28 July 2026

A Further Regulatory Intervention in the UK that is Unnecessary, Inefficient, and Counterproductive

Google's Response to the CMA's Consultation on a Proposed Steering CR

I. Introduction and Summary

1. We are committed to delivering the best possible experience to users, while ensuring Google Play developers have the tools and adaptability to succeed. As part of this commitment, on 4 March 2026,[1] we announced a global package of major changes to Play's business model (the **Revised Play Model**).

2. These changes introduce unprecedented new opportunities for developers, giving them even greater choice as to billing options, enabling them to 'steer' users outside the app through in-app 'linkouts', and considerably lowering Play's service fees: all UK developers (the vast majority of whom pay no fee at all) are eligible for discounts of 33-50%, while still benefitting from Play's protected and secure environment, best-in-class discovery technologies, smart delivery infrastructure, and ongoing support service. **As a result, UK developers will pay on average fees of just [X]%, and Play developers could collectively pay $[X] million less in fees each year.** These significant price decreases come against the backdrop of "*material improvements to the quality*" of Play and Android over time and "*high levels of consumer satisfaction in respect of Google's Mobile Platform*".[2]

3. The Revised Play Model also facilitates the use of third-party app stores through the Registered App Stores program, and additional changes to simplify the sideloading flow. Given the discussions with the CMA over the past year, we have accelerated bringing the Revised Play Model to the UK. It launched on 30 June 2026, and has been welcomed by the developer community (*see, e.g.,* ¶16 below).

4. Despite these changes, the CMA has announced that it is consulting on a proposed steering conduct requirement (the **Proposed CR**) (the **Consultation**), which includes a highly-complex, utility-style framework for assessing Play's fees.[3]

---

1 *See* Sameer Samat, A new era for choice and openness, 4 March 2026; Paul Feng, Expanded billing choice and lower fees on Google Play, 24 June 2026.

2 *See* CMA, SMS Investigation into Google's Mobile Platform, Final Decision Report, 22 October 2025 (**Final Decision**), ¶¶6.68 and 6.75.

3 CMA, Consultation: Steering Conduct Requirement, Google's Mobile Platform, 30 June 2026 (**Consultation Document**), ¶¶4.100(a) and 4.154.

5. The Consultation is unnecessary because the Revised Play Model—a market-based solution which would increase competition—already addresses the Consultation's stated objectives, giving developers the opportunities that the CMA has called for. It would disrupt the rollout of our global solution by re-opening disputes the Revised Play Model has resolved, creating uncertainty for developers who operate globally and value consistency across jurisdictions. And it would do so without first assessing the impact of the Revised Play Model thereby denying it a chance to succeed. This would hold back UK developers, who have repeatedly made clear, including directly to the CMA, that they need predictability and global coherence to build steering capabilities.

6. The Digital Markets, Competition and Consumers Act 2024 (**DMCCA**) is designed to provide a new, targeted approach to regulation, focusing on flexibility, speed, and proportionality.[4] This has been achieved in other areas for UK businesses. But the Consultation takes a different path, proposing an unnecessary and disproportionate utilities-type framework in the innovative markets in which Play operates. It involves price regulation, risks protracted private litigation from third parties, and would delay the benefits of the Revised Play Model by discouraging developers from taking up the new opportunities in view of regulatory uncertainty. **The net effect: holding back innovation, investment, and opportunity for UK developers and consumers.**

7. The Consultation wrongly equates our practices with those of other platforms that operate in a fundamentally different way. It ignores that Android and Play have always operated on an open basis, offering developers and users considerably more choice than other platforms:

    a. Play has always offered opportunities to developers to steer users to make purchases on their website, both through the app and through other channels (*e.g.*, email); the Revised Play Model will make this even easier by enabling steering via direct in-app hyperlinks.

    b. Android OEMs are free to preinstall third-party apps and app stores, and users can sideload apps directly from the internet and use sophisticated web apps.

8. We proactively introduced the Revised Play Model to build on these opportunities; no other platform has made voluntary changes in the UK or anywhere else. Not accounting for these key differences and voluntary steps—or even waiting to see how they work in practice—sends the wrong message: that good faith efforts to resolve concerns proactively in a participative framework are unlikely to succeed.

---

[4] *See*, *e.g.*, Sarah Cardell, [The CMA's approach to digital markets regulation], 11 January 2024; CMA, [CMA sets out initial plans as new digital markets competition regime comes into force], 7 January 2025.

9. This submission first explains why the Proposed CR is unnecessary and ill-timed (**Section II**); second, it sets out why the Proposed CR would be ineffective and disproportionate (**Section III**); and third, it explains how the Proposed CR seeks to solve the wrong problem (**Section IV**). **Section V** concludes with a better path forward.

10. We strongly encourage the CMA to take proper account of our changes, let us move forward on the fair and reasonable terms we have rushed to bring to the UK, and halt these proceedings.

II. The Proposed CR is unnecessary and ill-timed

11. We share the CMA's aspiration for even greater and more meaningful choice for developers and users in the UK. **The Revised Play Model is the culmination of an extensive global dialogue with developers and regulators—including the CMA—to achieve this objective.** It goes with the grain of competition, provides the opportunities and consistency requested by stakeholders, and is designed to benefit app developers by providing a clear, coherent, and readily-implementable solution across the jurisdictions in which they operate.[5] Intervening to demand changes that we have already announced and/or implemented is unnecessary and ill-timed.

The Revised Play Model fully addresses the CMA's concerns[6]

12. **Primary concerns.** The Consultation identifies two primary "*concerns*" regarding purported restrictions within Play's UK terms and conditions which the Proposed CR is intended to address.[7] But the Revised Play Model has already addressed these two issues:

[5] Consultation Document, ¶4.154 ("*Some stakeholders noted that market-by-market divergence in steering rules increases implementation and compliance costs and reduces incentives to build steering capabilities, and argued that therefore requirements should, as far as practicable, **avoid unnecessary jurisdiction-specific complexity***" (emphasis added)).

[6] This subsection provides our responses to questions 6.5-6.8 of the Consultation.

[7] Consultation Document, ¶1.7.

CMA concern	Revised Play Model
UK app developers cannot use alternatives to Google Play's billing system (**GPB**) to charge for Play-distributed apps or in-app features.[8]	**Addressed.** Developers can profitably offer an alternative billing system or link users to their own website for purchases, alongside GPB. (Developers of non-gaming apps have had the ability to offer alternative billing in the UK since 2025.)
UK app developers cannot provide "*buttons, links, messaging, advertisements, or other calls to action*" to lead users to alternative payment methods.[9]	**Addressed.** Developers can show all of these "*calls to action*" to steer users outside the app to alternative payment methods.

13. **Secondary concerns.** The Consultation next raises concerns about Play's purported ability to exploit its position as an "*intermediary between the developer and its customers*".[10] But again, the Revised Play Model—including through lower fees, newly-permitted linkout transactions, and a new program for Registered App Stores—addresses these issues. In addition to the steering options that we already offer to developers, the Revised Play Model ensures that:

    a. **Play developers have full control over what they sell, their pricing structure, and their sales strategy.** Under the Revised Play Model, developers are free to set commercial terms for linked transactions, control refunds, and have flexibility to promote linked offers however they like. For example, developers are free to communicate to users that linked-to offers are discounted relative to transactions completed via GPB.

    b. **Play developers have direct relationships with their customers.** Play has never prevented developers from having a direct relationship with users. Under the Revised Play Model, developers will have even more flexibility in how they build that relationship with users, including through in-app communications and billing.

    c. **Third-party apps can and do compete effectively with our own apps.** Play's fees are fair and reasonable and reflect the value Play provides. And under the

[8] Consultation Document, ¶1.7(a).

[9] Consultation Document, ¶1.7(b).

[10] Consultation Document, ¶1.8.

