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**Competition and Markets Authority**
Digital Markets Unit, Apple Mobile Platform team
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**By email**

19 December 2025

Dear CMA team,

**Implications for in-app steering arising from the CAT's recent judgment in *Kent v Apple*, and the Ninth Circuit Court of Appeals most recent judgment in *Epic Games v Apple***

1. We are writing on behalf of the Coalition for App Fairness ("**CAF**"), which as you know strongly supports the CMA's work in implementing the new digital markets regime. The CMA is considering conduct requirements that would include a prohibition of Apple's anti-steering provision. We understand that the CMA is considering whether Apple would be allowed to charge an app developer where an app developer steers users to an external payment provider for in-app purchases ("**in-app steering**"), e.g. link-outs to the developers' website to complete payment. As the CMA knows, CAF strongly believes that Apple should not be permitted to charge for this because it is not providing a service to the developer in this situation. The CAT's judgment in *Kent* is consistent with CAF's position. This letter also updates the CMA on the recent Ninth Circuit judgment in the *Epic Games* proceedings in the US.

***UK developments***

2. In *Kent* [2025] CAT 67,[1] the Competition Appeal Tribunal ("**CAT**") found that Apple acted unlawfully by imposing exclusionary practices on app developers in relation to two markets: one of "iOS app distribution services" and the other of "iOS in-app payment services", and by charging developers an excessive and unfair headline commission rate of 30% for those services. The CAT found that in a competitive market Apple's commission would be between 15% and 20% for iOS app distribution services, and 10% for iOS in-app payment services.

[1] Available here: https://www.catribunal.org.uk/sites/cat/files/2025-10/14037721%20Dr.%20Rachael%20Kent%20v%20Apple%20Inc.%20and%20Apple%20Distribution%20International%20Ltd%20-%20%20Judgment%20%5B2025%5D%20CAT%2067%2023%20Oct%202025_0.pdf.

3. A question arises as to whether the CAT's 10% benchmark for in-app payment services should also be applied for in-app steering. It should not because the services are completely different.

4. The CAT did not explicitly consider what is or is not a fair price for Apple to charge in the case of in-app steering. It cannot, however, rationally be inferred from the CAT's judgment that 10% would be a fair price for in-app steering. For reasons explained below, the proper inference from *Kent* is that the commission due to Apple in the case of in-app steering would be zero.

    a. **The CAT's methodology is service-specific, and the 10% fair price relates to services that Apple does not provide in in-app steering**: In determining a fair price for iOS in-app payment services, the CAT concluded "*10% represents a fair and reasonable benchmark for the level of Apple's Commission in the iOS in-app payment services market counterfactual*" [959] (emphasis added). When the CAT found that 10% commission rate, it was considering a fair price in circumstances where Apple provides the "in-app payment services".

    "*In-app payment services*" are defined in *Kent* by reference to a series of services, namely: "c*heckout, collecting and managing payment information, payment processing, customer support (including refunds, cancellation, chargeback services, and disputes), subscription management, fraud prevention, tax calculations and remittance, currency conversions, record keeping, distributing funds, family sharing, authorising the unlocking of in-app content or functionality, and cross-device support*." (page 390).

    For in-app steering, these services are provided by the alternative payment services provider and/or the developer, not by Apple. Therefore, the 10% commission that the CAT found is in exchange for services which Apple would not provide in the case of in-app steering (for instance, payment processing).

    b. **The CAT's chosen comparator, Paddle, confirms the focus on payments services**: In calculating a fair price, the CAT used the prices of payment service provider, Paddle, as the benchmark ("*Paddle is clearly a useful comparator for the provision of payment services*" [927]). If Apple is not providing those payment services (as is the case for in-app steering), Paddle is no longer the appropriate benchmark. If Apple were then to charge 10% and the payment services provider were also to charge, the developer would (on the logic of the CAT's approach) end up paying twice for the same services. As an aside, we also note that Paddle's product seems to include services that Apple does not provide, so if anything Paddle is a generous benchmark for Apple.

    c. **There is limited other basis to infer a significant fee to Apple (if any) for in-app steering**: The CAT does provide an uplift of 3-4% above Paddle's effective commission rate (of 6-7%) for "*the ability of Apple to maintain some competitive advantage from its strong brand and the benefits of its integrated services (including*

*the additional features it offers)*" [959]. Apple may therefore argue that it is entitled to charge at least 3-4% for in-app steering. That would not be justified on the CAT's reasoning. The CAT provided that 3-4% uplift for Apple's "*strong brand*" and its "*integrated services*" in the context of Apple providing a fully integrated payment solution. In the case of in-app steering, the developer and the user do not benefit from those "*integrated services*" in the same way. For example, the app developer (and consumer) would not be making use of (what the CAT calls) Apple's "*integrated and centralised service for iOS app distribution and in-app payment services*" [784]. Apple's strong brand is not relevant in a situation where Apple is not providing the payment services, because a customer only receives value from the trust and quality-assurance of a brand in a situation where it is entrusting that brand to directly provide a service.

