ITIF | INFORMATION TECHNOLOGY & INNOVATION FOUNDATION

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COMMENTS OF ITIF

to the

Competition and Markets Authority

London, United Kingdom

In the Matter of:	)
Proposed NFC access conduct requirement for Apple's mobile platform	)

November 17, 2026

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INTRODUCTION AND SUMMARY

On January 23, 2025, the Competition and Markets Authority (CMA) launched an initial investigation under Part 1 of the Digital Markets, Competition and Consumers (DMCC) Act to determine whether Apple had strategic market status (SMS) in the provision of its mobile platform.[1] Following Apple's final SMS designation in October 2025, the CMA requested opinions concerning near field communication (NFC) access on iOS at the end of June 2026.[2] On October 20, 2026, the CMA announced its Proposed NFC Access Conduct Requirement (Proposed CR) for Apple's mobile platform.[3]

The Information Technology and Innovation Foundation (ITIF) is an independent, non-profit, and nonpartisan think tank based in Washington, DC. ITIF's mission is to formulate, evaluate, and promote policy solutions that accelerate innovation and boost productivity to spur progress. The University of Pennsylvania has recognized ITIF as setting the global standard for excellence in science and technology policy, and as one of the overall "Top 40 U.S. Think Tanks."[4]

ITIF is grateful for the opportunity to provide comments to the CMA on the Proposed CR, particularly regarding pricing and product design. In summary, while ITIF appreciates the CMA allowing Apple to charge developers for access to its NFC and secure elements (SE) technologies, ITIF is concerned that the fair, reasonable, and non-discriminatory (FRAND) requirements will reduce R&D investment. ITIF is also concerned that the Proposed CR goes beyond requiring Apple to provide competitors with access to existing iPhone capabilities, including NFC and the SE. It would also require Apple to redesign aspects of iOS to support Host Card Emulation (HCE), an alternative technical architecture for processing contactless payments.

ITIF makes two points. First, the proposed FRAND pricing framework risks setting NFC and SE access fees artificially low, undermining Apple's ability to recoup its investments in its platform and weakening incentives for future innovation. Second, requiring Apple to support both HCE and SE, rather than allowing it to offer its existing technology, imposes an unnecessary and disproportionate product-design mandate. ITIF

[1] "Apple's Mobile Platform," GOV.UK, January 23, 2025, https://www.gov.uk/cma-cases/apples-mobile-platform#near-field-communication-nfc-access.

[2] "Issues Relating to NFC Access on iOS," GOV.UK, June 30, 2026, https://www.gov.uk/government/calls-for-evidence/issues-relating-to-nfc-access-on-ios.

[3] *Consultation Document: NFC Access* (PDF), GOV.UK, October 20, 2026, https://www.gov.uk/government/consultations/proposed-nfc-access-conduct-requirement-for-apples-mobile-platform

[4] James G. McGann, 2020 Global Go To Think Tank Index Report, Univ. of Pa. (2021), https://repository.upenn.edu/think_tanks/18.

therefore recommends revising the Proposed CR to preserve commercially sustainable access terms and eliminate the dual-technology requirement.

FRAND TERMS FOR NFC ACCESS WILL CHILL INVESTMENT

Developers have been able to access NFC and SE on iOS in the United Kingdom since the rollout of iOS 18.1 in October 2024, when Apple deployed its NFC and Secure Element Platform (the Platform), which enables developers to offer in-app contactless transactions for in-store payments out of Apple Pay and Apple Wallet; car, home, and hotel keys; public transportation; public and private identification; event tickets; and rewards cards.[5] While the CMA explicitly allows Apple to charge developers a fee for NFC access, Apple must demonstrate to the CMA's satisfaction that "each NFC Access Fee is fair, reasonable and non-discriminatory."[6]

Substituting the commercial terms by which developers may access the Platform for FRAND terms risks chilling innovation by eroding Apple's ability to monetize and recoup investments in its digital ecosystem. While the Proposed CR includes a value-based principle in addition to a cost-based principle for setting NFC access fees, adjusting the former for market power and excluding costs associated with Apple Pay and Apple Wallet from the latter bias fees downward.[7] Moreover, the flexibility principle's obligation to price in a way that supports a wide array of business models incentivizes Apple to price its fees close to zero to avoid a maximum penalty of 10 percent of global turnover.[8]

The CMA should therefore retain Apple's ability to negotiate commercial terms for NFC and SE access. It should avoid imposing a FRAND framework that systematically pushes fees below levels that allow Apple to recoup its mobile platform investments and earn a reasonable return.

