CONSULTATION RESPONSE

Apple and Google Mobile Ecosystems SMS Designation

Context

As Sarah Cardell argued in a recent speech, and CCIA noted in its response to the Google Search designation, the CMA is to a significant extent "starting with a blank canvas" in its implementation of the DMCC.[1] The predictability, which she argued was a priority in the same speech and other recent interventions, depends on the early SMS investigations. There is therefore a broader interest beyond these investigations: the CMA should be seeking to provide clarity for other instances in which the DMCC might be applied.

For those investigations to deliver predictability and thereby deliver against the Government's strategic steer to support growth and investment, they should help companies develop a clear understanding of what does (and crucially does not) cause a service to be in scope for ex ante regulation. The Guidance for the CMA notes that, in many cases, the tests under DMCC are not those that would have applied in pre-existing competition law, but this creates an opportunity and responsibility for the CMA to develop similarly robust tests that reflect the priorities of this new regulatory environment. The final decision can again do more to provide that clarity than the proposed decision.

CCIA is providing a common response to the Apple and Google mobile ecosystems enquiries. While there are important differences between the two, CCIA's primary interest is in the common analytical issues and implications for UK regulation more widely. Where we reference a proposed decision we will prefix the paragraph number with G for Google and A for Apple respectively.

Our goal is also to focus on where we see larger issues rather than a line-by-line response or restating issues raised in our response to the earlier consultation. This response should be seen as thematic rather than exhaustive.

Dynamic competition

Dynamic competition is generally understood to be important in digital markets and has occurred historically (such as the growth in TikTok), and continues to occur, most recently through the rapid growth of AI tools, which could fundamentally disrupt the current competitive landscape. The requirement to show that market power is "entrenched" shows that the DMCC is intended to capture this kind of competition.

Unfortunately, the CMA seems to have adopted a standard which asks about technological disruption and only when it is likely to fundamentally change the market within the next 5 years. This is an unnecessarily high bar and means that the unpredictability of dynamic

[1] Speech by Sarah Cardell, the Competition and Markets Authority (CMA) Chief Executive, delivered at the techUK Tech Policy Conference 2025: Promoting competition and protecting consumers in the digital age: a roadmap for growth, https://www.gov.uk/government/speeches/promoting-competition-and-protecting-consumers-in-the-digital-age-a-roadmap-for-growth

digital markets is treated as evidence that a market is less competitive, not more competitive. This is different to dynamic competition, where the relevant question is whether, if a service were to raise its quality-adjusted prices of services it would lose market share to potential competitors (either outright new entrants or existing market players changing their offer).

This affects these proposed decisions at several points, including:

- Barriers to entry are described for creating new mobile ecosystems, but there is no real analysis of whether various players in adjacent markets (e.g. major app developers, other operating system makers, OEMs) could overcome them, and bring a different set of advantages versus Apple and Google (particularly in the current climate of rapid AI-related innovation). CCIA described these other players in its original submission. The fact that this is not occurring now does not mean that the potential for it to do so is not a meaningful competitive constraint and it has occurred in the past (including both Google and Apple).
- It is asserted that the sectoral shares of iOS and Android are stable and do not indicate effective competition (A6.11, G6.19), but they do change from year to year. CMA provides no sense of the kind of change it would expect in order to believe that the market was sufficiently dynamic as it stands.
- Apple and Google are described as servicing different segments, higher and lower price respectively (A6.20, G6.24). These kinds of relative focuses are entirely normal and do not preclude that, if either were to raise its quality-adjusted prices, the other would not be able to exploit that. Apple and Google can and do produce mobile devices across a wide range of price points.
- OEM bargaining power is described as weak with respect to Google (G6.10), but this ignores the potential (seen in the past, including Apple) for OEMs to launch new mobile ecosystems. While this might be more challenging than licensing Android, it would also be much more costly for Google in terms of lost Android market share. There is therefore a strong incentive for Google not to use its bargaining power in ways that might lead to one or a group of its partners seeking alternatives on a strategic basis.
- Pre-installation and 3rd party app stores are described as limited for Android (G7.38), but there is no evidence that they would not grow if it became hard to access important apps through the Play Store. The low penetration of those means of accessing apps could simply reflect that the Play Store is fine from a consumer perspective.

Share of supply

The CMA has observed that the DMCC will not involve a conventional market definition exercise. This could be an opportunity to take a broader perspective that reflects the dynamism of digital markets. Unfortunately the CMA's approach seems to involve the worst of both worlds: there is no longer the analytical rigour of a market definition, but there is also a narrow view of the scope of competition.

This affects the proposed decisions:

- Sectoral shares in the tablet "market" over time are reported, (A6.17) but there is no evidence that this is an appropriate market, versus a somewhat-differentiated competitor in a personal computing market. Tablet sales have generally been falling in recent years and there is no reason to believe that consumers cannot choose between them and other devices with a different form factor.
- CMA points to other factors which it argues do not relate to competition and might be incentivising Apple and Google to invest in improvising their mobile ecosystems. In both cases these are better-understood as examples of the diverse competitive constraints to which mobile ecosystems are subject.
    - First, encouraging consumers to buy a new device (A6.44), which reflects a need to compete for consumer spend versus other priorities - consumers can respond to any reduction in the pace of improvement by postponing device purchases. Apple and Google have an incentive to bring forward innovations that will make upgrading attractive for consumers.
    - Second, encouraging more engagement and time spent, which reflects that mobile ecosystems have to compete for "share of wallet" versus other leisure activities, or devices with which to consume media. Again this creates a clear incentive for Apple and Google to make using their mobile ecosystems attractive for consumers.

