

# Appendix B: Summary of responses to our statement of scope

## Introduction

1. On 3 July 2019, we published our statement of scope document alongside a notice for a market study into online platforms and digital advertising. It set out the intended scope of the study, including which types of platforms and aspects of the market we would focus on, while highlighting a number of issues that would be outside of our scope. It also explained the main competition concerns that we would be investigating, set out under the following three themes:
  - 1) competition in consumer services;
  - 2) consumer control over data and privacy; and
  - 3) competition in digital advertising.
2. We invited comments and views from stakeholders on the following areas:
  - our description of the sector, and whether this is broadly accurate;
  - the proposed scope of the market study, including whether there are areas we should particularly focus on, and whether there are important areas we have missed;
  - the three themes identified, including views on the potential concerns we are considering;
  - the range of potential remedies, including whether they would be appropriate, proportionate, and effective; and
  - our proposed approach to evidence gathering.
3. We received 62 responses from a variety of stakeholders, including online platforms, publishers, advertisers, ad tech intermediaries, consumer groups, think tanks, and academics.<sup>1</sup> We have published 60 of these responses on our website.<sup>2</sup>

---

<sup>1</sup> See the annex to this appendix for a full list of respondents.

<sup>2</sup> [Online platforms and digital advertising market study case page](#). We have decided not to publish two of these responses in line with our obligations as set out in Part 9 of the Enterprise Act 2002. Both requests not to publish were considered and decided in line with the guidance set out in [CMA6: Transparency and disclosure: the CMA's policy and approach](#). The main points raised within those responses are reflected in this summary.

4. This document summarises the key messages and common themes emerging under each of the five areas above. We have provided a short response to the key points at the end of each section.

## **Our description of the sector**

5. Most of the stakeholders that commented specifically on this question were broadly supportive of our description of the sector, with some of those outlining nuances for the CMA to consider.

### ***Description of market operators***

6. A few stakeholders expressed the view that the CMA should be very clear on how it defines 'online platforms' as a concept. This includes the Professional Publishers Association, which disagreed with our characterisation of online platforms as publishers, noting that they 'do not meet the regulatory or editorial tests to be considered [publishers]'.
7. A few stakeholders suggested that we consider the distinction between different types of online advertising ie between search and display, as well as display advertising within walled gardens and on the open web. Direct Line Group specifically distinguished between display and search advertising in terms of their characteristics and uses. It noted that 'display advertising is a form of "push media" which is good for raising brand awareness and improving customer reach' and 'search advertising is a form of "pull media" and lends itself well to direct response planning and return on investment'.
8. Some stakeholders noted digital advertising as being an increasingly important source of revenue for the newspaper industry. In relation to this, News Media Association noted that it 'would be interested to understand how consumer detriment or adversity will be interpreted'; for example, how the CMA would 'analyse a finding that consumer access to plural news sources is impaired as a result of platforms market hold over, or manipulation of, the digital advertising market'.

### ***Description of how the market functions***

9. A small number of stakeholders disagreed with our description of how competition in the sector is currently functioning, instead suggesting that the market is highly competitive. For example, the Progressive Policy Institute noted that 'the shift to digital advertising... has been a significant force driving down the cost of advertising globally'. Similarly, the Computer and Communications Industry Association noted that its analysis of the advertising

industry 'demonstrates that the advertising market has never been as dynamic as it is today'.

10. Similarly, Facebook stated that it 'competes vigorously with numerous online platforms – such as Google, YouTube, Amazon, Twitter, Snapchat, Pinterest, LinkedIn, Bing, Huffington Post, Yahoo!, Activision Blizzard and Fortnite – to attract and retain user interest in the UK'. It also explained that 'the rapid growth of TikTok, for example, which has been downloaded over 1 billion times globally since launching in 2016, demonstrates that barriers to entry are low and pose no meaningful constraint on the development and growth of competitors'.
11. In addition, Facebook submitted that it competes with these same user platforms, and numerous other online and offline channels, for advertising revenue.
12. Google also highlighted that features and practices of different platforms vary, urging for the CMA 'to distinguish market- or sector-level issues from those that are specific to individual platforms.'

#### **CMA Response:**

- In the context of the digital advertising market, we refer to 'publishers' as those parties that operate websites or apps and monetise their services through selling space for adverts. Publishers in a traditional sense (ie news publishers) are a subset of this category.
- We recognise the important differences between the different forms of digital advertising, as well as the different routes to market. These distinctions are reflected in our assessment of the market.
- We are examining the strength of multiple potential competitive constraints to the largest online platforms within the digital advertising market, including from rival platforms and other advertising channels.

### **The proposed scope of the market study**

13. There was broad support for the scope of the study that we set out, with several parties encouraging us to use the study to take forward the analysis and proposals made by the Furman Review. Many responses recognised that to fully understand the dynamics of the digital advertising market it is necessary to look more broadly at both sides of platform markets.
14. Most comments we received on our proposed scope tended to fall within three categories. Firstly, some parties supported inclusion of specific issues within

our scope, highlighting that they judge these to be of central importance. Second, some parties highlighted areas where they felt increased emphasis should be placed, or where some specific issues deserve greater attention. Thirdly, several parties also encouraged us to broaden the focus of the study.

15. We received strong support from multiple parties for considering the following issues that are within the scope of the study:

- Several responses, in particular those from consumer protection bodies, welcomed the study looking at whether consumers are able and willing to control how data about them is used and collected by online platforms. Which? stated that ‘the data collection practices of dominant companies can often deprive consumers of control and choice if they are only able to access services by accepting terms and conditions that require them to give away more data than they would do in a more competitive landscape.’ Open Rights Group and Business Information Risk Management Consulting stressed that consumer control over the collection of their data should be a central aim of this theme of work.
- Some responses highlighted the importance of the distinction we have drawn between different forms of advertising, and between different sources of advertising inventory, and of data. For example, DMG Media stated that we ‘should clearly distinguish between display advertising on “walled gardens” and display advertising on the “open web” as they raise different types of issues for advertisers and publishers.’
- Several parties highlighted the complexity and opacity of the digital advertising value chain as being the source of important concerns that warrant closer scrutiny. Damien Geradin said that ‘the ad tech value chain has been made unnecessarily complex by intermediaries (a strategy I like to refer to as “opacity by design”) in order to better take advantage of advertisers and publishers, which due to an asymmetry of information – and the lack of access to bidding data – have only a limited understanding of how the market functions.’ Similarly, Lloyds Banking Group stated that ‘the market operates through a complex chain of advertising technology layers, where subsidiaries of the major online platforms compete on opaque terms with third party businesses leading to ineffective competition in the market’.
- A few responses explained how the volume of traffic to their site is highly sensitive to changes in Google’s search ranking algorithm, which can be sudden and difficult to understand. For example, DMG Media explained that these dynamics can make business planning highly challenging, as

their revenue is dependent on decisions made by Google regarding its algorithm.

