



## **SMS investigation into Apple’s and Google’s mobile ecosystems**

### **Comments from the European Publishers Council (EPC), 11<sup>th</sup> February 2025**

The EPC[1] welcomes the CMA’s invitation to comment (“ITC”) on the scope of, and issues to be explored in, its SMS investigation of Apple’s and Google’s mobile ecosystems.

The EPC supports the approach that the CMA proposes to pursue in its investigation and considers that the ITC lays out all the key issues that the CMA should investigate when designating Apple and Google as having strategic markets status (“SMS”). We are also confident that the CMA will be able to take advantage of the findings of its excellent Mobile Ecosystems Market Study (“MEMS”).

This submission is divided into three parts. First, we explain the key issues faced by press publishers with respect to Apple’s and Google’s significant market power in relation to these companies’ mobile ecosystems (**Section I**). Then, we comment on the scope of the investigation and the SMS assessment (**Section II**). Finally, we comment on the issues the CMA intends to explore and the possible interventions it may pursue in search (**Section III**).

#### **I. Issues faced by press publishers with respect to Apple’s and Google’s market power in their mobile ecosystems**

Press publishers are dependent on Apple’s and Google’s mobile ecosystems to disseminate their content to smartphone and tablet owners. A growing number of UK citizens consume press content on their mobile devices. As a result, press publishers have invested in the development of publisher apps, which are distributed through the Apple App Store or the Google Play Store.



While press publishers support initiatives to increase competition in mobile ecosystems, their primary concerns related to app distribution and the related restrictions and fees imposed by Apple and Google in this context. As the CMA correctly observed in the MEMS:

“Apple and Google have market power in relation to native app distribution. This market power allows Apple and Google to unilaterally set rules for their app stores, including requirements for certain app transactions to be processed through their own payment systems, and their ability to refer to payment options outside of the app.” [2]

The unilateral imposition of such rules by Apple and Google, as well as the charging of unjustified, hefty app store fees has been a major source of concern for press publishers. While greater competition in app distribution (through alternative app stores and direct downloading) should be promoted, it will likely take time to constrain Apple and Google’s market power, and it is therefore important for the CMA to consider remedies that will address publisher app developers’ concerns in a world where the vast majority of their apps will remain distributed through Apple’s and Google’s respective app stores for a long while to come.

Like many app developers whose apps sell digital content (Digital Content Apps), publisher app developers consider that:

- There should be no discrimination between Digital Content Apps of publishers and other categories of apps (such as apps selling physical goods or apps monetising digital content through advertising) considering that all apps use the same app store services/resources (including APIs, storage, the App Review process, updates, search functions, etc.), and the payment processing provided by IAP/GPB does not justify a fee of more than 3%. There is therefore no justification for this blatant form of discrimination.
- Publishers should be allowed to communicate with their users within the apps about promotions and other terms and conditions that can be obtained by acquiring content outside of the app (“steering”).
- The use of IAP/GPB should not be mandatory and publishers’ apps should be allowed to use link outs to purchase, and alternative PSPs, without being subject to friction and/or excessive fees. All payment methods (credit and debit cards, PayPal, etc.)

must be allowed for in-app purchases. In addition, all data generated from a user's subscription or other purchase done directly via the app **must belong to the publisher app developer**, and should not be used by Apple or Google beyond the mere processing for the technical purpose of enabling the payment in a secure environment.

- Fees applicable to the use of IAP or GPB should be fair, reasonable and non-discriminatory (“FRAND”).

Publisher app developers consider that the above requirements should be addressed by conduct requirements, which should be imposed on Apple and Google alongside their SMS designation. Much of the preliminary work for such conduct requirements was already performed as part of the MEMS, whose findings and proposed remedies the EPC strongly support.

In this respect, the CMA should adopt conduct requirements that cannot be easily evaded or circumvented by Apple and Google. The Digital Markets Act (“DMA”) experience in the EU shows that Apple and Google will use every opportunity *not* to implement their obligations under *ex ante* regulation, notably through a combination of friction and fees that disincentivise publishers from taking advantage of the remedies that aim to increase contestability and fairness in mobile ecosystems. One way to prevent this from happening is for the CMA to be much more specific about the way in which the remedies that will be adopted to address Apple’s and Google’s market power should be implemented in detail, so as to reduce the ability of these companies to engage in circumvention. The ongoing DMA experiences show that broadly defined obligations can be easily evaded.

