

Response of Epic Games¹:

SMS investigation into mobile platform: Google and Apple consultation questions

Epic is grateful for the opportunity to provide responses and observations on the CMA's proposed decisions to designate each of Apple and Google as having SMS in the provision of their respective mobile platforms (the **Proposed Apple SMS Decision** and the **Proposed Google SMS Decision**, together the **Proposed SMS Decisions**). In light of the overlap in Epic's position in relation to both Proposed SMS Decisions, Epic has prepared a single response addressing both.

Epic appreciates the CMA's consideration of Epic's response to the CMA's Invitation to Comment (**Epic's ITC Response**), and the incorporation of a number of points raised by Epic in the Proposed SMS Decisions. Epic welcomes and strongly endorses the CMA's findings that Apple and Google have SMS in the provision of their respective mobile platforms, and looks forward to the CMA carrying through its provisional findings to the final SMS designation decisions. This will be an important first step towards promoting competition in mobile ecosystems and safeguarding UK consumers and businesses from the unfair and harmful practices employed by Apple and Google. Following the final SMS decisions, the CMA must make full use of its statutory powers to unlock growth in mobile ecosystems in the UK.

Q1. Do you have any views on our proposed descriptions of the relevant digital activities, namely:

- **[for Google] the mobile operating system, native app distribution, and mobile browser and browser engine?**
- **[for Apple] (i) the smartphone operating system, (ii) the tablet operating system, (iii) native app distribution, and (iv) mobile browser and browser engine?**

Epic supports the CMA's approach to the proposed descriptions of the relevant digital activities in both Proposed SMS Decisions. In particular, Epic welcomes the CMA's approach of not adopting highly prescriptive definitions and descriptions. This is clearly the right approach given the close interlinkages and degree of integration between the different elements of Apple and Google's respective mobile platforms.

Epic sets out below clarifications to the existing definitions of digital activities proposed by the CMA it considers are necessary to ensure clarity and consistency. In particular, Epic considers that paragraph 4.62 of the Proposed Apple SMS Decision and paragraph 4.46 of the Proposed Google SMS Decision, which set out the what the digital activities include, should be expressly stated to be a non-exhaustive list of the features and activities included in the digital activities as defined by the CMA. Epic considers

¹ Epic Games is a developer of software applications, including Fortnite. Epic Games is headquartered in Cary, North Carolina, U.S. and operates more than 40 offices worldwide, including in London, Manchester, Leamington Spa, Newcastle, Guilford and Edinburgh. Epic Games' widely used "Unreal Engine" software is a key development tool for several sectors across the UK – including in engineering, medicine, architecture, as well as the creative industries and app development.

that this is necessary to avoid inadvertently suggesting that functions or actions which form part of the digital activities but are not listed in those paragraphs (for example because they have not yet been considered, or do not yet exist) are excluded.

Epic proposes some further clarifications below:

(a) Google's Mobile Operating System, and Apple's Smartphone and Tablet Operating Systems

Epic notes that in the Proposed Apple SMS Decision, at paragraphs 4.62(a) and (b) the Smartphone Operating System and Tablet Operating System digital activities include “(iv) *all other functionality intermediated on the mobile device by the operating system*”² (including, for the Smartphone Operating System, functionality which is key for digital wallets such as access to the NFC chip. Epic notes that an equivalent explanation is not included at paragraphs 4.46(a) of the Proposed Google SMS Decision. Epic does not understand that such functionality is unique to the iOS and iPadOS operating systems, and considers that equivalent wording should be included in the definition of Mobile Operating System at paragraph 4.46(a) of the Proposed Google SMS Decision.

