



Department for
Business, Energy
& Industrial Strategy



Department for
Digital, Culture
Media & Sport

Response to the CMA's market study into online platforms and digital advertising

November 2020



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Introduction

1. Digital platforms play an increasingly important role in our lives. The services of platforms are positively transforming the economy, re-defining the way we work, access information and news and stay in touch with loved ones. Ensuring that these markets are dynamic and competitive is central to the Government's ambition to drive growth and build a world-leading digital economy.
2. On 1 July 2020, the Competition and Markets Authority (CMA) published the final report of its market study into online platforms and digital advertising markets. This is an important contribution to the growing evidence base on the steps needed to promote dynamic and competitive digital platform markets. This document sets out the Government's response to the final report and its recommendations.

Background

3. Online platforms bring huge benefits for businesses, consumers and the economy. The digital sector contributed nearly £150 billion to the UK economy in 2018.¹ The sector's economic contribution has grown rapidly, increasing by 30% since 2010, outpacing most other sectors. It has driven opportunity, productivity and creativity across the economy.
4. The CMA market study is focused on digital markets funded by advertising, and includes the provision of search, social media and online advertising services. These are services that are transforming our economy and society, opening up new markets for business, providing instant access to information, allowing us to connect with people around the world, keep up with the news, and share creative content.
5. However, there is growing consensus – here and abroad – that the unprecedented concentration of power amongst a small number of tech companies is restraining growth, holding back innovation and potentially causing harm to the citizens and businesses that rely on them. Without effective competition, we will not unlock the full potential for these digital services to contribute to economic growth and the UK's recovery from COVID-19.
6. The UK has shaped the global debate on digital markets. We commissioned the Digital Competition Expert Panel, chaired by Professor Jason Furman ('the Furman Review'), which proposed a new pro-competition regime for digital platform markets. The Government accepted the Furman Review's six strategic recommendations, including the establishment of a new Digital Markets Unit (DMU), earlier this year.

¹ DCMS, Sectors Economic Estimates 2018: Gross Value Added, 2020: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/863632/DCMS_Sectors_Economic_Estimates_GVA_2018.pdf

7. Building on the work of the Furman Review, we established the Digital Markets Taskforce at the March Budget to provide advice to the Government on the potential design and implementation of a new pro competition regime. The Taskforce is due to report later this year. Alongside this – and in response to the Furman Review² and Cairncross review into sustainable journalism³ – we called on the Competition and Markets Authority to conduct a market study into digital advertising markets.
8. In this response, we summarise the key findings and recommendations of the CMA's final report, the Government response to these recommendations, and our next steps.

The CMA market study

9. The market study focuses on three high-level issues:
 - to what extent online platforms that are funded by digital advertising have market power in consumer-facing markets (and the sources of this market power);
 - whether consumers have adequate control over the use of their data by platforms; and
 - whether a lack of transparency, conflicts of interest and the leveraging of market power undermine competition in digital advertising.
10. In line with the Furman Review, the CMA concludes that digital advertising markets have a number of characteristics which can lead to the market tipping towards one or a small number of winners. These include:
 - network effects (where there are more benefits to users from a platform with a larger number of other users);
 - the use and importance of data to platforms' success;
 - economies of scale and scope;
 - consumer behaviour and the power of defaults; and
 - the role of ecosystems of complementary products and services.
11. The CMA provides compelling evidence in its market study that Google has significant market power in the general search market and in search advertising, and Facebook has significant market power in the social media market and in display advertising. Around £14 billion was spent on digital advertising in the UK in 2019, around 80% of which was spent on Google and Facebook. The CMA also provide evidence that a lack of competition in these markets leads to harms to consumers and businesses through:

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785547/unlocking_digital_competition_furman_review_web.pdf

³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779882/021919_DCMS_Cairncross_Review_.pdf

