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GMG RESPONSE TO CMA STATEMENT OF SCOPE - DIGITAL ADVERTISING MARKET STUDY

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About Guardian Media Group PLC (GMG)

GMG is one of the UK's leading commercial media organisations and a British-owned, independent, news media business. GMG owns Guardian News & Media (GNM), the publisher of theguardian.com website and the Guardian and Observer newspapers. It is known for its globally acclaimed investigations, including investigating the Paradise Papers and Panama Papers and Cambridge Analytica. As well as being the UK's largest quality news brand, the Guardian and Observer have pioneered a highly distinctive, open approach to publishing on the web and their website has achieved significant global audience growth over the past 20 years. Our endowment fund and portfolio of other holdings exist to support the Guardian's journalism by providing financial returns. As the CMA may be aware, The Guardian's unique structure and trust model means that our owner - the Scott Trust - takes no dividend from the business. This means that any revenue generated by GNM is reinvested back into funding more high-quality public interest Guardian journalism.

Introduction

GMG welcomes the opportunity to respond to the CMA statement of scope and wider work to examine competition in digital markets. The digital economy underpins and impacts almost every sector of the UK and global economy in some way. Ensuring that there is fair and effective competition in the supply of key products such as digital advertising, and digital payment services is vital to the sustainability of a wide range of digital businesses, including GNM.

In paragraph 10 of the CMA Statement of Scope the CMA sets out that it does *"not propose to focus in our study on platforms that are not funded by digital advertising."* We would emphasise that, in addition to analyses of the digital advertising market as a key driver of investment in the digital economy, it is important to understand the interplay between digital advertising and other methods of funding investment in content and services, principally through direct payment from end users.

GMG notes that this study forms part of a wider scheme of work to protect *"consumers in the digital economy while ensuring robust competitive digital markets."* GMG welcomes the acknowledgement, at paragraphs 39, 40 and 41 of the Statement of Scope, of the multiple global reports that have been undertaken to examine these issues, and various key findings, including:

- *'the risks associated with the concentration of digital markets and the challenges that such a rapidly-developing sector creates for policy makers and regulators';*
- *that "typical characteristics of digital markets can give incumbents a strong competitive advantage and makes them very hard to dislodge"; and*

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- proposals that *‘specific regulations should apply to firms with “bottleneck power” – situations where consumers rely on a single service provider, which makes obtaining access to those consumers by other service providers prohibitively costly.’*

The role and influence of browser vendors in the digital advertising market

As the CMA notes in the statement of scope, the final report of the Australian Consumer & Competition Commission (ACCC) notes concerns about how the policies and practices of browser vendors might potentially be used to distort competition in a way which favours the owners of those browsers. ✂.

In a European context, concerns about the differential classification of cookies and trackers by browser vendors are also relevant with respect to the ongoing implementation of the IAB Transparency and Consent Framework, which is being developed by the digital advertising industry as a way to comply with the consent requirements of the GDPR. The ability of browser vendors to differentiate and classify their own cookies in ways that differ to ad tech companies and publishers, who rely on third party cookies in order to deliver digital advertising, could impact on the level and nature of consent being sought from browser users.¹

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GMG notes other relevant concerns, identified by the ACCC, about the power and control of browser vendors to dictate the technical specifications of acceptable digital advertising, for example through the Coalition for Better Ads and the Better Ads Standards initiative. ✂

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GMG is concerned that the existing CMA statement of scope does not include any assessment of the role of internet browsers within the scope of its examination of competition in the digital advertising market. ✂

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Smart speakers, audio assistants and audio advertising

In terms of new forms of bottleneck power that could emerge in the future, the rise in adoption of audio speakers and audio assistants is an issue that should feature within the CMA’s statement of scope. Research company eMarketer suggests that the *“number of smart speaker users in the UK is set to grow by almost one-third in 2019, after doubling [in 2018]... In 2018, 9.5 million people* in the UK will use a smart speaker, up 98.6% over 2017.”*²✂.