Epic expressed the view in its ITC Response that any definition of the Mobile Operating System digital activity (with respect to Apple and Google) should include all complementary services to the core operating system, including (but not necessarily limited to) associated middleware, APIs, interaction with hardware functionalities and other developer tools required to build apps that can function to a high standard on iOS and Android respectively.³ Epic welcomes the CMA's clarification at paragraphs 4.24-4.27 of the Proposed Apple SMS Decision and paragraphs 4.24-4.27 of the Proposed Google SMS Decision that “*middleware and associated services*” and “*APIs providing access to connectivity functionalities*” fall within the scope of the relevant definitions. Epic is grateful for the CMA's express clarification that Apple's Xcode and Apple's TestFlight are included within the definition as non-exhaustive examples, however requests that Android SDK, iOS SDK, AppStore Connect⁴ and Xcode (including the tools associated with Xcode) are also expressly mentioned, for the avoidance of doubt and due to their importance to developers and content providers.

For completeness, Epic confirms that it has no comments on the CMA's proposal to define separate Smartphone Operating System and Tablet Operating System digital activities with respect to Apple, in light of the fact the CMA has found these to be part of a single digital activity of providing a Mobile Platform.⁵

² Paragraph 4.62(a) and (b) of the Proposed Apple SMS Decision.

³ Epic's ITC Response, page 2.

⁴ Apple's distribution portal, which is essential for releasing native apps on the App Store.

⁵ Paragraph 4.77 of the Proposed Apple SMS Decision.

(b) Native App Distribution

With respect to the definition of Native App Distribution, Epic suggested that the description of Native App Distribution should include developer tools for app developers, app distribution through channels outside app stores, discovery and review of apps, app updates, performance and design.⁶ Whilst the Proposed SMS Decisions expressly confirm the inclusion of developer tools and middleware in the definition, Epic understands that the remaining abovementioned functions and activities are also included within the definition of Native App Distribution to the extent that they relate to the installation, distribution and operation of native apps on mobile devices. Epic invites the CMA to expressly confirm this in the Proposed SMS Decisions.

Further, Epic notes that with respect to pre-installation, the definition of Native App Distribution at paragraph 4.62(c) of the Proposed Apple SMS Decision expressly includes “*the pre-installation of first party apps on iOS and iPadOS mobile devices*” (emphasis added); and, similarly, paragraph 4.46(b) of the Proposed Google SMS Decision includes “*the pre-installation, placement and defaults [sic] settings of Google’s own apps on Android mobile devices by OEMs*” (emphasis added). As set out at page 3 of Epic’s ITC Response, Epic considers that Native App Distribution must capture the distribution activities of all native apps, regardless of the channel used. This should also include the pre-installation of both first- and third-party native apps and app stores, and in particular the behaviours and policies of Apple and Google which hamper such pre-installation:

- As acknowledged by the CMA in the Proposed Google SMS Decision at paragraph 7.2, OEMs pre-installing third-party native apps (and app stores) is a form of alternative content distribution within Google’s Mobile Ecosystem, albeit one that the CMA correctly concludes does not exert significant competitive constraint on Google’s Play Store – including because of the pre-installation and prominent placement of the Play Store, as well as the relevant policies and contractual arrangements from Google which limit the competitive constraint from alternative app stores (para 7.21). As noted at paragraph 7.21(a) of the Proposed Google SMS Decision, one app store provider considered that certain of Google’s policies limited its ability to pre-install and prominently place its own app store on Android mobile devices because it was rejected by OEMs in the past for potential pre-installation deals.

[REDACTED]

⁶ Epic’s ITC Response, pages 2-4.

⁷ European Mobile Application Distribution Agreement (EMADA) under which OEMs pay Google a per-device licence fee to license a collection of Google apps and services, named Google Mobile Services (GMS).

- With respect to Apple, as noted at paragraph 7.3 of the Proposed Apple SMS Decision, Apple does not currently, and indeed never has, pre-installed any third-party apps on its mobile devices.

Epic therefore invites the CMA to clarify in the Proposed SMS Decisions⁸ that Apple's and Google's policies, practices and agreements which impact the pre-installation of all apps (whether first- or third-party) is a relevant activity falling within Native App Distribution.

Q2. Do you have any views on our provisional conclusion that it would be appropriate to treat those activities as a single digital activity, referred to as a mobile platform, whose purpose is to facilitate interactions between users and providers of digital content and services on Android / Apple's mobile devices in order to allow users to access, view and engage with such content and services on their mobile devices?