5. For the avoidance of doubt, it would obviously also be inappropriate to use what the CAT deemed a fair price for "iOS app distribution services" (15-20%) to infer that Apple is permitted to charge a 15-20% commission for in-app steering. When considering app distribution services, the CAT was concerned only with the commission related to the "*purchase and download of apps from app stores*", and explicitly excluded user payments after the download of apps. See eg [877]. In other words, the CAT found that Apple is *only* permitted to charge a 15-20% commission on purchases of *paid* apps.

6. One other point to note is that in the *Kent* case, the Tribunal did not consider the value brought by app developers to the iOS ecosystem; it only focused on the value brought by Apple. That is presumably because the class representative, acting on behalf of consumers rather than app developers, did not present evidence on that point. The CAT can only take decisions based on the evidence presented by the parties. The CMA is in a different position because it must take account of the value brought by developers and has relevant evidence from developers. No user needs a state-of-the-art iPhone if there are few good apps and, in the case of in-app steering, the app developer surely provides at least as much (if not more) value as the operating system that is not providing any service in that situation.

**US developments**

7. We would also like to update the CMA on developments in the *Epic Games v Apple* case in the US.

8. On 11 December 2025, the Ninth Circuit Court of Appeals published its decision on Apple's appeal of the District Court's contempt order, upholding most of that order and referring back to the District Court for further action on certain discreet issues. That decision is attached.

9. As the CMA is aware, the District Court had found Apple in contempt of its injunction addressing Apple's anti-steering rules which had been found, and previously upheld by the Ninth Circuit, as unlawful.

10. After Apple's appeals were exhausted, Apple claimed to "comply" with the District Court's injunction by imposing new conditions on steering, including a 27% fee and unreasonable restrictions on how app developers could present links and buttons for steering. Following a series of evidentiary hearings, the District Court found that Apple had deliberately violated the injunction and issued an order finding Apple in contempt for imposing those conditions.

11. In finding Apple in contempt, the District Court permanently restrained and enjoined Apple from:

> "***Imposing any commission or any fee on purchases that consumers make outside an app****, and as a consequence thereof, no reason exists to audit, monitor, track or require developers to report purchases or any other activity that consumers make outside an app.*" (emphasis added)

12. The Ninth Circuit upheld the District Court's finding of contempt. Notably, it upheld the court's finding that Apple, "*willfully chose to ignore the Injunction, willfully chose to create and impose another supracompetitive rate and new restrictions, and thus willfully violated the Injunction*" (page 24). It is also found – consistent with what Apple has also done in the UK, Europe and everywhere else its developer restrictions and abusive fee structure have been challenged – that Apple sought to avoid the prohibition on anti-steering by burdening any decision by a developer to steer with fees and restrictions that made such a decision uneconomic. Notably, the Ninth Circuit said, "*Apple is not the first litigant to try burdening what it could not prohibit*" and "*Apple has demonstrated that charging commissions on linked-out purchases gives it the power to prohibit them*" (page 27).

13. Two issues will be sent back to the District Court for further fact finding and review.

    a. First, with respect to the link design restrictions, the Court made some minor modifications to the contempt order (described at pages 34-36).

    b. Second, and more relevant to the CMA's consideration of in-app steering remedies, is the Ninth Circuit's discussion of Apple's commission and the District Court's order prohibiting Apple's collection of any commission. (see pages 41-42).

14. The Ninth Circuit noted in theory that Apple might be able to charge a commission if it could prove "*costs*" that are "*genuinely and reasonably necessary for its coordination of external links for linked-out purchases, <u>but no more</u>.*" (emphasis added). Those costs could include compensation for "*intellectual property*" but only that "*<u>directly</u> used in permitting Epic and others to consummate linked-out purchases*" (emphasis added). Of course, Apple has not to date proven that any such intellectual property or even genuinely necessary costs exist. Further, as the Ninth Circuit recognised, "*most of the intellectual property at issue is already used to facilitate IAP, and costs attributed to linked-out purchases.*" Most, if not all, costs of implementation are then borne by developers, not Apple.

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15. Indeed, this is completely consistent with the CMA's designation of Apple under the DMCC Act, which similarly seeks to eliminate Apple's ability to prevent steering. The CMA should reject any attempts by Apple to impose fees and charges triggered by a developer's decision to steer but unrelated to any costs associated with allowing external links, and for access to intellectual property unrelated to permitting developers to fulfil linked-out purchases. As the Ninth Circuit noted, the only fees that are appropriate for making the choice to steer are those related to the costs of linking, not for appearing in search results, or expedited app review, or for access to iOS itself, and certainly not as a percentage of the purchase being made or a percentage of the lifetime value of a customer.

16. In the meantime, the Ninth Circuit will allow the zero-commission regime to stand "*until such time as the district court has approved an appropriate fee.*" The Ninth Circuit also suggested that a Technical Committee might be helpful in determining what might be appropriate.

17. We can expect further proceedings in the District Court consistent with this advice and fact finding to determine whether Apple can justify any commission with proven costs, but no more than that.

18. We would be happy to discuss this further, if that would be helpful to the CMA.

Yours faithfully,

Geradin Partners