Many of the concerns that the CMA has identified in its statement of scope document will transfer to the distribution of journalism in audio form. However, they will do so in an

¹ <https://www.iabeurope.eu/category/policy/tcf-updates/>

² <https://www.emarketer.com/newsroom/index.php/uk-amazon-echo-dominates-smart-speaker-market/>

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environment that is even less transparent for market participants due to the personalised and less visible nature of audio content streams. Such concerns include the ability of advertisers to verify whether ad impressions have been served, the context in which those impressions have been delivered, and the content against which impressions have been served. For content providers, the personalised nature of audio assistants raises concerns around the prioritisation of content served to users, a lack of control over how that content is presented to end users, and an inability to influence the way in which that journalism is monetised by dominant smart speaker platforms. The ability to synthesise text to create new audio content also raises concerns about whether publishers can know whether their copyright is being infringed, undermining their ability to enforce legal rights.³

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Proposed remedies in the scoping document

GMG welcomes the proposed remedies set out at section 13 of the statement of scope, and sets out some early observations regarding each of the headline remedies.

(a) Increasing competition through data mobility, open standards and open data: these remedies, which have been proposed by the Furman review, have the potential to reduce barriers to entry and to promote new business models which might facilitate competition in existing markets and lead to innovation to the benefit of customers and digital advertisers. We will look to assess both the potential for these benefits to materialise in practice and the potential costs, including reduced incentives to invest and privacy concerns.

- GMG does not think that mandating consumer-facing data portability and greater measures to enable switching between services will be sufficient in itself to have a meaningful impact on competition in the market.
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 - This global number represents just over half of the number of households in the UK that decided to switch their energy supplier in 2018⁴. While efforts to drive switching in the energy market has been adopted by some consumers, the lack of widespread switching amongst consumers has been seen by experts as a failure.⁵
- In a similar vein, GMG questions whether recommendation 3 of the Australian Competition & Consumer Commission inquiry into digital platforms, which would change search engine and internet browser defaults, will have a meaningful impact on delivering competition in the digital advertising market.
- If the CMA does pursue the promotion of open standards and open data, it is essential that these are defined by bodies that sit outside of the main tech platforms, and are not used as a way to create a set of shared proprietary standards that simply perpetuate the existing business models of dominant players.
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³ <https://www.theverge.com/2019/8/23/20830057/amazon-audible-speech-to-text-feature-lawsuit-major-book-publishers>

⁴ <https://www.theguardian.com/business/2019/jan/21/record-numbers-switched-energy-provider-last-year-amid-price-hikes>

⁵ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/business-energy-and-industrial-strategy-committee/prelegislative-scrutiny-of-the-draft-domestic-gas-and-electricity-tariff-cap-bill/written/74931.pdf>

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(b) Giving consumers greater protection in respect of data: we will consider whether there is a case for improving transparency over what data is being collected, and also the consent process, liaising with other authorities as appropriate. We will consider the terms and conditions that platforms use and whether choice architecture could be improved and whether there is a potential role for a 'fairness by design' duty. We will consider whether consents should be more granular, and whether there should be rules on what defaults are fair, including when it is acceptable to restrict users from accessing a service if they do not consent to the provider of the service accessing their data.

- GMG welcomes measures that provide citizens with more transparency regarding data sharing and empower them to have more control over how that data is used. It is vital that the CMA is alert to the problem of the consistent application of data protection law against dominant search and social platforms, including a strong focus on enabling users to give their informed consent (and withdraw that consent), based on the purposes set out in the GDPR.
- It is also vital that the CMA adopts a consistent definition of how personal data is used by search and social platforms to gather and infer characteristics about individual users and their future actions⁶.

(c) Limiting large platforms' ability to exercise market power: if we find that the exercise of market power is harming competition and consumers, we will consider the case for the development of an ex ante regulatory regime to address such concerns, including whether one or more firms should be considered to have strategic market status, as described in the Furman review. We will consider whether ex ante rules are required to overcome any concern we identify in relation to market power in consumer-facing markets or digital advertising markets. Potential areas that could be covered through such a regime could include: rules on the terms on which platforms transact with other market participants, relating for example to discrimination and pricing; increased transparency in the different activities undertaken by the platforms; and separation between certain activities in the digital advertising value chain.