- Reduced innovation. The report argues that a lack of competitive pressure on Google and Facebook results in reduced innovation and inhibits the development of new, valuable services for consumers.⁴
- Higher prices for goods and services. The report provides evidence that businesses are facing higher prices on the dominant platforms (which are passed through to consumers).⁵ CMA analysis shows that in the UK both Google and Facebook are consistently earning profits well above what is required to reward investors with a fair return. Google earned £1.7 billion more profit in 2018 in the UK than the benchmark level of profits. For Facebook, the comparable figure for 2018 was £650 million.
- Reduced quality. The number of adverts that consumers are exposed to on digital platforms is increasing. Adverts seen per hour on Facebook rose from 40-50 in 2016 to 50-60 in 2019. In 2016, Google increased the maximum number of adverts displayed above the organic search results following a search query.
- Lack of consumer control. The report argues that consumers would have more control over the collection and use of their data if there was more competition in digital advertising markets. The CMA highlights that search and social media markets are often characterised by 'take it or leave it' terms that mean consumers have to share their data with platforms to use services. In a competitive market, one would expect services to compete to offer better terms to consumers who prefer not to share their data.
- Broader social harm. The CMA also set out evidence of broader harms due to weak competition, such as the negative impact on the quality of journalism, in line with the findings of the Cairncross Review.⁶

Recommendations

12. The CMA make four recommendations to address both the sources of market power and the behaviour of those platforms with market power:
 - **Recommendation 1:** Establish an enforceable code of conduct to govern the behaviour of platforms funded by digital advertising that are designated as having

⁴ The CMA argue that barriers to entry are such that the likelihood of new, innovative companies growing and challenging the dominance of incumbents is low. They also report "grounds for concern" that innovation and new entry may be stifled by actions of the incumbents themselves.

⁵ Facebook's average revenue per user is now more than ten times higher than competitors. In the UK, Google's prices for search advertising on desktop and mobile are 30-40% higher than Bing's, its main competitor, on a like for like basis. That Bing can continue to operate at lower prices suggests that Google's prices could be substantially lower in a competitive market.

⁶ The Cairncross Review found that the behaviour of online platforms on whom news publishers rely is a key barrier to publishers developing sustainable business models online.

strategic market status (SMS). The purpose of the code would be to meet three high-level objectives of fair trading, open choices, and trust and transparency.

- **Recommendation 2:** Establish the requirement for a Digital Markets Unit (DMU) to undertake SMS designation, introduce and maintain the code based on objectives set out in legislation, and produce detailed supporting guidance.
- **Recommendation 3:** Give the DMU the necessary powers to enforce the principles of the code on a timely basis and amend its principles in line with evolving market conditions.
- **Recommendation 4:** Give the DMU the necessary powers to introduce a range of pro-competitive interventions, which should include:
 - Data-related interventions (including consumer control over data, interoperability, data access and data separation powers)
 - Consumer choice and default interventions
 - Separation interventions

Government response

The value of search, social media and online advertising services

13. Digital advertising delivers and supports hugely valuable services – many of which are positively transforming our lives and economy. They are popular amongst consumers, with 76% of UK internet users using a search engine almost every day, and half of UK internet users visiting a social network site each day.⁷ These services are re-defining the way we work, access information and news and stay in touch with loved ones and are often provided at no direct monetary cost. Meanwhile, digital advertising is opening up new markets for business, helping consumers access relevant content and driving innovation and growth.

Government recognises the issues raised by the CMA's market study

14. However, we accept the CMA's findings that Google has market power in general search and search advertising, and Facebook has market power in social media and display advertising. The market study contributes to the growing consensus that the inherent features of digital markets funded by online advertising means they tend to 'tip' in favour of a single incumbent.⁸ This is leading to higher prices for goods and services, less innovation, and less choice and control for consumers.

⁷ Unlocking digital competition: Report from the Digital Competition Expert Panel (the 'Furman Review'), p. 19: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785547/unlocking_digital_competition_furman_review_web.pdf

⁸ Key papers include the 'Furman Review' (2019), the report from the US Stigler Committee on Digital Platforms (2019), the EU Commission Competition policy for the digital era report (2019), and the US House Investigation of Competition in Digital Markets report (2020).

