

Microsoft's Response to UK CMA Market Investigation of Mobile Browsers and Cloud Gaming – Working Paper 6

I. Executive summary

Microsoft respectfully submits the following comments on the CMA's Mobile Browsers and Cloud Gaming Market Investigation Working Paper 6.¹ Microsoft views the Working Papers as a significant step towards measures to facilitate increased competition in mobile ecosystems. Our comments are constructive suggestions for the CMA's consideration as it proceeds with its Market Investigation.

II. Relevant market

Microsoft agrees with the proposed market definitions identifying distinct markets for: (i) distribution of native apps on iOS devices (with native Android apps and distribution via non-mobile devices falling into other distinct markets)² and (ii) distribution of web apps on iOS devices.³

In relation to the market for distribution of web apps on iOS devices, Microsoft reiterates its prior comments regarding the inferior functionality of, and the difficulties end users have discovering and accessing, web apps (compared to native iOS apps).⁴ That inferior functionality is in large part the result of Apple's WebKit requirement⁵ and the fact that Apple does not permit web apps to access iOS and device hardware features and functionality that are accessible to native apps.

Beyond the restrictions that the WebKit requirement imposes on the development of web apps, Apple's App Store policies do not allow the development of distribution channels outside the App Store which could facilitate access to and take-up of CGSs.⁶ In particular, given the discoverability and accessibility limitations of web apps, the prohibition of alternative iOS app stores represents a major barrier to take-up.⁷ As noted by the CMA, "app stores are a gateway between mobile device users and app developers".⁸ In the case of iOS devices, this gateway role is exacerbated by Apple's

¹ CMA, 'WP6: cloud gaming services: nature of competition and requirements for native apps on mobile devices' (hereinafter: WP6), available at https://assets.publishing.service.gov.uk/media/6687b9fd899a6f92e5d9cd46/WP6_-_Cloud_gaming_services_nature_of_competition_and_requirements_for_native_apps_on_mobile_devices.pdf.

² CMA, WP6, at paras. 3.14-3.21.

³ CMA, WP6, at paras. 3.14-3.16. In this context, Microsoft notes that it will be important for the Market Investigation to appropriately define the markets for browser engines into which the browser engines on which web apps are built (Section 3 of Working Paper 1 does not define these markets). Defining these markets will create the framework for fully considering the challenges faced by web app developers as a result of Apple's requirement that they use WebKit for iOS apps. Assessing the platform-specific nature of the iOS browser engine market will enable the CMA to reach appropriate demand-side conclusions – namely that demand for browser engines comes from browser (and web app) developers, not end users (*cf* Working Paper 1 at para. 3.22). Unlike end users, developers assess whether a browser engine offers appropriate functionalities and compare the functionalities offered by different browser engines. As illustrated by the dynamics of Android developers, developers who can will choose the browser engine best suited for their technical and business needs.

⁴ CMA, WP6, at para. 3.14(a).

⁵ Apple's WebKit restriction decreases competition between browsers, constrains the ability of browser developers to innovate and develop new browser functionality, and forces those developers to devote resources to unnecessarily coding a WebKit version of their app. WebKit has not been brought to functional parity with other browser engines such as Blink/Chrome. Rather, Apple has only addressed some of the most glaring shortfalls of WebKit that precluded developers from incorporating functionality such as push notifications, badging, offscreen canvas, and screen notifications in their apps, and from being able to access APIs for compression streams, user activation, and storage. Because WebKit still does not offer the same functionalities as other browser engines, the WebKit requirement negatively impacts on competition based on functionality, and in the distribution, of web apps.

⁶ Apple Developer Program License Agreement, at Article 7, available at <https://developer.apple.com/support/terms/apple-developer-program-license-agreement/#ADPLA7.1>.

⁷ CMA, WP6, at paras. 3.14(a).

⁸ CMA, WP6, at para. 3.9.

conduct as a result of which iOS users are not habituated to discovering apps outside the App Store.⁹

III. App Review Guidelines (Guidelines) restrictions

Changes introduced by Apple in January, March and April 2024 to Guidelines 4.9 and 4.7 remove certain of the restrictions that had previously applied to Cloud Gaming native apps.¹⁰

As summarized in WP6, Microsoft identified a number of other provisions in Apple's Guidelines that continue to limit its ability to distribute and operate a Cloud Gaming iOS native app (namely Guidelines 2.1, 2.5.2, 2.5.6, 3.1.1, 3.1.2(a), 3.1.3(b), 3.2.2(i), 3.2.2(ii), 4.2.2., 4.2.7(e)).¹¹ For an overview of Microsoft's position on these Guidelines, Microsoft refers to its previous submissions.