THE DUAL-TECHNOLOGY MANDATE IS DISPROPORTIONATE

HCE was made available to developers in the European Economic Area (EEA) following a formal antitrust investigation launched in June 2020 by the European Commission under Article 102 of the Treaty on the Functioning of the European Union. In May 2022, the Commission sent Apple its Statement of Objections and, after market-testing Apple's proposed commitments in January 2024, the Commission made them legally binding that July. Although the Commission required Apple to enable HCE and make it available to developers for free, it did not require Apple to offer developers a choice between HCE and SE. The Proposed CR goes further by requiring Apple to support both technologies and provide developers with access to whichever one they request.

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[5] *Developers Can Soon Offer In-App NFC Transactions Using the Secure Element*, Apple Newsroom (UK), August 14, 2024, https://www.apple.com/uk/newsroom/2024/08/developers-can-soon-offer-in-app-nfc-transactions-using-the-secure-element/; "NFC & SE Platform for Secure Contactless Transactions," Apple Developer, accessed November 16, 2026, https://developer.apple.com/support/nfc-se-platform/.

[6] *Consultation Document: NFC Access (PDF)*, 26, para. 10.

[7] *Consultation Document: NFC Access (PDF)*, 26-27, para. 11(a-b); 28, para. 12(b).

[8] *Consultation Document: NFC Access (PDF)*, 27, para. 11(c); 93, para. 4.204; Digital Markets, Competition and Consumers Act 2024, c. 13, s. 86(4)(a), https://www.legislation.gov.uk/ukpga/2024/13/section/86.

Outside of the EEA, Apple's mobile devices do not use HCE, nor does the company offer this NFC technology to third-party developers. Yet, the Proposed CR requires Apple to grant developers a right to NFC Access "through HCE or SE according to the Requesting Developer's request."[9] This dual-technology mandate is contrary to the proportionality pillar of the CMA's 4Ps—pace, predictability, proportionality, and process—framework, which holds that "action taken…to address harms will be designed to minimise burdens for businesses."[10] Indeed, to satisfy the proportionality requirement, CRs issued under the DMCCA must be "no more onerous than it needs to be to achieve its intended aim" and be "the least onerous CR(s), where the CMA has identifies multiple equally effective options that would achieve the intended aim."[11] Furthermore, such product design mandates reduce inter-ecosystem competition by limiting product differentiation.

The CMA should therefore revise the Proposed CR to allow Apple to satisfy its NFC access obligations by providing access through either HCE or SE, rather than requiring it to support both technologies. This would achieve the objective of enabling third-party access while avoiding unnecessary redesigns of Apple products.

CONCLUSION

The United Kingdom's Modern Industrial Strategy directs "the Government [to] make it easier and simpler for companies to do business, giving them the stability to make long-term investments" to drive economic growth.[12] The CMA's 4Ps framework, when dutifully applied to the DMCCA, helps ensure that UK competition policy does not run contrary to this prudent macroeconomic goal. ITIF appreciates the CMA's sensitivity to innovation incentives, as reflected by its decision to allow Apple to charge developers for NFC access. However, as currently written, the Proposed CR fails to adequately abide by the proportionality pillar through its dual-technology mandate and its substitution of commercial NFC access terms for FRAND commitments. In doing so, the Proposed CR will unduly constrain Apple's ability to recoup investments in its mobile platform ecosystem, thereby reducing both its ability and incentive to innovate in the UK market.

Thank you for your consideration.

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[9] Consultation Document: NFC Access (PDF), GOV.UK, October 20, 2026, 24, para. 3(a); European Commission, "Commission accepts commitments by Apple opening access to 'tap and go' technology on iPhones," press release IP/24/3706, July 11, 2024, https://ec.europa.eu/commission/presscorner/api/files/document/print/fin/ip_24_3706/IP_24_3706_EN.pdf.

[10] Department for Business and Trade, Refining Our Competition Regime: Driving Growth and Enhancing Competition for Businesses and Consumers (January 20, 2026), 9, https://assets.publishing.service.gov.uk/media/696e4aa4bbcea094189e23b7/refining-our-competition-regime.pdf.

[11] Competition and Markets Authority, Digital Markets Competition Regime Guidance, CMA194 (December 19, 2024), 52, para. 3.33(b)–(c), https://assets.publishing.service.gov.uk/media/6762f4f6cdb5e64b69e307de/Digital_Markets_Competition_Regime_Guidance.pdf.

[12] UK Government, The UK's Modern Industrial Strategy, CP 1451 at 12 (Nov. 2025), https://assets.publishing.service.gov.uk/media/69256e16367485ea116a56de/industrial_strategy_policy_paper.pdf.