Revised Play Model, UK developers that pay service fees will pay on average just [X]%, compared to the previous headline rates of 15-30% that the CMA appears to have used as the basis for the Consultation. Overall, Play developers could collectively pay $[X] million less in Play service fees each year, with 99% of fee-paying developers paying service fees of just 10% for transactions concluded via linkout. There is no basis to suggest that Play fees prevent third-party developers from competing with our own apps.

d. **Play developers have flexibility in their choice of payment processors and other means of managing and completing transactions.** The Revised Play Model expands developers' options for billing and payment solutions currently available under the user choice billing program. Under this model, all UK developers are able to offer alternative billing and third-party payment providers for users to complete transactions. Specifically, Play developers can offer users the choice between using a linkout to complete a transaction on their website (a steered transaction) or completing the transaction through Play's billing system (a non-steered transaction). Play's new fees are therefore structured as a base service fee applicable to both steered and non-steered transactions (reflecting the value Play provides to all developers), and a separate fee which is only paid for transactions where the user chooses GPB.

14. The Revised Play Model already addresses the provisions of the Proposed CR, as the table below shows:

CR Para.	Proposed CR provision	Revised Play Model
3(a)	Developers must be able to communicate with users, including in response to information provided by the user as part of app account registration.	**Already permitted pre-Revised Play Model.** Developers can communicate with users in a range of ways, including in relation to the app account registration.
3(b)	External links must be permitted for completion of "*Steered Transactions*", defined as transactions for digital goods or services owned, operated or controlled by the Play developer through alternative payment mechanisms	**Addressed.** Developers can link out to their offers.
5	Google may not prevent, restrict, or limit (i) the format of external links, (ii) the use of external links, or (iii) the level or form of prices offered through external links.	**Addressed.** Developers can present external links with different prices.

6	Except for an interstitial screen (Proposed CR, ¶7), Google must ensure an app's link to the developer's alternative payment mechanism is presented, accessed, and used in the same or equivalent way to GPB.	**Addressed.** Equivalent, side-by-side presentation of links with GPB.
7	Interstitial screen permitted when a user selects an external link (only containing information that is strictly necessary to inform user that they are moving outside GPB and presented using neutral language and neutral design).	**Addressed**. Single, neutral interstitial screen.
8	Except for an interstitial screen, Google must not introduce additional frictions that discourage the user from using a steering option.	**Addressed**. No frictions.
14	Google must not discriminate against developers that make use of steering.	**No issue.** Google does not discriminate against any developer, including those who choose to steer.

15. **Put simply, the issues that the Consultation identifies do not exist on Play; the Proposed CR is therefore unnecessary.**

16. The benefits the Revised Play Model would bring are reflected in stakeholders' reactions, which have been overwhelmingly positive. The following examples are illustrative:

    a. ACT (the App Association) stated that the "*creation of a single worldwide solution provide[s] much-needed certainty that will make it easier for small and mid-sized app developers to plan next steps and will free up time for them to focus on their true passion: creating innovative apps*".[11] ACT also said the changes "*should protect truly small developers going forward*", noting that the Registered App Stores program will "*help maintain a level of confidence between the platforms, consumers, and ultimately small tech businesses*" given that "*maintaining trust is critical*" for these developers.[12]

    b. Major games developers Miniclip and Reliance Games said the Revised Play Model, "*is more likely to increase adoption of app stores, with the potential to*

11 *Amicus Curiae* Brief of Association for Competitive Technology, 6 April 2026, *Epic Games, Inc. v. Google LLC, et al.*

12 The App Association, Comments on Android Update Announcement from Google, 4 March 2026.

increase the ways users may download and pay for Developer apps", as well as providing users "*more seamless access to third-party stores, [meaning] Developers would directly benefit from the added optionality*".[13]

c. Rovio described Play's fee reductions as "*a meaningful step*" that "*allows developers to reinvest in content, innovation, and user acquisition*". It submitted that the greater optionality enabled in billing and distribution "*promotes developer choice and flexibility*" enabling them to "*best serve their users*". And it welcomed Google's balance of "*greater openness*" with "*platform security and user trust*", as it is critical to "*maintain high standards for security, privacy, and user trust*".[14]

d. Mattel's business development lead shared the announcement on LinkedIn, noting that the changes will "*deliver more choice to players and a deeper direct to consumer relationship for brands*".[15]

e. The co-founder of Hitwicket, a cricket strategy gaming app, stated that the "*[u]nit economics for mobile games just got even more lucrative*" following the changes, making "*the entire ecosystem poised for higher growth*".[16]

f. Industry stakeholders have described the changes as "*real evolution*", likely to have "*meaningful impact*" and "*a win for developers*":[17]

    i. The President of Xsolla, a payment services provider for video games said *"[t]he development marks a structural shift in how the game industry operates*" and "*we're now seeing the beginnings of a more open environment [which] enables developers to have greater control, optionality, and diversification over how they reach players, build their businesses, and manage payments*". In particular, *"[f]or developers running live-service titles built around in-app purchases, lower fees could improve margins and expand distribution options beyond the Google Play Store."*[18]

---

13 *Amicus Curiae* Brief of Interested Developers, 6 April 2026, *Epic Games, Inc. v. Google LLC, et al.*

14 *Amicus Curiae* Brief of Rovio, 6 April 2026, *Epic Games, Inc. v. Google LLC, et al.*

15 Tim Steudler, Post on LinkedIn.

16 Keerti Singh, Post on LinkedIn.

17 Pocket Gamer, Finally, real evolution in the app store, 11 March 2026.

18 GamesMarket, Google Revamps Android Ecosystem, Reduces Fees and Ends Dispute With Epic Games, 5 March 2026.

ii. An adviser at Mode7 Collective, a strategic gaming and media consultancy, said "*we're finally seeing real evolution in the industry*", as "*Google's new fee structure should give developers more flexibility in how they monetise and engage players, creating opportunities for a broader payments ecosystem*" and ultimately "*leading to fairer and more dynamic in-game economies*".[19]

iii. A member of multiple game studios' boards stated that "*these changes are meaningful" and "could unlock more margin*". A founder of a strategic agency for apps and games monetisation describes the changes as "*a new reality*" as they mean "*the effective platform cost can move closer to the 15-20% range instead of the traditional 30%*".[20]

iv. A gaming industry research analyst describes the changes as *"a win for developers*", noting that "*[t]he hope is that this will have a knock-on effect on other companies like Apple, and even Valve/Steam*".[21]

g. Japanese developers, including Bandai Namco, LY, MIXI, and PONOS responded positively to the rollout of the Revised Play Model in Japan.[22]

The CMA should give the Revised Play Model a chance to succeed

17. We recognise the CMA's interest in monitoring Play and Google's recent changes to its business model, as well as the need for meaningful regulatory dialogue. To that end, we have engaged in good faith with the CMA throughout the Mobile SMS investigation. In parallel, we have worked constructively with the CMA on its imposition of CRs following Google's SMS designation in Search.

18. The Proposed CR would, however, be an unnecessary and burdensome departure from the timely and pragmatic outcomes envisaged under the DMCCA's forward-looking framework. At best, the Proposed CR is unnecessary because it fails to assess the comprehensive changes to Play's business model that we have proactively introduced to allay the CMA's concerns; at worst, the Proposed CR would actively impede the benefits that the Revised Play Model delivers to developers through discouraging them from implementing a global steering solution until the regulatory uncertainty is resolved.

---

19 Pocket Gamer, [Finally, real evolution in the app store](), 11 March 2026.

20 Ibid.

21 Ibid.

22 Android Developers, [Early rollout: Lower fees, more options in Japan](), 14 July 2026.

19. The absence of meaningful consideration by the CMA of whether the Proposed CR is sufficiently-targeted is apparent in the near-identical steering CR for Apple that the CMA is consulting on in parallel.[23] It runs contrary to the bespoke and targeted nature of interventions under the DMCCA regime—and the 4Ps framework—to impose the same CR on two firms with different business practices, particularly when Google has already proactively addressed the CMA's concerns.[24]

[23] CMA, Consultation: Steering Conduct Requirement, Apple's Mobile Platform, 30 June 2026.

