

# Channel 4 response to the CMA's Online Platforms and Digital Advertising Market Study Statement of Scope

## Executive Summary

- As a commercially-funded public service broadcaster, Channel 4's ability to offer an online platform is vital to ensuring we are offering our content where audiences can be most effectively reached and enabling us to compete in an increasingly competitive and fast-changing market. It is a cornerstone of our future success and sustainability.
- With it being part of our public service identity to make ourselves available at no cost to audiences, Channel 4 is almost entirely funded by advertising. As such, we have extensive, first-hand experience of being in direct competition for revenue with the large online platforms.
- We are deeply concerned about the market dominance of Facebook and Google, not only in the *digital* advertising market, but in the UK advertising market as a whole.
- This dominance is stifling competition. It inhibits the ability of smaller online platforms to grow and the ability of content providers to suitably monetise their content when it is carried by the so-called digital giants which form the focus of the CMA's review.
- Television advertisers are competing at an inherent disadvantage to online advertisers due to the regulatory imbalance between the two sectors. This is allowing bad practice and unscrupulous behaviour to take place and is putting consumers and advertisers at risk.
- Channel 4 considers that fundamental regulatory reform of the digital advertising market is needed to facilitate competition and adequately protect consumers.

## 1. Introduction

- 1.1 Channel 4 warmly welcomes the opportunity to respond to the CMA's timely and important market study on online platforms and digital advertising as defined in the Statement of Scope. The health of the UK's advertising market is key to ensure the ongoing success of public service broadcasting and, as an almost entirely advertising-funded, free-to-air model, particularly the case for Channel 4. As a commercially-funded PSB that receives no public funding, advertising is overwhelmingly Channel 4's primary source of revenue and how we invest in fulfilling our public service remit.

- 1.2 As audiences have increasingly migrated to viewing in online environments in recent years, we have sought to keep pace with this and increased competition by developing on-demand services and data-led targeting which is fundamental to our long-term sustainability. Indeed, Channel 4 innovated early in developing its own on-demand service. We were the first broadcaster in the world to launch a VOD service – 4oD in 2006 – which, has now evolved into All 4. Subsequently, we then innovated in adapting our advertising model through data – enabling us to better serve audiences and advertisers, and to reinforce our business model.
- 1.3 As a trusted and well-respected public service broadcaster, we take our responsibilities to ensure the personal data of our audience is safe and secure very seriously and we are proud of the best-in-class practices that we have in place to ensure that this happens. Our approach has been one of viewer transparency and control from the moment we embarked on introducing viewer registration, to the way we are clear about – through various iterations of explanation videos – how viewer data is collected, stored, and used. Underpinning this is the idea that we are publicly owned, subject to Ofcom broadcast regulation and have a reputation in the market of honesty and trust built over years.
- 1.4 However, despite our best efforts to grow our digital offering and to do so in a responsible way, we are not competing on an even playing field. The digital media market is anything but fair, open and competitive and the current regulatory framework has not prevented some online players from operating unscrupulously. It has also allowed two digital giants, Google and Facebook, to dominate.
- 1.5 Google is the dominant search engine, with 39 million people in the UK using the site in September 2018. Facebook is the largest social media site in the UK in terms of reach, consumption and revenue, with 88% of UK adults using the service in 2018<sup>1</sup>.
- 1.6 Both companies now also operate a range of other platforms and applications that extend well beyond their original offering and have also become dominant in their particular field. Google operates YouTube (the second most visited site on the internet)<sup>2</sup>, Gmail (which has in excess of 1.5 billion users), Google Maps, Google Play, Chrome and Android (its mobile phone operating system which has a 76% market share)<sup>3</sup>. Facebook now owns WhatsApp and Facebook Messenger (the two most used messaging applications worldwide<sup>4</sup>) as well as Instagram. In the UK in 2018, Google sites reached 99% of the UK population who are online. Facebook sites were visited by 95% of the UK online population<sup>5</sup>.
- 1.7 The grip of these two companies on the UK online advertising market is even tighter. In 2018, online advertising generated revenues of £13.4bn in the UK<sup>6</sup>. Between them, it is estimated that Google and Facebook generated 61% of this total, approximately

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<sup>1</sup> Ofcom, [Online Nation](#), May 2019

<sup>2</sup> <https://www.alexa.com/siteinfo/youtube.com>

<sup>3</sup> <http://gs.statcounter.com/os-market-share/mobile/worldwide>

<sup>4</sup> <https://www.inc.com/larry-kim/the-top-7-messenger-apps-in-world.html>

<sup>5</sup> Ofcom, [Communications Market Report](#), August 2018

<sup>6</sup> Ofcom, [Online Nation](#), May 2019

£8.2bn<sup>7</sup>. This eclipses the total revenues of the entire UK television advertising sector (£5.1bn in 2018)<sup>8</sup>.

