

ONLINE PLATFORMS AND DIGITAL ADVERTISING MARKET STUDY

News UK's comments on the Statement of Scope

1. INTRODUCTION AND EXECUTIVE SUMMARY

- 1.1 This submission is made by News Corp UK & Ireland Limited (**News UK**) in response to the Statement of Scope published by the Competition and Markets Authority (**CMA**) on 3 July 2019 in connection with the CMA's online platforms and digital advertising market study (the **Market Study**). As the CMA is aware, News UK is the principal UK operating company of the group of companies headed by News Corporation (together, **News Group**) and, where relevant, this submission draws on the experiences of the wider News Group in other jurisdictions in relation to issues similar to those raised by the Market Study.
- 1.2 News UK welcomes the CMA's decision to conduct a market study in relation to digital advertising and those online platforms which obtain material revenues through it. As the Statement of Scope recognises, online platforms play a prominent role in people's lives. So too do the services funded through the digital advertising markets over which online platforms exert substantial control, with journalism amongst the most important of these for society. As a publisher reliant in significant part on advertising revenues to fund its newspapers both in the UK and elsewhere, News UK has an important interest in the proper functioning of these markets and direct experience of how, at present, they are not working as well as they should. The unique features of the CMA's market study regime make it a particularly appropriate tool to analyse the complex issues raised and consider how these might be remedied.
- 1.3 In broad terms, News UK agrees with the scope of, themes for and approach to the Market Study outlined in the Statement of Scope, and believes that the Statement of Scope accurately describes the digital advertising sector. It is clear from the document that the CMA has given careful consideration to the issues it proposes to investigate and, in doing so, has drawn appropriately on the existing evidence base developed through previous inquiries in the UK and elsewhere. Accordingly, News UK's comments at this stage are relatively limited and focused on emphasising certain points it considers especially important for the effective conduct of the Market Study – in particular, connected with the CMA's Theme 3 (concerning competition in the supply of digital advertising, where News UK has particular experience). News UK anticipates making more detailed contributions as the CMA's emerging thinking develops.
- 1.4 In summary:
- (i) News UK agrees with the broad scope of the Market Study, but would invite the CMA to give careful consideration to the adverse impact of poorly-functioning digital advertising markets on press sustainability. While News UK notes the CMA's decision not to make this a specific focus of the Market Study in light of the work already undertaken by the Cairncross Review, it nonetheless represents an important potential source of consumer harm and merits attention as such.
 - (ii) The Statement of Scope rightly distinguishes between different forms of digital advertising. However News UK also encourages the CMA to give greater consideration to how platforms operate on a closed 'walled garden' basis -



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encouraging consumers to log in - or on the open internet, and how these have different impacts for the advertising market, consumer data and publishers. The Statement of Scope identifies that consumers may face increased costs as a result of higher expenditure on the part of advertisers and that, as a result of the risk of harm to the consumer, this will form part of the CMA's investigation. News UK therefore believes the impacts on *both* buy and sell-sides of the market should form part of the study.

- (iii) News UK strongly welcomes the CMA's decision to investigate the extent of competition in digital advertising markets under Theme 3 and its focus on the functioning of the ad tech stack. The scope for online platforms – in particular, Google, as the leading provider across all key elements of the stack – to engage in conduct which has the potential to distort competition, masked by the opacity of these markets, is a key concern for News UK. In particular, News UK has long-standing concerns regarding the risk of “self-preferencing” behaviour by Google, given that it both runs auctions and participates in them. The planned move to Unified Pricing risks a further shift of control from publishers to Google, through the introduction of a unified floor price for inventory across all categories of buyers. The Market Study provides a valuable opportunity for the CMA to assess the extent of such conduct with its extensive information-gathering powers.
- (iv) While, as a publisher, News UK is most directly affected by the distortive effect of platforms' market power in digital advertising markets, News UK agrees with the CMA's decision to investigate the extent of digital platforms' market power in consumer markets (under Theme 1), as this is a key factor contributing to the poor functioning of digital advertising markets. News UK would encourage the CMA to take a broad view of the different possible mechanisms for this, rather than focusing only the role of consumer data at this stage. In particular, News UK would invite the CMA to consider the extent of platforms' market power in online news distribution (in line with the approach of the Australian Competition and Consumer Commission (ACCC) in its digital platforms inquiry), and how this has allowed them to force publishers to adopt particular forms of distribution that reinforce the platforms' position in digital advertising markets (such as Google's Accelerated Mobile Pages (AMP) standard, discussed further below). News UK believes it would also be useful for the CMA to consider the role of past acquisitions (as opposed to organic growth) in contributing to platforms' market power.
- (v) News UK also understands the CMA's reasons for investigating Theme 2 (consumer control over platforms' data collection practices). While News UK has no objection to the CMA seeking to formulate remedies to improve consumers' control in this area, News UK notes the importance of having alternatives available to consumers for the remedies to be effective.
- (vi) Instead, News UK believes that the core of any remedies package should be remedies designed to constrain the exercise of market power by the platforms. News UK agrees that this could take the form of a binding code of conduct or other form of *ex ante* regulation, enforced by an appropriate regulatory authority. This should, at a minimum, impose obligations to improve transparency in the digital advertising supply chain, so that advertisers and publishers can understand how much they are paying, and require some degree of functional separation (e.g. of ad serving solutions



from other parts of the ad tech stack) to curtail self-preferencing behaviour by platforms in auctions. News UK would also encourage the CMA to consider requiring commercial unbundling of platform's ad tech services, in order to facilitate competition in this area.