16. The following issues were highlighted by parties as deserving greater emphasis or more explicit inclusion within the scope of our study:
  - Citizens Advice, 5Rights Foundation, and The Carnegie Trust, among others, highlighted the importance of differentiating explicitly between different types of consumers in our analysis, including children and other potentially vulnerable consumers. These responses highlighted how the impacts of certain competition concerns, and the potential remedies to them, could vary significantly between consumers, and that we should not adopt a one-size fits all approach. 5Rights Foundation urged ‘the CMA to include children as a distinct group in the course of this market study’ and Carnegie Trust UK pressed for the CMA ‘to ensure that their study takes account of the impact of all these three themes specifically on children’.
  - Several parties highlighted concerns with the extent of tracking of consumers’ activity across the internet that occurs without consumers’ full understanding, or consent. Oracle stated that ‘most consumers, and most regulators for that matter, have little understanding about the scope and scale of data collection in today’s digitally-connected world.’ Similarly, Digi.me said that ‘being tracked from website to website because I am logged in to an account on a different website (e.g. Facebook log in) cannot be considered “explicit and informed” - few outside the tech community would have any understanding of what is being tracked or not.’
  - Some responses, including from News UK, Guardian Media Group, Digital Policy Alliance, and Verizon Media, highlighted the importance of looking at the whole ecosystem linked to digital advertising, with suggestions ranging from browsers, operating systems, and App stores to ‘smart’ in-home hardware such as voice assistants and thermostats.
17. We were also encouraged by a number of parties to broaden the scope of the study in several ways, including to capture larger number of platforms, a broader view of the UK advertising market, and other sources of consumer detriment that we stated were outside the scope of our study.
18. Several parties suggested the focus of our study should not be restricted to platforms that are funded by digital advertising. This point was made by different parties in support of two somewhat conflicting views of the market:
  - A few parties challenged whether a broader scope was needed to capture all digital platforms that operate in a gateway position and might therefore have a strategic market status. These parties were concerned that we will

be taking too narrow a view of the companies that hold market power in the digital ecosystem. A couple of responses did highlight and recognise that the CMA will be undertaking work on the broader digital landscape. The response from Which? said ‘we welcome that as part of the CMA's Digital Market Strategy there will be parallel work to this market study looking at, among other things, non-advertising funded business models. It is essential that these two pieces of work are closely linked.’

- A separate group of responses argued that a competitive constraint to large platforms can come from a broad range of products and services, and that this is not determined by their funding model. To support this argument, Digital Policy Alliance explained that ‘competitive substitution is a different issue from the funding models used to finance a business’. Making similar arguments, ResPublica also said ‘we believe that at the very least the CMA should retain the option for further investigation.’
19. Several responses also urged us to look more broadly at the UK advertising market, rather than focusing solely on digital advertising. Again, this point was made by two groups of parties with differing perspectives:
- Several parties, including Channel 4, and UKTV highlighted the competitive advantage that digital platforms have over traditional broadcast media in the advertising market, due in part to the asymmetry in the regulatory landscape. Channel 4 explained that ‘Television advertisers are competing at an inherent disadvantage to online advertisers due to the regulatory imbalance between the two sectors. This is allowing bad practice and unscrupulous behaviour to take place and is putting consumers and advertisers at risk.’
  - Some others made the point that, from an advertiser’s perspective, there is some substitutability between different forms of advertising, and so we must consider the entire market to make an accurate market power assessment. The Computer and Communications Industry Association stated that ‘Competition for advertising revenue, remains fierce between mediums such as online and offline advertising. Therefore, any competition analysis in this sector should comprise relevant stakeholders that include online and offline mediums.’ Similarly, the response from Whitereport questioned whether ‘online platforms and traditional media need to be considered as one advertising ecosystem as they all compete for advertisers’ money and consumers’ attention’.
20. News Media Association, News UK, DMG Media and the Guardian Media Group all noted that a few features the CMA proposed to consider in the market study would have implications on the sustainability of journalism. They

emphasised that this point would apply across different modes such as print, digital as well as future developments in audio form journalism. DMG Media noted that the news publishing industry would ‘not be able to survive much longer in a situation where digital advertising revenues are almost entirely captured by the Google/Facebook duopoly’, and that if ‘newspapers are no longer able to invest in original content, it [would] not only [be] their readers who will be harmed but society at large... and Parliament itself’.

21. In relation to issues of online harms, such as fake news and harmful content, several responses did recognise that these areas will not be the focus of our study as they are already the subject of wider government work. However, a small number of responses did highlight specific issues in this space that they thought should be addressed by the study. Reckitt Benckiser suggested the study ‘consider the opportunities for tackling fake reviews on sites’ and ‘to explore how sites ensure reviews are genuine to enable a level playing field’.
22. MoneySavingExpert stated that ‘Every day a great number of consumers are exposed to fake adverts, and risk losing considerable sums as consequence. It is essential that this harm is addressed, and it is logical for the CMA to include these harms within the scope of its market study.’
23. A small number of parties, including the Competition Law Forum and Digital Policy Alliance, expressed concern that the study would not consider mergers or killer acquisitions as a source of market power for large platforms.
24. Several responses cautioned that we must ensure the scope of the study, and any resulting recommendations, are joined up with, and well-informed by, all other related work going on across government and internationally.

**CMA Response:**

- Platforms funded by digital advertising remain the primary focus of the study. As recognised by some parties, the CMA is looking at a broader range of platforms and issues as part of its Digital Markets Strategy.
- A main focus of the study is digital advertising. As part of our analysis, we are considering to what extent other advertising channels such as traditional broadcast media are substitutes and thus provide a competitive constraint.
- We continue to engage proactively with wider government work in this area to ensure the scope of our work is joined up and duplication is minimised.
- We recognise that certain issues and remedies will not affect all consumers equally, particularly in relation to data collection and privacy concerns. Where appropriate, we are considering vulnerable consumers, including children, as a separate group as part of our assessment.

## **Theme 1: competition in consumer services**

### ***Overview***

25. Most respondents that commented on this topic suggested that Google and Facebook have market power or dominance in consumer-facing markets.
26. Google and Facebook did not directly comment on whether they have market power. Google said that platforms' market power in user-facing services warranted careful assessment, while Facebook argued that it faces fierce and dynamic competition.

### ***Role of data***

27. Several respondents suggested that large data sets help platforms to serve relevant content to users and help explain the strong positions of Google and Facebook. For example, the Competition Law Forum said that:
  - 'the strength of Google's market power on the consumer-facing side is mostly the result of data-driven externalities and learning-by-doing effects'; and
  - 'data-driven externalities are also decisive to the strength of a social network's market position'.
28. On the other hand, several respondents argued that the importance of data was less clear cut or that it was a context specific question.
29. The Computers and Communications Industry Association and Facebook noted that there had been successful recent entry by social media platforms that started with no significant amounts of data.