- GMG agrees that this is a vital aspect of the CMA's strategy and welcomes the establishment of a digital markets unit in line with the Furman recommendations.
- GMG strongly believes that this unit should be a standing statutory regulator that can examine existing and emerging issues with the practices of platforms with strategic market status.
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- It is vital that any such efforts by the CMA deliver behavioural remedies against platforms with strategic market status, as opposed to monetary penalties that have recently been levied by regulators in the US and EU.⁷
- One relevant market parallel, in terms of separating the activities of incumbent online platforms with strategic market status, are the measures taken to introduce competition in the UK broadband market. Through the introduction of local loop unbundling in order to create effective retail competition, and a focus on delivering competition in the wholesale broadband market by analysing and capping the fees charged for wholesale

⁶ <https://theintercept.com/2018/04/13/facebook-advertising-data-artificial-intelligence-ai/>

⁷ <https://www.theguardian.com/commentisfree/2019/jul/26/google-facebook-regulation-ftc-settlement>

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services provided by the incumbent provider, BT, Ofcom has created competition, investment and innovative new services for UK consumers.⁸

(d) Improving transparency and oversight for digital advertisers and content providers: we will consider whether the evidence indicates that interventions are required to improve transparency in and scrutiny of digital advertising markets, in order to address consumer detriment.

- Developing a new industry data standard that is attached to each and every digital advertising transaction is fundamental to the development of commercial and regulatory tools that can generate analysis of revenue and data flows, in order to determine whether vendors within the digital advertising ecosystem are manipulating transactions in a way which is contrary to contract and competition law.

(e) Institutional reform: if we do conclude that there is a case for any of the above interventions, we will consider the appropriate institutional arrangements required to deliver them. For example, a body could be given powers to impose enforceable rules on companies' actions, or we may conclude that any new functions should be taken on by existing institutions. In considering the options, we will draw on the proposal made by the Furman Review for a 'Digital Markets Unit'.

- GMG welcomes proposals to establish a new Digital Markets Unit, which would act as a standing statutory regulator to examine existing and emerging issues with the practices of platforms with strategic market status.
- It is vital that the CMA learns the lessons from other sectors, notably the grocery sector, and moves to the creation of a regulator that has statutory powers to enable information collection and the imposition of behavioural remedies.⁹

75 (a) Consumers might earn inadequate returns for the use of their data. Although many online services are provided for free, consumers are in practice paying with their attention and data which can then be monetised through digital advertising. In this situation, a free price might not necessarily be competitive; in a well-functioning market, consumers might be paid for their data, or offered a trade-off between price and amount of data provided.

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- If the only currency by which consumers can judge the returns they get on the use of their data is free services, the only returns that creative companies have for enabling platforms to distribute their content without direct payment is the currency of user traffic that can be monetised.
- On either side of that platform transaction, the platform benefits through the acquisition of personal data and the inference of that data to create intelligence, in order to sell advertising based on the attention of users alongside content generated by media companies. Yet neither the consumer nor the business on either side of that

⁸ https://www.ofcom.org.uk/__data/assets/pdf_file/0028/29647/context.pdf

⁹ <http://www.legislation.gov.uk/ukpga/2013/19/contents/enacted>

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transaction have a strong understanding of the value that they are creating for the platforms, or whether the returns they get from that transaction are equitable.

(b) Consumers might benefit from less innovation and quality in the services provided by the platforms, compared with a more competitive market.

- The CMA investigation should examine the number of potential competitors that have been bought by platforms with strategic market status, only for those businesses to be rolled up once the key aspects of IP have been removed, or the potential threat that they posed has been nullified.

(c) Consumers might not be able to exercise adequate control over how their data is used, leading to broader privacy and consumer protection concerns.

GMG recognises that this is a threat and notes that it has been the particular focus of the ongoing German competition case against Facebook.¹⁰

76. Consumers could also be harmed indirectly through impacts on firms engaged in digital advertising. For example:

(a) Consumers might be harmed if firms have to pay higher prices for advertising than they would do in a more competitive market. Since advertising is a cost for firms selling final products to consumers, we would expect higher advertising prices (where these are faced by all competitors in a market) to be passed through to consumers in the form of higher prices for final goods and services.

- GMG strongly believes that the current opacity at the heart of the digital advertising market creates the conditions in which ad fraud and other negative phenomenon are able to prosper.
- Opacity by design contributes to vast amounts of ad fraud, estimated to have cost \$19bn, or 9% of total digital advertising spending in 2018¹¹ with predictions that ad fraud will grow again in 2019 to \$42bn of ad spend being lost across online, mobile and in-app channels.¹²
- It is clear that many advertisers are unaware of the proportion of advertising budgets that are subject to wastage in this way, or where those revenues are ultimately ending up. This is wastage that ultimately means higher prices at the tills for consumers, and less money being directed towards legitimate media owners, for investment in high quality journalism and other forms of media content.

(b) There may be a further concern where platform market power creates or amplifies competition problems in other markets that rely on platforms, leading to higher prices or less choice for consumers in these markets.