- (vii) News UK agrees that remedies regarding open data and interoperability may be helpful in encouraging greater competition in the digital advertising supply chain. However, given any effect would be felt only in the long term, and significant practical difficulties would have to be overcome, News UK suggests that these should be seen as a complement to the remedies described above, rather than representing solutions in themselves.
- (viii) Finally, News UK would encourage the CMA to take a forward-looking perspective in considering possible remedies, in order to ensure that they are future-proof. Digital advertising markets are fast-moving, and it is vital that remedies remain effective in the face of developments in ad trading, use of consumer data, and innovations in consumer-facing products, for example the expected rise of voice search, recommendations and advertising.

1.5 The remainder of this submission is structured as follows. **Section 2** addresses the proposed scope of the Market Study. In **Section 3**, News UK comments on Theme 3, before setting out more limited remarks on Themes 1 and 2 in **Section 4**. **Section 5** responds to the CMA's initial thinking on remedies.

2. COMMENTS ON THE SCOPE OF THE MARKET STUDY

2.1 News UK generally agrees with the proposed scope of the Market Study, as outlined in paragraphs 52 to 74 of the Statement of Scope and, in particular, that the three identified themes represent an appropriate way for the CMA to structure its analysis. News UK agrees that these are inter-related and overlapping themes, since the market power held by online platforms in consumer markets, and their consequent ability to collect consumer data, plays an important role in explaining why competition in digital advertising markets is not working effectively.

2.2 At this stage, News UK would make three specific comments on the proposed scope of the Market Study. First, News UK notes that, under the heading of "*Areas not in scope*", the CMA explains that in view of the work conducted by the Cairncross Review, it is "*not proposing a specific focus on the sustainability of journalism or to seek to assess the profitability of news media organisations*" (Statement of Scope, paragraph 104). News UK appreciates the need to avoid duplication and the CMA's desire to take a broad view of the digital advertising sector as a whole. However, News UK also notes that the Market Study was recommended by the Cairncross Review as one of the measures necessary to address concerns regarding the future of news provision, and that, as the Statement of Scope correctly identifies (at paragraph 76(c)), one potential source of consumer harm is if competition problems in digital advertising markets ultimately lead to poorer quality content for consumers. This should be a real concern in the context of news provision, given the substantial pressures already placed on newspaper publishers' revenues, and the importance of high-quality news content for consumers, society and the democratic process.

2.3 By way of illustration of these pressures, between 2010 and 2019, print advertising revenues



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at *The Times* and *The Sunday Times* declined by [CONFIDENTIAL], while digital advertising revenues remained flat, resulting in an overall decline in revenues of [CONFIDENTIAL] (from [CONFIDENTIAL] to [CONFIDENTIAL]), even taking into account growing digital subscription revenues. In the same period, print advertising revenues at *The Sun*¹ declined by [CONFIDENTIAL] (from [CONFIDENTIAL] to [CONFIDENTIAL]), while digital advertising revenues grew by just [CONFIDENTIAL], and paid sales revenues declined from [CONFIDENTIAL] to [CONFIDENTIAL]. While News UK has to date been able to protect the quality of its titles through careful cost-efficiency measures and the introduction of its digital subscription model alongside advertising funding,² there inevitably comes a point where further savings are not possible without an effect on titles' journalistic output.

- 2.4 News UK would therefore urge the CMA to give due consideration to the impact of poorly-functioning digital advertising markets on journalism as an important element of its wider analysis of consumer harm.
- 2.5 Second, in assessing the display advertising market – which includes various types from traditional banners to native formats – the CMA should distinguish between closed platforms and platforms that operate on the open internet. ‘Walled gardens’ encourage (YouTube) or demand (Facebook, Instagram) that consumers log in to use the service, providing the platforms with a depth of data and insight about audience preferences and interests to target advertising. While media providing advertisers with audience measurement and insight is nothing new, it is notable that these platforms operate at scale collecting data across their multiple consumer-facing platforms, and – as News UK will go on to explore in this submission – on third party sites (including news media) too. Further to this, the ‘walled garden’ platforms benefit significantly from the content produced by news publishers. They exploit news content to make the experience more relevant and richer for the user and sell advertising against it on their platforms. Indeed, Ofcom’s recent report ‘*News Consumption in the UK: 2019*’ points to the success of this model as it found that 49% of UK adult users now use social media for their news, up from 44% in 2018.
- 2.6 However rather than news media being a supplier to the platforms on a commercial basis, the platforms are free riding on the content, to the publishers’ detriment. On the open internet, the lack of competition and transparency (facilitated by the platforms) in the ad tech stack means that publishers are not seeing the revenues that they ought to from advertisers, as reflected in the figures in paragraph 2.3 above.
- 2.7 Third, News UK would invite the CMA to consider whether changes to Google’s search algorithm contribute to poorly functioning digital advertising markets (a topic that is not explicitly addressed in the Statement of Scope). As discussed below, News UK has a specific concern that changes to the search algorithm have allowed Google to leverage its market power in the consumer search market to exert control over publishers’ choice of ad tech (a point relevant to Theme 1). However, News UK also has a more general concern that Google’s ability to make changes to its search algorithm without notice, even where not part of an attempt to harm competitors, can distort competition by making it difficult for publishers to plan their digital advertising strategy, since what content people see (and can therefore be

¹ 2010 figures include the *News of the World*.