## II. Scope of the investigation and SMS assessment

The EPC agrees with the scope of the investigation, which seeks to determine whether Apple and Google should be designated with SMS in relation to three digital activities: (i) mobile operating systems; (ii) native app distribution; and (iii) mobile browsers and browser engines.

As indicated above, publisher app developers’ main concerns relate to native app distribution. The market power of both Apple and Google in the app distribution market in their respective ecosystems has been used by them to impose a series of problematic restrictions on app developers whose apps sell digital content, as well as excessive fees,

which have negative consequences for press publishers and their readers, between which Apple and Google have unhelpfully interposed themselves.

Additional observations:

- The EPC does not have a clear view at this stage as to whether the provision of a mobile operating system, native app distribution and a mobile browser and browser engine should be considered as a single digital activity of a mobile ecosystem. However, we want to ensure that Apple and Google cannot use data from one service to strengthen their position in another, nor leverage one service to favour another (e.g., using a browser to steer users toward their own app store).
- The EPC supports the avenues of investigation relating to the SMS tests described at paragraphs 70-74 of the TIC.

**III. Issues explored and possible interventions**

As a starting point, we fully agree with the CMA’s observations that it is “important and appropriate to start considering potential interventions in parallel with our work on whether to designate Apple and/or Google from the outset of the mobile SMS investigation, whilst recognising that any decisions on such interventions will be dependent on the designation decisions.”[3] The final report of the MEMS was excellent, and there is no need to reinvent the wheel.

The EPC agrees with the potential interventions in mobile operating systems, as well as in mobile browsers and browser engines, outlined by the CMA in the TIC.

As to potential interventions in native app distribution, the EPC has the following observations:

- First, there is no question that weak competition in native app distribution has allowed Apple and Google to “set the rules of the game” and impose a series of restrictions and fees that are detrimental to developers of Digital Content Apps, such as news apps, and end users. While app developers bring considerable value to Apple and Google’s mobile ecosystems, it is totally discounted by Apple and Google, which

in the absence of competition seek to extract as much as possible value from app developers. This asymmetric situation is only due to Apple and Google's bottleneck power.

- Second, as to the potential measures that may be appropriate to promote competition in relation to native app distribution, the EPC supports the following interventions designed to stimulate competition in native app distribution:
  - “A requirement for Apple to allow alternative app stores to operate on iOS.”
    - **Observation:** Apple could frustrate the ability of alternative app store developers to successfully launch such stores on iOS through a combination of friction and fees, such as the imposition of a Core Technology Fee (“CTF”) as is provided in Apple’s Alternative Terms Addendum for Apps in the EU (which is a model of circumvention).[4]
  - “A requirement that prevents Google from making revenue share payments in return for certain additional requirements in relation to the Play Store.”
  - “Requirements to address the challenges faced by alternative app stores in attracting a sufficient user base.”
    - **Observation:** While we support such requirements, the EPC considers that, even in the absence of friction and penalizing fees, it will be difficult for alternative app stores to succeed considering the strong network effects enjoyed by the App Store and the Play Store, with perhaps the exception of app stores focusing on gaming (which is a tight community and where some major players may be able to convince game developers to join an alternative app store). It is therefore likely that news apps will continue to be distributed by the App Store and the Play Store.
  - “A requirement that Apple must allow users to directly download native apps to their devices (referred to as ‘sideloading’) (for example from a link within an email), where apps are able to demonstrate appropriate security safeguards.”
    - **Observation:** Apple will likely resist sideloading on (vastly exaggerated) security grounds and, if imposed as a requirement, will likely seek to make

it unworkable through unnecessary friction. As observed in the MEMS, Apple has often sought to justify the status quo (for instance, with respect to the use of alternative PSPs) on the basis of overstated security/privacy arguments. In the present case, Apple will likely argue that iOS mobile devices are different from MacBooks on a variety of grounds. The EPC has never been convinced by these arguments, and it is important that the CMA examine them with a critical eye. There is little evidence that Apple is the only market actor able to ensure security and privacy.

