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Online Platforms and Digital Advertising NMA Response to CMA Statement of Scope

Introduction

1. The [News Media Association](#) is the voice of UK national, regional and local newspapers in all their print and digital forms. Our members publish around 1,000 news media titles – from The Sun, The Guardian, the Daily Mail and the Daily Mirror to the Yorkshire Post, Kent Messenger, Monmouthshire Beacon and the Manchester Evening News. Collectively these publishers are by far the biggest investors in news in the UK, accounting for 58 per cent of the total spend on news provision in the UK¹. All of our members are reliant on digital advertising revenues to fund their editorial content.
2. The NMA has been raising growing concerns with government and regulators over the lack of competition in the digital advertising supply chain for at least the past three years. The dominance of the two main tech platforms has made it impossible for publishers to realise a fair return for their content. We therefore welcome the CMA's decision to launch a market study into this area and hope it will lead to a market investigation and effective remedies.
3. We and our members would be happy to contribute fully to the review. We understand that the CMA has written to a number of national news publishers with a series of detailed questions. However, we are not aware that the CMA has written to any regional and local publishers or magazines although they are equally reliant on digital advertising revenues to help to fund their journalism. We assume that publishers of newsbrands covering the nations and regions would be within the scope of the review and we can help to put you in touch with an appropriate selection of publishers, although they would of course need time to respond to the questions. Could we ask if the CMA will be publishing the list of questions it is sending to the platforms, ad tech companies, advertisers, agencies and publishers?
4. Although the CMA is not proposing that the study should focus on the sustainability of journalism, you rightly acknowledged, in the Statement of Scope, the potential harmful

¹Estimate by Mediatique Ltd

http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/pdf/mediatique_online_news_report_dec_2014.pdf; Mediatique Ltd also referenced by O&O at http://www.newsmediauk.org/write/MediaUploads/PDF%20Docs/OandO_NMA_-_UK_news_provision_at_the_crossroads.pdf

impact on consumers “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.”

5. We would be interested to understand how consumer detriment or adversity will be interpreted during the course of the study. How would the CMA analyse a finding that consumer access to plural news sources is impaired as a result of the platforms’ market hold over, or manipulation of, the digital advertising market leading to a reduction of news outlets in quality or numbers, or to restrictions or distortions, possibly as a result of discriminatory treatment of publishers by the platforms? We believe it is important for such issues to be within the scope of the review and potential remedies.
6. One of the central recommendations of both the Cairncross and Furman Reviews was the introduction of codes of conduct for online platforms. The NMA agrees with the CMA that this should be one of the potential remedies. It should ensure that practices controlled by the major online platforms adhere to standards of fairness, good competitive practice, openness and transparency. It should apply to digital advertising and to the related issue of how online content is surfaced and ranked. We believe there should be one over-arching and binding code of conduct which applies to online platforms of ‘strategic market status’. Importantly, the code should be backed by statutory powers.
7. We agree with the Furman recommendation that a Digital Markets Unit should be established by statute to draw up and oversee the code of conduct and to investigate and adjudicate complaints. We believe this Unit should sit within the CMA.

Background

8. The problems facing the newspaper industry are fundamentally related to revenue decline rather than audience decline. More people are consuming newsbrand content today than they have for decades, with the significant growth in digital audiences more than compensating for the more gradual decline in print circulation.
9. But the digital advertising supply chain does not recognise the growth in online audiences for news media content. It supports the aggregators of that content rather than its creators. The global tech giants’ dominance of the digital eco-system means that Google and Facebook are due to extract over 63 per cent of UK digital advertising expenditure in 2019 – even greater than their 59 per cent share of the US digital ad market. Those two companies alone are forecast to take over £9 billion this year in UK digital advertising,² while the news media companies producing the content from which the duopoly benefits earn just £500 million a year in digital ad revenues.³
10. This matters for consumers because the advertising eco-system which has traditionally supported high-quality journalism is being eroded, leading to reduced journalist numbers and closure of titles, particularly among local weeklies. Unless these ad revenue declines are reversed, the damage will inevitably extend to larger regional and even some national titles.