[24] *See*, *e.g.*, CMA, Digital markets competition regime guidance summary, 19 December 2024, p. 8 ("*We expect CRs to **vary across firms and designated activities** – reflecting the variety of business practices across firms and the wide range of concerns that may arise*." (emphasis added)); Hansard, Digital Markets, Competition and Consumers Bill (First Sitting): debated on Tuesday 13 June 2023, Column 5, where CMA CEO Sarah Cardell confirmed that "*what we have here is a Bill that enables the CMA to designate particular companies in relation to particular activities, and then to design conduct requirements to manage their market power in relation to those specific activities. **That is a much more bespoke system from the outset—it is targeted at the individual company and the individual conduct that is a cause of concern***." (emphasis added)); CMA, Digital Markets Competition Regime Guidance, 19 December 2024, ¶3.19 ("*The CMA will consider the imposition of CRs on SMS firms **on a case-by-case basis** having regard to the facts and circumstances pertaining to each relevant digital activity*" (emphasis added)).

III. The Proposed CR would be disproportionate and risks turning a dynamic, fast-moving product into a regulated utility, with all the disadvantages that entails[25]

20. As well as being unnecessary, the Proposed CR would be disproportionate. First, it contemplates a regulatory apparatus and price controls of the kind used to regulate utility companies (such as the water and energy sectors) and which the DMCCA's architects expressly dismissed as unsuitable for digital markets.[26] Second, the Consultation ignores the relevance of the Revised Play Model in its proportionality assessment. Third, it relies on flawed evidence to support its claims regarding the expected benefits of the Proposed CR.

The Consultation's proposal of utility-style price regulation with reference to costs is inappropriate

21. The Consultation sets out a complex, utility-style methodology for assessing Play's pricing, including by reference to our costs. Specifically, it requires us to take into account the "*costs incurred by Google in providing services used by a Developer to a material and direct extent in facilitating or supporting a Steered Transaction, calculated on the basis of: (i) a forward looking long run incremental cost approach, (ii) an appropriate recovery of common costs, and (iii) a reasonable rate of return as appropriate.*"[27]

22. This approach is inherently unsuitable for the dynamic, fast-moving markets in which Android and Play operate. Price regulation pegged to a company's costs is designed for industries characterised by natural monopolies, little or no competition, homogenous products, and negligible innovation in the core regulated products. But the markets in which Android and Play operate could not be more different.

---

25 This section provides our response to question 6.2 of the Consultation.

26 Unlocking digital competition, Report of the Digital Competition Expert Panel (**Furman Report**), March 2019, *see, e.g.*, p. 2 ("*Some people argue that digital platforms are natural monopolies where only a small number of firms can succeed, making competition impossible. The logical conclusion of that view is **utility-like regulation of the type used for electricity distributors**. **Others believe there is already adequate competition and no policy changes are needed to maintain it. We disagree with both views**, seeing greater competition among digital platforms as not only necessary but also possible – provided the right policies are in place*" (emphasis added)); *see also* Andrea Coscelli, Fordham Competition Law Institute speech, 9 October 2020 where he distinguished utility regulation, which was "*more about controlling outcomes*", from current economic regulation, which "*has become far more focused on promoting competition and innovation through opening up access to markets*".

27 Consultation Document, Proposed CR, ¶10(a)(i).

23. It is well-established in economics that price regulation has a negative impact on innovation by reducing firms' incentives to invest in developing new products and services through limiting the returns (*i.e.*, profits) of these investments.[28] The CMA has recognised this:

a. The CMA's guidance on merger remedies states that remedies that seek to control outcomes (such as price controls) are "*subject to several significant challenges regarding [their] effectiveness and … practicality*", noting that they "*directly override[] market signals with the result that [they] may generate substantial distortion risks over time*", for example by "*deter[ring] entry*" or "*discourag[ing] product innovation.*" It further notes that the longer the term of the intervention, the more significant these issues are likely to be, concluding that "*in view of these challenges [...] remedies that control market outcomes are unlikely to be appropriate unless there is no effective alternative remedy.*"[29] In the present case, there is *already* an effective alternative remedy: the Revised Play Model.

b. Likewise, the CMA's markets guidance states that: "*[m]easures to control outcomes, such as price controls, can [...] introduc[e] unintended consequences or impos[e] unreasonable costs.*"[30] This is exactly what the Proposed CR would do, as detailed below.

c. The CMA's 2020 paper on reforming regulation noted that "*poorly designed or outdated regulation (e.g. that does not reflect technological change) can stifle competition by holding back the competitive process.*"[31] The Proposed CR is a case in point of out-of-date intervention which seeks to solve yesterday's problem, holding back the market.

24. Given these risks, price regulation has been a last resort for markets where there is a natural monopoly or very limited competition, and where having alternatives (*e.g.*, two water pipes to the same home) is economically inefficient. It does not make economic sense to impose utility-style pricing restrictions on an entity such as Play, which trails

---

28 *See*, *e.g.*, BEIS, Taxonomy of regulatory types and their impacts on innovation, Final Report, January 2020, p. 40 ("***There is broad consensus across the literature that [price] regulation [...] has had a detrimental impact on R&D and therefore innovation***" and "*if a market is limited by price controls, firms will adjust the risk profile of their investments in the market such as reducing R&D expenditure, focusing on short-term investments, and concentrating on the areas of the market where there is highest demand*" (emphasis added)).

29 CMA87, Merger remedies, 19 December 2025, ¶¶7.35-7.37.

30 CMA3, Markets regime, Guidance, 3 February 2026, ¶69.

31 CMA, Reforming Regulation Initiative Response, July 2020, ¶21.

Apple's App Store (the market leader with a ~75% share) as well as competing with a range of other Android app stores and other distribution methods.[32] This type of intervention would risk reducing Play's ability to innovate and compete, leading to market distortions.

25. The Consultation acknowledges that cost-based pricing rules are typically used "*for more utility-like services*"[33], and seeks to distinguish the Proposed CR on the basis that it proposes "*higher-level principle-based obligations on Google*" which would not specify the exact level of the fee, and "*ensure that Google's incentives to invest and innovate […] are adequately protected*."[34] But this is no different in practice: the Proposed CR would lock Google into adopting a highly-prescriptive pricing methodology, backed by a requirement for a utilities-style accounting proof (with reference to various categories of costs). The Consultation states that it expects this to lead to "*significantly lower*" fees (apparently ignoring the fact that the Revised Play Model has *already* reduced fees by 33-50%) and therefore less revenue—and return on investment—for Google.[35] In other words, the Consultation proposes a price control, a methodology, and the fee changes it expects.

26. Losing pricing flexibility—and the possibility of having different external parties dictate multiple price changes over the coming years—would chill our incentives to compete and release Play innovations in the UK, putting at risk new features which have helped generate over £770 million in revenue for developers in the UK, create over 600,000 jobs in the UK, and deliver £3.6 billion in annual consumer surplus.[36] The CMA's Final Decision recognised that Google has "*made material improvements to the quality of [its] Mobile Platform[] over time*" and there are "*high levels of consumer satisfaction in respect of Google's Mobile Platform*".[37] The Proposed CR would threaten this by undermining our ability and incentive to continue investing in R&D and sponsoring developer support initiatives (such as the UK Smart Data Forum), and would inevitably slow the rollout of new capabilities to developers and users in the UK. Indeed, regulated utilities tend to operate in slow-moving markets with little innovation in the core regulated products due to the complexities of operating under prescriptive regulation.

