

Notice of intention to accept modified commitments offered by Google in relation to its Privacy Sandbox Proposals

Case number 50972

© Crown copyright 2021

You may reuse this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gov.uk.

Contents

	<i>Page</i>
1. Introduction and Executive Summary	3
2. The CMA's competition concerns	9
3. The Initial Commitments	11
4. Responses to the consultation and the CMA's provisional assessment of Google's proposed modifications to the commitments.....	12
5. The CMA's intentions and invitation to comment	57
Appendix 1A: The Modified Commitments	59
Appendix 1B: Comparison of the Initial Commitments and Modified Commitments .	78
Appendix 2: The CMA's assessment of other responses to the consultation	95

1. Introduction and Executive Summary

Introduction

- 1.1 On 11 June 2021, the Competition and Markets Authority ('**CMA**') gave notice¹ that it proposed to accept commitments offered by Google (the '**Initial Commitments**') in relation to the CMA's investigation into suspected breaches of competition law by Google (the '**June Notice**').²
- 1.2 The CMA's investigation concerns Google's proposals to replace third-party cookies ('**TPCs**') and other functionalities with a range of changes known as the 'Privacy Sandbox' (the '**Privacy Sandbox Proposals**').³ The investigation follows complaints of anticompetitive behaviour and requests for the CMA to ensure that Google develops its proposals in a way that does not distort competition. Further background is set out in Chapters 3 and 4 of the June Notice.
- 1.3 The CMA has been working closely with the Information Commissioner's Office ('**ICO**') in their engagement with Google and other market participants, in order to build a common understanding of the Privacy Sandbox Proposals. The CMA will continue to consult the ICO on aspects of the Privacy Sandbox Proposals that relate to matters of privacy and data protection, to ensure that both privacy and competition concerns are addressed as the proposals are developed in more detail. The ICO has published a Commissioner's Opinion which provides further regulatory clarity on the data protection expectations that online advertising proposals should meet.⁴
- 1.4 The CMA's competition concerns relate to the impact that the Privacy Sandbox Proposals are likely to have if implemented without sufficient regulatory scrutiny and oversight, 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

¹ In accordance with paragraph 2 of Schedule 6A of the Competition Act 1998 (the '**Act**').

² [Notice of intention to accept commitments offered by Google in relation to its Privacy Sandbox Proposals](#), 11 June 2021 (the '**June Notice**'). The June Notice set out the context for the CMA's investigation, including: (a) investigative steps taken in this investigation; (b) the party and conduct under investigation; (c) the context of the investigation, including the digital ecosystem in which the conduct under investigation is occurring; (d) the CMA's preliminary views of the most plausible definitions of the relevant markets; (e) Google's position in the relevant markets; and (f) the CMA's competition concerns.

³ The Privacy Sandbox Proposals are a set of proposed changes on Chrome by which Google aims to address privacy concerns by removing the cross-site tracking of Chrome users through TPCs and other methods of tracking; and create a set of alternative tools to provide the functionalities that are currently dependent on cross-site tracking.

⁴ See [Information Commissioner's Opinion: Data protection and privacy expectations for online advertising proposals](#), 25 November 2021 (the '**ICO Opinion**').

imposition of unfair terms on Chrome's web users.⁵ The CMA is also concerned that the announcements of the Privacy Sandbox Proposals have caused uncertainty in the market as to the specific alternative solutions which will be available to publishers and ad tech providers once TPCs are deprecated.

- 1.5 Google offered the Initial Commitments on 28 May 2021.⁶ The June Notice outlined the CMA's provisional view that the Initial Commitments addressed the CMA's competition concerns, and that the Initial Commitments should therefore be accepted. Pursuant to Schedule 6A of the Competition Act 1998 (the '**Act**'), the CMA conducted a public consultation seeking representations from interested third parties on the Initial Commitments.
- 1.6 The consultation ran for 20 working days, during which period the CMA received representations from a wide range of respondents.⁷ The CMA has carefully considered the responses and engaged in further discussions with certain consultation respondents, to clarify concerns where the CMA considered it appropriate to do so. The CMA has discussed with Google key concerns raised by respondents.

Summary of this notice

- 1.7 The CMA's competition concerns remain unchanged from those expressed in the June Notice. However, as set out at Chapter 4 of this notice, the CMA's assessment of the consultation responses to the June Notice identified a number of aspects of the Initial Commitments that should be strengthened or revised in order to ensure the CMA's competition concerns are addressed.
- 1.8 On 19 November 2021, Google offered modified commitments ('**Modified Commitments**') which seek to address the CMA's concerns. The Modified Commitments are described in Chapter 4 of this notice, their text is set out at Appendix 1A to this notice, and a comparison of them against the Initial Commitments is set out at Appendix 1B to this notice.
- 1.9 The modifications improve the provisions of the Initial Commitments, as they:
 - (a) **add obligations on Google regarding its transparency and consultation with third parties** by requiring that the CMA's role (and the ongoing CMA process) is referenced in Google's key public disclosures, including publication on a dedicated microsite of a process

⁵ See the June Notice, Chapter 5.

⁶ The Initial Commitments were described in Chapter 6 of the June Notice, and set out fully in Appendix 1 to the June Notice.

⁷ For example, the CMA received 45 written responses as part of the consultation on the June Notice.

for engaging with third parties (ie publishers, advertisers and ad tech providers), and that Google report regularly to the CMA on how Google has taken into consideration third-party views;

- (b) **put in place a more transparent process through which Google will develop and test the Privacy Sandbox Proposals** and extend the requirement that Google should test and trial (with the involvement of the CMA) all the Privacy Sandbox Proposals which are amenable to quantitative testing, not just those intended as replacements for TPCs;
- (c) add commitments to **address concerns about Google removing additional functionality or information before TPCs** – ie Google will now also commit that, before removing TPCs, it will not enforce the Privacy Budget (a tool which will reduce access to certain other information), and will only implement the GNATCATCHER proposal (which will reduce access to IP addresses) after making reasonable efforts to support websites' ability to combat fraud/spam;
- (d) **provide for a mechanism for the CMA to monitor Google's adherence to any resolutions reached** between the CMA and Google under the commitments;
- (e) **clarify the internal limits on the data that Google is allowed to use for the purposes of targeting and measuring digital advertising**, and confirm Google's intent to use Privacy Sandbox tools in the future in the same ways as third parties will be able to use them;
- (f) **improve the approach to addressing concerns about the potential for Google self-preferencing** Google's own products/services which includes providing greater certainty for third parties who are developing alternative technologies;
- (g) **improve the provisions on reporting and compliance**, eg by providing for a CMA-approved monitoring trustee to be appointed; and
- (h) **provide for a longer duration for any commitments**, ie 6 years from any decision by the CMA to accept commitments.

1.10 Overall, the CMA's provisional view is that, in combination, the Modified Commitments would address the competition concerns that the CMA has identified in relation to the Privacy Sandbox Proposals, and provide a robust basis for the CMA, ICO and third parties to influence the future development of the Privacy Sandbox Proposals to ensure that the purpose of the commitments (as set out in Section C of the Modified Commitments) is achieved. The CMA provisionally considers that the Modified Commitments, once implemented, would address its competition concerns as they:

- (a) **establish a clear purpose of the Modified Commitments** that will ensure that the Privacy Sandbox Proposals are developed in a way that addresses the competition concerns identified by the CMA during its investigation, by avoiding distortions to competition, whether through restrictions on functionality or self-preferencing, and avoiding the imposition of unfair terms on Chrome’s web users;
- (b) **establish the criteria that must be taken into account in designing, implementing and evaluating the Privacy Sandbox Proposals.** These include the impact of the Privacy Sandbox Proposals on: privacy outcomes and compliance with data protection principles, as set out in applicable data protection legislation;⁸ competition in digital advertising, and in particular the risk of distortion to competition between Google and other market participants; the ability of publishers to generate revenue from ad inventory; and user experience and control over the use of their data;
- (c) **provide for greater transparency and consultation with third parties over the development of the Privacy Sandbox Proposals,** including through operating a formal process for engaging with Google’s third-party stakeholders on a dedicated microsite, reporting regularly to the CMA on how it has taken into consideration third-party views, and disclosing publicly the results of tests of the Privacy Sandbox Proposals. This would help to overcome the asymmetry of information between Google and third parties regarding the development of the Privacy Sandbox Proposals;
- (d) **provide for the close involvement of the CMA in the development of the Privacy Sandbox Proposals,** and the ICO where privacy and data protection concerns are relevant, to ensure that the purpose of the Modified Commitments is met, including through regular meetings and reports, working with the CMA without delay to identify and resolve any competition concerns before the removal of TPCs, and involving the CMA in the evaluation and design of tests of all Privacy Sandbox Proposals amenable to quantitative testing. This would ensure that the competition concerns identified by the CMA about the potential impacts of the Privacy Sandbox Proposals are addressed and address the lack of confidence on the part of third parties regarding Google’s intentions in developing and implementing the Privacy Sandbox Proposals;
- (e) **provide for a standstill period** of at least 60 days before Google proceeds with the removal of TPCs (**‘Standstill Period’**), giving the CMA the option, if any outstanding concerns cannot be resolved with

⁸ See the ICO Opinion (as referred to at footnote 4 of this notice).

Google, to continue this investigation and, if necessary, impose any interim measures necessary to avoid harm to competition. Additional provisions address concerns about Google removing certain other functionality or information before TPCs, and the CMA monitoring Google's adherence to any resolutions reached under the commitments. These provisions would strengthen the ability of the CMA to ensure that its competition concerns are in fact resolved;

- (f) include **specific commitments by Google not to use user data** from certain specified sources for targeting or measuring digital advertising on either Google owned and operated ad inventory or ad inventory on websites not owned and operated by Google. A related provision confirms Google's intent to use Privacy Sandbox tools in future as third parties will be able to use them. These provisions would address the competition concerns arising from Google's greater ability to track users after the introduction of the Privacy Sandbox Proposals;
- (g) include **specific commitments by Google not to design any of the Privacy Sandbox Proposals in a way which could self-preference Google**, not to engage in any form of self-preferencing practices when using the Privacy Sandbox technologies and not to share information between Chrome and other parts of Google which could give Google a competitive advantage over third parties. Related provisions confirm that deprecating Chrome functionality will remove such functionality for Google and other market participants alike, and give greater certainty for third parties who are developing alternative technologies to the Privacy Sandbox tools. These provisions would address the above concerns relating to the potential for discrimination against Google's rivals; and
- (h) include **robust provisions on reporting and compliance**, which provide for a CMA-approved monitoring trustee to be appointed.

1.11 The CMA gives notice⁹ that it intends to accept the Modified Commitments in accordance with section 31A(2) of the Act, and invites representations from interested third parties on this proposed course of action. The CMA has not reached a final view and invites all interested parties to submit observations and evidence in order to assist the CMA in its final assessment of the Modified Commitments. The manner for responding is set out in Chapter 5 of this notice with a deadline for comments by **17 December 2021 at 5pm**.

1.12 Prior to its consultation on the Initial Commitments, the CMA received requests that it use its interim measure powers under section 35 of the Act to

⁹ In accordance with paragraph 3(1)(a) of Schedule 6A to the Act.

give directions to Google pending the outcome of the investigation. The CMA has not reached a view on whether the conditions of section 35 of the Act are met. However, the CMA recognises that a consequence of accepting commitments under section 31A is that, by virtue of section 31B(2)(c), it will be unable to give a direction under section 35. Section 31B of the Act provides that if the CMA has accepted commitments under section 31A and has not released them, it will not give a direction under section 35. The CMA will carefully consider representations on the consequences of this statutory condition, as part of its consideration of responses to this notice.

1.13 Formal acceptance of the Modified Commitments by the CMA would result in the discontinuation of this investigation, with no decision made as to whether or not the Act has been infringed by Google. Such acceptance of the Modified Commitments would not prevent the CMA from taking any action in relation to competition concerns which are not addressed by the Modified Commitments. Moreover, acceptance of the Modified Commitments would not prevent the CMA from continuing the investigation, making an infringement decision, or giving a direction in circumstances where the CMA had reasonable grounds for:

- (a) believing that there had been a material change of circumstances since the commitments were accepted;
- (b) suspecting that a person had failed to adhere to one or more of the terms of the commitments; or
- (c) suspecting that information which led the CMA to accept the commitments was incomplete, false or misleading in a material particular.¹⁰

1.14 Where a person from whom the CMA has accepted commitments fails without reasonable excuse to adhere to the commitments, the CMA may apply to the court for an order requiring the default to be made good.¹¹

1.15 To assist third parties in responding to this consultation, this notice summarises the proposed modifications to the commitments offered by Google and sets out why the CMA provisionally considers that the Modified Commitments address its competition concerns.

¹⁰ Pursuant to section 31B(4) of the Act.

¹¹ Pursuant to section 31E of the Act.

2. The CMA's competition concerns

- 2.1 The June Notice set out the CMA's preliminary views regarding the impact of the Privacy Sandbox Proposals on competition and consumers.
- 2.2 The CMA's competition concerns were set out in Chapter 5 of the June Notice. The CMA's competition concerns remain unchanged from those set out in the June Notice.
- 2.3 In brief, the CMA is concerned that, without sufficient regulatory scrutiny and oversight, the Privacy Sandbox Proposals would:
- (a) distort competition in the market for the supply of ad inventory¹² and in the market for the supply of ad tech services, by restricting the functionality associated with user tracking for third parties while retaining this functionality for Google;^{13,14}
 - (b) distort competition by the self-preferencing of Google's own advertising products and services and owned and operated ad inventory;¹⁵ and
 - (c) allow Google to exploit its likely dominant position by denying Chrome web users substantial choice in terms of whether and how their personal data is used for the purpose of targeting and delivering advertising to them.¹⁶
- 2.4 In addition, the CMA is concerned that the announcements have caused uncertainty in the market as to the specific alternative solutions which will be available to publishers and ad tech providers once TPCs are deprecated. The announcements and actions to date have shown (and created the expectation) that Google is determined to proceed with changes in the

¹² For the purposes of setting out its competition concerns in the June Notice, the CMA used the term 'market for ad tech services' to cover the different vertical activities within the ad tech stack, including the ad exchange and ad server. As set out in [Appendix M](#) to the final report of the CMA's [market study into online platforms and digital advertising](#) (the '**Market Study**'), the CMA considers that the ad tech stack in practice consists of several vertically-related markets; it was not necessary to separate these out for the purposes of stating our competition concerns, but this should not be taken as implying that the CMA considers that there is a single market for the supply of ad tech services.

¹³ See the June Notice, paragraphs 5.30–5.67 ('Concern 1: unequal access to the functionality associated with user tracking').

¹⁴ See the June Notice, paragraphs 4.3–4.15, for details of the CMA's provisional market definition. For the avoidance of doubt, while the CMA has not undertaken a full market definition exercise for the purposes of agreeing commitments with Google, any references to economic markets in this document are consistent with the market definition in the [final report](#) of the Market Study.

¹⁵ See the June Notice, paragraphs 5.68–5.79 ('Concern 2: self-preferencing Google's own ad tech providers and owned and operated ad inventory').

¹⁶ See the June Notice, paragraphs 5.80–5.82 ('Concern 3: imposition of unfair terms on Chrome web users').

relevant areas, in ways which advantage its own businesses and limit competition from its rivals.¹⁷

- 2.5 In this regard, the CMA considers that the concerns that third parties have expressed to it regarding the impact that the Privacy Sandbox Proposals are likely to have in the future reflect in part:
- (a) the asymmetry of information between Google and third parties regarding the development of the Privacy Sandbox Proposals, including the criteria that Google will use to assess different design options and evidence relating to their effectiveness against these criteria; and
 - (b) a lack of confidence on the part of third parties regarding Google's intentions in developing and implementing the Privacy Sandbox Proposals, given the commercial incentives that Google faces in developing the Privacy Sandbox Proposals and the lack of independent scrutiny of the Privacy Sandbox Proposals.

¹⁷ See further the June Notice, paragraphs 5.83–5.97 ('Assessment of the impact of the Privacy Sandbox announcements'). Since the announcements referred to in those paragraphs, Google has announced that Chrome could 'phase out third-party cookies over a three month period, starting in mid-2023 and ending in late 2023': see Chrome blog, [An updated timeline for Privacy Sandbox milestones](#), 24 June 2021.

3. The Initial Commitments

- 3.1 Google offered the Initial Commitments on 28 May 2021.
- 3.2 The Initial Commitments and the CMA's provisional assessment of these are set out in the June Notice.
- 3.3 As set out in the June Notice, the CMA's provisional view was that, in combination, the Initial Commitments addressed its competition concerns. In summary, the CMA noted that the Initial Commitments:
- (a) established a clear purpose of the commitments;¹⁸
 - (b) established the criteria that must be taken into account in designing, implementing and evaluating the Privacy Sandbox Proposals;¹⁹
 - (c) provided for greater transparency and consultation with third parties over the development of the Privacy Sandbox Proposals;²⁰
 - (d) provided for the close involvement of the CMA in the development of the Privacy Sandbox Proposals;²¹
 - (e) provided for a Standstill Period of at least 60 days before Google proceeds with the removal of TPCs;²²
 - (f) included specific commitments by Google not to use user data from certain specified sources for certain purposes;²³ and
 - (g) included specific commitments by Google not to design any Privacy Sandbox Proposal in a way which could allow Google to self-preference.²⁴
- 3.4 The CMA provisionally considered that, in combination, the Initial Commitments would address the competition concerns that the CMA had identified in relation to the Privacy Sandbox Proposals, and provide a robust basis for the CMA, ICO and third parties to influence the future development of the Privacy Sandbox Proposals, to ensure that the purpose of the commitments (as set out in Section C of the Initial Commitments) would be achieved.

¹⁸ See the June Notice, paragraph 6.10(a) and paragraph 6.13.

¹⁹ See the June Notice, paragraph 6.10(b) and paragraphs 6.14–6.15.

²⁰ See the June Notice, paragraph 6.10(c) and paragraphs 6.16–6.23.

²¹ See the June Notice, paragraph 6.10(d) and paragraphs 6.24–6.46.

²² See the June Notice, paragraph 6.10(e) and paragraphs 6.47–6.54.

²³ See the June Notice, paragraph 6.10(f) and paragraphs 6.55–6.63.

²⁴ See the June Notice, paragraph 6.10(g) and paragraphs 6.64–6.69.

4. Responses to the consultation and the CMA's provisional assessment of Google's proposed modifications to the commitments

The consultation

- 4.1 The consultation took the form of publication of the June Notice and an invitation to comment issued on the CMA's website on 11 June 2021.²⁵ The consultation ran for 20 working days and closed on 8 July 2021.
- 4.2 The CMA received 45 sets of written representations on the Initial Commitments, from 41 different respondents.²⁶ These included ad tech providers, advertisers, and publishers as well as other types of respondent (such as trade associations and academics).
- 4.3 Most responses welcomed the Initial Commitments. However, almost all raised certain concerns about, or suggested adding, certain aspects – as set out below.
- 4.4 The consultation responses broadly agreed with the CMA's analysis of the key concerns, and strongly supported CMA scrutiny of the Privacy Sandbox Proposals as they develop. Respondents suggested a number of areas where the commitments should be strengthened, including:
- (a) detailing further how third parties and industry bodies will be involved in the development of the Privacy Sandbox Proposals;
 - (b) adding obligations to ensure that Google does not remove other functionality or data before removing TPCs when the Standstill Period is triggered;
 - (c) ensuring that Google's proposed testing/trialling includes all Privacy Sandbox Proposals and not just replacements for TPCs;
 - (d) ensuring that data separation provisions in the commitments address, as far as possible, all possible concerns relating to Google's competitive advantage;

²⁵ [Notice of intention to accept commitments offered by Google in relation to its Privacy Sandbox Proposals](#) (ie the June Notice) and [Consultation on proposed commitments in respect of Google's 'Privacy Sandbox' browser changes](#).

²⁶ Three respondents also published a blog during the consultation period which came to the CMA's attention. The CMA has also taken into account those blogs for the purposes of its assessment.

- (e) clarifying how Google's non-discrimination obligations will be monitored in practice, with some calls for independent audit in addition to CMA scrutiny, and/or for operational separation;
 - (f) expanding the commitments to cover alternative approaches to the Privacy Sandbox tools, as developed by market players other than Google;
 - (g) improving the provisions on reporting and compliance; and
 - (h) extending the duration of the commitments beyond what Google had previously offered.
- 4.5 The CMA considers that, while a wide variety of issues were raised by the respondents, there were certain key themes contained in the responses that were directly relevant to whether the Initial Commitments addressed the competition concerns identified in the June Notice. These key themes are set out below.²⁷
- 4.6 The CMA's competition concerns remain unchanged from those set out in the June Notice. However, following consideration of the responses to the consultation, the CMA concluded that the commitments needed to be strengthened to address its competition concerns.

Google's offer of Modified Commitments

- 4.7 In light of the concerns raised in the responses to the consultation, and subsequent discussions on these issues between the CMA and Google, Google offered Modified Commitments on 19 November 2021. The Modified Commitments form Appendix 1A to this notice.²⁸
- 4.8 Pursuant to section 31A of the Act, for the purposes of addressing the competition concerns it has identified, the CMA may accept from such person (or persons) concerned as it considers appropriate, commitments to take such action (or refrain from taking such action) as it considers appropriate.
- 4.9 The CMA's Procedural Guidance²⁹ states that the CMA is likely to consider it appropriate to accept commitments only in cases where (i) the competition concerns are readily identifiable; (ii) the competition concerns are addressed

²⁷ A description and assessment of further consultation responses can be found in Appendix 2. For the majority of the responses listed in Appendix 2, the CMA's provisional views were that no or limited changes were required to address its concerns.

²⁸ A comparison demonstrating the changes made between the Initial Commitments and the Modified Commitments forms Appendix 1B to this notice.

²⁹ [Guidance on the CMA's investigation procedures in Competition Act 1998 cases \(CMA8\)](#), November 2020 ('Procedural Guidance').

by the commitments offered; and (iii) the commitments are capable of being implemented effectively and, if necessary, within a short period of time.³⁰ However, the CMA will not accept commitments where compliance with such commitments and their effectiveness would be difficult to discern and/or where the CMA considers that it would undermine deterrence not to complete its investigation and make a decision.³¹

4.10 Following engagement with Google, the CMA has reached the provisional view that its competition concerns would be addressed by the Modified Commitments and that the other criteria set out in the Procedural Guidance are met. Formal acceptance of the Modified Commitments would result in the CMA discontinuing its investigation and not proceeding to a decision on whether the Act has been infringed. A decision by the CMA accepting commitments would not include any statement as to whether Google's conduct under investigation has infringed Chapter II of the Act prior to the acceptance of these commitments.

4.11 The rest of this Chapter provides:

- (a) the CMA's assessment of the Modified Commitments;
- (b) the CMA's assessment of the Modified Commitments against the other criteria for accepting commitments set out in the Procedural Guidance; and
- (c) the CMA's overall provisional conclusion.

The CMA's assessment of the Modified Commitments

4.12 Set out below, for each section of the commitments, is a description of: (i) the Initial Commitments; (ii) a summary of consultation responses which are relevant to changes proposed in the Modified Commitments; (iii) the changes proposed by Google through the Modified Commitments; and (iv) the CMA's assessment of those changes..

³⁰ Procedural Guidance, paragraph 10.18

³¹ Procedural Guidance, paragraph 10.20

Introduction (Section A of the commitments)

Overview

- 4.13 Section A of the Initial Commitments sets out the context for Google's commitments offer and the legal framework within which Google made its initial offer of commitments.
- 4.14 As detailed below, a number of consultation responses commented on the references to Google's alleged privacy aims, identifying a need to clarify that Google's privacy agenda had not been endorsed by either the ICO or the CMA, and a need to ensure that Google does not gain an unfair competitive advantage by any such inference. Consultation responses also identified the need for further clarity over the scope of the commitments and their application to the Google corporate group.³²

Privacy aims

- 4.15 In Section A of the Initial Commitments, Google included introductory text which referred to the privacy aims of its Privacy Sandbox Proposals. This also referred to Google's 'goal of making the web more private and secure for users, while also supporting publishers', and stated that the Privacy Sandbox Proposals were 'privacy preserving' and 'open-standard'.³³
- 4.16 Six respondents commented on Section A. Their responses mainly focused on references to Google's claimed privacy aims, which respondents – to varying degrees – considered should not be included in Section A.
- (a) Four respondents suggested that these references were unnecessarily long or should be removed, with one respondent stating that Google's claimed privacy aims were misleading and potentially harmful.
 - (b) Similarly, three respondents raised the concern that including privacy claims in Section A of the Initial Commitments could create justifications on which Google may later rely, or which could imply CMA endorsement.

³² For the CMA's assessment of additional consultation responses on Section A of the Initial Commitments, see Appendix 2, paragraphs 2–3.

³³ Initial Commitments, paragraphs 1–2.

- 4.17 In Section A of the Modified Commitments, Google has substantially limited the references to its privacy aims, in the following ways.³⁴
- (a) Google has removed paragraph 2 of the Initial Commitments, which was focused on the privacy aims of the Privacy Sandbox Proposals.
 - (b) Google's reference to Google's goal of 'making the web more private and secure for users, while also supporting publishers', has been moved from the main body of the text to a footnote.³⁵
 - (c) Google has also introduced text to explicitly acknowledge that 'To date neither the CMA nor the ICO have concluded on the privacy impacts of the Privacy Sandbox Proposals'.³⁶
- 4.18 The CMA notes that references in the Initial Commitments to Google's alleged privacy aims in implementing the Privacy Sandbox Proposals served only to provide context for the commitments offer, and were not meant to act as an endorsement of Google's aims. To date neither the CMA nor the ICO has concluded on the privacy aims or impacts of the Privacy Sandbox Proposals. The CMA provisionally considers that the modifications make clear that there is no such endorsement and would prevent any unfair advantage accruing to Google as a result of any perceived endorsement.
- 4.19 The CMA's provisional view is that it is not necessary for the Modified Commitments to remove all references to Google's privacy aims entirely, since these are an important aspect of the context of the investigation. The CMA provisionally considers that the Modified Commitments make it sufficiently clear that claims made as to Google's privacy objectives are Google's own – and not endorsed by the CMA or the ICO – by referring to Google's blogs and noting that Google 'declared its goal' of enhancing privacy for its users.³⁷
- 4.20 The CMA provisionally considers that the Modified Commitments are sufficient to address the CMA's concerns about the lack of confidence among market participants as to Google's intentions in developing and implementing the Privacy Sandbox Proposals, and concerns that Google may obtain an unfair advantage through a perception that the privacy aims and impacts of its

³⁴ Paragraph 2 of the Initial Commitments has been removed; additional text has been included in footnote 1 of the Modified Commitments; and a consequential amendment has been made at paragraph 10.a. of the Modified Commitments.

³⁵ Modified Commitments, footnote 1.

³⁶ Modified Commitments, footnote 1. See the ICO Opinion (as referred to at footnote 4 of this notice).

³⁷ Similarly, in Section D, text from the Initial Commitments stating that 'Google intends to pursue its objective of making the web more private and secure for users' has been replaced with a statement that 'Google's objectives are to make the web more private and secure for users' in the Modified Commitments, clarifying that the privacy agenda is Google's own. See paragraph 10.a. of the Modified Commitments.

Privacy Sandbox Proposals have been endorsed or approved by the CMA and the ICO. In particular:

- (a) The text of the Modified Commitments makes it clear that there is no tacit CMA or ICO endorsement of Google's privacy aims by explicitly stating that neither the CMA nor the ICO have concluded on the privacy impacts of the Privacy Sandbox Proposals.³⁸
- (b) The removal of further references in the Initial Commitments to Google's own views on the 'privacy-preserving' qualities of the Privacy Sandbox Proposals mitigates the risk that the CMA is perceived as endorsing such statements.

4.21 In addition, the removal of paragraph 2 of the Initial Commitments, which refers to Google's privacy aims, addresses concerns that Google's objectives are not relevant to the purpose of the commitments, which are offered to address the CMA's competition concerns.

Scope of the commitments

4.22 As further detailed in paragraphs 4.36 to 4.37 below, the CMA received several consultation responses in relation to the definition of '**Google**' and '**Group**', suggesting that the application of the commitments should not be limited to Google UK Limited and Google LLC.

4.23 Google has amended the Modified Commitments to clarify that the commitments are offered by Alphabet Inc., as well as Google UK Limited and Google LLC.³⁹ This is in line with amendments to the defined terms 'Google' and 'Group' in the Modified Commitments, which are detailed in paragraph 4.38 below.

4.24 This is in line with amendments to the defined terms 'Google' and 'Group' in the Modified Commitments, which are detailed in paragraph 4.38 below. The CMA provisionally considers that this addresses concerns about the scope of the commitments and their application.

³⁸ Modified Commitments, footnote 1.

