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Which? response to the CMA's proposed market investigation reference in relation to mobile browsers and cloud gaming

Which? supports the CMA's proposal to make a market investigation reference in relation to mobile browsers and cloud gaming. The evidence presented by the CMA in its mobile ecosystems market study is persuasive and indicates that UK consumers are likely to be facing higher prices, lower quality and less choice as a result of the behaviour of Apple and, to a lesser extent, Google. By making a market investigation reference the CMA will be able to implement remedies that improve the competitiveness of these markets and reduce consumer harm.

The competitiveness of the mobile browser market is hugely important to UK consumers. In 2021, 88% of UK online adults accessed the internet using a smartphone and 43% with a tablet. For 21% of adult internet users, a smartphone was the only way in which they accessed the internet, and an average user spent 2 hours 55 minutes a day online using a smartphone. With regard to cloud gaming, Ofcom estimates that there were 2.1 million paying subscribers to cloud gaming services at the end of 2021. Only a subset of these will be currently accessing these services through mobile devices, but it demonstrates the importance of this market to UK consumers.¹

We agree with the CMA that it has identified multiple features in these markets that could result in adverse effects on competition. The features described by the CMA could be expected to lead to reduced innovation and investment, and this is substantiated by the submissions of many parties to the mobile ecosystems market study. The consequence for this for consumers is likely to be instances of poorer user experience, less choice and, in some cases, higher prices.

We also agree with the CMA that, on the basis of the evidence presented, the reference test has been met. That the suspected problems are of sufficient scale is inarguable: these are large markets affecting many consumers; the concentration of market power with Apple and Google means that the features affect substantial proportions of the markets (and cumulatively almost all of the browser market); and the CMA demonstrates the persistence of these features. It is also clear that a market investigation reference will make appropriate remedies available.

Overall though, while we welcome the CMA's proposal to make a market investigation reference, we must acknowledge that this is a second best approach to addressing these issues. It is deeply regrettable that the Digital Markets Unit (DMU) has not yet been empowered to tackle the enduring market power of firms designated as having strategic market status.

¹ All statistics taken from Ofcom (2022), *Online Nation 2022 Report*

The mobile ecosystems market study identified a wide range of harms beyond those included in this market investigation reference, for example weak competition in app distribution. It is not practicable for the CMA to make market investigation references to address many of these harms and they would be best addressed by the DMU being able to implement pro-competitive codes of conduct. Further, in evolving digital markets that are characterised by features not common in offline markets, the ability of the DMU to test and refine remedies is likely to give superior outcomes to the approach that must be used in market investigations.

Which? will continue to make the case to the government that it must swiftly bring forward a draft Digital Markets, Competition and Consumer Bill, as it committed to do so in the Queen's Speech, and that this should progress to a full Bill in the next legislative session.

About Which?

Which? is the UK's consumer champion. As an organisation we're not for profit - a powerful force for good, here to make life simpler, fairer and safer for everyone. We're the independent consumer voice that provides impartial advice, investigates, holds businesses to account and works with policymakers to make change happen. We fund our work mainly through member subscriptions. We're not influenced by third parties – we never take advertising and we buy all the products that we test.

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