

ONLINE PLATFORMS AND DIGITAL ADVERTISING MARKET STUDY

DMG Media's comments on the CMA's Interim Report

1. Introduction

This submission is DMG Media's response to the Interim Report published by the Competition and Markets Authority ("CMA") on 18 December 2019 in relation to its online platforms and digital advertising market study (the "Market Study").

DMG Media would like to commend the CMA for the excellent work it has done so far on the complex legal and economic challenges created by online platforms and digital advertising. Subject to some caveats that will be stated in this submission, DMG Media largely agrees with the analysis and the findings made by the CMA in the Market Study. DMG Media is pleased that the CMA has taken account of the observations and the related evidence it has submitted. DMG Media's main disappointment is that the CMA has indicated that it does not intend at this stage to launch a Market Investigation. We think this is not the right course of action for reasons we will discuss below.

DMG Media is a major news publisher in the UK and elsewhere. As it generates the vast majority of its revenues from online display advertising (via the open display market), it will concentrate its comments on this type of advertising. It will also comment on the need to improve fairness, trust and transparency around ranking algorithms, as its ability to generate ad revenue hinges is directly related to user traffic – a substantial portion of which is referred by Google according to its opaque algorithm. In this respect, DMG Media would like to emphasize the following points.

First, DMG Media is pleased that the Interim Report acknowledges "*publishers' concerns that sudden, unexplained and significant algorithm changes can have harmful financial consequences for them which they are unable to predict or manage.*"¹ That is certainly an area where intervention is needed as news publishers cannot properly plan and run their business when they can lose overnight a large fraction of their traffic without warning or explanation and with no means of redress.

Second, the Interim Report is also correct when it observes that while vertical integration in open display may be a source of efficiencies, "*it can also give rise to conflicts of interest and allow*

¹ Interim Report, paragraph 46.

companies with market power at one stage of the value chain to use it to undermine competition at other stages.”²

- Google’s operation “*as a publisher ad server, with influence over which ads are served and which bidding information is provided to publishers and intermediaries, as an SSP, which sells inventory on behalf of publishers, and as a DSP, which buys inventory on behalf of advertisers*”,³ creates serious conflicts of interests, which in DMG Media’s view would not be tolerated in other sectors of the economy, such as for instance financial services.
- In particular, the Interim Report has correctly identified the four main areas of potential concern about Google’s behaviour with respect to online advertising, namely “*using its market power in inventory and data to advantage its own DSP services (Google Ads and DV360); channelling Google Ads demand through Google’s SSP (AdX) and limiting the integration of AdX with rival publisher ad servers; self-preferencing between Google’s publisher ad server and AdX; and self-preferencing between Google’s DSP and SSP.*”⁴ Through this combination of mutually reinforcing practices, Google has turned what used to be a vibrant ad intermediation ecosystem into a quasi-monopoly on some of its core components. This has in turn allowed Google to charge high fees and hidden margins on its services to the detriment of publishers, advertisers, and ultimately consumers.

Third, DMG Media wholeheartedly agrees with the Interim Report’s finding that the lack of transparency that it has observed “*has the potential to create or exacerbate a number of competition problems.*”⁵ The Interim Report is certainly correct in stating that “*asymmetric access to information across suppliers may also create opportunities for exclusionary behaviour on the part of the large advertising platforms.*”⁶ Google’s efforts to deprive publishers of certain categories of data also prevent them from optimizing the monetization of their inventory. It also allows Google to collect hidden fees and engage in arbitrage.

Fourth, DMG Media encourages the CMA to “*carry out further work to investigate money flows along the intermediation chain in the second half of [its] study*”,⁷ and in this context “*analyse transaction-level data from Google to understand better where Google earns its revenues from different parts of the intermediation chain, and to investigate claims that Google is able to earn ‘hidden fees’ by arbitraging its position on both the buy side and sell side of the ad tech stack.*”⁸

² Interim Report, paragraph 52. See also paragraph 5.201.

³ Interim Report, paragraph 56.

⁴ Interim Report, paragraph 5.202.

⁵ Interim Report, paragraph 50.

⁶ Interim Report, paragraph 50.

⁷ Interim Report, paragraph 2.59.

⁸ Interim Report, paragraph 2.59.

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While news publishers have long believed that they receive an unfairly small share of the investment made by advertisers, the CMA can use its investigative powers to bring some light to this matter.

Fifth, the CMA is also right to consider the case for a “*range of separation remedies*” to address concerns relating to Google’s conflicts of interest in the open display market, such as for instance the separation of the ad server from the rest of Google’s business.⁹ As DMG Media submitted in its observations on the Statement of Scope of the Market Study, the CMA should envisage a combination of structural and behavioural remedies to restore competition in the online display advertising market.

Finally, we support the view expressed in the Interim Report that “*there is a strong argument for the development of a pro-competitive regulatory regime to regulate the activities of online platforms funded by digital advertising.*”¹⁰ The list of advantages of setting up such a regime through an enforceable code of conduct, including in particular the fact that digital markets move fast and that the enforcement of competition rules may be too slow in delivering satisfactory outcomes,¹¹ makes sense.

