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SHAPING COMPETITION IN THE DIGITAL AGE

Response to the CMA's Consultations on the Proposed Steering Conduct Requirements for Apple's Mobile Platform and Google's Mobile Platform

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The SCiDA Project: Shaping Competition in the Digital Age

SCiDA stands for Shaping Competition in the Digital Age. It is a joint research project of and the co-lead by professor Rupprecht Podzsun (Heinrich Heine University Düsseldorf, Germany) and Professor Oles Andriychuk (University of Exeter, UK). Our team compares and analyses the regulatory initiatives in the EU (DMA), the UK (DMCCA) and Germany (s 19a GWB) in shaping competition in the digital age. Our independent research project is funded by Deutsche Forschungsgemeinschaft (DFG) and the UK Arts and Humanities Research Council (AHRC). More information (including our regular blog entries reflecting on the development of the DMCCA, DMA, podcast, and a database with documents and information) can be found at www.scidaproject.com.

Introductory Note

This response is submitted in an academic capacity and addresses the proposed Steering Conduct Requirements (Steering CRs) for Apple's Mobile Platform and Google's Mobile Platform, both published on 30 June 2026, with the consultations closing on 28 July 2026.[1] The two consultation documents are substantially identical in structure and substance, and this response is submitted to both consultations. It focuses on the legal, economic and technical dimensions of the proposed Steering CRs and makes four principal submissions:

1) The CMA's express reliance on the Competition Appeal Tribunal's (CAT) judgment in *Dr Rachael Kent v Apple Inc* is welcomed as an important development in the interworking of the CMA and the CAT, and this practice of cross-institutional coherence should be maintained and deepened.

2) Building on that reliance, the CMA should treat the CAT's quantitative findings as a concrete reference range when assessing whether a proposed Steering Fee is fair and reasonable, rather than relying on general principles alone.

3) The proposed Steering CRs should not allow, by default, the display of interstitial screens for Steered Transactions in order to reduce friction. At least, further restrictions should be placed on the display of such screens with regard to frequency, time period and end-user choice.

4) The fee-setting principles in the proposed Steering CRs should be specified with the assistance of the emerging FRAND access pricing literature, which supplies a coherent set of propositions capable of operationalising the cost-based and value-based principles.

The response draws on the conduct requirement architecture of the Digital Markets, Competition and Consumers Act 2024 (DMCCA), the SMS designation decisions for

[1] CMA, Google Steering Conduct Requirement Consultation Document (30 June 2026); CMA, Apple Steering Conduct Requirement Consultation Document (30 June 2026).

Apple and Google of October 2025, the CAT's judgment in *Kent v Apple*, and the academic literature on fair, reasonable, and non-discriminatory (FRAND) access pricing in digital markets.

1- The CMA's Reliance on *Kent v Apple* and the Interworking of the CMA and the CAT

The most significant feature of the proposed Steering CRs, from an institutional perspective, is the CMA's express reliance on the CAT's judgment in *Kent v Apple*.[2] In that judgment, the CAT found that Apple had abused its dominant position in the iOS app distribution services market and the iOS in-app payment services market by, among other things, charging an excessive and unfair 30 per cent commission, and at the quantum stage established benchmark rates of 17.5 per cent for app distribution and 10 per cent for in-app payment processing.[3] The Apple consultation document draws on the CAT's findings at several points in its fee analysis, and the Google consultation document does the same, treating the CAT's findings on Apple's fee-setting as having broader relevance given the similarity in how both platforms structure their charges. Notably, the CMA deploys the CAT's reasoning to answer Apple's submission that its claimed inability to allocate costs systematically should excuse it from a cost-based assessment, invoking the CAT's observation that such a position would amount to an unjustifiable shield against scrutiny. The CAT's finding of a significant and persistent difference between the Commission and the costs of operation thus migrates directly into the CMA's regulatory reasoning. To the best of this respondent's knowledge, this is the first occasion on which a collective proceedings judgment has directly informed a DMCCA conduct requirement decision.