² For further details, please refer to [News UK’s application to the Secretary of State for Digital, Culture, Media and Sport](#) for variation of the conditions attached to the transfer of *The Times* and *The Sunday Times*, which seeks to mitigate the financial pressure to which News UK is subject by permitting greater sharing of resources between the titles. This application was granted by the Secretary of State on 23 July 2019.



monetised) can be changed by Google at will and in ways that are unclear. It also forces publishers to divert resources into efforts to understand and address the impact of algorithm changes, making them incur higher costs than they would in a well-functioning market; thereby detracting from their ability to focus spending on high-quality content, ultimately to the detriment of consumers. News UK notes that these issues received attention as part of the ACCC's digital platforms inquiry.³

3. COMMENTS ON THEME 3

- 3.1 As a newspaper publisher, the proper functioning of digital advertising markets is essential to News UK's business. As news consumption has shifted online, digital advertising has become vital for all publishers' ability to fund high-quality journalism, as the Cairncross Review recognised.⁴ News UK is no exception: while News UK has developed innovative digital subscription models for *The Times* and *The Sunday Times* that provide an additional revenue stream from online consumption, digital advertising accounts for a significant proportion of its revenues (approximately [CONFIDENTIAL]). News UK therefore welcomes the CMA's proposal under Theme 3 to investigate whether there is effective competition in the supply of digital advertising.
- 3.2 News UK also agrees with the CMA's proposal to investigate both sales of advertising on the major online platforms⁵ and the wider intermediation of advertising sales on other publishers' websites through the ad tech stack (Statement of Scope, paragraph 71). News UK believes that both areas raise concerns warranting investigation and contribute to the overall poor functioning of digital advertising; however, the nature of the concerns differ.
- 3.3 In relation to advertising on online platforms themselves (their 'walled gardens'), News UK considers the principal issue to be that identified in paragraphs 58 to 62 of the Statement of Scope, under Theme 1; i.e. the extent to which platforms can leverage the value of their consumer-facing properties (many of which, such as Instagram and YouTube, have been obtained via acquisition rather than organic growth) and the vast amounts of data collected in consumer markets to become "must-have" partners for advertisers through targeting capabilities that other players cannot match (Statement of Scope, paragraph 61). In addition, News UK considers that it is vital to consider whether this "must have" status can be used to leverage market power into adjacent activities (e.g. by making access to certain ad inventory contingent upon taking other advertising products⁶).
- 3.4 News UK's principal concerns, however, relate to the role of online platforms in intermediation of advertising sales on other publishers' own websites. News UK therefore strongly welcomes the CMA's decision to focus on this issue under Theme 3 and, in particular, the CMA's acknowledgement of concerns regarding the lack of transparency over how ad tech intermediation functions (Statement of Scope, paragraphs 73 and 74).
- 3.5 As the CMA will be aware, one online platform in particular – Google – holds a leading

³ See e.g. pages 250-252 of the ACCC's Final Report. The Report notes similar concerns in relation to changes to Facebook's News Feed algorithm.

⁴ See in particular, Chapter 3.

⁵ News UK notes that paragraph 71 of the Statement of Scope frames this as "the way that the platforms monetise their own content". News UK believes this is inaccurate, since platforms in fact rely heavily on other publishers' content to drive traffic to their sites – in particular news content – and would largely be empty shells without it. At the same time, platforms do not pay publishers for that content. This free-riding problem is a significant issue for the industry.

⁶ For example, in August 2015, Google cut off competing demand-side platforms' access to YouTube ad inventory, meaning that the only way for advertisers to buy YouTube ads was through Google's ad tech stack (described further below).



position in the distinct market or markets comprising the ad tech stack: publisher ad servers (Google Ad Manager, formerly DoubleClick for Publishers (**DFP**)), advertiser ad servers (DoubleClick Campaign Manager), ad networks (AdSense and AdMob), ad exchanges (formerly AdX, now also part of Google Ad Manager), demand-side platforms (Display & Video 360, formerly DoubleClick Bid Manager (**DBM**), Google Ads (formerly AdWords) and DoubleClick Search) and data analytics (Google Analytics). News UK believes that the opaque nature of the ad tech stack, combined with Google's presence across it, is likely to have facilitated a range of practices that have the potential to distort competition and are not consistent with well-functioning markets. Many of these practices take advantage of network effects present at various stages of the ad tech stack to erect barriers to entry and "tip" these markets towards monopoly.

3.6 News UK's concerns in this respect broadly correspond to the issues identified under paragraph 74 of the Statement of Scope.

- (i) News UK agrees that there is a real danger that online platforms are able to use market power in one part of the ad tech stack to obtain or protect market power in other areas (Statement of Scope, paragraph 74(a)). Google's ad tech products are designed to seamlessly integrate, granting an incentive for publishers and advertisers to use the suite of available products, rather than just one. Once an advertiser or publisher uses a Google operated ad server (which they are highly likely to), there is therefore an increased incentive to use other Google ad tech rather than third-party technology. This effect may also be reinforced by bundled discounts, restrictions on inter-operability, and other forms of tying between products; as well as other behaviours such as the selling of certain products below the cost of provision, and conditioning access to certain ad inventory on use of its ad tech products, as discussed above.⁷ While News UK notes the CMA's intention to consider any efficiency benefits for users resulting from vertical integration across the supply chain, it will be crucial that in considering any such benefits, the CMA gives due weight to the potential distortive effects of such integration on competition and the proper functioning of digital advertising markets.
- (ii) News UK believes that the distortive effects of platforms' market power in the ad tech stack is highly likely to allow intermediaries to capture a greater share of advertising revenues than would be the case in a well-functioning market (Statement of Scope, paragraph 74(b)). It is extremely difficult for News UK to quantify this, given the opaque nature of the ad tech stack; the fact that Google is able to extract fees at all the different stages of the stack, including by buying and selling inventory on its own platforms; and, in the experience of the News Group as whole, Google's