We believe it is worth pointing out that at EU level, Apple has introduced a new requirement: now all apps will have to be notarised<sup>[5]</sup> in order to provide certain guarantees. Given that any app that will run on iOS needs to be notarised and in effect approved by Apple, why downloading an app from the publisher's website is not allowed? Is this a real security issue or the fact that they have not come up with a suitable -to them- monetisation model?

To avoid this, we need objective industry standards regarding security and to monitor gatekeepers to prevent arbitrary decisions when implementing security measures.

- “Requirements that Apple and Google permit the advertising of alternative app distribution methods on websites and/or within apps listed on the App Store and the Play Store.”
  - o **Observation:** It is important to ensure that steering is not subject to unnecessary friction and fees that would make the use of the above form of advertising unattractive. For instance, in response to Article 5(4) of the DMA, Apple has decided to impose hefty fees on those app developers using the ability to communicate with their users in the app to promote offers, etc.

Similarly, the EPC supports measures seeking to prevent Apple and Google from leveraging their market power from native app distribution into adjacent activities. We agree with the CMA's statement in the TIC that in the UK:

“Apple and Google currently require apps offering in- app payments to use only their own payment method for purchases of digital content; and do not permit app developers to inform users of ways of paying for content outside of the app, which may be cheaper.”[6]

This point was made with additional force in the final report of the MEMS where the CMA observed that:

“apps which are required to use Apple’s and Google’s in-app payment systems do not have the benefit of competition between providers of payment systems. Based on the evidence we have seen, it appears that in the absence of the requirement to use Apple’s and Google’s systems, **app developers would be able to choose, often bespoke, payment solutions that better meet their needs and those of their users**, and that there would be a greater incentive for PSPs to innovate in payment solutions specifically designed for in-app payments.” (emphasis added)[7]

IAP is indeed a rigid, one-size-fits-all solution that does not properly serve the varying needs of app developers and their users.

Moreover, Apple and Google as the direct seller in relation to Apple IAP and Google Play’s billing system’s transactions have interposed themselves between app developers and their clients, hence making it harder for app developers to interact directly with customers in relation to refund/billings queries or complaints and depriving them from user-level transaction. This makes it harder for them to tailor prices or promotions, or carry out certain checks on users for safety reasons.

In that context, the EPC supports the following interventions:

- “Requirements for Apple and Google to permit app developers to use alternative payment methods for in-app content; including within the app or by linking to a separate website.”
  - o **Observation:** The EPC supports strongly this intervention, but as already noted above, it is critically important that the CMA’s conduct requirements prevent Apple and Google from disincentivising app developers to take advantage of such requirements through a

combination of friction and unnecessary fees. This approach was for instance pursued by Apple to neutralise the remedies imposed by the Dutch ACM.[8] The EPC’s understanding is that, no dating app developers has taken advantage of the remedies, as Apple charged its full fees (minus payment processing) and inserted friction (including scare screens) to those app developers seeking to use link outs to purchase, or alternative PSPs, which make these remedies unattractive.

- “Requirements for Apple and Google to ensure they have systems in place to prevent the use of app developers’ non-public information for the purpose of their own first-party app development.”

Similarly, the EPC supports measures seeking to prevent Apple and Google from engaging in exploitative practices. As observed by the CMA, app developers “have raised concerns about the current level of commission (up to 30%) that is payable to Apple and Google in respect of in-app purchases of digital content.”[9] That is the case of news apps developers, which consider that Apple’s and Google’s fees are excessive.

The EPC therefore supports measures that could be appropriate to guard against exploitative terms and practices in connection with native app distribution, such as:

- “Requirements for Apple and Google to implement fair and transparent app review processes and to offer fair, reasonable and non-discriminatory access to their app stores.”
  - o **Observation 1:** The EPC believes strongly that Apple and Google should be subject to FRAND terms. As a result of the non-discrimination provision, Apple and Google should bring the difference in treatment between Digital Content Apps and other categories of apps to an end, considering that all apps use the same app store services. To the best of the EPC’s knowledge, Apple and Google have never been able to explain why Digital Content Apps (however arbitrarily defined) are subject to worse terms and conditions than other categories of apps. This difference of treatment leads to paradoxical situations. For instance, a publisher app provider with a subscription-based business model will be subject to various restrictions and fees, whereas trillion-dollar companies like Google and Meta, which do not create any news, but monetise news content produced by press



publishers through advertising, do not pay any fees and are not subject to the same restrictions.