³⁹ Modified Commitments, paragraph 3.

Definitions (Section B of the commitments)

Overview

- 4.25 Section B of the Initial Commitments set out the definitions applicable to the text of the commitments.
- 4.26 Many respondents identified the need to clarify certain definitions to better identify the scope and application of the commitments. Other respondents proposed additional defined terms for the same reasons.⁴⁰

Main definitions

- 4.27 Most consultation responses on the definitions in the Initial Commitments concerned the following defined terms:
- (a) 'Privacy Sandbox' and/or 'Alternative Technologies';
 - (b) 'Removal of Third-Party Cookies' and 'Removal';
 - (c) 'Individual-level User Data'; and
 - (d) 'Google' and/or 'Group'.
- 4.28 Three consultation respondents submitted that the definition of '**Privacy Sandbox**' within the Initial Commitments was not broad enough, and may exclude some of the Privacy Sandbox Proposals.⁴¹ For example, respondents expressed concerns that neither the deprecation of the user-agent string, nor Google's GNATCATCHER proposal, fell clearly within the definition's sub-categories (for example, neither could be described as 'workarounds'). Respondents suggested referring in the definition to the Privacy Sandbox blog page, and using an anti-avoidance provision to prevent Google from making changes to this. Responses included a proposed amended definition for 'Privacy Sandbox' referring to 'proposed or actual functionalities', which itself contained a detailed, specific new defined term ('Competing Functionality').⁴²

⁴⁰ For the CMA's assessment of additional consultation responses on Section B of the Initial Commitments, see Appendix 2, paragraphs 4–20.

⁴¹ The Privacy Sandbox Proposals remain largely as set out in Appendix 2 to the June Notice, with two main changes. The first is the addition of the Shared Storage API proposal, which is a way for some restricted and Google-intermediated forms of cross-site data sharing to continue. The second is the new partitioning-related proposals, including the CHIPS API, Storage Partitioning, Network State Partitioning and HTTP Cache Partitioning. These partitioning proposals are mostly extensions of the same idea of limiting the ability for cross-site tracking, applied not only to the cookie jar but other network or Web API storage-based tracking vectors.

⁴² See Appendix 2, paragraph 9.

- 4.29 In the Modified Commitments, Google has amended the definition of ‘Privacy Sandbox’ to clarify that it covers all of Google’s relevant proposals, including GNATCATCHER, the Privacy Budget, and all other changes to Chrome listed at Annex 1 of the Modified Commitments. The CMA provisionally considers that the amended definition is now sufficiently broad to include all of the relevant Privacy Sandbox Proposals.
- 4.30 With regard to the definition of ‘**Alternative Technologies**’ within the Initial Commitments, nearly half of all consultation respondents commented on the testing of technologies and what this would or should entail.
- 4.31 In Section B of the Modified Commitments, Google has amended this definition to clarify that it covers the Google technologies intended as alternatives to TPCs in Chrome which are listed at Annex 1 to the Modified Commitments, and any successor technologies with the same aim.⁴³ The CMA provisionally considers that the proposed amendments provide increased clarity and assurance for third parties as to which ‘Alternative Technologies’ are referred to in the commitments.
- 4.32 Four respondents submitted that the dual definition of ‘**Removal of Third-Party Cookies**’ and ‘**Removal**’ within the Initial Commitments would allow Google to avoid breaching the standstill provisions in the commitments by clearing TPCs every 31 days or longer. One respondent contended that ‘Removal’ should encompass any reduction in the lifetime of rivals’ TPCs, and more generally any significant change to rivals’ reliance on state management via cookies support in Google Chrome.⁴⁴ Another respondent made a similar submission on shorter timeframes for clearing TPCs and queried why such cookies were accorded ‘special treatment’ in the Initial Commitments, whereas the removal of other technologies also presents significant concerns (such as user-agent string and IP addresses). The respondent also suggested that it was not clear in the Initial Commitments from when the lifespan of a cookie should be measured.
- 4.33 In Section B of the Modified Commitments, Google has amended the 30-day lifespan for TPCs referred to in the definition of ‘Removal of Third-Party Cookies’ or ‘Removal’ to 90 days to address the above concerns.⁴⁵ The

⁴³ See also, as to which Alternative Technologies will be subject to the testing obligations set out under the commitments, paragraph 4.78 below in relation to the new defined term ‘Quantitative Testing’.

⁴⁴ Including, for instance, but not limited to: reduced persistence, reduced cross-site interoperability, disruptive prompts for per cookie acceptance, etc.

⁴⁵ The CMA understands that this does not change Chrome users’ ability to manually clear their cookies, to change settings to block all TPCs and/or to clear cookies and site data when the user closes all Chrome windows. Currently, Chrome does not offer functionality that automatically clears TPCs that are older than a certain lifespan. Web servers can set expiry dates and maximum ages for the cookies that they set. In relation to

CMA's provisional view is that this amendment provides greater assurance for third parties who may otherwise be concerned about their continued ability to access data from TPCs until the Standstill Period – both by removing any potential loophole by which Google could avoid its obligations under the standstill provisions by clearing TPCs every 31 days or longer, and by ensuring a longer lifespan for TPCs (ie longer than 30 days) until the Standstill Period.

- 4.34 A small number of respondents suggested replacing the term relating to **'Individual-level User Data'** within the Initial Commitments, with a new term ('Personal Data') which could refer to applicable data protection legislation. A number of other consultation responses regarding the term 'Individual-level User Data', and the CMA's provisional views, are set out more fully below in the context of Section G: see paragraphs 4.89 to 4.100 below. A number of other consultation responses regarding the term 'Individual-level User Data', and the CMA's provisional views, are set out more fully below in the context of Section G: see paragraphs 4.89 to 4.100 below.
- 4.35 In Section B of the Modified Commitments, Google has replaced the term 'Individual-level User Data' with a new term, 'Personal Data', which is defined explicitly with reference to Applicable Data Protection Legislation (which has been included as a defined term). In addition, all other references to 'Individual-level User Data' previously within the commitments have likewise been amended within the Modified Commitments. The CMA provisionally considers that these changes provide increased clarity.
- 4.36 The CMA received several responses in relation to the definition of **'Google'** and **'Group'**. With regard to the definition of **'Google'**, one respondent submitted that Alphabet Inc. has many vertical businesses that collect user data (including its ad tech business, YouTube, and Fitbit) and that its ability to freely use data outside of the commitments would create additional competition concerns.
- 4.37 Another respondent submitted that the commitments should apply to any company within the **'Group'** definition and to any corporate affiliate that is part of the ad tech ecosystem regardless of direct involvement with the Privacy Sandbox. It was suggested that if the Privacy Sandbox leads to lower prices in open display advertising, advertising spend could shift to Google companies not 'operating a business involved in the Privacy Sandbox', such as YouTube or Google Search. The respondent considered that Google's commitments should apply to Google as a whole. One respondent submitted

individual organisations' use of cookies, expectations under data protection legislation and the Privacy and Electronic Communications (EC Directive) Regulations 2003 are set out in the ICO's [Guidance on the use of cookies and similar technologies](#) (as accessed on 24 November 2021).

that a group company could be defined in a more straightforward way by reference to a 'standard definition' in company law.⁴⁶

- 4.38 In Section B of the Modified Commitments, Google has clarified the appropriate scope of the commitments by amending the definition of 'Google' and 'Group' so that it explicitly refers to Alphabet Inc., and incorporate company law. The CMA's provisional view is that defining 'Group' with reference to the relevant section of the Enterprise Act 2002 provides sufficient clarity. The CMA also provisionally considers that the explicit reference to Alphabet Inc. provides clarification that the commitments will apply to Google's whole group whether or not the subsidiaries have any direct involvement with the Privacy Sandbox Proposals.
- 4.39 In conclusion the CMA provisionally considers that the changes outlined above result in the following improvements, relative to the Initial Commitments:
- (a) increased clarity as to the scope of the Privacy Sandbox Proposals and that all of these are covered by the commitments;
 - (b) increased clarity, and assurance for third parties, in relation to the 'Alternative Technologies' referred to in the commitments;
 - (c) greater assurance for third parties who may otherwise be concerned about their continued ability to access data from TPCs until the Standstill Period – both by removing any potential loophole by which Google could avoid its obligations under the standstill provisions by clearing TPCs every 31 days or longer, and by ensuring a longer lifespan for TPCs (90 days) until the Standstill Period;
 - (d) clarification that 'Personal Data' refers to the applicable data protection and privacy legislation in force in the UK; and
 - (e) further clarification that the commitments apply to Google's whole group (including Alphabet Inc. and its various subsidiaries, whether or not those subsidiaries have any direct involvement with the Privacy Sandbox Proposals).

Other definitions

- 4.40 A small number of respondents suggested that the commitments should include certain additional, or modified, defined terms.

⁴⁶ That submission may have been a reference to section 1161 (meaning of undertaking) of the [Companies Act 2006](#) or section 1159 (meaning of subsidiary) of the [Companies Act 2006](#).

- 4.41 One respondent considered that references to **'ads systems'** (eg in Section G of the Initial Commitments) were unclear, as the phrase was not commonly used in relation to digital advertising – and if it was intended to refer to all of Google advertising technology products and services (present or future) then Google should expressly state so.
- 4.42 In Section B of the Modified Commitments, Google has defined 'Ads Systems' as 'the computer systems that constitute Google's various products and services used for Targeting or Measurement of digital advertising on the web' to address this concern. The CMA's provisional view is that this provides additional clarity to the Modified Commitments.
- 4.43 One respondent suggested replacing references to **'Chrome'** in the Initial Commitments with a new defined term, which would refer to 'the Google Chrome web browser and interactions between Google and the Chromium project with like effect'.
- 4.44 In Section B of the Modified Commitments, Google has added a new defined term, referring to the Chrome web browser as built on Chromium and Blink. The CMA provisionally considers that this is more specific and addresses the concerns raised by the respondent.
- 4.45 Seven respondents considered that it was unclear whether **'targeting or measurement of digital advertising'** in the Initial Commitments included activities such as attribution and frequency capping, and that these should be included. One of these respondents further considered that ad delivery should be included. Furthermore, two respondents suggested defining each of the terms **'targeting'** and **'measurement'** because, while it might be difficult to dispute the scope of the terms within digital advertising, there appeared to be many ways that Google could advantage itself by using data outside of a strict definition of targeting or measurement.⁴⁷ Those included frequency capping, attribution, ad creative and inventory performance etc.
- 4.46 In Section B of the Modified Commitments, Google has added a definition for 'Targeting or Measurement', clarifying that it also includes frequency capping, reporting and attribution. The CMA provisionally considers that this provides clarity on the application of targeting or measurement in the Modified Commitments.

⁴⁷ In addition, it was submitted that 'measurement' could mean either measurement in the sense of determining whether the digital advertising was actually seen (that is, assessing viewability, ad fraud and/or brand safety) or measurement of attribution (that is, measuring the effectiveness of the digital advertising by determining whether conversion occurred), whereas both should be covered by the definition.

- 4.47 One respondent considered that references to **‘third-party inventory’** (eg in paragraph 23 of the Initial Commitments) did not make clear whether the phrase meant a ‘third party’ vis-à-vis Google, in particular as the phrase was not defined. That respondent submitted that if the term was intended to exclude any ad inventory on a website other than a Google-owned website, each such reference could be replaced by ‘any ad inventory on any website not owned by Google’.
- 4.48 In the Modified Commitments, Google has replaced any references to ‘third-party inventory’ previously within the commitments with the phrase ‘ad inventory on websites not owned and operated by Google’. The CMA’s provisional view is that this amendment provides greater clarity on the scope of the Modified Commitments.
- 4.49 In conclusion, the CMA provisionally considers that the changes and additions above result in the following improvements, relative to the Initial Commitments:
- (a) a clarification that references to ‘Ads Systems’ mean all of Google’s various advertising technology products and services used for targeting or measurement of digital advertising on the web;
 - (b) a more specific indication of the scope of ‘Chrome’ when it is referred to within the commitments;
 - (c) clarifying that ‘Targeting or Measurement’ in this context includes (but is not limited to) frequency capping, reporting and attribution; and
 - (d) a clarification that ‘third party inventory’ within the purpose of the commitments applies only to websites not owned or operated by Google.
- 4.50 In addition, the following defined terms have been added since the Initial Commitments in light of consultation responses.⁴⁸ The context of these additions, and the CMA’s provisional views on them, are set out within this notice (in the sections noted below):
- (a) ‘GNATCATCHER’ and ‘Privacy Budget’ – in relation to which see paragraphs 4.78 to 4.88 below regarding Section F of the commitments;

⁴⁸ Google has also added the defined term **‘W3C’** to the commitments. This was added not because of any specific consultation response, but due to the increased number of references in the Modified Commitments, relative to the Initial Commitments, to the World Wide Web Consortium. The CMA provisionally welcomes this new term, as it helps to simplify the text of the Modified Commitments.

- (b) 'Google Ad Manager' and 'Non-Google Technologies' – in relation to which see paragraphs 4.101 to 4.118 below regarding Section H of the commitments;
- (c) 'Monitoring Trustee' (with consequential amendments to 'Monitoring Statement') – in relation to which see paragraphs 4.119 to 4.138 below regarding Section I of the commitments.

Purpose of the Commitments (Section C of the commitments)

Overview

4.51 In Section C of the Initial Commitments, Google set out the '**Purpose of the Commitments**' – namely to ensure that the design, development and implementation of the Privacy Sandbox Proposals does not lead to a distortion of competition in digital advertising markets and/or the imposition of unfair terms on Chrome's web users. Section C of the Initial Commitments required Google to design, implement and evaluate the Privacy Sandbox Proposals by taking into account a number of specific factors (referred to as the 'Development and Implementation Criteria'). Section C also set out the structure of the commitments offer. A number of consultation responses identified a need to clarify and strengthen Google's obligations to address the CMA's concerns and comply with applicable data protection legislation.⁴⁹

Competition concerns and data protection

4.52 Five respondents considered the Initial Commitments to have a clear purpose and/or to be based on clear principles. However, as detailed below, some respondents suggested that Section C should contain more specific wording in relation to the CMA's competition concerns and data protection.

4.53 One respondent submitted that paragraph 8 of the Initial Commitments should not re-frame the CMA's concerns as set out in the June Notice. Two respondents stated that paragraph 9.a. of the Initial Commitments should refer to applicable law, and not simply 'data protection principles'.

4.54 In the Modified Commitments, Google has included amended text, to:

- (a) provide that the 'Purpose of the Commitments' is to 'address the competition concerns identified by the CMA during its investigation',

⁴⁹ For the CMA's assessment of additional consultation responses on Section C of the Initial Commitments, see Appendix 2, paragraphs 21–25.

and include a description of those concerns more closely reflecting the relevant wording in the June Notice;⁵⁰ and

- (b) amend the 'Development and Implementation Criteria', so that they include 'compliance with data protection principles as set out in the Applicable Data Protection Legislation'.⁵¹

4.55 The CMA provisionally considers that the Modified Commitments introduce greater clarity by:

- (a) emphasising that the purpose of the commitments is to address the CMA's competition concerns; and
- (b) further specifying that Google remains bound by the Applicable Data Protection Legislation, both as it applies to the commitments and more generally.

Transparency and consultation with third parties (Section D of the commitments)

Overview

4.56 In Section D of the Initial Commitments, Google included wording under which it offered to undertake the following measures, to improve transparency and consultation with third parties by:

- (a) making a public statement highlighting the criteria (themselves specified in the commitments) by which the Privacy Sandbox tools will be evaluated (including impacts on privacy, competition, publishers, advertisers and aspects of user experience);
- (b) publicly disclosing the timing of key Privacy Sandbox Proposals, including information on timing of trials, and removal of TPCs, such disclosure to take place in a range of fora including the World Wide Web Consortium ('**W3C**'); and
- (c) seeking to facilitate CMA involvement in W3C discussions.

4.57 Many consultation responses identified a need for enhanced transparency and consultation in the implementation of the Privacy Sandbox Proposals.⁵²

⁵⁰ See Modified Commitments, paragraph 7 (in particular paragraphs 7.b. and 7.c.), and the June Notice, paragraphs 5.98.b. and 5.98.c.

⁵¹ See Modified Commitments, paragraph 8.a.

⁵² For the CMA's assessment of additional consultation responses on Section D of the Initial Commitments, see Appendix 2, paragraphs 26–35.

Google's public statements

- 4.58 Around half of all consultation respondents commented on the importance of Google's future disclosures about Privacy Sandbox. Respondents welcomed the transparency offered by Google but sought further improvements, for example in relation to the content of (and the CMA's involvement in) public statements made by Google:
- (a) Two respondents submitted that Google should be required to make any public statements required from it under paragraph 11 of the Initial Commitments via the same means, and with the same prominence, as its prior public announcements about Privacy Sandbox's potential advantages. For example, Google should inform customers directly of any commitments accepted by the CMA.
 - (b) Four respondents objected to paragraph 11.a. of the Initial Commitments, citing Google's stated aim of making the web 'more private and secure for users'.⁵³ On a similar theme, another respondent suggested that Google should publicise that its technology is neither 'more privacy-friendly' than others' technology, nor 'certified' by the CMA or the ICO.
 - (c) Two respondents suggested amending 'intends to' in paragraph 11.c. of the Initial Commitments to 'will', when referring to Google's commitment to design, develop and implement the Privacy Sandbox Proposals in line with the Development and Implementation Criteria.
 - (d) One respondent suggested that Google should obtain prior CMA approval for any future Privacy Sandbox-related public communication mentioning privacy. On a related theme, one respondent suggested that any Google public statements about Privacy Sandbox should refer expressly to Google not implementing its proposals until the Standstill Period provided for under Section F of the commitments had expired.
- 4.59 In the Modified Commitments, Google has offered to commit to:
- (a) replace 'Google intends to pursue its objective of making the web more private and secure for users' in paragraph 11.a. of the Initial Commitments with 'Google's objectives in developing the Privacy Sandbox Proposals are to make the web more private and secure for users';⁵⁴

⁵³ See also responses in relation to Section A at paragraphs 4.15–4.16.

⁵⁴ Modified Commitments, paragraph 10.a.

- (b) instruct its staff/agents not to make claims to customers contradicting the commitments, and provide training to its relevant staff and agents to ensure that they are aware of the requirements of the commitments;⁵⁵
- (c) replace ‘intends to’ in paragraph 11.c. of the Initial Commitments with ‘will’;⁵⁶ and
- (d) involve the CMA on an ongoing basis in announcements relating to the Privacy Sandbox⁵⁷ – and to use Google’s best endeavours to ensure that Google’s public announcements expressly refer as appropriate to the involvement of, and regulatory oversight provided by, the CMA in consultation with the ICO.⁵⁸

4.60 The CMA provisionally considers that the changes above, in relation to the content of (and CMA role in) certain public statements by Google, provide increased clarity on how Google will carry out its transparency and consultation commitment.

Third-party engagement

4.61 Eight consultation responses identified a need for enhanced transparency and consultation with third parties in the implementation of Google’s Privacy Sandbox Proposals.

4.62 Some respondents suggested that Google’s ongoing future public disclosures should be enhanced by giving sufficient information, regular updates and providing third parties with enough notice to allow them to assess and meaningfully comment on proposals:

- (a) Two respondents suggested that Google’s commitment to publicly disclose the timing of key Privacy Sandbox Proposals lacks a clear notice period.
- (b) One respondent suggested obliging Google to publish regular updates, for example fortnightly updates on the progress of each proposal against each applicable criterion.
- (c) One respondent submitted that any timelines or updates published should include greater detail, in order for market players to be able to

⁵⁵ Modified Commitments, paragraph 14.

⁵⁶ Modified Commitments, paragraph 10.c.

⁵⁷ Modified Commitments, paragraph 10.d.

⁵⁸ Modified Commitments, paragraph 11. In relation to the CMA’s consultation with the ICO, as mentioned in paragraph 1.3 of this notice, the CMA will consult the ICO on aspects of the Privacy Sandbox Proposals that relate to matters of privacy and data protection.

assess the impact of any changes. For example, Google should provide further explanations publicly on how the Privacy Sandbox will operate and interact with existing ad tech.

- 4.63 Other respondents expressed concerns that the technical complexity of engineering behind the Privacy Sandbox Proposals may be a barrier for certain stakeholders participating in the development and feedback processes and asked that Google provide greater access to engineering teams and to code contributing to draft proposals.
- (a) One respondent said that, in Google's regular reporting to the CMA and in the subsequent publishing process, Google should ensure it provides clear and understandable progress reports, recognising its diverse audience.
 - (b) Two respondents suggested that any commitments accepted by the CMA should require Google to publish more technical details (and code) of the proposals being developed.
 - (c) Some respondents particularly valued more transparency or proof of no bias for certain Privacy Sandbox components in solutions (for example, algorithms which Google uses to create cohort-based audiences).
- 4.64 Seven respondents suggested that any commitments accepted by the CMA should set out a wider range of obligations than were contained in the Initial Commitments, including pre-agreed processes for Google to consult with third parties to actively solicit views, and with the involvement and oversight of the CMA.
- (a) One respondent suggested providing for regular discussions (for example, monthly) between Google, the CMA, marketers, publishers and ad tech providers – after which, details of each discussion would be published.
 - (b) Two respondents proposed that Google should be required to seek input proactively from market participants, ie consult on (and not just publish) certain things. One respondent also said that Google should seek to also obtain input from internet users.
 - (c) Five respondents contended that Google should give a specified degree of consideration to third parties' views: for example, Google should update the CMA on views received by Google, and how Google plans to respond.

- (d) One of these respondents said that Google should commit to dedicating more resources to engaging with, and supporting, the businesses impacted, directly or indirectly, by the proposals.

4.65 In the Modified Commitments, Google has offered to commit to:

- (a) disclose timing updates with sufficient advance notice, and publish key information, to allow third parties time to assess, comment and adjust their business models accordingly;⁵⁹ and
- (b) publish a formal process for engaging with its third-party stakeholders (including, but not limited to, in a W3C context) which would include:⁶⁰
 - (i) reporting to third parties on this process;
 - (ii) providing (non-public) quarterly reports to the CMA explaining how Google has substantively taken into account representations by third parties; and
 - (iii) taking into consideration reasonable views and suggestions expressed to Google by publishers, advertisers and ad tech providers in relation to the Privacy Sandbox Proposals, including about testing.

4.66 The CMA provisionally considers that the changes set out above, in relation to the timing and process for third-party engagement by Google, provide increased clarity on how Google will carry out its transparency and consultation commitment. This will, in turn, address concerns relating to an asymmetry of information between Google and third parties regarding the development of the Privacy Sandbox Proposals, and increase third parties' confidence regarding Google's intentions in designing, developing and implementing the Privacy Sandbox Proposals.

Involvement of the W3C

4.67 The CMA received 19 consultation responses addressing the role of the W3C as an appropriate forum for Google (and the CMA) to engage with stakeholders in developing the Privacy Sandbox Proposals. The CMA noted the following responses made in relation to the involvement of the W3C.

- (a) Six respondents commented on the impact that the choice of W3C as a forum, and choice of a specific 'group' within W3C, could have on stakeholders' ability to engage with the development of proposals and

⁵⁹ Modified Commitments, paragraph 11.

⁶⁰ Modified Commitments, paragraphs 12 and 32.a.

that there is no meaningful or structured engagement with industry in relation to the proposals and the feedback provided⁶¹ – and, because of the make-up of stakeholders including Google in selected W3C Business Groups and Community Groups, views may not be representative of all industry players.⁶²

- (b) Two respondents suggested engagement by Google with a broader set of stakeholders, including publishers (additional compulsory industry roundtables, for example, to address this concern).
- (c) Other respondents said that Google’s Privacy Sandbox Proposals should be developed through a dedicated W3C Working Group, subject to the W3C’s design principles and governance processes.

4.68 In the Modified Commitments, Google has offered to publish on a dedicated microsite a process for engaging with its third-party stakeholders in relation to the Privacy Sandbox Proposals. As part of that process, Google has offered to take into consideration reasonable views and suggestions expressed to it by publishers, advertisers and ad tech providers, including (but not limited to) those expressed in the W3C or any other fora.⁶³

4.69 The CMA’s provisional view is that the modifications to Section D extend the CMA’s involvement to announcements of the Privacy Sandbox Proposals and increase visibility of the CMA’s involvement by including an explicit reference to the CMA process and commitments in a dedicated microsite. In addition, publishing the feedback process on the microsite will help third parties to provide regular input, keep regularly informed of developments (including suggestions made and Google’s reactions), and also understanding which feedback channel applies to them. Google will report to the CMA on that feedback process as part of its reporting and compliance obligations, which are detailed in paragraphs 4.119 to 4.138 below regarding Section I of the commitments.

4.70 In addition, in relation to its ongoing participation in the W3C, Google has confirmed that it intends for the Privacy Sandbox Proposals to proceed to the relevant W3C Community Groups, Business Groups and Working Groups,

⁶¹ Examples cited in responses referred to eg: W3C groups providing insufficient breadth and depth for the scale of changes proposed; meetings being unstructured; questions and comments being ignored or left without a satisfactory answer; or insufficient amounts of code being made available to validate claims about proposals.

⁶² Comments included: US platforms and digital stakeholders being over-represented; a lack of news publishers being involved; and Google often driving and ‘dominating’ existing Business Groups and Community Groups, and chairing a majority of sessions in relevant Business Groups or Community Groups.

⁶³ Modified Commitments, paragraph 12.

according to W3C processes.⁶⁴ The CMA's provisional view is that this proposed modification is an adequate proposal, improving the Initial Commitments while taking into account that how Privacy Sandbox Proposals are considered with the W3C is a matter ultimately for the W3C.

Involvement of the CMA and ICO, including proposed testing and trialling (Section E of the commitments)

Overview

- 4.71 In Section E of the Initial Commitments, Google has offered to engage with the CMA in an open, constructive and continuous dialogue, providing the CMA with a timeline of Google's plans with respect to the Privacy Sandbox. The Initial Commitments included provisions relating to the way in which Google and the CMA will organise their dialogue. These covered, for example: efforts to identify and resolve competition concerns quickly; holding regular check-in meetings; submitting quarterly reports on the progress of the Privacy Sandbox Proposals; the design of tests as well as the involvement of the CMA in testing; and updating the CMA on Google's plans for user controls. The Initial Commitments also included provisions aimed at facilitating: the continuing of the investigation under the Act if any remaining competition concerns are not resolved, on the basis that there has been a material change of circumstances; and the involvement of the ICO in the process.
- 4.72 Many respondents supported the proposed involvement of the CMA, and the ICO, after the acceptance of any commitments under the Act.⁶⁵ Some of these underlined the importance of CMA involvement – in particular, through staff of the Digital Markets Unit ('**DMU**'), in future – at every stage of the future development of the Privacy Sandbox Proposals. However, as detailed below, a number of responses contained suggestions as to how to improve the commitments with regard to the involvement of the CMA as well as that of the ICO.⁶⁶

⁶⁴ Modified Commitments, paragraph 13. Google has explained to the CMA why Google cannot commit to develop the Privacy Sandbox Proposals through a dedicated W3C Working Group: this is not a step which Google can take independently – ultimately, it is for the W3C to decide. See Appendix 2, paragraph 29.

⁶⁵ The CMA expects to involve the ICO, in line with paragraph 18 of the Modified Commitments, on the application of the Applicable Data Protection Legislation to the Privacy Sandbox Proposals.

⁶⁶ For the CMA's assessment of additional consultation responses on Section E of the Initial Commitments, see Appendix 2, paragraphs 36–50.

Testing to be undertaken under the commitments

- 4.73 Almost half of all respondents commented on paragraph 16.c. of the Initial Commitments and the testing of technologies in the context of developing the Privacy Sandbox Proposals.
- 4.74 Consultation respondents welcomed the increased transparency provided for by the Initial Commitments' provisions relating to testing. However, responses focused on the importance of ensuring that this testing covers all of the Privacy Sandbox Proposals. Under the Initial Commitments, only 'Alternative Technologies'⁶⁷ would be subject to certain testing and trials by Google. Five respondents suggested expanding the scope of Google's testing commitments. One respondent considered that the scope of Google's testing obligations should not be limited to the 'Alternative Technologies'. For example, testing and trialling should assess the impact of the user-agent string deprecation or the Willful IP Blindness/GNATCATCHER proposals.
- 4.75 Some respondents also suggested amending who would be involved in designing, undertaking and/or evaluating tests in the context of the Privacy Sandbox – eg to allow for the testing of the Privacy Sandbox Proposals to be designed and/or conducted by third parties and/or independent experts. Some respondents suggested tightening or clarifying the CMA's oversight role in relation to Google's testing of the Privacy Sandbox Proposals. Three respondents submitted that the CMA's role in designing tests should be greater than the references in paragraph 16.c. of the Initial Commitments to Google seeking to 'agree with the CMA parameters' – and should include defining applicable objective measures of efficacy. One respondent called for the Initial Commitments to specify the data and benchmarks to be used for Google's testing and trials.
- 4.76 In the Modified Commitments, Google has committed to:
- (a) ensure that testing will be conducted on all Privacy Sandbox Proposals amenable to quantitative testing;⁶⁸
 - (b) clarify that Google will take into consideration third parties' reasonable views and suggestions regarding testing the Privacy Sandbox Proposals, by also applying the provisions of paragraph 12 of the Modified Commitments (process for engagement) to testing;⁶⁹

⁶⁷ Defined within Section B of the Initial Commitments to mean technologies designed, developed and implemented by Google as alternatives to TPCs in Chrome and Chromium.

