

BY EMAIL

Re **Digital Ads Market Study: Response To Statement Of Scope**

This submission provides Google's comments on the Statement of Scope for the Competition and Markets Authority (**CMA**) study of 'online platforms and digital advertising' (**Market Study**). We appreciate this opportunity to provide our initial thoughts.

The CMA has set out five aims for digital markets, including the supply of digital ads: (i) promoting "*competition for the benefit of consumers*"; (ii) ensuring "*the enormous innovation and benefits brought about through digitisation can continue*"; (iii) creating a "*level playing field*" for all businesses to compete on the merits; (iv) ensuring new competitors can enter digital markets; and (v) enabling consumers "*to feel trust in online markets*."<sup>1</sup>

We support these goals and are ready to provide information and assistance, including via the Market Study. Some may doubt the veracity of that claim. But, put most simply, we have an interest in a rigorous, evidence-based assessment. It provides an opportunity for clearer rules of the road and to dispel myths regarding how we operate and the value we provide consumers and industry in the UK.<sup>2</sup>

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<sup>1</sup> CMA, Digital Markets Strategy, July 2019, p.6.

<sup>2</sup> In this regard, we note Digital Competition Expert Panel, Unlocking Digital Competition, March 2019, para. 3.195 ("*It is clear that the [digital advertising] market is opaque, with limited information disclosed either at an aggregate or an individual level. A thorough investigation of its workings, encompassing the entire value chain, would be helpful in either identifying any valid grounds for concern about effective competition, or dispelling the mistrust that exists*").

The Statement of Scope identifies three areas of focus: (i) platforms' market power in user-facing services, which may confer an advantage in gathering data that is relevant to digital ads; (ii) users' understanding of the data they share, their ability to exercise control, and whether they get a 'good deal' in return for sharing their data; and (iii) platforms' market power in digital ads, including whether integrated players 'leverage' their position through the value chain and provide sufficient transparency to advertisers and publishers.

These are important issues that have been raised in other recent reports and warrant a careful assessment.<sup>3</sup> The nature of any concerns will likely vary according to the features and practices of different platforms, including how they collect and use data (and the controls they offer over that data), and whether users can switch to rival services. The Market Study will, we think, need to distinguish market- or sector-level issues from those that are specific to individual platforms.

We believe that the CMA will also need to consider carefully the costs and trade-offs associated with interventions as compared to the costs and trade-offs associated with the product and business decisions that platforms have taken. Online platforms like ours *"have created significant benefits for users, and in many ways have changed the way people live their lives,"* funded by digital advertising that *"increases the efficiency of*

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For our approach more generally, see e.g., O. Bethell, [Competition Law and Tech - A New Approach](#), 7 March 2019 (*"I wanted to outline three observations that give some sense of how we see our part in this process. First, we have a commercial incentive to maintain the trust of our users and so have a role in ensuring, for example, that they can make informed decisions about their data, and in lowering barriers to sharing. Second, we see a role in helping explore and find targeted and proportionate solutions to other concerns that have been raised, including participating in agencies' retrospective reviews of previous merger cases. Third, and perhaps most importantly, we believe that we have a role in helping develop new participative procedures to promote legal certainty, timely and effective intervention, and enhanced sector-specific knowledge among competition agencies"*); O. Bethell, [How to unlock digital competition](#), presentation to the Centre for Competition Policy, 7 June 2019 (*"Why participate in participatory antitrust? Clarity in the rules; Dispel the myths; Preserve user trust"*); and O. Bethell, G. Baird, and A. Waksman, *Ensuring Innovation Through Participative Antitrust*, forthcoming (in which we argue that agency officials, platform operators, business users, and consumers have a shared interest in a well-functioning antitrust framework that is effective, clear, robust and – critically – promotes and fosters the kind of innovation that has transformed the world over the past 10 to 15 years; that innovation comes from both incumbent players and new entrants).

<sup>3</sup> See e.g., discussions of digital advertising in Stigler Center, Committee for Study of Digital Platforms, Draft Report, 15 May 2019, pp.38-41; Digital Competition Expert Panel, *Unlocking Digital Competition*, March 2019, pp.112-117; and The Cairncross Review, *A Sustainable Future for Journalism*, 12 February 2019, Chapter 4.

advertising expenditure.”<sup>4</sup> If the Market Study leads to new rules, those rules should be based on evidence that they will likely promote innovation and competition for consumers and customers without materially undermining the benefits they currently enjoy and value. Moreover, any new rules should afford businesses flexibility<sup>5</sup> in finding ways to achieve a desired outcome.<sup>6</sup>

The following sections provide our preliminary thoughts on the three main themes in the Statement of Scope. In each section we give an overview of the concerns as we understand them; the factual issues or market features that we think will be relevant to the CMA’s assessment; what we are currently doing in these areas; and ideas for improvements.

## **A. Theme 1: Market power in consumer-facing markets**

### **1. The concerns**

The Statement of Scope states that digital platforms’ “*strong market positions*” in consumer facing services may “*drive the market power they have in the supply of digital advertising.*” Their large audiences are said to be “*a valuable source of data which may be used to improve the targeting of adverts.*” Therefore, the CMA intends to focus on whether “*platforms’ extensive data on users creates a barrier to competition in digital advertising.*” This ‘barrier’ may, according to the Statement of Scope, result in higher prices for advertisers that are passed on to consumers.<sup>7</sup>

### **2. Some preliminary considerations**

The Statement of Scope calls for a two-stage analysis: (i) whether online platforms enjoy market power on the user-facing side; and (ii) if so, whether it translates into market power

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<sup>4</sup> Statement of Scope, paras. 25-26. See also Digital Competition Expert Panel, Unlocking Digital Competition, March 2019, paras. 1.5 and 1.7 (“*Within the digital economy, markets based on platforms that connect different groups of users have played a prominent and distinctive role. Online search, social media, digital mapping and other applications frequently provide consumers with services at no monetary cost... Having companies operating at such scale and across multiple digital markets delivers substantial benefits for consumers and the UK economy*”).

<sup>5</sup> The Cairncross review explicitly advocated for a “*flexible approach*” in formulating any new rules for platforms. See The Cairncross Review, A Sustainable Future for Journalism, 12 February 2019, p.74.

<sup>6</sup> For example, there may be several different ways of improving access to data, ensuring user control over their data, and bringing greater transparency to the digital ads chain. Different businesses might have different ways of achieving these goals, taking into account the nature of their services and their users.

<sup>7</sup> Statement of Scope, paras. 54-61.

in the supply of digital advertising, in particular as a result of the data that platforms have collected.<sup>8</sup> This analysis – we think – raises the following initial questions.

***How important is user data for digital ads?*** The causal connection between data accumulation and the accumulation of market power in digital advertising seems to us a fundamental question.<sup>9</sup> It will require a categorisation of the different types of data that a platform acquires, an assessment of how those types of data are (or are not) used in digital advertising,<sup>10</sup> and an assessment of the extent to which platforms benefit from access to competitively significant data.<sup>11</sup> The value of a particular type of data may depend on its usefulness (measured against criteria such as variety, velocity, volume, and value);<sup>12</sup>

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<sup>8</sup> Statement of Scope, para. 59.

<sup>9</sup> Statement of Scope, paras. 55-56. See also Digital Competition Expert Panel, Unlocking Digital Competition, March 2019, paras. 1.72-1.73 (“A data-rich incumbent is able to cement its position by improving its service and making it more targeted to users, as well as making more money by better targeting its advertising.” Extensive data accumulation was considered by many commentators and respondents to the Panel’s call for evidence as “the single biggest barrier to entry in the digital economy”). See also Stigler Center, Committee for Study of Digital Platforms, Draft Report, 15 May 2019, pp.38-41; and ACCC, Digital Platforms Inquiry - Final Report, June 2019, pp.84-89.

<sup>10</sup> Google Search text ads, for example, are chosen by matching a user’s query with an advertiser’s chosen keywords, taking into account the user’s location. Thus, users can enter queries in Google Search without signing into (or even having) a Google account. Users can continue to enter queries in Google Search and see ads even if they ‘turn off’ ads personalisation and the collection of location, app and other data (discussed in Section B). Google does [not enable advertisers to target users based on sensitive data](#). As the founder and CEO of DuckDuckGo explained, “It is a myth you need to track people to make money in web search... Most of the money is still made without tracking people by showing you ads based on your keyword, i.e. type in ‘car’ and get a car ad.” See International Business Times, DuckDuckGo CEO: It’s a myth you need to track people to make money in web search, 8 October 2015.