This development is strongly welcomed, and this response urges the CMA to maintain and deepen this practice going forward. The UK has constructed what is best understood as a dual-track architecture for the governance of digital markets. The DMCCA establishes a prospective, regulatory track through SMS designations and conduct requirements, while collective proceedings under section 47B of the Competition Act 1998 (CA98) provide a retrospective, adjudicatory track through which private parties obtain redress and, in doing so, develop abuse of dominance doctrine.[4] These two tracks perform distinct but mutually reinforcing functions, and neither can substitute for the other. There have been longstanding concerns about the limited record of standalone abuse of dominance enforcement in UK digital markets under Chapter II CA98. Exploitative pricing cases in particular are resource-intensive and have rarely been

[2] *Dr. Rachael Kent v Apple Inc. and Apple Distribution International* Ltd [2025] CAT 67
[3] Ibid paras 670-681.
[4] Anush Ganesh, 'The CAT's Kent v Apple Judgment: Platform Dominance, IP Defences, and Excessive Pricing in Digital Markets' (2026) 10(1) European Competition and Regulatory Law Review 69-73; See also, Anush Ganesh, 'Kent v Apple judgment: Implications for digital markets and UK Class Actions' SCiDA Blog, (27 November 2025) https://scidaproject.com/2025/11/27/kent-v-apple-judgement-implications-for-digital-markets-and-uk-class-actions/.

pursued to decision. Against this background, the interworking now visible between the CMA and the CAT is of real structural importance. It ensures that the factual and analytical output of each institution strengthens rather than duplicates the work of the other.

The CAT's analysis in *Kent v Apple* drew extensively on the CMA's Mobile Ecosystems Market Study, using its findings on the absence of effective competitive constraints as evidentiary support for market definition, dominance, and the rejection of Google Play as a valid comparator. The proposed Steering CRs now complete the circuit by carrying the CAT's conclusions into prospective regulatory design. For digital markets to function effectively, the two institutions need to read from the same book rather than develop divergent understandings of competitive benchmarks through parallel processes.[5] Institutional divergence, in which the regulator pursues one account of fair terms while the CAT develops another through private litigation, would generate legal uncertainty for developers, consumers, and the platforms alike, and would invite strategic arbitrage between the two tracks.

This response also notes the care with which the CMA has handled the CAT's findings. The consultation documents do not treat the findings as binding, and they appropriately flag the pending appeal.[6] That caution reflects an important discipline. A finding that App Store prices significantly and persistently exceeded costs was made by the CAT for the purpose of assessing an abuse and quantifying loss. Its migration into a regulatory decision about steering fees requires the CMA to satisfy itself that it is borrowing the finding for a purpose the finding can properly bear. The CMA has done so here by using the CAT's findings as corroboration for an independently reasoned framework rather than as a substitute for its own analysis.[7] This is best practice, and it is consistent with the evidence-based, consultation-driven methodology that has characterised the CMA's implementation of the DMCCA to date.

2- The CMA should treat the CAT's Quantitative findings as binding

While the CMA's corroborative use of *Kent v Apple* is welcome, the proposed Steering CRs stop short of drawing on the most operationally useful part of the judgment, namely its quantitative benchmarks. The proposed framework requires Apple and Google to demonstrate that each Steering Fee is fair and reasonable by reference to a cost-based principle, a value-based principle, and an administrative simplicity principle. These are appropriate organising concepts, and the CMA is right to prefer a principles-based approach over prescriptive rate-setting. However, principles require anchoring if they are

[5] Anush Ganesh, 'The CMA's Steering Fee Framework for Apple and Google: Cost, Value and a Nod to the CAT' Kluwer Competition Law Blog (7 July 2026) https://legalblogs.wolterskluwer.com/competition-blog/the-cmas-steering-fee-framework-for-apple-and-google-cost-value-and-a-nod-to-the-cat/.
[6] Apple CR Consultation document para 4.129.
[7] Ibid para 4.111.

to discipline the fee-setting process in practice. The CAT has already supplied that anchor.