⁶⁸ Modified Commitments, paragraph 17.c. 'Quantitative Testing' is defined in Section B of the Modified Commitments.

⁶⁹ Modified Commitments, paragraphs 12 and 17.c.ii.

- (c) give the CMA sufficient advance notice of any intention to carry out any 'alternative tests' (ie ones not approved by the CMA), explain the nature of any such tests and discuss with the CMA whether (and if so how) Google should publish the results of any such tests.⁷⁰

4.77 The CMA's provisional view is that the Modified Commitments address the concerns raised by respondents as described above. In particular, the changes provide for CMA involvement in testing all relevant Privacy Sandbox Proposals (ie those that are amenable to quantitative testing), that third parties may provide their views on such testing, and that Google will regularly update the CMA on how Google has taken these third-party views into consideration. Where appropriate, the CMA will also continue to consult the ICO on aspects of the Privacy Sandbox Proposals that relate to matters of privacy and data protection, in line with the Memorandum of Understanding between the CMA and the ICO,⁷¹ the CMA-ICO joint statement,⁷² and paragraph 18 of the Modified Commitments.

Standstill before the Removal of TPCs (Section F of the commitments)

Overview

4.78 In the Initial Commitments, Google offered a Standstill Period of 60 days (which could be extended by a further 60 days) triggered by giving notice to the CMA of Google's intention to remove TPCs. The CMA would consult during this period, and notify Google if the CMA had any remaining competition concerns. If so, and those concerns were not resolved, the CMA would have the opportunity to continue the investigation, make a decision or give an interim measures direction (see section 31B(4) CA98).

4.79 Ten respondents supported the inclusion of such a period albeit subject to certain modifications. The suggested modifications are referred to below.⁷³

The appropriate trigger for the Standstill Period

4.80 Three respondents suggested that the trigger for and/or the suspensive effect⁷⁴ of the Standstill Period should not only be the removal of TPCs, as set

⁷⁰ Modified Commitments, paragraph 17.c.vi.

⁷¹ [Memorandum of Understanding between the Information Commissioner and the Competition and Markets Authority](#), 30 April 2021.

⁷² [Competition and data protection in digital markets: a joint statement between the CMA and the ICO](#), 19 May 2021.

⁷³ For the CMA's assessment of additional consultation responses on Section F of the Initial Commitments, see Appendix 2, paragraphs 51–69.

⁷⁴ Namely, the effect of the words 'Google will not implement the Removal of Third-Party Cookies before the expiry of a standstill period', contained in paragraph 18 of the Initial Commitments.

out in the Initial Commitments, but should be expanded to the removal of other functionalities or data. Respondents suggested that the trigger and/or suspensive effect should apply to the implementation by Google of any of the Privacy Sandbox Proposals which will limit data accessibility or interoperability for third parties, or otherwise significantly impact the web advertising ecosystem. In particular, submissions referred to the removal of interoperable data, used for purposes including fraud detection, such as the user-agent string and IP addresses.

- 4.81 Two other respondents suggested that the trigger for and/or the suspensive effect of the Standstill Period should apply to the deployment by Google of any new Privacy Sandbox functionality in Chrome (eg User-Agent Client Hints, GNATCATCHER, the Privacy Budget, FLoC or TURTLEDOVE).
- 4.82 In the Modified Commitments, Google has offered to commit to not implement, before Google removes TPCs:
- (a) the Privacy Budget element of the Privacy Sandbox Proposals; or
 - (b) the GNATCATCHER element of the Privacy Sandbox Proposals, without Google making reasonable efforts to support websites' non-ads use cases for the IP address.⁷⁵
- 4.83 The Modified Commitments do not include:
- (a) A modification in relation to user-agent string: the CMA is satisfied that this is not necessary since, although a reduction is scheduled to take place in the coming months, Google has stated that 'all of the information available in the user-agent string' as of the 'Effective Date' of the commitments would be available through User-Agent Client Hints.⁷⁶ Since the Privacy Budget is not scheduled to be in force until later (after TPC deprecation), there will be no limit on how much information can be requested from User-Agent Client Hints. The main difference is that User-Agent Client Hints will need to be actively requested by websites, rather than passively receiving the information. While there will be some cost involved in changes to code that website developers need to make to use this new API, the CMA believes this cost to be small and typical for website developers.
 - (b) A general commitment not to remove or reduce any functionality or data before the Standstill Period is triggered: the CMA has looked at Google's timeline for deploying the Privacy Sandbox Proposals and

⁷⁵ Modified Commitments, paragraph 20. Section B of the Modified Commitments also now includes new definitions for each of 'GNATCATCHER' and 'Privacy Budget'.

⁷⁶ Modified Commitments, footnote 3.

notes that the main reductions that might occur before TPCs include user-agent string and IP addresses.⁷⁷ The additional commitments set out at paragraph 4.82 above address consultation respondents' specific concerns about the pre-Standstill Period removal of the user-agent string, and/or losing support for non-ads use cases for IP addresses. Google has informed the CMA that, because of a risk that third parties will devise 'workarounds' to continue tracking users after TPC deprecation (through means such as fingerprinting), Google may want to pre-empt this in order to prevent undesirable privacy harms that TPC deprecation might induce. Overall, the CMA is provisionally satisfied that the Modified Commitments cover the key substantive concerns expressed by consultation respondents about Google removing other functionality or data pre-Standstill Period, without restricting unnecessarily Google's ability to continue to prevent privacy harms. The CMA provisionally considers that the additional commitments set out at paragraph 4.82 above suffice to protect the key other non-advertising use cases cited as important by consultation respondents.

- 4.84 The CMA provisionally considers that the changes in the Modified Commitments address the additional points arising from consultation responses, in particular as the changes provide third parties with greater certainty that Google will not remove certain functionalities and data in advance of the Standstill Period. In any event, the CMA notes that if any concern does arise in relation to the removal or reduction of any data or functionality before the Standstill Period pursuant to any specific elements of the Privacy Sandbox Proposals, the CMA can notify Google of this concern and trigger the need to resolve it, under the provisions in paragraph 17.a. of the Modified Commitments.

Notifiable concerns

- 4.85 One respondent suggested that a wider scope of concerns (ie not just those 'concerning the Removal of Third-Party Cookies') should be notifiable by the CMA to Google in the context of the Standstill Period under paragraph 19 of the Initial Commitments.
- 4.86 Under the Modified Commitments, the concerns that are notifiable by the CMA to Google during the Standstill Period are now broader in scope, ie not limited to just those concerning the removal of TPCs.⁷⁸ Google is offering to commit to working with the CMA to resolve any concerns that arise,

⁷⁷ Google, [The Privacy Sandbox timeline](#) (as accessed on 25 November 2021).

⁷⁸ Modified Commitments, paragraph 21.

addressing comments made by the CMA. The CMA welcomes this change, which will allow for a wider range of concerns to be raised, not limited to the removal of TPCs.

Interactions between the CMA and Google to resolve concerns

- 4.87 One respondent queried whether the commitments could be more specific on the possible avenues at the end of the Standstill Period. This prompted the CMA to discuss with Google mechanisms to provide assurance that where concerns were resolved at the end of the Standstill Period, such resolution would be maintained.
- 4.88 Under the Modified Commitments, Google will inform the CMA of how it has responded to resolving concerns notified by the CMA to Google during the Standstill Period.⁷⁹ This will form part of the quarterly reporting in addition to the signed Compliance Statement.⁸⁰ The CMA provisionally considers that these changes are an improvement relative to the Initial Commitments. This wording was added in order to address the CMA's concern that the CMA and Google could resolve concerns notified to Google during the Standstill Period, but there was no provision specifically aimed at preventing Google from rowing back on any resolutions reached during the Standstill Period. The CMA provisionally considers that these changes address this additional point.

Google's use of data (Section G of the commitments)

Overview

- 4.89 In the Initial Commitments, Google committed not to use individual-level user data from a user's Chrome browsing history (including synced Chrome history) and Google's publisher customers' Analytics accounts, to track users for targeting and measurement of digital advertising on Google owned and operated inventory on the web. Google further committed not to use individual-level user data from these sources – or from Google's user-facing services (including Android), or data uploaded by advertisers to Google's Customer Match service – to track users for targeting and measurement of digital advertising on non-Google owned and operated web inventory. The Initial Commitments set out certain clarifications – eg for 'indirect use' of the data types listed, or use to prevent spam and fraud.

⁷⁹ Modified Commitments, paragraph 21. Concerns raised outside of the Standstill Period will be resolved on the basis of paragraph 17.a.ii. of the Modified Commitments.

⁸⁰ Modified Commitments, paragraphs 21 and 32.a. The reporting obligations also relate to concerns raised outside of the Standstill Period based on paragraph 17.a.ii. of the Modified Commitments.

4.90 The focus of consultation responses was on clarifying the scope of Section G, including the types and sources of data that Google can use and the uses permitted. Respondents' broad concern was that Google would continue to be able to share substantial amounts of data within its ecosystem (including with its third-party ads business), which could enable Google to replicate the functionalities of TPCs, whilst denying those functionalities to its competitors in digital advertising.⁸¹

Clarifications on Google's use of data

4.91 Some consultation respondents suggested amending the commitments, to provide:

- (a) a clarification of what is meant by 'individual-level user data', and whether this includes aggregated data where individuals may still be identifiable by Google;
- (b) a clarification of the purposes and uses of data included in 'targeting or measurement of digital advertising', and whether this included attribution, reporting and frequency capping;
- (c) a stronger commitment that Google would only use data provided by its publisher customers for the purpose for which it was provided;
- (d) a clarification of the reference, proposed by Google, to 'indirect use' of the data from the sources in paragraph 25 of the Initial Commitments;
- (e) a confirmation that Section G's specific wording supplemented, and did not override, broader obligations elsewhere in the commitments or in generally applicable law; and
- (f) an additional commitment, namely that Google should commit to use only user data collected through the Privacy Sandbox.

4.92 In the Modified Commitments, Google has:

- (a) replaced all references to individual-level user data with references to 'Personal Data', a term which is itself defined by reference to 'Applicable Data Protection Legislation', and which will include aggregated data in contexts where Google is still able to identify individuals;⁸²

⁸¹ For the CMA's assessment of additional consultation responses on Section G of the Initial Commitments, see Appendix 2, paragraphs 70–97.

⁸² Modified Commitments, paragraphs 25–27.

- (b) clarified that ‘targeting or measurement’ includes attribution, reporting and frequency capping;⁸³
- (c) provided a clearer commitment not to use personal data provided by Google Analytics customers to track users for targeting or measurement of digital advertising, on either Google owned and operated inventory or ad inventory on websites not owned and operated by Google – except to allow each Google Analytics customer to share or export its own Analytics data, including through a linked Google Ads account, for ads targeting and/or measurement;⁸⁴
- (d) removed the reference in paragraph 25 of the Initial Commitments to Google making ‘indirect use’ of data from the sources listed in Section G of the Initial Commitments;
- (e) included a clarification that the specific wording of Section G supplements, and does not override, the broader obligations in the commitments or in generally applicable law;⁸⁵ and
- (f) further clarified that, with respect to ad inventory on websites not owned and operated by Google, Google intends to use the Alternative Technologies developed as part of the Privacy Sandbox for targeting or measurement.⁸⁶ Google has told the CMA that Google will have the same ability as other market participants to use data points made accessible by the browser (including but not limited to Chrome) or network, such as IP address, user agent information, or device information, to the extent that these are equally available to other market participants.⁸⁷

4.93 Google has told the CMA that it would still use the first-party Personal Data of the relevant advertiser and publisher⁸⁸ to track users to target or measure digital advertising on the relevant ad inventory. Google would not use

⁸³ See paragraph 4.46 above, in relation to Section B of the commitments.

⁸⁴ Modified Commitments, paragraph 26 and footnote 4.

⁸⁵ Modified Commitments, paragraphs 29.a. and 29.b. respectively.

⁸⁶ Modified Commitments, paragraph 28.

⁸⁷ For example, Google will not have any access to IP addresses and user agent information that is not available to other market participants following implementation of the Privacy Sandbox. Instead, Google may use the versions of IP address and user agent information that the Privacy Sandbox will make available (ie proxied IP address or limited to certain uses via Willful IP Blindness, and the User Agent-Client Hints API).

⁸⁸ Google has explained that the reference to ‘relevant advertiser and publisher’ in the last sentence of paragraph 27 of the Modified Commitments refers to the publisher on whose website the ad is shown and the advertiser for that ad. For example, if an ad leading to www.nike.com is shown on www.nytimes.com, Nike is the relevant advertiser and the New York Times is the relevant publisher. Google is therefore committing not to use Personal Data regarding the user’s activity on, say, www.theguardian.com in order to target or measure this ad. A definition of ‘Google First-Party Personal Data’ is included in Section B of the Modified Commitments.

Personal Data (regarding users' activities) on websites other than those of the relevant advertiser and publisher.

- 4.94 Paragraphs 25 to 27 of the Modified Commitments do not prevent Google from sharing data collected from its user-facing services and Customer Match to target or measure advertising on Google's owned and operated inventory.
- 4.95 In light of the above, the CMA provisionally considers that the changes in the Modified Commitments to Section G clarify the envisaged formal internal limits on Personal Data Google shares between services and activities in its ecosystem, and clarify further Google's intent to use Privacy Sandbox tools in future in the same ways as third parties will be able to use them.
- 4.96 The CMA's provisional view is that these provisions (set out in paragraphs 25 to 27 of the Modified Commitments) would directly address many aspects of the CMA's concern that Google's Proposals would limit the functionality available to its rivals in the open display market, while leaving Google's ability to offer these functionalities relatively unaffected through the use of Personal Data from its own user-facing services in Google's advertising businesses.
- 4.97 Specifically, in relation to third-party inventory, paragraphs 25 to 27 of the Modified Commitments would remove Google's ability to use Personal Data (i) from its user-facing services (including Chrome browsing history), and (ii) from pooling data across unaffiliated advertisers and publishers (including Google Analytics data) to track users to target and measure digital advertising on non-Google inventory, to its advantage when competing with rival ad tech providers to offer digital advertising services to third-party websites.
- 4.98 The Modified Commitments would also prevent Google from using Personal Data from two key sources (Chrome browsing history and Google Analytics data) for the purposes of targeting and measuring digital advertising on its own inventory. Both of these were key areas of concern identified by stakeholders.
- 4.99 More generally, the commitments give the CMA the ability to influence the design and development of the Privacy Sandbox Proposals to avoid distortions to competition.⁸⁹ For example, if through the process of development, testing and trialling set out above, the Privacy Sandbox tools were shown to be effective substitutes for the functionality provided by TPCs and the other information deprecated by the Privacy Sandbox Proposals, this could address concerns that the implementation of the Privacy Sandbox

⁸⁹ The criteria that the CMA and Google would use to assess the effectiveness of alternative technologies would give the CMA the opportunity to evaluate whether and the extent to which Google's data advantage would distort competition in digital advertising markets (see Modified Commitments, paragraph 8).

Proposals would give Google a competitive advantage over rival publishers and ad tech providers. Even if the Privacy Sandbox tools were not shown to be effective substitutes for these functionalities, if required by the Development and Implementation Criteria the design of other elements of the Privacy Sandbox Proposals (notably First Party Sets) could be used to address any remaining issues through directly determining the extent of data sharing which could occur within Google (and other large businesses).

- 4.100 If, before the removal of TPCs, the CMA were to have remaining competition concerns, the CMA would notify Google to that effect. The CMA's expectation is that, should such concerns be raised, Google will resolve those concerns. If, contrary to the CMA's expectations, such competition concerns are not resolved, the CMA could continue its investigation under section 31B(4) of the Act and, where necessary, the CMA could impose interim measures under section 35 of the Act to avoid harm to competition. In this context, the CMA could consider other interventions to address the remaining competition concerns, such as imposing separation of certain sources of data used by Google to advertise on its own ad inventory.

Non-discrimination (Section H of the commitments)

Overview

- 4.101 Section H of the Initial Commitments set out Google's commitment to develop and implement the Privacy Sandbox Proposals in a manner consistent with the Purpose of the Commitments and in accordance with the Development and Implementation Criteria set out in Section C of the Initial Commitments. In the Initial Commitments, Google offered to ensure that it would not design, develop and implement the Privacy Sandbox Proposals in a way that would distort competition by discriminating against its rivals in favour of its own advertising products and services. Google's offer also included an obligation not to use competitively sensitive information provided by an ad tech provider or publisher to Chrome in a way that distorts competition.
- 4.102 Almost half of consultation respondents commented on Section H of the Initial Commitments. These respondents were not opposed to the inclusion of such an obligation, but expressed concerns regarding the scope and effectiveness of the obligation not to discriminate and the feasibility of monitoring.⁹⁰

⁹⁰ For the CMA's assessment of additional consultation responses on Section H of the Initial Commitments, see Appendix 2, paragraphs 99–108.

Conflicts of interest

- 4.103 Several respondents suggested that Google should offer additional commitments to address competition concerns that Google may be in a privileged position, in terms of the data that it can access via Chrome compared to third parties.
- 4.104 In the Modified Commitments, Google included a new final sentence within paragraph 30 to address the above concern. In that additional sentence, Google now clarifies that the removal of Chrome functionality will remove that functionality not only for other market participants but also for Google.
- 4.105 The CMA provisionally considers that the wording in the Modified Commitments, in addition to the commitment set out in the remainder of paragraph 30, provides further clarity and would give market participants further reassurance that the deprecation of functionality on Chrome will also remove such functionality for Google's own advertising products and services.

Google's use of competitively sensitive information

- 4.106 Google's Initial Commitments included an obligation not to use 'competitively sensitive' information provided by an ad tech provider or publisher to Chrome in a way that distorts competition.⁹¹ This commitment was intended to remove Google's ability to use a rival's information to its own advantage. For example, Google would not be able to access rivals' bidding strategies included in the bidding logic which rivals would need to provide to Chrome to execute when a retargeting opportunity arises.
- 4.107 Five respondents suggested that Google should commit to not using publisher data for any purposes other than those explicitly requested by the publisher. Another respondent also said that Google should commit not to use information provided by a publisher or ad tech provider for any purpose other than that for which it was provided.
- 4.108 In the Modified Commitments, Google has offered not to use competitively sensitive information provided by an ad tech provider or publisher to Chrome for a purpose other than that for which it was provided.⁹² This broadens the scope of the original commitment offer, and avoids any potential ambiguity over interpreting whether information is used 'in a way that distorts competition'; instead, the publisher should be in a position to determine the purpose for which the information is provided.

⁹¹ Initial Commitments, paragraph 26.c.

⁹² Modified Commitments, paragraph 30.c.

4.109 The CMA's provisional view is that this modification directly addresses the concerns raised during the consultation in relation to this issue.

Non-Google Technologies

4.110 Various respondents noted that certain technologies are being (or may in future be) designed, developed, and implemented by parties other than Google as alternatives to TPCs and other functionalities.⁹³ The Initial Commitments contained no wording referring to these technologies.

4.111 Six respondents said that the Initial Commitments should be amended to oblige Google not to impede such alternative solutions, to ensure that alternative technologies are on a 'level playing field' with Google's technologies. For example, it was suggested that Google should not be able to block – or discriminate against marketers, publishers, and ad tech vendors that use – alternative technologies not developed by Google which comply with applicable data protection legislation.⁹⁴ Respondents' concerns arose in the context of Google's market position as an ad tech vendor, and as a browser/browser engine.

4.112 Relatedly, two respondents submitted that Google's proposed Privacy Sandbox technologies for Chrome should be interoperable with other browsers.⁹⁵

4.113 The CMA's concerns in this investigation, as set out in Chapter 2 of this notice, relate to the impact of Google's introduction of the Privacy Sandbox Proposals,⁹⁶ rather than Google's approach to any alternative technologies of other market participants. Nevertheless, the CMA recognises that Google's market position allows it to have a significant impact on the viability of alternative technologies which could compete with the Privacy Sandbox tools following the removal of TPCs. In particular, Google's strong market position

⁹³ Submissions referenced, for example, the alternative identifiers called Unified ID 2.0 and SWAN (as referred to in, for example, the Bloomberg article of 31 March 2021, [Google Is Ending Cookies and the Ad Industry Has an Alternative](#)).

⁹⁴ One respondent noted that there was a risk that Google could use its position in the ad tech supply chain to discriminate against non-Google alternative solutions. Submissions in this regard referred to amongst other things the Google Ads blog, [Charting a course towards a more privacy-first web](#), 3 March 2021. That blog stated, for example, that Google Ads was 'making explicit that once third-party cookies are phased out, we will not build alternate identifiers to track individuals as they browse across the web, nor will we use them in our products'.

⁹⁵ One respondent made a similar submission, albeit in the context of paragraph 9 of the Initial Commitments, that future Privacy Sandbox Proposals should not distort browser competition.

⁹⁶ The Privacy Sandbox Proposals include removing TPCs, and introducing Google's Alternative Technologies as well as the changes listed at Annex 1 to the Modified Commitments. See the defined term 'Privacy Sandbox' within Section B of the Modified Commitments.

as a provider of ad tech services, including through Google Ad Manager,⁹⁷ means that Google's policies towards the use of alternative identifiers can impact on the ability of third parties to develop viable alternative proposals.

4.114 The CMA notes that both Google's Privacy Sandbox Proposals and possible third-party alternatives are still under development.⁹⁸ Both Google's Privacy Sandbox Proposals and possible third-party alternatives will need to comply with applicable data protection legislation, and the ICO has recently set out certain general expectations in this regard.⁹⁹ In relation to the Privacy Sandbox tools, Google's intention is for these to be effective substitutes for the functionality provided by TPCs and the other information deprecated by the Privacy Sandbox Proposals. Under the commitments, there will be an ongoing process of assessing the impacts and effectiveness of the Privacy Sandbox Proposals, including compliance with the applicable data protection legislation.

4.115 The Modified Commitments provide that Google will not change its Google Ad Manager customer policies to introduce any new restrictions on a customer's use of Non-Google Technologies before the Removal of TPCs, absent certain exceptions – and Google will, in any event, for the duration of the commitments inform the CMA¹⁰⁰ ahead of any such policy change.¹⁰¹

4.116 The CMA's provisional view is that this additional commitment will provide greater certainty for third parties who are developing alternative technologies, ensuring that Google does not introduce restrictions under its Google Ad Manager customer policies that would limit the use of third parties' alternative technologies in transactions between publishers and advertisers facilitated by Google Ad Manager, unless exceptional circumstances apply, and without

⁹⁷ Google Ad Manager provides ad tech services to enable publishers to sell ad inventory on their websites, and includes the publisher ad server which controls which advert is shown to a particular user. In the Market Study, the CMA found that Google had a share of supply more than 90% in publisher ad serving in the UK: See [Appendix C](#) to the final report of the Market Study, paragraph 244.

⁹⁸ Consultation responses referred to eg the alternative identifiers called Unified ID 2.0 and SWAN (as cited in eg the Bloomberg article of 31 March 2021, [Google Is Ending Cookies and the Ad Industry Has an Alternative – Bloomberg](#)). See also the ICO Opinion (as referred to at footnote 4 of this notice) – and, in particular, the ICO's analysis of developments in user preferences and identifiers in that opinion.

⁹⁹ See the ICO Opinion (as referred to footnote 4 of this notice), and in particular, the ICO's analysis of developments relating to identifiers in the ICO Opinion.

¹⁰⁰ The CMA expects to involve the ICO, in line with paragraph 18 of the Modified Commitments, in relation to any such changes to the Google Ad Manager customer policies.

¹⁰¹ Modified Commitments, paragraph 31. The Modified Commitments also include two new defined terms used in that paragraph. The new term 'Google Ad Manager' refers to Google's current ad management platform for publishers (on which, see footnote 97 of this notice), and any successor product. 'Non-Google Technologies' refers to the technologies (including, but not limited to, individual user-level identifiers) which are the subject of the representations summarised at paragraphs 4.110–4.112 of this notice. Google has told the CMA that the relevant policies are those set out in the following Google documents: (a) [Platforms program policies](#); (b) [Google Ad Manager Partner Guidelines](#); (c) [Google Publisher Policies](#); and (d) [About publisher provided identifiers](#).

first informing the CMA. The CMA will be involved in an ongoing process of assessing the impacts and effectiveness of the Privacy Sandbox Proposals, including consulting with the ICO regarding compliance with the relevant data protection rules (including consideration, globally, of emerging third-party alternative technologies).

4.117 This additional commitment does not go so far as to impose a requirement on Google to allow any and all third-party alternative technologies access to Chrome and Google Ad Manager, as certain consultation respondents requested. However, the CMA provisionally considers that, currently, this additional commitment is appropriate to address the representations summarised at paragraphs 4.110 to 4.112 of this notice. This is for the following reasons:

- (a) The CMA recognises that Google, like any other tech vendor, has an interest in ensuring that data protection standards (including eg adequate protection for user privacy) are maintained for users of its platforms and systems
- (b) Although it is important that Google does not seek to rely on data protection without proper justification in order to prevent third-party use cases which are consistent with data protection legislation, possible third-party alternatives – and Google’s Privacy Sandbox Proposals – are still under development, and their consistency with applicable data protection legislation is still being evaluated.
- (c) Given this context, the CMA’s provisional view is that it would not be appropriate within these commitments to require Google to interoperate with any and all proposed third-party alternatives that might be developed. However, Google’s additional commitment regarding its Google Ad Manager customer policies should ensure that Google does not introduce restrictions that would limit the use of third-party alternative technologies in the manner described at paragraph 4.116 of this notice.

4.118 The CMA also notes that, in certain circumstances, the CMA could take further action. For example, if before the removal of TPCs, the CMA were to have remaining competition concerns, the CMA would notify Google to that effect.¹⁰² The CMA’s expectation is that, should such concerns be raised, Google will resolve those concerns. If, contrary to the CMA’s expectations, such competition concerns are not resolved, the CMA could continue its investigation under section 31B(4) of the Act and, where necessary, the CMA

¹⁰² Modified Commitments, paragraph 21. The CMA would keep under review Google’s approach to ‘Non-Google Technologies’, including on the basis of the information provided by Google to the CMA under the commitments (eg under Sections D, E and/or I of the Modified Commitments).

could impose interim measures under section 35 of the Act to avoid harm to competition.

Reporting and compliance (Section I of the commitments)

Overview

- 4.119 In the Initial Commitments, Google offered to take a number of steps to ensure compliance with the Initial Commitments, including by submitting to the CMA quarterly Compliance Statements and Monitoring Statements. The Initial Commitments also included, at Annex 2, a high-level outline of the Compliance Statement, and standard paragraphs on both reporting and remedying any breach of the commitments, and on anti-avoidance. The Initial Commitments did not include an outline of the Monitoring Statement.
- 4.120 Fourteen respondents commented on reporting and compliance. In the main, comments were of a general nature: see paragraphs 4.121 to 4.128 of this notice below. Some responses covered specific issues: see paragraphs 4.131 to 4.134 of this notice below.¹⁰³

General comments

- 4.121 A number of respondents commented on the importance of reporting and compliance. Two respondents stressed the importance of the CMA monitoring Google's actions, and of ensuring that Google was held accountable for any commitments accepted. Another two respondents were encouraged by the CMA's proposed rigorous approach, as successful enforcement of the commitments would require continuous monitoring of implementation and the market.
- 4.122 Four respondents cited possible difficulties in monitoring Google's compliance, with three respondents noting that the appointment of an independent third party or expert might be warranted.¹⁰⁴
- 4.123 Three respondents submitted that difficulties arose partly from insufficient transparency/an information asymmetry as between Google and regulators, and the potential risk of regulatory capture.

¹⁰³ For the CMA's assessment of additional consultation responses on Section I of the Initial Commitments, see Appendix 2, paragraphs 109–119.

¹⁰⁴ By contrast, at least one other respondent submitted that it would be preferable for the CMA, rather than a monitoring trustee, to ensure compliance with any commitments.