<sup>11</sup> Crémer, de Montoye, and Schweitzer, Competition Policy For The Digital Era, April 2019, p.8 (discussing “the heterogeneity of data and its uses along many dimensions”).

<sup>12</sup> Case COMP/M.8788 *Apple/Shazam*, Commission decision of 6 September 2018, paras. 313-317. This includes an assessment of whether the data at issue suffers diminishing returns to scale or becomes less useful the older it gets. See Case COMP/M.5727, *Microsoft/Yahoo! Search Business*, Commission decision of 18 February 2010, para. 174 (“the value of incremental data decreases as the amount of data increases, something which is acknowledged by the notifying party”); and Commissioner Vestager, Competition in a big data world, Munich, 17 January 2016 (“It might not be easy to build a strong market position using data that quickly goes out of date. So we need to look at the type of data, to see if it stays valuable”).

whether similar data are available from other sources;<sup>13</sup> whether users can port their data between services;<sup>14</sup> how the data is used; and restrictions on data use.<sup>15</sup>

**How are platforms using data to generate efficiencies?** Put another way, to what extent do digital platforms collect data to develop their products in ways that benefit consumers in the UK? In answering this question, the Market Study will need to assess how platforms use data to improve their services, including (i) to maintain and improve their products and product designs (e.g., to reduce the number of steps that are needed to activate a frequently used feature); (ii) to develop new services;<sup>16</sup> and (iii) to protect users from security risks.<sup>17</sup>

**To what extent are factors contributing to market power generalisable across online platforms?** The Statement of Scope identifies network effects, switching costs, economies of scale, and “*the need to use data from large numbers users*” as possible barriers to entry in the supply of user-facing services.<sup>18</sup> These potential barriers merit assessment. That assessment will, however, need to take account of how barriers apply in different circumstances. It is well established that network effects apply differently in different sectors and for different platforms, depending on factors like the extent of multi-homing, ease of switching, differentiation among rival products, competition from ‘single-

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<sup>13</sup> Case COMP/M.7217 *Facebook/WhatsApp*, Commission decision of 3 October 2014, paras. 188–189 (the EC noted that “*there are currently a significant number of market participants that collect data alongside Facebook*” and “*there will continue to be a large amount of Internet user data that are valuable for advertising purposes and that are not within Facebook’s exclusive control*”).

<sup>14</sup> For example, Article 20(1) of the GDPR provides data subjects with the right to receive data concerning them “*in a structured, commonly used and machine-readable format and have the right to transmit those data to another controller*” and Article 20(2) confers the right “*to have the personal data transmitted directly from one controller to another, where technically feasible.*”

<sup>15</sup> Restrictions may prevent the acquirer from using datasets held by the target because of contractual arrangements with users, policy or reputational reasons (e.g., maintaining a ‘privacy-based service’), or GDPR requirements.

<sup>16</sup> For example, understanding how people organised their photos in Picasa, our first photos app, helped us design and launch our subsequent photos service.

<sup>17</sup> For example, Gmail collects information about recent activity in a user’s email account, such as the IP addresses from which the account was accessed, the associated location, as well as the time and date, thereby enabling unauthorized access to be detected.

<sup>18</sup> Statement of Scope, para. 56.

sided' firms, and the type of charging model.<sup>19</sup> Thus, network effects have not prevented the growth of multiple ride-sharing apps, online travel agents, and financial product comparison sites in parallel.<sup>20</sup> The EC special advisers' report noted that the usefulness of a search engine turns on its quality rather than direct network effects.<sup>21</sup> The Market Study provides a valuable opportunity to move this kind of debate from the general to the specific.

**What does 'dynamic competition' mean and how is it relevant?** The Statement of Scope notes the need to "*consider the extent to which dynamic competition may constrain market power in the future.*"<sup>22</sup> It seems to us that an assessment of market dynamics will need to give a view on the durability of any findings of market power in ads or ad-funded services in the face of rapidly evolving digital markets in the UK.<sup>23</sup> One

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<sup>19</sup> Cross-group externalities are weaker with per-transaction charges. For example, search engine advertising is charged on a Cost Per Click (CPC) basis, determined dynamically on an auction-by-auction basis. Such a charging mechanism tends to favour multi-homing and competitive sampling by advertisers. See M. Armstrong, [Competition in Two-Sided Markets](#), *The RAND Journal of Economics*, Vol. 37, No. 3 (Autumn, 2006), p.669.

<sup>20</sup> Competing ride-sharing services include Uber, Lyft, Kapten, and ViaVan; competing online travel agents include Booking.com, Opodo, and Kayak; and competing financial product comparison sites include MoneySuperMarket, Compare The Market, Go Compare, and others. See also Case COMP/M.4741 Google/DoubleClick, Commission decision of 11 March 2008, paras. 304 and 307 ("*According to some complainants, the presence of indirect network effects provides additional incentives to engage in foreclosure strategies as rival networks are more likely to be weakened. While the presence of these network effects is theoretically compelling, the evidence gathered during the investigation suggests that these may not be as strong (or at least, not strong enough to lead to 'tipping')... many ad networks and ad exchanges have developed in parallel and are growing. The market investigation has revealed that a large number of ad networks have experienced significant growth in recent years (growth in net revenues has been more than 50% for a large number of ad networks). Both small and large networks have also seen the number of publishers and advertisers participating grow in recent years*").

<sup>21</sup> Crémer, de Montoye, and Schweitzer, *Shaping Competition Policy For The Digital Era*, p.30 ("*[search engines'] market positions stem from the quality of the content as perceived by their users and the presence of these users in turn attracts advertisers... Social media platforms are different. As a first approximation, users are attracted by the presence of other users. Advertisers are then, in turn, attracted by the presence of the users. If this analysis is correct, network externalities of the single-sided type is the basis of the difficulty of dislodging social media platforms from their market positions*").

<sup>22</sup> Statement of Scope, para. 57.

<sup>23</sup> See e.g., [TechNation, Unicorn Update](#), 10 June 2019, explaining that "*in the past year, 13 UK companies have reached valuations of more than \$1bn – the equivalent to creating a tech unicorn every month – and this takes the total number of UK billion-dollar firms to a staggering 72. More than a third of Europe's fastest-growing tech companies are now based in Britain and only the US and China – with vastly bigger populations and resources – have done better than the UK. London remains the acknowledged centre of Europe's tech sector, producing 1 in 5 (21 per cent) of the continent's fast-growing unicorns. The capital has produced 45 unicorns worth \$148bn.*"

relevant question will be whether there are services that, on a static analysis, exhibit different product characteristics but, when one looks at the ways in which customers are using those services over time, in fact exercise competitive constraints on each other. For example:

- When it comes to commercial search queries, users are increasingly searching for information via specialised search services. A user looking to search for and compare products is more likely to begin their product search journey at Amazon than a general search engine.<sup>24</sup> A related trend is the shift by smartphone users away from accessing services on the web via their phone's browser to greater reliance on specialised apps, which bypass browser-based search altogether.<sup>25</sup>
- Advertisers want to attract users' attention and achieve the best return on their investment. The Market Study will need to take a fresh look at how different advertising channels compete in the UK to win advertisers' marketing spend based on their expected return on investment. Previous market definitions may not prove to be stable on a dynamic assessment of cross-channel marketing strategies.
- The Market Study will need to take account of the ways in which other players are entering, expanding, or consolidating in the supply of digital ads.<sup>26</sup> Examples include Amazon's growing ads business, Verizon (which purchased AOL and Yahoo!), the integrated AT&T/Time Warner/AppNexus businesses, AdForm, and Alibaba – one of China's largest digital ad providers that recently expanded into

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<sup>24</sup> See, e.g., [Wunderman Thompson Commerce study reveals Amazon's shopping search supremacy](#), 16 July 2018 ("Data from a new Future Shopper study released today by Wunderman Thompson Commerce shows Amazon leads as consumers' preferred starting point for shopping (51%), and also dominates where consumers complete the majority of their online purchases (55%)").

<sup>25</sup> eMarketer, [Time Spent With Media](#), 30 May 2019 ("The average US adult will spend 2 hours, 55 minutes on a smartphone in 2019, a 9-minute increase from 2018... About 90% of smartphone time is in apps").

<sup>26</sup> We think that the Market Study will need to take account of platforms that "obtain material revenues through digital advertising" (as the Market Study Notice implies); it should not be limited to platforms that are solely "funded by digital advertising" (which is how the Statement of Scope is at risk of being read). Any indication that digital revenues are in fact, or could be, generated by a rival platform begs the question, in our view, of the extent to which that platform provides a competitive constraint on other platforms offering digital ads.