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An example of the use of bundled discounts is that Google charged publishers using DFP (now Google Ad Manager) for ad impressions that exceeded 90 million total impressions per month; however, impressions sold using other Google ad tech products such as AdX (now also branded Google Ad Manager) did not count towards this total – effectively giving users who exclusively used Google ad tech products a discount on their impressions compared with those who used DFP with third-party ad tech. An example of tying is that Google reportedly used a "fractional credit" system to tie DBM (now Display & Video 360) and AdX (now Google Ad Manager). Under this system, advertisers using AdX reportedly had to agree to a minimum spending quota, with ad spend credited towards this quota only if they used DBM to facilitate their ad buys on AdX. See Digiday, "[Google's display advertising dominance raises concerns](#)", 2 December 2014. In relation to interoperability, a particular concern is increased latency when using Google ad tech with third-party ad tech. Given the importance of speed in programmatic ad sales, even small delays can affect the outcome of the bidding process and have the potential to distort competition. Finally, in relation to links between advertising inventory and Google's ad tech products, in addition to the issue of access to YouTube inventory discussed above, real-time AdX demand is only available on Google Ad Server, since AdX does not participate in header-bidding, while Google Ads only buys on AdX.



unwillingness to provide its customers with data regarding the gross price paid by advertisers and, thus, Google's total fees.⁸ Given the CMA's extensive information gathering powers, it should be well-placed to examine whether such pricing practices prevail across the digital advertising sector.

- (iii) News UK also agrees that advertising fraud is a concern warranting investigation (Statement of Scope, paragraph 74(c)). News UK would highlight that, in its experience, publishers' ability to combat fraud is heavily dependent on the capabilities and co-operation of ad tech providers and, as such, weakened competition in this area may reduce the extent to which the market is likely to address concerns in the future.
- (iv) News UK strongly agrees that the CMA should consider the role of auctions in selling digital advertising (paragraph 74(d)). News UK has long-standing concerns regarding the risk of "self-preferencing" behaviour by Google, given it both runs auctions and participates in them (in both cases through Google Ad Manager), and these concerns have been recognised in other jurisdictions.⁹ As the Statement of Scope notes (at footnote 44), the "last look" advantage afforded to AdX was one manifestation of this. While News UK recognises that (as footnote 44 states) Google has introduced changes to its auction rules, with the introduction of Exchange Bidding and, most recently, with its planned move to "Unified Pricing", News UK nonetheless has very little confidence that auctions are run in a manner that is fair to the interests of publishers rather than favouring Google's own interests. In particular, News UK has concerns that Unified Pricing will result in a further shift of control from publishers to Google, including through the introduction of a unified floor price that will prevent publishers from setting different price rules for different categories of buyers (including the ability to independently set floor prices for buys through Adwords). More generally, the opaque nature of the digital advertising supply chain as a whole makes it impossible for News UK to be sure that conduct raising equivalent concerns is not occurring at some point of the process.

3.7 News UK therefore welcomes the CMA's intention to use its information-gathering powers to develop a better understanding of the different elements of the advertising supply chain, including the flow of money and information between market participants (Statement of Scope, paragraph 73). Given these powers, the CMA should be able to reach clearer conclusions than previous reports in the sector, which have had to leave questions open as a result of gaps in the available data.¹⁰ Even the ACCC's recent in-depth digital platforms report found it necessary to recommend a further inquiry into ad tech services to assess comprehensively the issues raised (which, consistent with News UK's comments above, included that *"the opaque operations of digital platforms and their presence in inter-related*

⁸ As the ACCC recently noted, the opacity of the ad tech supply chain is such that *"Where problems do occur, they may be impossible for participants to detect"* (final report of the digital platforms inquiry, page 2).

⁹ In particular, the ACCC's final report in its digital platforms inquiry found that Google and Facebook *"have both the ability and incentive to favour their own related businesses [...] They also have the ability and incentive to favour a business with which they have an existing relationship (and through which additional revenue may be generated, such as websites that are members of their display or audience network or use their ad tech services. Given the substantial market power of each of Google and Facebook, their presence in a significant number of related markets and the opacity of their key algorithms, there is significant potential for self-preferencing by Google and Facebook to substantially lessen competition."* (page 12.)

¹⁰ See e.g. the [report commissioned from Plum by the Department for Digital, Culture, Media and Sport into online advertising in the UK](#) (January 2019), which at Appendix C lists gaps in data about the online advertising market, notably including the *"share of expenditure taken by programmatic intermediaries"*.



markets mean it is difficult to determine precisely what standard of behaviour these digital platforms are meeting” and that “the opacity of the ad tech supply chain means that the sum of the prices charged by supplier of ad tech services and the share of advertising expenditure they retain are unknown to many advertisers and websites).¹¹ The CMA has the opportunity to provide a lead in understanding how platforms’ market positions and practices in this area affect publishers, advertisers and ultimately consumers of ad-funded content.

- 3.8 To assist the CMA’s analysis, News UK has drawn on its experiences in digital advertising markets to suggest some questions that might usefully be addressed to the online platforms. These are attached as **Annex 1** to this response. News UK would also be pleased to provide any further information that the CMA may require for this analysis (beyond that already requested from it).