- 4.124 Three respondents expressed concern that monitoring of Google’s compliance would be largely delegated to Google, and may in any event be difficult to discern.
- 4.125 Three respondents expressed scepticism that Google could be relied on to comply with the Initial Commitments. Respondents submitted that Google had a history of renegeing, which undermined confidence in any solutions it proposes.
- 4.126 Three responses included comments on the CMA’s role in ensuring that Google complied with the Initial Commitments.
- 4.127 Two respondents submitted that Compliance Statements should be subject to full audit and review by the CMA.
- 4.128 Another respondent suggested that the CMA should have a more active role in enforcing the Initial Commitments, and stronger auditing and verification rights, both for Privacy Sandbox and obligations related to Google’s use of its own data.
- 4.129 In the Modified Commitments, Google has offered to also commit to:
- (a) appoint, at its own cost and subject to the CMA’s approval, a monitoring trustee;¹⁰⁵
 - (b) instruct that trustee to monitor Google’s compliance with the operational aspects of the Modified Commitments (ie paragraphs 25 to 27 and 30 to 31), and provide the CMA with quarterly Monitoring Statements – including a check for circumvention;¹⁰⁶ and
 - (c) promptly notify the CMA if it becomes aware of a breach and take all actions reasonably required to remedy a breach.¹⁰⁷
- 4.130 The CMA welcomes the changes detailed above and most notably, regarding the appointment of a CMA-approved monitoring trustee. The appointment of a monitoring trustee would provide more assurance as to Google’s compliance with any commitments by focusing on operational elements relevant to paragraphs 25 to 27, 30 to 31, and 33 of the Modified Commitments.¹⁰⁸ The appointment also addresses a risk of information asymmetry as between

¹⁰⁵ Modified Commitments, paragraph 32.b. Accordingly, Section B of the Modified Commitments includes a definition of ‘Monitoring Trustee’.

¹⁰⁶ Modified Commitments, paragraph 32.b. and new Annex 3 of the Modified Commitments (titled ‘Outline Monitoring Statement’). The definition of ‘Monitoring Statement’ included in Section B of the Modified Commitments mentions that this statement will be prepared by Google or by the Monitoring Trustee, if appointed.

¹⁰⁷ Modified Commitments, paragraphs 32.c. and 32.d.

¹⁰⁸ As regards other areas of the commitments, the CMA will be responsible for reviewing compliance based on the compliance reporting envisaged by paragraph 32.a. of the Modified Commitments.

Google and the CMA, and accords with approaches applied in other CMA cases. The CMA envisages any trustee being: (i) external and independent of Google; and (ii) capable of fulfilling its role (ie possessing relevant experience or skills, and no conflicts of interest). The CMA also expects to liaise with the ICO, in line with paragraph 18 of the Modified Commitments, in relation to the appointment of the Monitoring Trustee. The CMA also envisages the trustee analysing whether Google adheres to both the actual requirements and the 'spirit' of the commitments, in addition to providing simple factual reporting which simply confirms or denies that certain requirements have been met.

Specific comments

- 4.131 Two respondents submitted that Google should also have to, under paragraph 27.c. of the Initial Commitments, consider within a specific period (rather than a 'reasonable period') whether or not its conduct is in compliance. Somewhat similarly, two other respondents suggested including specific time periods in paragraph 27.d. (or Section I, more generally) of the Initial Commitments. One respondent suggested that the Initial Commitments should enable the CMA to specify which actions are 'reasonably required to remedy a breach' under paragraph 27.d. of the Initial Commitments.
- 4.132 The Modified Commitments now state that the 'reasonable period' referred to above should not exceed, absent exceptional circumstances, 10 Working Days from the date on which Google becomes aware of the conduct in question.¹⁰⁹ Paragraph 32.d. of the Modified Commitments now specifies that such actions will be taken by Google 'in consultation with the CMA'.
- 4.133 In combination with paragraph 32.e. of the Modified Commitments, which allows for provision of information and documents to the CMA for the purposes of enabling the CMA to monitor and review the operation of the commitments, in the CMA's provisional view, the changes described at paragraph 4.132 above address the representations summarised at paragraph 4.131 above.
- 4.134 Two respondents submitted that the CMA would require access to Google's data in order to monitor compliance:
- (a) The first of these respondents submitted that Google should grant the CMA (and third parties) access to data to allow them to test Google's compliance with the Initial Commitments.
 - (b) The second of these respondents suggested, specifically in relation to compliance with paragraph 26 of the Initial Commitments, that the CMA

¹⁰⁹ Modified Commitments, footnote 6, which is applicable to paragraph 32.c. of the Modified Commitments.

should have full audit rights to Google's ad tech services to develop a transparent view of Google's operations. This respondent also submitted that the CMA may also wish to consider working with third-party specialists to process the large volumes of data involved in Google's ad tech operations, with a view to such scrutiny being on a rolling basis, rather than ad hoc spot checks. The respondent also deemed it essential that the CMA was provided with full audit rights to Google's demand side platforms ('**DSPs**'), including being able to impose on Google additional data fields that should be made available to the CMA, in order to develop a transparent view of Google's operations. The respondent stated that ongoing scrutiny would require the CMA to gain access to a volume and quality of transaction data that is unprecedented in scale, as it was hard to see how the CMA could satisfy itself that a self-preferencing commitment was being met without full access to Google log-level data.

- 4.135 The Modified Commitments now include, at Annex 3, an outline of the Monitoring Statement. This outline states that each Monitoring Statement will include a summary of the Monitoring Trustee's review of the relevant logs detailing the access history of any datasets within Google that contain data relevant to paragraphs 25 to 27 of the Modified Commitments. The summary will list out exhaustively any access by ads services or individuals and provide the justification for such access. The Monitoring Statement will also include a description of training on permissible data access Google has carried out and the attendees of such training.¹¹⁰ The Monitoring Statement also includes measures for monitoring compliance with paragraphs 30, 31 and 33 of the Modified Commitments.
- 4.136 In combination with the appointment of a Monitoring Trustee (as described above), in the CMA's provisional view, the changes described at paragraph 4.135 above address the representations summarised at paragraph 4.134 above. The Monitoring Trustee will have access to, and the expertise to scrutinise, the relevant logs on an ongoing basis, working on behalf of the CMA. In the CMA's provisional view, this will increase the robustness of the reporting and compliance requirements aimed at ensuring Google's compliance with the commitments.

¹¹⁰ The Monitoring Trustee will also review any training material that Google makes available to all relevant publisher and advertiser-facing staff and agents to make them aware about how to communicate around the removal of TPCs and the Privacy Sandbox (see Annex 3 of the Modified Commitments, point B9). In this context, the CMA notes that while the Monitoring Trustee's role is defined by reference to paragraphs 25–27 and 30–31 of the Modified Commitments, the Monitoring Trustee's review of training materials will not be strictly limited to those provisions of the commitments.

Other amendments

- 4.137 As noted above, a high-level outline of the Compliance Statement was set out at Annex 2 of the Initial Commitments.
- 4.138 Annex 2 has been updated within the Modified Commitments to reflect changes made to the content of the provisions under Section G and Section H of the commitments. In addition, Google has specified that a signatory of Google LLC will, by means of the Compliance Statement, confirm that 'Google' (as defined under the commitments) has complied with certain obligations in the preceding three-calendar-month period. The CMA welcomes this greater specificity, which will ensure that one person has the responsibility for confirming that Google companies have maintained compliance with the commitments.

Duration (Section J of the commitments)

Overview

- 4.139 The Initial Commitments provided for a duration of (i) two years from the removal of TPCs, or (ii) five years from the CMA's commitments acceptance decision – whichever came first – unless, in either case, the commitments were released any earlier, under section 31A(4) of the Act. Given the timing that appeared likely (as at the time of the June Notice) for Google's removal of TPCs and for any CMA decision to accept the Initial Commitments, the Initial Commitments would likely have been in force until at least the end of 2024,¹¹¹ or until the end of 2026 at the latest.¹¹²
- 4.140 Multiple consultation responses suggested that the duration set out in Section J of the Initial Commitments should be extended in order to ensure sufficient regulatory oversight, technological development and industry certainty.

Duration of the commitments should be extended

- 4.141 Almost half of all respondents expressed concern that the duration of the Initial Commitments (or at least some parts thereof) may be too short to allow for sufficient regulatory oversight, industry certainty or technological adaptation, and to ensure that the benefits of the Privacy Sandbox Proposals

¹¹¹ On 14 January 2020 Google announced that it planned 'to phase out support for third-party cookies in Chrome. Our intention is to do this within two years', ie by the end of 2022: Chromium blog, [Building a more private web: A path towards making third-party cookies obsolete](#), 14 January 2020. Two years after the date of the removal of TPCs according to this announcement date would have been the end of 2024.

¹¹² Assuming that the CMA could have issued a decision to accept the Initial Commitments in late 2021, five years after such a decision would have been the end of 2026.

are realised. Some respondents suggested that the Initial Commitments be modified to end on the later (instead of the earlier) of the two alternatives contained in paragraph 29 of the Initial Commitments – or to end no earlier than five years from the ‘Removal of Third-Party Cookies’. One respondent suggested a duration similar to that of behavioural commitments accepted by the European Commission in Case M.9660 *Google/Fitbit* (a merger case), ie an initial 10-year period which was extendable by 10 additional years.

- 4.142 Other respondents suggested that the Initial Commitments (or at least some parts thereof) should not have a fixed end date. For example, it was submitted that duration for Sections G and H could reset after each technology or policy change related to Privacy Sandbox had taken place, or could continue for as long as Google is implementing such technology or policy changes.
- 4.143 Some respondents suggested that any commitments should continue in force until Google is no longer dominant – or, more generally, until the CMA had re-evaluated and found that the CMA’s concerns had been addressed (or at least until the CMA’s DMU had statutory powers and sufficient resources to act).¹¹³
- 4.144 The Modified Commitments provide for a duration of six years from the date of the CMA’s acceptance of the commitments (unless released earlier).¹¹⁴ Given the likely timing for any CMA decision to accept commitments in this investigation,¹¹⁵ the Modified Commitments would likely be in force for at least one year longer (and potentially just over three years longer) than the duration set out in the Initial Commitments.
- 4.145 The CMA provisionally considers that the changes in the Modified Commitments allow for a longer sustained period in which the CMA could assess further the Privacy Sandbox Proposals and their impact. The removal of two alternative bases for duration, the earliest of which would have applied, should result in a longer (but not an unduly long) duration.¹¹⁶ That is appropriate, not least because since the Initial Commitments were published, Google announced in late June 2021 a longer timeline to implement at least some Privacy Sandbox Proposals than Google had proposed initially.¹¹⁷ An effective increase in the duration of the commitments as described at

¹¹³ One similar set of submissions added that, before any commitments end, Google should publicly state how it will run Privacy Sandbox after any commitments which were ultimately accepted terminated.

¹¹⁴ Modified Commitments, paragraph 34.

¹¹⁵ If the CMA were to issue a decision to accept the Modified Commitments in early 2022, six years after such a decision would be early 2028.

¹¹⁶ The CMA provisionally considers, for example, that a 10-year duration, or a perpetual duration, for the commitments would be an unduly long duration.

¹¹⁷ See Appendix 2, paragraph 52, for a summary of respondents’ concerns about Google’s ability to arbitrarily delay the removal of TPCs (in the context of Section F of the commitments).

paragraph 4.144 above should give comfort to respondents who expressed concern that Google may yet announce further delays, as Google did in late June 2021.¹¹⁸ In addition, while the role of monitoring the implementation of any commitments would fall to the CMA for their duration, in the medium term the establishment of the DMU could provide a framework for regulatory oversight and scrutiny.

Sections K, L, and M of the commitments

Overview

4.146 Sections K, L, and M of the Initial Commitments contained provisions in relation to:

- (a) Google's ability to offer a variation or substitution of any commitments (Section K);
- (b) the effect of any part of any commitments being contrary to law or invalid or unenforceable (Section L); and
- (c) the law by which any commitments would be governed, the jurisdiction for any related disputes and the agent for any related proceedings (Section M).

4.147 For representations on Section K, see Appendix 2.¹¹⁹ The CMA's provisional view is that no modifications to Section K are required.

4.148 The CMA received no material representations in respect of Section L. The CMA's provisional view is that no modifications to Section L are required.¹²⁰

4.149 Consultation responses on Section M of the Initial Commitments focused on the scope of the commitments and their application to the Google corporate group.¹²¹

¹¹⁸ Google explained that 'Subject to our engagement with the [...] [CMA] and in line with the commitments we [ie Google] have offered, Chrome could then phase out third-party cookies over a three month period, starting in mid-2023 and ending in late 2023': Chrome blog, [An updated timeline for Privacy Sandbox milestones](#), 24 June 2021.

¹¹⁹ Appendix 2, paragraphs 120–121.

¹²⁰ See also Appendix 2, paragraph 122.

¹²¹ For the CMA's assessment of additional consultation responses on Section M of the Initial Commitments, see Appendix 2, paragraphs 123–124. For the CMA's assessment of additional consultation responses on other aspects of the Initial Commitments, including the scope of the Initial Commitments, and specific Privacy Sandbox Proposals, see Appendix 2, paragraphs 125–131.

Application of service provisions

- 4.150 Several consultation responses concerned the definition of ‘Google’ and ‘Group’, and two respondents took the view that any commitments in this matter should expressly apply to Alphabet Inc. (as the appropriate parent company): see paragraphs 4.36 to 4.38 above. On this basis, one respondent suggested amending Section M of the Initial Commitments so that Alphabet Inc. – rather than Google LLC – would receive service in England and Wales (by its agent) of any proceedings arising out of any commitments accepted by the CMA.
- 4.151 In the Modified Commitments, Google has amended Section M so as to now provide that each of Alphabet Inc. and Google LLC will receive service by an agent in England and Wales of any commitments-related proceedings.¹²²
- 4.152 In combination with the amended definitions of ‘Google’ and ‘Group’ detailed at paragraphs 4.36 to 4.38 above, the CMA provisionally considers that this change within the Modified Commitments – which ensures that Alphabet Inc. is included within the scope of the commitments¹²³ – improves the coverage of the commitments.

Conclusion

- 4.153 Accordingly, in light of the considerations set out above and following its consideration of the consultation responses, the CMA has reached the provisional view that the Modified Commitments, once implemented, would address its competition concerns.
- 4.154 As explained in the June Notice, the extent to which the CMA’s three concerns in relation to the likely impact of the Privacy Sandbox proposals are actually borne out in the future will depend on the design and implementation of Google’s Proposals, which have not been finalised. The Modified Commitments improve the regulatory scrutiny and oversight envisaged by the provisions of the Initial Commitments, as they:
- (a) **add obligations on Google regarding its transparency and consultation with third parties** by requiring that the CMA’s role (and the ongoing CMA process) is referenced in Google’s key public disclosures, including publication on a dedicated microsite of a process for engaging with third parties (ie publishers, advertisers and ad tech

¹²² Modified Commitments, paragraph 39.

¹²³ For the avoidance of doubt, no changes were made to Section K or Section L of the Initial Commitments.

providers), and that Google report regularly to the CMA on how Google has taken into consideration third-party views;

- (b) **put in place a more transparent process through which Google will develop and test the Privacy Sandbox Proposals** and extend the requirement that Google should test and trial (with the involvement of the CMA) all the Privacy Sandbox Proposals which are amenable to quantitative testing, not just those intended as replacements for TPCs;
- (c) add commitments to **address concerns about Google removing additional functionality or information before TPCs** – ie Google will now also commit that, before removing TPCs, it will not enforce the Privacy Budget (a tool which will reduce access to certain other information), and will only implement the GNATCATCHER proposal (which will reduce access to IP addresses) after making reasonable efforts to support websites' ability to combat fraud/spam;
- (d) provide for a mechanism for the CMA to monitor Google's adherence to any resolutions reached between the CMA and Google under the commitments;
- (e) clarify the internal limits on the data that Google is allowed to use for the purposes of targeting and measuring digital advertising, and confirm Google's intent to use Privacy Sandbox tools in the future in the same ways as third parties will be able to use them;
- (f) **improve the approach to addressing concerns about the potential for Google self-preferencing** Google's own products/services which includes providing greater certainty for third parties who are developing alternative technologies;
- (g) **improve the provisions on reporting and compliance**, eg by providing for a CMA-approved monitoring trustee to be appointed; and
- (h) **provide for a longer duration for any commitments**, ie 6 years from any decision by the CMA to accept commitments.

4.155 The CMA is provisionally satisfied that, in combination, the Modified Commitments are sufficient and appropriate to address the competition concerns that the CMA has identified in relation to the Privacy Sandbox Proposals, and provide a robust basis for the CMA, ICO and third parties to influence the future development of the Privacy Sandbox Proposals to ensure that the Purpose of the Commitments is achieved. As such the CMA is provisionally minded to accept the Modified Commitments as they:

- (a) **establish a clear purpose of the Modified Commitments** that will ensure that the Privacy Sandbox Proposals are developed in a way that addresses the competition concerns identified by the CMA during its investigation, by avoiding distortions to competition, whether through restrictions on functionality or self-preferencing, and avoiding the imposition of unfair terms on Chrome’s web users;
- (b) **establish the criteria that must be taken into account in designing, implementing and evaluating the Privacy Sandbox Proposals.** These include the impact of the Privacy Sandbox Proposals on: privacy outcomes and compliance with data protection principles, as set out in applicable data protection legislation;¹²⁴ competition in digital advertising, and in particular the risk of distortion to competition between Google and other market participants; the ability of publishers to generate revenue from ad inventory; and user experience and control over the use of their data;
- (c) **provide for greater transparency and consultation with third parties over the development of the Privacy Sandbox Proposals,** including through operating a formal process for engaging with Google’s third-party stakeholders on a dedicated microsite, reporting regularly to the CMA on how it has taken into consideration third-party views, and disclosing publicly the results of tests of the Privacy Sandbox Proposals. This would help to overcome the asymmetry of information between Google and third parties regarding the development of the Privacy Sandbox Proposals;
- (d) **provide for the close involvement of the CMA in the development of the Privacy Sandbox Proposals,** and the ICO where privacy and data protection concerns are relevant, to ensure that the purpose of the Modified Commitments is met, including through regular meetings and reports, working with the CMA without delay to identify and resolve any competition concerns before the removal of TPCs, and involving the CMA in the evaluation and design of tests of all Privacy Sandbox Proposals amenable to quantitative testing. This would ensure that the competition concerns identified by the CMA about the potential impacts of the Privacy Sandbox Proposals are addressed and address the lack of confidence on the part of third parties regarding Google’s intentions in developing and implementing the Privacy Sandbox Proposals;
- (e) **provide for a Standstill Period** of at least 60 days before Google proceeds with the removal of TPCs, giving the CMA the option, if any outstanding concerns cannot be resolved with Google, to continue this

¹²⁴ See the ICO Opinion (as referred to at footnote 4 of this notice).

investigation and, if necessary, impose any interim measures necessary to avoid harm to competition. Additional provisions address concerns about Google removing certain other functionality or information before TPCs, and the CMA monitoring Google's adherence to any resolutions reached under the commitments. These provisions would strengthen the ability of the CMA to ensure that its competition concerns are in fact resolved;

- (f) include **specific commitments by Google not to use user data** from certain specified sources for targeting or measuring digital advertising on either Google owned and operated ad inventory or ad inventory on websites not owned and operated by Google. A related provision confirms Google's intent to use Privacy Sandbox tools in future as third parties will be able to use them. These provisions would address the competition concerns arising from Google's greater ability to track users after the introduction of the Privacy Sandbox Proposals;
- (g) include **specific commitments by Google not to design any of the Privacy Sandbox Proposals in a way which could self-preference Google**, not to engage in any form of self-preferencing practices when using the Privacy Sandbox technologies and not to share information between Chrome and other parts of Google which could give Google a competitive advantage over third parties. Related provisions confirm that deprecating Chrome functionality will remove such functionality for Google and other market participants alike, and give greater certainty for third parties who are developing alternative technologies to the Privacy Sandbox tools. These provisions would address the above concerns relating to the potential for discrimination against Google's rivals; and
- (h) include **robust provisions on reporting and compliance**, which provide for a CMA-approved monitoring trustee to be appointed.

Assessment against the other criteria set out in CMA guidance

4.156 In addition to the Modified Commitments addressing the CMA's competition concerns, the CMA has reached the provisional view that it remains appropriate to accept commitments in this investigation, for the following reasons.

- (a) The Modified Commitments are capable of being implemented effectively, and if necessary, within a short period of time as Google would undertake to act in accordance with the Modified Commitments

as of the date the CMA publishes any decision accepting the Modified Commitments.

- (b) Accepting commitments in this investigation would not undermine deterrence. The CMA remains of the view that accepting commitments in this investigation would demonstrate that the CMA is acting swiftly and decisively when identifying competition concerns. By accepting the Modified Commitments at this early stage of the investigation, the CMA would be able to resolve its competition concerns quickly and with an opportunity to scrutinise the further development of the Privacy Sandbox Proposals, address any issues before they are finalised and involve the ICO as appropriate. This would provide market participants with greater transparency and certainty at an earlier stage than could be achieved through continuing with the investigation.
- (c) Compliance with the effectiveness of the Modified Commitments would not be difficult to discern. The CMA provisionally considers that Google's compliance and reporting obligations, regular meetings and close involvement of the CMA would ensure that the CMA remains in a position throughout the process to monitor effective compliance by Google and take appropriate enforcement steps if required. These obligations have been expanded to require Google to inform the CMA of how Google has responded to resolving concerns notified by the CMA to Google during the Standstill Period, and this will form part of the quarterly reporting in addition to the signed Compliance Statement. In addition, the CMA provisionally considers that Google's additional commitment to appoint a Monitoring Trustee, in particular, strengthens the ability of the CMA to ensure compliance with the Modified Commitments.
- (d) The Modified Commitments would not preclude the CMA from taking further enforcement action in relation to other breaches of competition law and/or related markets which raise competition concerns and harm consumers.

4.157 Finally, the CMA provisionally considers that the Modified Commitments, if accepted, would not produce adverse effects (on third parties) which are disproportionate to the aim pursued. The CMA provisionally considers that the Modified Commitments would lead to a net benefit to the position of (third-party) stakeholders.

5. The CMA's intentions and invitation to comment

- 5.1 In light of the above, the CMA provisionally considers that the Modified Commitments, as set out in Appendix 1A, are sufficient to address its competition concerns. Therefore, the CMA intends to accept the Modified Commitments by a means of a formal commitments decision.
- 5.2 As required by paragraph 3 of Schedule 6A of the Act, the CMA now invites interested third parties to make representations on the proposed modifications to the commitments and will take such representations into account before making its final decision whether to accept the Modified Commitments. For ease of reference, modifications offered by Google relative to the Initial Commitments are indicated in the comparison of the Initial Commitments and Modified Commitments included at Appendix 1B.

Invitation to comment

- 5.3 As noted above, the CMA has not reached a final view and invites all interested parties to submit observations and evidence in order to assist the CMA in its final assessment of the Modified Commitments.
- 5.4 Any person wishing to comment on the Modified Commitments should submit written representations to Angela Nissyrios and Simon Deeble at 50972-Consultation@cma.gov.uk by **17 December 2021 at 5pm**. Please quote the case reference 50972 in all correspondence related to this matter.
- 5.5 The CMA is interested to hear from anyone wishing to comment on the Modified Commitments. Any non-disclosure agreement a party may have in place with Google should not prevent them from responding to this consultation. Google has confirmed to the CMA that it will not use any confidentiality provision with a party to prevent them from responding to this consultation. How the CMA handles confidential information is set out in paragraphs 5.7 to 5.9 below.
- 5.6 In any representations to the CMA on the Modified Commitments, please refer as far as possible to the relevant heading(s) and/or paragraph(s) within the Modified Commitments.

Confidentiality

- 5.7 The CMA does not intend to publish or disclose to Google the responses to the consultation with any commitments decision or further notice to

provisionally accept any modified commitments.¹²⁵ However, the information contained in the responses may be used or summarised on an anonymous basis in these documents.

- 5.8 The CMA previously decided to share with the ICO, in line with Part 9 of the Enterprise Act 2002, the information contained in certain responses to the Initial Commitments. The CMA did so after completing a confidentiality assessment, including corresponding with the relevant consultation respondents to obtain any representations on confidentiality in relation to this disclosure to the ICO. The CMA intends to likewise share with the ICO, on the same basis and following a similar process, the information contained in any relevant responses to the present consultation on the Modified Commitments.
- 5.9 In the event that the Modified Commitments are not accepted and the CMA is considering disclosing the information (such as in or with a statement of objections), it will revert to the provider of that information to obtain representations on confidentiality. The CMA will then consider those representations before deciding whether the information should be disclosed by it under Part 9 of the Enterprise Act 2002.¹²⁶

¹²⁵ Following this consultation, (i) the CMA may issue a decision accepting commitments, (ii) the CMA may issue a further notice of intention to accept any further modified commitments offered by Google, or (iii) in the event that commitments are not accepted, the CMA may otherwise continue with the investigation. For more information on all possible investigation outcomes, see Chapter 10 of the CMA's Procedural Guidance.

¹²⁶ [Transparency and disclosure: Statement of the CMA's policy and approach](#) (CMA6), January 2014. See, in particular, paragraphs 4.11–4.34 of the Statement.

Appendix 1A: The Modified Commitments

**Case 50972 - Privacy Sandbox
Google Commitments Offer**

A. Introduction

1. In August 2019, Google launched its Privacy Sandbox initiative to develop a set of open standards to enhance privacy on the web.¹
2. On 7 January 2021, the CMA commenced an investigation under section 25 of the Act in relation to Google's Privacy Sandbox proposals. The CMA subsequently informed Google that the CMA was concerned that Google's proposals, if implemented without regulatory scrutiny and oversight, would be likely to amount to an abuse of a dominant position.
3. To address the CMA's competition concerns, Alphabet Inc., Google UK Limited and Google LLC offer Commitments under section 31A of the Act. These Commitments provide for scrutiny and oversight by the CMA over implementation of, and announcements relating to, Google's Privacy Sandbox proposals.
4. Consistent with sections 31A and 31B of the Act, and subject to section 31B(4) of the Act, the Commitments are offered on the basis that if the CMA accepts the Commitments in accordance with section 31A(2) of the Act, it will not continue the investigation, make a decision within the meaning of section 31(2) of the Act, or give a direction under section 35 of the Act.
5. The offering of Commitments by Google does not constitute an admission of wrongdoing and nothing in these Commitments may be construed as implying that Google agrees with any concerns identified by the CMA in its investigation, including in a Commitments Decision. Google has not been the subject of any infringement decision or statement of objections in respect of the investigation.

B. Definitions

6. For the purposes of these Commitments, the following definitions apply:

"Act" means the Competition Act 1998;

"Ads Systems" means the computer systems that constitute Google's various products and services used for Targeting or Measurement of digital advertising on the web;

¹ In January 2020, Google declared its goal of making the web more private and secure for users, while also supporting publishers. See [Building a more private web](#), 22 August 2019, and [Building a more private web: A path towards making third party cookies obsolete](#), 14 January 2020. To date neither the CMA nor the ICO have concluded on the privacy impacts of the Privacy Sandbox proposals.