By contrast, DMG Media respectfully disagrees with the CMA’s current position not to propose to make a Market Investigation reference. While we understand that there might be good reasons to tackle the problems the CMA has identified through recommendations to government for regulatory reform, ***we are concerned that regulatory intervention may come too late to ensure the survival of the news industry.*** The collapse of advertising revenues, due in part to the behaviour of major online platforms, must be tackled urgently.

If the recommendations made by the CMA need to be translated in a code of conduct to be developed in partnership with industry by a yet-to-be-created digital unit, they may be implemented too late for the publishers that heavily rely on digital advertising. Moreover, it would be unfair to allow Google to pursue some of its exclusionary and exploitative conducts with respect to online advertising (many of which started with its acquisition of DoubleClick in 2008) unchallenged for several additional years. ***Swift action is thus needed to restore competition in a critical area of the economy for the welfare of news publishers and their readers.***

Moreover, to the extent that some of the challenges identified by the CMA are international in nature, we think that the CMA – given its high standing in the community of antitrust authorities – is very well placed to proactively address them – as well as discuss potential remedies – in collaboration with the European Commission, the US authorities, as well as leading European continental authorities, such as the Autorité de la Concurrence and the Bundeskartellamt.

⁹ Interim Report, paragraph 84.

¹⁰ Interim Report, paragraph 65.

¹¹ Interim Report, paragraph 6.22.

As an intermediate solution, the CMA might wish to pursue a Market Investigation on:

*“the open display advertising market, with a focus on the conflicts of interest Google faces at several parts of its vertically integrated chain of intermediaries.”*¹²

The evidence of anticompetitive wrongdoing in this area is compelling and well suited to support a Market Investigation reference. Moreover, as noted above, this is an area where Google’s conduct must be addressed as a matter of priority to ensure the viability of the thousands of publishers, large and small, that rely on display advertising revenues to fund their operations.

The two other areas in which the CMA reasonably suspects that problematic behaviour exists, i.e. *“general search and search advertising, with a focus on Google’s market power and the barriers to expansion faced by rival search engines”*¹³ and *“social media and display advertising, with a focus on Facebook’s market power and the lack of interoperability between Facebook and rival services”* could then be left to regulatory reform on the basis of a code of conduct.¹⁴

This submission is divided in six Parts. In Part 2 we respond to the consultation questions of Chapter 8 of the Interim Report. In Part 3 we respond to some of the questions included in Appendix I of the Interim Report on potential practices to be tackled through a code of conduct. In Part 4 we respond to some of the questions included in Appendix J of the Interim Report on potential interventions in general search. In Part 5 we respond to some of the questions included in Appendix L of the Interim Report on potential approaches to improving personal data mobility. Finally, in Part 6 we respond to some of the questions included in Appendix M of the Interim Report on potential interventions in digital advertising.

¹² Interim Report, paragraph 87.

¹³ Id.

¹⁴ Id.

2. Consultation questions

DMG Media hereby responds to the consultation questions raised by the CMA in Chapter 8 of the Interim Report.

Our understanding of the markets within our scope

1) Do you agree with our descriptions of general search services and social media service, as set out in Chapters 2 and 3?

The description given is broadly accurate and identifies the main reasons why a very small number of platforms dominate the respective markets, and the problems this causes for other businesses and ultimately consumers. There are a few points on which we would place greater emphasis:

Voice Assistants (paragraph 3.12). The increasing popularity of voice assistants will exponentially increase platforms' ability to pick winners and losers in search. Because of the linear nature of a verbal reply to a search request voice assistants are generally only able to provide *one* response, rather than a page of options, supported by further pages, as is the case in online search requests. This presents problems for platforms, because it makes monetisation difficult, as was acknowledged by representatives of Google and Amazon at the European Commission's recent Ranking Transparency Workshop.¹⁵ Platforms may well try to monetise the service by selling responses.

Voice assistants represent a serious challenge for news publishers, as it is hard to see how advertising could be included in a verbal response to a search request for news. This in turn would undermine the present arrangement under which platforms access publishers' news content without charge in return for delivering page-views for advertising.¹⁶

2) Do you agree with our explanation of the different forms of digital advertising, as set out in Chapter 5?

DMG Media is not engaged in search advertising, but it is heavily engaged in open display, which provides the revenue which funds its digital news operations. Broadly we agree Chapter 5 gives an accurate description of the area of digital advertising in which we are engaged. We welcome in particular the CMA's finding that "*search and display advertising appear likely to impose little competitive constraint on one another*" and it is thus "*most appropriate [...] to consider*

¹⁵ This took place on December 12, 2019. No report has yet been published.

¹⁶ It should be noted, however, that this *quid-pro-quo* arrangement no longer functions when the platform acts as a substitute to the publisher and thus diverts traffic away from it. An example would be snippets in Google's SERP providing the information the user seeks, to the effect that the user no longer needs to visit the publisher's website).

*competition in search and display advertising separately from one another and from other forms of advertising.*¹⁷ Indeed, as most advertisers and media agencies indicated, search and display “*perform different roles within the customer purchase journey*” and thus are unlikely to be substitutable.¹⁸

We also agree with the CMA’s distinction according to the way display advertising is sold, between owned and operated platforms, where inventory is sold using the platform’s own ad tech tools, and the open display market, where inventory is sold through a complex chain of intermediaries.¹⁹

3) Do you agree with our explanation of how the intermediated open display market operates, as set out in appendix H?