Europe.<sup>27</sup> In some cases, the mere threat of this kind of well-financed and fast-moving competition may provide a significant competitive constraint on existing players.

- A range of metrics will likely be helpful in informing an assessment of how the market is performing now and is likely to perform in the future. For example, the cost-per-click that Google was able to charge on its properties (e.g., Google Search, Gmail, Maps, and YouTube) decreased by 25% in 2018, following a similar decrease in 2017.<sup>28</sup> At the same time, Google faces higher ‘traffic acquisition costs’ and other ‘cost of revenues’, as shown in the following table.<sup>29</sup>

The following tables present our cost of revenues, including TAC (in millions):

	Year Ended December 31,		
	2016	2017	2018
TAC	\$ 16,793	\$ 21,672	\$ 26,726
Other cost of revenues	18,345	23,911	32,823
Total cost of revenues	\$ 35,138	\$ 45,583	\$ 59,549
Total cost of revenues as a percentage of revenues	38.9%	41.1%	43.5%

The above is not to argue that market power is, or is not, present. Instead, as a preliminary observation, we simply note that generalised theories of how platforms collect, use and offer controls over data – and the extent of competition they face – will be unlikely to capture the competitive realities for individual platforms in the UK. The Market Study represents an opportunity for an evidence-based assessment that recognises the individual features of different platforms.

<sup>27</sup> Financial Times, [Alibaba steps up competition with Amazon in global ecommerce market](#), 8 May 2019 (“Alibaba, the Chinese ecommerce group, is overhauling the business model of a fast-growing subsidiary in a bid to offer a full international service able to challenge Amazon, the world’s largest online retailer... The urge to expand overseas, said Billy Leung, a director at brokerage Haitong, is being driven by wilting growth at home”). Another example is TikTok, a social media video app originally developed in China, which introduced ads in 2019 and describes its ads business as being “one of the first mobile-first products powered by AI and ML” (see [TikTok Ads](#)).

<sup>28</sup> [Google Form 10-K](#) for the year ended 31 December 2018, p.28 (Google experienced a “decrease in the cost-per-click paid by our advertisers from 2017 to 2018 and from 2016 to 2017”).

<sup>29</sup> *Ibid.*, p.32. Google pays ‘traffic acquisition costs’ to third parties to show ads on their websites or make available Google Search access point and other services (e.g., third party browser providers).



### 3. What are we currently doing?

Some have observed that improving consumers' ability to move between – or use simultaneously – different platforms may ensure that platforms stay competitive.<sup>30</sup> Whilst that does not preclude other measures, we think that our work in data portability and data mobility is relevant to the question of market power and might be the basis for further measures to ensure that markets stay competitive in the future. We also believe this kind of initiative aligns with the CMA's policy objective of wanting to put the consumer's interests at the heart of competition reform.<sup>31</sup>

We believe in giving users control over their data and that doing so can promote competition. Specifically, a data mobility framework that enables users to transfer and share their data between user-facing and ad-funded services can promote competition on both sides of digital markets. It can reduce barriers to switching, facilitate multi-homing, and thereby enable user-facing services (including ad-funded services) to enjoy better access to potentially useful information.

We realised some time ago that data mobility made users value our services more. In 2007, we launched the Data Liberation Front – an engineering team with the goal of ensuring that users can migrate data to and from Google, including having their data sent to them via OneDrive, Dropbox, or other locations. This was followed in 2011 by Google Takeout – a hub with instructions to users on how to review privacy settings, control what activity Google records, track and delete data, and transfer or download their data.<sup>32</sup>

We subsequently launched the Data Transfer Project in July 2018, bringing Facebook, Microsoft, and Twitter on board, to build an open-source framework that can connect any two online service providers. The Data Transfer Project is open to all online service providers, it is easy to join, and it will enable users to direct one service to share their data, such as photos, playlists, or purchase histories, with another service, without having to download and upload data themselves.

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<sup>30</sup> Digital Competition Expert Panel, *Unlocking Digital Competition*, March 2019, p.9 (“*Data mobility and open standards are tools with great potential to secure greater competition*”).

<sup>31</sup> Lord Tyrie, *Is competition enough? Competition for consumers, on behalf of consumers*, 8 May 2019.

<sup>32</sup> In 2017, Google Takeout had approximately 21 million unique visitors, who had exported in total more than one Exabyte of data since launch. That is the equivalent of 50,000 years' worth of DVD-quality video.

#### 4. What are the opportunities for improvement?

The Digital Competition Expert Panel stated that the Data Transfer Project (despite being a work-in-progress) “*should be supported and encouraged by government*” and that “*Silicon Valley, for example, could expand the Data Transfer Project into an industry-led standard-setting programme which, working with the UK and other regulators, is well placed to take a lead on proposing internationally applied technical standards for data mobility.*”<sup>33</sup>

A data mobility regime supported by industry and government has the potential to promote competition and access to data, while leaving users in control.<sup>34</sup> It could be supported by public bodies, such as the contemplated ‘digital markets unit’, in the following ways:

- Verifying that businesses wanting to participate in the project meet minimum necessary security requirements, similar to the vetting process for Open Banking.
- Working with companies to overcome any obstacles to achieving reciprocity (*i.e.*, offering import and export functionality).<sup>35</sup> This may involve providing guidance or assurances about the types of data companies will have to transmit or receive.
- Helping develop relevant criteria for assessing possible new use cases that consumers want (*e.g.*, transferring photos, playlists, or purchase histories)<sup>36</sup> and

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<sup>33</sup> Digital Competition Expert Panel, *Unlocking Digital Competition*, March 2019, paras. 4.47.

<sup>34</sup> For this type of approach to succeed, there is a need for industry-government cooperation: a “*purely government-led approach to setting mandatory standards is likely to be inflexible and ill-equipped to deal with market developments or changes in technology*” whereas “*industry involvement in the design and implementation of standards will therefore be key to the success of encouraging greater data mobility.*” See Digital Competition Expert Panel, *Unlocking Digital Competition*, March 2019, paras. 2.60 and 5.10.

<sup>35</sup> All participating companies should be willing both to receive incoming data and to transmit data to other services at a user’s direction. In other words, they should build both ‘import’ and ‘export’ functionalities. This is essential to establish user control over their data and to ensure the long-run viability of a data mobility system; a network of companies that are willing only to receive but not transmit data (or vice versa) is unlikely to achieve data mobility or to be sustainable in the long run.

<sup>36</sup> [Data Transfer Project, Overview and Fundamentals](#), 20 July 2018, pp.5–6. The Australian Competition and Consumer Commission has a similarly wide-ranging role in administering Australia’s Consumer Data Right: See R. Sims, *Consumer data and regulatory reform*, 16 July 2018 (the ACCC has “*multiple roles under the CDR, including rule-making, accreditation of third party data receivers, enforcement, and consumer education*”).

mediating where participants disagree (e.g., as regards the type of data within the scope of the project), and investigating the possibility of continuous data transfer.<sup>37</sup>

- Encouraging individual users and businesses to take part in the project by offering technical support, practical guidance, and accreditation for participating companies.

The idea of developing data portability projects is one opportunity to promote competition between platforms. There will be others – we don't have the ability to assess the market in the round, as the Market Study does. We raise data portability as one possible avenue for research since it is an area where we have some experience, and empowering consumers to transfer their data between services may provide some constraint on platforms that may appear to have market power.

“Data openness” is another idea that has been mooted as a measure to counteract market power that derives from superior access to data.<sup>38</sup> We have made datasets publicly available over the past decade, including to facilitate research and train future engineers.<sup>39</sup> There may be scope to encourage voluntary data openness further. Public bodies could, for example, offer endorsements to companies practising data openness.<sup>40</sup> And agencies

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<sup>37</sup> Digital Competition Expert Panel, *Unlocking Digital Competition*, March 2019, para. 2.59 (“*There is no requirement within GDPR that data portability be made possible on a continuous, rather than discrete, basis. However, many technologies and services – such as aggregator apps which provide up to date information on consumers’ activity – require ongoing data sharing*”).

<sup>38</sup> Statement of scope, para. 85.

<sup>39</sup> For example, we released the Open Images dataset of 36.5M images containing nearly 20,000 categories of human-labelled objects. This data can be used by computer vision researchers to train image recognition systems. Other interesting datasets for machine learning include YouTube-8M (with millions of annotated videos) and the Natural Questions database (containing 307,373 human-generated questions and answers). Since 2006, Google has been running Google Trends - a free service that enables anyone to obtain data on the searches that people run on Google Search, Image Search, News Search, Shopping or YouTube. Data is available as far back as 2004 with a great deal of granularity: it's possible to get information for specific countries, regions, metro areas and cities.

