RESPONSE TO INVITATION TO COMMENT

CCIA response to Invitation to comment: SMS investigation into Apple's and Google's mobile ecosystems

About CCIA

CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA's members operate mobile ecosystems and offer digital services through those mobile ecosystems.

Q1: Do you have views on the proposed scope of our investigation and descriptions of Apple's and Google's mobile ecosystem digital activities?

The mobile ecosystems investigation is distinctive for its breadth, including:

- Operating systems and how those interact with the underlying hardware.
- App stores and their terms and conditions.
- Browsers and how they operate and work with upstream operating systems and downstream services.

There are obvious risks with an investigation this broad, in that:

(1) It will include services that are subject to more or less competition, with a risk of the analysis neglecting competitive constraints that apply to some of these services.
(2) Conduct requirements might be designed that do not reflect the differing technical challenges and consumer needs with each service.
(3) Overly broad interventions premised on how these components within mobile ecosystems today interact could chill innovation in the relationship between hardware and software and between software elements within mobile ecosystems.

The CMA can mitigate these risks by bearing them in mind in its analysis, but there may also be an advantage in narrowing the investigation so that it can reflect a clearer share of supply and/or a more precise picture of a given segment.

Q2: Do you have any submissions or evidence related to the avenues of investigation set out in paragraph 70-72? Are there other issues we should take into account, and if so why?

The avenues of investigation for SMS tests (70) should explore dynamic competition. The potential for other participants in mobile ecosystems to create new operating systems in the event that the consumer proposition were to worsen (quality-adjusted prices were to rise). This has clearly occurred over time with strategic entry by:

- App developers - many of which have the ability to reach customers and develop high quality software. Google and Android would be an example.
- Telecoms companies - which have created mobile ecosystems in the past, or partnered to do so.
- Device makers - including makers of mobile phones and makers of other devices in growing segments (e.g. cars). Apple and iOS would be an example.

All of these have their own advantages:

- Ability to develop new app integrations - in recent years, the potential for new apps to develop large followings quickly has been demonstrated, by TikTok for example, and there is a track record of app developers considering new mobile ecosystems as a next step and doing so based on integration with the features of their app.
- Customer relationships - telecoms companies, for example, often have the most direct ability to sell mobile phones and their attached ecosystems to customers. Consumer preferences for a particular mobile ecosystem are the main constraint on telecom companies' ability to use what might otherwise be a decisive influence over how consumers choose their devices.
- Device integration - device makers can develop new means of building mobile ecosystems around new types of devices. This is being pursued as a strategy by developers of AR / VR glasses, for example with the explicit intention of entering the mobile ecosystem market.

The technical resources to build a mobile ecosystem are broadly available and have, in the past, occurred via the means of Android forks for example. Even if individual organisations do not have the ability to deliver new ecosystems, there are numerous historical examples of partnerships to address any capability gaps (e.g. the Symbian operating system). Indeed no company produces an entirely independent mobile ecosystem not interacting with other services to function (e.g. telecoms networks).

CMA's avenues for investigation should include the potential for such entry and the role that has as a competitive constraint now. Crucially it needs to distinguish between whether this would be practical if customers or other users were broadly frustrated with their experience with mobile ecosystems (the relevant question for competition policy), versus whether it is easy in a context in which there are multiple highly competitive mobile ecosystems (i.e. today).

There is a risk otherwise that marginal frictions are wrongly understood as barriers to competition because we are considering a market in which consumers are choosing between two competitive ecosystems. CCIA explored this in its response to the consumer survey invitation to comment, but it will be relevant to other areas of analysis as the investigation proceeds.

That most consumers have in recent years preferred Android or iOS does not mean that the dynamic competitive constraint represented by the potential for one or a group of these ecosystem partners to create new mobile ecosystems is not present. Crucially, this kind of entry and competition between Android, iOS and other existing mobile ecosystems depends upon differentiation as a means to attract customers.