DMG Media broadly agrees with the explanation of how the open display market operates and appreciates the work the CMA has put into understanding this complex ecosystem. We welcome in particular the CMA’s initial finding that “*there are conflicts of interest arising from Google’s position on several sides of the market*”,²⁰ and its analysis of the four main areas where such conflict may arise.

We would like however to draw the attention of the CMA to certain issues which in our view merit further examination:

Unified Pricing Rules (paragraph 5.196). There is only a brief reference to the fact that Google’s introduction of Unified Pricing Rules to Google Ad manager has stopped publishers setting different floor prices for some DSPs. When we responded to the RFI in August 2019 it was too early to assess the significance of this action. However, we now believe it is a major change, the effect of which is to protect Google by preventing publishers from controlling reserve prices on AdX. Previously many publishers (including DMG Media) had regularly set higher floor prices for Google than for non-Google demand sources, which resulted in higher prices paid by Google, helping to add price support to the overall auction mechanism within Google Ad Manager. Under Unified Pricing Rules this is no longer possible. Publishers are no longer able to floor Google with a higher reserve price than other demand, which means Google can win impressions more easily and at a lower price. The result has been an increase in the total volume of impressions won by Google, along with an increase in the percentage of publisher revenue generated by Google. Google operates on a revenue share model and therefore Unified Pricing Rules has resulted in greater revenues generated for Google.

¹⁷ Interim Report, paragraph 5.36.

¹⁸ Interim Report, paragraph 5.28.

¹⁹ Interim Report, paragraph 5.101-5.102.

²⁰ Appendix M, paragraph 24.

The justification put forward by Google, namely that “*under the newly introduced unified first-price auction per-buyer floor are less relevant*”,²¹ fails to convince. It is hard to see why Google should take the drastic measure of deprecating per-buyer floors (and essentially the quality of its service to publishers) because it considers that such floors are “less relevant”. Once more, Google wants to decide for its customers. If its customers, i.e. publishers, consider that per-buyer floors are less relevant, they would simply stop using them. This paternalistic justification is a smokescreen for the real reason behind the introduction of Unified Pricing Rules: Google’s wish to eliminate publishers’ ability to set higher floor prices for Google demand – which, as DMG Media has explained, could be used to force Google pay more than a single penny above the winning header bidding bid.²² This is another instance of Google serving its own interests over those of its customers: enabling Google to buy impressions at a lower price increases arbitrage opportunities and the related margin.²³

Further to this, it is worth noting that policy update occurred on 5 February 2020 whereby Google now states a “House” type line item can only be used to represent demand where the Google Ad Manager Account holder owns the product / service being advertised.²⁴ This was not previously a Google policy, and it is clearly a direct and rapid response to a recently developed workaround that allowed publishers to ‘uncouple’ their non-Google (header bidding) demand from the blanket flooring mechanisms of Unified Pricing Rules, thus allowing Unified Pricing Rules to only apply to Google demand once again.

The removal of “last look” (paragraph 5.221). The CMA observes that as part of its transition to a unified auction, “*Google has made the policy decision to remove AdX’s ability to observe the bids submitted by header bidding SSPs before running its own auction, the so-called ‘last look’ advantage.*”²⁵ While we do not wish to challenge Google’s intentions, we think the CMA should not accept at face value such a statement in the absence of specific evidence. Google has not explained – at least not publicly – how the decision logic of GAM (and in particular Dynamic Allocation) will *not* grant AdX “last look” over header bidding bids. Importantly, information provided through “minimum bid to win” can be used by Google to achieve a similar outcome. Additionally, the Google AdX “Average Revenue Share” functionality seems to rely on knowing or predicting for which impressions it is necessary for Google to forego their revenue share in order to win the impression. Whether this occurs directly from “last look” in its current form, or is

²¹ Interim Report, footnote 272.

²² As the CMA observes in Appendix M (paragraph 30), “Google’s internal documents show that this [the introduction of Unified Pricing Rules] was an integral part of the design of the Unified Auction and was motivated by the fact that publishers tended to set higher floor prices for AdX compared to other SSPs. Introducing a uniform reserve price would therefore improve AdX competitiveness by giving it an equal footing’ with third-party SSPs.”

²³ Interim Report, paragraph 5.196.

²⁴ <https://support.google.com/admanager/answer/1628457>.

²⁵ Interim Report, paragraph 5.221.

inferred via some new method using information to which non-Google participants do not have access, it would, in our opinion, still constitute a last look advantage.

Google not participating in header bidding (paragraph 5.216). The reasons put forward by Google for refusing to participate in header bidding fail to convince. Server-side header bidding has minimal impact on header bidding. As regards client-side header bidding, publishers can take appropriate measures to ensure that it will not impact page latency (e.g. by implementing time-outs or limiting the number of integrated demand partners). We find it hard to understand why Google should be the ultimate arbiter of whether header bidding is bad for user experience. It is for the publisher to strike the optimal balance between monetization and user experience.

CPC/CPM conversion (paragraph 2.42). This an area of considerable opacity which we believe allows Google to make hidden profits. Google Ads charges advertisers typically on a Cost-Per-Click (CPC) basis, but Google Ads competes against other DSPs in the AdX auction on a Cost-Per-Mille (CPM) basis. That means that Google Ads submits a bid on a CPM basis while getting paid on a CPC basis. It is unclear how Google converts CPC bids to CPM bids. This lack of transparency creates ample arbitrage opportunities.