### ***Network effects, multi-homing, switching***

30. Several respondents said that network effects contribute to Facebook's market power:
  - Dr Ryan and Dr Lynskey said that 'network effects have played a significant role in Facebook's success as a platform and in the failure of would-be competitor platforms'.



- The Competition Law Forum said that ‘the strength of Facebook’s market power on the consumer-facing segment is mostly the consequence of direct network effects and lock-in’.
31. Ecosia stated that online platforms’ market power is reinforced by what it terms ‘Ecosystems of Platform Power’, where multiple services ‘protect and reinforce each other’.
  32. On the other hand, the Computers and Communications Industry Association argued that network effects can be negative as well as positive for platforms and do not create insurmountable barriers to entry. It suggested that consumers can easily switch or multi-home across different advertising-funded platforms.
  33. Facebook said that mobile devices enable consumers to ‘adopt and spread their limited time across a wide variety of services’ and that ‘the only restriction on consumers’ ability to multi-home is the time available to them’.
  34. In relation to search, the Competition Law Forum argued that a lack of multihoming reinforces Google’s market power.

### ***Entry and dynamic competition***

35. Several respondents encouraged the CMA to consider sources of current and potential competition to Facebook and Google from platforms with different characteristics and business models, such as Amazon.
36. Respondents made a variety of observations about historical entry and growth patterns in platform markets. For example:
  - BT noted that some online platforms have maintained or successfully improved their position in the market for a decade or more;
  - the Competition Law Forum said that there had been a ‘poor entry record’ in search engine markets; and
  - Facebook pointed to ‘new and fast developing platforms entering and expanding their offerings successfully on a continuous basis’.
37. Several respondents highlighted the record of large platforms in innovating and improving their services and products. For example, the Computers and Communications Industry Association said that ‘today’s leading innovators do not rest on their laurels... these companies are among the highest R&D spenders in the world’.

38. Facebook said that ‘multi-sided competitive dynamics require Facebook to compete vigorously in order to attract and retain both users and advertisers’ and that ‘these dynamics should be recognised with reference to a proper market definition analysis which is a crucial step in the Market Study, but which has so far been omitted in the [statement of scope]’.

### ***Other sources of market power***

39. A few respondents noted that, to compete in search, providers must either build a large web index (through web-crawling) or access a web index through a syndication contract. Others highlighted the importance of being the default search engine on consumer devices.
40. Several respondents suggested that platforms strengthen or protect their market power through the acquisition of entrants and competitors.
41. Respondents suggested various other advantages that Facebook and Google derive from the large scale and scope of their businesses.
42. Guardian Media Group argued that the smart speaker market is highly concentrated and that this could lead to new forms of bottleneck power in future.

#### **CMA Response:**

- The majority of responses on this theme supported the view that Google and Facebook have some degree of market power in their consumer facing markets, though there was slightly less consensus on the underlying sources of this power. We recognise that the underlying issues are both market and platform specific, and therefore that any potential remedies considered in this area must sufficiently targeted.
- We have received competing views on the extent to which dynamic competition ‘for the market’ constrains the behaviour of Google and Facebook. We will seek to form a view on this issue in the course of our study.

## **Theme 2: consumer control over data and privacy**

### ***Overview***

43. The majority of respondents generally agreed with the characterisation of the issues under theme 2 and highlighted:
- the need for greater clarity, transparency and accessibility over the terms and conditions (T&Cs) and privacy policies of the major platforms;

- the importance of considering the potential impacts of any interventions on all market players;
- the value of considering and, where appropriate, co-ordinating with the other work being done in this area; and
- the need for increased public awareness and understanding of the role of user data in online advertising.

### ***Consumer understanding***

44. Respondents were generally in agreement that consumers lack the understanding to engage over the collection and use of their data.
45. The Behavioural Insights Team reported that participants of its studies into consumer understanding of T&C's and privacy policies correctly recalled just 40-60% of key terms. It also reported that understanding of the various types of data consent options, such as consent to the use of personal data for specific purposes, was very low, but that 'providing people with more granular detail about how their personal data is used can actually create greater confusion.'
46. Citizens Advice, Which? and others submitted that the majority of consumers had significant concerns over privacy, with Which? in particular noting there is 'a widespread sense of disempowerment' amongst consumers. Competition Law Forum quoted research by the UK Information Commissioner's Office, stating that 53% of British adults were concerned about their online activity being tracked, and research by the European consumer protection organisation BEUC, saying that 70% of EU consumers have concerns about the processing of their data.

### ***Vulnerable customers***

47. Several respondents, including Citizens Advice, Barclays, ResPublica and Carnegie UK Trust, noted that data collection had a particular impact on vulnerable consumers. Behavioural Insights Team highlighted that the impenetrability of the majority of platforms' T&Cs is exacerbated for vulnerable users. Citizens Advice made the point that, if platforms were to pay consumers for their data, such payments would 'disproportionately benefit low income consumers' budgets. Conversely, vulnerable or lower income consumers might have worse outcomes – if their data had little or no value, for example.'

## ***T&Cs and privacy policies***

48. Respondents raised a number of concerns about the privacy policies of the major platforms, stating that they are:
- excessively lengthy and complex;
  - expressed in incomprehensible legal jargon and contain lots of links to other pages; and
  - typically vague as to the circumstances in which, and the persons to whom, data may be transferred, for example simply referring to providing 'a more tailored and consistent experience' or 'third-party partners'.
49. According to Competition Law Forum, privacy policies often omit to provide information such as the specific kinds of data being held, how long the data will be retained, with whom it will be shared, the format in which it is held, the security measures used or the purposes for which it will be used ('for instance, targeted advertising or price discrimination'). Privacy International notes that the situation is exacerbated by market concentration, as 'companies in a dominant position have no incentive to adopt business models and practices that enhance individuals' privacy, and they may seek to exclude any privacy enhancing players from any of the markets where they can exert market power.'
50. Some respondents also observed that the regular changes that the platforms make to their privacy policies have led to increases in the amount of data collected or shared.
51. Many respondents highlighted other techniques adopted by the major platforms to exploit consumers and collect more data:
- **Use of defaults which favour the platforms' interests** – several respondents mentioned this as a concern. Behavioural Insights Team and Citizens Advice advocated allowing users to set a wider range of their own conditions and for the adoption of 'sliding scale' opt-ins. Google argued that opt-in consents are not necessarily preferable, as 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)'; however, Behavioural Insights Team and Citizens Advice advocated allowing users to set a wider range of their own conditions and for the adoption of 'sliding scale' opt-ins.
  - **Use of dark patterns** – Open Rights Group and Competition Law Forum both referred to the use made by platforms of design features intended to

nudge consumers into making certain choices (eg to accept consents) and the invariably lengthy and complex route that users wishing to manage their data settings are required to navigate.