- 1.8 Despite their scale and dominance in the market, the digital giants are operating in what some have described as “an unregulated duopoly”<sup>9</sup>.
- 1.9 This places the regulatory context in which the digital giants operate in stark contrast with that of television advertisers. The regulatory regime for TV is legally binding, ultimately overseen by Ofcom, with effective sanctions for those who break the rules. The TV regime also puts clear liability for ensuring the adverts comply with the rules on the broadcaster and with every advert we show receiving pre-clearance via Clearcast, a clearance body funded by broadcasters to ensure that all advertising complies with UK advertising rules and regulations as laid out in the BCAP code, before it is allowed to be transmitted. This is not the case with online advertising, where the responsibility for compliance sits with the advertiser, not the platform. Despite the platform being the publisher of the advertising from which it profits. In a previous decision, the ASA recorded YouTube as saying “they required that advertisers complied with all relevant legal and regulatory requirements, including their obligations under the CAP code, and that YouTube did not review ads on behalf of advertisers for compliance with the CAP code”<sup>10</sup>.

#### About Channel 4

- 1.10 With a mission to innovate, be diverse, present alternative views and stimulate debate, Channel 4 is required to take risks and challenge the status quo. As a publicly-owned, but entirely commercially-funded, public service broadcaster (PSB), Channel 4 sits as a unique hybrid alongside the BBC, ITV and Channel 5. This model ensures that Channel 4 operates free from both commercial and political influence, as a broadcaster that is not shareholder-owned but which also operates at no direct cost to consumers or the public purse. Under this model, Channel 4 puts its profits back into programmes, with the ultimate objective of delivering its statutory remit and specific Ofcom licence obligations. Combined with Channel 4’s status as a publisher-broadcaster, which means all of its commissioned programmes are made by external production companies, Channel 4 is an agile and innovative challenger brand in the creative industries.
- 1.11 Channel 4’s detailed statutory public service remit includes requirements to invest in high quality British-made content (including requirements to commission from the UK’s Nations and Regions); to support British film-making (through Film4); broadcast high quality news and current affairs; to support and stimulate well-informed debate on a wide range of issues, including by providing access to information and views from around the world; as well as requirements to challenge established views, promote alternative views and new perspectives and champion diversity.

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<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> <https://www.marketingweek.com/ritson-digital-duopoly-2018/>

<sup>10</sup> [ASA ruling on Columbia Pictures Corporation Ltd, T/A as Sony Pictures Releasing UK](#), 13 June 2018.

- 1.12 In an era of fake news and the growth of globally-oriented content provided by the global SVOD providers, Channel 4 believes that the need for public service broadcasting as trusted providers of public service content for UK audiences is more vital than ever; the need to ensure we can continue to compete and fulfil our mission sustainably is a critically important issue.
- 1.13 In this context, Channel 4 considers the CMA's market study to be a vital first step in taking action to: ensure healthy competition within the online advertising market; allow consumers to feel confident that they are in control of their personal data and that it is being used appropriately; and, allow broadcast advertisers to operate on a level playing field with online advertisers.

