

**Ernieapp contribution to CMA On-Line Digital Advertisement Platforms public consultation**

**Contribution for public use – Aug 23<sup>rd</sup> 2019**

**CMA Question:** *The market power of online platforms in consumer-facing markets: under this theme, we propose to examine to what extent online platforms in these consumer-facing markets enjoy market power as a result of economies of scope and scale, network effects and their ability to extract valuable data from their users. We propose to examine whether these sources of market power raise barriers to entry in user-facing markets to the detriment of consumers and lead to market power in the digital advertising markets to the detriment of consumer;*

**Answer:** Ernieapp is of the view that more careful attention should be given to the **definition of on-line digital ads-platforms (in consumer facing markets)** before determining if these platforms enjoy any market power and ultimately if they abuse of it and should be subject of specific ex ante regulation and or ex post remedies.

**“Scope” doesn’t define a digital platform sufficiently well** nor it would be sufficient to determine if and how a specific regulation should apply and on which legal and or regulatory grounds.

In fact, it is difficult today to distinguish between a digital platform that has a its core a digital advertisement business from another digital platform that seems not to have it but builds on assets which could transform it in the future in a big on-line advertisement player, with little technology adaptive efforts and capital injection.

Microsoft is an interesting exemple to make. As a leading company in the design, development and provision of enterprise software solutions, following a number of high profile acquisitions (Linkedin and Skype) and further integrations with some of its existing properties (Edge, Office365, Bing, Hotmail, Windows etc) it has now entered de facto into the consumer advertisement market and while its market share remains insignificant compared to Alphabet-Google and Facebook, it has become a credible market contender offering a compelling proposition to brands and advertisers as its ability to profile consumers across multiple applications and even its OS has expanded exponentially following such acquisitions. So while Microsoft core business scope remains focused on enterprise IT solutions, Microsoft should also be tested against a new definition of digital advertisement platform. Absent its pre-existent solid digital assets (Windows, Office, Edge, Bing, Hotmail etc) it would have been almost impossible also for a company of the size of Microsoft to become a contender to Google and Facebook in the advertisement space.

Similarly, Amazon which seems to operate an e-commerce (intranet) platform very different in scope from the ads-focused business of Alphabet-Google (Google search being an open platform), should also be tested against a new definition of digital advertisement platform as Amazon as much as Google (and Uber or PayPal for exemple) can profile consumers and perform analytics on consumers so deeply to give Amazon a unique strong position in a consumer-facing market, opening for a wide set of options should Amazon would want to enter the advertisement direct to consumers business, anytime. Again, this would only be possible because of the assets Amazon can rely on and which consists in a large

owned IT infrastructure, a single log-in solution (for all their digital properties) and an extremely solid consumer profiling database, across multiple services. All assets which a new entrant would not have from start.

Our proposal is hence to:

- introduce a new definition (based on a set of new criteria) for on-line digital advertisement platforms and have as goal to identify beyond Google and Facebook which other platforms fall in the new definition;
- draw out the final list of companies meeting the criteria of the new definition;
- Classify these companies as Significant Market Power players, subject to ex ante regulation;
- Open for public authorities to adopt specific regulation to facilitate new entrants access to the market;
- Consider the SMP categorization in any M&A operation of the digital platform
- Consider the SMP categorization in case of bankruptcy or liquidation
- Consider the SMP categorization for enhanced privacy transparency implementation requirements
- Consider the SMP categorization for data transfer (cross border) implementation requirements

In this regard we suggest to look closer at:

- number of active users (MAU);
- number of geographic markets in which the company operates;
- technology stack and infrastructure assets ownership/effective control;
- ability to influence design/develop the technology stack (also including patents assets)
- tot. number of consumer-facing applications managed (interlinked databases)
- global turnover (by service/application/database)
- log-in solution implemented (single sign-in or not)
- intra-interoperability implementation (by accounts across applications)

**We hence recommend that further thinking is spent on the “definition” of on line advertisement platforms beyond the notion of “scope”.**

CMA Question-> **Consumer control over data collection practices:** we propose to consider whether consumers have the knowledge, skills and desire to control how data about them is collected and used by the online platforms, and how far they are able to exercise such choice. Within this theme, we will examine the relationship between consumers and consumer-facing online platforms and whether the choices of consumers are limited through terms and conditions or other practices, for example website or app design.

**Answer by Ernieapp** is of the view that **these are areas of critical investigation** and promising further regulatory guidelines to the market.

**On knowledge & skills** -> Consumers have been over the years “managed (AKA abused)” under the so called 1-click rule and the user experience (UX) design frictionless requirement which has been implemented on web and mobile platforms to streamline as much as possible how a service can be enjoyed on line by a non-digital skilled user.

This notion (UX frictionless) has not always been implemented with fairness as a user “who knows” becomes a user that is more difficult to control and exploit (eg user installing ad block software or using VPN/private browsers solutions etc). A user who doesn't question how technology functions or perform is an easier user (consumer) to manage and exploit so the approach of companies has been to create the myth that technology is complex to scare people from asking too many questions. This has led to many abuses.

It's only with the emergence of privacy laws and regulations (following serious breaches and abuses and the adoption of GDPR and the risk of fines) that the notion of transparency has become a more prominent aspect of the digital experience.

Unfortunately, users are still too distant from understanding the core of how the internet functions (its economics) and how the value is created thank to their contribution and data generation and sharing;

Public policies should be devised to incentivize users to elevate their knowledge while disincentivize data collection and processing mis-behaviors by companies.

One way to achieve this is to impose on digital companies new duties in term of privacy transparency design requirements and be prepared to extend that beyond consumer internet so to also include devices that do not have a GUI.

**Ernieapp recommends that further work is done into this direction and this work to also encompass privacy settings design harmonization and privacy setting taxonomy adoption.**

**On user desire to control data and use of data** -> indeed if users are not knowledgeable of data value it's difficult to imagine their engagement and interest in the data economy will change over time as they live their digital life more as passive users than active players. However, it's proven that if incentives are brought to the market and these becomes transparent and accessible to the parties, even an un-interested user (consumer) might have the reaction to become more interested, engaged and actively involved.

Hence **ErnieApp considers that public policies should be devised in the area of incentives and such incentives to promote transparency in data transactions “value” between users and companies.**

**CMA question on competition in the supply of digital advertising in the UK:** we propose to examine the extent to which platforms' market power might distort competition in digital advertising, as well as concerns around transparency and conflicts of interest in the intermediation of advertising. This is a highly-complicated market and the focus of our work in this theme will be on investigating those concerns that are most likely to lead to bad outcomes for consumers.

**Answer by ErnieApp** -> market power per se would not be an issue until the effect in the market is to distort competition. Years and years of analysis of the digital advertisement market have been showing that certain digital platforms do enjoy market power positions and in few cases have also been found abusing of it. However, we consider that treating these plateforms under anti trust frameworks entails significant challenges.

**We rather propose to carry further analysis on the benefit of relying on the SMP notion in digital markets.**

Under the concept of SMP certain ex ante regulation could be imposed on digital platforms; including accounting and transparency principles as regard data collected and owned; data crossed references and data passed on 3<sup>rd</sup> parties. Last but not least special measures should also be imposed in case of merger and acquisitions when these entails consumers personal data and consumer profiles.

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*end of submission*  
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