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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 3 on Co-operation and Enforcement

Monopolisation, Moat Building and Entrenchment Strategies – Note by the United Kingdom

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This document reproduces a written contribution from the United Kingdom submitted for Item 2 of the 139th meeting of Working Party 3 on 11 June 2024.

More documents related to this discussion can be found at
www.oecd.org/competition/monopolisation-moat-building-and-entrenchment-strategies.htm

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1. The UK Competition and Markets Authority (CMA) welcomes the opportunity to contribute to the OECD’s Roundtable on “Monopolisation, Moat Building and Entrenchment Strategies”. The OECD has defined “economic moats” as “key competitive advantages that allow a company to protect its core monopoly from rivals on a long-term basis”. We interpret this to refer to intrinsic barriers to entry and expansion which make it challenging for an incumbent’s position to be challenged. In contrast the OECD defines “entrenchment” as “strategic actions adopted by a dominant firm to maintain its competitive advantage”.

2. The CMA has not defined “economic moats” and “entrenchment” in the same way as the OECD. However, the concepts covered by the OECD’s definitions have been relevant in a number of areas of the CMA’s work. In this note we summarise some recent UK cases in which “economic moats” and “entrenchment” (as defined by the OECD) have been relevant. These examples illustrate how incumbents can have incentives to take actions (the OECD’s definition of entrenchment) so as to exacerbate pre-existing competitive advantages (the OECDs “economic moats”).

3. We also note that the UK Government is shortly expected to pass legislation to formally establish the Digital Markets Unit and to create a new Strategic Market Status (SMS test).¹ The SMS regime is intended “to unlock the benefits of competition in digital markets and tackle the strategic market position of a small number of key digital firms”.² The draft legislation identifies the SMS conditions as that the firm:

1. has substantial and entrenched market power; and
2. a position of strategic significance, both in respect of the digital activity.

4. Once the legislation has passed the CMA will publish draft guidance that will explain the CMA’s proposed interpretation of “entrenched” for the purposes of the SMS test and its proposed approach to assessing whether market power is “substantial and entrenched”.

1. Cases where the OECD’s concepts of “economic moats” and “entrenchment” have been relevant in the CMA’s work

5. While the CMA has not formally distinguished between “entrenchment” and “moats” in the way envisaged by the OECD’s definitions, the issues covered by these terms have been important in a number of CMA cases. Below we summarise some notable examples from the CMA’s recent and ongoing work in digital markets. However, such issues are not unique to digital markets, indeed the CMA has a long experience of considering such issues in more “traditional” markets.³

¹ The parallel to the UK’s SMS test is the European Commission’s designation of firms as “gatekeepers” under the Digital Markets Act.

² See [A new pro-competition regime for digital markets - government response to consultation - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/a-new-pro-competition-regime-for-digital-markets).

³ For example, the Competition Commission’s (a predecessor of the CMA) [2008 Groceries Market Inquiry](#) considered both inherent barriers to entry and expansion (the UK planning system) and

1.1. Online Platforms and Digital Advertising Market Study

6. The CMA's Online Platforms and Digital Advertising Market Study found that Google and Facebook were protected by such strong incumbency advantages – including network effects, economies of scale and unmatched access to user data – that potential rivals could no longer compete on equal terms.⁴

7. The CMA's report identified a number of characteristics of the search and display advertising markets that inhibit entry and expansion by rivals and undermine effective competition. These include:⁵

1. Significant economies of scale in relation to the crawling and indexing activities required for search;
2. Advantages to scale in user queries and click behaviour in search; and
3. Strong network effects in social media.

8. The CMA also identified actions by Google and Facebook which affect the competitive constraints they face. For example, the CMA found that Google's extensive default positions across devices and browsers, and in particular on almost all mobile devices in the UK, act as a barrier to expansion for other search engines. The CMA noted that Google had negotiated agreements with Apple and with many of the largest phone manufacturers under which it pays a share of search advertising revenues to these partners in return for Google Search occupying the default search positions on the device.⁶ Similarly the CMA described how, by restricting other social media platforms' ability to interoperate with Facebook's services, Facebook is able to reduce the competitive threat from new entrants and smaller rivals.⁷

1.2. Mobile Ecosystems Market Study

9. The CMA's Mobile Ecosystems Market Study found that Apple and Google have substantial and entrenched market power in mobile operating systems⁸ and native app distribution⁹.

10. In reaching this conclusion the report identified a number of factors which make it challenging for others to compete with Apple and Google. These factors include intrinsic factors such as the presence of significant indirect network effects (ie more apps and content on an operating system/app store attracts more users and vice-versa) which create a 'chicken and egg' problem for new entrants or those wanting to expand.¹⁰

actions by incumbents which exacerbated those barriers to entry and expansion (eg land agreements which could inhibit entry by competitors).

⁴ [Online Platforms and Digital Advertising Market Study Final Report](#), page 5.

⁵ [Online Platforms and Digital Advertising Market Study Final Report](#), paragraphs 23-30.