² Facebook and Google Control Ever-Greater Portion of UK Ad Market, 26 March 2019:

<https://www.emarketer.com/content/facebook-and-google-control-ever-greater-portion-of-uk-ad-market>

³ AA WARC 2018: <http://expenditurereport.warc.com/media/1112/press-release-aa-warc-expenditure-report-fy-2018-final.pdf>

11. No publisher could remain immune from the effects of a halving of the revenues that have traditionally sustained their editorial cost base. The local press, more dependent on advertising revenue than the nationals with their stronger cover price revenues, has been hardest hit. The threat to local journalism is now acute. Many smaller titles are loss-making and in danger of closure. Without significant market intervention, the outlook for Britain's regional and local press is bleak. National newspapers face similar difficulties over time.
12. The challenges facing the news media sector are not unique to the UK; they are impacting on all independent news channels, including commercial broadcasters and newer digital entrants to the market such as BuzzFeed and Vice Media. This has implications not just for consumers but for advertisers as well, limiting their choice of trusted advertising channels.
13. High-quality journalism is critical to the functioning of any healthy democracy but it is expensive; it requires the infrastructure, resources and skills to monitor and investigate those in authority and to sift, analyse and interpret a plethora of information.
14. Consumers are best served by a diverse range of trusted, verified news sources to help them make sense of a chaotic world. That means a strong cross-section of news media brands covering national and international issues and professional, well-funded newsrooms covering every town and city in the UK.

NMA Comments on Statement of Scope:

15. Google and Facebook have unprecedented reach, resources and power. They control the pipeline through which many people access news and information online. Their commercial agenda, business operations and the services and products offered have a major effect on those around them – including publishers and advertisers who have little option but to use the platforms to reach consumers. They have been accurately described as 'unavoidable business partners.' Given their scale and power, companies such as Google and Facebook should be required to provide news publishers and other businesses with access to their platforms in a fair, consistent and transparent way.
16. Surfacing of content via search rankings and the changes which the platforms make to their algorithms is one area which is not specifically covered in the scope but it is one which we believe requires scrutiny as part of the market study. Small algorithmic changes can inflict enormous damage on publishers overnight, with sudden downward shifts in traffic and resulting revenues to news media sites. Far greater openness, transparency and accountability is required from the tech companies over their data processing and algorithmic decision-making which affect news publishers who are reliant on the platforms for traffic to their own sites. Tech companies must be required to give reasonable notice of any changes to terms of business or to algorithms which impact on news publishers (eg, by deprioritising 'news' or promoting some news sites and demoting others), to explain the changes and their purpose, and to set out the assumptions and editorial judgments which lie behind the automation.
17. Another area which should be examined is Google's Accelerated Mobile Pages (AMP) standard. This was launched with the apparently laudable aim of making websites load faster when accessed by mobile. News publishers have little option but to become AMP-compliant if they want to appear on the Google News Carousel and ensure they are not demoted lower down the search rankings. The problem is that news stories on AMP-compliant web pages are served up to consumers from Google's servers and not from the

publisher's servers, allowing Google to retain the all-important user data and inhibiting the publisher's ability to sell targeted advertising direct. Similar issues are raised over Facebook's equivalent, Instant Articles.