Domain categorisation. Chapter 5 does not address the “black-box” way in which Google controls inventory/domain categorisation. This relates to Google’s ability to determine, in their sole discretion, what constitutes an advertiser safe web page, as explained in more detail in DMG Media’s response to the CMA’s RFI (pages 10-11). This operates both on the DSP side via “Digital Content Labels” and “Sensitive Category” blocks, and on the SSP side via “Policy” blocks in the ad server (which in effect can switch off all AdX buyers for sections of a publisher’s website). There appears to be a large human component in this process and decisions made are often arbitrary, and not consistent across different websites.

Third-party cookies (Appendix M, paragraph 255). As we are sure the CMA is aware, Google are now phasing out third-party cookies in Chrome, their dominant web browser.²⁶ The move will have a massive impact on the ad tech ecosystem, since the third-party cookie is the backbone of advertising on websites. At the same time, advertising on Google’s own properties will not be affected, as it relies on first-party cookies. DMG Media lays down its thoughts in more detail in its response to the next question (Q.4, p 10-12).

SSPs bear risk of paying publishers (Appendix M, paragraph 77). We are increasingly finding this to not be the case. SSPs are seeking to put in place sequential liability clauses to cover instances where they cannot collect payments due from their DSP partners, for whatever reason. Pressure on ad tech business has led to a number of DSPs leaving the market with bills unpaid. SSPs wish to be able to withhold such amounts from future publisher payments, so that that publisher carries the burden, not the SSP.

²⁶ <https://blog.chromium.org/2020/01/building-more-private-web-path-towards.html>.

Fees for Open Bidding (para 5.224). The CMA states that “[w]hen using Open Bidding, however, SSPs are charged an additional fee, placing them at a disadvantage compared to AdX”. We understand that the 5%-10% fee for the use of Open Bidding is charged on *publishers*, not Open Bidders (i.e. SSPs participating in Open Bidding). Of course, Open Bidders are indirectly disadvantaged, as publishers selling inventory through them will receive 5%-10% less revenue.

4) Do you agree with our understanding of the role of data, as set out in Appendix E?

Again, we broadly agree with the description of the role of data as set out in Appendix E, but we have a number of observations:

Campaign Data (paragraphs 18-20): We would also classify programmatic ad data under campaign data. This includes data on average price paid, average bids, advertiser verticals or specific advertiser. We can use this information to segment our audiences (either in real time or using historical data). For example, using average bid data we can decide what demand sources should run on a given user by segmenting our users into “buckets” of high value and low value users.

Data collected directly from third party sites and apps through technology (paragraphs 40-41): It is worth reiterating, from a publisher’s perspective, the large impact that the removal of third-party cookies has on targeting capabilities, manifesting itself in considerably lower CPMs. The use of third-party cookie IDs is a rapidly dying method of data collection/targeting across a large percentage of our users (currently including those accessing our website via Firefox or Safari, and soon to be joined by Chrome).

Data collected through advertising services to publishers (paragraphs 46-47): It should be noted that even without a direct integration to a website, a platform can still access data via the “OpenRTB” or “Google Authorized Buyer” bid request. In many cases a call out to their DSP will occur on every web page that a publisher wishes to serve an ad (whether they serve an ad or not).

Role of data in search (paragraph 62 (a)): It is also the case that data gathered by search engines is held in various data centres around the world and organized in a number of ways to provide different web search results depending on the geographical location of the user.

Role of data in search (paragraph 62 (b)): The use of the word “bounce” as a negative point on a user’s behavior with a site is not entirely accurate. It is not the bounce itself that is inherently bad, rather it is the bounce accompanied by low dwell time (as some sites such as a recipe site may have a very high bounce rate along with a very high dwell time). A “bounce” is not a measure of time.

Role of data in search (paragraph 62 (d)): Google has preferred content partners for additional data to be provided on the search engine results page. This means not every website or content

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producer has the same opportunity to have its content displayed. Clearly those that are preferred are likely to benefit from increased traffic, brand awareness and brand authority. Wikipedia is a notable example of this.

Web-crawling (paragraph 68): The main reason we would block a web crawler on a specific part of our site is because that part of the site has no content that is needed by a user in search. The statement that *“this means that almost two thirds of sites in the sample are implicitly blocking or limiting crawling”*, is somewhat misleading. Just because a site has a robots.txt file does not mean they are blocking any search engine crawlers. Additionally, a robots.txt file does not necessarily stop a crawler, as a robot may not be well-behaved and still crawl the site.

Non-user data about web pages (paragraphs 80-81): Google uses an ongoing process known as Expertise, Authoritativeness and Trustworthiness (EAT) to help rank websites. Our understanding is that PageRank is just one of the measurements that Google use to rank sites in their search results.

Value of personal advertising (paragraphs 132-137): Following the removal of third-party cookies by Firefox and Safari we currently see, using browser level CPM data, that this traffic has between a 45-65% lower average CPM than Chrome traffic. Assuming Firefox and Safari offer the poorest user-based targeting capabilities, whilst Chrome offers the best, the comparison can be a proxy of the value of user-based targeting. This is not a perfect comparison for many reasons, however if the CMA requires more information on publisher CPMs by browser we would be happy to provide it.