⁶ [Online Platforms and Digital Advertising Market Study Final Report](#), paragraphs 33-34.

⁷ [Online Platforms and Digital Advertising Market Study Final Report](#), paragraph 3.256.

⁸ [Mobile Ecosystems Market Study Final Report, page 28](#)

⁹ [Mobile Ecosystems Market Study Final Report, page 82.](#)

¹⁰ [Mobile Ecosystems Market Study Summary, page 11.](#)

11. The report also identified a number of actions taken by Apple and Google which may contribute to their position, for example:

- Google’s agreements with and payments to third-party manufacturers by which Google effectively pays manufacturers to use its operating system and which would be very difficult for new entrants to replicate.¹¹
- Restrictions on the functionality of web apps within Apple’s ecosystem which contribute to the substantially lower usage of web apps than native apps and, which also undermine the availability of web apps on Android.¹²
- Apple’s App Tracking Transparency policy (ATT) where the evidence reviewed by the CMA was generally consistent with the fact that ATT had undermined alternative discovery channels to Apple’s App Store, thereby strengthening Apple’s market power in app distribution.¹³

1.3. Google Privacy Sandbox

12. The Google Privacy Sandbox case¹⁴ relates to Google’s proposal to remove third party cookies on the Chrome browser and Chromium browser engine. In the Online Platforms and Digital Advertising Market Study the CMA described the fundamental role that third party cookies play in digital advertising; helping businesses target advertising effectively and funding free online content for consumers, such as newspapers.¹⁵ Specifically, open display advertising relies on the ability to identify individual web users and ‘track’ them across web pages by means of third-party cookies. and other forms of cross-site tracking.

13. The concern was whether removal of third-party cookies could undermine competition in digital advertising, entrenching Google’s market power. In particular, there were concerns about the impact that the Privacy Sandbox proposals might have in terms of third parties’ unequal access to the functionality associated with user tracking, Google self-preferencing its own ad tech providers and owned and operated ad inventory, and the imposition of unfair terms on Chrome’s web users.¹⁶

14. The investigation was opened in January 2021 and in February 2022 the CMA accepted commitments from Google. These commitments involve the CMA working with Google on the design and assessment of the Privacy Sandbox proposals before a final decision is taken to remove third-party cookies from Chrome.

¹¹ [Mobile Ecosystems Market Study Final Report, page 28.](#)

¹² [Mobile Ecosystems Market Study Final Report, page 82](#) and paragraphs 4.126-4.141.

¹³ [Appendix J: Apple’s and Google’s privacy changes \(publishing.service.gov.uk\)](#), paragraph 178.

¹⁴ [Investigation into Google’s ‘Privacy Sandbox’ browser changes](#)

¹⁵ Eg [Online Platforms and Digital Advertising Market Study Final Report](#), Section 5.

¹⁶ [Decision to accept commitments offered by Google in relation to its Privacy Sandbox proposals](#), paragraph 1.7.

1.4. Cloud Market Investigation

15. The CMA is currently undertaking a market investigation into public cloud services.¹⁷ This investigation follows an earlier study by Ofcom (the UK’s communications regulator). The CMA’s Issues Statement¹⁸ identifies four theories of harm which the CMA is seeking to investigate. These theories of harm include a mix of inherent advantages of established firms and strategic actions by those firms which may affect competition.

16. The specific theories of harm the CMA is investigating are whether:¹⁹

- Technical barriers make switching and multi-cloud harder and limit competition between cloud service providers. Ofcom found that a significant share of customers is likely to face high technical barriers to using multiple cloud providers and switching which make it more difficult and/or costly for customers to use multiple clouds or switch provider. Moreover, Ofcom found that some of these technical barriers are not justified by the inherent nature of the technology.
- Egress fees charged to customers to transfer data out of their provider’s cloud create barriers to switching and the use of multi-clouds.
- Committed spend discounts raise barriers to entry and expansion for smaller cloud service providers by incentivising customers to concentrate their business with one provider.
- Software licensing practices by cloud service providers restrict customer choice and prevent effective competition.

2. Summary

17. In summary, the CMA has not used the terms “entrenchment” and “moats” in its work in the same way as defined by the OECD. However, the CMA has considered the issues covered by the OECD’s definitions of “entrenchment” and “moats” and this paper has described some notable recent examples. Additionally, the UK Government is expected to pass legislation shortly that will establish the Strategic Market Status (SMS) regime and where the test for whether a firm has SMS includes a requirement that a firm has “substantial and entrenched market power”. Once the legislation has passed the CMA will publish draft guidance that will explain the CMA’s proposed interpretation of “entrenched” for the purposes of the SMS test and its proposed approach to assessing whether market power is “substantial and entrenched”.

¹⁷ [Cloud services market investigation case page.](#)

¹⁸ [Public cloud infrastructure services market investigation Issues Statement.](#)

¹⁹ [Public cloud infrastructure services market investigation Issues Statement](#), paragraphs 22-35.