---

32 CMA, SMS Investigation into Google's Mobile Platform, Proposed Decision, 23 July 2025, ¶6.101.

33 Consultation Document, ¶4.106.

34 Consultation Document, ¶¶2.4 and 4.78.

35 Consultation Document, ¶4.111.

36 Public First, The UK's Mobile Gateway - The economic impact of Google Play and Android, April 2026, pp. 2, 4.

37 *See* CMA, Final Decision, ¶¶6.68 and 6.75.

We address in more detail the significant flaws of the Proposed CR's pricing provisions in **Section IV** below.

27. The Proposed CR would ultimately harm developers in the UK by frustrating or delaying the benefits and opportunities the Revised Play Model would bring. A UK-specific set of rules would deny developers the clear structure and coherent model they require. As the Consultation itself notes:

    a. Stakeholders told the CMA that "*market-by-market divergence in steering rules increases implementation and compliance costs and reduces incentives to build steering capabilities*" and "*requirements should, as far as practicable, avoid unnecessary jurisdiction-specific complexity.*"[38]

    b. Some developers have not taken up the steering options available on iOS in the US due to "*the lack of consistent global rules, which prevented scaling the capability effectively*."[39]

28. By increasing the resources developers need to implement different steering options across the countries in which they operate, and by jeopardising the case for releasing future Play innovations in the UK, the Consultation risks denying the benefits of the steering and other opportunities the Revised Play Model would bring.

The Consultation ignores the relevance of the Revised Play Model in its proportionality assessment

29. The Consultation claims that the benefits of the Proposed CR would be "*substantial*", whereas the "*associated costs are likely to be small*",[40] thereby supporting the Consultation's position that the Proposed CR is proportionate. But it makes this claim by reference to the position *before* the steering elements of the Revised Play Model were rolled out; not the real-world context in which the Consultation is taking place.

    a. A proper assessment would seek to identify the *incremental* benefits of the Proposed CR, relative to the status quo. The Consultation instead purports to examine the benefits of developers being able to "*make meaningful choices regarding steering to end-users and trade on fair and reasonable terms with Google*" – something that the Revised Play Model has already achieved.[41]

[38] Consultation Document, ¶4.154.

[39] Consultation Document, ¶4.100.

[40] Consultation Document, ¶¶5.39-40.

[41] Consultation Document, ¶5.32.

b. The Consultation concedes that it has failed to take account of the Revised Play Model in proposing a CR, instead stating that "*During the **next phase of our work**, we will assess the likely impact of these recent changes including by reference to the evidence we receive through this consultation*" (emphasis added).[42] And out of the eight questions (and multiple sub-questions) that are put out for consultation,[43] there is just a single, generic question asking respondents to comment on the Revised Play Model. This invalidates the Consultation for several reasons:

    i. There is no good basis for failing to take account of the Revised Play Model, which was announced several months before the Consultation and was the subject of discussion between Google and the CMA.

    ii. By failing to disclose its assessment of the Revised Play Model (or, possibly, failing even to undertake one), the Consultation fails to take account of a relevant (indeed, a critical) consideration.

    iii. In failing to disclose its evaluation of the Revised Play Model , the Consultation violates established principles of procedural fairness, such as the duty to provide the gist of the case to answer,[44] including sufficient details of the reasoning as to fairly allow for an informed response.[45]

---

42 Consultation Document, ¶1.15.

43 Consultation Document, ¶¶6.2-6.9.

44 *See, e.g., R v Secretary of State for the Home Department, ex parte Doody* [1994] 1 AC 531, ¶560 ("*Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer.*"); *see also R (on the application of Moseley) v London Borough of Haringey* [2014] UKSC 56, ¶¶23-25, where the Supreme Court endorsed the decision of the Court of Appeal in *R v North and East Devon Health Authority, ex parte Coughlan* [2001] QB 213, ¶112.

45 *See, e.g., BMI Healthcare Limited v Competition Commission* [2013] CAT 24, at ¶39(7), where the CAT confirmed that "*[c]ompetition cases are redolent with technical and complex issues, which can be only understood, and so challenged or responded to, when the detail is revealed*"; *see also* Cérélia v CMA [2024] EWCA Civ 352, ¶73 ("*the most important principle is that the entity concerned must be given adequate information to enable it to understand the position of the decision maker and to respond fairly and fully*"). Moreover, the CMA is not permitted to excise from its provisional findings or final decision "*matters which are relied upon in that on the ground that the gist of the decision-maker's reasoning appears from the unredacted portions of the provisional findings or final decision*" (*Meta v CMA* [2022] CAT 26, ¶148(3)).

iv. Further, the CMA has not provided Google with any information regarding the evidence it has gathered via its Call for Evidence,[46] which it cites extensively in the Consultation.[47]

v. By withholding the CMA's assessment of the Revised Play Model, the Consultation has not provided sufficient reasoning or details as to allow us to make a considered response to the Proposed CR. A key consideration—the Revised Play Model—has been omitted from the analysis entirely, precluding our understanding of how the CMA takes it into account for the purposes of the aim of the Consultation, the proportionality analysis, and the assessment of consumer benefits under s.19(10) DMCCA. This in turn impedes an effective response.

c. The Consultation's cost-benefit analysis also ignores the possibility for rivals to distribute apps and sell content outside Play, including through third-party app stores – an option that becomes even more relevant as the Revised Play Model makes it even easier to use third-party app stores on the device (alongside other routes such as distribution of content on the web and secure preload deals with Android OEMs).

d. The Consultation overlooks the significant costs the Proposed CR would have for UK businesses and consumers by reducing Google's (and developers') ability and incentive to innovate in the UK, as described above.

30. Finally, the Consultation fails to consider the extent to which developers can 'steer' users via means other than linkouts already—an option which continues to be available under the Revised Play Model—and for which developers pay no Play fees at all. Many developers already steer users to their websites through these other mechanisms (*e.g.*, direct emails to users and non-link in-app communications) today. Again, this oversight means that the Consultation has not properly evaluated the benefits arising from the Proposed CR specifically, as opposed to the purported benefits of steering in general.

---

46 CMA, Views sought: Recent developments in relation to Apple's and Google's app store rules, 1 April 2026, ¶¶9 ("*We have identified **several relevant developments** on which we would like to **better understand the views of interested stakeholders**. In particular, we are keen to (1) learn from these experiences about what is and is not likely to be effective and (2) ascertain whether there may be real benefits for developers operating across jurisdictions in some degree of alignment in steering rules internationally*"(emphasis added)), 17-18 ("*In March 2026, Google announced changes to steering that it plans to roll out globally (except in the US) over the course of 2026 and 2027, including to the UK*"), 22 ("*In light of all of the above, **we would particularly like to understand**: For developments relating to steering, **the impact these developments are having, or are likely to have, for developers and users and in turn how these affect the likelihood of adopting steering.** […]*" (emphasis added)).

47 Consultation Document, fns. 17, 22, 23, 61, 72, 82, 84, 85, 87, 98, 131, 161, 167, 180, 181, 185 and 199.

31. By failing to take proper account of the Revised Play Model and the options we make available to developers already, the Consultation's assessment of expected costs and benefits (and hence its overall proportionality assessment) is fundamentally flawed.

The Consultation relies on flawed evidence to substantiate the expected benefits of the Proposed CR

32. First, the Consultation itself cites evidence suggesting that many developers in fact see very little (or zero) benefit from steering, irrespective of how steering is implemented. By failing to take this into account in its proportionality assessment, the Consultation overstates the expected benefits of the Proposed CR and fails to discharge its burden of proof. For example, the Consultation states that, after more than 12 months of zero-cost restriction-free steering in the App Store on iOS in the US, "*some developers had still not decided whether to implement steering*" with developers still undecided "*whether steering would benefit them*" due to potential negative effects on the customer experience, among other reasons.[48] The Consultation states that this experience is "*informative for what might happen if steering restrictions on Android were reduced*";[49] a position that cannot be reconciled with the unqualified claims elsewhere in the Consultation as to the benefits that steering is said to bring to developers and their end users.[50]

33. Second, the Consultation's assessment accepts uncritically certain developers' (commercially motivated) assertions of the potential user benefits that steering will produce, without testing it against the evidence. It conducts only a superficial analysis of the benefits to end users and does not "*have regard in particular to the benefits for consumers*" resulting from the Proposed CR that s.19(10) DMCCA requires:

    a. The CMA previously found in the Mobile Ecosystems Market Study (**MEMS**) that some developers would not pass through cost savings.[51] Similarly, the Consultation accepts that there is no guarantee that steering will lead to lower

48 Consultation Document, ¶4.100(a).

49 Consultation Document, ¶4.100(a).

50 *See* further examples, at Consultation Document, ¶¶4.103(a), 4.97 and fn. 120.

