

CMA Board Advisory Steer

Mobile browsers and cloud gaming market investigation

Introduction

1. This is the CMA Board's advisory steer to the Inquiry Group (the Group) for the market investigation reference (**MIR**) relating to the supply of mobile browsers and mobile browser engines, and the distribution of cloud gaming services through app stores on mobile devices (and related ancillary goods and services) in the United Kingdom (the **Steer**).
2. This Steer is provided pursuant to the CMA's procedural guidance on market studies and market investigations which states that, in addition to drafting the formal terms of reference for the market investigation, the CMA Board may append an advisory steer to the MIR decision setting out its expectations regarding the scope of the market investigation and the issues that could be its focus.
3. The Group is expected to take this Steer into account, although it will continue, as required by the legislation, to make its statutory decisions independently of the CMA Board.^{1,2}

Advisory steer

4. This Steer forms part of the CMA's decision to refer the market for the supply of mobile browsers and mobile browser engines, and the distribution of cloud gaming services through app stores on mobile devices in the United Kingdom for

¹ [Market studies and market investigations: Supplemental guidance to the CMA's approach](#) (Paragraph 3.39, CMA3, July 2017)

² In its [Response to the consultation on guidance on market investigations](#) the CMA stated: "We believe [the steer] will help maximise the potential synergies between MSs and MIs carried out by the CMA and reduce the risk of unnecessary duplication, by allowing the Board to take more explicit account of the work undertaken in an MS in setting out its views on the appropriate scope of an MI. We therefore consider that these changes are consistent with the creation in ERR13 of the CMA as a single competition authority, a key rationale for which was to avoid duplication and to bring about greater efficiencies in markets work, while preserving the independence of decision-making between MSs and MIs which remains central to the regime." The CMA's report on the responses to its consultation also indicates that the steer is 'simply intended to provide additional clarity over the views (if any) of the Board on the expected scope of the MIR, including issues to be addressed or issues that it considers do not require further consideration, based on the previous work undertaken.'

investigation ('mobile browsers and cloud gaming MIR'). It is separate from, but should be read in conjunction with, the [Terms of Reference](#).

Focus of the MIR

5. The CMA Board is satisfied that the relevant statutory threshold for making this MIR³ in relation to mobile browsers and cloud gaming has been met for the reasons given in chapters 5 and 6 of the mobile ecosystems market study final report (the Market Study Report).
6. The Market Study Report indicates that a concern common to several features of the markets targeted by this MIR is the extent to which restrictions imposed by Apple within its mobile ecosystem are hindering disruptive innovation that could transform the way people access and experience content online.
7. Both in the case of web apps (applications that run within browsers) and cloud gaming services, these restrictions may affect or have the potential to affect millions of UK businesses and consumers. Many stakeholders have told us that decisive and timely action in these areas is critical. This is one of the key reasons for making a MIR.
8. The Group will also note that the Market Study Report identified a number of other features of mobile browsers which are equally relevant to Apple's and Google's mobile ecosystems.
9. A key issue is whether the restrictions imposed by Apple can be justified on grounds of protecting users' privacy, security or safety online. The Group will investigate further the concerns we identified in the Market Study Report and test the justifications given by Apple.
10. The MIR has been scoped with the intention of enabling any required targeted action in relation to mobile browsers and cloud gaming, with a focus on specific and discrete issues. That said, given the interconnected nature of the markets concerned, the scope of the MIR is less clearly defined in some areas, as explained further in the Decision to make a MIR ([the Decision](#)). The Board's steer on these issues is set out below.

Web compatibility

11. It is important to understand this issue and the role that web compatibility plays in the browser market. However, our view is that this should not be a priority area for intervention because:

³ [Enterprise Act 2002](#), section 131: the relevant statutory threshold for making an MIR is that there are reasonable grounds for suspecting that the following features, alone or in combination may prevent, restrict or distort competition.

- There are three open-source stable browser engines with committed and responsible stewards. If there are no barriers to competition between them, this may be enough to drive competition; and
- The dynamics of the market that appear to limit the number of browser engines, such as the existence of strong indirect network effects driven by web compatibility, may not be capable of resolution through CMA intervention as part of the MIR. This is because web standards are managed through voluntary web standards bodies that operate on a global level. In our view, such bodies would be difficult to influence on an ongoing basis through the market investigation tool.

In-app browsing

12. This is an area where there may be merit in gathering further evidence and seeking greater clarity on the nature and magnitude of any concerns. The Market Study Report noted that a significant and growing proportion of mobile browsing is taking place through in-app browsers; and it identified some potentially problematic practices with respect to in-app browsers whereby users' preferences regarding default and privacy settings are not being applied when clicking on a link within a native app.
13. The Group will be aware that the Market Study Report did not reach a firm conclusion on whether any interventions may be needed or be feasible in this area. Therefore, this may be an area where the Group may decide, after further investigation, that the case for intervention is not clear cut and, on this basis, decide to de-prioritise it. Consideration of interventions in this area should be kept distinct from interventions relating to dedicated browser apps, to the extent possible.

Revenue sharing agreements

14. The CMA's market studies into online platforms and digital advertising, and mobile ecosystems have identified that Google has a large number of agreements with mobile device manufacturers and browser vendors (including Apple) that support widespread use of its services, including its search engine and its browser, Chrome. As part of many of these agreements, Google shares a proportion of its search advertising revenue. These agreements are numerous, complex and interrelated. Many have some connection to the browser market, but due to their complexity, assessing and potentially addressing each of them could lead to a substantial expansion in scope of the MIR.
15. In light of this, we advise the Group to prioritise contractual or revenue sharing agreements whose primary purpose and/or effect appears to be to limit the ability or incentives for browser vendors to compete with one another within a given mobile ecosystem.

Conclusion

16. In the conduct of this inquiry and in considering any possible remedies, we advise the Group that it should keep abreast of relevant developments, notably in relation to the UK government's proposed new digital regime and forthcoming legislation, other CMA cases in digital markets, and international developments. Furthermore, we advise the Group to be mindful of the lessons the CMA has learnt from the implementation of Open Banking (introduced following the Retail Banking Market Investigation).