

## **Awin AG response to the CMA's interim report on online platforms and digital advertising market study**

### **1. INTRODUCTION**

Awin is a global affiliate network operating across multiple verticals, such as retail, telecommunications, travel and finance. The UK is one of Awin's most important markets.

The purpose of this consultation response is to provide the CMA with context on affiliate marketing and address our specific concerns with some of the proposed interventions and their likely impact on affiliate marketing.

By way of background, affiliate marketing is a performance-based online marketing channel in which a publisher is awarded for sales that they generate for an advertiser. Publishers, also known as affiliates or partners, promote a product or service on their website or other service for their users. Advertisers, sometimes referred to as merchants or brands, is the term used for the person or company that has the product to sell.

Awin, as the affiliate network, facilitates the relationships between publisher and advertiser and administers payments. Awin most commonly operates payments on a CPA or 'cost per acquisition' basis. This means that publishers earn money when the advertiser pays them a percentage of the basket value from the sale that they have driven.

While affiliate marketing is an essential element of the digital advertising eco-system, it does not present the same issues as these other marketing channels. This is especially the case in respect of data use, privacy impact and market transparency.

As a model that, in its traditional form, is inherently less privacy intrusive than other forms of online advertising there is a risk that that our marketing channel is bundled in with the more invasive and personalised elements of the wider digital advertising environment, such as real-time bidding, and therefore unduly impacted.

It is it important to bear in mind that the data Awin tracks is all pseudonymous, non-sensitive, largely technical and not related to predictions or evaluations of consumer interest or personalities. ***Awin operates a closed online marketing environment with a limited number of participants. These are all elements that significantly differentiate affiliate marketing from other marketing channels such as real-time bidding.***

We would urge the CMA to consider the differences between the different marketing channels when making its formal recommendations, to ensure that any intervention does not create an unjustified impact on affiliate marketing and have a chilling effect on Awin's ability to compete with the likes of Google and Facebook.

This particularly applies to the potential interventions:

- to improve personal data mobility (as outlined in Appendix L); and
- in digital advertising markets (as outlined in Appendix M).

***We ask that the affiliate marketing channel be expressly exempted from these proposed interventions.***

Finally, as a global network operating across multiple markets in the EEA, we would ask the CMA for consideration of the implications involved in placing additional burdens on the UK market.

## 2. **POTENTIAL CONFLICTS BETWEEN THE CMA AND THE ICO POSITION**

Current Data Protection Laws (and the enforcement thereof by the ICO) overlap significantly with the content of the interim report and proposed CMA interventions. We note that the GDPR already provides a comprehensive regime for data protection and data rights. This regime is harmonised across the EU and reduces barriers to access to European markets.

***As further detailed below, Awin has invested significant resource towards its GDPR compliance and privacy practices generally. It is unclear to us how certain aspects of the CMA interventions will avoid being contradictory to and in direct conflict with the existing regulatory regime and the ICO's positions.***

For example, we disagree with the statement made by the CMA that "*fingerprinting is unlikely to be compliant with privacy regulations, given the inability of the end-user to opt-out of profiling*" and this position is not in line with the ICO's cookie guidance. There are several other instances of inconsistencies in respect of positions by the ICO and the CMA, which we have not listed here.

## 3. **DATA USE IN AWIN'S ATTRIBUTION**

Awin practices privacy by design and default and uses limited personal data for tracking referrals to advertiser websites, the consequent transactions and our reporting, and does not reuse this data to build behavioural user profiles or for other marketing purposes. Awin also prohibits its network participants from doing so. Awin does not collect any other data for: building behavioural user profiles or behavioural targeting.

Awin primarily uses data for rudimentary tracking. Tracking enables Awin to understand a consumer's online journey across particular websites made after viewing or clicking an advertisement. The purpose of tracking is to attribute sales and marketing efforts by a publisher to a particular transaction, to enable advertisers to reward publishers on a per transaction basis. Tracking also allows Awin to provide publishers and advertisers with related reports.

Cross-device tracking enables Awin to understand a consumer journey when it starts on one device, with a transaction completing on another.

To carry out tracking, Awin uses cookies and device fingerprinting

Cross-device tracking also makes use of pseudonymous consumer profiles, which are then used to match multiple devices to a single consumer.

All tracking Awin undertakes only seeks to attribute an action to a particular publisher. This data is kept by Awin in fragmented "per-transaction" form and never processed to establish a full browsing history for a consumer. The only insight Awin has on a consumer is that they clicked a publisher's ad and then went on to buy the product.

We have undertaken a comprehensive data protection impact assessment ("DPIA") which sets out our analysis of the data protection implications of Awin's service. We would be happy to share this with the CMA, as part of its market investigation to provide further context on the data use and compliance of Awin.

## 4. **CONCERNS WITH A REQUIREMENT FOR A UNIVERSAL TRANSACTION ID**

The adoption of any universal user ID solution would have to take into account the privacy impact.

***The ability for Awin to create our own unique identification for providing our service, enables us to keep oversight of data and encourage this to be used in a responsible (and GDPR-compliant) manner.***

The use of IDs rather than directly identifiable information is intended to reduce privacy risks on individuals and is recognised as a security measure under GDPR. An obligation to make available a universal ID would be directly contradictory to this approach. It would allow currently disparate databases to be linked together.

It would likely enable and encourage the creation of detailed user profiles and make it much harder for Awin to guarantee that data we collect and share with our network for affiliate marketing purposes is not used in a variety of different online advertising techniques.

We ask that affiliate marketing be expressly exempted from the requirement to use a universal ID.

***Relevant to questions: M.14 to M.17***

## **5. CONCERNS WITH 'ON-DEVICE ONLY' ATTRIBUTION**

In light of our already privacy-conscious business-model, Awin is particularly concerned about the CMA's proposal for attribution to occur '*on-device only*' and to further restricting how and what businesses are able to track via their services, even when this tracking does not raise legitimate concerns under GDPR.

***A restriction in this way will inevitably provide a competitive advantage to large technology firms that sell devices (or software, such as browsers) to leverage their positions.***

Although Awin does not profile individual consumers by using the same tracking methods as more personalised marketing channels, Awin's ability to compete with vertically-integrated businesses and continue to attribute sales and fairly reward publishers would be significantly affected by an "on-device only" ecosystem.

We ask that the proposed intervention to move exclusively to "on-device only attribution" be abandoned.

***Relevant to questions: L.10 to L.26***

## **6. IMPORTANCE OF ATTRIBUTION**

We welcome that the interim report highlights the importance of accurate attribution and the ability to show effectiveness of advertising. We agree that measuring performance accurately and comprehensively is a direct benefit to the advertiser. Awin provides a method for this which is independent from the online platforms.

Furthermore, Awin seeks to democratise validation data and be as transparent as possible with its network in respect of attribution and validation. We offer our network real-time reporting and methods whereby they can validate and query the reporting.

## **7. CONCERNS AROUND THE ADTECH FEE REPORTING**

***As Awin usually acts as a single intermediary in a closed network between a publisher and an advertisers, our fees are entirely transparent to our network.***

We ask that proposals around fee transparency include exemptions and a level of flexibility for the methods through which companies are required to comply, so that companies, such

as Awin, that already operate with fee transparency have the ability to comply using their existing practices.

***Relevant to questions: M.14 to M.17***