<sup>40</sup> Ofcom accredits price comparison sites that undergo “*a rigorous independent audit*” that “*checks on how the site works and checks whether the information provided to consumers is accessible, accurate, transparent, comprehensive, and up to date.*” See Ofcom website, [Price comparison](#).

could publish more detailed guidance (and possibly block exemptions from the Competition Act) to encourage data pooling among smaller or nascent digital players.<sup>41</sup>

However, as regards the possibility of “*providing access to data held by rivals firms*,”<sup>42</sup> we tend to agree with the concerns expressed by the Digital Competition Expert Panel that a broad, mandatory data-sharing obligation (as opposed to encouraging voluntary data openness) would be a “*significant intervention*.” It requires “*caution*” and a “*thorough analytical assessment*,” given “*the impact upon their [companies’] business model, the legitimacy of requiring access to a significant asset, and the impact on incentives for investment in future*.”<sup>43</sup> Depending on the data at issue, such an obligation could dampen investment in gathering useful data by incumbents and new entrants;<sup>44</sup> it could also reveal to rivals the types of data that a platform views as competitively significant.<sup>45</sup> And it could create privacy risks, even when attempts have been made to anonymise.<sup>46</sup>

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<sup>41</sup> Certain organisations have voiced concerns about perceived antitrust risks involved in data-sharing cooperation, particularly in view of the need to self-assess the level of risk under Article 101(3) TFEU or Section 9 of the Competition Act 1998. To facilitate procompetitive arrangements that help new entrants build up their datasets, a new block exemption could be introduced to create a safe harbour for data-pooling arrangements. The EC special advisers’ report notes this possibility, alongside offering more guidance on data pooling.

<sup>42</sup> Statement of Scope, para. 85.

<sup>43</sup> Digital Competition Expert Panel, *Unlocking Digital Competition*, March 2019, paras. 2.87-2.88.

<sup>44</sup> For example, we invest significant resources in gathering data for Google Maps, which has enabled major improvements and innovations in the service (e.g., gathering both underlying mapping data and information on, for example, streets where users are moving slowly, which may indicate greater levels of traffic).

<sup>45</sup> In this regard, it is important to be clear about the different types of data. For example, businesses try to infer information from (a) data that users ‘input’ (e.g., their date of birth or home town), and (b) observations of how users behave (e.g., what they read or watch online). Businesses compete to derive the most accurate or meaningful inferences to cater for the demands of individual users. Sharing ‘inferred data’ could undermine this parameter of competition and, ultimately, future product improvements.

<sup>46</sup> See e.g., L. Rocher, J. Hendrickx, and Y. de Montjoye, [Estimating the success of re-identifications in incomplete datasets using generative models](#), *Nature*, 23 July 2019 (“*numerous supposedly anonymous datasets have recently been released and re-identified. In 2016, journalists re-identified politicians in an anonymized browsing history dataset of 3 million German citizens, uncovering their medical information and their sexual preferences. A few months before, the Australian Department of Health publicly released de-identified medical records for 10% of the population only for researchers to re-identify them 6 weeks later. Before that, studies had shown that de-identified hospital discharge data could be re-identified using basic demographic attributes and that diagnostic codes, year of birth, gender, and ethnicity could uniquely identify patients in genomic studies data. Finally, researchers were able to uniquely identify individuals in anonymized taxi trajectories in NYC, bike sharing trips in London, subway data in Riga, and mobile phone and credit card datasets*”).

## **B. Theme 2: Consumer control over data collection practices**

### **1. The concerns**

The Statement of Scope proposes to consider whether users have sufficient knowledge, understanding, and tools to manage the data they share. This includes an assessment of “*how far online platforms use or combine data across their services, and how far consumers are aware of this and can control it*”; whether platforms “*exploit any imbalance of knowledge or power with consumers*” to “*extract more data from consumers than they might do otherwise*”; and whether users receive “*insufficient compensation for their data*” as a result.<sup>47</sup>

### **2. Some preliminary considerations**

This is clearly a complicated area. The assessment of competitive issues and remedies will involve a number of considerations. For example, it will be important to consider what types of data users want to keep private (and to what extent users are concerned about data privacy); how different legal regimes interact (including the impact of data protection rules); the value of the data users provide; and what features, if any, are likely to enhance user engagement with – and understanding of – data privacy policies and tools.

***What types of data do users want to keep private?*** The importance to users of data privacy and controls may vary depending on the type of data at issue. For example, users might not be troubled by sharing a list of professional interests with LinkedIn, but might be more reluctant to share their medical history. The importance of data privacy may also vary from one user to the next.<sup>48</sup> An important challenge will be to distinguish users who understand but choose not to use data controls because they place little value on keeping particular data private, from users who lack understanding of the data they share or lack effective tools to manage their data. This challenge is exacerbated by discrepancies between stated preferences and how users actually behave.<sup>49</sup>

***How do different legal regimes interact?*** The Market Study will need to consider the interaction of the various applicable legal regimes in this area, such as the GDPR and work

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<sup>47</sup> Statement of Scope, paras. 63-70.

<sup>48</sup> It is also worth noting that a range of privacy-focused digital services are available. DuckDuckGo, Qwant, and others use syndicated traffic from Bing and Yahoo, and are freely available.

<sup>49</sup> Athey, Catalini, and Tucker, [The Digital Privacy Paradox: Small Money, Small Costs, Small Talk](#), September 27, 2017 (“*the effect small incentives have on disclosure may explain the privacy paradox: People say they care about privacy, but are willing to relinquish private data quite easily when incentivized to do so*”). See also G. Akerlof and R. Schiller, *Phishing for Phools: The Economics of Manipulation and Deception* (2015).

currently being undertaken by the Information Commissioner's Office.<sup>50</sup> The GDPR sets legal constraints on businesses' ability to collect, process and use data.

**What is the value of the data users provide?** To examine whether users are sufficiently 'compensated', it may be appropriate to compare the value of ad-funded services to users with the value to digital platforms of the data users provide. Researchers have started examining consumers' willingness to pay for (free) ad-funded services<sup>51</sup> and the value of particular types of data (discussed in Section A.2 above).<sup>52</sup>

**Which features are likely to enhance user engagement with data collection controls?**

The CMA will, most likely, need to collect evidence on which product features are likely to promote user engagement with data privacy policies and tools, and which features may discourage engagement or irritate users. For example, it will be important to test whether adding additional consents might cause users to disengage and pay less attention to what data they are agreeing to share.<sup>53</sup>

### 3. What are we currently doing?

We are committed to promoting transparency and giving users control over how data is used. The user has always been the paramount consideration for us when designing our products and related transparency and privacy tools. Our design and implementation of

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<sup>50</sup> This includes, for example, the Information Commissioner's Office '[Update Report](#)' of 20 June 2019 into ad tech and real time bidding . This is a particular area of concern, since publishers need to be able to inform advertisers about their available inventory, including the profile of the user visiting the site. Imposing additional or impracticable restrictions might effectively require advertisers to bid 'blind' for ad inventory, which would damage the attractiveness of display ads overall and could undermine efficient real-time bidding.

<sup>51</sup> Brynjolfsson, Collis, and Eggers, [Using massive online choice experiments to measure changes in well-being](#) (2019) (estimating that users in 2017 would be willing to go without search engines for one year in return for approximately \$18,000; the study also finds that Facebook provides substantial value to consumers, such that users would require a median compensation of \$40 to \$50 for leaving this service for a month). See also PublicFirst, [Google's Impact In The UK: At Home, At School, At Work](#), 23 October 2018.

<sup>52</sup> Medium, [How Much Is Your Data Worth? At Least \\$240 per Year. Likely Much More](#), 19 January 2018 (estimating a US consumer's Facebook data as being worth approximately \$47 per year). Note that the true figure may be lower still: According to Facebook, "For 2018, worldwide ARPU [average revenue per user] was \$24.96." See [Facebook Form 10K for the year ended 31 December 2018](#), p.39.

<sup>53</sup> ACCC, Digital Platforms Inquiry - Final Report, July 2019 p.404 ("*Information overload describes the excess of information available to a person making a decision. Consumers confronted with complex products may face information overload, and subsequently find it difficult to engage with the decision to purchase a product or service. In order to make a decision a consumer may either rely on relatively simple 'rules of thumb', limit the number of decision criteria they consider (for example, focus exclusively on price at the expense of other factors) or defer their decision. They may also choose not to engage with the terms and conditions of a product*").

these tools have been informed by many rounds of user testing. We look forward to discussing our work in the course of the Market Study.