51 MEMS Final Report, Appendix N, 10 June 2022, ¶22 ("*With regards to whether any cost savings made by developers would be passed through to consumers in terms of lower prices, we heard mixed views from developers. [...] However, some indicated that they would not pass through cost savings, at least not in full [...].*")

prices for users.[52] It does not, however, factor this into its assessment of the extent to which the Proposed CR benefits consumers; nor is it apparent that the CMA has conducted any meaningful analysis of the extent of passed-on benefits to consumers.

b. As for what happens to the rest of the 'saving' developers achieve from paying a lower service fee, the Consultation provides no reliable evidence to support the claim that these savings would be used on investments in innovation, quality improvements, new features, or new apps.[53] It is equally possible that any savings would simply be retained as additional profits for distribution to developers' shareholders. This would not be a consumer benefit.[54]

c. Finally, the Consultation cites evidence of lower conversion rates that can result from steering, which is a reason for developers not to undertake steering at all. Such friction would also represent a worsening of the user experience, and hence a consumer *disbenefit*. Yet this is not taken into account in the Consultation's cost-benefit analysis.

34. The evidence therefore does not support the Consultation's expected benefits of the Proposed CR.

---

52 *See*, *e.g.*, Consultation Document, ¶1.10(c), where the CMA notes that ensuring developers can steer and communicate directly with users "*can*" (not 'will') increase revenue which "*could*" (not 'would') be passed onto end-users; and ¶5.39, where the CMA presumes that a "*relatively low take-up of steering and modest price decreases*" (which the CMA never assesses the likelihood of) "*could*" result in £millions for consumers. The Consultation contains no evidence to support these presumptions.

53 *See*, *e.g.*, Consultation Document, ¶5.33 ("*Developers would be able to innovate more, and have stated that the cost reduction from lower commissions would lead to increased investment in quality, new features, and/or new apps*"). It is not clear that any evidence has been sought to verify these claims, which the quoted developers have a vested interest in making.

54 Consultation Document, ¶5.37.

IV. The Proposed CR's fee provisions are untethered from the problem they are trying to solve[55]

35. Even on its own terms, the Consultation's proposed rules on fees for Steered Transactions are inconsistent with the problem statement that the Consultation sets.

    a. The Consultation starts from the premise that the terms and conditions for Steered Transactions should ensure that steering is viable, while also maintaining Google's ability and incentive to invest.[56]

    b. To achieve this outcome, the Proposed CR states that the steering fees must be 'fair and reasonable'.[57]

    c. But the Proposed CR then sets out a framework for assessing whether Play's service fees are 'fair and reasonable' that has nothing to do with preserving the viability of steering, focusing instead on issues like Play's own costs, allowable returns, and shares of value.

36. In doing so, the Consultation diverges from its own problem statement, introducing fee provisions that are shooting at the wrong target, while introducing all the adverse effects identified above.

The problem statement: service fees should not be set so high as to make steering unviable, but should maintain our ability and incentive to invest

37. The Consultation articulates a clear problem statement that it is seeking to solve: avoiding fees that are so high as to make steering unviable, while maintaining our ability and incentive to invest:

    a. The Consultation particularises four aims: (i) ensuring developers have the "*ability to communicate with and direct end-users*"; (ii) achieving "*freedom from restrictions that limit effective steering*"; (iii) facilitating the "*ability to implement steering effectively in practice*"; and (iv) having "*appropriate safeguards to protect legitimate platform interests*".[58]

    b. In light of these aims, the Consultation frames the Proposed CR's fee provisions as "*[e]nsuring that any steering* ***fee is set at a level which is commercially***

---

55 This section provides our response to question 6.9 of the Consultation.

56 Consultation Document, ¶¶1.10, 2.4(a), 2.5 and 2.10(a).

57 Consultation Document, Proposed CR, ¶9.

58 Consultation Document, ¶2.5(a)-(d).

viable *for developers to use steering whilst protecting Google's cost recovery and investment incentives*".[59]

c. It again confirms that: "*the relevant concern we are aiming to address with the fee provisions is that the setting and structure of fees, and related terms, may* ***prevent or undermine developers' ability to make effective use of steering.***"[60]

d. In concluding what 'fair and reasonable' fees mean in this context, the Consultation notes that "*Fees that significantly reduce the incentive of developers to offer steered transactions, or that introduce complexity, uncertainty or deterrence, may* ***limit developers' ability to communicate with and direct end-users*** *and weaken the effectiveness of steering in practice*".[61]

e. Finally, the Consultation explains that developers advocating intervention view the problem statement the same way. Summarising their feedback, it states that "*We have received evidence from developers that* ***for steering to be viable****, any fees for steering need to be sufficiently low.*"[62]

38. In other words, the problem statement is a purely practical one: are the fees for steered transactions so high as to make steering unviable, through impeding "*their ability to use steering in practice*"[63]?

39. To meet the Consultation's objectives, what matters is that fees are not set in such a way as to make the option of steering illusory, while also maintaining Google's ability and incentives to invest.

59 Consultation Document, heading before ¶4.76 (emphasis added).

60 Consultation Document, ¶4.78 (emphasis added).

61 Consultation Document, ¶4.88 (emphasis added).

62 Consultation Document, ¶4.94 (emphasis added).

63 Consultation Document, ¶2.4(a).

The Proposed CR's fee provisions target an entirely different notion of 'fairness', disconnected from the Consultation's problem statement

40. Rather than addressing the problem statement directly, the Consultation argues that ensuring 'viability' necessitates fees that are 'fair and reasonable'. It then proceeds to adopt 'principles' of 'fair and reasonable' pricing that have nothing to do with the viability of steering - as explained in **Section III** above, they seem to be standard price controls of a type typically associated with utilities regulation.

41. Specifically, the proposed fee provisions constrain (i) the type of costs that we can recover; (ii) the return that we are allowed; and (iii) the value that we can take into account. This goes much further than—and is untethered from—the Consultation's stated objective of preventing prices from being used to circumvent developers' ability to steer. Asking whether a fee attempts to circumvent developers' ability to linkout cannot be answered by assessing Play's costs. They are fundamentally disconnected. Instead, the CMA should consider whether the reduced fees that developers pay for Steered Transactions are sufficient to ensure that steering is a viable option.

Invoking the 'fair dealing' objective does not provide a basis to regulate fees for distributive 'fairness' between Play and developers

42. The Consultation's approach of seeking to regulate the 'fair and reasonable' level of fees is not justified by invoking the 'fair dealing' objective alongside the 'open choices' objective.