4. COMMENTS ON THEMES 1 AND 2

- 4.1 As noted above, News UK agrees that Themes 1 and 2 should be explored as part of the Market Study, since the position of online platforms in consumer markets and their ability to obtain data from consumers contributes to competition problems in digital advertising. News UK also broadly agrees with the approach to these themes proposed in the Statement of Scope, and has relatively limited comments at this stage.

Theme 1

- 4.2 In relation to Theme 1, first, as noted above, News UK considers that the ways in which online platform’s market power in consumer-facing markets distorts competition in digital advertising markets differs as between display advertising on the platform’s own services and display advertising on the open internet. While the Statement of Scope draws a distinction between search advertising and display advertising, News UK believes it would assist the CMA to draw this further distinction within display advertising.
- 4.3 Second, in identifying the markets to be considered under Theme 1, News UK would invite the CMA to consider the existence of a market for the distribution of news online, in which the online platforms act as intermediaries between publishers and consumers. The Final Report of the ACCC’s digital platforms inquiry found Facebook and Google are “*must-have*” sources of traffic for news publishers, accounting for around half of news media website traffic in its jurisdiction through their search, social and news aggregation activities, are “*unavoidable trading partners*” for a significant number of news media businesses, and are likely to have substantial market power in what it termed “*news media referral services*”.¹² News UK believes that the CMA would reach similar conclusions in respect of the UK.
- 4.4 Online platforms have been able to exploit this “*must-have*” position to the detriment of news publishers in a number of ways (for example through the use of “*snippets*” without appropriate compensation for the publisher). However, given the focus of the Market Study on digital advertising, News UK would highlight in particular how this position has allowed the online platforms to compel news publishers to make use of certain distribution services, which in turn reinforce the platforms’ market power in digital advertising.

¹¹ See e.g. pages 1, 12 and 14 of the ACCC’s final report.

¹² Section 2.8. The ACCC found that news media referral services probably constitute a market and that Google and Facebook are each likely to have substantial market power in that market, but decided that it was not necessary to reach a conclusion on this given Google and Facebook were in any event unavoidable trading partners for news media businesses.



- 4.5 The promotion of Google’s AMP standard for mobile web-pages provides a particularly clear illustration of this concern.
- (i) Through the operation of its dominant search engine, Google has placed publishers under considerable pressure to use this standard – first, by allowing only AMP articles to appear in its “News Carousel” (a horizontal bar of stories which appear at the top of its search results page, and therefore have particular prominence) and, second, by making page speed a major ranking factor for search results (meaning AMP articles are likely to appear higher up than non-AMP articles).
 - (ii) Because AMP articles load from Google’s servers (rather than those of publishers), the consequent adoption of the AMP standard gives Google direct control over first-party user data from consumers reading these articles. As the Statement of Scope identifies (at paragraphs 60 to 62), online platforms’ ability to amass unrivalled holdings of consumer data is a key contributor to their market power in digital advertising markets. The ability to compel publishers to use distribution services that give platforms control of user data reinforces this.
 - (iii) In addition, the promotion of the AMP standard has undermined important pro-competitive developments in ad tech. The development of header bidding has offered publishers a means to solicit real-time bids simultaneously in an auction run by the user’s browser or a remote server, allowing them to run multiple supply-side platforms in an auction and thereby improve their yields compared with Google’s “waterfall” set up.¹³ As such, it represents one of the few competitive pressures on Google’s position in ad tech. However, the AMP standard is incompatible with client-side header-bidding, and therefore constrains publishers’ ability to make use of this.¹⁴
- 4.6 News UK would invite the CMA to explore these issues further in the course of the Market Study, including the extent to which other distribution services that platforms can require publishers to use (such as Google News and Facebook Instant Articles) may distort competition in digital advertising in similar ways.
- 4.7 Third, News UK notes that paragraphs 55 and 60 of the Statement of Scope focus on the online platforms’ ability to collect data from consumers using their own sites. It is important to note that both Facebook and Google are able to collect data from consumers using *third party* sites. Google changed its privacy policies in 2016 to allow it to combine data collected through all its tools, including on use of non-Google websites (for example, through ad tech such as Google Ad Manager and Google Analytics, its Chrome web browser and the Android mobile operating system),¹⁵ while it has been reported that Facebook collects data across the web, even on consumers that do not have a Facebook account.¹⁶ In this context, News UK believes it would be informative to examine the origins of the data held by the major platforms and, in particular, the extent to which it relates to browsing on news websites and/or is derived from hosting of news articles in AMP / IA format.

¹³ See e.g. AdExchanger, [“The rise of ‘header bidding’ and the end of the publisher waterfall”](#), 18 June 2015.

¹⁴ While the AMP standard is compatible with server-side header bidding, this lacks many of the advantages for publishers of client-side header-bidding. In particular, because it takes place on third-party servers, it lacks transparency and gives rise to risks of self-preferencing behaviour.

¹⁵ See e.g. Propublica, [“Google has quietly dropped ban on personally identifiable web-tracking”](#), 21 October 2016.

¹⁶ See e.g. Vox, [“This is how Facebook collects data on you even if you don’t have an account”](#), 20 April 2018.