As noted above, the CMA plans to assess whether users have “*sufficient knowledge, understanding or tools*” to engage with platforms’ use of their data.<sup>54</sup> We offer users a range of measures to enhance their understanding of how we use data, establish user control over their data, and promote user engagement:

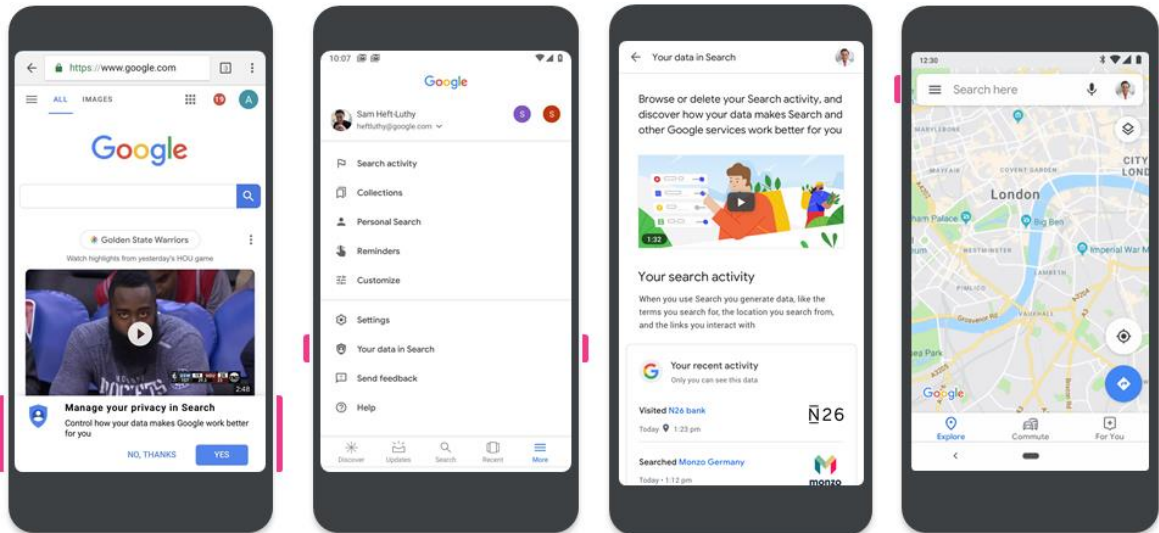
- ***User knowledge and understanding.*** We publish a privacy policy that uses graphics and audio-visual content so that users can easily understand the scope of our use of their data. It embeds key settings directly in the text so that users can easily access relevant tools. We ensure users know what data they are sharing and how that data is used, and we make available corresponding privacy tools. Our Privacy Policy was commended for its “*clear, plain language approach*”<sup>55</sup> and explanatory videos.
- ***User tools and controls.*** We enable users to control the use of their data via a number of tools that make it easy for users to see and understand the data that we process and also to exercise control over the use of location data, web and app activity, and audio or voice activity. Our tools also enable users to delete data (e.g., videos watched on YouTube) and to browse the web ‘incognito’ to limit data sharing, and to download their data in machine-readable, portable format.
- ***User engagement.*** We frequently promote these tools in prominent places, such as our homepage, and via email reminders sent to users shortly after account creation. Indeed, the first email users receive in their new Google Account upon account creation is an email inviting them to discover all the privacy controls available to them, including via ‘Privacy Checkup’ (described below). At the time of account creation, or at any time directly from the Privacy Checkup, users are also able to sign up for regular individual reminders to take the Privacy Checkup, which are currently sent approximately every 6 months.

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<sup>54</sup> Statement of Scope, para. 63.

<sup>55</sup> MashableUK, [Google makes its privacy policy clearer so we can actually understand it](#), 11 May 2018.





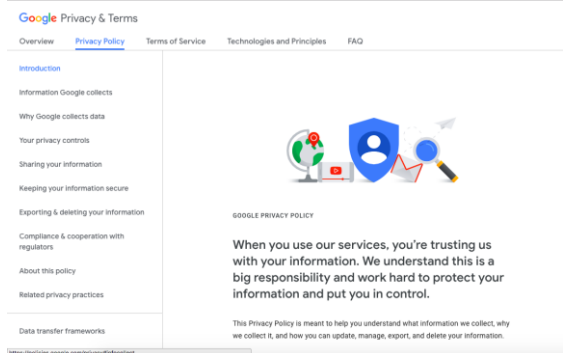
Occasional reminders on main product page

Consistently available from app menu

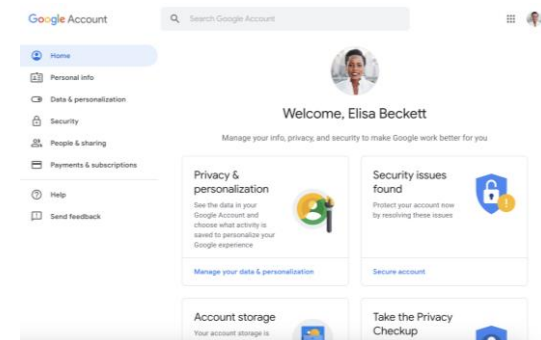
'Particle' providing access to data settings

The tools we offer enable users to take action quickly, in a straightforward way, and on an ongoing basis. These tools are supported by a team of over 400 privacy experts who engage with privacy and governance issues, and liaise with customers and partners on our data collection and use.<sup>56</sup>

**Google's privacy policy** explains what information we collect, why we collect it, and how users can update, manage, export, and delete their information. It has received hundreds of millions of visits since its relaunch in 2018 and uses clear language, illustrative videos, and links to relevant user controls which correspond to the descriptions of data use so that users can easily access relevant controls.



**Google Account** enables users to manage their information, privacy, and security



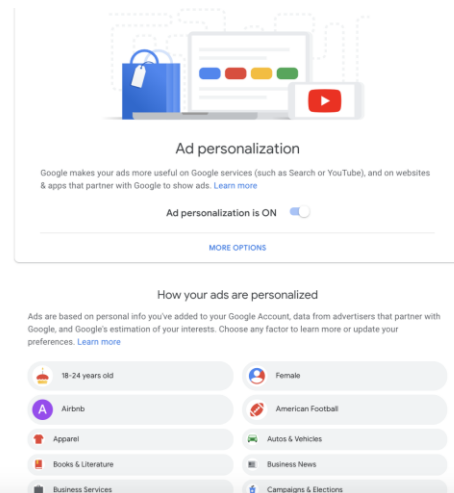
<sup>56</sup> Each of our advertising products has been examined by Google's Data Protection Officer, classified as either data controllers or processors, and described as such on Google's website.

settings both at the point of account creation and throughout the life of the account.<sup>57</sup>

We provide users with the ability to make granular choices during the account creation flow about the data we store with their accounts and uses for personalisation, including recommendations, customized content, and personalised ads.

Our strategy for informing users and putting them in control of their privacy and security does not end at account creation — it continues throughout the life of the account with periodic privacy reminders and pointers to relevant privacy settings, in order to ensure that users become familiar with the controls available to them and are empowered to use them at any time they wish.

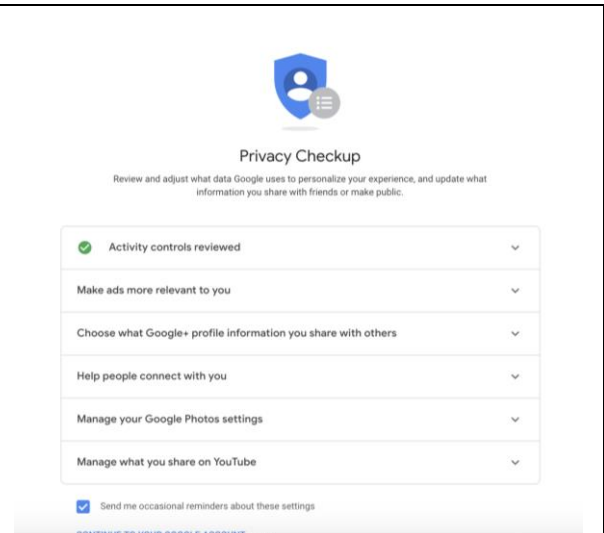
**Ad settings** enable users to opt-out of ad personalisation easily through their Google Account. Users are also offered granular controls to decide which advertising factors are applied.