15. The government supports the establishment of a new, pro-competition regime for the digital advertising, general search and social media markets. We accept the view of the CMA's market study and the Furman Review, that our existing competition tools are not equipped to address the systematic harms associated with dominant platforms in these markets. A new pro-competition regime would allow for swift action to pre-empt and address competition concerns. If carefully implemented and enforced, the regime will: boost innovation and growth across the economy; promote the overall economic health of the advertising sector; protect users against unfair or exploitative practices; enhance users' control over their personal data and the services they use and help support the sustainability of the press.

Recommendation 1: Code of conduct and Strategic Market Status

16. The CMA recommends that the Government establish an enforceable code of conduct to govern the behaviour of platforms funded by digital advertising that are designated as having strategic market status (SMS). The purpose of the code would be to meet three high-level objectives of fair trading, open choices and trust and transparency. The CMA considers that Google and Facebook are highly likely to be designated as having SMS in online advertising markets.
17. The Government agrees that the introduction of an enforceable code for firms with substantial and enduring market power would protect competition in digital markets funded by online advertising. This should also address the recommendation of the Cairncross Review to introduce codes governing the relationships between online platforms and news publishers, which will be a key step in ensuring the sustainability of high-quality journalism and news publishing.
18. The code will provide firms with substantial and enduring market power with clear expectations over what represents acceptable behaviour when interacting with customers, users and competitors. It will address anti-competitive behaviour and enhance choice and control for consumers across online platform markets. It will promote greater fairness in the relationships between platforms and their business customers, including news publishers.⁹ Upfront clarity on what is acceptable will help guide platforms and pre-empt – or allow swift action to address – practices that cause harm in these fast-paced markets.

⁹ The Cairncross Review into the sustainability of high quality journalism in the UK concluded last year that, given their substantial market power, online platforms (Google and Facebook in particular) are able to impose terms on publishers on a range of issues that limit their ability to monetise their content. The Review therefore recommended that codes of conduct be set out to govern the commercial arrangements between publishers and platforms, to ensure this unbalanced relationship does not threaten the viability of publishers' businesses.

19. We have commissioned the Digital Markets Taskforce to provide advice on the potential design and implementation of a code of conduct and approach to designating firms that have substantial and enduring market power with 'Strategic Market Status'.
20. The Government recognises the need for urgent action in response to a number of the issues identified by the CMA and intends to legislate as soon as parliamentary time allows.

Recommendation 2: Digital Markets Unit to introduce and maintain the code

21. The CMA recommends that a Digital Markets Unit is established to undertake Strategic Market Status designation, introduce and maintain the code and produce detailed supporting guidance.
22. The Government agrees that a dedicated Digital Markets Unit (DMU) is needed to introduce, maintain and enforce a code of conduct. We will establish the DMU within the CMA from April 2021, to build on the work of the Taskforce and begin to operationalise the key elements of the regime.¹⁰ We will consult on the form and function of the DMU in early 2021, and legislate to put it on a statutory footing as soon as parliamentary time allows.
23. In addition, we are considering what arrangements should be in place to enable close cooperation between regulators and to ensure the new regime is coherent and effective. We will therefore work with the Digital Regulation Cooperation Forum, to consider the steps we need to take to ensure adequate coordination, capability and clarity across the digital regulation landscape.

Recommendation 3: Powers to enforce the code

24. The CMA recommends that the DMU is given the necessary powers to enforce the principles of the code on a timely basis, and amend its principles in line with market conditions. This includes powers to suspend, block and reverse decisions of SMS firms, order conduct to achieve compliance with the code and financial penalties for non-compliance.
25. We agree that measures to govern the behaviour of platforms that have substantial and enduring market power should be mandatory and enforceable. A non-enforceable code would not provide sufficient incentives to deter anti-competitive behaviour. Existing attempts at non-enforceable measures in other countries, such as Australia, have

¹⁰ Subject to consultation, key elements would include the code of conduct and strategic market status

illustrated the difficulties in reaching agreement between parties.¹¹ An enforceable code would offer clarity and build trust in online advertising funded services, promote the overall health of the broader advertising sector ecosystem, deter anti-competitive practices, and ensure that consumers and businesses that rely on dominant platforms are fairly treated.