## **2. Ensuring effective competition between online advertisers and television advertisers**

- 2.1 In its Statement of Scope, the CMA has set out a concern about potential competition distortions in the digital advertising market. However, we would strongly urge the CMA to consider these issues in the context of the wider advertising market. In particular, the CMA's study should recognise that the dominant online platforms are not only in competition for advertising revenue with other, smaller online platforms but also UK commercial television broadcasters.
- 2.2 The degree to which competition for advertising revenue between online platforms and television broadcasters is fair and effective is particularly impacted by the degree to which these sectors are currently regulated. Television advertising is heavily and effectively regulated. Key characteristics of this regulatory framework are as follows:
- The broadcaster has control and responsibility for the adverts that it offers to its viewers and must ensure compliance with the rules as laid out by BCAP (UK Code of Advertising Practice). This Code applies to all advertisements and programme sponsorship credits on radio and television services licensed by Ofcom. It is designed to inform advertisers and broadcasters of the standards expected in the content and scheduling of broadcast advertisements and to protect consumers. The overarching principles of this Code are that advertisements should not mislead or cause serious or widespread offence or harm, especially to children or the vulnerable. Broadcasters are responsible for ensuring that the advertisements they transmit comply with both the spirit and the letter of the Code. All compliance matters (copy clearance, content, scheduling and the like) are the ultimate responsibility of each broadcaster.
  - There is an effective system of pre-transmission compliance of advertising to ensure adverts are compliant with the rules. This is conducted by Clearcast and is funded by four UK commercial broadcasters (ITV, Channel 4, Sky and Turner).
  - There is a legally binding regulatory regime, ultimately overseen by Ofcom, with the ASA operating under authority as the front-line regulator and with effective

sanctions for breaches.

- There is transparency around what advertising is being served on TV channels and to whom. The broadcasters must keep copies of everything they broadcast to ensure that regulation can be effective, and BARB offers a reliable guide to the composition of the audience.
- There are binding obligations on broadcasters to ensure clear separation between editorial and advertising with clear signalling of any product placement (and detailed rules around how that is done).

2.3 As a responsible broadcaster, Channel 4 voluntarily chooses to apply the same standards of compliance as laid down by the BCAP rules to advertisements transmitted in our on-demand programme services.

2.4 A big part of the effectiveness of the television advertising regulatory framework is that it is clear who has responsibility for the compliance of broadcast advertising and they face potentially serious penalties in the event of non-compliance. However, in the online world, responsibility for compliance with the rules laid down for this area in the CAP code (UK Code of Non-broadcast Advertising and Direct & Promotional Marketing) falls squarely on the shoulders of advertisers, rather than the platforms who benefit directly from the publication of these advertisements.

2.5 Much of the reason for this regulatory disparity lies with the digital giants' insistence that they are just tech companies rather than publishers with responsibility for the material they publish. This distinction has enabled the digital giants to sidestep many of the existing regulatory, compliance and legal frameworks that would otherwise apply.

2.6 One such example is that in the regulation of advertising on online platforms, there is no statutory regime and no backstop regulator with effective powers of enforcement in relation to the immensely powerful online platforms. The ASA deserves credit for the way in which it has worked proactively to try to regulate online advertising, particularly through the use of innovative solutions such as its recent Child Avatar monitoring project, however, there needs to be substantial statutory intervention to enable the ASA to effectively police global online platforms under an equivalent regime to TV.

2.7 This is borne out in many of the issues referred to by the CMA in its Statement of Scope that risk damaging consumer confidence and the reputation of brands advertising on online platforms and also provide the digital giants with an inherent advantage over television broadcasters when attracting advertisers. We discuss a number of these issues below.

### **3. The dominance of the digital giants is stifling competition**

The digital giants can dominate the market through their use of customer data

3.1 Through their scale and breadth, the digital giants have access to a vast array of high quality user data collected across their full suite of services. As the CMA refers to,

Google can aggregate its user data from Google Maps, Gmail, YouTube, Google Play, Chrome and Android. Facebook may aggregate its data from WhatsApp, Instagram and Facebook Messenger. The digital giants also have access to consumer data that is collected through their social media networks and interactions. The wealth of data that they hold allows highly efficient targeting of consumer profiles that is of great worth to advertisers.

- 3.2 The digital giants also have additional tools at their disposal that allow them to make particularly effective use of the data they hold. For instance, Facebook's attribution tool allows advertisers to track views of their ads on Facebook users' feeds and then link this to behaviour on the advertiser's site. These kinds of tools place the digital giants at a huge commercial advantage as they can collect and analyse viewing data from content providers such as Channel 4 but then do not provide this data to the content provider. The digital giants are also providing limited clarity and assurance to content providers regarding their own use of this data.
- 3.3 Further, as a result of their dominance, they are able to insist that they are a data controller or data processor, in order to suit their requirements and desires over how they use the data they receive, even where those interpretations appear open to challenge. Contracting parties are forced to accept those interpretations and accept legal risk in contracts due to unequal bargaining power.
- 3.4 Channel 4 collects vastly less data about its users than the digital giants; this is collected from just four sources: data provided by the user at the point of registration; the behavioural data created when registered viewers use our services; and we may also acquire additional data about our viewers from a data broker (see our Privacy Policy <https://www.channel4.com/4viewers/privacy> and our *Your Data* video <https://www.channel4.com/4viewers/your-data> for more details about how we responsibly collect and use this data). Additionally, users have the option to join a research panel. This deficit of data between the digital giants and ourselves significantly limits our ability to compete for both audiences and for advertising revenue.

