment system up to 27% on all transactions that take place outside of the app within seven days after the user clicks on the external link. By charging a commission that is only 3% less than Apple's standard IAP fee (of up to 30%) and extending Apple's ability to claim commission on purchases made outside the iOS ecosystem, Apple effectively discourages developers from opting in to use external links outs or third-party payment systems. In practice, developers will have to pay more than 3% just to process these linked purchases, and as a result, developers would not be able to offer consumers lower prices on linked purchases than they offer on in-app purchases processed through Apple's IAP. More than just being a disincentive, in the EU the imposition of a 27% commission on linked purchases is non-compliant with Apple's obligations to allow developers to communicate and promote offers *free of charge*.
42. Alternatively, Apple could introduce a new set of alternative terms masquerading as compliance with Conduct Requirements, which developers "opt in" to. Apple has tried to do this under the DMA with its *Alternative Terms Addendum for Apps in the EU*, which does not comply with the letter or spirit of the DMA.²³ Apple designed these

²³ As the CMA notes in footnote 58 of the ITC, the European Commission has opened non-compliance procedures against Apple over concerns that (i) Apple's anti-steering rules for the App Store, and (ii) Apple's new contractual requirements for third-party app developers and app stores, including Apple's new "Core Technology Fee", fall short of ensuring effective compliance with its obligations under the Digital Markets

non-compliant terms essentially to force developers to stay with the *status quo* (i.e., Apple's original terms), including by introducing an "*initial acquisition fee*" and a "*store services fee*", which effectively tweak and rename the existing fee arrangements without making any real changes (and without providing any additional value). These fees are only charged to a subset of developers – many of whom are Apple's direct competitors – who sell digital goods and services and seek to benefit from the DMA. Apple's new terms also require developers to pay Apple a per-user €0.50 "*core technology fee*" for each "*first annual install*", which Apple defines as the first time a user either downloads, reinstalls, or upgrades an app on an iOS device within a 12-month period, *including if the user downloads, reinstalls, or upgrades the app through web distribution or through an alternative app store.*

43. For many of the most popular developers, these fees match or even exceed the fees they would have to pay Apple in the *status quo*, so they do not "opt in" to the proposed DMA terms (and thus lose the benefits of the DMA). Notably, a great number of apps that Apple does not deem to offer "digital goods and services" have used alternative payments for years with no fees and no security concerns.
44. A comparable risk to avoid is that Apple might introduce a disproportionately high fee for developers who do not use IAP or charge an excessive fee for "security and privacy review", or the use of its software developer kits (**SDKs**) and application programming interfaces (**APIs**). Effectively, Apple finds ways to move the 30% IAP fee up the App Store "stack" to maintain its revenue stream.

(b) Apple introduces unnecessary friction for users

45. Where developers do "opt in" to any of Apple's entitlements, Apple creates unnecessary friction to encourage developers to only offer Apple's IAP without alternative IAP solutions or links to purchasing options available outside the app.
46. In its so-called "compliance" in other jurisdictions such as the EU and the US, Apple requires developers to display exaggerated security warnings (which Apple calls "in-app disclosure sheets") when linking out to web pages from within iOS apps. There is no legitimate reason why Apple should have full control over the language or tone used in security messages to end users, and the actual message Apple requires developers to display is not necessary to protect user security. For instance, the large bold warnings "*You're about to go to an external website*" and "*Apple is not responsible for the privacy or security of purchases made with this developer*" do nothing to enhance security or prevent fraudulent activity, and are instead designed to scare users into thinking they have taken a wrong turn or that they are being directed to a web page that is known to be unsafe.

Act. In connection with the former non-compliance procedure, the Commission sent preliminary findings to Apple in June 2024. See here for further details: https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3433.

47. This practice creates unnecessary friction and degrades the user experience, ultimately dissuading customers from completing purchases on the web.²⁴ This is all the more concerning as Apple does not allow developers to offer *both* Apple's IAP and alternative payment options, which forces developers to choose between offering Apple's IAP *or* alternative payment options. By degrading the user experience with link-outs, Apple encourages developers not to apply for the entitlement to use them, thus encouraging the continued use of Apple's IAP.

(c) Apple's use of "entitlements" that developers must apply for

48. A further danger of circumvention which the CMA will want to avoid or pre-empt arises from Apple's discretion to withhold "entitlements". These are the rights of app developers, such as Spotify, to include a link within its iOS app directing the user to payment options on the developer's own site. Apple stipulates that a developer cannot include an External Link within its app unless it specifically applies for, and is granted, a Link Entitlement - which is a separate application process that a developer must complete in addition to the ordinary process for submitting an app for review by Apple. Apple reserves the right, in its "sole discretion", to deny developers' requests for Link Entitlements.
49. The Korean Communications Commission (**KCC**) has previously found that the restrictions imposed by Apple essentially forced developers to use specific payment methods and unfairly delayed app reviews in breach of the Telecommunications Business Act, and expressed an intention to fine Apple 20.5 billion won.²⁵ The KCC found that denying, delaying, or limiting app registrations, renewals, or reviews, deleting apps, among other behaviours, could be construed as mandating the use of certain payment methods.

(d) Apple withholding benefits

50. Finally, Apple is also in a powerful position which would enable it to withhold other benefits that are essential to developers operating their business. [Confidential]
51. The CMA should analyse any changes that Apple makes to existing rules in response to the CMA's interventions with extra scrutiny. Such changes are likely to undermine developers' ability to take advantage of pro-competitive interventions.

(e) Conclusion

²⁴ Further details about Apple's circumvention of the injunction issued by the United States District Court of Northern District of California are provided in Epic Games' motion to enforce the injunction <https://www.courtlistener.com/docket/17442392/897/epic-games-inc-v-apple-inc/> and Spotify's Motion for leave to file brief as Amicus Curiae in support of Epic Games Inc's motion to enforce injunction <https://www.courtlistener.com/docket/17442392/906/epic-games-inc-v-apple-inc/>.

²⁵ See <https://eng.kcc.go.kr/user.do?mode=view&page=E04010000&dc=E04010000&boardId=1058&cp=3&boardSeq=57618#:~:text=The%20KCC%20will%20make%20a,such%20as%20deliberation%20and%20decision.>

52. The CMA can draw several key lessons from the interventions being considered, imposed, and implemented in relation to mobile ecosystems in other jurisdictions. Apple's historical and ongoing resistance to compliance, its ability to re-create its anticompetitive fees through "Entitlement" programs, and its control over link placement, messaging, and appearance all demonstrate Apple's consistent ability to circumvent its obligations. The CMA has the opportunity to address these tactics to ensure effective compliance and foster a competitive and fair market for app developers and consumers in the UK.

C. NEXT STEPS

53. Apple has limited the success of UK tech companies for far too long, while causing harm to UK consumers. If enforced correctly, the DMCCA will let the UK lead the world in the fight against Apple's anti-competitive conduct and make the UK a more globally competitive and attractive place to do business.
54. Spotify would value the opportunity to meet the CMA in the coming weeks and months to discuss this matter further. Spotify is also happy to provide any additional information and evidence that the CMA might find helpful for its investigation.