“Alternative Technologies” means the technologies designed, developed and implemented by Google as alternatives to Third-Party Cookies in Chrome and Chromium listed at Annex 1, and any successor technologies having the same objective;

“Applicable Data Protection Legislation” means all applicable data protection and privacy legislation in force in the UK, including the Data Protection Act 2018, the UK General Data Protection Regulation (and regulations made thereunder) and the Privacy and Electronic Communications (EC Directive) Regulations 2003;

“Chrome” means the Chrome web browser as built on Chromium and Blink;

“CMA” means the Competition and Markets Authority;

“Commitments” means the commitments given by Google pursuant to section 31A of the Act;

“Commitments Decision” means a formal decision by the CMA under section 31A of the Act to accept Commitments, such that section 31B of the Act applies;

“Compliance Statement” means the quarterly statement provided by Google confirming its compliance with the Commitments;

“Effective Date” means the date on which the CMA notifies Google of a Commitments Decision;

“Gnatcatcher” means the Chrome proposal aimed against covert tracking that both supports the Willful IP Blindness functionality, by which websites may attest that their servers will use IP addresses only for defined critical purposes and not for covert tracking, and, for websites that do not participate in Willful IP Blindness, enables the forwarding of HTTP requests through an IP privatising server, and any successor technology having the same objective;

“Google” means Alphabet Inc., Google UK Limited (company number 03977902) and Google LLC and any other member of their corporate Group;

“Google Ad Manager” means Google’s ad management platform for publishers marketed under that name at the Effective Date, and any successor product;

“Google First-Party Personal Data” means data from (a) Google’s user-facing services; and (b) Google’s services available on the Android operating system as deployed in smartphones, connected televisions or other smart devices;

“Group” includes those companies with which any of Alphabet Inc., Google UK Limited or Google LLC has the links described in section 129(2)(b) of the Enterprise Act 2002 and thus

constitute a “*group of interconnected bodies corporate*”, within the meaning of the Enterprise Act 2002;

“**ICO**” means the Information Commissioner’s Office;

“**Monitoring Statement**” means the quarterly statement prepared by Google (or, if appointed, by the Monitoring Trustee) validating the internal measures that Google operates to remain compliant with the Commitments;

“**Monitoring Trustee**” means a person appointed in accordance with paragraph 32(b) below;

“**Non-Google Technologies**” means technologies (including, but not limited to, individual user-level identifiers) designed, developed and implemented by parties other than Google as alternatives to Third-Party Cookies, to enable users to be tracked for the Targeting or Measurement of advertising on the web;

“**Personal Data**” means personal data as defined in the Applicable Data Protection Legislation;

“**Privacy Budget**” means the Chrome proposal aimed against covert tracking that enables the information disclosed about a user or device by fingerprinting surfaces to be limited by reference to a specified budget, and any successor technology having the same objective;

“**Privacy Sandbox**” means Google’s proposals relating to the Removal of Third-Party Cookies, the design, development and implementation of the Alternative Technologies, and the changes to Chrome listed at Annex 1, including Gnatcatcher and the Privacy Budget;

“**Purpose of the Commitments**” has the meaning given in paragraph 7 below;

“**Quantitative Testing**” means testing which would provide quantifiable metrics in comparison to the situation existing before implementation of the Privacy Sandbox proposal concerned that are materially informative for the application of the Development and Implementation Criteria;

“**Removal of Third-Party Cookies**” and “**Removal**” refer to Chrome ending support for Third-Party Cookies or clearing Third-Party Cookies more frequently than every 90 days, whichever is first;

“**Targeting or Measurement**” means the targeting or measurement of digital advertising, including but not limited to frequency capping, reporting and attribution;

“**Third-Party Cookies**” means cookies which are created by a website other than the website that the user is visiting;

“**W3C**” means the World Wide Web Consortium;

“**Working Day**” means any day other than a Saturday, Sunday or any other day that is a public holiday in England.

C. Purpose of the Commitments

7. The “**Purpose of the Commitments**” is to address the competition concerns identified by the CMA during its investigation, namely that, without sufficient regulatory scrutiny and oversight, the Privacy Sandbox proposals could:
 - a. distort competition in the market for the supply of ad inventory and in the market for the supply of ad tech services, by restricting the functionality associated with user tracking for third parties while retaining this functionality for Google;
 - b. distort competition by the self-preferencing of Google’s own advertising products and services and owned and operated ad inventory; and
 - c. allow Google to deny Chrome web users substantial choice in terms of whether and how their Personal Data is used for the purpose of targeting and delivering advertising to them.
8. Google will design, implement and evaluate the Privacy Sandbox proposals by taking into account the following factors (the “**Development and Implementation Criteria**”), which will inform the answer to the question of whether or not the Purpose of the Commitments has been achieved. The Development and Implementation Criteria are:
 - a. impact on privacy outcomes and compliance with data protection principles as set out in the Applicable Data Protection Legislation;
 - b. impact on competition in digital advertising and in particular the risk of distortion to competition between Google and other market participants;
 - c. impact on publishers (including in particular the ability of publishers to generate revenue from advertising inventory) and advertisers (including in particular the ability of advertisers to obtain cost-effective advertising);
 - d. impact on user experience, including the relevance of advertising, transparency over how personal data is used for advertising purposes, and user control; and

- e. technical feasibility, complexity and cost involved in Google designing, developing and implementing the Privacy Sandbox.
9. These Commitments are organised as follows:
- a. Section D provides for transparency and consultation with third parties;
 - b. Section E provides for involvement of the CMA in the Privacy Sandbox proposals;
 - c. Section F provides for a standstill before the Removal of Third-Party Cookies;
 - d. Section G provides for Google's use of data;
 - e. Section H provides for non-discrimination; and
 - f. Sections I to M provide for reporting and compliance; duration; variation or substitution; effect of invalidity; and governing law and jurisdiction.

D. Transparency and consultation with third parties

10. Having agreed the wording with the CMA, by the day the Commitments Decision is published, Google will make a public statement in a blog post, a dedicated microsite or equally prominently (to which a link may be added in the CMA's webpages) specifying:
- a. that Google's objectives in developing the Privacy Sandbox proposals are to make the web more private and secure for users, while:
 - i. supporting the ability of publishers to generate revenue from advertising inventory and the ability of advertisers to secure value for money from advertising spend;
 - ii. supporting a good user experience in relation to browsing the web and digital advertising;
 - iii. providing users with substantial transparency and control over their data as they browse the web; and
 - iv. not distorting competition between Google's own advertising products and services and those of other market participants;
 - b. the Development and Implementation Criteria;
 - c. that Google will design, develop and implement the Privacy Sandbox in line with the Development and Implementation Criteria; and

- d. that Google will involve the CMA on an ongoing basis in relation to the design, development and implementation of the Privacy Sandbox (and related announcements) and Google will also regularly consult with publishers, advertisers and ad tech providers pursuant to paragraphs 11, 12 and 17(c)(v) below.
11. Google will publicly disclose the timing of the key Privacy Sandbox proposals as set out in Annex 1. Google will also publicly update the information provided for in Annex 1 as timings change or become more certain. Such disclosures may be made in particular within the blink-dev discussion group, within the W3C and/or in a blog post, a dedicated microsite or equally prominently. Such disclosures will aim to enable publishers, advertisers and ad tech providers to influence the Privacy Sandbox and to adjust their business models, including by providing sufficient advance notice of the proposals and publishing key information. Google will use its best endeavours to ensure that blog posts and Privacy Sandbox microsite updates relating to origin trials for, the timing of, and any key changes to, the Privacy Sandbox proposals as set out in Annex 1 will contain an express reference to these Commitments and a brief explanation of the involvement of, and regulatory oversight provided by, the CMA in consultation with the ICO. Google will provide a single webpage from which all such disclosures can be accessed.
 12. Google will publish on a dedicated microsite a process for stakeholder engagement in relation to the details of the design, development and implementation of the Privacy Sandbox proposals and report on that process publicly, as well as to the CMA through the quarterly reports described in paragraph 32(a) below. As part of that process, Google will take into consideration reasonable views and suggestions expressed to it by publishers, advertisers and ad tech providers, including (but not limited to) those expressed in the W3C or any other fora, in relation to the Privacy Sandbox proposals, including testing, in order to better apply the Development and Implementation Criteria in the design, development and implementation of the Privacy Sandbox proposals.
 13. Google will, at the CMA's request, seek to facilitate the involvement of the CMA in discussions on the Privacy Sandbox in the W3C or any other fora. In relation to its ongoing participation in the W3C, Google intends for the Privacy Sandbox proposals to proceed, when appropriate, to the relevant Community, Business and Working Groups in accordance with W3C processes.
 14. Google will instruct its staff and agents not to make claims to other market players that contradict these Commitments. Google will provide training to its relevant staff and agents to ensure that they are aware of the requirements of these Commitments.

E. Involvement of the CMA in the Privacy Sandbox proposals

15. Google will engage with the CMA in an open, constructive and continuous dialogue in relation to the development and implementation of the Privacy Sandbox proposals, with a view to achieving the Purpose of the Commitments, taking into account the Development and Implementation Criteria.
16. Updates to the timeline at Annex 1 will be provided to the CMA in accordance with paragraph 32(a) below. This is to assist the CMA in planning its own involvement in the process.
17. Google and the CMA will organise their dialogue by mutual agreement. Such dialogue will in particular involve:
 - a. **Efforts to identify and resolve concerns quickly.**
 - i. Google will proactively inform the CMA of changes to the Privacy Sandbox that are material to ensuring that the Purpose of the Commitments is achieved.
 - ii. Google will work with the CMA without delay to seek to resolve concerns raised and address comments made by the CMA with a view to achieving the Purpose of the Commitments. Google will inform the CMA of how it has responded to those comments.
 - iii. In the event that Google and the CMA cannot reach mutual agreement or resolve concerns within 20 Working Days of a notification in writing by the CMA, unless extended by mutual consent, the CMA may take action pursuant and subject to the provisions of section 31B(4) of the Act.
 - b. **Status meetings.** Google and the CMA will schedule regular meetings at least once a month until the Removal of Third-Party Cookies and at regular intervals thereafter to discuss progress on the Privacy Sandbox proposals.
 - c. **Testing.** During the period from acceptance of these Commitments until the Removal of Third-Party Cookies, Google will seek to agree with the CMA parameters and other aspects² which are material for the design of any significant tests for evaluating the effectiveness of the Alternative Technologies, and of other Privacy Sandbox proposals at Annex 1 that are amenable to Quantitative Testing, according to the Development and

² Other aspects means data and benchmarks which are material for the design of any significant tests.

Implementation Criteria. Such testing will be carried out on the following basis:

- i. Google will test the effectiveness of individual Alternative Technologies and of other Privacy Sandbox proposals at Annex 1 that are amenable to Quantitative Testing, and will also, before triggering the standstill period as set out in paragraph 19 below, test their effectiveness in combination to fully assess the impact of the Removal of Third-Party Cookies.
- ii. Google will involve the CMA in the design of such tests of Alternative Technologies and of other Privacy Sandbox proposals at Annex 1 that are amenable to Quantitative Testing, and will share with the CMA the results of such tests and, to the extent necessary for the CMA to understand and evaluate the results, explanations of the data used and underlying analyses as well as, on request and where practicable, relevant analyses retained in Google's systems for the purpose of the experiment results. Google will work with the CMA to enable the CMA to understand and have confidence in the results. Google will take into account reasonable views and suggestions expressed by stakeholders in relation to the testing of the Privacy Sandbox proposals, in accordance with paragraph 12.
- iii. If Google and the CMA cannot reach an agreement regarding appropriate testing parameters the CMA may notify Google of its preferred parameters.
- iv. If Google does not within 20 Working Days, unless extended by mutual consent, agree to carry out a test according to the CMA's parameters, the CMA may take action pursuant and subject to the provisions of section 31B(4) of the Act.
- v. In consultation with the CMA, Google will publish the results of tests that are material to evaluating the effectiveness of the Alternative Technologies and of other Privacy Sandbox proposals at Annex 1 that are amenable to Quantitative Testing by reference to the Development and Implementation Criteria. The publication will be made in a blog post, a dedicated microsite or equally prominently. When Google publishes the results of these tests, it will also publish a description of the underlying data and methodology used that is sufficiently granular to enable publishers, advertisers and ad tech providers to understand the results and obtain an informed view of the relevance of the test and its outcome for their own businesses. For

the avoidance of doubt, Google will not publicly disclose personal data, Google proprietary software code or algorithms or other business secrets. However, Google may need to disclose such data to the CMA if such data is necessary for the CMA to assess the effectiveness of the Alternative Technologies and of other Privacy Sandbox proposals at Annex 1 that are amenable to Quantitative Testing.

vi. This provision shall not prevent Google from carrying out alternative tests on the basis of its own parameters and design. However, Google will provide the CMA with sufficient advance notice of any intention to carry out any such alternative tests, explain the nature of any such tests and discuss with the CMA whether (and if so how) Google should publish the results of any such tests.

d. **User controls.** At least once a quarter, Google will update the CMA on its plans for user controls in relation to the Privacy Sandbox proposals, including default options and choice architectures, and it will share with the CMA the user research and testing which underpins its decisions on user controls. Google will take into account any observations the CMA may make with a view to ensuring that the Purpose of the Commitments is achieved.

18. **The ICO.** Google acknowledges that the CMA will involve the ICO to achieve the Purpose of the Commitments as agreed between the CMA and the ICO and subject to applicable legislation. The CMA will consult the ICO before issuing any notification under paragraph 21 below.

F. Standstill before the Removal of Third-Party Cookies

19. Google will not implement the Removal of Third-Party Cookies before the expiry of a standstill period of no less than 60 days after Google notifies the CMA of its intention to implement their Removal. Google may increase the length of such a standstill period at any time between giving such notice and the period's expiry. At the CMA's request, Google will increase the length of this standstill period by a further 60 days to a total of 120 days.

20. Before the Removal of Third-Party Cookies, Google will not implement Gnatcatcher without making reasonable efforts to support websites' ability to conduct anti-spam and anti-fraud efforts and to tailor their websites based on users' coarse geographic location (i.e., country or region), or enforce the Privacy Budget.³

³ As part of this, before the Removal of Third-Party Cookies Google will allow publishers, advertisers and ad tech providers to make unlimited requests for User-Agent Client Hints, so that all of the information available in the user-

21. During the standstill period, the CMA may notify Google that competition law concerns remain such that the Purpose of the Commitments will not be achieved. Google will work with the CMA without delay to seek to resolve concerns raised and address comments made by the CMA with a view to achieving the Purpose of the Commitments. Google will inform the CMA of how it has responded to those comments.
22. If Google and the CMA do not resolve those competition law concerns during the standstill period referred to in paragraph 19 above, the CMA may take action pursuant and subject to section 31B(4)(a) of the Act. In such circumstances the CMA will have reasonable grounds for believing that there has been a material change of circumstances since the Commitments were accepted.
23. Nothing in these Commitments prevents the application of any part of section 31B(4) or other provisions of the Act.
24. Where section 31B(4) applies, the CMA may continue the investigation, make a decision within the meaning of section 31(2) of the Act, or give directions under section 35 (interim measures) of the Act.

G. Google's use of data

25. **Chrome browsing history commitment.** After Chrome ends support for Third-Party Cookies, Google commits not to use Personal Data from a user's Chrome browsing history, including synced Chrome history, in its Ads Systems to track that user for the Targeting or Measurement of digital advertising on either Google owned and operated ad inventory or ad inventory on websites not owned and operated by Google.
26. **Google Analytics data commitment.** After Chrome ends support for Third-Party Cookies, Google commits not to use a user's Personal Data from a customer's Google Analytics account in its Ads Systems to track that user for the Targeting or Measurement of digital advertising on either Google owned and operated ad inventory or ad inventory on websites not owned and operated by Google.⁴
27. **Additional commitments regarding ad inventory on websites not owned and operated by Google.** After Chrome ends support for Third-Party Cookies, Google commits not to track users to Target or Measure digital advertising on ad inventory on websites not owned and operated by Google using either (i) Google First-Party Personal Data or (ii)

agent string as of the Effective Date would remain accessible during the period prior to the Removal of Third-Party Cookies.

⁴ Google Analytics plans to continue to allow Analytics customers to use their respective first-party data to support publisher monetization within their own respective websites. Google Analytics does not use Personal Data across unaffiliated publishers for publisher monetization and, in accordance with paragraph 26, commits not to do so in the future. This does not preclude the possibility that a customer may choose to share or export their own Analytics data, including through a linked Google Ads account, for ads Targeting and/or Measurement.

Personal Data regarding users' activities on websites other than those of the relevant advertiser and publisher.⁵

28. After Chrome ends support for Third-Party Cookies, Google intends to use the Alternative Technologies for the Targeting or Measurement of digital advertising on ad inventory on websites not owned and operated by Google.
29. For the avoidance of doubt:
 - a. nothing in paragraphs 25-27 above prevents Google from using the data types listed to prevent spam and fraud; and
 - b. Section G of these Commitments is without prejudice to the operation of any other part of the Commitments, including Section H, or to the application of the Applicable Data Protection Legislation. Section G does not prevent Google from using the Alternative Technologies in the same way as other market participants are able to do.

H. Non-discrimination

30. Google will design, develop and implement the Privacy Sandbox proposals in a manner that is consistent with the Purpose of the Commitments and takes account of the Development and Implementation Criteria mentioned in paragraph 8 above, ensuring that it does not distort competition by discriminating against rivals in favour of Google's advertising products and services. In particular, Google will not:
 - a. Design and develop the Privacy Sandbox proposals in ways that will distort competition by self-preferencing Google's advertising products and services;
 - b. Implement the Privacy Sandbox in ways that will distort competition by self-preferencing Google's advertising products and services; or
 - c. Use competitively sensitive information provided by an ad tech provider or publisher to Chrome for a purpose other than that for which it was provided.

For the avoidance of doubt, Privacy Sandbox proposals that deprecate Chrome functionality will remove such functionality for Google's own advertising products and services as well as for those of other market participants.

31. Google will not change its policies for customers of Google Ad Manager to introduce new provisions restricting a customer's use of Non-Google Technologies before the Removal of Third-Party Cookies, unless in exceptional circumstances (such circumstances to be

⁵ This includes data uploaded by an advertiser to Customer Match in accordance with Google's Customer Match policy.

discussed with the CMA) or as required by law. For the duration of the Commitments, Google will inform the CMA ahead of any such change to these policies.

I. Reporting and compliance

32. Google will:

- a. provide the CMA with quarterly reports within three Working Days of the end of each three-calendar-month period following the Effective Date about: progress on the Privacy Sandbox proposals; updated timing expectations; substantive explanations of how Google has taken into account observations made by the CMA and by third parties pursuant to paragraphs 12 and 17(c)(ii) of these Commitments; and a summary of the interactions between the CMA and Google pursuant to paragraphs 17 and 21 of these Commitments, including in particular a record of any concerns raised or comments made by the CMA and the approach retained for addressing such concerns or comments pursuant to paragraphs 17(a)(ii) and 21. The quarterly reports will include a signed Compliance Statement in respect of paragraphs 25-27, 30-31 and, with respect to those provisions, paragraph 33 of these Commitments. The Compliance Statement will be signed by the CEO (or an individual with delegated authority) on behalf of each company giving the Commitments and will be in the form included in Annex 2 to these Commitments;
- b. appoint at its own cost in consultation with the CMA (and subject to the ongoing approval of the CMA), a monitoring trustee to monitor compliance with paragraphs 25-27, 30-31 and, with respect to those provisions, paragraph 33 of these Commitments and instruct this trustee to provide the CMA with a quarterly Monitoring Statement in the form of Annex 3 to these Commitments within three Working Days of the end of each three calendar month period following the Effective Date;
- c. promptly notify the CMA, as soon as practicable (and, at the latest within five Working Days) by email at RemediesMonitoringTeam@cma.gov.uk, if it becomes aware of any breach of the Commitments, and commits to providing full information concerning the nature and duration of such breach. Google will not be taken to be aware of a breach for a reasonable period during which it is considering whether conduct is or is not in compliance;⁶
- d. promptly take all actions reasonably required, in consultation with the CMA, to remedy a breach; and

⁶ Such reasonable period to not exceed, absent exceptional circumstances, 10 Working Days from the date on which Google becomes aware of the conduct in question.

- e. provide to the CMA any information and documents which the CMA requests for the purposes of enabling the CMA to monitor and review the operation of the Commitments or any provisions of the Commitments or for the purposes of their enforcement.

33. Alphabet Inc., Google UK Limited and Google LLC will not in any way, whether by actions or omissions, directly or indirectly, circumvent any of the Commitments.

J. Duration

34. The Commitments will terminate six years from the date they are accepted by the CMA, unless released at an earlier date in accordance with section 31A(4) of the Act.

K. Variation or substitution

35. Google may offer a variation or substitution of the Commitments as envisaged by section 31A(3) of the Act.

L. Effect of invalidity

36. Should any provision of these Commitments be contrary to law or invalid or unenforceable for any reason, Google will continue to observe the remaining provisions, which shall remain valid and enforceable.

M. Governing law and jurisdiction

37. The Commitments will be governed by and construed in all respects in accordance with English law.

38. Disputes arising concerning the Commitments will be subject to the exclusive jurisdiction of the courts of England and Wales.

39. Each of Alphabet Inc. and Google LLC irrevocably appoints Sisec Limited, 21 Holborn Viaduct, London EC1A 2DY as its agent to receive on its behalf in England or Wales service by the CMA of all documents, orders, requests, notifications, proceedings or other communications connected with these Commitments. Such service shall be deemed completed on delivery to such agent and shall be valid until such time as the CMA has received prior written notice that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, each of Alphabet Inc. and Google LLC shall forthwith appoint a substitute acceptable to the CMA and deliver to the CMA the new agent's name and address within England and Wales.

**

Annex 1

Google will provide the following information in relation to the use cases set out below, by reference to each quarter (e.g., Q1 2022, Q2 2022...):

1. Currently anticipated opening of application programming interface (API) origin trial
2. Currently anticipated start of notice period prior to Removal of Third-Party Cookies
3. Currently anticipated Use Case general availability
4. Currently anticipated Transition Period for Removal of Third-Party Cookies

The use cases for which such information will be provided, and distinct APIs for which information will be shown, are as follows (if the development of an API is discontinued, and/or an alternative API developed, such changes will be reflected):

1. Use Case: Fight spam and fraud on the web
 - Trust Tokens API
2. Use Case: Show relevant content and ads
 - FLoC API
 - FLEDGE API
3. Use Case: Measure digital ads
 - Core Attribution API
 - Aggregate Reporting API with aggregate reports
 - Cross-Environment Attribution API
 - Aggregation Service Reference
4. Use Case: Improve the web platform infrastructure
 - First-Party Sets API
 - Shared Storage API
 - CHIPS API
 - Storage Partitioning
 - Fenced Frames API
 - Network State Partitioning

Information on the earliest anticipated date for availability will be provided for the following measures to promote a more private web (if the development of a measure is discontinued, and/or an alternative measure developed, such changes will be reflected):

- DNS-over-HTTPS
- Federated Credential Management (FedCM)

- User-Agent Reduction
- Gnatcatcher
- Origin-Bound Cookies
- Privacy Budget

**Annex 2
Template Compliance Statement**

[Note: Quarterly Compliance Statements will be provided to the CMA within three Working Days of the end of each three-calendar-month period following the Effective Date for the duration of the Commitments]

I, [insert full name], [Chief Executive Officer/title of authorised delegate] of Google LLC confirm that for the three months to [amend date as appropriate], [Google] has complied in the preceding three-calendar-month period with the obligations relating to:

- Google’s use of data set out in paragraphs 25, 26, and 27 of the Commitments;
- Google’s non-discrimination commitments set out in paragraphs 30 and 31 of the Commitments; and
- Google’s commitment in relation to anti-circumvention in this respect set out in paragraph 33 of the Commitments.

Any failures to meet the Commitments during this three-calendar-month period were notified to the CMA within five Working Days of Google becoming aware of them and are also listed below for completeness.

Signed.....

Full name.....

Date.....

[Breaches (if any) listed on following page for completeness]

Annex 3
Outline of Monitoring Statement

A	Commitments in paragraphs 25-27
A1	A description of the technical data separation mechanisms for compliance with the requirements of these paragraphs, updated as appropriate in each successive report, including how Google ensures that any access by ads for the purposes of preventing spam and fraud is limited to this use case.
A2	A summary of the Monitoring Trustee’s review of the relevant logs detailing the access history of any datasets within Google that contain data relevant to these paragraphs. This summary shall list out exhaustively any access by ads services or individuals and provide the justification for such access. ⁷
A3	A description of training on permissible data access Google has carried out and the attendees of such training.
B	Commitments in paragraphs 30-31
B1	A description of the process through which Google records how the Development and Implementation Criteria were assessed in key design decisions for relevant products, updated as appropriate in each successive report.
B2	A summary of the Monitoring Trustee’s review of the records described in B1.
B3	A description of Google’s guidelines detailing what contacts between Chrome and Ads are permissible, updated as appropriate in each successive report.
B4	A summary of the Monitoring Trustee’s review of the implementation of B3.
B5	A description of (i) the secure depository for documents partners label as containing confidential information that will not be accessible to members of the Google Ads organization, updated as appropriate in each successive report; and (ii) the steps Google has taken to inform third-parties of the steps they can take to label information as confidential.
B6	A description of any processes in addition to those in B5 that Google has carried out to ensure that Google uses any competitively sensitive information provided by an ad tech provider or publisher to Chrome only for the purpose(s) for which it was provided.

⁷ To the extent that, for the purposes of any Monitoring Statement, Google provides information to the Monitoring Trustee that information will also be provided to the CMA.

B7	A summary of the Monitoring Trustee’s review of the implementation of B5 and B6.
B8	A description of training Google has carried out to ensure that all relevant Chrome staff and agents are aware of the requirements of paragraphs 25-27 and 30-31 of these Commitments and the attendees of such training.
B9	A description of training material Google makes available to all relevant publisher and advertiser-facing staff and agents to make them aware about how to communicate around the Removal of Third-Party Cookies and the Privacy Sandbox (at least with respect to paragraphs 25-27 and 30-31 of the Commitments).
B10	A description of the internal process that will enable relevant Google staff and agents at least to report behaviour that is not in line with paragraphs 25-27 and 30-31 of these Commitments.
B11	A summary of the Monitoring Trustee’s review of any reports pursuant to B8, B9 and B10 (including on any training under the requirements of paragraph 14 in relation to paragraphs 25-27 and 30-31 of these Commitments).
C	Commitment at paragraph 33
C1	A summary of the Monitoring Trustee’s review of putative circumvention of paragraphs 25-27 and 30-31 of the Commitments.

Appendix 1B: Comparison of the Initial Commitments and Modified Commitments

**CMA—Case 50972 - Privacy Sandbox
Google Commitments Offer**

A. Introduction

1. In August 2019, Google launched its Privacy Sandbox initiative to develop a set of open standards to enhance privacy on the web.¹
- ~~2.~~ In January 2020, Google declared its goal of making the web more private and secure for users, while also supporting publishers. Google expressed its confidence that privacy preserving and open standard mechanisms like the Privacy Sandbox can sustain a healthy, ad-supported web in a way that will render Third-Party Cookies obsolete. Google explained that, once these approaches had addressed the needs of users, publishers and advertisers, and Google had developed the tools to mitigate workarounds, it planned to phase out support for Third-Party Cookies in Chrome.²
- ~~3.~~2. On 7 January 2021, the CMA commenced an investigation under section 25 of the Act in relation to Google's Privacy Sandbox proposals. The CMA subsequently informed Google that the CMA was concerned that Google's proposals, if implemented without regulatory scrutiny and oversight, would be likely to amount to an abuse of a dominant position.
- ~~4.~~3. To address the CMA's competition concerns, Alphabet Inc., Google UK Limited and Google LLC offer Commitments under section 31A of the Act. These Commitments provide for scrutiny and oversight by the CMA over implementation of, and announcements relating to, Google's Privacy Sandbox proposals.
- ~~5.~~4. Consistent with sections 31A and 31B of the Act, and subject to section 31B(4) of the Act, the Commitments are offered on the basis that if the CMA accepts the Commitments in accordance with section 31A(2) of the Act, it will not continue the investigation, make a decision within the meaning of section 31(2) of the Act, or give a direction under section 35 of the Act.
- ~~6.~~5. The offering of Commitments by Google does not constitute an admission of wrongdoing and nothing in these Commitments may be construed as implying that Google agrees with any concerns identified by the CMA in its investigation, including in a Commitments Decision. Google has not been the subject of any infringement decision or statement of objections in respect of the investigation.

B. Definitions

~~7.~~6. For the purposes of these Commitments, the following definitions apply:

"Act" means the Competition Act 1998;

"Ads Systems" means the computer systems that constitute Google's various products and services used for Targeting or Measurement of digital advertising on the web;

"Alternative Technologies" means the technologies designed, developed and implemented by Google as alternatives to Third-Party Cookies in Chrome and Chromium listed at Annex 1, and any successor technologies having the same objective;

¹ In January 2020, Google declared its goal of making the web more private and secure for users, while also supporting publishers. See *Building a more private web*, 22 August 2019, and *Building a more private web: A path towards making third party cookies obsolete*, 14 January 2020. To date neither the CMA nor the ICO have concluded on the privacy impacts of the Privacy Sandbox proposals

² *Building a more private web: A path towards making third party cookies obsolete*, 14 January 2020.