#### Setting of revenue shares

- 3.5 The dominance of the online giants means that, for content providers, they are the gatekeepers to bringing short-form content to online audiences. This is particularly important to Channel 4 as our ability to engage with young people outside of traditional, linear broadcasting is vital to our future sustainability because of the shift in viewing behaviour. In this context, it may be of interest to the CMA that the trading terms we are offered by the online giants are nearly identical.
- 3.6 Given the similarity in these trading terms and the lack of strong competition in the market, Channel 4 is left with little choice but to accept the revenue shares we are offered by the digital giants. However, these fail to take account of the expense we incur when producing premium, PSB quality content.
- 3.7 In addition to the regulatory reform we discuss below, we would urge the CMA to consider the implementation of regulated trading terms between broadcasters and digital platforms. These could provide fairer access for PSBs to online audiences through the digital giants' platforms through revenue shares that fairly reflect the

risks and rewards involved.

#### **4. The need for transparency of data in the online world**

- 4.1 Channel 4 is pleased that the CMA has identified a potential remedy area of improving transparency and oversight of data for digital advertisers and content providers. Below, we discuss two areas where we consider there is a particular need for improvement in this regard.

##### There needs to be a consistent approach to audience measurement

- 4.2 For television advertisers, there is a standard industry currency (BARB) for measuring who is watching and when. This data is produced by an independent and trusted pan-industry body that is funded by the broadcasters. However, there is no equivalent of BARB online, with most online platforms using proprietary data with no standardisation. For example, Facebook and Google define video, and what constitutes a 'view', in different ways. The lack of robust, independent measurement metrics and transparency about how online platforms are producing their viewing data has resulted in a number of incidents where online platforms have had to make corrections to their measurements having been challenged over their accuracy.
- 4.3 One such incident occurred in 2016, when Facebook had to apologise following the discovery of an error that resulted in it overstating how much time its viewers were spending watching videos on the platform<sup>11</sup>. The group of advertisers impacted filed a lawsuit in which they alleged these figures had been inflated by as much as 900%, despite Facebook only admitting the overestimation had been between 60 to 80%. Facebook recently settled with the parties out of court<sup>12</sup>.
- 4.4 Such incidents have left online advertisers being unclear, or worse, potentially misled, about the effectiveness of their online advertising. In addition, smaller and less financially robust advertisers are unlikely to be able to afford to bring lawsuits against the digital giants. This leaves bad actors in the online advertising space able to fraudulently position themselves for commercial benefit in a way that Channel 4 could not and would not.
- 4.5 At present, this situation appears unlikely to change. BARB has made clear that it is currently unable to measure online video services such as Facebook and YouTube on the grounds that these online platforms have thus far failed to adopt the standardised, independent and accepted methods that BARB require for accreditation<sup>13</sup>.

##### The prevalence of ad fraud is skewing the digital advertising market

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<sup>11</sup> <https://www.nytimes.com/2016/09/24/business/media/facebook-apologizes-for-overstating-video-metrics.html>

<sup>12</sup> <https://www.hollywoodreporter.com/thr-esq/facebook-settles-class-action-claiming-company-inflated-video-viewership-metrics-1218059>

<sup>13</sup> <https://www.thedrum.com/news/2018/04/08/tv-body-barb-outlines-hurdles-facebook-google-need-overcome-win-accreditation>

- 4.6 The reported audience for digital advertising is heavily plagued with fraudulent, bot-driven traffic. The prevalence of ad fraud, and the ongoing failure of many online platforms to successfully tackle it, risks investment decisions being made on the basis of false data and digital campaigns appearing more effective than they actually are. Not only does this mean that advertisers are not getting the exposure that they have paid for, it deprives existing operators, such as television broadcasters, of advertising revenues. The current system therefore rewards unscrupulous behaviour at the expense of other operators who are held to robust and independent standards. This impacts on their ability to innovate and bring new services to market and perpetuates anti-competitive market conditions.
- 4.7 The susceptibility of many online platforms to ad fraud is in stark contrast to that of our own platform. Channel 4 conducted an independent audit of the All 4 platform to assess whether we were inadvertent victims of click/view fraud. The audit detected only one non-human viewing our content – an authorised, internal tool used to screen capture adverts on behalf of our advertisers.