Removal of third-party cookies from Chrome: Given that Google’s decision to phase out third party cookies for Chrome was announced after the CMA’s Interim Report was published, it might be useful to provide some perspective on how this will affect the industry from DMG Media’s point of view.

The value of cookies, and specifically third-party cookies, as an ad targeting mechanism has been eroding since Safari (Apple) first introduced Intelligent Tracking Prevention (ITP) in 2017. ITP has been updated a number of times over the last 24 months with tighter blocks on tracking cookies on each update. Mozilla Firefox rolled out Enhanced Tracking Protection (ETP) in September 2019 which blocked third party tracking cookies. As a result, digital advertising has been operating across the open web for some time with an approximately 30% blind spot in its targeting capability. Clearly Google’s announcement means both advertisers and publishers must prepare for a future in which there are no third-party tracking cookies, given that Chrome is the dominant web browser.

To date, there have been a number of proposed user-based replacements to the cookie with some adoption across ad tech ecosystem:

- **DigiTrust ID:** Owned by the IAB Tech Lab, this allows for the use of a DigiTrust first party cookie to store the ID. This is set via a rapid redirect to the DigiTrust domain.

NON-CONFIDENTIAL VERSION

However, Firefox is expected to block this tracking, even if it is set as a first party cookie by DigiTrust.²⁷

- **ID5:** Universal ID. It uses publisher first party cookies to store the ID, similar to DigiTrust.
- **Permutive:** DMG Media’s data management platform, which is an attempt to protect ourselves from removal of third party cookies. Permutive does not rely on cookies, but instead assigns a publisher ID (Permutive ID) to every user on our site and stores it in browser localStorage. Permutive enables us to create detailed contextual segments of our users. We then pass the first party targeted data to the buy-side at the point of auctioning our ad space. The Permutive ID can also be passed to end buyers to use for frequency capping. It may, in the future, be possible to link universal IDs to the Permutive ID for better user targeting. However, Permutive ID is vulnerable to being blocked by browsers if it becomes a widespread solution to manage identity across programmatic buying. Although Chrome has not yet mentioned concerns around localStorage usage for tracking, we predict that if localStorage is used in this manner, it is likely to be blocked by some or all browsers.
- **Liveramp IdentityLink:** This solution creates persistent IDs from uploaded email addresses from many different sources, which can then be targeted via our DMP. This solution may come with an increased effort from publishers to ask for email addresses which would then be hashed or linked to a separate ID and sent to buyers. The benefit from using a hashed email is that it will still allow for attribution and retargeting, but concerns may arise due to the level of targeting this would offer, especially as the email address is a persistent Personal Identifiable Information, albeit hashed or linked to separate IDs. It is also unclear how much scale can be gained across the open web with this method.

There are also a number of “unified ID” initiatives. However, some of these ID solutions, such as The Trade Desk Universal ID, whilst useful to improve ad targeting, have a critical weakness in that they still rely on third party cookies.

Google has proposed its own solution to replace cookies. Known as ‘Privacy Sandbox’, it utilises a browser sandbox within Chrome to track and measure ads in an anonymised way. The Privacy Sandbox will ensure these tracking signals are not accessible to the advertiser, thus protecting user privacy while also providing ad targeting. The Privacy Sandbox is intended to allow an information exchange between the browser and the various internet companies (advertisers, publishers, ad tech, potentially other browsers), in a privacy safe manner.

²⁷ <https://digiday.com/media/firefox-browser-will-block-the-iabs-digitrust-universal-id/>

NON-CONFIDENTIAL VERSION

Google has proposed various APIs (application programming interfaces) as part of the Privacy Sandbox, so that other companies can access information, along with privacy budgets that will limit how much overall information can be passed from the APIs. Examples of these APIs are:

- Ad conversion API – this measures ad conversion
- Ad Measurement API – this measures ad delivery
- Trust API – this confirms the user is human
- PIGIN (referring to private interest groups, including noise) – this classifies users into buckets of ‘interests’ using machine learning, but won’t reveal the bucket of users until the bucket reaches a sufficient size to avoid individual identification.

While it is still early to draw conclusions, an obvious criticism of this solution is that, if successful, Google may have further monopolised the ad ecosystem by controlling ad targeting not only for Google buyers, but for almost all buyers across the open web, as data collection will be moved to the browser itself. The Privacy Sandbox also appears to be a “black box”, and it is not at all clear whether it will be possible to verify that Google itself, as the provider of the browser, will not have access to the underlying tracking signals or any other advantage. For instance, it is not clear whether Google’s buy-side software (Google Ads, DV360) will have access to additional information through these APIs compared to non-Google vendors, in which case Google’s buy-side tools will have superior performance. If that is the case, it will make it even more important to take steps to break up Google’s advertising business.

A final point to note is that if implemented, the Privacy Sandbox could potentially undermine user agency. Users have always had the option to block or clear cookies to avoid being tracked. It is not yet clear whether users will be able to stop the new tracking methods being built into browsers. Google will be dropping users into “interest” buckets and passing these to other business – how will a user know what interest buckets they are in, what the definition of the interest bucket is, and how to opt out of a specific interest bucket?

Our initial findings and concerns under each theme

5) Do you agree with our analysis and findings in relation to competition in search and social media, as set out in Chapter 3?