- 4.8 Related to the above, News UK would encourage the CMA to explore whether the ability of the tech platforms to collect data through proprietary means (e.g. via the browser and OS referred to above) results in them having incentives to take steps that limit means for publishers and ad tech providers to gather data to facilitate ad targeting. For example, concerns have been raised about upcoming changes to Google’s Chrome browser that would prevent publishers from detecting whether users are browsing in incognito mode, and, in turn, from requiring them to register in order to use the site. While the changes may purportedly be to promote user privacy, they also risk further entrenching Google’s data advantage, as well as harming publishers by preventing them from enforcing paywalls.¹⁷
- 4.9 Fourth, while News UK does not disagree with the Statement of Scope’s emphasis on the role of consumer data in translating market power in consumer markets into digital advertising markets (paragraphs 60 to 62), News UK notes that Google’s ability to leverage its market power in search and online news distribution to harm competition in ad tech, as described above, illustrates the need not to focus *only* on the role of data in this respect.
- 4.10 Similarly, while News UK agrees that the CMA should investigate how platforms can disadvantage other companies by denying them access to user data (paragraph 62), the CMA should also consider the scope for platforms to exclude competitors in advertising markets by denying them access to other services. For example, the ACCC’s report in its digital platforms inquiry notes that the ACCC is currently considering “*whether access restrictions imposed by a digital platform on a third party app developer may raise issues under*” Australian competition law. It has been reported that this is an investigation into Google’s treatment of a third party ad tech firm, Unlockd, which became insolvent following a dispute over access to Google’s Play Store and AdMob ad network.¹⁸ (In the interests of transparency, News UK notes that News Corp’s Co-Chairman, Lachlan Murdoch, had a financial interest in Unlockd.)
- 4.11 Finally, in assessing the implications of platforms’ market power in consumer-facing markets, News UK believes it would be useful for the CMA to consider how their past acquisitions (as opposed to organic growth) have contributed to this.

Theme 2

- 4.12 In relation to Theme 2, News UK believes that limitations on consumer control over data collection practices by online platforms is fundamentally a function of the dominance of those platforms in consumer markets. While News UK understands the CMA’s reasons for investigating the extent of consumers’ knowledge and understanding regarding online platforms’ data collection practices, it is difficult to see how increasing this would result in real consumer choice for so long as there are few meaningful alternatives to their services. The concern that platforms can impose terms and conditions on a “take it or leave it” basis applies not just following mergers (Statement of Scope, paragraph 67), but arguably to the platforms’ activities generally. As discussed below, this has implications for the extent to which remedies intended to give consumers more information on data collection are likely to be effective.

¹⁷ See e.g. Digiday, “[Chrome’s privacy changes are a humbling reminder for subscription publishers](#)”, 25 June 2019.

¹⁸ Final report, page 38; Mlex, “[Google faces Australian probe over its treatment of advertising startup Unlocked](#)”, 3 January 2019. Unlocked also obtained an interim injunction before the English courts, but ultimately withdrew its claim after its administrators failed to obtain third-party funding for its claim – [Unlocked Limited & Others v Google Ireland & Others](#).



5. COMMENTS ON POTENTIAL REMEDIES

5.1 Overall, News UK welcomes the CMA’s direction of travel in relation to potential remedies, which contemplates the development of an *ex ante* regulatory regime rather than a one-off intervention. As the Statement of Scope notes (paragraph 78), these are fast-moving markets lacking competition, making flexibility and on-going monitoring essential to the success of any remedy. It is vital that remedies remain effective in the face of developments such as the rise of voice search and advertising.

5.2 News UK also agrees that it is appropriate to consider both remedies designed to encourage greater competition in digital advertising markets (such as the data remedies contemplated in “Potential remedy area 1” (paragraphs 81 to 89 of the Statement of Scope) and remedies designed to ensure other market participants’ ability to compete and, ultimately, protect consumers from the exercise of market power by the platforms (“Potential remedy areas” 2 and 3). Given the scale of the major online platforms’ market power, any remedies to encourage entry and expansion by other players are likely to take a significant amount of time to have even a modest impact, so it is right for the CMA to consider action that would be effective immediately, such as the development of codes of conduct for the major platforms. This is in line with the findings of the ACCC in its digital platforms inquiry that “*data portability is unlikely to have a significant effect on barriers to entry and expansion in certain digital platform markets in the short term*”, and its decision to recommend the creation of codes of conduct to rebalance relationships between the leading digital platforms and news media businesses, “*backed by sufficiently large sanctions for breaches to act as an effective deterrent*”.¹⁹

5.3 News UK sets out some comments on each potential remedy area below.

Potential remedy area 1: increasing competition through data mobility, open standards and open data

5.4 News UK agrees that measures to increase access to data held by the major online platforms may help to foster competition by facilitating entry and expansion by other players on a more level playing field, albeit only over a relatively long time-frame. However, a number of difficult practical issues would need to be addressed.

5.5 In particular, in order for data mobility and open data to have any value, it would be necessary for there to be a common language used for sharing and interpreting the data. At present, however, there is a good chance that data received by one company from another company will make little sense to it, since there is no such universal language. Remedying this is likely to require the imposition of interoperability requirements on digital platforms. It would also be necessary to create secure pipelines for this data to flow between businesses. One possibility that the CMA could consider would be the creation of a common language universal ledger controlled by blockchain functionality. While ambitious, this is currently being tried.²⁰

5.6 A further challenge would be defining what “data” means – i.e. what information, precisely, is within scope of the remedy. Something specifically declared, or taken as a positive action -

¹⁹ Final report, pages 11 and 16.