- **Creating an illusion of control** – Competition Law Forum stated that 'users are able to choose from several granular settings which regulate access by other individuals, but cannot exercise meaningful control over the use of their personal information by Facebook or third parties. This gives users a false sense of control.' Dr Ryan and Dr Lynksey's response observed that, even if platforms provided consumers with robust control, this would 'only cover "frontstage". However, what is happening backstage - such as the processing of personal data in the context of the real-time bidding process /.../remains impossible for users to control.'
  - **Use of 'take it or leave it' conditions** – Privacy International, Telefonica and Competition Law Forum blamed the lack of an opportunity for consumers to negotiate terms with regard to the collection, sharing and use of their data on the absence of any real competition for the platforms' excessive data collection practices.
  - **Use of consent framework in the GDPR** – the News Media Association noted that Google's consent framework, introduced on the eve of the GDPR 'required publishers to give 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 liability.'
52. Concerns were also raised about the use of real-time bidding (RTB) in the advertising supply chain. The Open Rights Group stated that, in the course of this process, 'intimate personal details about [users] are broadcast to tens or hundreds of intermediary adtech companies' and that this process is repeated 'hundreds of billions of times each day and there are no limits on what the intermediary adtech companies, which have no direct relationship with consumers, can do with consumers' personal data once they receive it.'
53. Barclays, Business Information Risk Management Consulting and Which? all commented on the need for greater consumer understanding and awareness of how digital advertising works and the value of their data. BT observed that 'greater focus should be given to building awareness of this exchange and the value of personal data. Our belief is that if individuals understand that their data has value, they may be more incentivised to read and engage with privacy policies and be more selective when deciding who they share their

data with. This, in turn, could stimulate greater competition with data handling and privacy becoming a key dimension of competition.’

54. Several respondents also expressed concern about the commoditisation of personal data. Privacy International commented that ‘personal data is not just any other economic asset’ and that privacy and the protection of personal data are fundamental human rights. Open Rights Group said that it was concerned about the framing of the market study ‘in terms of consumers getting “insufficient compensation” or “poor value” for their data. Personal data is not a commodity; rather, it goes to the heart of individuals’ identity. Data protection rights, most notably those provided for in the [GDPR], protect consumers through a fundamental rights-based framework.’
55. Business Information Risk Management Consulting observed that phrases used in our statement of scope, such as ‘consumers getting insufficient compensation for their data’ and ‘consumers receiving poor value for their data’, ‘appear to imply an assumed acquiescence to data collection based on some undefined but universally acceptable quid pro quo.’

#### **CMA Response:**

- We received strong views and useful evidence on a wide range of issues relating to data collection by platforms. We will look to explore all of these in more detail as the study progresses.
- We recognise that under this theme in particular there will be significant differences in how certain issues affect different consumers, and that it will be important to consider separately any impacts on vulnerable consumers throughout our study.
- A few parties expressed concerns regarding our framing of issues around the value of consumer data. Our primary aim in this area is to give consumers greater control over their data. We will engage with interested parties on this issue to ensure we understand the full range of possible consequences of any remedies under consideration.

### **Theme 3: competition in digital advertising**

#### **Overview**

56. Most respondents agreed with the overall concern set out under this theme – that the largest online platforms have market power in digital advertising – and supported our focus on data as a key source of this market power. Google agreed that the role of data in digital advertising is indeed a fundamental question, while Facebook submitted that data provided by users does not confer market power or act as a barrier to entry.

57. Transparency was raised as a concern by several respondents. Several publishers and advertisers pointed to the lack of transparency of Google's search algorithm as a key concern. Some respondents also raised concerns about the way in which the large platforms measure and report advertising performance.
58. Many respondents commented specifically on advertising intermediation, or 'ad tech'. Nearly all who did so expressed the concern that Google has market power. Some highlighted Google's ad server as a particular source of market power and most noted that Google has a high share at various levels of the value chain.
59. Many respondents expressed concerns about the imbalance in power in Google and Facebook's relationship with publishers. All publishers submitted that they have little ability to negotiate with Google and Facebook and instead have terms dictated to them on a 'take it or leave it' model.

### ***Competition and sources of market power***

60. Most respondents, including a number of advertisers, agreed with the overall concern in the statement of scope that the largest online platforms have market power in digital advertising, in part due to the rich datasets they hold. BT mentioned that an additional source of market power may arise from their global scope creating advantages over their local/regional counterparts. Some advertisers were concerned this may lead to higher prices. Barclays also raised the concern that a lack of competition has led to terms and conditions that are opaque and not user friendly. The need to interact with a large platform for digital advertising penetration means there is little alternative – platform advertising has become a must have for consumer facing organisations.
61. The Computer and Communications Industry Association set out an opposing view, suggesting its analysis of the advertising industry demonstrates that the advertising market has never been as dynamic as it is today with many online as well as offline channels fiercely competing for advertisers' money. While Direct Line Group stated that it 'supports the CMA's review into the strong market positions of online platforms', though it believes that the potential concerns articulated need to be weighed against the potential benefits that the scale of these platforms can bring to the functioning of the markets, and to the protection of consumer interests.
62. Google search was singled out as the most dominant form of digital advertising, or an unavoidable trading partner, by several advertisers, many of whose businesses rely on it. Some pointed out that Google has significant

control over the number of ads consumers see as it can replace organic search with paid advertisements. For example, mobile ads now take up all of the first screen on most searches. The organic traffic of several businesses has deteriorated significantly in recent years as a result. One online travel comparison service suggested that ‘Google has been able to use its dominance in search to vertically integrate travel search services through the introduction of Google Flights and Google Hotels services.’

