

TO: Online Platforms and Digital Advertising Market Study

Competition and Markets Authority

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By email only: onlineplatforms@cma.gov.uk

To whom it may concern

Response to the Competition and Market Authority "Market Study into Online Platforms and Digital Advertising"

Below Telefónica UK Limited ("**TUK**") provides its initial high-level input on the three themes put forward in the Competition and Market Authority's ("**CMA**") market study into online platforms and digital advertising of July 3, 2019 (the "**Market Study**"), which is focused on assessing the nature of competition in markets on both sides of online platforms.

As the CMA has noted, this is a highly complex area – many facets of TUK's business have thoughts and input on the Market Study that could not be aggregated and collated within the timeframe given (noting that TUK's resources are not unlimited, and there are a number of parallel government studies and consultations that TUK has addressed or is in the process of addressing). Accordingly, TUK wishes to underline its commitment to helping the CMA with its Market Study as much as possible, and in this vein, TUK proposes engaging in an active dialogue with the CMA over the coming months; as part of this process TUK may be in a position to submit more detailed papers on the issues raised in this Market Study and any remedy envisaged to address any specific issues the CMA may raise.

Overall TUK finds that there has been insufficient scrutiny and intervention in the digital markets sector, despite it having substantially higher levels of concentration than other sectors in which the CMA frequently intervenes. TUK believes that the CMA would benefit from a better understanding of the online platforms and digital advertising markets for future enforcement activity and welcomes this Market Study as a good instrument to gain the necessary knowledge. In addition, as indicated [REDACTED], TUK also supports a number of proposals and legislative changes to protect competition in the digital sector.

Please note that the information provided below represents TUK commercially sensitive information. Therefore we kindly ask you that the full content of this letter be treated as confidential and not for publication.

Please do not hesitate to contact us if you have any questions in relation to our response.

Yours sincerely,

Suzanne Debras
Legal Counsel
Telefónica UK Limited

Themes

(a) The market power of online platforms in consumer-facing markets

1. In TUK's view, consolidation of online platforms (in horizontal, vertical and conglomerate senses) has diluted competition in the digital advertising market, where only a few large platforms enjoy high market power due to barriers to entry, strong network effects, economies of scale and accumulation of non-rivalrous data.
2. Another aspect of digital markets which exacerbates the market power of these few large platforms is the interplay between data, AI/machine learning, and network effects. When large incumbent firms acquire more data, it generally enhances the network effects that they benefit from, and *vice versa*. Similarly, the more effective a firm's AI systems are, the more data they can process, which in turn leads to more enhanced network effects. The lack of interoperability also exacerbates network effects. In other words, there is a feedback loop between data, network effects, and AI. As has been noted by the academy and organisations such as the OECD, the first player to take advantage of this feedback loop can obtain a relatively unassailable market position – [REDACTED], which each have legion data, AI, and network effect generating assets that feed into each other.¹
3. Data plays an essential role in the digital advertising market, in which business models based on data exploitation mean data accumulation can be used as a lever to create and extend dominance. Data is a key input shared across markets and biggest digital players, dominant in a specific market, using data to enter other markets and entrench their dominance. For this reason, those large platforms enjoying one or more advantages related to data in the online advertising market (at non-replicable level), might be viewed as essential facilities and obligations to give access to data could be imposed.
4. From TUK's perspective, matters related to data protection should only be part of competition assessment when there is an impact on the competitive process. Privacy, understood as the amount of data to be given in exchange of a services, can have a competitive significance when data acts as the price paid and there is competition in privacy among the players in the market. In these situation, privacy/data protection should be considered as a parameter of competition.
5. As communicated to Lear in the context of the CMA mandated "ex-post assessment of Merger Control Decisions in Digital Markets", the UK digital advertising space is very competitive but the majority of spend is consolidated amongst those same [REDACTED] key players who attract ads through different but equally important online channels, in which they are well established ([REDACTED]). Within online advertising, [REDACTED].

¹ [https://one.oecd.org/document/DAF/COMP\(2016\)14/en/pdf](https://one.oecd.org/document/DAF/COMP(2016)14/en/pdf).

6. [REDACTED] the ever-increasing market shares of digital advertising providers will render them capable of setting anti-competitive prices that TUK and its peers will be forced to pay. Consumer welfare depends not only on prices but also on other elements such as quality, privacy (as amount of given data), choice and innovation. Competition analysis should therefore also focus on those other factors beyond prices. [REDACTED] and have significant control over the amount of ads a user sees. For example, mobile ads now take up all of the first screen on most searches thus consumers are more likely to see ads and miss out on natural listings although they regard the latter as most trustworthy. TUK believes that qualitative research is needed to understand the true impact on consumers.

(b) Consumer control over data collection practices

7. Many users of “free” digital services now understand that they are, in effect, paying for such services by providing viewing time/attention and non-public data about themselves to the service provider (which will monetise such data through advertising). TUK does not view “paying with data” as objectionable in and of itself. However, our principal concern is whether the terms of service on the consumer side of the market are sufficiently understood, and consumers are being treated fairly by the platforms. In this sense, the CMA should feel free to employ remedies that impose active obligations on service providers to give relevant information to customers (i.e., if appropriate, service providers should be required to explain, in simple terms, how they use their customers’ data).
8. We note that in certain situations companies can require their customers to provide excessive amounts of data in situations where such customers lack genuine choice on whether to accept or not. In this context, the terms of service form an important parameter of competition in digital markets. In a market where data is the form of remuneration, having sufficient “price setting power” that leads to excessive data being provided by customers must be a relevant factor in determining whether a firm can set “prices” without regard to the reaction of its users.

(c) Competition in the supply of digital advertising in the UK

9. In TUK’s view, competition in the digital advertising market is distorted by the market power held by platforms, and [REDACTED], it is concerned about its general lack of bargaining power in the determination of the PPC – the absence of alternatives means that if prices increase, there is no other alternative than removing the spend from that channel.
10. TUK believes that advertising prices are likely to increase in the future [REDACTED]. TUK notes that [REDACTED] and own a significant amount of ad technology in the supply chain. Moreover,

[REDACTED]

11. An increase in advertising prices might indirectly harm consumers if the additional costs are passed on through higher prices for the advertiser's final goods and services. [REDACTED] [REDACTED] market power is limiting entry and competition from other providers might also result in consumer harm over time, if it leads to lower levels of quality and innovation and reduced consumer choice.
12. Moreover, TUK has found that certain of these platforms ([REDACTED] [REDACTED]) have become essential facilities to advertise and to get a fair share of market demand. Those digital advertising platforms, through use of propriety algorithms that retailers/companies cannot interrogate, have become necessary gatekeepers of market intelligence; this means that leaving aside any issues of price, TUK is required to transact with them, which has led to considerable changes and increases in costs and business outcomes and limits TUK's ability to use other available ad technologies.

[REDACTED]

ANNEX 1

[CONFIDENTIAL]