²⁰ See www.po.et. Po.et is building an open, universal ledger that records immutable and time-stamped information about creative content and uses open protocols designed for interoperability with current industry standards in media and publishing.



for example, a ‘like’ - is clearly data. But if a company figures out new ways to generate data from passive activities (like an article read on a publisher’s site), does that count as data and who owns it? Moreover, data is rarely used in its raw form, and may not be useful without being combined with other data and interpreted to generate useful insights. It may therefore be necessary to consider whether the remedy would encompass only raw data, or also conclusions and learnings reached from that data, in particular through the use of machine-learning.

- 5.7 More generally, transfer of user data could raise complex challenges under privacy and data protection legislation, which would require detailed analysis. Given the legal and reputational risks involved, it seems likely that industry would need assurance from the authorities (including the Information Commissioner’s Office) in order to feel confident engaging with any remedy in this area.²¹

Potential remedy area 2: giving consumers greater protection in respect of data

- 5.8 As described in relation to Theme 2 above, News UK believes that the scope for consumers to exercise meaningful control over the data shared with the dominant online platforms is limited for so long as there are few realistic alternatives to their services. As such, while News UK has no objection to the CMA pursuing remedies in this area, it would respectfully suggest that remedies in the other areas identified in the Statement of Scope (and in particular potential remedy area 3 discussed below) should be the focus.

- 5.9 News UK also notes that the Statement of Scope is somewhat unclear as to which companies any remedies in this area would cover – at paragraph 92 it refers to “platforms *and other service providers*” (emphasis added). In News UK’s view, any remedies should affect the major online platforms only (rather than applying sector-wide), since they would be intended as a response to the dominant position and unique data collection practices of those firms. Remedies could, for example, be implemented through the platform-specific *ex ante* regulation discussed under potential remedy area 3 below, rather than through generally-applicable legislation.

- 5.10 Finally, News UK would invite the CMA to explore the case for remedies limiting the platforms’ ability to cross-reference data collected on their sites with data collected on third-party sites, for example for targeted advertising purposes, in particular as consumers may have different expectations regarding the use of data collected in these ways (the consumer having chosen to engage directly with the platform only in the first situation). As discussed at paragraph 4.7 above, Google introduced privacy changes in 2016 that allowed it to combine data in this way, and the CMA may wish to consider the effects of these changes and whether they should be reversed.

Potential remedy area 3: limiting platforms’ ability to exercise market power

- 5.11 For the reasons explained above, News UK believes that measures to limit platforms’ ability to exercise market power should form the core of any package of remedies that the CMA develops. News UK agrees that the development of an *ex ante* regulatory regime, such as an enforceable “code of conduct” for major digital platforms, would in principle be an

²¹ The potential for privacy issues to serve as a barrier to data mobility absent appropriate guidance from the authorities is illustrated by Google’s citation of obligations under the General Data Protection Regulation in restricting third-party access to DoubleClick ID data. See e.g. AdExchanger, [“Google Sharply Limits DoubleClick ID Use, Citing GDPR”](#), 27 April 2018.



appropriate remedy (Statement of Scope, paragraph 94).

5.12 The content of any code would need to be subject to detailed consultation with stakeholders; however, News UK believes the following key principles should inform its content:

- (i) **Transparency:** as discussed above, the ad tech stack is highly opaque, giving rise to significant risks of practices that have the potential to distort competition. Unless publishers and advertisers can understand how much they are paying, and for what, it is difficult to see how competition can operate effectively. In line with paragraph 95(b) of the Statement of Scope, any code should therefore require substantially enhanced transparency from platforms with market power in this area – in particular, Google.²²
- (ii) **No self-preferencing:** any code should contain effective provisions to stop platforms from leveraging their positions in other markets to preference their own advertising inventory and solutions. As paragraph 95(c) of the Statement of Scope envisages, this may require the imposition of some degree of functional or structural separation on digital platforms operating at multiple stages of the supply chain (for example, between the technologies running auctions and those selling advertising inventory in those auctions), or, more generally, between business units acquired in past transactions and other elements of platforms’ business.
- (iii) **Commercial unbundling:** as described above, News UK believes that competition in the ad tech stack may have been weakened by bundling and tying of different elements of platforms’ ad tech offering. Any code should ensure that publishers and advertisers wishing to combine ad tech from other providers with that of the platforms are able to do so without being placed at a disadvantage.

5.13 News UK notes that the CMA intends to consider the balance between *ex ante* and *ex post* enforcement, including the use of existing competition and consumer powers (paragraph 97 of the Statement of Scope). While aspects of platforms’ conduct giving rise to the concerns described above may in principle be capable of being addressed through *ex post* enforcement of competition law (in particular Article 102 TFEU and the Chapter II prohibition), News UK believes that the emphasis should be on *ex ante* regulation given the duration and complexity of Article 102/Chapter II proceedings and the risk of serious harm to competition and consumers in the interim.

Potential remedy area 4: improving transparency and oversight for digital advertisers and content providers

5.14 News UK believes that improving transparency and oversight for participants in digital advertising markets should be a key principle behind any remedy package, and measures to this end could be implemented as part of the *ex ante* regulatory regime discussed under “potential remedy area 3”. In particular, it is essential that platforms not be in a position where they are both bidder and auctioneer while other participants have no visibility on how ad

²²

For the reasons discussed in paragraph 2.7 of this submission, there may be a case for the code also to require greater transparency regarding algorithm changes, or more advanced notification to publishers of such changes. This would be in line with the recommendations of the ACCC’s digital platforms inquiry, which recommended that early notification of changes to the ranking or display of news content should form part of the codes of conduct to be put in place to redress imbalances in the relationships between digital platforms and media businesses (see e.g. page 257 of the ACCC’s final report).



purchases are ultimately determined.