“Applicable Data Protection Legislation” means all applicable data protection and privacy legislation in force in the UK, including the Data Protection Act 2018, the UK General Data Protection Regulation (and regulations made thereunder) and the Privacy and Electronic Communications (EC Directive) Regulations 2003;

“Chrome” means the Chrome web browser as built on Chromium and Blink;

“CMA” means the Competition and Markets Authority;

“Commitments” means the commitments given by Google pursuant to section 31A of the Act;

“Commitments Decision” means a formal decision by the CMA under section 31A of the Act to accept Commitments, such that section 31B of the Act applies;

“Compliance Statement” means the quarterly statement provided by Google confirming its compliance with the Commitments;

“Effective Date” means the date on which the CMA notifies Google of a Commitments Decision;

“Gnatcatcher” means the Chrome proposal aimed against covert tracking that both supports the Willful IP Blindness functionality, by which websites may attest that their servers will use IP addresses only for defined critical purposes and not for covert tracking, and, for websites that do not participate in Willful IP Blindness, enables the forwarding of HTTP requests through an IP privatising server, and any successor technology having the same objective;

“Google” means Alphabet Inc., Google UK Limited (company number 03977902) and Google LLC and any other member of their corporate Group operating a business involved in the Privacy Sandbox;

“Google Ad Manager” means Google’s ad management platform for publishers marketed under that name at the Effective Date, and any successor product;

“Google First-Party Personal Data” means data from (a) Google’s user-facing services; and (b) Google’s services available on the Android operating system as deployed in smartphones, connected televisions or other smart devices;

“Group” includes those companies with which any of Alphabet Inc., either Google UK Limited or Google LLC has the links described in section 129(2)(b) Article 5(4) of Council Regulation (EC) No-139/2004 of the Enterprise Act 2002 and thus constitute a “group” 20 January 2004 on the control of *interconnected bodies corporate*, within the meaning of the Enterprise Act 2002 concentrations between undertakings;

“ICO” means the Information Commissioner’s Office;

~~**“Individual Level User Data”** means personal data (including pseudonymised data) on a given, individual user;~~

“Monitoring Statement” means the quarterly statement prepared provided by Google (or, if appointed, by the Monitoring Trustee) validating the internal measures explaining how it will ensure that Google operates to remain it monitors internally that it remains compliant with the Commitments;

“Monitoring Trustee” means a person appointed in accordance with paragraph 32(b) below;

“Non-Google Technologies” means technologies (including, but not limited to, individual user-level identifiers) designed, developed and implemented by parties other than Google as alternatives to Third-Party Cookies, to enable users to be tracked for the Targeting or Measurement of advertising on the web;

“Personal Data” means personal data as defined in the Applicable Data Protection Legislation;

“Privacy Budget” means the Chrome proposal aimed against covert tracking that enables the information disclosed about a user or device by fingerprinting surfaces to be limited by reference to a specified budget, and any successor technology having the same objective;

“Privacy Sandbox” means Google’s proposals relating to the Removal of Third-Party Cookies, addressing workarounds³ that facilitate continued cross-site tracking on Chrome, and the design, development and implementation of the Alternative Technologies, and the changes to Chrome listed at Annex 1, including Gnatcatcher and the Privacy Budget; as described on Google’s website;⁴

“Purpose of the Commitments” has the meaning given in paragraph 7 below;

“Quantitative Testing” means testing which would provide quantifiable metrics in comparison to the situation existing before implementation of the Privacy Sandbox proposal concerned that are materially informative for the application of the Development and Implementation Criteria;

“Removal of Third-Party Cookies” and “Removal” refer to Chrome ending support for Third-Party Cookies or clearing Third-Party Cookies more frequently than every ~~90~~30 days, whichever is first;

“Targeting or Measurement” means the targeting or measurement of digital advertising, including but not limited to frequency capping, reporting and attribution;

“Third-Party Cookies” means cookies which are created by a website other than the website that the user is visiting;

“W3C” means the World Wide Web Consortium;

“Working Day” means any day other than a Saturday, Sunday or any other day that is a public holiday in England.

C. Purpose of the Commitments

~~8.7.~~ The **“Purpose of the Commitments”** is to address the competition CMA’s concerns identified by the CMA during its investigation, namely that, without sufficient regulatory scrutiny and oversight, the design, development and implementation of the Privacy Sandbox proposals could; ~~has the potential to:~~

- a. distort competition in the market for the supply of ad inventory and in the market for the supply of ad tech services, by restricting the functionality associated with user tracking for third parties while retaining this functionality for Google;
- b. distort competition by the self-preferencing of Google’s own advertising products and services

³Such workarounds include other forms of cross-site tracking beyond Third-Party Cookies, including fingerprinting (via information such as IP address or User Agent HTTP header) and CNAME cloaking.

⁴A dedicated website for Privacy Sandbox set up by Google exists here. There is also more information available on Chromium’s website.

and owned and operated ad inventory; and

- c. allow Google to deny cause the imposition of unfair terms on Chrome's web users substantial choice in terms of whether and how their Personal Data is used for the purpose of targeting and delivering advertising to them.

9.8. Google will design, implement and evaluate the Privacy Sandbox proposals by taking into account the following factors (the "**Development and Implementation Criteria**"), which will inform the answer to the question of whether or not the Purpose of the Commitments has been achieved. The Development and Implementation Criteria are:

- a. impact on privacy outcomes and compliance with data protection principles as set out in the Applicable Data Protection Legislation;
- b. impact on competition in digital advertising and in particular the risk of distortion to competition between Google and other market participants;
- c. impact on publishers (including in particular the ability of publishers to generate revenue from advertising inventory) and advertisers (including in particular the ability of advertisers to obtain cost-effective advertising);
- d. impact on user experience, including the relevance of advertising, transparency over how personal data is used for advertising purposes, and user control; and
- e. technical feasibility, complexity and cost involved in Google designing, developing and implementing the Privacy Sandbox.

10.9. These Commitments are organised as follows:

- a. Section D provides for transparency and consultation with third parties;
- b. Section E provides for involvement of the CMA in the Privacy Sandbox proposals;
- c. Section F provides for a standstill before the Removal of Third-Party Cookies;
- d. Section G provides for Google's use of data;
- e. Section H provides for non-discrimination; and
- f. Sections I to M provide for reporting and compliance; duration; variation or substitution; effect of invalidity; and governing law and jurisdiction.

D. Transparency and consultation with third parties

11.10. Having agreed the wording with the CMA, by the day the Commitments Decision is published, Google will make a public statement in a blog post, a dedicated microsite or equally prominently (to which a link may be added in the CMA's webpages) specifying:

- a. that Google's objectives, in developing the Privacy Sandbox proposals are, Google intends to make pursue its objective of making the web more private and secure for users, while:
 - i. supporting the ability of publishers to generate revenue from advertising inventory and the ability of advertisers to secure value for money from advertising spend;

- ii. supporting a good user experience in relation to browsing the web and digital advertising;
 - iii. providing users with substantial transparency and control over their data as they browse the web; and
 - iv. not distorting competition between Google's own advertising products and services and those of other market participants;
- b. the Development and Implementation Criteria;
 - c. that Google ~~will intend to~~ design, develop and implement the Privacy Sandbox in line with the Development and Implementation Criteria; and
 - d. that Google will involve the CMA on an ongoing basis in relation to the design, development and implementation of the Privacy Sandbox (and related announcements) and Google will also regularly consult with publishers, advertisers and ad tech providers pursuant to paragraphs 11, 12 and ~~17~~16(c)(v) below.

~~12.11.~~ Google will publicly disclose the timing of the key Privacy Sandbox proposals as set out in Annex 1.

Google will also publicly update the information provided for in Annex 1 as timings change or become more certain. Such disclosures may be made in particular within the blink-dev discussion group, within the ~~W3C World Wide Web Consortium~~ and/or in a blog post, a dedicated microsite or equally prominently. Such disclosures, and will aim to enable publishers, advertisers and ad tech providers to influence the Privacy Sandbox and to adjust their business models, including by providing sufficient advance notice of the proposals and publishing key information. Google will use its best endeavours to ensure that blog posts and Privacy Sandbox microsite updates relating to origin trials for, the timing of, and any key changes to, the Privacy Sandbox proposals as set out in Annex 1 will contain an express reference to these Commitments and a brief explanation of the involvement of, and regulatory oversight provided by, the CMA in consultation with the ICO.- Google will provide a single webpage from which all such disclosures can be accessed.

12. Google will publish on a dedicated microsite a process for stakeholder engagement in relation to the details of the design, development and implementation of the Privacy Sandbox proposals and report on that process publicly, as well as to the CMA through the quarterly reports described in paragraph 32(a) below. As part of that process, Google will take into consideration reasonable views and suggestions expressed to it by publishers, advertisers and ad tech providers, including (but not limited to) those expressed in the W3C or any other fora, in relation to the Privacy Sandbox proposals, including testing, in order to better apply the Development and Implementation Criteria in the design, development and implementation of the Privacy Sandbox proposals.
13. Google will, at the CMA's request, seek to facilitate the involvement of the CMA in discussions on the Privacy Sandbox in the W3C or any other fora. In relation to its ongoing participation in the W3C, Google intends for the Privacy Sandbox proposals to proceed, when appropriate, to the relevant Community, Business and Working Groups in accordance with W3C processes~~World Wide Web Consortium or any other fora.~~
14. Google will instruct its staff and agents not to make claims to other market players that contradict these Commitments. Google will provide training to its relevant staff and agents to ensure that they are aware of the requirements of these Commitments.

E. Involvement of the CMA in the Privacy Sandbox proposals

~~14.15.~~ Google will engage with the CMA in an open, constructive and continuous dialogue in relation to the development and implementation of the Privacy Sandbox proposals, with a view to achieving the Purpose of the Commitments, taking into account the Development and Implementation Criteria.

~~15.16.~~ Updates to the timeline at Annex 1 will be provided to the CMA in accordance with paragraph ~~3227(a) below.~~ This is to assist the CMA in planning its own involvement in the process.

~~16.17.~~ Google and the CMA will organise their dialogue by mutual agreement. Such dialogue will in particular involve:

a. **Efforts to identify and resolve concerns quickly.**

- i. Google will proactively inform the CMA of changes to the Privacy Sandbox that are material to ensuring that the Purpose of the Commitments is achieved.
- ii. Google will work with the CMA without delay to seek to resolve concerns raised and address comments made by the CMA with a view to achieving the Purpose of the Commitments. Google will inform the CMA of how it has responded to those comments.
- iii. In the event that Google and the CMA cannot reach mutual agreement or resolve concerns within 20 Working Days of a notification in writing by the CMA, unless extended by mutual consent, the CMA may take action pursuant and subject to the provisions of section 31B(4) of the Act.

b. **Status meetings.** Google and the CMA will schedule regular meetings at least once a month until the Removal of Third-Party Cookies and at regular intervals thereafter to discuss progress on the Privacy Sandbox proposals.

c. ~~**Testing Alternative Technologies.**~~ During the period from acceptance of these Commitments until the Removal of Third-Party Cookies, Google will seek to agree with the CMA parameters and other aspects² which are material for the design of any significant tests for evaluating the effectiveness of the Alternative Technologies, and of other Privacy Sandbox proposals at Annex 1 that are amenable to Quantitative Testing, according to the Development and Implementation Criteria. Such testing will be carried out on the following basis: -

- i. Google will test the effectiveness of individual Alternative Technologies and of other Privacy Sandbox proposals at Annex 1 that are amenable to Quantitative Testing, and will also, before triggering the standstill period as set out in paragraph ~~1918~~ below, ~~will~~ test their effectiveness in combination to fully assess the impact of the Removal of Third-Party Cookies.
- ii. Google will involve the CMA in the design of such tests of Alternative Technologies and of other Privacy Sandbox proposals at Annex 1 that are amenable to Quantitative Testing, and will share with the CMA the results of such tests and, to the extent necessary for the CMA to understand and evaluate the results, explanations of the data used and underlying analyses as well as, on request and where practicable, relevant analyses retained in Google's systems for the purpose of the experiment results. Google will work with the CMA

² Other aspects means data and benchmarks which are material for the design of any significant tests.

to enable the CMA to understand and have confidence in the results. Google will take into account reasonable views and suggestions expressed by stakeholders in relation to the testing of the Privacy Sandbox proposals, in accordance with paragraph 12.

- iii. If Google and the CMA cannot reach an agreement regarding appropriate testing parameters the CMA may notify Google of its preferred parameters.
 - iv. If Google does not within 20 Working Days, unless extended by mutual consent, agree to carry out a test according to the CMA's parameters, the CMA may take action pursuant and subject to the provisions of section 31B(4) of the Act.
 - v. In consultation with the CMA, Google will publish the results of tests that are material to evaluating the effectiveness of the Alternative Technologies and of other Privacy Sandbox proposals at Annex 1 that are amenable to Quantitative Testing by reference to the Development and Implementation Criteria. The publication will be made in a blog post, a dedicated microsite or equally prominently. When Google publishes the results of these tests, it will also publish a description of the underlying data and methodology used that is sufficiently granular to enable publishers, advertisers and ad tech providers to understand the results and obtain an informed view of the relevance of the test and its outcome for their own businesses. For the avoidance of doubt, Google will not publicly disclose personal data, Google proprietary software code or algorithms or other business secrets. However, Google may need to disclose such data to the CMA if such data is necessary for the CMA to assess the effectiveness of the Alternative Technologies and of other Privacy Sandbox proposals at Annex 1 that are amenable to Quantitative Testing.
 - vi. This provision shall not prevent Google from carrying out alternative tests on the basis of its own parameters and design. However, Google will provide the CMA with sufficient advance notice of any intention to carry out any such alternative tests, explain the nature of any such tests and discuss with the CMA whether (and if so how) Google should publish the results of any such tests.
- d. **User controls.** At least once a quarter, Google will update the CMA on its plans for user controls in relation to the Privacy Sandbox proposals, including default options and choice architectures, and it will share with the CMA the user research and testing which underpins its decisions on user controls. Google will take into account any observations the CMA may make with a view to ensuring that the Purpose of the Commitments is achieved.

~~17,18.~~**The ICO.** Google acknowledges that the CMA will involve the ICO to achieve the Purpose of the Commitments as agreed between the CMA and the ICO and subject to applicable legislation. The CMA will consult the ICO before issuing any notification under paragraph ~~21~~ below~~19.~~

F. Standstill before the Removal of Third-Party Cookies

~~18,19.~~ Google will not implement the Removal of Third-Party Cookies before the expiry of a standstill period of no less than 60 days after Google notifies the CMA of its intention to implement their Removal. Google may increase the length of such a standstill period at any time between giving such notice and the period's expiry. At the CMA's request, Google will increase the length of this standstill period by a further 60 days to a total of 120 days.

20. Before the Removal of Third-Party Cookies, Google will not implement Gnatcatcher without making

19 November 2021

reasonable efforts to support websites' ability to conduct anti-spam and anti-fraud efforts and to tailor their websites based on users' coarse geographic location (i.e., country or region), or enforce the Privacy Budget.³

~~19.21.~~ During the standstill period, the CMA may notify Google that competition law concerns remain concerning ~~Removal of Third-Party Cookies~~ such that the Purpose of the Commitments will not be achieved. Google will work with the CMA without delay to seek to resolve concerns raised and address comments made by the CMA with a view to achieving the Purpose of the Commitments. Google will inform the CMA of how it has responded to those comments.

~~20.22.~~ If Google and the CMA do not resolve those competition law concerns during the standstill period referred to in paragraph ~~19 above~~~~18~~, the CMA may take action pursuant and subject to section 31B(4)(a) of the Act. In such circumstances the CMA will have reasonable grounds for believing that there has been a material change of circumstances since the Commitments were accepted.

~~21.23.~~ Nothing in these Commitments prevents the application of any part of section 31B(4) or other provisions of the Act.

~~22.24.~~ Where section 31B(4) applies, the CMA may continue the investigation, make a decision within the meaning of section 31(2) of the Act, or give directions under section 35 (interim measures) of the Act.

G. Google's use of data

~~25.~~ **Chrome browsing history commitment.** After Chrome ends support for ~~Third-Party Cookies, party inventory.~~ Google commits not to use ~~Personal~~~~any Individual-level User Data~~ from a user's Chrome browsing history, including synced Chrome history, ~~the sources listed below in its Ads Systems~~~~ads systems~~ to track ~~that user~~~~users~~ for the ~~Targeting~~~~targeting~~ or ~~Measurement~~~~measurement~~ of digital advertising on ~~either Google owned and operated ad inventory or ad~~~~third-party~~ inventory on websites not owned and operated by Google.

~~23.26.~~ **Google Analytics data commitment.** After Chrome ends support for ~~the web after the~~ ~~Removal of Third-Party Cookies~~, Google commits not to use a user's Personal Data from a customer's Google Analytics account in its Ads Systems to track that user for the ~~Targeting~~ or ~~Measurement~~ of digital advertising on either Google owned and operated ad inventory or ad inventory on websites not owned and operated by Google.⁴

~~24.27.~~ **Additional commitments regarding ad inventory on websites not** ~~Google's current and future user-facing services, including Android;~~

a. ~~a user's Chrome browsing history, including synced Chrome history;~~

³ As part of this, before the Removal of Third-Party Cookies Google will allow publishers, advertisers and ad tech providers to make unlimited requests for User-Agent Client Hints, so that all of the information available in the user-agent string as of the Effective Date would remain accessible during the period prior to the Removal of Third-Party Cookies.

⁴ Google Analytics plans to continue to allow Analytics customers to use their respective first-party data to support publisher monetization within their own respective websites. Google Analytics does not use Personal Data across unaffiliated publishers for publisher monetization and, in accordance with paragraph 26, commits not to do so in the future. This does not preclude the possibility that a customer may choose to share or export their own Analytics data, including through a linked Google Ads account, for ads Targeting and/or Measurement.

19 November 2018 - May 2021

b. ~~— a publisher's Google Analytics account;² and~~

~~uploaded by an advertiser to Customer Match in accordance with Google's Customer Match policy. **Google-owned and operated by Google.** After Chrome ends support for Third-Party Cookies, ~~inventory.~~ Google commits not to use any Individual-level User Data from the sources listed below in its ads systems to track users to Target for the targeting or Measure measurement of digital advertising on ad inventory on websites not Google-owned and operated by Google using either (i) Google First-Party Personal Data or (ii) Personal Data regarding users' activities on websites other than those of the relevant advertiser and publisher.⁵ ~~inventory on the web after the Removal of Third-Party Cookies:~~~~

28. After Chrome ends support for Third-Party Cookies, Google intends to use the Alternative Technologies for the Targeting or Measurement of digital advertising on ad inventory on websites not owned and operated by Google.

29. For the avoidance of doubt:

a. ~~— nothing a user's Chrome browsing history, including synced Chrome history; and~~

b. ~~— a publisher's Google Analytics account.⁶~~

a. ~~Nothing in paragraphs 25-27 above²³ or 24 prevents Google from using indirect use of the data types listed, use to prevent spam and fraud; and~~

b. Section G of these Commitments is without prejudice to the operation of any other part of the Commitments, including Section H, or to the application of the Applicable Data Protection Legislation. Section G does not prevent Google from using the Alternative Technologies in the same way as other market participants are able to do, or use in or for Google services not included under paragraphs 23 and 24.

H. Non-discrimination

~~25-30.~~ Google will design, develop and implement the Privacy Sandbox proposals in a manner that is consistent with the Purpose of the Commitments and takes account of the Development and Implementation Criteria mentioned in paragraph 8 above⁹, ensuring that it does not distort competition by discriminating against rivals in favour of Google's advertising products and services. In particular, Google will not:

- a. Design and develop the Privacy Sandbox proposals in ways that will distort **competition** by self-preferencing Google's advertising products and services;
- b. Implement the Privacy Sandbox in ways that will distort competition by self-preferencing Google's advertising products and services; or
- c. Use competitively sensitive information provided by an ad tech provider or publisher to Chrome

⁴Google Analytics plans to continue to allow customers to use their first-party data to support publisher monetization within their own sites. Google Analytics does not use data across unaffiliated publishers for publisher monetization, though customers may choose to share or export their analytics data, including through a linked Ads account for ads targeting and/or measurement elsewhere.

⁵ This includes data uploaded by an advertiser to Customer Match in accordance with Google's Customer Match policy.

⁶ See footnote 5. Note that Google owned and operated properties are third party with respect to non-Google publishers

~~for a purpose other than way that for which it was provided distorts competition.~~

For the avoidance of doubt, Privacy Sandbox proposals that deprecate Chrome functionality will remove such functionality for Google's own advertising products and services as well as for those of other market participants.

31. Google will not change its policies for customers of Google Ad Manager to introduce new provisions restricting a customer's use of Non-Google Technologies before the Removal of Third-Party Cookies, unless in exceptional circumstances (such circumstances to be discussed with the CMA) or as required by law. For the duration of the Commitments, Google will inform the CMA ahead of any such change to these policies.

I. Reporting and compliance

~~26-32.~~ Google will:

- a. provide the CMA with quarterly reports within three Working Days of the end of each three-calendar-month period following the Effective Date about: progress on the Privacy Sandbox proposals; updated timing expectations; substantive and ~~and~~ explanations of how Google has taken into account observations made by the CMA and by third parties pursuant to paragraphs 12 and 17(c)(ii) of these Commitments; and a summary of the interactions between the CMA and Google pursuant to paragraphs 17 and 21 of these Commitments, including in particular a record of any concerns raised or comments made by the CMA and the approach retained for addressing such concerns or comments pursuant to paragraphs 17(a)(ii) and 21. The quarterly reports will include a signed Compliance Statement in respect of paragraphs 25-27, 30-31 and, with respect to those provisions, paragraph 33~~23, 24 and 26~~ of these Commitments. The Compliance Statement will be signed by the CEO (or an individual with delegated authority) on behalf of each company giving the Commitments and will be in the form included in Annex 2 to these Commitments;
- b. appoint at its own cost in consultation with the CMA (and subject to the ongoing approval of the CMA), a monitoring trustee to monitor compliance with ~~provide in respect of~~ paragraphs 25-27, 30-31 and, with respect to those provisions, paragraph 33 of these Commitments and instruct this trustee to provide the CMA with~~23, 24 and 26 above~~ a quarterly Monitoring Statement in the ~~a~~ form of Annex 3 to these Commitments agreed upon with the CMA ~~within three Working Days of the end of each three calendar month period following the Effective Date and every three-calendar month period thereafter explaining the means by which Google will ensure that it monitors internally that it remains compliant with those paragraphs of the Commitments;~~
- c. promptly notify the CMA, as soon as practicable (and, at the latest within five Working Days) by email at {RemediesMonitoringTeam@cma.gov.uk}, if it becomes aware of any breach of the Commitments, and commits to providing full information concerning the nature and duration of such breach. Google will not be taken to be aware of a breach for a reasonable period during which it is considering whether conduct is or is not in compliance;⁶
- d. promptly take all actions reasonably required, in consultation with the CMA, to remedy a breach; and

⁶ Such reasonable period to not exceed, absent exceptional circumstances, 10 Working Days from the date on which Google becomes aware of the conduct in question.

~~19 November~~ 28 May 2021

- e. provide to the CMA any information and documents which the CMA requests for the purposes of enabling the CMA to monitor and review the operation of the Commitments or any provisions of the Commitments or for the purposes of their enforcement.

~~27-33.~~ Alphabet Inc., Google UK Limited and Google LLC will not in any way, whether circumvent, by actions ~~and/or omissions, directly or indirectly, circumvent~~ any of the Commitments, ~~including by selling, assigning or otherwise transferring any part of the businesses involved in the Privacy Sandbox to any other entity within the Google corporate Group as a result of which that entity would do anything that is prohibited by these Commitments.~~

J. Duration

~~28-34.~~ The Commitments will terminate ~~six~~ on the earlier of (i) the two year anniversary of the Removal of Third-Party Cookies; and (ii) five years from the date they are accepted by the CMA, unless released at an earlier date in accordance with section 31A(4) of the Act.

K. Variation or substitution

~~29-35.~~ Google may offer a variation or substitution of the Commitments as envisaged by section 31A(3) of the Act.

L. Effect of invalidity

~~30-36.~~ Should any provision of these Commitments be contrary to law or invalid or unenforceable for any reason, Google will continue to observe the remaining provisions, which shall remain valid and enforceable.

M. Governing law and jurisdiction

~~31-37.~~ The Commitments will be governed by and construed in all respects in accordance with English law.

~~32-38.~~ Disputes arising concerning the Commitments will be subject to the exclusive jurisdiction of the courts of England and Wales.

~~33-39.~~ Each of Alphabet Inc. and Google LLC irrevocably appoints Sisec Limited, 21 Holborn Viaduct, London EC1A 2DY as its agent to receive on its behalf in England or Wales service by the CMA of all documents, orders, requests, notifications, any proceedings or other communications connected in connection with these Commitments. Such service shall be deemed completed on delivery to such agent and shall be valid until such time as the CMA has received prior written notice that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, each of Alphabet Inc. and Google LLC shall forthwith appoint a substitute acceptable to the CMA and deliver to the CMA the new agent's name and address within England and Wales.

**

Annex 1

Google will provide the following information in relation to the use cases set out below, by reference to each quarter (e.g., Q1 2022, Q2 2022~~Q3 2021~~, ~~Q4 2021~~...):

1. Currently anticipated opening of application programming interface (API) origin trial
2. Currently anticipated start of notice period prior to Removal of Third-Party Cookies
3. Currently anticipated Use Case general availability
4. Currently anticipated Transition Period for Removal of Third-Party Cookies

The use cases for which such information will be provided, and distinct APIs for which information will be shown, are as follows (if the development of an API is discontinued, and/or an alternative API developed, such changes will be reflected):

1. Use Case: Fight spam and fraud on the web

- Trust Tokens API

~~1-2.~~ Use Case: Show relevant content and ads

- FLoC API
- FLEDGE API

~~2-3.~~ Use Case: Measure digital ads

- Core Attribution API
- Aggregate Reporting API with aggregate reports
- Cross-Environment~~environment~~ Attribution API
- Aggregation Service Reference~~API~~

~~3.~~ Use Case: Fight spam and fraud on the web

- ~~Trust tokens~~

4. Use Case: Improve the web platform infrastructure

- First-Party Sets API
- ~~Fenced Frames~~
- Shared Storage API
- CHIPS API
- Storage Partitioning
- Fenced Frames API
- Network State Partitioning

Information on the earliest anticipated date for availability will be provided for the following measures to promote a more private web (if the development of a measure is discontinued, and/or an alternative measure developed, such changes will be reflected):

- DNS-over-HTTPS
- Federated Credential Management (FedCM)
- User-Agent UA-Reduction
- Gnatcatcher
- ~~Same-Site cookies~~

- Origin-Bound Cookies~~bound cookies~~
- ~~DoH~~
- ~~Network state partitioning~~
- ~~IP address privacy~~
- Privacy Budget
- Web ID

Annex 2

Template Compliance Statement

[Note: Quarterly Compliance Statements will be provided to the CMA within three Working Days of the end of each three-calendar-month period following the Effective Date for the duration of the Commitments]

I, [insert full name], [Chief Executive Officer/title of authorised delegate] of Google LLC confirm that for the three months to [amend date as appropriate], [Google] has complied ~~with the following obligations in the preceding three-calendar-month period~~ with the obligations relating to: ~~dated [inset dates covered by this Compliance Statement]:~~

~~1. Relating to Google’s use of data set out in paragraphs 25, 26, and 27 of:~~

~~Google commits not to use any Individual-level User Data from the Commitment sources listed at paragraph 23 of the Commitments in its ads systems to track users for the targeting or measurement of digital advertising on third party inventory on the web after the Removal of Third Party Cookies;~~

~~2. Google’s Google commits not to use any Individual-level User data from the sources listed at paragraph 24 of the Commitments in its ads systems to track users for the targeting or measurement of digital advertising on Google owned and operated inventory on the web after the Removal of Third Party Cookies;~~

~~Relating to non-discrimination commitments set out in paragraphs 30 and 31 of the Commitments;~~

~~3. Google will design, develop and implement the Privacy Sandbox proposals in a manner that is consistent with the Purpose of the Commitments and takes account of the Development and Implementation Criteria, ensuring that it does not discriminate against rivals in favour of Google’s advertising products and services.~~

~~- Google’s commitment in relation This includes, but not is limited to anti-circumvention in this respect set out in, the actions listed at paragraph 33~~26~~ of the Commitments.~~

Any failures to meet the Commitments during this three-calendar-month period were notified to the CMA within five Working Days of Google becoming aware of them and are also listed below for completeness.

Signed.....

Full name.....

Date.....

[Breaches (if any)]~~[Commitments to be listed on following page for completeness]~~

Annex 3
Outline of Monitoring Statement

A	<u>Commitments in paragraphs 25-27</u>
A1	<u>A description of the technical data separation mechanisms for compliance with the requirements of these paragraphs, updated as appropriate in each successive report, including how Google ensures that any access by ads for the purposes of preventing spam and fraud is limited to this use case.</u>
A2	<u>A summary of the Monitoring Trustee's review of the relevant logs detailing the access history of any datasets within Google that contain data relevant to these paragraphs. This summary shall list out exhaustively any access by ads services or individuals and provide the justification for such access.⁷</u>
A3	<u>A description of training on permissible data access Google has carried out and the attendees of such training.</u>
B	<u>Commitments in paragraphs 30-31</u>
B1	<u>A description of the process through which Google records how the Development and Implementation Criteria were assessed in key design decisions for relevant products, updated as appropriate in each successive report.</u>
B2	<u>A summary of the Monitoring Trustee's review of the records described in B1.</u>
B3	<u>A description of Google's guidelines detailing what contacts between Chrome and Ads are permissible, updated as appropriate in each successive report.</u>
B4	<u>A summary of the Monitoring Trustee's review of the implementation of B3.</u>
B5	<u>A description of (i) the secure depository for documents partners label as containing confidential information that will not be accessible to members of the Google Ads organization, updated as appropriate in each successive report; and (ii) the steps Google has taken to inform third-parties of the steps they can take to label information as confidential.</u>
B6	<u>A description of any processes in addition to those in B5 that Google has carried out to ensure that Google uses any competitively sensitive information provided by an ad tech provider or publisher to Chrome only for the purpose(s) for which it was provided.</u>
B7	<u>A summary of the Monitoring Trustee's review of the implementation of B5 and B6.</u>
B8	<u>A description of training Google has carried out to ensure that all relevant Chrome staff and agents are aware of the requirements of paragraphs 25-27 and 30-31 of these Commitments and the attendees of such training.</u>
B9	<u>A description of training material Google makes available to all relevant publisher and advertiser-facing staff and agents to make them aware about how to communicate around the Removal of</u>

⁷ To the extent that, for the purposes of any Monitoring Statement, Google provides information to the Monitoring Trustee that information will also be provided to the CMA.