- o **Observation 2:** As to the level of the commission, we agree with the findings of the MEMS whereby “our analysis suggests there is scope for downward pressure on app store commission rates while maintaining healthy profit margins.”[10] A lower level of commission would allow publisher app developers to invest in the use of new technologies, the production of additional and higher quality content, and/or reduce the price of their apps/subscriptions to the benefit of their readers. The UK has the benefit of hosting world leading media organisations whose growth and employment should not be impeded by Apple’s and Google’s unnecessary friction and fees.
  
  - o **Observation 3:** While also agree with the view expressed in the MEMS that while potential ways to use other distribution models outside Apple’s and Google’s app stores may put downward pressure on Apple and Google’s commission rates, there is no guarantee at this stage “whether or how quickly these alternative distribution models would become sufficiently widely used such that they are able to impose a strong competitive constraint on the level of the app commission.”[11] Thus, it is important to constrain the ability of Apple and Google to charge excessive commissions now, rather than expect future potential competition in app distribution may put downward pressure on these commissions.
- “A requirement for Apple and Google to provide greater visibility over the operation of search and ranking algorithms to app developers on their app stores; and a connected requirement to provide fair warning (and explanation) of planned changes to the operation of algorithms, where these are likely to have a material effect on users.”

### Conclusion

The EPC is favourably impressed by the ITC and is strongly supportive of the investigation of the CMA into Apple’s and Google’s mobile ecosystems. The EPC believes that Apple and Google should be designated, and that the CMA should adopt conduct requirements alongside designation. The MEMS’ findings are compelling and there is no need to reinvent

the wheel, especially since app developers have waited a long time for remedies addressing their concerns.

The CMA can also benefit from the EU experience. While the DMA contains a variety of provisions designed to create more contestability and fairness in mobile ecosystems, Apple and Google, but most particularly Apple, have taken advantage of any ambiguity in the drafting of these provisions to interpret them in a manner that breaches their spirit. Apple and Google also used a combination of friction and unattractive fees to discourage app developers from taking advantage of these provisions. It has also ignored the FRAND requirement contained in Article 6(12) of the DMA. It is therefore critically important that the CMA pays attention to the risk of circumvention in drafting conduct requirements.

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## Footnotes

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- [1] The European Publishers Council (EPC) is a high-level group of Chairmen and CEOs of Europe's leading media groups representing companies which are active in news media, television, radio, digital marketplaces, journals, eLearning, databases and books. The core mission of the European Publishers Council is to advocate for a free, competitive, and sustainable media

environment that supports high-quality journalism and safeguards the economic viability of the publishing industry. Our UK membership includes UK publishers The Guardian, News UK, DMG Media, CondeNast and RELX.

- [2] MEMS at paragraph 6.134.
- [3] ITC at paragraph 77.
- [4] See [https://developer.apple.com/contact/request/download/alternate\\_eu\\_terms\\_addendum.pdf](https://developer.apple.com/contact/request/download/alternate_eu_terms_addendum.pdf)
- [5] “a baseline review that applies to all apps, regardless of their distribution channel, focused on platform policies for security and privacy and to maintain device integrity”, which will “help ensure apps are free of known malware, viruses, or other security threats, function as promised, and don’t expose users to egregious fraud.”
- [6] See ITC, at paragraph 85.
- [7] MEMS at paragraph 6.136.
- [8] See ACM obliges Apple to adjust unreasonable conditions for its App Store, available at <https://www.acm.nl/en/publications/acm-obliges-apple-adjust-unreasonable-conditions-its-app-store>
- [9] ITC at paragraph 85.
- [10] MEMS at 7.67.
- [11] MEMS at 8.102