Epic fully endorses the CMA's decision to adopt a holistic approach and to group the digital activities for the purposes of conducting SMS assessments. As set out at pages 4-5 of Epic's ITC Response, such an approach is not only desirable, but necessary in order to ensure that Apple and Google do not have the opportunity to evade compliance with measures imposed by the CMA in respect of one digital activity, by adopting actions in respect of other digital activities which would undermine those measures imposed by the CMA. Epic refers to the detailed examples provided at page 5 and 11-16 of Epic's ITC Response of Apple and Google taking steps to evade compliance with measures designed to curb their abuses of market power (such as the introduction by Apple of the "Core Technology Fee").⁹

Q3. Do you have views on our provisional finding that:

- **[for Google] the competitive constraint on Google's mobile platform from Apple's and other rival mobile ecosystems is limited?**
- **[for Apple] the competitive constraint on Apple's mobile platform from Google's and other rival mobile ecosystems is limited?**

This relates specifically to the competitive constraint in attracting end users and content providers.

Epic strongly agrees with the CMA's provisional findings, for the reasons set out in the Proposed SMS Decisions. As set out in Epic's ITC Response in response to Question 2, Apple and Google face limited constraint from each other in relation to each other's app stores because end users generally do not switch between ecosystems. Developers still do not delist from either app store due to the volume and value of each store's users. Users generally do not have both iOS and Android devices and would need

⁸ At paragraph 4.62(c) of the Proposed Apple SMS Decision and at paragraph 4.46(b) of the Proposed Google SMS Decision.

⁹ Epic understands that Apple has since introduced a "Core Technology Commission" and is intending to transition to a single set of terms in 2026.

to purchase a new device to access the other app store (and there are many barriers to switching ecosystems). The lack of user switching means that developers must list their apps on both the App Store and the Play Store in order to reach users. The App Store therefore is not constrained by the Play Store and vice versa.

Q4. Do you have views on our provisional finding that there are high barriers to entry and expansion for mobile platforms?

Epic strongly agrees with the CMA's finding in the Proposed SMS Decisions that there are high barriers to entry and expansion for mobile platforms.

The CMA is right to find that many of these barriers are inherent to Mobile Platforms, such as indirect network effects.¹⁰ With respect to Native App Distribution in particular, Apple and Google have employed restrictive practices to ensure that only they can benefit from the network effects that arise from operating an app store platform. These restrictive practices represent the most significant barriers to entry and expansion. Epic refers to its response to Question 11 of Epic's Section 69 Response. By way of non-exhaustive summary:

- On iOS, Epic is prevented from offering EGS to iOS users in the UK by Apple's outright prohibition on app store competition (including via direct downloading, referred to by the CMA as "sideloading"). UK consumers and businesses continue to be deprived of the benefits of unlocking competition in native app distribution on iOS. As acknowledged by Apple, it has no plans to change its policies on alternative app stores and sideloading in the UK by the end of 2030.¹¹ Epic remains willing and ready to launch EGS in the UK should these barriers to entry be removed.
- On Android, Google has engaged in restrictive practices, policies and agreements to create barriers to entry in app distribution, as acknowledged by the CMA at paragraph 7.14 of the Proposed Google SMS Decision. These include (but are not limited to) the following steps taken by Google:
 - (i) Google has ensured that sideloading is not a viable alternative to distribution via an app store, by requiring OEMs to impose in virtually all instances a series of scare screens for users to navigate;¹²
 - (ii) As a result of Google's EMADA with OEMs, the Play Store is pre-installed and prominently placed on the home screen of the vast majority of Android mobile devices;

¹⁰ Paragraph 7.13 of the Proposed Google SMS Decision and paragraph 6.142 of the Proposed Apple SMS Decision.

¹¹ Proposed Apple SMS Decision, paragraph 7.3.

¹² Epic's ITC Response, page 7. The CMA is right to highlight the impact of these frictions on direct downloading at paragraph 7.18 of the Proposed Google SMS Decision.

