CLIQZ

Competition and Markets Authority

By email only:

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OnlinePlatforms@cma.gov.uk

Munich, February 12th, 2020
Comments regarding the online platforms and digital advertising market study, interim report

To whom it may concern

Thank you for your thorough market study into online platforms and the digital advertising market and for publishing the interim report. We appreciate your investigation of this important topic, for consulting with us during the drafting phase, and for reaching out to us for comments on the interim report.

Cliqz is a search engine based in Germany that was designed with privacy as a guiding principle. Over the last five years we have built our own search index and privacy technology, and made these available in the Cliqz browser on all major platforms. All of our technology is built from scratch, driven by privacy by design principles and all client software is open source. In contrast to most other players we run our own, independent search index. Every day, we show that neither big data, cutting edge technology, nor business decisions need to conflict with the essential right to privacy.

We want to see more European technologies reach significant market share. This would finally allow consumers to choose products that are
- designed and built reflecting European values,
- understood and regulated by our elected or appointed regulators,
- create value and pay a fair share of taxes in Europe.

We strongly believe that Europe should control its own digital infrastructure and ensure digital sovereignty. For the purpose of this goal definition we use the term Europe with the UK included even after Brexit.

We compete directly with Google and suffer from the market foreclosure by Google which is driven by Google's financial ability to essentially buy exclusive access to the most relevant distribution options. It is important to note that the technological challenges of establishing a high-quality search engine can be solved with some investment, time and engineering, as Bing, Yandex, or Cliqz have shown. However, the quality of the technological solution is not sufficient to compete

effectively against Google. For example, startpage.com uses the Google index, thus having the same quality as Google search, but has reached only a negligible market share.

When addressing Google's dominance, it is therefore important to address the primary cause for this dominance first and not get distracted by secondary potential barriers to entry. Such secondary potential barriers to entry include lack of technical interoperability, e.g. not getting access to click and query data, or not having transparent access to crawl websites ("robots.txt").

From our experience, the primary cause for Google's dominance is the fact that Google forecloses access to distribution for competitors. Because of this, new players do not manage to reach the user. Given Google's vast financial resources and its superior ability to monetize user data, Google has raised the cost of distribution deals to the point that no new entrant can match their price and distribution is effectively blocked. We have laid this out in detail here: https://0x65.dev/blog/2019-12-22/google-competition-is-just-one-click-and-27-billion-us-dollars-away.html. There are literally two orders of magnitude difference between the necessary investment in technology vs. the required investments in distribution to compete on a level playing field with Google. In 2019, Google spent 22.3% of its annual revenue on distribution deals, i.e. they pay billions for exclusive access[1]. When the regulator steps in, Google reacts aggressively as seen recently in Turkey[2]. This should be the primary focus of competition authorities: If Google is foreclosing the market by paying billions to all relevant players in the ecosystem to exclusively access their distribution, it is effectively making these players dependent on Google's money and de facto creating the rules for the ecosystem. It is also impossible for others to access this market.

In our comments we focus on the search parts, specifically the questions in Appendix J that Cliqz has experience with and/or are relevant for Cliqz.

We believe that the measures mentioned in J.8.-11. would create a significant market opening. Forbidding pre-installation deals for the dominant market player, as suggested in question J.52., J.1., would be an effective lever: **Forbidding a player with 90+% market share to pay others for further distribution is a very strong sword**. We recognize the concerns mentioned in J.11. about potential disruptions to the ecosystem. We do, however, believe that such disruptions are necessary to stop the de facto exclusive access to distribution by Google as described above. While such a disruption could lead to services or devices getting more expensive for consumers, this would only make the true costs, which are payed today indirectly by the users via the advertising system, visible to the consumers. We do not dispute that browsers, operating systems, or device manufacturers should be able to receive money from other players (like search engines) in the ecosystem. We just experience the monopoly power that Google derives from being the only player that can afford extremely costly world-wide deals and then re-sell these slots.