	<u>Third-Party Cookies and the Privacy Sandbox (at least with respect to paragraphs 25-27 and 30- 31 of the Commitments).</u>
<u>B10</u>	<u>A description of the internal process that will enable relevant Google staff and agents at least to report behaviour that is not in line with paragraphs 25-27 and 30-31 of these Commitments.</u>
<u>B11</u>	<u>A summary of the Monitoring Trustee’s review of any reports pursuant to B8, B9 and B10 (including on any training under the requirements of paragraph 14 in relation to paragraphs 25-27 and 30-31 of these Commitments).</u>
<u>C</u>	<u>Commitment at paragraph 33</u>
<u>C1</u>	<u>A summary of the Monitoring Trustee’s review of putative circumvention of paragraphs 25-27 and 30-31 of the Commitments.</u>

**

Appendix 2: The CMA's assessment of other responses to the consultation

Introduction

1. This appendix summarises consultation responses to the Initial Commitments that were not covered in Chapter 4 of this notice, as well as the CMA's provisional assessment of these responses.¹ For the responses listed in this appendix, the CMA's provisional views were that no, or only very limited, changes to the commitments were required in order to address its concerns.

Consultation responses

Introduction (Section A of the commitments)

First-party data

2. One respondent was concerned that references to Google's aims in Section A of the Initial Commitments seemed to suggest that first-party data was more secure than third-party data, and give 'carte blanche' for the use of first party data while neglecting the privacy risks associated with it.
3. While the CMA recognises that there are privacy impacts which can arise from the use of first-party data as well as third-party data, the CMA's provisional view is that no modification would be required to Section A of the commitments to address this concern. The CMA notes that the relevant text at issue (paragraph 2 of the Initial Commitments) has been removed from the Modified Commitments as a result of addressing the concerns set out in paragraph 4.16 of this notice. The CMA considers that the text within paragraph 2 of the Initial Commitments did not indicate that first-party data is more secure than third-party data, nor did it suggest (implicitly or explicitly) that first-party data could be used without appropriate reference to applicable data protection legislation.

¹ Consultation responses which are relevant to modifications made in the Modified Commitments are included in Chapter 4 of this notice. All consultation responses in relation to Section J of the commitments were covered in Chapter 4 of this notice, so no consultation responses in relation to Section J are listed in this appendix.

Definitions (Section B of the commitments)

Other definitions

4. While representations suggested that the commitments should include additional or modified defined terms, the commitments have not been amended as a result of those representations. These are detailed below, in alphabetical order of the related definitions.
5. Additional definitions of '**Accelerated Mobile Pages**' or '**AMP**' were suggested during consultation. The CMA's provisional view is that these definitions are not necessary, as Accelerated Mobile Pages are not part of the Privacy Sandbox Proposals, and therefore not within the scope of this investigation.
6. '**Advertising Solutions**' was an additional term suggested in connection with proposed revisions to paragraphs 23 and 24 of the Initial Commitments. The CMA considers that all these suggestions are covered by the definition of 'Ads Systems' added within the Modified Commitments, discussed at paragraph 4.42 of this notice.
7. The term '**B2B**' was proposed by one respondent to distinguish, within one part of the Initial Commitments, between 'business to business' advertising services and 'business to consumer' advertising services.² The definition was proposed partly on the basis of a view that business to business use cases rarely raise privacy issues. However, in particular since it cannot be excluded that privacy issues may arise in that context, the CMA's provisional view is that this additional definition is not necessary or appropriate.
8. '**Competitive Constraint**', '**Discrimination**' and '**Disintermediation**': these additional terms were suggested by one respondent in connection with other proposed revisions to paragraphs 9, 11, 16 and/or 26 of the Initial Commitments. The CMA considers that these additional definitions would have been overly specific.
9. One respondent suggested a '**Competing Functionality**' definition in connection with other proposed revisions to paragraphs 8, 9, 11, 16, and 18 and 19 of the Initial Commitments,³ aimed at capturing technologies which the

² The proposed definition itself cross-referred to another proposed definition, namely '**Substitute Product**'.

³ The term '**Competing Providers**' was another addition suggested, in relation to similar proposed revisions. The CMA's provisional view is that there is no need to define this term in the commitments, not least as the phrase 'other market participants' (used within the Initial Commitments, and within the Modified Commitments) appears to encompass those intended to fall within the meaning of 'Competing Providers'.

Privacy Sandbox Proposal may affect, impair or replace.⁴ The CMA considers that the substantive point relevant to this term and its related suggestions is addressed within paragraphs 4.28 to 4.29 of this notice, in the context of Section B of the commitments.

10. One respondent suggested several additional terms in connection with the idea that under the commitments Google should allow interoperability of Google's data with competitors. For example, '**Equivalence of Input**' was suggested in connection with an idea that Google should allow competitors to access data on fair, reasonable and non-discriminatory terms. '**Lawful Data**' was another term suggested in this context (and in connection with other proposed additional terms, namely '**Mechanism for Lawful Data Sharing**' and '**Mechanism**'). Since the respondent's proposed additions may pre-empt the outcome of the envisaged dialogue with Google and the envisaged consideration by the ICO under the commitments, the CMA's provisional view is that it is not appropriate to add such definitions.
11. '**Impacted Organisations**': This additional term was suggested in connection with other proposed revisions to paragraphs 16 and 29 of the Initial Commitments, all apparently aimed at increasing third parties' role in consultation with Google, and testing, before implementation of the Privacy Sandbox. The CMA considers that the substance related to those suggestions is addressed within paragraphs 4.56 to 4.77 of this notice, in the context of Section D and Section E of the commitments.
12. One respondent suggested that testing under paragraph 16 of the Initial Commitments should include ensuring a lack of threats to '**Long Term Innovation**' – a new defined term – on the part of Google's competitors. The CMA's provisional views on what should be covered by testing are set out at paragraphs 4.73 to 4.77 of this notice, in the context of Section E of the commitments.
13. One respondent submitted that certain additions should be made to the terms '**Monitoring Statement**' and '**Compliance Statement**' within the Initial Commitments. The main effect of these additions, suggested in connection with certain proposed revisions to paragraph 16 and/or paragraph 27 of the Initial Commitments, appeared to be to specify further the seniority and knowledge required in order to sign these statements. The CMA considers it unnecessary to include such detail – in particular, in light of changes made to

⁴ The term '**Substitute Product**' was also suggested in connection with similar proposed revisions. This proposed definition appeared to resemble the concept of 'Alternative Technologies'. For this reason, and because the substance related to this term is addressed within this notice in the context of Section E of the Initial Commitments, the CMA provisionally considers that this addition is unnecessary.

Section I of the commitments, as set out at paragraphs 4.119 to 4.138 of this notice.

14. One respondent suggested including the additional term '**NIAC**', to refer to the June Notice. In that respondent's view, this would help avoid repetition if the commitments were to cross-refer, at multiple places, to the June Notice. However, the commitments do not contain such cross-references.
15. '**Notice**', '**Notification**' and '**Notify**' were additional, related terms suggested by one respondent. The CMA's view is that there is no need to define these words, and that they should be interpreted according to their natural ordinary meaning and the context in which they appear.
16. '**Privacy**': one respondent suggested that Google's actions should be measured against a definition of privacy centred on the appropriate flow of information. This respondent submitted that this would mean ensuring that data about a user is collected and used only in ways that align with that user's expectations, a principle embodied in various data legislation including the GDPR. Similarly, two respondents suggested an additional term such as '**Privacy Concern**'. The suggestion was that the existence of a 'Privacy Concern' should only be accepted on the basis of evidence, and only substantiated 'Privacy Concerns' should be addressed, as agreed with the CMA and the ICO. The aim of this suggestion appeared to be preventing Google from defining or interpreting privacy in a self-serving way, and preventing Google from using data protection arguments to frustrate competition. The CMA's provisional view is that it is important that the CMA and the ICO are involved in ensuring that the Privacy Sandbox is developed taking into account, for example, impact on privacy outcomes and compliance with applicable data protection legislation. However, these additional definitions appeared unnecessary, in light of the commitments being amended to also refer to 'Personal Data' and 'Applicable Data Protection Legislation' (as set out at paragraphs 4.34 to 4.35 of this notice).
17. '**Pseudonymised Data**': This was suggested because the definition of 'Individual-level User Data' in the Initial Commitments referred to 'pseudonymised data', which was not itself defined. However, adding such a defined term – like various other terms which were suggested within certain consultation responses⁵ – appears unnecessary. The Modified Commitments no longer refer to 'pseudonymised data'. Moreover, the Modified Commitments have been amended throughout so that all references to 'Individual-level User Data' now refer to 'Personal Data', a term which is itself

⁵ For example, '**Identifiable Living Individual**', '**Identity**' and '**Re-identification**'.

defined by reference to ‘Applicable Data Protection Legislation’ (see paragraphs 4.34 to 4.35 of this notice).

18. One respondent suggested revising the definition of **‘Third-Party Cookies’** – mainly on the basis that the definition in the Initial Commitments could arguably include all cookies, such that the true removal of TPCs could arguably not be caught by the standstill obligation. The CMA provisionally considers that there is no material risk that the term could be understood in the way suggested by this respondent.
19. The term **‘User Agent Client String’** was suggested in connection with proposed revisions to paragraph 11 of the Initial Commitments. The CMA’s provisional view is that ‘user-agent string’ does not require definition as it is a generally understood term in the context. Moreover, the CMA considers that this proposed definition may conflate the user-agent string (which is to be reduced, under the Privacy Sandbox proposals) and User-Agent Client Hints (which is to be introduced, under the Privacy Sandbox proposals), even if this proposed definition appeared to relate more to the former than the latter.
20. One respondent submitted that it was not clear what **‘user-facing services, including Android’** in paragraph 23 of the Initial Commitments was meant to cover. This was based on an assumption that ‘Android’ refers to the Android operating system which, strictly speaking, is not always a user-facing service. The CMA considers that the substance relevant to this suggestion is addressed within paragraph 4.92 of this notice, in the context of Section G of the commitments. In any event, the relevant phrase has now been replaced, in the Modified Commitments, with the following, clearer phrase: ‘Google’s services available on the Android operating system as deployed in smartphones, connected televisions or other smart devices’.⁶

Purpose of the Commitments (Section C of the commitments)

Development and Implementation Criteria

21. Six respondents queried if it sufficed for Google to commit only to ‘taking into account’ factors such as the Development and Implementation Criteria listed in paragraph 9 of the Initial Commitments.
22. Four respondents queried whether the Initial Commitments should explain how the Development and Implementation Criteria set out in paragraph 9 of

⁶ See new defined term of ‘Google First-Party Personal Data’ within Section B of the Modified Commitments.

the Initial Commitments would be measured or weighted – or how practicable such measurement/weighting would be.

23. The CMA's provisional view is that the commitments need not be amended in the ways suggested in these representations. Any future assessment of whether Google has taken the criteria sufficiently into account should involve the CMA exercising its discretion fully and freely. Indeed, some consultation responses supported the idea of the CMA doing exactly that, following an approach based on general principles.

Suggestions for additional Development and Implementation Criteria

24. Several respondents suggested adding to the Development and Implementation Criteria.⁷ For example, four respondents suggested that paragraph 9 of the Initial Commitments should also oblige Google to assess, or not impede, rivals' alternative proposals and solutions (for example, rival advertiser software and services).⁸
25. The CMA has considered these representations together with others relating to other parties' alternative proposals and solutions:
 - (a) Under the Modified Commitments, Google will take into consideration reasonable views and suggestions, including on testing, which are expressed to Google by publishers, advertisers and ad tech providers in relation to each of the Privacy Sandbox Proposals.⁹
 - (b) In relation to not impeding other parties' alternative technologies, the Modified Commitments include an additional commitment which, in the CMA's provisional view, provides greater certainty for third parties developing such technologies.¹⁰

⁷ One respondent suggested developing a fuller framework of principles, to which Google must adhere (for example, the principle that Chrome should provide consumers with simple and easy control over tracking).

⁸ Some other respondents made similar submissions, albeit in the context of testing (on which, see paragraphs 4.75 of the notice, and paragraph 36 of this Appendix 2) or more broadly.

⁹ Modified Commitments, paragraphs 12 and 17.c.ii. Google will also provide quarterly reports to the CMA explaining substantively how Google has taken into account representations by third parties: Modified Commitments, paragraph 32.a. See also paragraphs 4.65, 4.68 and 4.76 of this notice.

¹⁰ Modified Commitments, paragraph 31. See also paragraph 4.115 of this notice.

Transparency and consultation with third parties (Section D of the commitments)

Public statements

26. One respondent considered that the reference to ‘substantial transparency’ in paragraph 10.a.iii. of the Initial Commitments may not be sufficiently precise or reflective of applicable data protection law. Another respondent submitted that transparency and control do not lead to informed privacy choices for users and that this is a fundamental limitation with the ‘self-management’ approach to privacy.
27. The CMA’s provisional view is that no modification to the Initial Commitments is needed to address these concerns. The commitments already provide for the involvement of the CMA and the ICO with a view to ensuring that the Privacy Sandbox Proposals develop in the appropriate way, and in line with the Development and Implementation Criteria, in relation to user control.

Involvement of the W3C

28. Various respondents made submissions about the processes of the W3C.
 - (a) Three respondents submitted that W3C currently was a forum focused on technical discussions rather than policy issues relating to competition and privacy. One respondent said that the forum did not allow for sufficient discussions around privacy issues or competition concerns.
 - (b) Some respondents submitted that W3C’s processes were not clear to them or could be improved. For example, decision-making should include a pre-defined voting system (either within W3C or another industry body). Such a system could allow publishers and ad tech providers to input and be involved in decision-making in respect of the Privacy Sandbox Proposals. Specific recommendations included establishing independent chairs for W3C groups relating to Privacy Sandbox Proposals.
 - (c) One respondent felt that the W3C’s public aim of making decisions by consensus did not work in practice, and had concerns about certain members’ ability to influence the W3C Management Team to ban other members from directly contributing to W3C Technical Advisory Group discussions.
 - (d) Three respondents commented on the impact that choice of a specific ‘group’ within the W3C could have on both governance and decision-

making in the development of Google's Privacy Sandbox Proposals. Three respondents said that Privacy Sandbox Proposals should be developed through formal standards development processes within an open Standard Development Organisation ('SDO'), whether this SDO is W3C or another forum. Another respondent stated that any commitments accepted in this investigation should state whether the Privacy Sandbox Proposals will become open web standards.¹¹

- (e) Four respondents submitted that the use of W3C Business Groups and Community Groups was not appropriate for standards development as they tend to lack tangible and specific criteria for success – and the scrutiny and expertise of technical advisory groups require parties to address all submitted stakeholder concerns ahead of finalising proposals (which delays progress).¹² One respondent noted that, although early discussions on proposals often occur in informal fora such as W3C Business Groups and Community Groups to gather 'meaningful impact and feedback', once sufficiently mature, proposals are then formally developed within W3C Working Groups.

- 29. The CMA understands that creating a W3C Working Group to refine proposals into recommendations requires the making of a decision by consensus among W3C members and must be initiated by W3C staff and that a W3C Director decides which initiatives can move into a Working Group phase.
- 30. The CMA's provisional view is that the related parts of the commitments need no modification and that any changes suggested above would not need to form any part of any commitments offered to the CMA by Google. The W3C is primarily a technical forum designed to exchange ideas for future standardisation, or targeted work on technical APIs aimed at developing specific standards (ratified by an Advisory Committee agreeing a W3C recommendation). The W3C is not a place intended to discuss, promote, or determine policy decisions on proposals for compliance with national (or international) data protection or competition policy. How the Privacy Sandbox Proposals are considered within the W3C is a matter ultimately for the W3C, and it is not within Google's ability to offer any commitment to ensure that W3C discussions of the Privacy Sandbox Proposals take place in a certain

¹¹ One respondent suggested that the certain Privacy Sandbox Proposals should be developed within various different, specifically named, SDOs.

¹² Two respondents suggested that Google should craft measurable success criteria for the W3C Improving Web Advertising Business Group, independently assess the outcomes of the Business Group, and provide a forum for public comment on those outcomes.

manner or within a certain group.¹³ In addition, under the Modified Commitments Google will publish on a microsite a process dedicated to stakeholder engagement in relation to the Privacy Sandbox Proposals, and will take into consideration reasonable views and suggestions including those expressed in the W3C.¹⁴

CMA involvement in W3C processes and similar fora

31. Six respondents explicitly recommended direct involvement of the CMA in W3C discussions or equivalent fora. Two respondents suggested that paragraph 13 of the Initial Commitments be modified, to require Google to proactively involve the CMA in discussions in W3C and other fora.¹⁵ Two respondents submitted that the CMA should formally apply to join the W3C.
32. One respondent suggested the CMA attend discussions and participate in SDO fora as a stakeholder, without the CMA providing ideas, concepts or technologies itself. In that respondent's view, once Google has published sufficient data about one of the Privacy Sandbox Proposals, the CMA would invite comments from stakeholders, and publish an evaluation of that proposal's impact on competition.
33. The CMA's provisional view is that the related parts of the commitments need no modification. Any CMA decision to join the W3C would not need to form any part of any commitments offered to the CMA by Google.
34. Other respondents sought a commitment that the CMA will assess the competitive impact of, and recommend, specific alternative proposals made by third parties in the W3C Improving Web Advertising Business Group and other Business Groups. Respondents submitted that Google (and other browsers) should be required as part of this process to consider and provide specific feedback on such proposals.
35. The CMA's provisional view is that the related parts of the commitments need no modification. Any CMA decision on how to assess the competitive impact of proposals made by third parties would not need to form any part of any commitments offered to the CMA by Google.

¹³ Google has said that it intends for the Privacy Sandbox Proposals to proceed, when appropriate, to the relevant W3C Community Groups, Business Groups and Working Groups, according to W3C processes: see the Modified Commitments, paragraph 13.

¹⁴ Modified Commitments, paragraphs 12 and 17.c.ii. Google will also provide quarterly reports to the CMA explaining substantively how Google has taken into account representations by third parties: Modified Commitments, paragraph 32.a. See also paragraphs 4.65, 4.68 and 4.76 of this notice.

¹⁵ One of these respondents suggested that Google should also commit to proactively include other market participants, regulators and associations in the respective fora.

Involvement of the CMA and the ICO (Section E of the commitments)

Testing to be undertaken under the commitments

36. One respondent submitted that Google's testing and trials should also assess other market participants' alternatives, and proposed alternatives, to the Privacy Sandbox proposals.¹⁶ Three other respondents submitted similarly that the commitments (and the definition of 'Alternative Technologies') should aim to ensure the consideration by Google of all reasonable proposals, not just of the Privacy Sandbox Proposals.¹⁷
37. The CMA is of the provisional view that it would be inappropriate to require Google to test third parties' alternative solutions to Google's Privacy Sandbox proposals, unless these become a part of the Privacy Sandbox Proposals.
38. One respondent submitted that Google should test for 'equivalence of functionality', rather than 'effectiveness' (as referred to in paragraph 16.c. of the Initial Commitments). For example, Google should test benchmarks such as time to access data (or a proposed cohort), impact on site load speed or yield optimization methods that publishers are currently running.
39. The CMA's provisional view is that effectiveness (as determined by the Development and Implementation Criteria) is the appropriate basis for assessing the impact of the Privacy Sandbox Proposals, and there should not be an additional requirement of 'equivalence'.¹⁸ However, the CMA agrees with respondents that there may be benefits in testing benchmarks such as time to access data and site load speed as part of the overall assessment of effectiveness, and this should be factored into the design of future trials.
40. One respondent stated that Google should also test for functionality in relation to 'Accelerated Mobile Pages' or 'AMP'. The CMA's provisional view is that AMP is not part of the Privacy Sandbox Proposals and, therefore, not within the scope of the CMA's investigation. Therefore, the CMA provisionally considers that it is not necessary to address this submission through the commitments.
41. One respondent suggested that reviews of the 'Alternative Technologies' should demonstrate an absence of threats to long-term innovation by market

¹⁶ Submissions included the suggestion that tests of 'Alternative Technologies' should demonstrate an absence of threats to long-term innovation by other market participants, arising from conflicts of interest in any and all proposals.

¹⁷ Another respondent made similar points about the CMA's oversight of any commitments ultimately accepted, albeit more broadly (ie not limited to Google's testing and trials).

¹⁸ The ICO's Opinion (as referred to at footnote 4 of this notice) sets out the data protection expectations that online advertising proposals should meet.

participants, from conflicts of interest in any and all proposals. The CMA considers that these types of long-term harms would already be captured within the second of the Development and Implementation Criteria (ie impact on competition). However, as a practical matter the CMA considers that effects on long-term innovation are unlikely to be amenable to being assessed quantitatively as part of testing the 'Alternative Technologies' or the Privacy Sandbox proposals. Therefore, the CMA's provisional view is that the Initial Commitments need no modification in this regard.

42. Twelve respondents suggested amending who would be involved in designing, undertaking and/or evaluating tests in the context of the Privacy Sandbox:
 - (a) One respondent suggested that the CMA consult with market participants on the design of tests. Five respondents suggested that other market participants be involved in designing tests, for example to assess whether functionality such as measurement will either still exist or have effective replacements with the Privacy Sandbox. Two respondents suggested involving the ICO, or independent experts, in test design.
 - (b) Eight respondents suggested that the testing of Alternative Technologies should be conducted and validated by market participants (or W3C participants). One respondent said that the CMA should have the option to contract with third parties to assess the effectiveness of Alternative Technologies. Five respondents suggested a role in this regard for independent experts. Three respondents proposed that results relating to the efficacy of the Privacy Sandbox be audited by an independent auditor or another independent person. One respondent suggested that confidential communications between Google and the CMA be shared with a list of agreed market participants, to ensure transparency.
43. As regards the representations set out above relating to testing by third parties, the CMA's provisional view is that it would be inappropriate to accord third parties and/or experts any formal procedural testing role, noting that under the Modified Commitments Google would take into account third parties' reasonable views and suggestions regarding testing, and would provide substantive explanations to the CMA (as outlined in paragraph 4.76 of this notice).
44. Four respondents made submissions about the publicity of results from testing done in the context of developing the Privacy Sandbox proposals:

- (a) Two respondents favoured a wider scope of publication obligations in relation to test results, for example suggesting that Google publish all results (and not just 'material' ones) or all underlying data (not just a description).
 - (b) Three respondents suggested certain obligations for Google if it wished to publish results from tests carried out based on parameters not approved by the CMA. For example, it was submitted that Google should obtain CMA approval before publishing those results, or at least it should publish those results subject to the publicity requirements set out in paragraph 16.c.v. of the Initial Commitments relating to the results of tests published based on approved parameters.
45. The CMA's provisional view is that the related parts of the Initial Commitments need not be modified. For example, the scope of test result publication provided for under paragraph 16.c. of the Initial Commitments (now paragraph 17.c. of the Modified Commitments) balances appropriately transparency for third parties and the resources involved in publishing all test results and all accompanying data.

Other comments on paragraph 16 of the Initial Commitments

46. Paragraph 16.a. of the Initial Commitments sets out ways for Google and the CMA to identify and resolve concerns quickly. Three respondents suggested deleting or defining 'material' in paragraph 16.a.i., to lower the risk of Google not informing the CMA sufficiently about changes to the Privacy Sandbox. Another respondent expressed concern that the Initial Commitments did not provide a way to raise concerns once the Alternative Technologies were implemented.
47. The CMA's provisional view is that paragraph 16.a. of the Initial Commitments (now paragraph 17.a. of the Modified Commitments) allows concerns to be raised during the period of any commitments accepted, including after the Privacy Sandbox proposals are implemented. The CMA considers that Google updating the CMA on material changes to the Privacy Sandbox is appropriate, in particular given, for example, the dialogue and meetings provided for elsewhere in Section E (paragraph 16.b of the Initial Commitments, now paragraph 17.b. of the Modified Commitments).
48. Several responses referred to paragraph 16.d. of the Initial Commitments. Three respondents suggested that this should also provide for the ICO to be updated on proposals relating to user controls. The CMA's provisional view is that no modification to the commitments is needed in this regard, given that there is already an acknowledgement that the CMA will involve the ICO to

achieve the Purpose of the Commitments (see paragraph 18 of the Modified Commitments).

49. In the context of paragraph 16.d. of the Initial Commitments, two respondents raised a concern that without appropriate amendments to the Initial Commitments, Google could turn to its commercial advantage its bespoke dialogue with the CMA and the ICO in this matter, by later claiming that this meant that the Privacy Sandbox complied with applicable competition law and applicable data protection legislation. The CMA's provisional view is that the commitments need no such amendments: the concerns summarised above are unfounded. It is open to any individual or business to approach the ICO with regard to data protection issues and to approach the CMA in relation to competition issues.
50. Four respondents made specific submissions concerning user choice. One respondent submitted that the Chrome browser should return to its purpose of being a user-agent, giving consumers simple and easy control over tracking. Another respondent said that any commitments should require Google to ask users if they consent to websites using TPCs. Three respondents said that valid user consent should be obtained for the processing of personal data. One respondent submitted that users should be able to say no as easily as they can say yes as regards data processing, and that Google should provide a clear and easy way for users to opt out of TPCs blocking in case any user reconsiders a previous decision to opt in. As user controls including choice architecture and defaults are already explicitly within the scope of the Initial Commitments, the CMA's provisional view is that the commitments need no modification to address these points.

Standstill Period (Section F of the commitments)

Circumstances triggering the Standstill Period

51. One submission indicated that the commitments should provide for multiple standstill periods (for example, triggered by the removal of TPCs and the removal of any other functionalities or data).
52. Two other respondents suggested that the deprecation of TPCs should not be delayed by the CMA, given the impact on privacy outcomes. Two respondents suggested that the commitments should limit Google's ability to arbitrarily delay the removal of TPCs (as such delay could put at risk potential new competitors and their innovations).

53. The CMA's provisional view is that a clear trigger point is required for the Standstill Period. The deprecation of TPCs is a suitable candidate for such an event.¹⁹
54. However, the CMA does not consider that the commitments should be modified to allow for the possibility of multiple standstill periods. Under paragraph 17.a.iii of the Modified Commitments, where the CMA has notified Google of concerns the CMA has as regards Google's implementation of Privacy Sandbox, and these concerns remain unresolved after 20 Working Days, the CMA may continue its investigation. This applies to any aspect of Google's implementation of Privacy Sandbox, not just the Removal of TPCs. The CMA's provisional view is therefore that the commitments already provide a means through which it may address concerns relating to the wider implementation of the Privacy Sandbox Proposals.
55. In addition, the changes within the Modified Commitments which are described at paragraphs 4.82 to 4.83 in this notice address consultation respondents' specific concerns about the pre-Standstill Period removal of the user-agent string, and/or losing support for non-ads use cases for IP addresses. Therefore, the CMA is provisionally satisfied that the Modified Commitments cover the key substantive concerns expressed by consultation respondents about Google removing other functionality or data pre-Standstill Period.

Pre-requisites for start of the Standstill Period

56. Several respondents raised concerns that Google could trigger the Standstill Period in the Initial Commitments unilaterally, so suggested adding further conditions to be fulfilled before the standstill commenced.
57. Five respondents suggested that the Standstill Period should only be triggered after appropriate market tests have proven that the Alternative Technologies are adequate, after certain success criteria (which Google should set out) are met, or after the CMA has approved a final version of the Alternative Technologies.
58. Two respondents made related suggestions. One suggested that there should be sufficient adoption of Alternative Technologies across the market before Google could implement the removal of TPCs. Another suggested that Google should conduct 'in market' testing for six months before undertaking any fuller roll-out.

¹⁹ See the June Notice, paragraphs 6.47–6.54.