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¹⁰ <https://www.politico.eu/article/german-competition-authority-orders-facebook-to-change-data-collection-procedures/>

¹¹ <https://www.businesswire.com/news/home/20170926005177/en/Juniper-Research-Ad-Fraud-Cost-Advertisers-19>

¹² <https://www.emarketer.com/content/the-size-of-the-ad-fraud-problem-in-digital-marketing-is-varying>

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- ✂. It is currently a market that is structured in a way that rewards products and services that create attention at any cost. Users of those platforms have no choice but to allow them to facilitate opportunities for advertisers to follow them across the web at the lowest possible price. This approach to advertising is creating negative externalities in societies across the world, with which governments are trying to come to terms. There is therefore widespread consumer and societal harm as a result of a business model that flattens hierarchies of content, and monetises its ends users solely based on who they are, rather than the quality of the content that they are reading, or the quality of the environment in which they are reading it.
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- The combination of market concentration and a lack of accountability and transparency in the digital advertising market creates barriers to the primary funders of the digital economy - advertisers - being in a position to demand market change. A report of the Intelligence & Security Committee (ISC) of Parliament into the 2017 terrorist attacks across Britain found that previous *“efforts to persuade the [Communications Service Providers] CSPs to take action have appealed to their sense of corporate and social responsibility, and have achieved relatively little. Action that affects their profits hits home harder than any sense of ‘doing the right thing’, and it is this that the Government should focus its efforts on. Encouraging companies who advertise on the CSPs’ platforms to put pressure on the CSPs to remove extremist content – with the threat of pulling their adverts if they do not – will have more impact on the CSPs.”*¹³
- Major advertisers have attempted to drive change from search and social platforms. For example, in June 2017, the IPA and ISBA published a joint paper outlining five standards they expected platforms and ad tech businesses to meet to provide more certainty, transparency and accountability for the data they use, and the data they provide to advertisers. It is not clear if these standards have been met.
- The lack of leverage in relation to dominant search and social platforms contrasts with the leverage that advertisers have to pull content from media channels that do practice a transparent approach to ad placement and self-regulation. Where advertising is placed transparently next to high-quality media - where there is a clear distinction between the advertising and the content it funds - this creates a strong degree of accountability, and the ability for advertisers to demand or pursue change.¹⁴
- In place of market based accountability, the UK government is seeking to address these negative externalities through the imposition of an online harms framework¹⁵. While this framework is necessary to hold dominant search and social platforms to account, the danger is that in seeking to tackle issues associated with the dominance of these platforms, through the regulation of speech, there will be unintended consequences for the ability of citizens to consume a wide variety of news and information, and for individual citizens to express themselves online, including:
 - An overly zealous approach to the regulation of speech could not only have a negative impact on the business models of organisations that do invest in high-quality journalism, but on the rights of individual citizens to participate in democracy; and

¹³https://drive.google.com/file/d/0B-DemBSSMo_tb2JDcFhORnZ1d0NrbUhzT1Q5QzU5dS1McGU0/view

¹⁴ <https://www.theguardian.com/media/blog/2011/jul/07/news-of-the-world-phone-hacking-live-coverage>

¹⁵ <https://www.gov.uk/government/consultations/online-harms-white-paper>

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- the costs of regulating the negative externalities caused by these platforms being passed to consumers, who have to fund the online harms framework through taxation, or in the potential loss of freedom of expression that occurs as a result of the framework.
- In terms of the broader impact of the current structure of the digital advertising market on the choice and quality of news and journalism available online, the way in which news is presented and distributed within services provided by dominant search and social platforms has had the effect of flattening news sources, making it harder for consumers to discern fact from fiction; trusted news sources from junk news. For example:
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 - Research from the Reuters Institute and the US-based Pew Research Centre has suggested that there is a major issue with users not being able to recall the name of the source of the news that they consume in online search and social environments¹⁶. The rise of aggregated environments, in which users consume news from a range of sources alongside other content, combined with the creation of formats that flatten the appearance of news and demote the prominence of news branding, make it increasingly difficult for citizens to identify the source of information.
 - The US-based Pew Research Centre recently published a survey on digital news habits, which found that Facebook has become the leading source of news for its 1.8 billion global users, with one in 10 respondents who clicked on a link to a news story identifying it as a news outlet when asked to cite the story's source.¹⁷ This reduction in users identifying the source of news story, and the confusion of a significant minority of users about the difference between the source of content served on a platform and the platform itself, makes it even more difficult for users to know which sources of news they can trust.
- The impact of these policies is likely significant, but often intangible. But as Apple CEO Tim Cook has noted, there is evidence that fake news risks “killing people’s minds”¹⁸.
 - In a 2013 issue of *Scientific American Mind*, the academic Sander Van Linden highlighted academic work that demonstrated how pervasive exposure to fake news can create a climate of deep public scepticism. *“Douglas and University of Kent graduate student Daniel Jolley presented statements to their study participants that supported various conspiracy theories, including one on climate skepticism. They found that people who received information affirming the idea that global warming is a hoax were less willing to engage politically and to implement behavioral changes, such as reducing their carbon footprint. This result is alarming because it suggests that even cursory defenses of conspiracy theories can sow mistrust and divert attention from critical scientific political and social issues.”*¹⁹