Potential remedy area 5: institutional reform

- 5.15 News UK agrees that a “digital markets unit” should be established to monitor and enforce the interventions discussed above. There may be advantages in the unit being established within the CMA, to facilitate joined-up enforcement of competition, consumer protection and specific *ex ante* regulation, and to take advantage of institutional knowledge gained through the market study process.

30 July 2019



ANNEX 1

Potential questions to online platforms regarding digital advertising intermediation

To assist the CMA, News UK provides below a list of potential questions to ask the online platforms. These questions have been written with Google in mind. However, similar issues around interoperability, tying, pricing and data are likely to apply also to other ad-funded platforms.

For brevity News UK has focused on questions which relate to the operation of the ad-tech industry and to Google's conduct within it. It would anticipate that these would be asked alongside a range of more purely factual questions (e.g. to determine the level of market shares across the various components of the ad tech stack). News UK appreciates that the CMA is at its initial stages of fact gathering and is happy to provide further input on specific issues as the CMA's investigation develops.

1. Interoperability.

- a. Why has Google chosen to generally only make demand from AdWords available via its own ad exchange AdX? To what extent is this likely to impact competition between ad exchanges in circumstances where AdWords is the only way to purchase ads on certain Google properties (e.g. YouTube, Google Search)?
- b. What loss of functionality arises if a publisher attempts to access AdX using an ad server other than Google Ad Manager (previously DFP)? Why can't full interoperability be achieved?
- c. How did Google's introduction of Dynamic Allocation, Enhanced Dynamic Allocation and Exchange Bidding affect the interoperability of Google's services? For example, is it necessary to opt into Enhanced Dynamic Allocation to access AdX demand?
- d. Why did Google introduce Dynamic Allocation for AdX, but not for competing SSPs?
- e. What is the decision logic applied by DFP when deciding which ad to serve? To what extent does this decision logic apply differently for Google ads and properties (e.g. AdX) as compared to other ad exchanges?
- f. Why has Google not made AdX available on header bidding?

2. Switching costs.

- a. What barriers are there to switching and multi-homing at each element of the ad tech stack?
- b. How many significant publishers (those with >50m impressions) have switched away from each element of Google's tech stack in each of the last 10 years ?
- c. What is this switching as a proportion of the total number of significant publishers?

3. Network and scale/data effects.

- a. What is the extent of scale and network effects at each level of the tech stack?
- b. What is the source of these effects (e.g. are they due to a desire for advertisers to use intermediaries with large volumes of publishers and vice-versa, or due to advantages in analytics capabilities from gathering data on multiple interactions)?

4. Costs and revenues and potential below cost pricing.

- a. What are the costs and revenues associated with each level of Google's tech stack?
- b. In particular, what are the costs and revenues associated with DFP (now part of Google Ad Manager)?



- c. If there are services which are provided at prices below the cost of provision, what is the rationale for this pricing strategy and what does it imply for competition in this space?
5. **Multi-homing.** Please provide annual data for the last 10 years on the extent of multi-homing behaviour within the Google ad tech stack. At a minimum please provide information on:
 - a. the share of AdX auctions won by bids submitted through AdWords;
 - b. the share of AdX auctions resulting from DFP requests; and
 - c. the share of DFP requests serving ads on AdX over competing exchanges.
6. **Commissions and transparency.**
 - a. Please provide information on the level and calculation of the full set of commissions and charges made by Google throughout its ad tech stack including, for example, the revenue share of AdWords and AdWords’ “additional service fee for ads that use audience targeting”.²³
 - b. To the extent these commissions and charges are not reported publicly by Google, please explain the rationale for this being the case.
 - c. Please provide data in aggregate and for the top 500 advertisers which permits computation of the total amount spent by these advertisers on display advertising using Google’s ad intermediation stack and the ultimate amount paid out to publishers for these advertisers’ ads. Please provide a breakdown of the difference between these two figures into the different commissions or other charges (implicit or explicit) charged by Google.
7. **Auctions.**
 - a. Concerns have been raised that Google’s two-step auction in which the winning bid in an AdWords auction is subsequently entered into an auction by AdX results in Google being able to engage an additional commission and earn extra revenue. Please comment on the extent of this issue.
 - b. What safeguards are in place to ensure that Google’s auctions are run in a non-discriminatory fashion?
 - c. How does Google convert the CPC bid that wins the AdWords auction into a CPM bid to be submitted to AdX? What control does an advertiser have over this process?
 - d. How does AdX exercise its discretion to adjust “the bid submitted by the buyer for the purpose of optimizing the auction”?²⁴
8. **Privacy and data.**
 - a. To what extent is data gathered from other operations (e.g. Chrome, Gmail, Android) used to target Google ads?
 - b. What consumer data is collected through Google Ad Manager across publisher sites using Google Ad Manager? Is any of the collected data used by AdWords?
 - c. What data does Google share with third parties to facilitate targeting of ads?
 - d. How are the responses above impacted by the 2016 change in Google’s privacy policy whereby Google requests permission to combine DoubleClick and Google data?
9. **Innovation.** What have been the major innovations in Google’s ad tech stack over the last five years and what have been the implications of these for publishers, users, and Google itself?

²³

<https://support.google.com/google-ads/answer/2996564?hl=en>

²⁴

<https://support.google.com/authorizedbuyers/answer/6077702?hl=en>