59. The CMA's provisional view is that the commitments need not be modified to include further steps before the Standstill Period can be triggered. As noted above, the CMA's provisional view is that a clear trigger point is required for the Standstill Period. In addition, the Standstill Period is, in and of itself, an appropriate means to assess at a future point whether the CMA has remaining competition concerns and whether they have been resolved.
60. One respondent suggested that any commitments should additionally require Google to provide broad, public notice of the Standstill Period.
61. The CMA's view is that the commitments need not be modified in this regard. The commitments already provide for Google to publicly disclose the timing of the key Privacy Sandbox Proposals, and to update that information as timings change or become more certain.²⁰ Even in the absence of those provisions, it would be open to the CMA to publicise the commencement of the Standstill Period.

Length of the Standstill Period

62. Five respondents suggested that the periods specified in paragraph 18 of the Initial Commitments (ie an initial Standstill Period of 60 days, which can be increased by a further 60 days at the CMA's request) should be longer.
63. Four respondents suggested that the minimum Standstill Period should be increased to 120 days; some respondents also suggested the potential for an extension of 60 days or 120 days. Another suggested a minimum of 180 days would be appropriate. The motivations behind these proposals were to give the industry sufficient time to adapt, and to give the CMA sufficient time to analyse the impact of the deprecation of TPCs.
64. The CMA provisionally considers that the length of the Standstill Period does not require modification. At the CMA's request, Google will increase the Standstill Period to a total of 120 days. The CMA intends to engage closely with Google and industry stakeholders throughout the process, including undertaking a further public consultation, and the CMA does not consider that it would require additional time to analyse and consult during the Standstill Period. Further, extending the Standstill Period may delay the implementation of potentially beneficial new technologies.²¹

²⁰ Initial Commitments, paragraph 12; Modified Commitments, paragraph 11.

²¹ Various consultation responses cited these potential benefits: see eg paragraph 52 of this Appendix 2.

Ability to re-start or extend the Standstill Period

65. One respondent suggested that the CMA should be able to re-start the periods specified in paragraph 18 of the Initial Commitments in case of a lack of information, or misleading information, from Google.
66. One respondent suggested that there should be fewer possibilities for Google to extend the Standstill Period.
67. The CMA provisionally considers that the commitments do not require modification in this regard. Google is unlikely to have an incentive to extend the Standstill Period for longer than necessary. The provision of false or misleading information to the CMA is a criminal offence under section 44 of the Act, attracting criminal penalties. Pursuant to section 31B(4) of the Act, the CMA has distinct powers to continue an investigation if incomplete, false or misleading information led the CMA to accept commitments under the Act.

Other comments

68. One respondent suggested including some wording in Section F of the Initial Commitments to clarify the relationship with section 31B(4) of the Act.
69. The CMA's provisional view is that the commitments need no such addition, as they already include sufficient information on this relationship.

Google's use of data (Section G of the commitments)

Purposes/uses of data

70. With regard to not using publisher data for any purposes other than those explicitly requested by the publisher, one respondent gave an example of a user looking at content on a publisher's site who has Google Ad Manager or Google Analytics installed. That information might be used to recommend to the user related videos on YouTube, which indirectly leads to a related ad being served to them. The CMA's view is that the scope of the CMA's investigation and of the competition concerns identified by the CMA during its investigation (as summarised in the June Notice), and the Modified Commitments do not cover Google's use of data to provide its user-facing services and personalise non-ad content on these services.
71. With respect to Google's use of Analytics customers' data, the CMA's provisional view is that this is addressed in the Modified Commitments by a clearer commitment not to use personal data provided by Analytics customers to track users for targeting or measurement of digital advertising on either

Google owned and operated inventory or ad inventory on websites not owned and operated by Google. This is subject to allowing each Google Analytics customer to share or export its own Analytics data, including through a linked Google Ads account, for ads targeting and/or measurement.

72. One respondent said publishers should not be forced to share data with Google. One respondent suggested Google should commit to using data only for the customer or user's service request, and that any additional use should require an opt-in.
73. The CMA notes that publishers enter into an agreement with Google when they use Google Ad Manager. Under that agreement, publishers allow Google to retain and use all the data that they provide, including to aggregate the data provided by other publishers. The terms of such agreements are not formally a part of the Privacy Sandbox.
74. One respondent suggested that Google should be prevented from using synced Chrome data for any purpose other than the sync service.
75. On synced Chrome data, in the CMA's provisional view, the Modified Commitments prevent Google from using Personal Data from a user's Chrome browsing history (including synced Chrome history) in its Ads Systems to track that user for Targeting or Measurement of digital advertising, and it is not necessary to further restrict Google's use of this data (for instance, to prevent spam and fraud or improving Chrome security).
76. Two respondents queried whether the restriction to use certain data in Google's ads systems should be removed, broadening it to include more systems. Similarly, one respondent suggested that, at least for certain sources (namely a user's Chrome browsing history and a publisher's Google Analytics account), Google should be prohibited from using this data for any other purposes. One respondent suggested that Google should commit to not using any Chrome-sourced data for any purpose other than delivering a synchronisation service to the user, while one other respondent suggested the same but also allowing use for the purpose of improving Chrome and security.
77. The CMA's provisional view is that broadening the scope beyond ads systems would be beyond the scope of the CMA's investigation and of the competition concerns identified by the CMA during its investigation (as summarised in the June Notice).
78. One respondent said that even purposes of preventing spam and fraud should be restricted. The CMA's provisional view is that it is unnecessary and inappropriate to restrict Google's ability to use data for the purposes of preventing spam and fraud.

79. Additionally, one respondent considered that paragraphs 23 and 24 of the Initial Commitments should not be limited to ‘on the web’, and that use of data across contexts such as on mobile phones should be included. This respondent also noted that the Initial Commitments would not preclude Google from processing information on-device, including contextual signals, and using such insights to enhance its offerings. One respondent said that paragraph 23 of the Initial Commitments should be amended to specify each device use.
80. The CMA’s provisional view is that the Privacy Sandbox changes will not have a direct, material impact on competition in the market for advertising on mobile apps, given that mobile advertising identifiers on Android devices are not affected by Privacy Sandbox, so the commitments do not need to cover advertising activities on mobile apps as well as on the web. Also, in the CMA’s provisional view, the Modified Commitments prevent Google from using Personal Data from Google’s services on the Android operating system as deployed in smartphones, connected televisions or other smart devices to track users to target or measure digital advertising on non-Google web inventory, and this is not limited to situations where the Personal Data is processed on-device.

Data sources or services

81. On the theme of which exact data sources or services should be covered for paragraphs 23 and 24 of the Initial Commitments, many respondents thought additions were warranted. These included:
- (a) ad servers;
 - (b) DV360;
 - (c) Google Analytics non-publisher accounts and other analytics services such as Firebase;
 - (d) consumer-facing software and business-facing software involved in controlling publisher auctions; and
 - (e) with respect to paragraph 24 of the Initial Commitments specifically:
 - (i) Customer Match;
 - (ii) Google’s current and future technology or current and future user-facing services;
 - (iii) Google Search and YouTube;

(iv) Android; and

(v) any Personal Data collected from rival publishers or rival ad solutions.

82. Ten respondents voiced concerns about the effectiveness of the commitments specifying a list of data sources that Google commits not to use.

- (a) Six respondents suggested that paragraphs 23 and 24 of the Initial Commitments should be reviewed with a view to securing principles-based commitments. This reflected in part the concern that the inclusion of specific prohibitions on using the data in paragraphs 23 and 24 was inconsistent with the principles-based approach adopted in the rest of the Initial Commitments and risked giving the impression that these provisions alone were sufficient to address competition and data protection concerns in relation to the Privacy Sandbox.
- (b) One respondent submitted that Google should by default not use data which Google collects from one of its services for the purpose of targeting or measuring digital advertising shown on another service, unless the user has proactively granted free, informed, and explicit consent, consistent with the purpose limitation principle and other requirements under the applicable data protection legislation.
- (c) Two respondents commented on future services offered by Google not falling within the restrictions in Section G and the need for flexibility to revisit the commitments.
- (d) Four respondents suggested that the method for determining which data Google is permitted to use under paragraphs 23 and 24 of the Initial Commitments should be reversed – instead of specifying which data Google is not allowed to use, Google should be prohibited from using any data, except for an exhaustive list of data Google may use and/or an exhaustive list of permitted uses. One respondent suggested that, in addition to a ‘whitelist’, the Initial Commitments should list, in a non-exhaustive way, specific data sources Google is not allowed to use.
- (e) One respondent suggested that Google should commit not to combine user data from any sources for advertising services, while two respondents suggested that Google should commit to not using any individual-level user data from any of Google’s owned and operated inventory to track users for targeting.

83. In the CMA's provisional view, the specific provisions of Section G are supplementary obligations that are binding on Google alongside the broader principles-based commitments set out in the Purpose of the Commitments and the Development and Implementation Criteria, and other obligations to which Google is subject. The CMA will assess the overall impact of the Privacy Sandbox proposals on competition in the light of a number of factors, including evidence on the effectiveness of the Privacy Sandbox tools, and the CMA will consider the need for further action if any remaining competition concerns are not resolved before the removal of TPCs.²² Similarly, in relation to obligations under the applicable data protection legislation, the provisions of Section G do not imply that any conclusions have been reached in relation to Google's obligations under the applicable data protection legislation.²³
84. In relation to various proposals that paragraph 24 of the Initial Commitments should further constrain Google's ability to use data for advertising on owned and operated inventory (eg the suggested inclusion of all user-facing services such as Search and YouTube), the CMA's provisional view is that the inclusion of such additional restrictions in the commitments is unnecessary. As noted in paragraph 83 above of this Appendix 2, the CMA would wish to assess the overall impact of the Privacy Sandbox Proposals on competition in the light of a number of factors, including evidence on the effectiveness of the Privacy Sandbox tools. The case for any further restrictions on Google's use of data can be considered further, if necessary, during the Standstill Period or beforehand, once there is greater certainty as to the precise form that the Privacy Sandbox proposals will take.
85. Two respondents queried whether paragraphs 23 and 24 of the Initial Commitments applied to data that Google has accumulated in the past.
86. The CMA's provisional view is that any historical use of data is beyond the purpose of the Modified Commitments, but that the Modified Commitments do prohibit Google using data collected in the past for purposes which would no longer be in line with the Modified Commitments.
87. Some respondents submitted that certain obligations in Section G of the Initial Commitments may be imprecise as some terms were not defined. One respondent suggested defining 'first and third party data'. A related point was that 'third party inventory' was not defined.
88. The CMA's provisional view is that the Modified Commitments have clarified these terms where necessary. With respect to terms containing 'first-party' and 'third-party', the meaning of these terms depends on the context in which

²² Paragraphs 6.57 to 6.63 of the June Notice contain text to this effect.

²³ See the ICO Opinion (as referred to at footnote 4 of this notice).

they are used, so it is impractical to include them as a defined term in the commitments.²⁴

89. Some respondents were concerned about the use of data from WebID, and that Google might be using email addresses collected via WebID for advertising purposes. Similarly, three respondents submitted that Google might use IP addresses or the user-agent string whilst denying them to others.
90. In the CMA's provisional view, any such behaviour would be precluded under the obligation on Google not to discriminate set out in Section H of the commitments – in particular with the amendments made within the Modified Commitments (on which see paragraphs 4.101 to 4.118 of this notice).
91. Two respondents submitted that the commitments should not allow Google to use probabilistic methods for estimating across browsers and devices, and the possibility for timing attacks – but they did not mention for what purposes. A different respondent gave the example of a feature which DV360 has called 'Modelled frequency management for anonymous inventory', speculating whether this feature is using fingerprinting (which can be probabilistic).
92. In the CMA's provisional view, the purpose of the commitments is not to prevent Google from using fingerprinting to track users. Rather, it is to ensure that Google does not use fingerprinting to track users for targeting or measuring digital advertising whilst restricting others' ability to do so, as set out in Section H of the commitments.

Data sharing with third parties/structural remedies

93. Five respondents suggested that instead of a commitment not to rely on specific data, Google should be required to share data with third parties. For example, it was suggested that data from Google's own user-facing services, such as Analytics data on Google's properties, should be shared on equal terms with Google's competitors in the ad tech market. One respondent said Google should make available pricing and bid data, commission rates for each part of the value chain, bid auction outcomes and conversion data. Another respondent indicated that Google should offer free of charge, high-quality, real time and continuous access to information on FLoCs (or any other use case) as well as pricing conditions relating to bids placed by advertisers and intermediaries. One further respondent submitted that Google should provide access to any indirect data Google uses to improve or optimise its advertising capabilities to all AdTech participants.

²⁴ The ICO Opinion (as referred to at footnote 4 of this notice) sets out further discussion of the terms 'first-party' and 'third-party' in relation to online advertising.

94. The CMA's provisional view is that a data access commitment is not required. The issue of data access can be considered further, if necessary, during the Standstill Period or beforehand, once there is greater certainty as to the precise form that the Privacy Sandbox proposals will take.
95. One respondent suggested that Google's (alleged) dominant position and conflicts of interest across the ad tech value chain could be effectively addressed only through separation interventions, and that the CMA should consider separation remedies as part of the DMU.
96. The CMA's provisional view is that structural separation is not required at this time. These issues can be revisited, if necessary, in due course.

Temporal application

97. One respondent suggested that 'after the Removal of Third-Party Cookies' was not the correct temporal application for Section G of the commitments. The implication was that (extensive) limits on Google's use of data should apply irrespective of progress on the Privacy Sandbox, from the date of acceptance of any commitments.
98. The CMA's provisional view is that, to address issues raised by the CMA, the provisions of Section G should apply once TPCs are removed.²⁵

Obligation not to discriminate (Section H of the commitments)

Conflicts of interest

99. Some respondents submitted that Section H was too narrow in scope, and:
 - (a) should (i) cover Google providing access to its own properties and apps (eg YouTube); and (ii) not be limited to Google's advertising products, ie Google should not use the browser changes to self-preference any of its products or services. The CMA provisionally considers that requiring Google to allow for access as noted under (i); or to expand the commitments as noted under (ii) is outside of the scope of the competition concerns of this investigation and therefore, the commitments require no modification in this regard;
 - (b) should not be limited to the removal of TPCs but include other proposals under the Privacy Sandbox that could have a significant impact on the web advertising ecosystem (WebID, GNATCATCHER,

²⁵ See the ICO Opinion (as referred to at footnote 4 of this notice).

Event Conversion Measurement API,²⁶ the reduction of the user-agent string and the introduction of the Privacy Budget).²⁷ The CMA provisionally considers that the commitments need no modification in this regard as Section H clearly refers to the Privacy Sandbox Proposals as defined in Section B and is not limited to the removal of TPCs;

- (c) should also include a limitation on Google discriminating against third parties with which Google does not directly compete, thereby preventing Google from benefiting certain market participants over others. To the extent that this relates to the CMA's competition concerns, the CMA provisionally considers that this is already covered by the scope of Section H and, therefore, the commitments need no modification in this regard; and
- (d) should adopt a wide interpretation of non-discrimination not limited to self-preferencing but including non-disintermediation. The CMA provisionally considers that the commitments do not need to be modified, as the comment appears to be seeking to incorporate a particular interpretation of the European Commission's decision in *Google Search (Shopping)* into the commitments; the CMA notes that the decision itself does not refer to disintermediation.

100. One respondent requested more clarity as to the scope of the commitments, in particular whether Google providing preferential treatment to third parties in return for them agreeing not to compete would be included. The CMA considers this point to be outside of the scope of the investigation; it therefore does not currently consider a modification to the commitments to be required.

101. One respondent flagged that the obligation not to discriminate would need to be more specific to avoid Google arguing that certain aspects which the CMA would want to see implemented fall outside the scope of the commitments, resulting in potentially lengthy legal disputes to establish whether discrimination has taken place. The respondent suggested that, to address this concern, the following should be considered in relation to the commitments:

- (a) including a reference to external legal standards (eg case law);

²⁶ Regarding the Event Conversion Measurement API one respondent explained that this API relies on last click attribution thereby not considering other contributions of other marketing channels, pointing out that the last click of a consumer is often on a search ad. It was submitted that the attribution metrics should be broadened to include non-search events. On this API, see the June Notice, Appendix 2, paragraphs 20–25.

²⁷ One of the respondents indicated that this point should also apply to Sections C, D, E and F of the commitments.

- (b) providing examples of behaviour which the CMA would consider amounts to self-preferencing (eg reduction of interoperability between Chrome and third-party service providers), specifying certain impacts on third parties that would be regarded as self-preferencing;
 - (c) providing examples of what the CMA considers to be competitively sensitive information (eg bidding data shared by DSPs with Chrome in TURTLEDOVE); and
 - (d) clarifying that self-preferencing cannot be justified.
102. The CMA notes that Section H of the commitments is intentionally broad in scope and not intended to be exhaustive, whether by eg setting out (or cross-referring to) a summary of case law, or by listing specific behaviours that may amount to self-preferencing. The CMA considers that the inclusion of specific examples would risk limiting the scope and its assessment of the Privacy Sandbox Proposals. Therefore, the CMA is of the provisional view that the commitments do not need to be modified based on the above representations.
103. Several respondents also expressed concerns over the effectiveness of Section H of the commitments.
- (a) Two respondents stated that Google's own ability to target would need to be restricted (eg by limiting targeting capabilities on Google's owned and operated inventory to the level of targeting available under the Privacy Sandbox proposals).
 - (b) Five respondents submitted that, in order to tackle Google's data advantages and conflicts of interest across the ad tech value chain, a structural or at least functional separation of Chrome from Google's advertising activities is necessary. Four respondents submitted that, in the alternative, Google should turn over administration of the Privacy Sandbox to an independent entity. One respondent said that this could be an independent standard-setting body, such as the Interactive Advertising Bureau, or a specially constituted body, such as the Transparency & Consent Framework Board. Another respondent suggested that the CMA should consider the application of structural remedies at the very minimum in the context of its work within the DMU.
104. The CMA currently does not consider it necessary or appropriate to include requirements for operational separation within any commitments. The CMA recognises the importance of having in place an effective monitoring regime under any commitments and has further refined this regime following the consultation as discussed in this notice in relation to Section I of the

commitments, in particular as regards independent monitoring. At this stage, the CMA considers appropriate measures are in place to reassure third parties that action will be taken if Google does not comply with its non-discrimination obligation. The issue of whether an element of operational separation is required can be more appropriately considered during the Standstill Period or beforehand, if a need is identified and there is more clarity as to the precise form that the Privacy Sandbox Proposals will take.

105. Five respondents noted self-preferencing concerns regarding specific Privacy Sandbox Proposals. One respondent submitted that moving the auction to Chrome eliminates competition between SSPs and Google and implies that Google has the ability to self-preference and discriminate, as competitors will need to adjust and adapt to Google's changes. The CMA's provisional view is that the commitments need not be modified in order to reflect these representations, as Google's commitment not to discriminate as set out in Section H is broad enough to cover the concerns.
106. Several representations were made in relation to FLoC.
 - (a) Two respondents noted that through the FLoC proposal, Google would become the owner of segmented audiences excluding other providers of audiences, limiting available segmentation, and providing Google with the opportunity to extend its FLoC audiences into other channels thereby further entrenching its position.
 - (b) Two respondents noted that FLoC would provide Google with central controls and that a further commitment should be added to require FLoC to be open source and subject to arbitration for the specification of central parameters. Otherwise, Google could ensure that the way cohorts are created is optimised for Google's systems and access to the data and information could allow for self-preferencing of other parts of Google's advertising platform.
 - (c) Four respondents were concerned that Google will have a significant advantage compared to its rivals in decoding FLoC IDs (or in using FLEDGE), noting that FLoC IDs remains a black box to third parties, while Google has an intricate understanding of FLoC IDs.
 - (d) One respondent submitted that FLoC would increase Google's data advantage as more overall user data would be needed to infer users' interests and preferences from FLoC than is the case with TPCs.
 - (e) One respondent submitted that training advertising models to better understand users at the group level benefits from larger datasets and

greater scale, which Google is privy to, giving Google a further advantage.

107. In addition to these representation regarding FLoC, one representation stated that Fenced Frames²⁸ would make the ad tech industry dependent on Google for all measurement data, and would further consolidate Google's position. Similarly, the respondent confirmed a concern noted in the June Notice, that if FLEDGE²⁹ is implemented with a 'trusted server' operated by Google, there could be room for Google to favour its own operations – and suggested that independent control and governance of such a server will be required.
108. The concerns raised by these respondents are consistent with those identified in paragraphs 5.71 to 5.73 of the June Notice. As set out in the June Notice (from paragraph 6.67) the CMA considers that the substance of these concerns relating to potential information asymmetries or data advantages would be addressed under the obligation not to discriminate set out in Section H of the commitments. The addition of a new final sentence within paragraph 30 of the Modified Commitments, clarifying setting out that the removal of Chrome functionality will remove that functionality not only for other market participants but also for Google, provides further assurance to market participants.

Reporting and compliance (Section I of the commitments)

Compliance Statements

109. Two respondents stated that the CEO and not a delegated authority should be required to sign Compliance Statements. Respondents referred to both the importance of responsibility for compliance at the top of organisations, and to due diligence, personal knowledge and penalties.
110. The CMA's provisional view is that the commitments need not be modified as suggested. The CEO is not necessarily the only appropriate individual within Google to sign Compliance Statements. The individual signing Compliance Statements should be sufficiently senior to have authority to sign on behalf of Google, but sufficiently close to the operations of Google and the detail of the obligations in the Initial Commitments to understand the procedures and processes behind the statement.
111. One respondent suggested that reporting concepts from the US Sarbanes-Oxley Act should be applied to ensure that certification was taken seriously.

²⁸ On 'Fenced Frames', see the June Notice, Appendix 2, paragraph 16.

²⁹ On 'FLEDGE', see the June Notice, Appendix 2, paragraphs 14–17.

The respondent also submitted that, since Google had to put in place internal controls to comply with the US Securities and Exchange Commission's governance obligations, Google (and not the CMA) would be doing the work on verification tasks.

112. The CMA's provisional view is that the application of Sarbanes-Oxley reporting concepts is not appropriate in the context of any commitments entered into voluntarily under the Act.

Frequency of statements

113. One respondent suggested that the Compliance Statement and the Monitoring Statement should both be provided by Google on a monthly basis.
114. The CMA's provisional view is that the commitments need not be changed as suggested. While there may be some periods where additional reporting is required, statements on compliance and monitoring on a monthly basis would be overly burdensome on both Google and the CMA; provision on a quarterly basis is sufficient for the CMA to monitor effectively.
115. Two respondents suggested that the CMA should publish Google's Monitoring Statements.
116. In the CMA's provisional view, given that the Monitoring Statements are likely to contain commercially sensitive information, it would not be appropriate to require their publication under any commitments.

Other suggestions relating to reporting and compliance

117. One respondent also proposed: (a) a power for the CMA to stop the Privacy Sandbox project in the event of Google's non-compliance with certification requirements; (b) a further anti-avoidance provision preventing purported 'personal' representation by Google at standard-setting bodies and open-source collaborations, reflecting industry experience that this can be a means to evade responsibilities; and (c) a requirement to articulate a private redress mechanism in respect of any breach of any commitments accepted, as in section 2(4) of the US Tunney Act (ie Antitrust Procedures and Penalties Act).
118. Three respondents suggested that there should be a further anti-avoidance provision, to cover changes to like or equivalent effect, or modelled on the European Union's Digital Markets Act. A further respondent suggested various additional commitments to address the future risk of any anti-competitive behaviour. One respondent suggested that anti-avoidance

mechanisms in respect of other aspects of the Initial Commitments should be included.

119. The CMA's provisional view is that the commitments require no modification to address these suggestions. These suggestions appear to invite measures which would go beyond what is necessary to address the CMA's competition concerns. It is sufficient for the commitments to include the anti-circumvention commitment at paragraph 33 of the Modified Commitments, and to refer in the Monitoring Statements to the Monitoring Trustee's review of the possible circumvention by Google of key provisions of the commitments (see Annex 3 of the Modified Commitments, point C1).

Sections K, L and M of the commitments

120. One respondent suggested that Section K of the Initial Commitments ('Variation or substitution') be modified to further provide that Google may only offer a variation or substitution of any commitments as envisaged by section 31A(3) of the Act 'on the basis of substantial contemporaneous public evidence'.
121. The CMA's provisional view is that the commitments need no modification in this regard. The Act itself makes the relevant provision for variation or substitution in section 31A(3) of, and Schedule 6A to, the Act. It is neither necessary nor desirable to purport to place a restriction on how Google may seek to vary any commitments accepted by the CMA.
122. No material representations were received in relation to Section L of the Initial Commitments ('Effect of invalidity').
123. With regard to Section M ('Governing law and jurisdiction'), one respondent raised a concern that under the Initial Commitments, Google had not expressly submitted to the exclusive jurisdiction of the courts of England and Wales. It was submitted that, in the event of a dispute arising out of the Initial Commitments, Google or a member of its corporate group might seek to challenge jurisdiction in the absence of such provision and Section M of the Initial Commitments should therefore be clearer on this point.
124. The CMA's provisional view is that the commitments need no modification in this regard. The clause as currently drafted likely suffices in all the circumstances.

Other comments – scope of the commitments

125. Several respondents commented on the scope of the Initial Commitments.

126. One respondent suggested that accepting commitments relating to the web advertising market alone may be counterproductive, and that the Initial Commitments should address some known cross-market anti-competitive practices. The CMA's provisional view is that the commitments need no modification in this regard. The CMA has assessed the appropriateness of any commitments on the basis of the scope of the CMA's investigation.
127. Two respondents noted that by disabling TPCs, Google's Chrome is following similar actions by competing browsers (notably Apple's Safari browser), so any remedy applied in this matter should be equally applied to other browsers. Three other respondents similarly submitted that the CMA should seek to impose similar rules on all browsers that have deprecated TPCs (and possibly even mobile operating systems that have restricted third-party use of data), at least to set out what user control mechanisms may be acceptable. The CMA's provisional view is that the commitments need not be modified in this regard. As the CMA's investigation concerns Google's conduct, only Google can offer commitments to address the CMA's competition concerns.
128. Four respondents suggested that the Initial Commitments should also cover Google's 'Accelerated Mobile Pages' or 'AMP'. Another respondent submitted that, as AMP has the potential to distort competition by self-preferencing Google's advertising products and services, the CMA should obtain additional commitments from Google. The CMA's provisional view is that the commitments need no modification in this regard. As noted at paragraphs 5 and 40 of this Appendix 2, in CMA's provisional view Accelerated Mobile Pages are not part of the Privacy Sandbox Proposals, and therefore not within the scope of this investigation.
129. Two respondents suggested that Google should commit to honouring the Initial Commitments (or at least clarify which parts of them will apply) on a worldwide basis. One respondent wanted clarity on whether Google could remove TPCs outside the UK before the Standstill Period. The CMA notes that Google has said it will apply the commitments on a global basis, if accepted by the CMA.³⁰

Other comments – specific Privacy Sandbox Proposals

130. Ten respondents made other submissions, by reference to particular elements of the Privacy Sandbox Proposals. One response suggested that Google should commit to offering publishers the ability to opt-out of participating in Google's Alternative Technologies without suffering any negative consequences, while those who opt-in should remain free to use rival

³⁰ Google blog, [Our Commitments for the Privacy Sandbox](#), 11 June 2021.

solutions not developed by Google. One respondent submitted that Google should commit to not hindering publishers from using their first-party data for the purposes of ad targeting or measurement on their inventory. One respondent also suggested that the Initial Commitments should explicitly prevent Google from hindering publishers' access to rival ad technology and services. Respondents also made submissions about the following proposals:

- (a) TURTLEDOVE, FLEDGE and Fenced Frames: one respondent suggested that the Initial Commitments should have set out 'guard rails' specifying the required minimum properties (for example, for TURTLEDOVE, setting the minimum group size);
- (b) FLoC: one respondent said that the CMA should oblige Google to implement a centralized processing solution; two respondents noted the possibility of inferring sensitive data about cohorts, and one of them said that there is a risk of discrimination which merits mention in any commitments;
- (c) GNATCATCHER: one respondent suggested that Google make specific commitments relating to GNATCATCHER, including ensuring that the proposal is not altered in a way that harms legitimate business interests;
- (d) First-Party Sets: one respondent said that the CMA should ensure that First-Party Sets data are not combined with Chrome browser functionality in a way that gives Google an unfair advantage over other market participants who are not active in the browser market;
- (e) Privacy Budget: one respondent said that Google should commit to maintain access to data that allows competitors to create anonymous, probabilistic ID models, and extend the Privacy Budget accordingly ie access to IP addresses should not be blocked even if the Privacy Budget is used up; and
- (f) Attribution and measurement: one respondent submitted that the Initial Commitments should be amended to oblige Google to offer tools that enable attribution and measurement under the Privacy Sandbox while protecting users' privacy, taking into account the Development and Implementation Criteria.

131. The CMA's provisional view is that the commitments need not be modified in order to address the above points. The intention of the commitments is to ensure that general principles concerning the development and implementation of the Privacy Sandbox apply to the entirety of the proposals.