[1] https://abc.xyz/investor/static/pdf/20200204_alphabet_10K.pdf
[2] https://ahvalnews.com/google/google-suspends-licences-turkey-after-fined-violating-competition-law

With respect to question J.52, J.2.: **We believe that a mandated choice screen is only a secondary lever that can only partly mitigate the current market dominance of Google.** Moreover, regulation of the choice screen requires careful thought in order not to end up benefiting Google indirectly:

- The way the current European Commission's choice screen remedy is being implemented by Google (your question J.52, J.3.b) today, competitors have to bid and pay for a place on the screen. No competing search engine should engage on these terms as they lead to Google getting superior insights into the economics of all competitors and Google's competitor effectively paying its fine. This model only benefits arbitrage players that do not have the costs of running an actual search engine (and the results of the first auction round show this).
- Even without a pay-to-play scheme, there are likely unintended consequences of a mandated choice screen. E.g., a choice screen with a selection by "market position in the Play store" will require players to pay Google Play for promotion to increase their market position. Again, Google would benefit.

If a choice screen is mandated after all, the regulator will need to play a very strong role (question J.52, J.3.c.):

- There should be a reasonable number of alternatives on the screen, much more than four.
- The selection and order should be completely random, there should be no payments.
- Not only syndication partners with high revenue should be options for choice, but also true competitors with an own index (like Mojeek or Cliqz) that do not have the incumbent's revenue yet. It should also be obvious to market participants who is a real competitor and who is only a syndication partner.

With respect to question J.53: **Click data are another secondary lever that could help improve the quality of competing search engines.** The sharing of click data can be implemented easily without major cost, e.g., via an API (your questions J.53, J.8. and J.53, J.10.). However, it requires significant privacy care: Older scandals like the publication of the AOL query data set[3] and recent news around AVAST[4] show that click data can be very problematic and/or used to identify users. It is technically possible to collect (click) data in a privacy preserving way, even beyond the requirements of GDPR (your question J.53, J.9.) and guaranteeing user's privacy. At Cliqz we have developed a concept called Human Web to this end (https://0x65.dev/blog/2019-12-03/human-web-collecting-data-in-a-socially-responsible-manner.html). This comes with additional costs (computation time, latency until data is accessible, and less coverage due to the removal of critical data points) but the concept ensures that not only potential (user) identifiers are removed, but also all temporal correlations that could be used to (re)build user profiles. If the CMA decides to implement measures around click-data, Cliqz would be happy to assist and consult on how to apply the Human Web concept to guarantee privacy when sharing click data.

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[3] https://en.wikipedia.org/wiki/AOL_search_data_leak
[4] https://techcrunch.com/2020/01/30/avast-shuts-down-marketing-analytics-subsidiary-jumpshot-amid-controversy-over-selling-user-data

With respect to question J.54: **Even if multiple search engines had access to Google's index it would not solve the core problem by creating only pseudo-competition on the basis of *one* index.** We have argued in the past that a level playing field *structurally* requires multiple search engines with their own indexes (https://0x65.dev/blog/2019-12-01/the-world-needs-cliqz-the-world-needs-more-search-engines.html).

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Please allow us to highlight again that highly paid and thus de facto exclusive distribution is the fundamental barrier to market entry for new search engine competitors. **Stopping Google from paying for distribution would increase their profit margin short term, but immediately open the market for existing and new players**. This is the primary lever to create a level playing field where existing and new search engines compete around business models, search quality, and content.

Focusing on this primary lever would ultimately benefit consumers and society by allowing to break up a monopoly in the highly sensitive domain of information access and search. Without a disruption of the dynamics underlying the status quo, European countries risk being digital colonies without digital sovereignty which entails major risks for our democracies and future prosperity.

Thank you for your dedication and for looking into this issue.

Yours sincerely,
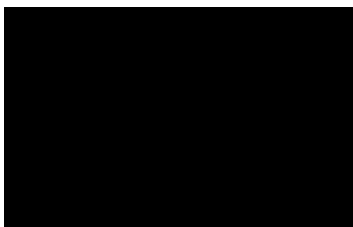
Dr. Marc Al-Hames
Managing Director Cliqz
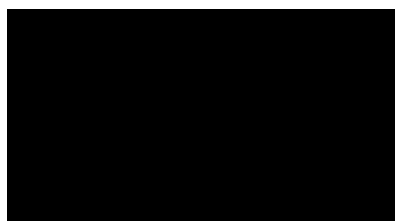
Jean-Paul Schmetz
Managing Director Cliqz