

Proposed decision: SMS investigation into Apple's mobile platform

2. Do you have any views on our provisional conclusion that it would be appropriate to treat those activities [digital activities, namely the smartphone operating system, the tablet operating system, native app distribution, and mobile browser and browser engine] 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 Apple's mobile devices in order to allow users to access, view and engage with such content and services on their mobile devices?

I am an independent researcher specialising in issues related to competition and antitrust, with a particular focus on the dynamics of digital markets and regulatory frameworks. Views expressed here are my own and do not represent any organisation.

I support the provisional findings of the Competition and Markets Authority (CMA) that Apple should be designated as having strategic market status in relation to its mobile platform. I also support the view that its related digital activities, including the operating system (iOS and iPadOS), Apple App Store, Safari browser and WebKit browser engine should be treated as a single digital activity, as all comprising a platform to facilitate interactions between users and providers of digital content and services on Apple's mobile devices in order to allow users to access, view and engage with such content and services on their mobile devices.

Apple's products have long been described as a "walled garden" due to their tight integration of software and hardware.¹ Apple CEO, Tim Cook, announced back in 2012 that new company changes were being made to "encourage even more collaboration between the Company's world-class hardware, software and services teams", with Cook stating that the company's success is "the direct result of our relentless focus on tightly integrating world-class hardware, software and services".² Apple does not allow Android or any other operating system to access Apple devices, nor does Apple license out iOS, watchOS, iPadOS or any of its operating systems to other devices. Additionally, Apple devices cannot access third-party app stores, meaning that all apps must be downloaded through Apple's App Store.³ This gives Apple unique access to app

¹ <https://www.wsj.com/video/series/joanna-stern-personal-technology/how-apples-iphone-and-apps-trap-you-in-a-walled-garden/B8E1988F-7850-4A5D-B390-91530D3F9A00>.

² <https://www.apple.com/newsroom/2012/10/29Apple-Announces-Changes-to-Increase-Collaboration-Across-Hardware-Software-Services/>.

³ With some jurisdictional exceptions, such as the EEA, due to regulatory intervention such as the European Digital Markets Act – "[Regulation \(EU\) 2022/1925](#) of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act).

store metadata, such as which apps are being downloaded and by whom, as well as an ability to charge high commission fees of up to 30%. Thus, Apple maintains both an economic and information advantage through its fees and access to competitor data. Apple sets the terms and conditions on app development due to Apple's app review process, often bemoaned by developers as "unclear" and opaque.⁴ Additionally, Apple controls data and functionality access for third-party developers. For example, the CMA has found that Apple restricts functionalities like digital wallets and connected devices for third parties.⁵ But this extends further, through Apple's policies like App Tracking Transparency (ATT), which allows users to block third-party cross-app tracking, cutting off access to an iPhone's Identifier for Advertisers (IDFA). However, this policy only applies to third parties, with Apple's collection of first-party apps still able to cross-track users. Whilst the increased user privacy is to be applauded, the unequal access has also meant that app developers must increasingly rely on Apple for advertising and app monetisation.⁶ App developers also must agree to Apple's Developer License Agreement, which gives Apple unrestricted access to developer information.⁷

Considering the above, Apple maintains a massive ecosystem advantage in its mobile platform, and it is crucial that this be considered together, as a single digital activity; otherwise, regulatory enforcement risks missing crucial gaps in Apple's information, economic, and ecosystem-level advantages. The Apple platform should be considered as comprising a central core with an expansive ecosystem of peripheries, which it controls:

"Apple as a platform maintains a central core in the form of its hardware, iOS, Software Development Kits (SDKs), advertising networks, and other governing structures, as well as control over its peripheries such as apps and MFi licensed products and services. For example, Apple, in 'leveraging their scale and ecosystem assets' makes app developers reliant on Apple not only for development and distribution but increasingly for monetisation as developers are less likely to exchange data for ad revenue and are moving towards in-app payments which, for now, is conducted through Apple Pay".⁸

Therefore, considering all of these sources of power and advantage together as a single digital activity not only makes sense but is the *only* approach that may create fairer competition in the mobile platform market. Levelling the playing field is critical due to Apple's market share, which, according to the CMA's proposed decision, accounts for one-half of a duopoly and holds roughly 50-60% of the UK market.⁹ Therefore, app developers currently have no choice but to submit to Apple's governing policies, terms and conditions if they wish to reach end users.

Therefore, I hope this submission makes clear its support for designating Apple's mobile platform as a single digital activity, encompassing the smartphone and tablet operating systems, including the middleware such as SDKs and APIs, native app distribution, and mobile browser and browser engine. When designing conduct requirements to address this, the CMA

⁴ <https://www.gov.uk/cma-cases/sms-investigation-into-apples-mobile-platform#proposed-decision> See Proposed Decision, p. 7.

⁵ <https://www.gov.uk/cma-cases/sms-investigation-into-apples-mobile-platform#proposed-decision> See Proposed Decision, p. 7.

⁶ See: <https://doi.org/10.2139/ssrn.4090786> and <https://doi.org/10.1145/3531146.3533116>.

⁷ <https://developer.apple.com/support/terms/apple-developer-program-license-agreement/#ADPLA9.3>.

⁸ <https://www.techpolicy.press/regulating-the-walled-garden-the-challenge-of-taking-on-the-gatekeepers/>.

⁹ <https://www.gov.uk/cma-cases/sms-investigation-into-apples-mobile-platform#proposed-decision> See Proposed Decision, p. 6.

should consider the ways that Apple sources its ecosystem advantage, including all informational and economic advantages it maintains across the platform, and what dependencies third-party developers may be forced to have due to Apple's vast ecosystem control.

Thank you for considering this submission.