With most customers owning mobile phones, replacing them reasonably regularly and knowing about other options through friends, family and the media, there is no reason to think that they cannot consider whether, for example, they prefer an ecosystem that gives them more or less freedom to alter their phone (and bear any resulting risks). They might not do so in the event that they are broadly happy with the different ecosystems available, but over time ecosystem operators have responded to technological developments and design choices that prove popular among other mobile ecosystems.

This may not be reflected at this stage in any particular expected change in the market in the coming 5 years (though such a change is certainly possible), but instead in the development of Android and iOS responding to current and potential competitors. Firm behaviour in this sector is hard to reconcile with entrenched market power, in particular extensive investment and innovation. Android and iOS are both updated regularly with new features, performance updates and security improvements. This includes both new features and responses to regulatory or wider social expectations (e.g. improving security and privacy protection over time). This reflects that process of dynamic competition alongside static competition between Android, iOS and others.

Q4: Which potential interventions should the CMA focus on in mobile ecosystems? Please identify any concerns relating to Apple's or Google's mobile ecosystems, together with evidence of the scale and/or likelihood of the harms to your business; or to consumers.

The economics of a mobile (or other digital) ecosystem do not necessarily allow for simple interventions. If regulators insist on changes to features that drive the economics of an ecosystem, the changes required to compensate can be substantial. Operators of mobile ecosystems are seeking to balance the needs of different user groups and there is a risk that interventions intended to benefit certain categories of business stakeholders might hurt the interests of others and/or consumers.

Integration within mobile ecosystems is also an important means for innovation, many new services innovate by combining services in new ways, and can be important for security. It is important to allow diverse approaches to discover the right balance over time.

This means interventions should have:

- Clear objectives - what consumer benefit CMA is seeking to achieve.
- Measurable outcomes - how will that benefit be measured.
- Careful analysis of indirect effects - where else in the network the costs of any intervention might be felt.

Q5: Are the potential interventions set out above likely to be effective, proportionate and/or have benefits for businesses and consumers?

Unwinding ecosystem design choices will often result in extensive indirect effects, as operator attempts to balance the interests of different stakeholders are upset. While the proposals are only described at a high level in the invitation to comments, this means that unintended effects are likely if they are overly prescriptive or broad:

Mobile operating systems

- Portability for data and apps (83a) inevitably requires some degree of standardisation (so that data generated in one ecosystem can be used in another). If taken too far it therefore has the potential to undermine differentiation in ecosystems and thereby consumer choice and competition. There are already portability tools that can move data between iOS and Android and going beyond these existing services carries the clear risk of limiting the scope for innovation and choice.
- Integration within ecosystems (either by handset maker or through incentives) achieves outcomes consumers value. Interventions which artificially undermine that integration (83b) are likely to create costs by unwinding that integration. Over time, consumers have chosen between more or less integrated ecosystems and they can still do so today. Diminishing this choice is likely to make differentiation harder, impede competition, and hurt consumer outcomes to the extent that they lose choices that they currently prefer and face greater time costs (potentially with limited commensurate impacts on competition, see section below on the DMA experience).
- Enabling competition needs to be distinguished from requiring that phones serve a niche consumer interest in extensively replacing core phone functions with 3rd party software. Mandated increases in choice over phone functions (83biii) risks creating a worse service for most users. Niche handsets can support consumers that want extensive customisation options, but for many consumers requiring that kind of approach is more likely to increase confusion and undermine effective choice.