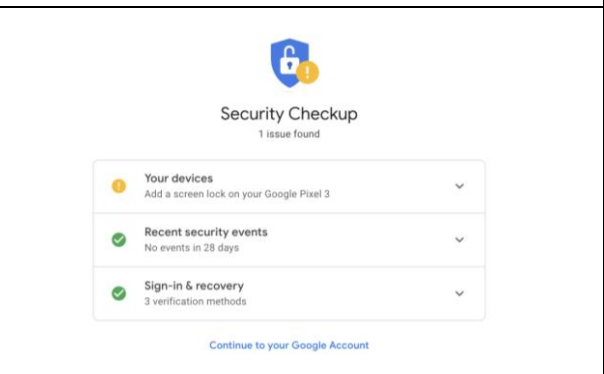
<sup>57</sup> We created the Google Account experience, Activity Controls, and My Activity to enable users to quickly and intuitively access tools to manage their personal data and privacy settings. We have continued to improve the Google Account experience with regular updates and increased product integration so that users are able to view and manage their activity from more product sources. In 2017 alone, roughly 2 billion users visited their Google Accounts.

**Privacy Checkup** provides a step-by-step guide to help users review and control privacy settings in their Google Account, including the types of data we use to personalise their experience, update which personal information gets shared with friends or made public, and adjust the types of ads they want us to show them.

At the time of account creation or at any time directly from the Privacy Checkup, users are also able to sign up for regular individual reminders to take the Privacy Checkup, which are currently sent approximately every 6 months. The Privacy Checkup is also available for signed-out users, providing access to the key privacy controls Google makes available to those who use Google’s products without an account.

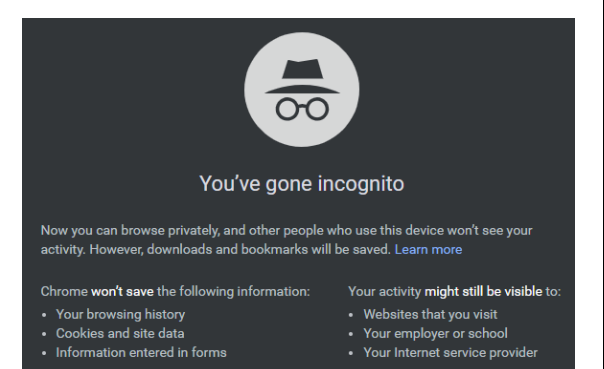


**Security Checkup** is a step-by-step guide to help users review and control the security settings in their Google Account, including to verify that their account recovery information is up to date, and ensure the websites, apps, and devices connected to their account are ones that they still use and trust.



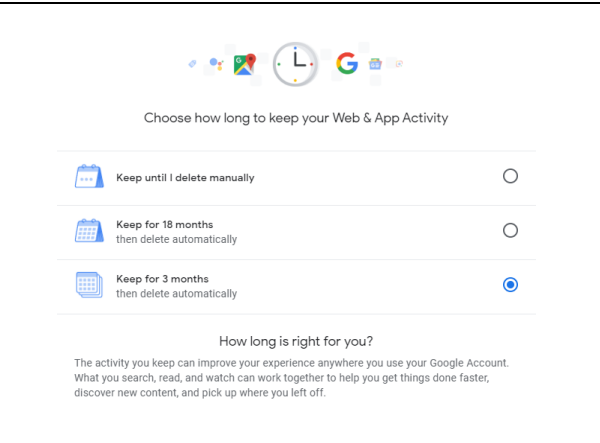
**Incognito mode** creates a ‘cookies jar’. The user is not logged in and when they close the browser, the cookies will fall away.<sup>58</sup> Incognito mode has been very successful in Chrome [REDACTED].

As we announced in May during our annual I/O developer conference, we are working to bring a new mode to Maps that allows users to engage with basic Maps functionality (search, navigation, access to information about places) in sessions that do not tie data to their account.

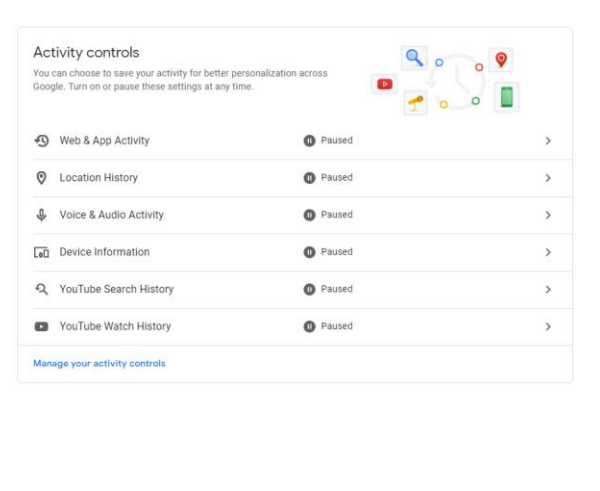


<sup>58</sup> If a user logs onto a website while browsing in incognito, then the website publisher may separately collect cookies.

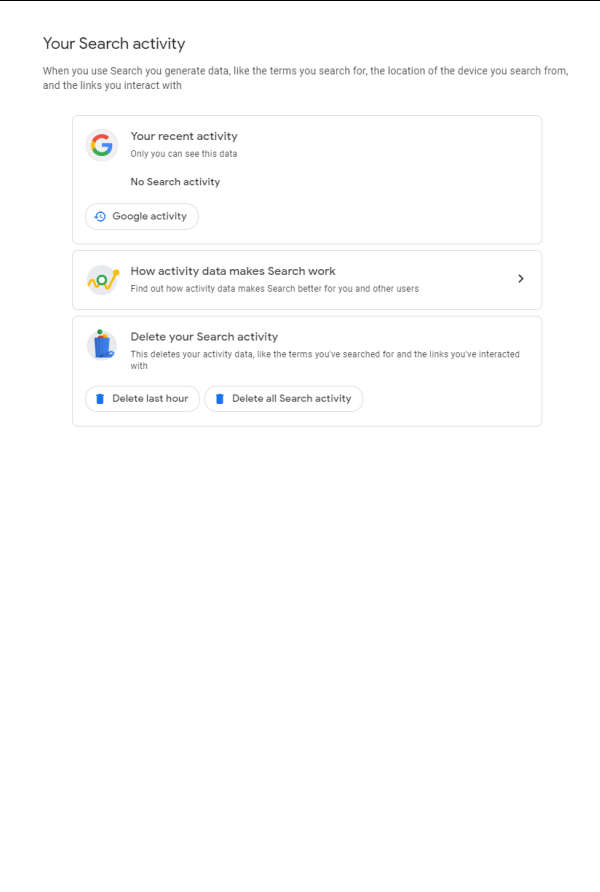
**Auto-Delete Activity** enables users to delete records of their activities from their Google Accounts, such as a record of which YouTube videos the user has watched. Users can also set time limits on how long we store records of their activity on the web and in apps. We introduced auto-delete controls for location history and activity data in May 2019.



**Activity Controls** allows users to decide which types of data will be saved to their Google Accounts, including web and app activity; location history; device information; voice and audio activity; and YouTube ‘search’ and ‘watch’ history. Although the functionality of certain services may be reduced when data are not shared, users can experiment with turning permissions off and on to find their preferred balance between privacy and functionality.



**Your Data in Search** makes it easier for users to review and delete their recent Search activity and get quick access to web and app activity and other privacy controls in Google Account directly from Google Search. It also includes disclosures about our use of information about location in Search. Soon, users will also be able to access “Your Data in Search” directly from the Search app on Android.



As announced at Google I/O, building on the tool we provide to users in Search, we also provide Google Maps users with ‘Your Data In Maps’ where users can access their Google account location settings and see how Google Maps works with data to provide useful experiences. For example, they can see what Maps activity is being saved to their Google Account, and if they choose, delete it right from the app.

We make it possible for users to access certain privacy settings even when signed out, including Ad Settings, Google Search history, and YouTube history, as well as enabling users to adjust their browser settings.

As these tools show, we adopt a ‘user-centric’ approach to transparency and control – a combination of: (1) just-in-time notices and in-product flows that provide context for particular product experiences and decisions, (2) a ‘plain language’ privacy policy with tutorial videos, icons and links to ‘deep dive’ explanations for key subjects, and (3) a centralized dashboard where users can quickly and intuitively access tools to manage their personal information and adjust their key privacy settings (their Google Account). These notices and tools, which are based on in-depth user testing, ensure that the most relevant and appropriate level of information is presented to individuals, along with user-friendly controls, at the most opportune moments when they interact with our services.