Following a 28-day trial and detailed expert evidence, the CAT concluded that a commission for app distribution in conditions of workable competition would be in the region of 12 to 20 per cent, with some possible adjustment to reflect differences in quality, scale, and reputation.[8] The CAT reached that range through a methodologically careful comparator analysis. It turned to the PC games distribution market precisely because that market has experienced genuine competitive entry, treating Steam's reduction of its commission from 30 to 20 per cent following the Epic Games Store's entry at 12 per cent, and Microsoft's reduction from 30 to 12 per cent in August 2021, as a natural experiment demonstrating how commission rates respond to competitive pressure. Microsoft's reduction in particular was treated as important evidence of the price that developers are willing to pay in conditions of workable competition. The CAT was alert to the Cellophane Fallacy risk of comparing one monopoly price to another, which is why Google Play's 30 per cent commission was rejected as a comparator, since Google also faces no effective competitive constraint in Android app distribution. At the quantum stage the CAT disaggregated the range between the two relevant services, arriving at benchmark rates of 17.5 per cent for app distribution and 10 per cent for in-app payment processing.

This response submits that the CMA should state, in the final Steering CRs or in the accompanying interpretative notes, that these judicially established benchmarks constitute a relevant reference range for the application of the cost-based and value-based principles. This would not impose a mechanical ceiling. Apple and Google would remain free to adduce evidence justifying a different rate for the narrower bundle of services actually used in facilitating a Steered Transaction, which is likely to be considerably narrower than the full bundle assessed in *Kent v Apple*. Indeed, since the Steering Fee relates only to services used to a material and direct extent in facilitating or supporting a Steered Transaction, the logic of the CAT's analysis points to a fee materially below the 17.5 per cent distribution benchmark.[9] What the reference range would achieve is a properly allocated burden. Any Steering Fee approaching or exceeding the rates the CAT identified as consistent with workable competition should require compelling justification, and the platforms should bear the burden of explaining the departure. Anchoring the principles in this way would also have salutary effects beyond these consultations, since the pending Google Play collective proceedings before the CAT will engage closely related questions, and coherence between the regulatory and adjudicatory treatment of Google's fees will serve both tracks.

3 – Minimizing Friction to Enable Effective Steering

In order for steering measures to be effective in practice, any friction in the steering process should be minimized. This response supports the Steering CRs' aim to prevent

[8] *Kent v App*le (n 2) para 673(3)

[9] Ibid paras 677-679.

undue friction, deterrence, or distortion arising from the platforms' design choices, technical constraints, user interface measures, or commercial terms. In that regard, this response supports including in the Steering CRs the obligation for Apple and Google to "ensure that the way in which an End-user Redirection Mechanism is presented, accessed and used in relation to a Steered Transaction is the same or equivalent to the way in which [Apple's / Google's] in-app purchase system is presented, accessed and used."[10]

The companies' ability to present an interstitial screen before the redirection[11] stands in stark contrast to the equal presentation and access requirement. While the limitations on interstitial screens with regard to content, language and effects are welcomed by this response, the legitimacy and necessity of interstitial screens are questioned as such. These screens do not appear necessary and have an adverse impact on the effectiveness of steering.

As noted in the consultation documents, several developers have criticized such screens and expect them to result in declining conversion rates.[12] The limited necessity of such screens is showcased by the fact that Apple and Google do not use interstitial screens for apps that are already excluded from the Apple's and Google's in-app payment systems (namely apps that offer physical goods and services). Consequently, the CMA considers that end-users already have substantial experience with alternative in-app payment mechanisms without being exposed to interstitial screens.[13]

Against this background, this response takes the view that interstitial screens should be considered undue friction that limits effective steering. Apple and Google should, by default, not be allowed to show interstitial screens, unless they can show that they are required to protect end-users in specific cases of particularly risky transactions.