43. 'Fair dealing' and 'open choices' are distinct statutory objectives with different goals and different definitions.

    a. 'Fair dealing' concerns users of the relevant digital activity being "*treated fairly*" and "*able to interact, whether directly or indirectly, with the undertaking on reasonable terms*" (s.19(6) DMCCA). It concerns distributive fairness between the designated firm and its users. The Explanatory Notes give the example of "*providing a clear appeals process for when a designated undertaking terminates a user's marketplace access*".[64]

    b. 'Open choices', by contrast, concerns users being "*able to choose freely and easily between the services or digital content provided by the undertaking and services or digital content provided by other undertakings*" (s.19(7) DMCCA). In other words, it relates to users having an outside option instead of using the designated firm's services. The Explanatory Notes give the example of a

[64] DMCCA, Explanatory Notes, ¶174.

prohibition on "*a designated undertaking restricting the functionalities of web browsers that compete with its own*".[65]

44. As noted above, the Consultation frames its aims and problem statement in terms of enabling developers to have the option to sell content outside of Play. In other words, it concerns developers having an outside option instead of selling via Play. This may fall within 'open choices' (requiring Play to allow developers to steer users outside of Play, which is already the case), but it does not relate to the substantive 'fairness' of the terms that we apply in our dealings with developers.

45. The Consultation first seeks to justify invoking the 'fair dealing' objective by stating that a "*fair and reasonable*" fee for steered transactions will prevent Google from imposing conditions (here, fees) that "*undermine or materially impede developers' ability to exercise steering effectively in practice*".[66] But this does not take the Consultation any further than saying the fee must not be set at such a high level as to make steering unviable; it doesn't justify the CMA's efforts to prescribe more widely what a 'fair' price means by reference to costs (or value).

46. The Consultation then claims that enabling developers to steer would mean "*addressing the imbalance of bargaining power arising from Google's position in app distribution and in-app payment systems*".[67] But this too simply describes the objective of giving developers an option to sell content outside of Play (and describes the consequence of getting outside options – namely, greater bargaining power). Again, this does not explain attempts to regulate a 'fair' price beyond ensuring prices are set so that steering is possible.

47. Finally, co-mingling the two statutory objectives in this way misapplies the statutory scheme: the DMCCA articulates distinct statutory objectives, with different definitions and pursuing different aims. Conflating 'fair dealing' and 'open choices' also contradicts the underlying purpose of having three distinct, defined statutory objectives: to require the CMA to articulate clearly and transparently what the purpose of a proposed CR is, which in turn allows the designated firm to understand the purported basis for

---

65 DMCCA, [Explanatory Notes](), ¶175.

66 Consultation Document, ¶2.8(a)(i).

67 Consultation Document, ¶2.8(a)(ii).

intervention.[68] Eliding those distinct statutory objectives would frustrate that aim by making the case for intervention harder to understand and respond to, causing precisely the type of confusion that is apparent in the Consultation. Moreover, if the statutory objectives could be interpreted so broadly as to overlap with one another, the duty to state which objective pertains in a notice imposing a conduct requirement would be deprived of any useful purpose.[69]

The Proposed CR's fee provisions are in any event unworkable and subjective, and contravene established principles for assessing the fairness of prices

48. The Consultation's approach leads it to propose a complex set of more than 20 binding principles and sub-principles of pricing.[70] These fee provisions are unworkable, subjective, and contravene established principles for assessing the fairness of prices.

49. First, the Proposed CR proposes a purely subjective standard, requiring us to prove to "*the satisfaction of the CMA*" that our fees are 'fair and reasonable', that our accounts are sufficient, and that we have applied the Proposed CR's principles suitably (Proposed CR, ¶¶9, 12(d), and Interpretative Notes, ¶9). This subjective standard does not allow us to know what compliance requires or achieve it with any degree of confidence, while also excluding rights of appeal since a court will not be in a position to rule on whether the CMA was 'satisfied'. It is incompatible with the principles of the rule of law, effective

---

68 *See, e.g.*, Hansard, Digital Markets, Competition and Consumers Bill, Volume 835: debated on Monday 22 January 2024, Column 162GC ("*I start with the discussion on the imposition and use of conduct requirements by the regulator. I thank my noble friend Lord Holmes of Richmond for tabling Amendment 15, which would remove the conduct requirement objectives—fair dealing, open choices and trust and transparency—and instead allow the CMA to impose conduct requirements for any purpose, so long as they fall within the list of permitted types. ... Both the objectives and the permitted types of conduct requirement reflect extensive and expert evidence and analysis on types of harms in digital markets. These have been set out in legislation to provide clarity up front about the types of rules that designated firms could be subject to.* ***It is right that the powers given to the CMA have clear and defined limits, and the objectives provide an appropriate framework for them to operate within. The Government feel that this clarity of objective is essential to the success of the regime, ensuring that it remains targeted and proportionate***") (emphasis added).

69 s.21(b)(i) DMCCA.

70 Consultation Document, Proposed CR, ¶¶9-13.

judicial remedies,[71] and Articles 6 and 7 ECHR rights,[72] which the legislative materials accept are engaged.[73]

50. Second, the principles and sub-principles are so open-ended as to invite litigation from every developer who wants a further fee reduction. No matter what fee level we set, there will always be scope to litigate over what is "*a reasonable rate of return*" (Proposed CR, ¶10(a)(i)) or whether the fee is "*disproportionate to the service provided by Google to Developers*" (Proposed CR, ¶13(b)). This makes it impossible for us ever to treat compliance as a settled issue, or to invest on the basis of the fees we expect to apply. Litigation over these open-ended principles could even result in fees that the CMA would *not* have supported.

51. Third, a cost-based approach to assessing fairness is inefficient, as explained in **Section III** above. Any efforts to reduce costs would be negated by a resulting obligation to lower Play's service fees for Steered Transactions. And while the Consultation claims that it can "*maintain Google's incentives to invest*" through an "*appropriate*" return on investment, it also states that "*the cost-based principle is likely to result in significantly*

---

71 *See, e.g.*, DMCC Bill, ECHR Memorandum, November 2023, ¶11. ("*The CMA's officials will not constitute an "independent and impartial tribunal" for the purposes of Article 6. However this can be "cured" on appeal so as to render the overall process compliant with the right to a fair trial*"). However, as the CMA has designed the Proposed CR to give itself the ability to meet or unmeet its subjective standard at will, the CMA has removed the "curing" that an appeal would provide.

72 *See, e.g.*, *R (on the application of P, G and W) v Secretary of State for the Home Department and another* [2019] UKSC 3, per Lady Hale at ¶73 ("*The foundation of the principle of legality is the rule of law itself - that people are to be governed by laws not men. They must not be subjected to the arbitrary - that is, the unprincipled, whimsical or inconsistent - decisions of those in power. This means, first, that the law must be adequately accessible and ascertainable, so that people can know what it is; and second, that it* ***must be sufficiently precise to enable a person - with legal advice if necessary - to regulate his conduct accordingly****. The law will not be sufficiently predictable if it is too broad, too imprecise or confers an unfettered discretion on those in power*") (emphasis added); *see also* *Camilleri v Malta Application no. 42931/10*, ¶¶34-35 ("*offences and the relevant penalties must be clearly defined by law. This requirement is satisfied where the individual* ***can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him criminally liable*** *(see Scoppola v. Italy (no. 2) [GC], no. 10249/03, §§ 93-94, 17 September 2009). When speaking of "law" Article 7 alludes to the very same concept as that to which the Convention refers elsewhere when using that term, a concept which comprises statute law as well as case-law and implies* ***qualitative requirements, including those of accessibility and foreseeability***") (emphasis added).

73 *See, e.g.*, DMCC Bill, ECHR Memorandum, November 2023, ¶24 ("*The process by which decisions are made by the CMA regarding a breach of a conduct requirement engage Article 6, including arguably the criminal limb*") and 118 ("*To the extent that the civil sanctions are found to be criminal under Article 6, they will need to be considered to be criminal for the purposes of Article 7 as well*").

lower steering fees relative to Google's Play Store fees" in view of Google's low-cost model and "*high observed profitability*".[74] Both statements cannot be true. A requirement to lower fees when a company earns a high profit will necessarily undermine incentives to make investments in pursuit of profit in the first place.