While DMG Media does not compete directly with Google and Facebook in search and social media, we generally agree with your analysis and findings. We would only like to emphasise our experience of the effects of Google’s market dominance in search, evidenced by the damage done to our business by discriminatory algorithm changes, made without warning, explanation or means of redress. This is of course addressed in Chapter 5.

6) Do you agree with our analysis and findings in relation to consumer control over data, as set out in Chapter 4?

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We would urge great caution in considering any changes to consumer control over data. As the Interim Report rightly observes there is considerable tension between data privacy law and competition law,²⁸ and we have serious concerns about some of the measures the Information Commissioner's Office is considering to enforce GDPR and PECR (Privacy and Electronic Communications Regulations).

Data is the fuel which powers everything on the internet, which has brought consumers enormous benefits in the form of lower prices, and easier and quicker access to a far wider range of goods, services, and knowledge. In contrast the risks involved in sharing data, at least in digital advertising, are difficult to quantify. After all, many consumers may prefer to be shown advertisements tailored to their preferences over non-relevant ads.

Data protection regulators tend to focus on privacy to the exclusion of all other issues, with results which in our view threaten to damage consumers rather than benefit them. News is expensive to produce, but the existence of the BBC gives the illusion that it can be provided for free (it is not of course – the BBC is funded by a poll tax collected under threat of prosecution, but consumers forget that when they use the BBC news website).

The availability of high-quality news from the BBC, which is perceived by users to be free even if in truth they pay for it through their licence fee, means it is extremely difficult to fund news by subscription in the UK. If there is to be plurality in the digital news market, which is essential for a democracy to function properly, commercial publishers must be able to fund their news output with advertising.

However the ICO's position in the current debate over cookie consent appears to be that publishers should give consumers a clear choice between accepting targeted advertising with their news, or not. This is rather like telling a shop-keeper that he can charge for a loaf of bread, but must make it clear to customers they can take their loaf without paying if they prefer to. It insists GDPR does not allow the reasonable choice that consumers can pay for their news with data, or take out a subscription; but they cannot have it for nothing. If the ICO holds sway commercial provision of online news will become unsustainable.

Our experience of GDPR to date is that its main beneficiaries have not been consumers, who are confronted with a proliferation of cookie consent notices, which not only irritate them but have to be paid for. Instead the main beneficiaries have been the online platforms which, thanks to their vast signed-in data bases, have been able to use GDPR to reinforce their market dominance and as an excuse to restrict data they used to share with publishers or advertisers.

Furthermore, as Chapter 4 recognises, some of the proposals being put forward, such as data portability and payments by platforms for consumer data, are untested and would rely on

²⁸ Interim Report, paragraph 5.234.

technology which does not yet exist. We would strongly suggest that, while these are areas where a digital regulator might need powers to develop codes of conduct in the future, the CMA should be very wary at this stage.

7) Do you agree with our analysis and findings in relation to competition in digital advertising, as set out in Chapter 5?

We entirely agree that Google occupies dominant position throughout the ad tech stack, whereas the news publishing industry is pluralistic and highly competitive. This enables Google to operate as a buyer and seller in markets it controls, arbitrarily impose conditions on its business partners, and exploit the opacity of its black box operations to extract rents.

The merits and challenges of the potential interventions identified

8) Do you agree with our assessment of the merits of a code of conduct for large online platforms funded by digital advertising?

DMG Media agrees there is a very strong case for establishing a code of conduct for large online platforms. This would have the advantage of relatively speedy implementation, and the flexibility needed to tackle the problems of a complex and rapidly changing industry. However, given the enormous imbalance of market power between the large platforms and other players, it would be essential for any new regulator to have statutory backing. It would also need to be established in a way which ensures it does not become captured by the platforms, which are prepared to deploy enormous resources to game legislation and regulation to their advantage.

9) Do you agree with the range of possible practices we have identified that could be considered under such a code of conduct?

Yes.

10) Have we identified the appropriate range of potential interventions to address the sources of market power for Google and Facebook?

We agree with the range of interventions, though we would add that the regulator should have the power to award compensation where it finds a platform has acted without good reason in a way that has damaged the revenues of a business partner. The Interim Report also does not fully address whether the regulator would act in response to complaints from business or members of the public, or *ex officio*, although we note it does say: “*The regulator would be able to carry out own-initiative investigations, with powers of audit, scrutiny and transparency*”²⁹. We would recommend that it

²⁹ Appendix I, paragraph 18.

NON-CONFIDENTIAL VERSION

should act both in response to complaints and *ex officio*, because the dominant market position of the platforms means many businesses are fearful of the consequences of challenging their practices

The most useful remedy would be orders to implement actions to comply with the code, or to reverse actions taken in breach of the code. Financial penalties should be available to enforce compliance.