If the CMA should nonetheless decide to allow Apple and Google to show interstitial screens, it should consider – already at this stage – placing further restrictions on them. Such restrictions should relate to the frequency of display, the time period in which display is allowed and the empowerment of users to choose not to see the screens again.

With regard to frequency and the time period of the possibility to display, under the current wording of the CR, Apple and Google would be allowed to interrupt the steering process every single time with an interstitial screen, even if the specific end-user has used the alternative payment mechanism many times previously. The European Commission has also considered the frequency and timing of the display of such screens in its Non-compliance Decision against Apple under Article 5(4) DMA. It found that "there does not appear to be any need for a frequent and recurrent display of such a disclosure sheet, which is presented every time an end user links-out, since an end user that has previously linked-out will already have seen the disclosure sheet and will thus have been sufficiently

[10] Apple and Google Proposed CRs No 6 of the Proposed steering conduct requirement in Chapter 3.
[11] Apple and Google Proposed CRs No 7 of the Proposed steering conduct requirement in Chapter 3.
[12] Google CR Consultation document para 4.62.
[13] Google CR Consultation document para 4.65.

informed that clicking on "Continue" results in leaving the App Store."[14] It seems appropriate to assume that once an end-user has used an alternative payment mechanism within one app, they do not expect to be informed in subsequent payments within that app that the transaction takes place outside of Apple's or Google's in-app purchase system.

Regarding end-user choice, under the current wording of the CR, it is currently not mandatory for Apple and Google to give end-users the option to choose "do not show this screen again". This is likely to result in a situation where the interstitial screen is theoretically meant to improve end-user choice while not enabling end-users to opt for a frictionless payment process without such screens in the future. The example screen illustrated in the consultation documents includes such a choice for end-users; however, it is not mandatory.[15]

In summary, this response recommends removing the possibility for Apple and Google to display interstitial screens for Steered Transactions by default. The companies should only be allowed to display such a screen where they can demonstrate that it is necessary to protect end-users in specific cases of particularly risky transactions. If the CMA nevertheless decides to allow the display of interstitial screens, such displays should face further restrictions: they should only be displayable for a limited transition period; they should only be displayed for the first Steered Transaction within one app; and they should include an option allowing end-users to choose not to see such screens again in any app.

4- Principles for Determining a Fair and Reasonable Steering Fee

The tripartite structure of the proposed fee framework is supported. This Part submits that the cost-based and value-based principles should be specified by reference to four propositions developed in the FRAND access pricing literature, principally in the work of Padilla and Prasad and Mantzari. Although that literature addresses Article 6(12) of the EU Digital Markets Act,[16] the underlying economic logic applies with equal force to the fair and reasonable requirement in the proposed Steering CRs, and the CMA's own framework already gestures towards each proposition. Making them explicit in the interpretative notes would materially strengthen the enforceability of the fee principles.

A. No Remuneration for Network-Effect Rents

The first proposition is that neither Apple nor Google should be permitted to incorporate the value of network effects into a Steering Fee. Network effects are a property of the market rather than an innovation of the platform. They arise from the participation of users and developers and cannot legitimately be appropriated as a private rent. Padilla and Prasad demonstrate that the *ex ante* incremental value of app store services, assessed

[14] *Apple Anti-Steering* (Case DMA.100109) Commission Decision C(2025) 2090 final [2025], para 102.
[15] Apple and Google Proposed CRs No 7 of the Interpretative Notes in Chapter 3.
[16] Despoina Mantzari, 'FRAND in Article 6(12) DMA: a pragmatic approach with unintended consequences' (2024) 12(2) Journal of Antitrust Enforcement 280.

against the next best alternative in a competitive market stripped of network effects, is likely to be negligible, because app store services are largely commoditised.[17]

Mantzari develops the same proposition from the enforcement side, noting that the European Commission's non-compliance decision against Apple under Article 5(4) DMA expressly prohibited charging for gatekeeper value, echoing the exclusion of strategic value stemming from market power in the Microsoft interoperability proceedings.[18] The proposed CRs already require the value-based assessment to adjust for the effects of the platforms' substantial and entrenched market power. The interpretative notes should make explicit that this adjustment requires the exclusion of network-effect rents and gatekeeper value from the fee calculation.