63. Google observed that high level competition metrics tell a different story about how the market is performing, providing evidence that total cost of revenues (including Traffic Acquisition Costs) as a proportion of revenue has been rising, while prices (cost-per-click) has been falling substantially in recent years.
64. Respondents from other advertising segments, including Channel 4, UKTV, and Radiocentre, noted that digital advertising was taking share away from these formats. They suggested that in addition to having less data, other forms of advertising are competing at an inherent disadvantage to online advertisers due to the regulatory imbalance with digital advertising (suggesting that digital advertising is insufficiently regulated).
65. Almost all respondents supported our focus on the role of data as the key source of market power in digital advertising, for both Facebook and Google (but particularly Google). Some respondents, including Oracle and Digital Content Next, pointed out that Google and Facebook dominate the digital advertising market as a result of the data they collect not just from user-facing services but from tracking users across the internet. Oracle highlighted that ‘Google also captures an enormous stream of surveillance through its ubiquitous Android operating system and the two billion Android phones traversing the planet.’ Channel 4 noted that the ‘digital giants also have additional tools at their disposal that allow them to make particularly effective use of the data they hold’ thereby giving them a huge commercial advantage over other content providers.
66. Google submitted that the role of data in digital advertising is indeed a fundamental question. It submitted that the value of a particular type of data may depend on:
  - its usefulness (measured against criteria such as variety, velocity, volume, and value);
  - whether similar data are available from other sources;
  - whether users can port their data between services;



- how the data is used; and
  - restrictions on data use.
67. Facebook submitted that data provided by users does not confer market power or act as a barrier to entry, on the basis that:
- data is non-rivalrous, ubiquitous and easily obtainable from a number of third-party providers as well as from users directly when they choose to engage with valuable services;
  - user data is not necessary for competitors to enter the market or expand their offerings; and
  - diminishing economies of scale and scope from “big data” mean that market participants do not grow in proportion to the data they possess.
68. The Computer and Communications Industry Association also disagreed with the view expressed in the statement of scope of data as an insurmountable advantage, highlighting several examples of Internet companies that successfully entered established markets prior to acquiring access to big data. It submitted that proposals to classify data as an essential input are unfounded and rest on a misunderstanding of the concept of data that is, among other things, non-rivalrous and non-exclusive.

### ***Transparency***

69. Several respondents, particularly publishers and advertisers, pointed to the lack of transparency of Google’s search algorithm (and to a lesser extent Facebook’s Newsfeed ranking) as a key concern. Many highlighted their reliance on Google search and examples of changes that adversely impacted their business:
- DMG Media pointed to several examples where its search traffic from Google has been severely affected for unknown reasons and suggests that Google is discriminating against it. It also suggested that Facebook’s algorithm prioritizes in the newsfeed content that is in the Instant Articles format over other content that is not. DMG Media suggests this enables Facebook to capture a greater share of data and advertising revenue.
  - One advertiser submits that it has frequently been subject to arbitrary and unexplained suspensions of its AdWords account without satisfactory explanation as to why.

- ISBA said that ‘Algorithm changes introduced periodically by Google can have a significant impact on brands’ search rankings and result in immediate loss of revenues, requiring considerable resource to recover. An example of this was the impact on Moneysupermarket of a change in algorithms in 2013, which ‘hit visitor numbers and revenue growth’ and sent it ‘tumbling down the list on the [search] results page’. Moneysupermarket went from 1st to 5th search result which had a material impact on its revenue.’
70. UKTV also suggested that social media platforms use algorithms which can lead to ‘echo chambers’ or ‘filter bubbles’ where a user is presented with only one type of content instead of a range of sources. It said that, at present, ‘there is no systematic means of assessing the impact of a platform’s algorithms and decisions, nor of holding intermediaries to account.’ It went on to explain that algorithm changes on Facebook, for example, have an impact which can result in a significant reduction in traffic.
  71. Several respondents, including DMG Media, Professional Publishers Association, Channel 4, and Competition Law Forum, raised concerns about the way in which the large platforms measure and report advertising performance when advertising within walled gardens. Several highlighted the example of Facebook admitting to miscalculating the time spent by users viewing video ads in 2016 of up to 80%. Channel 4 noted that ‘the group of advertisers impacted filed a lawsuit in which they alleged these figures had been inflated by as much as 900%’, and that Facebook had recently entered into a settlement with the parties.
  72. Guardian Media Group noted that many of the transparency concerns for advertisers and publishers would be exacerbated for market participants in audio forms such as smart speakers and audio assistants, due to the personalised and less visible nature of audio content streams.
  73. A few respondents raised concerns that there is a large extent of advertising fraud online. A response from Dr Ryan and Dr Lyndskey provided some statistics illustrating the potential scale of ad fraud. Oracle submitted that its ‘technologies ferret out fraud in digital advertising and provide a neutral analysis of an ad’s effectiveness’ and thus informing its ‘judgment that the digital advertising industry is not working.’ Channel 4 submitted that digital advertising is heavily plagued with bot-driven traffic in stark contrast to its own platform. UKTV submitted that ‘Ad fraud is often referred to as the second biggest revenue source for organised crime after narcotics.’
  74. ISBA identified a concern from ‘a lack of alignment between the interests of agencies and their clients in the media marketplace. Client fee income for agencies was in long-term decline and other sources of income were growing.

These included profits from buying and re-selling digital media to clients at non-disclosed margins, margins from adtech and rebates and discounts from media owners. These introduced the risk of conflict of interest in the agency-client relationship. In April 2016, ISBA launched a new Framework template agreement for Media Planning and Buying services for advertisers.'

### ***Intermediation***

75. Most respondents, and nearly all of those that commented on ad tech, expressed the concern that Google has market power. Some highlighted Google's ad server as a particular source of market power, as advertising teams optimize for Google's ad server and the often-opaque business rules and measurements Google establishes. Most noted that Google has a high share at various levels of the chain. Several noted that this market power had arisen as a result of a series of acquisitions made by Google, the most notable being DoubleClick. Oracle noted that publishers and advertisers both had strong incentives to use Google intermediaries to access the targeting data it holds.
76. The same respondents also had concerns that Google exploits its market power in intermediation through self-preferencing behaviour. The following more specific concerns were raised:
- DMG Media said, with reference to an academic paper by Geradin & D. Katsifis, that 'Google has used its control of DFP (Google Ad Manager), its dominant ad server for publishers, to give systematic preference to its own ad exchange – via “dynamic allocation” and “last look” – to the detriment of other ad exchanges. This form of vertical leveraging has had a devastating impact on competition in ad tech.'
  - Digital Content Next said that 'on the demand side, because Google oversees more advertising demand than any of the top five advertising agencies, Google is able to, in effect, set the rules of data usage in the open-auction market. Google determines these rules with full knowledge whether they will help Google or help publishers.'
  - European Publishers Council explained that, following Google's acquisition of DoubleClick in 2007, 'Google used DFP to favour its own intermediary Google Ad Exchange ('AdX") to deprive rival intermediaries from revenue, while continuing to acquire new companies and integrating them into its ad tech stack. Dissatisfied publishers resorted to an innovative technique called “header bidding” which promised fairer auctions, but Google refused to participate, instead launching its own product (called “Exchange Bidding”) to ensure that it remains in control of the ecosystem. Google's ad

tech stack is rife with conflicts of interests, as the same entity (Google) both organises auctions and participates in such auctions, without even the slightest pretence of separation.’