26. Careful consideration will be given to the nature of the new DMU powers and the interactions between these and existing elements of the regulatory landscape. This includes the CMA's role in promoting competition, the Information Commissioner's Office's role in overseeing the data protection regime and Ofcom's role in related markets.

Recommendation 4: Pro-competitive interventions

27. The CMA recommends that Government gives the DMU the necessary powers to introduce a range of pro-competitive interventions. These interventions are designed to tackle the sources of market power and promote competition. They include mandating access to data, enforcing greater interoperability, changing choices and defaults for consumers and imposing separation remedies.
28. We agree that pro-competition measures have the potential to tackle the underlying sources of market power and positively transform innovation and growth in the digital economy. The Government agrees in principle with giving pro-competition powers to the DMU. However, these interventions are complex and come with significant policy and implementation risks. More work is required to understand the likely benefits, risks and possible unintended consequences of the range of proposed pro-competitive interventions. The Government will continue to consider this, taking into account the advice of the Taskforce, our findings from the National Data Strategy consultation, and views of stakeholders.

Next steps

29. Dynamic and competitive digital markets are central to the Government's ambition to build a world-leading digital economy that works for all. We are therefore committed to taking action to protect businesses and users from the potential harms associated with substantial and enduring market power in digital platform markets, boost innovation and drive economic growth. We will:
 - consider the Digital Markets Taskforce's advice on the design and implementation of the regime, which is due by the end of 2020

¹¹ Australian Financial Review, April 20, 2020, "'Only fair': Facebook, Google ordered to pay up on news": <https://www.afr.com/companies/media-and-marketing/only-fair-facebook-google-ordered-to-pay-up-on-news-20200419-p54174>

- consult on proposals for a new pro-competition regime in early 2021, drawing on industry and technical expertise
 - legislate for pro-competition reforms as soon as parliamentary time allows.
30. Steps to promote competition in digital markets will form part of wider work to improve the UK's approach to competition policy. In 2021 the Government will consult on these reforms.
31. A new pro-competition regime will form a key part of our forthcoming Digital Strategy, where we will set out our overarching approach to regulating digital technology. This includes the steps we are taking to boost innovation, build public trust through greater safety and security for users of digital tech, and promote a democratic, open society. We will also set out the action we are taking to ensure the coherence of our approach, including streamlining the digital regulatory landscape, minimising overlaps and ensuring strong coordination between regulators.

Annex A: Digital Competition Expert Panel Strategic Recommendations

Strategic recommendation A: To sustain and promote effective competition in digital markets, government should establish and resource a pro-competition digital markets unit, tasked with securing competition, innovation, and beneficial outcomes for consumers and businesses.

Strategic recommendation B: Merger assessment in digital markets needs a reset. The CMA should take more frequent and firmer action to challenge mergers that could be detrimental to consumer welfare through reducing future levels of innovation and competition, supported by changes to legislation where necessary.

Strategic recommendation C: The CMA's enforcement tools against anticompetitive conduct should be updated and effectively used, to help them play their important role in protecting and promoting competition in the digital economy.

Strategic recommendation D: The government, CMA and the Centre for Data Ethics and Innovation should continue to monitor how use of machine learning algorithms and artificial intelligence evolves to ensure it does not lead to anti-competitive activity or consumer detriment, in particular to vulnerable consumers.

Strategic recommendation E: The CMA should conduct a market study into the digital advertising market encompassing the entire value chain, using its investigatory powers to examine whether competition is working effectively and whether consumer harms are arising.

Strategic recommendation F: Government should engage internationally on the recommendations it chooses to adopt from this review, encouraging closer cross-border co-operation between competition authorities in sharing best practice and developing a common approach to issues across international digital markets.

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