B. Reciprocal Nature of Value Creation

The second proposition is that value in app store ecosystems flows in both directions. The platforms do not merely provide value to developers. They receive value from them, since the quality and range of third-party apps drives demand for devices, first-party services, advertising, and the accumulation of usage data. Padilla and Prasad model this as a two-sided value exchange and show that a fee calibrated only to the gross value the platform provides, without accounting for the value it receives, cannot be FRAND.[19]

Mantzari frames the point through ecosystem theory, observing that the surplus generated by an app store is co-created by interdependent actors and that fairness requires proportionate participation in value capture, not merely procedural equal treatment. The CAT reached a congruent conclusion in *Kent v Apple*, holding that developers' revenues could not be taken as evidence of the fairness of Apple's charges because those revenues reflect the developers' own creative and investment effort, and identifying the willingness-to-pay fallacy, under which developers pay not because the price reflects the value of the platform's contribution but because the platform controls access to the user base. The proposed CRs already require the value-based principle to take account of the value contributed by developers in aggregate. This response supports that requirement and submits that it should be applied as a genuine netting exercise rather than a token acknowledgment.

C. The Fee Should Reflect the Net Exchange of Value

The third proposition follows from the second. Once value is recognised as flowing in both directions, the fair and reasonable fee is the net value after the value received by the platform from developer participation is deducted from the value provided. Padilla and Prasad identify three theoretically available outcomes.[20] The platform may charge developers a net fee, the platform may pay or subsidise developers where the value it

[17] Jorge Padilla and Kadambari Prasad, 'Taking Article 6(12) DMA Seriously: FRAND Access Prices for App Stores' (2025) 16(8) Journal of European Competition Law and Practice 458.
[18] Despoina Mantzari, 'Regulating FRAND Access to App Stores under the DMA' (2026) Journal of Competition Law and Economics, nhag001.
[19] Padilla and Prasad (n 11).
[20] Ibid 467.

receives exceeds the value it provides, or there may be no charge at all where the flows are roughly commensurate.[21]

Mantzari operationalises this as a value-balance assessment comparing the incremental contribution of each side to the ecosystem's joint surplus, an approach with regulatory precedent in the joint Ofcom and CMA advice on platforms and content providers, which recommended that value sharing account for the incremental benefits and costs accruing to both parties.[22]

The proposed CRs speak of ensuring that both the platform and developers are fairly and reasonably treated given the value of their respective contributions. The interpretative notes should confirm that this requires a net rather than gross assessment, and that a Steering Fee derived from a purely one-directional account of value would not satisfy the value-based principle.

D. Anchoring in Long Run Average Incremental Cost (LRAIC)

The fourth proposition is that the cost-based component should be anchored in the platform's long run average incremental cost (LRAIC) of providing the services used to a material and direct extent in facilitating a Steered Transaction. Both Padilla and Prasad and Mantzari identify LRAIC as the appropriate floor.[23]

A fee below LRAIC would undercompensate the platform and weaken investment incentives, while a fee substantially above LRAIC signals the extraction of market power rents rather than legitimate cost recovery. This is backed up by the CJEU's *Android Auto* ruling in early 2025,[24] which required that access remuneration compensate the dominant firm for its upfront fixed costs and incremental costs while remaining fair and proportionate.[25] The proposed CRs already adopt a forward-looking long run incremental cost approach with an appropriate recovery of common costs and a reasonable rate of return.