App distribution

- Many measures again set the boundaries of integration between apps that function as core components of mobile ecosystems (85a). As noted above, this limits customer choice (customers might choose more integrated ecosystems reflecting their expertise, risk preferences, convenience and other personal motivations) and reduces differentiation and thereby competition and innovation.
- Commercial agreements with handset makers and others (85aii) are an important source of revenue for those parties and pro-competitive to the extent they support diversity in that market. If this is removed, handset makers may need to cut back on innovation, reduce their ranges or exit the market entirely.
- Smaller application developers benefit from the trust established by mobile ecosystem operators. To the extent that there are fewer controls at the ecosystem level (85b), users who prefer this kind of assurance could find it by seeking apps from larger developers, more established brands. This is likely to reduce competition over time. It may also explain a limited consumer takeup of 3rd party app stores where they are permitted. At the same time, consumers will vary in their ability to understand the risks with apps and should be able to make a choice between ecosystems on that basis.
- Limitations on ecosystem operation discretion or requirements to share more information about the indexing for apps risks enabling manipulation of search results (85ciii). Android and iOS are platforms for large numbers of apps and there is a risk that, if app store oversight is compromised, lower quality apps will be able to undermine the function of algorithms that are intended to help consumers find quality apps that suit their needs (e.g. through encouraging patterns in user reviews, or making misleading design choices).

Browsers

- Integration within ecosystems (either by a handset maker or through incentives) achieves outcomes consumers value and undermining this makes it harder to align hardware expectations with software developers, for example (87ai-iii) such that apps generally run as consumers expect and developers intend.
- Restraints on market allocation of defaults for search services (87aiv) risks creating frictions for consumers and undermining innovation and competition in adjacent industries. Having defaults settled based on a financial exchange (open to other similarly-sized competitors) seems fairer in principle than other instances (e.g. Bing, Edge and Windows) where operating systems are open in theory, but in practice heavily promote their own services. Any device maker will need to choose between creating their own service (risking scrutiny over self–preferencing), creating friction in the user experience or developing other forms of relationship that are less open to other market participants.
- Artificial choice architecture (87av) has a risk of introducing time costs for consumers with limited commensurate impact on competition (as noted below in the section on DMA impacts).
- As noted above, agreements with handset makers and others (87avi) are an important source of revenue for those parties and pro-competitive to the extent they support

diversity in that market. If this is removed, handset makers may need to cut back on innovation, reduce their ranges or exit the market entirely.

Q6: What key lessons should the CMA draw from interventions being considered, imposed and/or implemented in relation to mobile ecosystems in other jurisdictions?

The Digital Markets Act is the obvious precedent for the impacts of similar measures envisaged as DMCC conduct requirements.

First, creating artificial boundaries between services (as in 83biii and 87av) creates a material inconvenience cost for users, without a compensating meaningful competition impact. Early academic research on the impact of Google Maps no longer being presented in response to searches suggests it mostly led to users searching for "maps" or "google maps" and then following the same process that they might have before, meaning "higher search costs for users without significantly boosting the discovery or adoption of alternative mapping services in the short run."

Second, there has been limited uptake of alternative app stores as sources of mainstream competition (85a). To the extent they are developing, they complicate platform content moderation choices made from the perspective of either legal compliance or corporate policy, for example:

- an early third party app marketplace has allowed porn apps previously not allowed on the iOS App Store;
- EUIPO has identified sideloading generally as raising IP risks, often through apps that share copyright infringing content (e.g. illegal IPTV services).

These risks will be exacerbated if mobile ecosystem operators are not allowed to cover the costs associated with mitigating these risks and/or communicating with customers to ensure they understand the differences to their own app stores (85aiii).

At a broader level, the Digital Markets Act (DMA) faces significant legal uncertainty arising from the complex interplay of its provisions with other pieces of legislation, including the Digital Services Act (DSA), General Data Protection Regulation (GDPR), competition law, and telecom rules. Concerns also exist regarding the DMA's potential impact on fundamental rights, such as intellectual property rights, and the proportionality of its obligations. This inherent complexity has been further compounded by the lack of decisive and timely guidance from the European Commission on procedural aspects of the DMA's implementation, such as the extent to which gatekeepers can test their commitments during the pre-investigation phase. All of this highlights the practical and policy risks associated particularly with the accelerated process that the CMA is currently pursuing for its SMS designation process. If the CMA does not set out conduct requirements that are practical to comply with and stable, there is a greater risk that

services will exit or reduce their functionality in the UK market, with consequences for consumers.