#### **4. What are the opportunities for improvement?**

The Statement of Scope raises the possibility of requiring that “*consents should be more granular*” and proposes to consider rules on “*what defaults are fair*.”<sup>59</sup> These are important questions that we think about ourselves and look forward to discussing. We think the following will be relevant:

- As a general matter, improvements will depend on defining precisely the ‘harms’ that we want to address. For example, where confusing and vague privacy policies prevent users making conscious decisions about their data, it should be possible to identify changes that will help consumers.<sup>60</sup>
- The Statement of Scope refers to ‘fairness by design’, but it is important not to assume that this means that the strictest privacy settings must be implemented by default; users’ interests in product quality and functionality also need to be taken into account. There are instances where users would want to have certain data uses switched on by default so that apps can function properly (e.g., sharing location data to enable Google Maps to provide navigation).
- We believe that users need enough information to understand their options at the most relevant times when they interact with the product in question, but not so

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<sup>59</sup> Statement of Scope, para. 91.

<sup>60</sup> By contrast, the reference to platforms earning “*excessive returns in digital advertising*” makes a less obvious connection to a harm to consumers (Statement of Scope, para. 9). General references to high prices fail to account for the quality of the service received in return for that price. The Market Study will, we think, need to be clear about the connection between a given price for digital advertising and the harm to consumers arising from that price.

much information that they are overwhelmed. In other words, there is a risk that a requirement to give more frequent consents leads to *less* user engagement. User research seems to be a key component of any recommendations in this regard.

- Imposing additional restrictions on data usage (or combinations) or requiring more consents can harm the user experience. For example, enabling users to receive an event invitation via Gmail and add it seamlessly to their calendar is useful. Interposing additional or heightened consent requirements (or preventing this data ‘combination’ altogether) would not necessarily benefit users and risks creating one-size-fits-all regulation for very different services. Rather than over-burdening users with consent requests and thereby placing the onus on users, platforms should ensure that their use of data is proportionate and respects users’ privacy rights. As regards Google specifically, users can easily turn off data collection with the tools we described above.
- In addition to the risk of over-burdening users, as discussed above, imposing additional consent requirements beyond those set out in the GDPR, and regulating default settings, may distort competition. For example, this could disadvantage firms whose business models rely (in part) on data-driven ads, thereby incentivising the use of paid subscriptions. Limits on the use of data across products could also impede functionality (as described above with the example of Gmail and Calendar), and disadvantage firms whose competitiveness derives from multi-product offerings.

These considerations favour providing users with readily comprehensible controls over their privacy, security, and data-sharing settings. This would likely provide a better outcome than ever more frequent and detailed user consent notifications. User research will be central to this part of the Market Study. We look forward to discussing our work to date.

### **C. Theme 3: Competition in the supply of digital advertising in the UK**

#### **1. The concerns**

The third theme in the Statement of Scope concerns competition in the supply of digital advertising in the UK. The CMA will investigate whether a lack of transparency means that intermediaries are capturing more value from advertisers and publishers than would occur in a more competitive market. The Statement also discusses whether vertically integrated players might “*leverage*” market power through the ad tech stack, or whether vertical integration creates efficiency benefits for users.

## 2. Some preliminary considerations

Digital advertising services comprise a complex and “*rapidly changing*” set of arrangements.<sup>61</sup> The ad tech industry has undergone substantial evolution over the last decade, emerging as a way for publishers and advertisers to place online ads automatically and, we think, efficiently.<sup>62</sup>

Growth and innovation in digital ads have created monetisation opportunities for publishers and more options for advertisers. As the Cairncross report noted, the automatic process of buying and selling ads “*has saved time, and has also meant that users can be better targeted through the use of more sophisticated data providers and analytics.*”<sup>63</sup> Intermediaries add value “*by connecting buyers and sellers*” and “*facilitating trading.*”<sup>64</sup> It bears emphasis, in this regard, that the UK has one of the most advanced digital sectors in the world.<sup>65</sup>

New practices have disrupted online display ads, including, for example, the emergence of header bidding<sup>66</sup> (enabling publishers to increase the amount of competition for their inventory<sup>67</sup>), Google Exchange Bidding (enabling publishers to invite third party exchanges

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<sup>61</sup> Statement of Scope, para. 72.

<sup>62</sup> Digital Competition Expert Panel, *Unlocking Digital Competition*, March 2019, para. 3.182 (Ad tech “*has the potential to massively increase the efficiency and effectiveness of advertising as it can direct messages to those most receptive to them*”).

<sup>63</sup> The Cairncross Review, *A Sustainable Future for Journalism*, 12 February 2019, p.58; and Stigler Center, Committee for Study of Digital Platforms, *Draft Report*, 15 May 2019, p.26 (“*When [platforms] can identify individual tastes at fine levels and personalise their services to this taste, they often improve people’s lives*”).

<sup>64</sup> Plum, *Online Advertising in the UK*, January 2019, p.45. This mirrors comments in the Statement of Scope that digital advertising not only “*increases the efficiency of advertising expenditure,*” but also “*improve[s] the relevance of the advertisement [users] see and reduce[s] search costs.*” para. 26.

<sup>65</sup> See e.g., footnote 23 above.

<sup>66</sup> Header bidding involves multiple supply-side platforms bidding in parallel for each ad impression in an auction initiated from the user’s browser (Plum, *Online Advertising in the UK*, January 2019, p.45). See also eMarketer, [Five Charts: The State of Header Bidding](#), 30 May 2019 (“*Despite drawbacks like latency, header bidding continues to gain popularity. Among the internet’s most popular 1,000 sites that sell programmatic ads, 79.2% used header bidding in March 2019, according to ad serving company Adzerk*”).

<sup>67</sup> Digiday.com, [With header bidding, publishers are boosting CPMs by as much as 50 percent](#), 12 November 2015. See also Plum, *Online Advertising in the UK*, January 2019, p.45 (“*Major publishers are increasingly using heading bidding for programmatic indirect sales. In December 2018, 76% of top 1,000 US websites used header bidding. The majority of UK publisher interviewees used header bidding*”).



to compete for their inventory, discussed below), and dynamic inventory allocation.<sup>68</sup> Our ‘ad tech stack’ products are available – and can be used – separately, so that advertisers and publishers can mix-and-match between different services, and multi-home. Indeed, publishers and advertisers tend to multi-home across a range of demand-side and supply-side ad tech services.<sup>69</sup>

At the same time, we recognise there are concerns regarding transparency.<sup>70</sup> We make the following preliminary observations in this regard:

- **Opacity sometimes is a function of fragmentation.** The Cairncross report noted that lack of transparency can arise from the presence of a “*multitude of players,*” many of whom “*are not easily visible to those buying or selling the ad space on publishers’ sites.*”<sup>71</sup> Vertical integration can sometimes resolve some of the

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<sup>68</sup> [Dynamic allocation](#) enables competition on an impression-by-impression basis between Ad Manager ‘guaranteed line items’ (i.e., line items that are contractually obligated to deliver a requested number of impressions) and ‘remnant line items’ (i.e., line items most commonly used to fill a site’s unsold inventory if not contractually obligated to deliver a requested number of impressions) or ‘Ad Exchange ads’ (when the latter have a sufficiently high bid). It thereby maximizes efficiency and increases publisher yield/advertiser value compared to a static allocation or ‘waterfall’ system (a waterfall involves having a hierarchy of ads ready to serve. If the first one doesn’t serve, the second one will; if the second doesn’t serve, the third one will, and so on).

<sup>69</sup> [Average Number of DSPs Used by U.S. Advertisers](#), Jan 2016–April 2018 (among the largest 100 advertisers on the Pathmatics), eMarketer, 29 May 2018 (The top 100 U.S. advertisers use an average 4 to 7 DSPs according to a 2016–2018 study); Ross Benes, [More isn’t always better: Publishers cut their SSPs by 20 percent this year](#), Digiday, 13 December 2017 (500 largest U.S. publishers use an average of 6 SSPs).

<sup>70</sup> Digital Competition Expert Panel, *Unlocking Digital Competition*, March 2019, para. 3.195 (“*It is clear that the market is opaque, with limited information disclosed either at an aggregate or an individual level. A thorough investigation...would be helpful*”); Plum, *Online Advertising in the UK*, January 2019, p.45 (Some market participants believe that “*market complexity and opaqueness*” allow certain players to obscure high margins or hidden fees); and ACCC, *Digital Platforms Inquiry – Final Report*, July 2019, p.151 (“*Ad tech services have been described to the ACCC as being opaque in nature. This is largely due to the number of suppliers and services that can be involved in the ad tech supply chain and the ‘black box’ nature in which ad tech services operate. This lack of transparency gives rise to concerns regarding the pricing of ad tech services and the proportion of advertiser spend being retained by ad tech providers. This issue also occurs in other advertising markets (for example, television ad)*”).