## **5. The need for proportionate and effective regulation**

- 5.1 Channel 4 is pleased to note that the CMA's current expectation is that any remedies are likely to focus on the development of an ex ante regulatory regime and that it seeks to consider any remedy as working towards a sustainable long-term framework for the sector. We would also urge the CMA to carefully consider, as it refers to in the Statement of Scope, the potential need for "separation between certain activities in the digital advertising value chain" as a way of ensuring competition in the advertising market given the huge size and scope of the digital giants.
- 5.2 While we consider that fundamental changes to the regulation of digital advertising are required, we would underline the need to ensure that any remedies imposed should be proportionate and effectively target those areas in which issues are apparent.
- 5.3 In particular, Channel 4 would be very concerned if any remedies that the CMA recommends to help combat the issues caused by the actions of the digital giants had an inadvertent impact on Channel 4 and commercially funded public service broadcasting.
- 5.4 Linear broadcasting is a mass medium whose main benefit is the ability to reach large proportions of the population in a relatively short period of time, something that is prized by brands. In the established linear TV world, we optimise airtime so that it yields an efficient return for advertisers and ourselves as media owners. This involves us carving up our airtime into buckets of audience which are more aligned to the requirement of the advertisers. Targeting in TV is about efficiency in reaching as many of the target audience as possible and one of the benefits of digitally served platforms and devices is that we can be more efficient still.
- 5.5 The advertising market has clearly evolved to value targeting at an individual level and this delivers efficiencies that allow both increased yield for media owners and



reduced wastage or unwanted exposure for viewers. In this context, and with the fall in linear TV viewing, it is vital for Channel 4 that we can offer targeted advertising. Should any regulatory reforms be introduced that impact on our ability to do this, it would have potentially very severe impacts on Channel 4's ability to invest in high-quality and innovative public-service programming.

- 5.6 In addition, if and when any regulatory intervention is made, it is crucial that regulatory overlap is avoided to ensure regulation is proportionate and targeted. This is particularly risky for organisations such as Channel 4 and other broadcasters that are already subject to a number of sector-specific and issue-specific regimes.
- 5.7 That said, it is Channel 4's firm belief that there needs to be fundamental reform to ensure online advertising is regulated to the same high standard as TV advertising.
- 5.8 In addition to the issues we have described above, the need for regulatory reform is also demonstrated by the inherent risk of damage to Channel 4's brand when we advertise and promote our programmes online. Although this is vital to our future sustainability and our ability to reach audiences with public service content, the CMA will be aware that adverts for a number of brands including Channel 4, The Guardian and the BBC have appeared alongside extremist and offensive content on Google and YouTube<sup>14</sup>. This was in direct contravention of assurances received by our media-buying agency from YouTube. Due to the potential reputational damage caused, Channel 4 felt it had no choice but to remove all its advertising from the platform.
- 5.9 Given the importance of being able to advertise on the most widely used platforms, brands like Channel 4 should not be left in a position where doing so may damage our brand through the failures of the digital giants.
- 5.10 In order for there to be an effective regulatory framework for the regulation of online advertising, we would suggest six key areas that require fundamental change:
- As publishers, online platforms must be responsible for the advertising they carry. Currently, this rests primarily with the advertiser.
  - Online advertising should be complied before it is published, as Clearcast do for broadcasters.
  - There needs to be clear legal and regulatory incentives for compliance.
  - Non-compliance must be risky and unattractive. The current lack of substantial repercussions for online advertising in breach of the rules means that non-compliant advertising campaigns are more likely to run online.
  - The digital giants need to pay content providers fairly. This could be regulated on a basis similar to the "Terms of Trade" between public service broadcasters and independent production companies.

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<sup>14</sup> <https://www.theguardian.com/technology/2017/mar/17/google-ministers-quiz-placement-ads-extremist-content-youtube>

- There needs to be an effective and well-resourced regulator akin to the roles played by the ASA and Ofcom in the regulation of television advertising.

5.11 In our view, it is only through such fundamental reform of the digital advertising market that competition can be encouraged and consumers can be protected.

**July 2019**