Consumer interests

In its response to the consultation on the consumer survey, CCIA noted that the proposed approach would struggle to distinguish between two scenarios, to summarise:

- Scenario 1: there are significant barriers to consumers switching, which would preclude switching even if quality-adjusted prices changed significantly.
- Scenario 2: there are not significant barriers to consumers switching and responses describe the relatively minor factors that consumers use to choose between broadly competitive mobile ecosystems. If either ecosystem became materially less competitive, these factors would not preclude customers shifting to the other, or new competitors entering.

The survey does not appear to have been adjusted to reflect this potential issue.

The evidence in the proposed decisions is broadly consistent with a sector in which most consumers are broadly satisfied with their phones and the two mobile ecosystems are competing at the margin based on price, quality and innovation. The main barrier to growth or entry is precisely that consumers are satisfied with their (improving) existing options. This will cease to be the case either if the existing ecosystems worsen, or new ecosystems provide distinctive improvements upon them.

- CMA acknowledges that many consumers reported they did not switch because they are satisfied with their phones in its consumer survey and argues that consumers might not be aware of the qualities of other ecosystems (A6.36, G6.47). There is no evidence for this false consciousness, however. There is extensive consumer journalism around mobile ecosystems; most people will know someone they could ask for a word of mouth recommendation; and mobile phones are advertised

frequently. It is much more plausible that consumers are broadly satisfied with the experience offered by their mobile ecosystem.
- Share of users for the Chrome browser is reported as high on Android (G7.72). Its share is also high for Windows PC, however, despite Microsoft's Edge being pre-installed and promoted aggressively by the operating system. This is consistent with users simply being broadly satisfied with Chrome as a browser and demonstrates more generally that if users elect to stick with preinstalled browsers, including Safari on iOS and Chrome on Android, it can reflect their preferences.

Ecosystem standards

Network policy is always an important avenue for competition and improvements to services over time, with real trade-offs for consumers, particularly those that are less experienced. If the mobile ecosystem entirely stands back, consumers can face threats to their privacy and security but also confusion and other frictions. Oversight and standard-setting is a fundamental function of any ecosystem provider, which grows more challenging with scale as some app developers - for example - act maliciously or seek to exploit systems.

Unfortunately that essential role is generally treated as prima facie anti-competitive in these proposed decisions.

- CMA cites a speaker from Apple who discusses how there should be a high bar to including new features in the iPhone experience (A6.46). The proposed decision describes this as foregoing innovation because of limited competitive constraint, but the speaker appears to instead be speaking to that standards function. Mobile ecosystems involve trade-offs and there will be important decisions over where features are mature enough to include in services aimed at a broad spectrum of users. This is evidence of competition, not a lack of competition.
- Many of the incentives Google creates for compliant Android devices ensure that Android phones from diverse manufacturers function as consumers expect. This can both improve the consumer experience and build a trust that allows users to choose more freely between Android devices (and between Android and iOS).

Consumer choice

While the understanding of network effects in digital markets remains relatively nascent, the creation of the Digital Markets Unit should be an opportunity for a more sophisticated and nuanced understanding of network effects and other means by which consumers choose devices. The final decision should address this.

- The role of apps in competition is considered inconsistently. At times described as a central barrier to the creation of new mobile ecosystems, but at other times as not decisive for consumers (A6.46). The reality will be that their effect is diverse and complex. Diverse in that some apps, with strong brands and their own network effects, will have a strong bargaining position with respect to mobile ecosystems. Complex in that, while indirect network effects might enhance the growth of mobile ecosystems beyond a threshold scale, they might also hasten the decline of any mobile ecosystem that starts to lose consumers and therefore apps, or vice-versa. It

will increase the role of dynamic competition generally neglected in the proposed decision.
- The role of apps as a threshold for phones to gain acceptance is asserted, but the fact that the overall number of apps is not particularly seen as decisive in competition between iOS and Android shows the limits of this analysis. This is a threshold and not a tipping point and therefore companies able to attract a viable number of apps will be competitive. That other companies have failed to do so in the past could reflect other weaknesses in their offer besides the number of apps; a less mature app market where developing for multiple ecosystems is more expensive; or simply consumer satisfaction with existing mobile ecosystems.
- Apple's brand may be a reason for consumers to choose it over alternatives (A6.46), however this compounds the impact of any decline in the price-adjusted quality of Apple products. If they are seen to not match up to the standards expected of that brand (e.g. by being hard to use, or less secure than expected) then this will not only affect Apple's relationship with that consumer but its brand and therefore wider sales.

Implications for the wider DMCC

Overall the evidence presented by CMA is consistent with a world in which consumers are broadly satisfied with mobile ecosystems and mobile ecosystem providers are fulfilling their role in setting rising standards. In that context, even if the CMA stands by its overall decision, it should be cautious about any conduct requirements which could easily worsen consumer outcomes versus their generally positive experience now.

As mentioned at the beginning of this submission, these early investigations will have a disproportionate impact on the sector's understanding of how the DMCC will be applied in practice. In that context, and again even if the CMA stands by its overall decision, it should consider the signals it is sending in the analytical report:

- Development reflecting constraints other than "like-for-like" competition, e.g. competing for usage versus other devices, will not be treated as evidence of competition
- Despite the legislative requirement for a company's position to be "entrenched", the potential for dynamic competition as an existing constraint (versus the potential for technological disruption) will not be considered
- That conduct requirements will not be based on segment-specific findings at the designation stage that consumers are frustrated with their choices

None of these signals are appropriate, and some may not be intended, but the CMA should reflect on whether amendments could address these potential concerns.