52. Fourth, the Consultation adopts an erroneous approach to assessing what is 'fair and reasonable' under the DMCCA. Play's fees, including for those developers who choose to steer, are fair and reasonable.[75] They reflect the significant economic value that Play provides. Critically, developers receive exactly the same value from Play, irrespective of whether they choose to conclude transactions via linkouts or through GPB (in which case they pay a separate fee for GPB's billing services).

Fees for linkouts *vs.* previous Play rates

	Previous rates	New Steering Fees	Reduction
First $1M in developer earnings	15%	10%	33%
Recurring transactions	15%	10%	33%
Non-recurring transactions	30%	15% (for developers in Games Level Up / Apps Experience Programs) or 20%	50% or 33%

53. As shown in the table above, developers monetising via linkouts are eligible for discounts of 33-50%, while still benefitting from Play's valuable app store service, comprising:

    a. Within open Android, Play provides a **protected and secure environment** for users and app developers to connect by rigorously vetting and verifying all apps on Play for security and safety issues. Trust is a critical factor to motivate users to engage and transact with apps. Before engaging and transacting with apps, users must have the confidence that the apps are safe and secure and meet their quality expectations. Developers have publicly emphasised the central

74 Consultation Document, ¶¶4.107(c) and 4.111.

75 A price is only unfair if there is "*no reasonable relation to the economic value*" of the service. To be unfair, a price must satisfy the following two cumulative conditions: (i) the difference between the costs incurred and the price charged is "*excessive*"; <u>and</u> (ii) the price is either unfair in itself or when compared to competing products (*United Brands*, Case 27/76 EU:C:1978:22, ¶252).

importance of trust for app stores,[76] and this point is confirmed by consumer survey evidence on the CMA file. Play's comprehensive security framework deploys a combination of technical and policy measures, including automated review tools, machine-learning processes, and human reviews to ensure that apps downloaded through Play are safe, good quality and perform as expected.

b. Play's **best-in-class discovery technologies** provide sophisticated search, indexing and matching capabilities. To monetise successfully, developers first have to find users who are likely to engage and transact with their apps. Play's cutting-edge indexing and cataloguing systems, query analysis system, matching algorithms, recommender systems and listing features and support tackle the discovery hurdle for developers to connect users with the apps that are most relevant to them, with which they are likely to engage and transact. As the third-party evidence cited by the CMA in this case has confirmed, Play "*brings benefits to app developers, for example in terms of discoverability*."[77]

c. Play's **smart delivery infrastructure** overcomes the delivery challenge that mobile apps face. For users to engage with and transact with an app, the app must reach the user successfully. Without an optimised system, a significant portion (c. 30%) of attempts to download and install mobile apps fail, because file sizes are too big, download times take too long, downloading processes are not optimised, or the wrong file type is downloaded for the device. Play's sophisticated download infrastructure consists of a vast network of servers that is constantly optimised and improved to keep downloads as reliable and fast as possible. And Play has developed a range of advanced technologies that are specifically designed to reduce app file sizes and download times.

d. Play's **ongoing support service** generates great value for developers by creating a continuous sophisticated support environment for downloaded apps. Through this support environment Play keeps users engaged and encourages them to transact with the apps that they have downloaded via Play. This includes security vetting for updates, ongoing testing, provision of updates via

[76] *See* MTM, UK Developer Attitudes Towards App Stores, July 2025, pp. 10-11. Security considerations feature in four of the top five most important benefits sought by developers when listing on app stores. Compared to other Android app stores, 88% of developers see Play as having a better approach to user safety and security, and 83% see Play as having a better approach to developer safety and security.

[77] *See* CMA, Final Decision, ¶6.123.

its sophisticated delivery infrastructure, and tools to allow them to evaluate and optimise the performance of their apps across their entire lifetime.[78]

54. The Consultation suggests, however, that the CMA is not required to follow well-established principles for determining the fairness of prices, including the need to assess the value of the service being provided by reference to comparators (even imperfect ones) and benchmarks. It makes this claim on the basis that the DMCCA "*differs materially from other regimes and from ex post competition law*".[79] This approach is flawed:

    a. First, the statutory context[80] shows that Parliament's intention was for the CMA to use its new powers under the DMCCA to better address similar issues as traditional competition law, in digital markets: "*[t]he DMU will be able to use conduct requirements to address and prevent* ***practices that exploit consumers and businesses or exclude innovative competitors****. [...] The list of permitted types of requirement* ***reflects the competition issues*** *we see in digital markets today*" (emphasis added).[81] Accordingly, what is fair and reasonable under UK competition law governing exploitative and exclusionary conduct is, at the very least, highly relevant for assessing what is fair and reasonable under the DMCCA.[82]

    b. Second, there is nothing in the DMCCA or the legislative materials stipulating that the CMA should adopt a different concept of what is fair and reasonable to the longstanding definition from competition law. Although the DMCCA provides the CMA with new *ex ante* enforcement powers to better tackle competition issues in digital markets, the statutory context shows that Parliament intended the CMA to apply these new powers in line with competition law principles. In the words of the Furman Report (which heavily

78 These include, for example, Play's Android Performance Tuner, Android Vitals, the Play Developer Reporting API, Play Asset Delivery and App Size (which helps developers measure and optimize their app's download and install sizes).

79 Consultation Document, ¶4.83.

80 Per Lord Steyn in *R (Westminster City Council) v National Asylum Support Service* [2002] UKHL 38 at ¶5 ("*[t]he starting point is that language in all legal texts conveys meaning according to the circumstances in which it was used. It follows that the context must always be identified and considered before the process of construction or during it*").

81 *See* Hansard, Digital Markets, Competition and Consumers Bill (Fifth sitting): debated on Tuesday 20 June 2023, Column 145.

82 Per Lord Mansfield in *R v Loxdale* [1758], 1 Burr ¶¶445-447 ("*Where there are different statutes in pari materia, though made at different times [...] they shall be taken and construed together as one system and as explanatory of each other*").

informed the development of the DMCCA and is cited in the Explanatory Notes): "***[r]ather than changing the conceptual approach of UK competition policy, the accepted principles and concepts need to be applied** to achieve their aims where digital markets pose new challenges.*"[83] Similarly, the Explanatory Notes specify that the DMCCA "*builds on the UK's existing competition legislative framework*" and identifies the Competition Act 1998 as a "*key source[] of law*" for the legal framework of which the DMCCA forms part.[84] This shows that—notwithstanding the CMA's new enforcement tools under the DMCCA—core legal concepts such as fairness should be applied in a way that is consistent with the established principles.

c. Third, the Consultation's claim that the legislator's intention was to keep the DMCCA definition of what is fair and reasonable "*deliberately [...] undefined and broad*"[85] is incorrect and misleading. In fact, the cited passage from the Explanatory Notes refers to the definition of the word "*trade*" (*i.e.*, the conduct of the designated firm), not the concept of fairness.[86]

d. Fourth, the Consultation itself invokes competition law cases—albeit selectively—to support its interpretation of what is "*fair and reasonable*", conceding that "*there are certain similarities between the Act's legal framework and [the competition law regime]*".[87] The CMA cannot simultaneously rely upon the CAT's reasoning in *Kent* (*e.g.*, at ¶4.128 of the Consultation Document) but ignore that *Kent* is derived from the case law that the Consultation disavows.

83 Furman Report, ¶¶3.24-26 (emphasis added). The report proposed that the Government should enact legislation to address the "*need for rapid interventions*" and "*forward-looking*" action, while abiding by "*accepted principles and concepts*" of competition law and policy.

84 DMCCA, Explanatory Notes, ¶30. The Courts have consistently held that explanatory notes (and, by proxy, the materials referred to within them) may assist in interpreting a statute. For example, per Brooke LJ in *Flora v Wakom (Heathrow)* [2006] EWCA Civ 1103 at ¶16, "*the text of an Act does not have to be ambiguous before a court may be permitted to take into account explanatory notes in order to understand the contextual scene in which the Act is set*."