¹⁶ <http://www.journalism.org/2017/02/09/how-americans-encounter-recall-and-act-upon-digital-news/>

¹⁷ <http://www.journalism.org/2017/02/09/how-americans-encounter-recall-and-act-upon-digital-news/>

¹⁸ <https://www.theguardian.com/technology/2017/feb/11/fake-news-is-killing-peoples-minds-says-apple-boss-tim-cook>

¹⁹ <http://scholar.princeton.edu/slinden/publications/what-hoax-why-people-believe-conspiracy-theories>

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(c) Finally consumers may potentially be harmed where competition problems in digital advertising markets result in content providers receiving a lower share of advertising revenues than they would in a well- functioning market, ultimately leading to poorer quality content for consumers.

- At the heart of the present structure of the digital economy is the use of personal data in order to serve targeted digital advertising. This model of content monetisation has two major consequences:
 - First, it rewards clicks by volume, which means that the more sensational a piece of content is, the more likely it is that a user will click on that piece of content in order to read it. As a general rule, this model of monetisation does not favour the production of considered journalism focusing on the day's news. It favours attention grabbing headlines and opinion pieces that encourage readers to click through to a destination website. As Katharine Viner, editor in chief of GNM, argued in July 2016, *"In the last few years, many news organisations have steered themselves away from public-interest journalism and toward junk-food news, chasing page views in the vain hope of attracting clicks and advertising (or investment) – but like junk food, you hate yourself when you've gorged on it. The most extreme manifestation of this phenomenon has been the creation of fake news farms, which attract traffic with false reports that are designed to look like real news, and are therefore widely shared on social networks. But the same principle applies to news that is misleading or sensationally dishonest, even if it wasn't created to deceive: the new measure of value for too many news organisations is virality rather than truth or quality."*²⁰ News organisations that invest in journalism based on verification before publication are competing with entrepreneurs, political activists and state sponsored actors who publish content that bears little relation to true facts. The current structure of the digital advertising market has flattened the previously clear hierarchy of trustworthy news versus misinformation or low grade content.
 - Second, as Hamish Nicklin, chief revenue officer of Guardian News & Media, recently wrote in Campaign Magazine, the current model of digital advertising makes little or no distinction between *"Audiences on "long tail" sites and in more unsavoury environments [and those on] a quality, premium environment such as The Guardian or The Times. When the marketer buys an audience programmatically, it is seemingly getting more eyeballs for its money. But look at what can happen. If we believe the future of all advertising is programmatic, including TV, then we must recognise we are at a watershed moment that should jolt us into action... In this environment, claims that the ad industry is a supporter of media pluralism look increasingly hollow. The current equivalence given to quality and clickbait isn't good for anyone – advertiser, customer, media planner or publisher."*
- It is important to be clear - no media owner is owed a guaranteed share of advertising spend. It is the job of each media owner, and each media format, to sell the benefits of the engagement with advertising that is generated within those environments. But we are currently operating in a market where there are some clear imbalances in the degree to which advertising through established media channels (newspapers, online

²⁰ <https://www.theguardian.com/media/2016/jul/12/how-technology-disrupted-the-truth>

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news sites, radio, TV) is subject to external oversight and metrics, compared to the lack of regulation of advertising that appears on dominant search and social platforms. At a very basic level, advertisers simply do not know which specific sites online, or which content or activity, they are funding by placing advertising through search and social platforms.

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We look forward to engaging further with the CMA as the market study progresses.

GMG – 19 August 2019