By requiring the platforms to demonstrate the extent to which upfront investment costs remain unamortised before including them in the cost base, the CMA could refine the approach further. Padilla and Prasad observe that for app stores established well over a decade ago, most upfront investment is likely already recovered, meaning the relevant LRAIC will be dominated by running costs and is likely to be low.[26]

The CAT's findings of operating margins of approximately 75 per cent and returns on capital far exceeding Apple's weighted average cost of capital support the inference that

[21] Ibid 469.
[22] Mantzari (n 12) Section IV.
[23] Ibid 468–469; See Mantzari (n 12) Section V(D).
[24] Case C-233/23 *Alphabet and Others v Autorità Garante della Concorrenza e del Mercato* EU:C:2025:110.
[25] Anush Ganesh and Camille Liegre Thomas, 'The CJEU's Google Android Auto Judgment and the Evolution of Refusal to Supply Doctrine' (2025) 9(1) European Competition and Regulatory Law Review, 86-91.
[26] Padilla and Prasad (n 11) 466-467.

historic investment has long since been recovered.[27] The exclusions already listed in the proposed CRs, including costs relating to the platforms' own downstream services and costs already recovered through other developer fees, are supported and should be applied strictly.[28]

The European Commission's implementation decision for FRAND access to data under Art. 6(11) DMA offers an alternative benchmark. In this decision, the Commission finds that the price for access has to strictly reflect the incremental costs of providing access. The access provider is allowed to charge a reasonable rate of return, but this too is tied to incremental costs of providing access as the access provider shall not exceed weighted average capital costs of providing access.[29] An exception remains possible for the access provider if a price that recovers the WACC would make providing access economically unviable.[30] It is interesting to note that the in the implementing decision, the EU Commission makes a distinction between micro, small- and medium size enterprises and large enterprises. The access provider is only permitted to charge a price up to the WACC for the latter, while it cannot exceed the marginal incremental costs of providing access for the former.[31] This recognition of asymmetry between smaller and larger access seekers is also relevant for app marketplaces: large app providers can be gatekeepers in their own right, and require less protection than smaller undertakings. Allowing the access provider to charge a higher price to large digital undertakings facilitates charging prices that only cover incremental costs for access to smaller undertakings. These price-calculating methods may help the CMA to determine whether the remuneration charged is reasonable, even within the bounds of the broad axe approach to calculating fees used by the CAT.

E. Periodic Assessment

A fair and reasonable Steering Fee cannot be a once-and-for-all determination. Digital ecosystems evolve rapidly, and the balance of value exchanged between platform and developer shifts accordingly. Padilla and Prasad's rebuttable presumption that the FRAND price should be no higher than cost is expressly presented as testable against evidence.[32] Additionally, Mantzari has warned that decentralised approaches which leave the platform effectively unconstrained in specifying its own fair terms tend to disadvantage the very business users the obligation is designed to protect.[33]

The compliance reporting obligations in the proposed CRs,[34] including the requirement to maintain cost accounting records sufficient to demonstrate compliance to the CMA's satisfaction, provide the empirical foundation for periodic reassessment. This response recommends that the interpretative notes commit the CMA to reviewing the level and

[27] *Kent v Apple* (n 2) para 667.
[28] Apple and Google Proposed CRs para 12 in Section 3.
[29] *SP – Alphabet – Article 6(11)* (Case DMA.100209), Commission Decision 16/07/2026 [87]
[30] *SP – Alphabet – Article 6(11)* [88]
[31] *SP – Alphabet – Article 6(11)* [89]
[32] Ibid 460.
[33] Mantzari (n 10) 281.
[34] Apple and Google Proposed CRs para 10(c) in Section 3.

structure of Steering Fees on a regular cycle, so that the fee remains proportionate to the evolving economics of the ecosystem rather than embedding historical assumptions.

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Publication

This response may be published in non-confidential form in its entirety. The SCiDA team remains available to provide further input and would welcome the opportunity to engage with the CMA as these CRs are finalised and implemented.