85 Consultation Document, ¶4.83.

86 DMCCA, Explanatory Notes, ¶183 ("*Trade is undefined, and in this context has a broad meaning that includes how the designated undertaking provides the relevant digital activity or otherwise interacts with users and potential users*").

87 Consultation Document, ¶4.85.

55. The established framework for assessing fairness stipulates that demand-side value is at the core of the assessment;[88] the whole purpose of the exercise is to assess whether the prices charged bear no reasonable relation to the value of the service provided. But the framework set out in the Proposed CR—and the CMA's already-emerging positions on how it would apply that framework—would preclude a proper assessment of Play's value, both in and of itself or in relation to comparators. This risks leading to an underassessment of value, artificially-depressed fees, and ultimately a dampening of both price signals that would otherwise prompt market entry and incentives to invest. The Consultation proposes an approach that departs from the case law and that would exclude valid benchmarks. Specifically:

   a. First, the approach takes a flawed approach to comparators in assessing the (un)fairness of prices charged. Aside from the accepted criteria under the case law – ensuring sufficient similarity between the comparators and the product at issue, and disentangling market power effects – the Consultation states that the comparator must "*reflect the two-way value exchange between the participants and the platform*".[89] This third criterion is, at best, redundant since the usual criteria already ensure that comparators provide an appropriate analogue to determine a 'fair' price. At worst, it deprives comparators of any purpose: rather than looking to comparators to work out what a fair price is, this third criterion would task the CMA (or courts) with first determining what is a fair 'value exchange', and then finding comparators to match. It thereby introduces circularity and prejudgment, and has no basis in the existing case law.

   b. Second, the Consultation fails to explain why the benchmarks Google has put forward are not applicable. To take two examples: (i) Play's current fees are *lower* than its fees when it first entered the market and before it acquired alleged market power (*i.e.*, the *ex ante* benchmark). The Consultation fails to engage with this comparator at all, despite the fact that it is used in both competition law and SEP licensing[90] (which the Consultation endorses as a relevant regulatory context which appropriately constrains market power (*e.g.*,

---

88 In considering "*economic value*", the CMA must look to the "*demand side rather than the supply side"* and consider *"value to the customer, not the cost to the seller*": per Roth in *Attheraces Limited (ATR) v British Horseracing Board* [2007] EWCA Civ 38 (*Mummery* LJ), ¶¶186-187, that the Court of Appeal, per Mummery LJ, was in "*broad agreement with*", ¶203.

89 Consultation Document, ¶4.127.

90 *See*, *e.g.*, European Commission, *Licensing Terms of Standard Essential Patents*, 2017, Section 3.2.1.1 (pp. 55-59). The *ex ante* benchmark is routinely used as the benchmark to assess FRAND fees in the SEP context, to identify the genuine value of the technology before it is incorporated in the standard.

at fn. 140)); and (ii) the Consultation does not address the fact that Play's fees are in line with or lower than other Android app stores, such as Huawei AppGallery (30% headline rate) and ONE Store (50% headline rate), which undoubtedly face strong competition.

c. Third, the Proposed CR suggests that <u>any</u> 'imbalance' in rights or obligations resulting from the Steering Fee would mean that the value-based principle has not been properly applied (Proposed CR, ¶13(a)). Nowhere in the existing case law is there a rule that requires 'balance' or a 50:50 division of how the economic surplus is split between the firm with alleged market power and its trading partners. On the contrary, a price is only considered 'excessive' if it is "*significantly*" and "*persistently*" in excess of the competitive benchmark price, and even such excessive prices can nonetheless be fair based on the value of the service provided.[91] A mere 'imbalance' is not enough.

d. Fourth, the Consultation expresses reticence about the circumstances in which it would accept a value-based approach, suggesting that it is appropriate only in industries where investments are high-risk (which it denies is the case for established app stores), where the value assessment occurs over a time-limited period, and where the scale and cost of investments can be demonstrated and translated into an assessment of value.[92] The suggestion that investments in longstanding app stores lack material risk is simply not true—Play faces the constant threat of losing users and developers to its competitors, such as Apple's App Store, the market leader, alternative Android stores, and other distribution methods such as sideloading. In any event this is not a reflection of how value is assessed in existing law. Rather, the courts have identified features, tools, or other 'gives' that are beneficial to customers; considered the brand value that customers ascribe to the service on offer; considered customer (non-)switching behaviour as indirect evidence of how customers perceive the fairness of the price being charged; and considered whether an excessive price is justified because it bears a reasonable relation to the value of the service, even if that value cannot be precisely quantified.[93]

e. Fifth, the Consultation's requirement that the assessment of the value-based principle and the resulting Steering Fee *"must take account of the value*

---

91 *See, e.g.*, *Le Patourel v BT* [2024] CAT 76, ¶¶53-58; upheld by the Court of Appeal, *Le Patourel v BT* [2025] EWCA Civ 1061.

92 Consultation Document, ¶¶4.129-4.130.

93 *See, e.g.*, *Le Patourel v BT* [2024] CAT 76, ¶¶952-1136; upheld by the Court of Appeal, *Le Patourel v BT* [2025] EWCA Civ 1061.

contributed by Developers (in aggregate) in respect of all elements of Google's Mobile Platform" is misconceived.[94] There is no economic basis for the proposition that, in a competitive market, the fees an app store provider would charge should reflect the value that developers (in aggregate) provide to the broader platform.

f. Sixth, even setting aside the fact that a broad assessment of Play's overall fees (and costs) goes far beyond what the Consultation's problem statement requires, the draft framework for establishing a cost-based price is significantly flawed:

   i. The Consultation states that Google (i) may include the long run incremental costs (including common costs and a reasonable rate of return) of providing Play to the extent that developers implementing steering benefit from those services, and (ii) must exclude costs relating to services that are not used by developers that implement steering (*i.e.*, they do not use GPB's services).[95]

   ii. But although the Consultation accepts—rightly—that Google is entitled to charge a fee to both developers who choose to steer their users and those who don't (since both sets receive the significant value Play provides), the Proposed CR would require Google to exclude legitimate costs that should be allocated to Play when calculating fees for steering developers. Specifically, ¶12(b) of the Proposed CR lists various costs that must be excluded from the calculation of steering fees, such as "*costs relating to general app discovery, marketing, developer tooling, or other services not used by Developers who offer Steering Transactions to a material and direct extent*". These are valid categories of costs that Play incurs in delivering its service to <u>all</u> developers, including those who choose to steer. On Android, developers can distribute via a range of methods, such as alternative Android app stores or sideloading. One of the reasons they choose Play is to attract new users through Play's app discovery, marketing, and other services. Even accepting the Consultation's framework (which we do not), it would be unreasonable and disproportionate to exclude Google's costs for supporting these valuable elements of its offering.

94 Consultation Document, Proposed CR, ¶13(e).

95 Consultation Document, Proposed CR, ¶12.

iii. The Proposed CR's requirement that Google must not double count costs already recovered through other fees does not reflect sound economic reasoning.[96] Because costs are shared across services provided to all developers, it is not possible to attribute specific costs to specific fees. The exception is the 5% fee associated with GPB, which is specifically designed to cover the costs of providing that service.

V. Conclusion and the better path forward

56. The Consultation is a regulatory mis-step because it leaves no space for the Revised Play Model—a global solution that takes full account of engagement with regulators and developers—to succeed. Subjecting Play to price controls with the same practical effect as utilities-type regulation would be unnecessary, disproportionate, and would undermine the case for UK investment for both Google and developers.

57. There is a better path forward. We have accelerated the UK launch of the Revised Play Model which meets the Consultation's aims and goes even further, facilitating steering and making other app distribution channels (*e.g.*, third-party app stores) even easier to deploy. The CMA should conclude that no CR is required at this point. It should not sleepwalk into a process that is unnecessary, inefficient, and detrimental to UK innovation and growth.

---

96 Consultation Document, Proposed CR, ¶12(c).