- Oracle stated that ‘Google’s use of various policies and technical restrictions foreshadow its drive to slowly wall off its competitors in the provision of ad tech services to independent content creators and advertisers currently participating in the open internet of display advertising. The massive amounts of consumer data Google injects solely into its own services — and its restrictions on customer usage of non-Google data — drive customers to rely on Google’s ad tech stack rather than solutions from independent providers. Its dominance over the Chrome browser has a direct impact on the ad tech ecosystem, as its proposed changes to Chrome have the potential to directly prevent rival ad tech companies from implementing their own targeting solutions, which could bring the independent ecosystem to a grinding halt.’

77. Google noted that contrary to the CMA’s view that platforms could leverage market power into other parts of the supply chain, vertical integration could benefit stakeholders. For example:

- it suggested that it could mean that there is a single point of contact for advertisers and publishers, eliminating concerns about the possibility of rent-seeking by ‘difficult-to-identify intermediaries’; and
- it also suggested that it can make it easier for consumers to understand how – and by whom – their data will be processed.

78. Many respondents expressed concern about the transparency of programmatic advertising and the loss of value to the ad tech supply chain. Several suggested that Google in particular was able to earn high margins from exploiting the lack of transparency in ad tech. The European Publishers Council said that ‘Google charges publishers a commission for the use of its intermediation services (AdX) calculated on the basis of the clearing price of the AdX auction. However, the same ad may go through multiple consecutive auctions – all run by Google – until it is finally sold. Google may take advantage of the different prices of the various auctions it organises in order to receive an extra margin.’

79. Google submitted that ad tech opacity may be partly a function of fragmentation, that transparency is improving, but that it is limited by the need not to supply commercially sensitive information to competitors.

80. Many respondents expressed concerns about the imbalance in power in Google and Facebook’s relationship with publishers. All publishers submitted

that they have little ability to negotiate with Google and Facebook and instead have terms dictated to them on a ‘take it or leave it’ model.

81. Other commentators have also focused on this imbalance. The Competition Law Forum said that the exploitative terms introduced in the 2015 Data Policy by Facebook harmed publishers to a great extent, given that by enabling Facebook’s surveillance of their readers and visitors, Facebook was able to undercut their value and publishers’ pricing power over them. Dr Ryan and Dr Lyndskey also made this point, expressing concern that ‘publishers may be required to agree to practices such as the use of unique identifiers in RTB “bid requests” that enable companies that receive these to turn each publishers’ unique audience into a commodity that can be targeted on cheaper sites and apps.’

**CMA Response:**

- We received broad support for the wide range of issues and concerns that we identified under this theme, including in relation to transparency and the functioning of the intermediated market. We have been encouraged to investigate each these issues in more depth.
- There are strong views held by different parties about the role and value of data in the digital advertising market. We will seek to shed greater light on these complex issues through the course of our study, while also recognising the potential interactions with issues under theme two relating to consumer control and privacy.

## **The range of potential remedies**

### ***Remedy area 1: data remedies***

82. Data mobility is frequently referred to in parties’ responses as a positive and necessary remedy to address competition concerns in digital markets. However, the extent to which this remedy could be effective varies significantly across the markets within the scope of our study. For instance, respondents did not explain how personal data mobility could address competition concerns in the market for general search.
83. For social networks, this remedy was only mentioned by a few respondents and was described as a necessary but insufficient remedy. By contrast, with regards to digital advertising, several respondents proposed the creation of a ‘Digital ID’ which could enable platforms, intermediaries and publishers to engage directly with users to access their personal data, lowering barriers to entry and facilitating competition.

84. The benefits of interoperability (sometimes referred to as systems with open standards) were highlighted in a number of the responses that addressed this subject. These submissions noted that this proposed remedy is particularly suited to the social media and electronic communications markets (Facebook specifically), which exhibit strong direct network effects, and provides the clearest use case of how data remedies could be used to address market power in the consumer facing markets.
85. Privacy International also made specific reference to the potential effectiveness of open standard obligations on which systems could be built to enable compatibility of services to reduce the lock-in effects that existing social networks benefit from. It suggested that Facebook's interoperability could be extended to applications and services outside of its internal ecosystem.
86. The submissions on 'open data' remedies provided little insight into which datasets should be made available to facilitate competition in the markets in scope. Respondents also raised two significant areas of concern:
- the privacy implications of such a remedy, including its compatibility with GDPR, which limits interventions to anonymised data; and
  - the damaging impact on the incentive to invest in the collection, processing and interpretation of data.
87. Finally, certain stakeholders including Which? warned that given the relatively nascent nature of some of these remedy proposals, and the currently low levels of consumer engagement, any remedies should be thoroughly tested by the CMA. BT also suggested that any remedies in this area should be kept under review and subject to change to ensure they remain necessary, proportionate and in line with the fast-move ad-tech ecosystem, and digital markets more generally.

### ***Remedy area 2: consumer protection in respect of data***

88. Many respondents submitted that greater transparency around the platforms' data collection was key to affording consumers better protection. Privacy International advocated the adoption of a 'fairness by design' duty that would 'require online platforms to provide for privacy policies in concise, exhaustive and clear language, granular consent mechanisms, and by limiting the ability of online platforms to share data across various applications'. ErnieApp suggested that new duties, in terms of privacy transparency requirements, should be imposed on platforms and that any such remedy should include 'privacy settings design harmonization and privacy setting taxonomy adoption'.

89. Digi.me suggested that a different solution would be for publishers (including Facebook and Google) to ask for data directly from the consumer, as this would make ‘the exchange of data for a good or service explicit’. It explained that companies such as Digi.me would then be able to integrate different types of data from multiple sources to make this process work better for publishers and facilitate ownership by an individual of their data, while ‘enabling the provision of a service or reward as an exchange for that data’.
90. Some respondents felt that more transparency over data privacy policies would help to facilitate competition between service providers on privacy terms. The Competition Law Forum observed that, ‘with the majority of consumers uninformed or confused about their data processing practices and related privacy harms, Google and Facebook feel little to no pressure to reduce the intrusiveness of their practices, in spite of consumers’ voiced preference for more online privacy’. However, Damian Geradin questioned ‘whether ensuring that consumers obtain greater information about the data collected by the platforms and the use they make of such data will stimulate competition in consumer-facing markets.... Regulation of the platforms’ data collection practices may thus be more effective than empowering Internet users to have greater control over the use of their data.’
91. In terms of data collection itself, the Developers Alliance stated that ‘identifying potential remedies related to consumer data access should take into consideration the diversity in how data is used by various applications’, citing car parking apps requiring location data as an example of an occasion where access to certain data is intrinsic to the service itself, and cautioned against confusing that type of situation with the collection of data purely for advertising purposes.
92. Some respondents felt that greater use of opt-in consents, rather than default settings and a need to opt out of data collection, would improve data protection for consumers. Google’s view, however, was that requiring users to provide more frequent consents might lead to less user engagement and that user research is a ‘key component of any recommendations in this regard’. It also commented that ‘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.’
93. Arete Research suggested that digital platforms should be required to ‘expose their opt-out rates and seek to value the data they collect on end users by examining the price differential between ads bought “with data” and those bought on an “un-targeted” basis’.
94. In terms of methodology for considering potential remedies to give consumers greater protection, Guardian Media Group said that it was ‘vital’ for the CMA

to adopt ‘a consistent definition of how personal data is used by search and social platforms to gather and infer characteristics about individual users and their future action.’