Microsoft notes that, despite the changes Apple made to the Guidelines between January and March 2024, many of them still represent an obstacle to Cloud Gaming native apps. These guidelines cannot be complied with by game catalogue apps incorporating third party games (for both technical and economic reasons). For example:

- Guideline 3.1.3(b)¹² forces CGSPs to make available to users all content, subscriptions or features that are available across other platforms within their iOS app as in-app purchases. Given the IAP terms imposed by Apple (see below), it is not feasible for Cloud Gaming app developers to do this, as a result of the cost and time required offer content on the financial terms imposed by Apple.¹³ In this context, this Guideline is effectively a most-favoured nation clause that prohibits CGSPs from managing the impact of Apple's IAP requirements by offering consumption-only iOS apps (which would enable iOS users to use content purchased on other platforms without being able to purchase additional content on their iOS device). It precludes developers from offer content on any platform if the content cannot be offered for purchase on iOS.

Beyond that, from a practical perspective, CGSPs have no way to ensure that third-party game developers recode their games to comply with this requirement.¹⁴ As a result, the restriction effectively precludes CGSPs from offering third-party developed games.

- Guideline 3.1.1¹⁵ prevents native apps from linking outside the app/game to enable the purchase of digital products or services for UK apps. While Guideline 3.1.3(a) provides an exception from the linking out prohibition for 'Reader' apps, Apple continues to take the position that game streaming apps do not qualify for this

⁹ See [MSFT reply to CMA RFI of 15 April 2024](#), at p. 4.

¹⁰ Apple, App Review Guidelines, Guideline 4.9 has been deleted altogether; Guideline 4.7 has been heavily revised. Changes are available at <https://www.appstorereviewguidelineshistory.com/>.

¹¹ CMA, WP6, at para. 4.27.

¹² Apple, App Review Guidelines, Guideline 3.1.3(b), available at <https://developer.apple.com/app-store/review/guidelines/#multiplatform-services>.

¹³ Note that implementing Apple's IAP would require the implementation of a system able to distinguish between in-app purchases and external cloud gaming platform purchases. The cost and time required for such duplication are prohibitive. (See further [Microsoft's reply to RFI of April 15, 2024](#), at p. 20, and WP6, at para. 4.28(b)).

¹⁴ CMA, WP6, at para. 4.28(c).

¹⁵ Apple, App Review Guidelines, Guideline 3.1.1, available at <https://developer.apple.com/app-store/review/guidelines/#multiplatform-services>.

exception.¹⁶ [REDACTED] Audio-visual content streamers increasingly offer interactive content, and use exactly the same technology as game streams. [REDACTED]

Further, it is worth noting that Guideline 3.1.1(a) specifies that, in certain circumstances, developers may apply for external purchase link entitlements. As Apple’s website makes clear, this is only being offered as the result of the enforcement activities of legislators and regulators around the world.¹⁷

In conclusion, Apple’s changes to its Guidelines have not made it possible for CGSPs to provide their apps in the App Store.

IV. The IAP Requirement

Apple takes the position that it is responsibility of CGSPs to set the terms and arrangements for revenue sharing with third-party game developers.¹⁸

This position fails to take any account of the fundamentally multi-platform model for CGSPs: their intent is to enable users to access games across multiple surfaces (of which iOS devices are only one). As Apple’s position demonstrates, any platform with market power can seek to extract a disproportionate share of revenues where the CGSP must price to gamers in a manner that makes the multi-platform opportunity attractive to those gamers.

Second, it rests on the premise that Apple’s contribution through the App Store is greater than that of both game developers and CGSPs for all post-game acquisition IAPs (where Apple contributes nothing to the purchase, not even on discoverability and accessibility),

[REDACTED]

In fact, Apple’s IAP commission fee is set at a level that is neither economically sustainable nor justifiable. The 30% commission fee makes it impossible for Microsoft to effectively monetize its cloud gaming service offering, given that Guideline 3.1.3(b) prevents different content, subscriptions or features (including consumables in multi-platform games) being offered to iOS users (as compared to the content, subscriptions and features offered on other platforms).

As observed by the CMA in its Mobile Ecosystem market study, the 30% fee imposed by Apple on IAPs is the result of a lack of competition in the distribution of native iOS apps.¹⁹

V. Conclusions

Web apps do not represent a comparably discoverable or functionally equivalent alternative to native apps, in part because of the WebKit restriction imposed by Apple. However, Apple’s Guidelines (including the in-app purchase commission fee, prohibition

¹⁶ According to Apple, “cloud gaming apps ‘do not involve the passive consumption of content acquired elsewhere and therefore are not appropriate for inclusion within the Reader guideline’” (see CMA, WP6, at para. 4.11).

¹⁷ Apple, ‘External Purchase’, available at https://developer.apple.com/documentation/storekit/external_purchase?language=objc. For instance, following the EU DMA Apple changed its rules to allow external purchases for all apps in the EU.

¹⁸ CMA, WP6, at para. 4.15.

¹⁹ CMA, Mobile Ecosystem – Market study final report, at p. 82, available at https://assets.publishing.service.gov.uk/media/63f61bc0d3bf7f62e8c34a02/Mobile_Ecosystems_Final_Report_amended_2.pdf.

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on sideloading and prohibition on third-party distribution), continue to represent an obstacle to the development of native iOS Cloud Gaming service apps, such that CGSPs are not in the position to offer native iOS apps.