18. We welcome the CMA's intention to examine the role of the platforms, tech vendors and other intermediaries in the complex and opaque ad tech market, to understand the impact of their activities and charges on advertisers and other media players. Google's dominant hold over every stage of the digital supply chain, from demand side platforms to supply side platforms, ad servers to data management platforms and real time bidding specs, effectively locks in publishers and advertisers and drives out competitors. The competition law issues arising from this are set out in a recent analysis by Damien Geradin and Dimitrios Katsifis.⁴
19. To inform a greater understanding of the digital advertising value chain, the tech platforms should also be required to reveal the importance of news content to their businesses in terms of the monetary value they extract from UK news content annually. A US study found that Google received an estimated \$4.7 billion from US news publishers' content in 2018.⁵ Where they do extract value from publisher content, directly or indirectly, they should negotiate fairly with publishers to determine how that value should be shared in order to ensure an appropriate level of compensation to publishers for the use of their content. Similarly, the platforms should not act in ways which impede the ability of news publishers to monetise their content online.
20. Although the CMA understandably wants to avoid duplication with other initiatives and does not intend to focus on fake news or other online harms, it would be appropriate for the market study to explore how real time bidding in programmatic trading can directly incentivise clickbait practices and similar types of behaviour which has been shown to fuel fake news sites and other harmful content online, to the benefit of tech platforms, agencies and other intermediaries, but to the detriment of consumers, advertisers and the publishers of genuine news.
21. The growth of blind programmatic ad buying on open exchanges has resulted in a chronic lack of transparency, with advertisers, including the government, left in the dark about how their money is being spent and their ads inadvertently appearing alongside low quality or illegal online content. We have long called on the government to take the lead, as one of the largest UK advertisers, to reject the risks associated with 'blind' programmatic ad buying via open exchanges and to instruct their buying agencies instead only to use brand safe programmatic options such as private marketplace or programmatic guaranteed for government digital campaigns.
22. The UK advertising community is acutely aware of the problems, launching a white paper this year to address declining public trust in advertising by trying to tackle criticisms over issues including advertising bombardment, personal data misuse, and brand safety.
23. Greater transparency in the digital advertising supply chain is clearly urgently required; a system of 'programmatic receipting' has been proposed by some publishers so that buyers and sellers of advertising can see the price paid by the advertiser, the fees paid to intermediaries and identify any money lost to fraudsters. Tests have shown that in the worst

⁴ An EU Competition Law Analysis of Online Display Advertising in the Programmatic Age:

<https://www.tandfonline.com/doi/full/10.1080/17441056.2019.1574440>

⁵ <https://www.newsmediaalliance.org/release-new-study-google-revenue-from-news-publishers-content/>

cases as little as 30p in the pound is making its way to the publishers. A system of transparent receipting could also help to track down where data breaches have occurred.

24. An important part of the review will be to investigate how the major online platforms control the ecosystem in relation to collecting, aggregating, processing and selling the personal data they gather from news publishers and others to drive their ad revenues.
25. In terms of user consent, on the eve of the introduction of GDPR, the NMA and other associations representing 4,000 publishers across the globe found themselves having to resist attempts by global tech companies to force unfair terms on them through the new consents regime. Google's consent framework required publishers to give Google a direct relationship with their own users, allowed Google to use all the data which their publishers passed through Google's products for whatever purposes Google wishes, and required publishers to collect the relevant user permissions for Google and bear the liabilities.⁶

Summary:

26. The NMA commends the CMA's decision to launch a market study into online platforms. We believe the Statement of Scope's description of the sector is broadly accurate and we agree with the themes outlined. We understand that sustainability of journalism is not considered to be a key area of focus but we would highlight the importance of a properly-functioning digital advertising market to the funding of independent news and editorial content, upon which consumers and democratic processes rely.
27. The surfacing and ranking of content via search algorithms are not areas specifically covered in the Statement of Scope but we suggest this does require scrutiny given the impact which changes in the search algorithm can have on digital advertising flows.
28. We believe that a Digital Markets Unit should be established by statute and given effective monitoring and enforcement powers to oversee the new remedies, including drawing up and overseeing a binding code of conduct for online platforms of 'strategic market status' which embeds clear principles of fair dealing by the platforms in digital advertising and search. We believe the Unit should sit within the CMA.
29. The CMA market study is welcomed by the news media industry. We believe it should lead to a market investigation reference and the introduction of tough and effective remedies. It is hoped that this will ultimately help to rebalance the digital advertising market so that revenues once again follow audiences and advertisers can once again be confident that their brand messages are seen by real people viewing real content in a brand-safe environment. This will ultimately benefit consumers, advertisers, publishers and the platforms themselves.
30. Please let us know if you require further information at this or future stages of the market study, or if we can help to put you in touch with our member companies to ensure you have access to detailed information from a range of national, regional and local news publishers.

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⁶ Publisher associations letter to Google CEO: <http://www.newsmediauk.org/News/gdpr-google-accused-of-putting-a-gun-against-publishers-heads/201259>