### ***Remedy area 3: limiting market power***

95. There was general support from a range of parties including publishers, advertisers, broadcasters and academics for some form of ex ante regulation of large platforms’ conduct in the digital advertising market. Some explicitly supported the Furman Review proposal for a code of conduct for platforms designated with a Strategic Market Status.
96. Some responses also provided some more specific suggestions for issues that could be tackled by a new ex ante regime. One advertiser said ‘if there were clear rules for companies (such as Google) to follow, then an advertiser would not end up in the situation that [an ICSS provider] has found itself in, whereby accounts have been arbitrarily suspended without clear, upfront reasoning, and without a clear and formalised way for the advertiser to challenge the suspension. Transparency of contract terms is key to an effective functioning of the market.’
97. News UK and Damien Geradin, both suggested some areas where rules and guidance could usefully be introduced within such a regime, including:
  - rules on the terms on which platforms transact with different digital advertisers, including on how platforms set prices;
  - increased reporting and transparency on the different activities undertaken by the platforms across the value chain; and
  - requiring vertically integrated platforms to implement an appropriate form of separation between different activities across the value chain.
98. A few other parties referenced the separation between certain activities in the digital advertising supply chain as being important. Channel 4 urged us to consider this ‘as a way of ensuring competition in the advertising market given the huge size and scope of the digital giants.’ The European Publishers Council went further, suggesting ‘the CMA should implement structural remedies e.g. breaking up Google’s ad tech stack’.
99. Some responses also suggested that platforms’ use of algorithms should be captured within an ex ante regulatory regime:



- The Competition Law Forum said that ‘both Google and Facebook should be prevented from implementing any modifications to their algorithms that result in undue advantages for their platforms and harms for rivals.’
- An online travel comparison service said it ‘would support Potential Remedy Area 3 (Paragraph 95 point C) cited within the CMA’s Statement of Scope which would require ‘vertically integrated platforms to implement an appropriate form of separation between different activities across the value chain, to the extent necessary to reduce incentives to favour their own businesses.’

100. A small number of respondents cautioned that we should be careful to avoid any unintended consequences of new regulation, including the potential to entrench any market dominance of incumbents.

***Remedy area 4: improving transparency and oversight for digital advertisers and content providers***

101. Not all responses chose to comment on this remedy area but of those that did, most were broadly supportive of the need for greater transparency in digital advertising markets. Some respondents specifically argued that greater transparency would help ensure greater competition.

102. There were, however, different views as to what transparency remedies should cover. There were three main areas where there were calls for greater transparency:

- financial flows and commissions;
- measurement (ie the standardisation of industry metrics); and
- algorithms.

103. A limited number of responses also referred to problems created by some platforms playing a dual role in relation to the buying and selling of digital advertising and that this issue also needed greater oversight. This related to large platforms acting both as market places as well as sellers in those markets and the potential conflicts of interest that this could give rise to.

104. A number of responses suggested that increased transparency would improve trust in digital advertising and help to combat advertising fraud.

105. Several responses also referred to existing industry initiatives in this area while others made specific suggestions about potential remedies in this area including:

- improved disclosure;
  - platforms being required to submit data to an independent third party to scrutinise the performance of advertising campaigns;
  - the use of new technology such as blockchain; and
  - structural separation.
106. Some respondents did urge caution in respect of calling for increased transparency. For instance, one cautioned against a one size fits all approach and another argued that transparency should not extend to sharing commercially sensitive information.
107. A number of responses also drew parallels with increased transparency in respect of data collection and handling (under theme 2) and transparency in relation to the advertising supply chain (under theme 3).

#### ***Remedy area 5: institutional reform***

108. A minority of responses commented explicitly on potential institutional reform. Of those, several parties supported taking forward proposals of the Furman Review for ex ante regulation being overseen by a new Digital Markets Unit.
109. Barclays expressed the view that there would be ‘benefit to the DMU being set up as an independent cross-sectoral body’ and said it would ‘welcome clarity from the CMA and indeed the government on when and in what form the DMU should be expected’. Guardian Media Group said it ‘welcomes proposals to establish a new Digital Markets Unit, which would act as a standing statutory regulator to examine existing and emerging issues with the practices of platforms with strategic market status.’
110. Several parties raised concerns about possible unintended consequences of making changes to the regulatory landscape, including the potential to introduce further complexity or tension between overlapping bodies. For example, Direct Line Group said it ‘considers that the establishment of a “Digital Markets Unit” as proposed by the Furman Review (and identified by the CMA as a potential remedy), could have some benefits in terms of a unified, independent approach to regulation across digital markets. However, DLG notes that care would need to be taken to ensure that any such body did not duplicate, undermine, hinder, or otherwise make unnecessarily complex the successful regulatory and supervisory activity that is already taking place.’
111. To counter this issue, Vodafone suggested that ‘any ex ante targeted regulation should be overseen by an existing regulator i.e. Ofcom.’ It

explained there 'are already a number of different regulators acting in the digital space which has led to significant confusion and potential duplication.'

112. Two parties (Digital Policy Alliance and ResPublica) also questioned whether it was appropriate for the CMA to be opining on reforms to the institutional landscape. ResPublica stated that 'the CMA's position is one of an institution with an interest in the outcome and that this is not an issue in which it is can exercise a position that is entirely impartial.'

### ***Other comments on remedies***

113. A small number of parties expressed concerns that we had identified potential remedies before going through the process of conducting a rigorous assessment of the problems and evidence.
114. Facebook said 'it does not seem appropriate for the CMA to have sought to formulate remedies proposals at the very outset of the Market Study. Doing so before any fact finding, evidence gathering and/or assessment of market failure has commenced - and certainly in the absence of any legal or economic assessment of potential failures in the market and evidence of consumer harm – risks having the unintended effect of diminishing, rather than furthering, consumer benefits and competition in online advertising.'

#### **CMA Response:**

- The inclusion of potential remedies in our statement of scope is not an indication that we had reached any conclusions from the outset. We are conducting a thorough, evidence-based assessment of competition in the markets and areas identified, and will propose remedies only where there is a strong justification to do so. There has been significant work to date in this area, with many of the issues and potential remedies discussed at length in the public domain. The progress in this public debate was reflected within in our statement of scope.
- We received a wide range of useful views and evidence on the potential remedies we described. We also received suggestions for a number of new proposals that may warrant further consideration. This input has provided a strong basis for our preliminary analysis.