We would also suggest some specific remedies:

- Google should be prevented from sharing rival bid information with Google Ads and/or other DSPs and exchanges, other than the price at which an impression sold. That would counteract incentives to stabilise prices based on knowledge of competitors' bids.
- Google should be required to provide equal access to real-time AdX demand to all publisher ad servers. A regulatory body may require AdX to participate in client-side header bidding (like all major exchanges) until Google devises an appropriate plan to fulfil this requirement. This remedy would permit rival publisher ad servers to compete with DFP on the merits of price and quality and counteract the built-in bias that AdX might retain toward DFP, even if separation takes place.
- Additionally, Google should be required to provide equal access to Google Ads to all exchanges. Such a remedy is necessary to ensure that AdX, by virtue of its privileged access to Google Ads, cannot coerce publishers to use any publisher ad server or other ad-tech services.
- Google should be required to provide equal access to all demand sources on AMP pages. A regulatory body may require Google to permit client-side header bidding on AMP pages (e.g. using the remote.html feature, or, opening the number of Real Time Configuration vendor connections with no limits/restrictions on corresponding amp-analytics/amp-iframe sync pixels) until Google devises an appropriate plan to fulfil this requirement. This remedy would prohibit Google from limiting competition among rival exchanges on AMP pages.
- Google should be required to remove any preference in its organic search results for publishers that purchase products or services from Google. That would address Google's exploitation of its search monopoly power to harm competition in other markets.
- Google should be required to give both publishers and a regulatory body 60 days warning of any changes to its search algorithm, and an explanation of the effects such changes are likely to have on publishers' search visibility and ranking. The regulatory body should have the power to prevent or reverse changes, and in cases where changes

NON-CONFIDENTIAL VERSION

cause damage to a publisher's revenue should have the power to award financial compensation.

11) Have we identified the appropriate range of remedies to improve consumers' control over their data?

Please see our answer to Question 6 above and **Part V** for our observations on Appendix L. There is a serious risk that a one-sided focus on data privacy will make it impossible for business to provide valuable services, such as reliable news, to the public.

12) Have we identified the appropriate range of remedies to address conflicts of interest and a lack of transparency in digital advertising markets?

13) We have set out a number of specific questions relating to the potential interventions, which are discussed in the following appendices:

- I. Potential practices to be tackled through a code of conduct**
- J. Potential interventions to address market power in general search**
- K. Potential interventions to address market power in social media**
- L. Potential interventions to improve personal data mobility**
- M. Potential interventions in digital advertising markets**

Do you have any views on the more specific questions in these documents?

Please see DMG Media's responses in **Parts III-VI**.

14) Do you have any views about the appropriate sequencing of the remedies we have identified?

As far as we are concerned the most pressing issues are those relating to fairness and transparency in digital advertising and search. Other issues such as data mobility are less urgent and potential outcomes much less certain, requiring considerable further work before any action is taken.

We believe that structural and behavioural interventions to address specific concerns relating to market power, lack of transparency and conflicts of interest should be further explored, and if appropriate, implemented within the context a Market Investigation, which would run in parallel to the promulgation of the code of conduct.

Market Investigation

15) Do you agree with our assessment of the potential candidates for a market investigation, and what are your views on the merits of each?

Yes. We would encourage the CMA to conduct a Market Investigation in open display advertising, with a focus on Google's conduct and the lack of transparency. As explained in the Introduction, we believe there is compelling evidence of Google's wrongdoing in open display advertising, which has resulted in significant harm for publishers, advertisers, and ultimately consumers.

16) Do you agree with our proposal not to make a market investigation reference at this stage?

We respectfully disagree with the CMA's proposal not to make a Market Investigation reference at this stage, for the reasons explained in more detail in the Introduction.

17) Do you support recommendations to government as an effective route to implementing interventions in these areas?

Further work we propose to do over the second half of the study

18) Do you agree we have identified the right areas for further work in the second half of the study (set out below), and are there any significant gaps?

Yes, with the exception of proposing not to make a Market Investigation reference. We welcome in particular the CMA's intention to investigate further the fees and revenues in the open display advertising value chain (and especially Google's arbitrage) and the ability of platforms to influence auction outcomes. We also think that the CMA should investigate further Google's decision to phase out third-party cookies on Chrome.

3. Comments on Appendix I

DMG Media responds to some of the questions included in Appendix I of the Interim Report.

1) Do you agree with the overall proposed approach of regulation in the sector through a code of conduct applying to SMS firms? What thresholds should be applied by the regulator in determining SMS and compliance with the code?

Yes, we agree with the overall proposed approach of regulation through a code of conduct applying to firms designated as holding Strategic Market Status. We agree with the Furman Review, according to which such status should apply to any platform holding a position of “*enduring market power/control over a strategic gateway market with the consequence that the platform enjoys a powerful negotiating position resulting in a position of business dependency.*”³⁰ When determining compliance with the code, we think that the applicable evidentiary threshold should normally be that of the balance of probabilities. However, a lower threshold would seem more appropriate when determining whether interim measures should be granted. In that case, the threshold could be that of a *prima facie* case of non-compliance with the code.

2) What are your views on our initial thinking on the list of potential rules described in the left column of Table 1 below?

We generally agree with the proposed rules. However, we have concerns about Principle (1) Example (2) (Fair Trading - consumer data extraction) if it were to be applied to news websites. Unless we have a means to generate advertising our journalism is unsustainable.

In addition, we would suggest adding to Principle (3) Example (1) (Trust and transparency – Changing how core services work without due notice) that such changes should not be discriminatory, they should apply consistently to all business affected, and where adequate warning and explanation is not given, or changes are discriminatory, platforms should be liable for any detriment to the revenues of the businesses concerned.

3) What are your views on the proposed form of regulation: a set of principles-based rules, supported where appropriate by guidance?

We agree that this is the best approach to regulating a complex and rapidly changing industry.