<sup>71</sup> The Cairncross Review, *A Sustainable Future for Journalism*, 12 February 2019, p.58. See also ACCC, *Digital Platforms Inquiry – Final Report*, July 2019, p.156. The ACCC noted that “*a number of transparency and pricing issues in the online advertising supply chain may in part be attributable to the role of advertising and media agencies, and more particularly, the holding group that they are part of.*” Specifically, the ACCC’s recent report noted that “[a]gencies may seek to benefit their own interests, rather than their clients” and that “[f]urther complexity may arise due to the way the large agencies are structured and how they report their revenue and purchasing arrangements”.

concerns around a lack of transparency and complexity.<sup>72</sup> It eliminates the multiple margins from having many actors in the ecosystem, and there may be more transparency when a single player delivers all services along the ad tech stack.

- **Transparency is improving.** We believe that transparency in the ad tech stack is improving and we're taking steps to accelerate that work. Market participants quoted in the Cairncross report noted that opacity that allows certain players to obscure high fees is "*becoming less common.*"<sup>73</sup> As regards the effectiveness of digital ads, the ACCC's recent report noted that "*market driven solutions appear to be on the way to solving issues around verification and the measurement of ads.*"<sup>74</sup>
- **Transparency requires limits and safeguards.** While we support efforts to improve transparency, there will sometimes be necessary limits. In particular, transparency should not require providing competitively sensitive information to third parties: greater transparency does not mean unlimited transparency to the entire sector. Accordingly, any efforts to improve transparency should be accompanied by suitable safeguards.

As to the CMA's second concern – whether platforms can leverage market power into other parts of the supply chain through vertical integration – we note the following:

- **Vertical integration can benefit stakeholders.** Vertical integration means there is a single point of contact for advertisers and publishers and it eliminates concerns about the possibility of rent-seeking by difficult-to-identify intermediaries. For the same reason, vertical integration can also make it easier for consumers to understand how – and by whom – their data will be processed. We think it will be important for the CMA to investigate how vertical integration in the ad tech stack creates efficiency benefits for users. Changes ought to benefit all stakeholders, not just one set.

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<sup>72</sup> Alexandra Bruell, *The Ad Agency of the Future is Coming. Are you Ready? Clients Want One Partner to Simplify the Fragmentation and Data – and Today's Shops May Not Be Among Them*, AdAge, 2 May 2016 ("*At the nexus of this confusing and continually evolving mashup of business operations and marketing are clients, who need a partner to help them stave off their own impending winter*"); Alison Weissbrot, *Four Reasons Why Agencies Are Working With Fewer DSPs*, Adexchanger, 19 June 2018 ("*Consolidation around fewer DSPs 'has allowed teams to master certain platforms and find workflow efficiencies, while creating a more transparent and collaborative relationship with partners'*").

<sup>73</sup> The Cairncross Review, *A Sustainable Future for Journalism*, 12 February 2019, p.59. See also Plum, *Online Advertising in the UK*, January 2019, p.45.

<sup>74</sup> ACCC, *Digital Platforms Inquiry – Final Report*, July 2019, p.150.

- ***Allegations of leveraging should be properly defined.*** Leveraging is a generic term that captures many different behaviours. At its broadest, it simply refers to conduct by a company in one market that affects another market. Some leveraging practices are procompetitive while others, such as refusal to supply, can be anticompetitive if the legal criteria for those abuses are met. When investigating this concern – and if the ultimate objective is clearer rules of the road for platforms – we encourage the CMA to set out clear definitions, together with specific characteristics and effects for any potentially problematic practices that it identifies.

### 3. What are we currently doing?

We are engaged in several initiatives to improve transparency in the ad tech stack and to support publishers and advertisers in the UK:

- ***Improving ad measurement.*** We have an incentive to provide advertisers with trusted, accurate measurement solutions to understand how their ads are performing. We have therefore developed effective measurement tools for advertisers that are independently verified. We participate in a variety of industry organisations dedicated to developing industry standards for accurate, uniform ad measurement.<sup>75</sup> We also provide advertisers with detailed metrics that relate to ad performance.<sup>76</sup>
- ***Encouraging data standardisation.*** Industry bodies like the IAB are producing industry-wide guidelines on data standardisation. We are working with IAB to integrate with the IAB Transparency & Consent Framework (TCF) to explore how our products and policies can support the TCF.
- ***Promoting mix-and-match.*** Advertisers and publishers have different preferences when it comes to ad tech services. Some prefer to use multiple

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<sup>75</sup> For example, the Media Rating Council is an independent body that oversees the process of developing standards in line with industry best practices, ensures compliance with those standards, and works with its membership to enhance compliance tools and collaborate on continually improving standards and practices. MRC accreditations require a rigorous vetting process, which consists of a full independent audit and a vote in favour of accreditation from MRC's 160+ members. MRC members include leading advertisers and traditional media publishers like Unilever, Fox Sports, CBS, and Group M. We have obtained MRC accreditation for over 30 distinct measurement solutions, covering all of our billable metrics (such as clicks, impressions, and viewability) across search, video, and display for products including Google Ads, Google Marketing Platform, and Google Ad Manager.

<sup>76</sup> See, e.g., Google, [Display & Video 360 Help, Metrics in reports](#); and [Search Ads 360 Campaign Management](#).

services from one vendor, and therefore find our ability to offer a suite of services appealing. Others, however, prefer mixing and matching among different vendors, and might choose Google for some but not other services, or might multi-home between different providers for some services. We make it straightforward for advertisers and publishers to select some or all of our ad tools and combine these with third-party tools, should they choose to do so.

- **Commitment to brand safety.** We were one of the first adopters of the IAB's ads.txt protocol. This is a simple, flexible and secure method that publishers can use to publicly declare the companies they authorise to sell their digital inventory.<sup>77</sup>
- **Launching Exchange Bidding.** In 2018, we launched Exchange Bidding, which allows publishers to invite third-party exchanges to compete for their inventory in a single auction with real-time, server-to-server bidding.<sup>78</sup> Exchange Bidding drives significant revenue for publishers and we estimate that it has allowed publishers to grow programmatic revenue by an average of double-digit percentages.<sup>79</sup>

#### 4. What are the opportunities for improvement?

Ad tech is complex, fast-moving, and involves hundreds of different parties who vary in their roles, practices, and presence on different parts of the value chain. This complexity is both a sign of the vibrancy of the sector and a potential contributor to opacity.

Improvements will require a collaborative approach to identifying issues and solutions.

Concerns about whether advertisers and publishers are getting value for money could be addressed by measures to provide more information. For example, as a first step, the CMA could work with industry to develop a set of standard reporting mechanisms.<sup>80</sup> Market players in the ad tech sector could be required to respond publicly to standardised questions, such as how they make money, what rebates or incentive arrangements they

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<sup>77</sup> IAB Tech Lab, [ads.txt](#).

<sup>78</sup> Google, [Introduction to Exchange Bidding](#).

<sup>79</sup> Google, [Exchange Bidding now available to all customers using DoubleClick for Publishers](#), 4 April 2018.

<sup>80</sup> At the same time, the CMA will need to take account of the extent to which advertisers and media agencies are using (and could use more) data analytics to evaluate the effectiveness of different advertising channels and determine the value of ad spend on each channel. See e.g., eMarketer, [Data science is in demand at ad agencies](#), 5 March 2019 (“Over the past five years, 67% of marketers have significantly increased their focus on data and analysis, according to research by YouAppi and Dimensional Research”); and eMarketer, [How data science is changing market attribution](#), 14 February 2019 (“In a Salesforce poll of 4,101 marketing leaders worldwide, 42% of respondents said they are using methods driven by data science to measure their marketing success”).

have with media agencies, what data and insights they provide to advertisers, and how they report on ad performance. And transparency could be enhanced further through providing guidance and training for new advertisers and publishers, who may have little previous experience of digital ads.

The Market Study may also need to take a view on the extent to which transparency measures need to apply to all players in the ad tech stack, including smaller ad tech providers.<sup>81</sup> As noted above, in all circumstances there should be safeguards and limits to ensure that greater transparency does not result in competitively sensitive information being disclosed to rivals.

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We hope that the above gives some sense of how we view the Market Study at this early stage. We are committed to supporting the CMA in its work and stand ready to contribute however helpful.

Sincerely,

Oliver Bethell

Legal Director for Competition, EMEA, Google

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<sup>81</sup> See e.g., The Wall Street Journal, [The Guardian and Ad-Tech Vendor Rubicon Project Settle Legal Dispute](#), 12 October 2018 (“*The Guardian filed a lawsuit in the Chancery Division of London’s High Court in March 2017, alleging that Rubicon Project charged fees to buyers of the London-based newspaper’s advertising inventory without disclosing them to the publisher*”).