

## Guardian News & Media (GNM) **non-confidential** response to the CMA consultation on proposed commitments from Apple & Google

### About Guardian News & Media

Guardian News and Media (GNM), the publisher of [theguardian.com](https://www.theguardian.com), one of the largest English-speaking quality news websites in the world. The Guardian was first published in 1821. In the UK, Guardian News & Media produces the Guardian newspaper six days a week in print and seven days a week online. Since launching its US and Australian digital editions in 2011 and 2013, respectively, traffic from outside of the UK now represents around two-thirds of the Guardian's total digital audience. The Guardian also has an international digital edition and a new European edition that launched in 2023.

### Executive summary

GNM welcomes the opportunity to respond to the CMA's consultation on the proposed commitments offered by Google & Apple. We acknowledge and appreciate the commitment by both companies to address competition concerns including the app review processes, app ranking, use of data and interoperability access. However GNM is concerned that **the proposals codify existing internal practices and focus on procedural changes rather than meaningful structural remedies.**

**The commitments offered by Google and Apple lack the robustness and detail that we envisaged would be in CMA imposed conduct requirements** - it appears that Apple and Google are engaging with the CMA in a way that will lead to a more restrained approach. The commitments do not sufficiently remove the current barriers to competition and innovation in mobile applications and services, with a potentially negative impact on consumers and the UK economy. To fulfil the aims of the original SMS designation and improve the app development market, these structural barriers need to be addressed i.e. enabling alternative app stores and meaningful steering rights.

The CMA's decision to accept voluntary commitments from Apple & Google also risks establishing a precedent that sits outside the original template of the DMCC. The UK is an important territory in the tech industry and the high level of analysis behind the CMA's market studies and competition investigations give it a preeminent status. Other regulators are watching how the CMA remedies the problems it has discovered through those cases. Accepting voluntary, ill-defined commitments would be widely seen as a setback in the move towards curbing anti competitive practices or meaningfully altering market dynamics.

**The voluntary nature of the commitments also raises questions about enforcement.** We appreciate the CMA's motivation for a prompt resolution but if Google or Apple fail to follow through fully or promptly on their commitments, it could result in reviews and consultations - further delaying meaningful market redress.

While we disagree with the premise of accepting voluntary commitments - if this is the route the CMA chooses, then we would encourage them to make use of the new timetable and **pull forward the proposed phase 2 CRs to address steering and charges.** This would improve app developer confidence by moving towards clear enforceable conduct

requirements that support competition, innovation and prevent platforms with SMS from exploiting their monopoly gateway positions.

## **App review**

GNM appreciates that reviews are important for ensuring quality of apps on the stores. However, their speed, frequency, and format are far from ideal - often slowing down GNM's development and testing process. In the commitments, Apple says it will operate a 'fair, objective and transparent' review process but the terms are inherently subjective and defined by the organisation.

Both Apple and Google have previously defended their high commission rates by framing them as a 'service fee' rather than just a transaction tax. However, some app developers have found the 'service' of the app review process to be slower than expected, with limited opportunities for human communication.

**Beta reviews:** These go to less than 5% of users who volunteer to test the app for us, still require app reviews. On the Apple app store beta releases are manually reviewed. GNM would like to explore the possibility of automating more reviews for beta releases, as this would help us find bugs faster, improving app quality for consumers.

**App store removal process:** Under its current policy, Apple and Google can reject an app update or threaten removal from the App Store / Play Store when they feel there is a breach of its policies, including anti-steering rules. When this happens developers are typically given a short remediation period (for Google this is often 2 weeks). This may not give developers sufficient time to address the issues, nor does it provide an opportunity to engage with Google/Apple before the store removal process is initiated.

**Automated responses:** App developers take the threat of a takedown extremely seriously - receiving an automated rejection (in the case of Google), without a direct point of contact, makes it difficult to understand or discuss what steps should be taken. In many cases, the policy violation will be unintentional - no one wants to be removed from the app store - and the company may not even be aware of what needs fixing. App developers are forced to go through multiple people to get a direct response. The commitments fall short of offering the opportunity to engage directly before rejection or removal decisions are taken. In the case of Apple - 1:1 sessions may be offered - but only where Apple deems 'appropriate'.

Suggesting that 'one annual roundtable event' and a 'dedicated page' are sufficient to discuss questions and raise issues is woefully inadequate.

**'Complex' app loophole:** In offering the CMA a set of commitments, Google and Apple are able to define terms in a way that works for them - rather than for app developers. For example the 24-hour target excludes "complex" apps - as determined by the platform. News apps with integrated subscriptions or complex data-sharing often fall into this 10%, meaning the apps that actually drive revenue are the ones most likely to be delayed.

**Accountability and auditing:** GNM also seeks clarity on how these commitments are being measured and enforced in practice given that they do not offer any independent arbitration. We would appreciate clarity on how the commitments will be audited, including what KPIs would be applied.

**Third party resolution:** It would be helpful to have further information from the CMA and Apple/Google on the independent channels for issue remediation. Would this be a singular body (such as an ombudsman) with responsibility for Apple App Store and Google Play, how would this body operate, and how is it funded to ensure independence ?

### **App ranking**

We welcome commitments on greater transparency, visibility around app ranking and discoverability, however further clarity is required on:

- How ranking decisions would be determined, and applied in practice, as well how this would be measured and audited.
- The available tools and resources and their functionality.
- The channels which will receive complaints, and how this is set up.
- The 'provision of confidential reports to the CMA for oversight' - especially the contents of these reports. We would like to know if the CMA plans to make these publicly available.

### **Curated collections**

GNM welcomes Google's stance on 'selecting apps for curated collections in a fair, objective, transparent and non-discriminatory manner, to ensure that similarly situated third-party and first-party apps are treated the same way". We would seek clarity on how this will be monitored, measured and audited. We would also like to understand Apple's position on this.

### **Data Collection**

GNM welcomes commitments to protecting app developer data and transparency over access controls for app developers' data. We would appreciate further clarity and safeguards that ensure sensitive data will not be used in a way that disadvantages publishers.

### **Interoperability process (Apple only)**

GNM would appreciate a definition of 'interoperability'. Please further define what eligible requests mean from Apple.

### **Steering**

Whilst we welcome commitments on a fair, transparent, non discriminatory app review, unless the commission on digital goods is addressed simultaneously, the impact will be limited. The commitments fail to address the justification for fees and or the arbitrary barriers that prevent app developers from communicating with our readers. GNM set out some of the issues this raises in our recent submission. If the goal of the SMS designation is to address competition concerns in the mobile ecosystem - it will not be achieved by these commitments alone. We urge the CMA in the strongest terms, to make use of the newly truncated timetable to **pull forward detailed conduct requirements around steering and commission charges** and look forward to engaging in this discussion.