- (iii) Whilst OEMs are not prevented from pre-installing alternative app stores from third parties, they are further incentivised to prioritise the Play Store as the platform for native app distribution because signing an EMADA entitles OEMs to a share of Google's search advertising revenue under revenue share agreements with Google;¹³ and
- (iv) As explained in Epic's ITC Response (pages 6-7), Google has historically engaged in conduct known internally as "Project Hug". There, Google targeted the largest game developers who were most likely to develop their own competing app stores or to distribute their apps via alternate competing app stores. As part of these agreements, Google provided various benefits to developers that were unrelated to the Google Play Store in the form of different Google credit and support packages (such as substantial cloud computing credits). The total cost of this programme to Google amounts to hundreds of millions of dollars. In exchange for these financial benefits from Google, developers agreed to various parity clauses. The precise terms of these agreements varied from developer to developer, but in general the agreements included terms requiring developers: (i) not to release apps via other platforms earlier than on the Google Play Store; (ii) not to offer better content and features via other platforms; (iii) not to remove apps from the Google Play Store; and (iv) not to promote their apps more aggressively on other platforms. These agreements made it very difficult or even practically impossible for rival app stores to differentiate themselves, for instance by securing exclusive content from any developers participating in the project. At paragraph 7.15, the CMA notes that Project Hug has been discontinued. While this specific conduct may be historic, the effects of the project are long-lasting, as for several years alternative app store operators were unable to differentiate their stores by offering exclusive content.
- (v) As noted by the CMA at paragraph 7.23(a) of the Proposed Google SMS Decision, Google also imposes restrictions on alternative app store operators' abilities to access functionality within the Google Mobile Ecosystem. For example, Android does not permit third party app stores (i.e. app stores other than the Play Store or the OEM-installed app store) to implement "patching". Patching allows a developer to update only the portion of an application that needs updating, which results in an improved user experience. Users only need to download the update rather than the full app again. For example, if a user downloads a 1GB app that then requires a small 10MB update, the Play Store enables developers to deliver only the 10MB update. However, users of alternative app stores must download the entire application each time. This is inefficient in terms of user experience and the amount of data consumed to perform the update.

¹³ As recognised by the CMA at paragraph 7.20 of the Proposed Google SMS Decision.

(vi) Finally, the CMA is right to acknowledge the importance of the GMS APIs at paragraph 7.23(b) of the Proposed Google SMS Decision. These APIs are only available where an OEM signs an EMADA and agrees to pre-install and prominently place the Play Store on the default home screen of the device. Many developers build their apps assuming that these Play Store-specific APIs will be available. If a developer is already distributing through the Play Store and decides to add a new distribution channel for their app, the developer must strip out the Play Store-specific adjustments so the app can function on the other distribution channels. To the extent that the developer relied on GMS APIs to provide some of the app's functionality, the developer would need to not only remove the Google Play Services APIs but also develop their own versions.

Q5. Do you have views on our provisional finding that:

- **[for Google] the competitive constraint on Google's mobile platform from alternatives to content distribution within Google's mobile ecosystem, and alternatives on non-mobile devices, is limited?**
- **[for Apple] the competitive constraint on Apple's mobile platform from alternatives to content distribution within Apple's mobile ecosystem, and alternatives on non-mobile devices, is limited?**

Epic agrees with the CMA's findings with respect to the limited competitive constraint on Google's mobile platform from alternatives to content distribution, for the reasons identified by the CMA in the Proposed Google SMS Decision. With respect to the distribution of content through native apps on Android specifically, as set out in detail in section B to Question 2 of Epic's ITC Response, none of pre-installation, alternative app stores, direct downloading, web apps or PC/Laptops and games consoles currently offer a credible competitive constraint to Google's Play Store.

Epic similarly agrees with the CMA's findings with respect to the limited constraint on Apple's mobile platform from alternative to content distribution, for the reasons identified by the CMA in the Proposed Apple SMS Decision.

Q6. Do you have views on our provisional conclusion that there are no expected or foreseeable developments that are likely (whether individually or in combination) to be sufficient in scope, timeliness and impact to eliminate Google's / Apple's substantial market power in the provision of its mobile platform over the next 5 years?