## Our proposed approach to evidence gathering

115. Only a minority of parties commented directly on the CMA's proposed approach to evidence gathering. Those that did were broadly positive about our approach. This includes Verizon Media, which said it welcomed 'the use of technology and behavioural expertise fostered by the CMA, all of which are necessary to understand digital market dynamics and competitive behaviour. The CMA has placed itself on the vanguard in creating a Data, Technology and Analytics Team, as it recognises that technologists, data scientists and behavioural economists are important to understanding the evidence and data being collected for true insights into competition in these digitally driven areas. The market study should employ this resource and expertise to ascertain incentives, distortions, and opportunities for enhanced competition.'
116. Waitrose and Partners stated that it welcomes our approach to 'seeking evidence from a wide range of digital advertising market participants'. However, Digital Policy Alliance stated that 'many of those affected by the major global platforms have no mechanism to share their views and no opportunity to present evidence and perspectives to the CMA'. It emphasised the importance of considering the views of all who are affected including consumers, small businesses and those who may not have the time and/or resources to participate in the inquiry.
117. Both News Media Association and Facebook have referenced the specific impact that digital advertising has had on smaller advertisers and publishers:
- News Media Association noted that regional and local publishers should be within the scope of the market study, as 'they are equally reliant on digital advertising revenues to help to fund their journalism' as national publishers. It offered support to engage with these stakeholders.
  - Facebook submitted that its investments in driving innovation have enabled it to grow its business by helping advertisers, especially small and medium enterprises, to grow theirs.
118. Some respondents have recommended that more innovative methods of evidence gathering should be used, or that the CMA should be conducting primary research:
- Whitereport recommended that 'more of the innovative and independent, 3rd Party data and analysis tools' should be considered, in order to have 'the most accurate view of the current cross-media reality'. It also recommended that the CMA conduct field and/or laboratory experiments

‘to simulate the online environment to understand influences on consumer behaviour’. It has provided the CMA with information on the types of primary research methods that could be used to gather evidence.

- Behavioural Insights Team also recommended the use of experimental research methods such as field studies and/or of laboratory experiments, where data is not available, to ‘stimulate the online environment’. An example of this is a ‘flip test’, which mimics the behaviours of a user.
- Barclays also recommended that the CMA conducts primary research, saying it ‘notes that the CMA is proposing pulling together existing research such as that by Which?, rather than conducting empirical user research into consumer journeys and use of platforms’. Instead, it urged ‘the CMA to reconsider this approach as conducting its own research will allow it to use a robust and independent methodology’. Barclays stated that it has used both qualitative and quantitative market research ‘to help shape its decisions on its Open Banking architecture and in other customer facing changes including understanding the impact of vulnerability’.
- When gathering evidence in relation to the proposed remedies, Which? stated ‘it is important that any remedies are tested with consumers to offer a more robust insight into their effectiveness’. This is because Which? found a ‘dissonance between consumers’ attitudes towards data collection and use and their behaviour’ during its Data Dozen segmentation.

119. Respondents have also recommended further evidence which could be gathered:

- Google suggested that the CMA will ‘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’.
- Telefonica suggested that the CMA should use qualitative research to inform competition analysis that goes beyond prices, to consider also factors such as quality, privacy, choice and innovation.
- ResPublica recommended that evidence should be gathered from all stages of the supply chain.

120. Several responses have also encouraged the CMA to communicate with other authorities with overlapping or adjacent remits when gathering evidence.

### **CMA Response:**

- We agree with responses highlighting the importance of gathering views from a broad range of stakeholders, including small businesses in the digital advertising sector, smaller advertisers, and local news publishers. We will continue to do so as the study progresses.
- Our initial approach to evidence gathering has been to learn what we can from existing studies and research, including by consumer groups, academics and think tanks, and the platforms themselves. We are aware that significant work has been conducted in this field to date that we aim to utilise.
- We are open to taking forward our own primary research in the second half of the study if this proves necessary.

## **Views on a market investigation reference**

121. In our statement of scope on the online platforms and digital advertising we said that we did not currently ‘expect that a ‘one-off’ intervention by the CMA, such as could be achieved through a market investigation, would be sufficient to provide a sustainable long-term framework for the sector.’<sup>3</sup>
122. We received 5 responses from stakeholders that included a request for a market reference under section 131 of the Enterprise Act 2002, 3 of which were published on our case page:
- A UK media company.
  - An online platform;
  - Dr Ryan & Dr Lynksey;
  - News Media Association; and
  - Privacy international.
123. Two of the public responses submitted that the market investigation should be used to address two key concerns in the market:
- Privacy International referenced the ‘inherent lack of transparency’ in the market;

---

<sup>3</sup> CMA, Statement of Scope in the Online Platforms and Digital Advertising market study, paragraph 80.

- News Media Association hoped that the market investigation would ‘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’.

1.1 In terms of the scope of any reference, a UK media company considered that any ‘reference should be forward looking and specifically include the impact of digital platforms on video content and advertising broadly across the full range of internet-connected services’.

1.2 One online platform made the case that the threshold for a market investigation reference under section 131 of the Enterprise Act 2002 had been met in relation to the general search market. It argued that the structural features of the search market, including network effects and barriers to entry and expansion, coupled with behaviour of incumbents and consumers, are restricting competition in the market.

## Annex: List of respondents to our statement of scope

1.3 To access the responses please see the [Online platforms and digital advertising market study case page](#).

**Table 1: Table of respondents to our statement of scope.**

5Rights Foundation	Facebook
A UK media company	Gillian Doyle
Advertising Association	GoCompare
An online platform	Google
An online travel comparison service	Guardian Media Group
Arete Research	IAB UK
Association of Independent Tour Operators	ICSS
Barclays	Index Exchange
Behavioural Insights Team	ISBA
British Association of Picture Libraries & Agencies	JICWEBS
Business Information Risk Management Consulting	John Lewis & Waitrose Partners
BT Group plc	Lloyds Banking Group
Carnegie Trust	L'Oréal
Center for Democracy & Technology	Money Saving Expert
Citizens Advice	News Media Association
Competition Law Forum at BIICL	Open Rights Group
Computer & Communications Industry Association	Oracle
Channel 4	Professional Publishers Association
Damien Geradin	Progressive Policy Institute
Developers Alliance	Privacy International
Digi.me	Radiocentre
Digital advertising services provider	Reckitt Benckiser
Digital Content Next	Remote Gambling Association
Digital Policy Alliance	ResPublica
DMG Media	Telefonica UK
Direct Line Group	University of East Anglia
Dr Ryan and Dr Lynksey	UKTV
Ecosia	Vodafone
Ernie App	Verizon Media
Eyeo GmbH	Which?
European Publishers Council	WhiteReport