Epic agrees that there are no expected or foreseeable developments that are likely to eliminate Google's and / or Apple's substantial market power in the provision of their respective mobile platforms over the next 5 years, for the reasons set out in the Proposed SMS Decisions and at section C to Question 2 of Epic's ITC Response. In particular, and contrary to Google and Apple's positions, Epic agrees with the CMA's findings at paragraphs 7.12-7.13 of the Proposed Apple SMS Decision and paragraph 7.48 of

the Proposed Google SMS Decision that cloud-based gaming is not a significant competitive constraint on the App Store or the Play Store, and that cloud-based gaming apps are not likely to significantly change the App Store or Play Store's position of substantial and entrenched market power in the next five years.

With respect to the litigation-related potential developments identified by the CMA in the Proposed SMS Decisions:

- **Epic US Litigation:** At paragraph 8.8(a) of the Proposed Google SMS Decision, the CMA refers to the Epic Games case against Google in the US, and notes that an injunction imposing remedies has been partially stayed pending Google's appeal, the outcome of which at that time remained to be seen. By way of update, on 31 July 2025 the Ninth Circuit Court of Appeals upheld the jury verdict against Google and affirmed the injunction imposed by Google by the court below. Google has since sought an "en banc" rehearing of that decision, and stated that it intends to appeal the matter to the Supreme Court of the United States, should the request for a rehearing be denied. Google has also sought a stay of the injunction pending the rehearing and/or appeal to the Supreme Court.

Similarly, at paragraph 8.9 of the Proposed Apple SMS Decision, the CMA notes that in the Epic Games case against Apple in the US, Apple has stated that it will appeal the United States District Court's injunction, the outcome of which remains to be seen. By way of update, Apple has appealed the District Court's decision to the Ninth Circuit Court of Appeals. Whilst Apple has been unsuccessful in persuading the appellate court to stay the injunction,¹⁴ the appeal remains on foot and oral argument is due to be heard on 21 October 2025.

- **Epic UK Litigation:** With respect to the proceedings brought by Epic Games against Google in the UK before the Competition Appeal Tribunal, trial is due to commence on 28 September 2026 with a provisional trial length estimate of 14 weeks.¹⁵ The date of any judgment and outcome of the proceedings cannot be predicted at this point.

In light of the above, Epic considers that in its conclusion at paragraph 8.11 of the Proposed Google SMS Decisions and paragraph 8.13 of the Proposed Apple SMS Decision with respect to whether developments are likely to impact Google's / Apple's market power in at least the next five years, the CMA should expressly refer to "regulatory and other developments". Further, Epic notes that such developments are due to ongoing intense efforts by regulators and market players such as Epic, and require time, commitment and resources in order to challenge Apple and Google's entrenched

¹⁴ Epic Games, Inc. v. Apple Inc., 25-2935, (9th Cir. Jun 04, 2025) ECF No. 40.

¹⁵ Order of 4 August 2025 of the Competition Appeal Tribunal in jointly managed cases 1378/5/7/20, 1408/7/7/21 and 1673/7/7/24.

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monopolies. Any such developments are not attributable to voluntary action by Apple and / or Google, or to any evolution of the relevant markets due to technological advancements.

Q7. Do you have views on our provisional conclusion that Apple / Google has substantial and entrenched market power (SEMP) and a position of strategic significance (POSS) in respect of its mobile platform?

Epic strongly agrees with the CMA's provisional conclusions that Apple and Google each have substantial entrenched market power and a position of strategic significance. Epic considers that the evidence and analysis relied on in the Proposed SMS Decisions conclusively demonstrates that the conditions necessary for findings of SEMP and POSS are met.

Q8. Do you have any other views in relation to the assessment/evidence set out in the proposed decision?

The CMA has clearly presented compelling evidence which supports its conclusions in the Proposed SMS Decisions. To the extent that the CMA receives any further evidence which contests any of its findings under the Proposed SMS Decisions, Epic would be grateful for an opportunity to submit further observations on that evidence.