4) What powers should the regulators have in making SMS companies change behaviour and under what conditions?

³⁰ Unlocking digital competition, Report of the Digital Competition Expert Panel (2019) available at <https://www.gov.uk/government/publications/unlocking-digital-competition-report-of-the-digital-competition-expert-panel>, page 5.

NON-CONFIDENTIAL VERSION

We agree with the powers listed in paragraph 17. The regulator should have the power to issue legally binding orders (without the need to obtain any court authorization/order) obliging the addressee to engage in certain affirmative action or refrain from certain practice in order to comply with the code of conduct, as well as the power to impose sanctions in case of non-compliance (see our response to next question). Finally, the regulator should have the power to award damages in case non-compliance has caused financial harm.

5) What sanctions should apply where a SMS platform does not comply with or breaches orders under the code of conduct, and, what impact that might have on the speed and effectiveness of the regime, including any appeal process?

In order to safeguard the effectiveness of the code of conduct, the regulator should be vested with the power to impose on the non-compliant SMS platform sanctions of sufficient deterrent effect. Sanctions could include e.g. periodic penalty payments which could be calculated on the daily / monthly turnover of the non-compliant firm. Any decision imposing sanctions would of course be without prejudice to the SMS platform's right to seek judicial review before the courts.

6) How should the process of an investigation be defined? How would disputes under the code be tested and treated?

7) Should the regulator be able to direct SMS firms to implement, or unwind, measures for the purpose of fulfilling the objectives of the code?

Yes, the regulator should be vested with the power to order SMS firms – without the need to obtain a court order – to take any necessary action (or refrain from action) in order to fulfil the objectives of the code, otherwise the code of conduct could end up having no teeth. The regulator should be further empowered to impose sanctions of sufficient deterrent effect (e.g. periodic penalty payments) and without the need to obtain a court order in case the SMS firms fail to comply with the regulator's order.

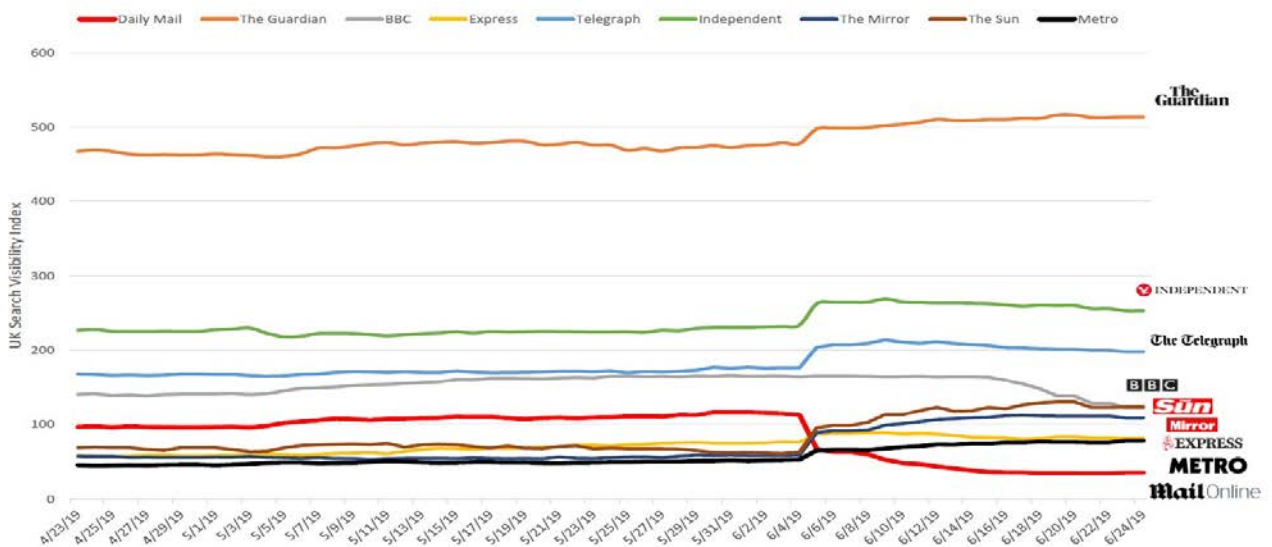
8) What forms of reporting by SMS firms should be within the scope of the code?

4. Comments on Appendix J

DMG Media is not itself a provider of search services [CONFIDENTIAL] but, as detailed in our response to the RFI, we do have considerable adverse experience of the way Google uses its market power to act in a way that is arbitrary and discriminatory, and to impose algorithm changes without warning, explanation or means of redress. We therefore welcome the CMA’s proposed interventions aimed at encouraging greater competition in search in addition to measures aimed at improving trust and transparency around ranking algorithms [CONFIDENTIAL]

There have been two significant developments since we submitted our response to the RFI. The first is that changes in the advertising market resulting from Google’s introduction of Unified Pricing Rules lead us to suspect there may be linkage between its otherwise unexplained discrimination against MailOnline in search, and [CONFIDENTIAL]

Google algorithm changes [CONFIDENTIAL]. To recap evidence we have previously submitted, on June 3, 2019 a core search algorithm change, made by Google without warning or explanation, reduced MailOnline’s search visibility, already abnormally low for such a large website, by 50% (see chart below).



We protested to Google at the highest level, only to receive the following response:

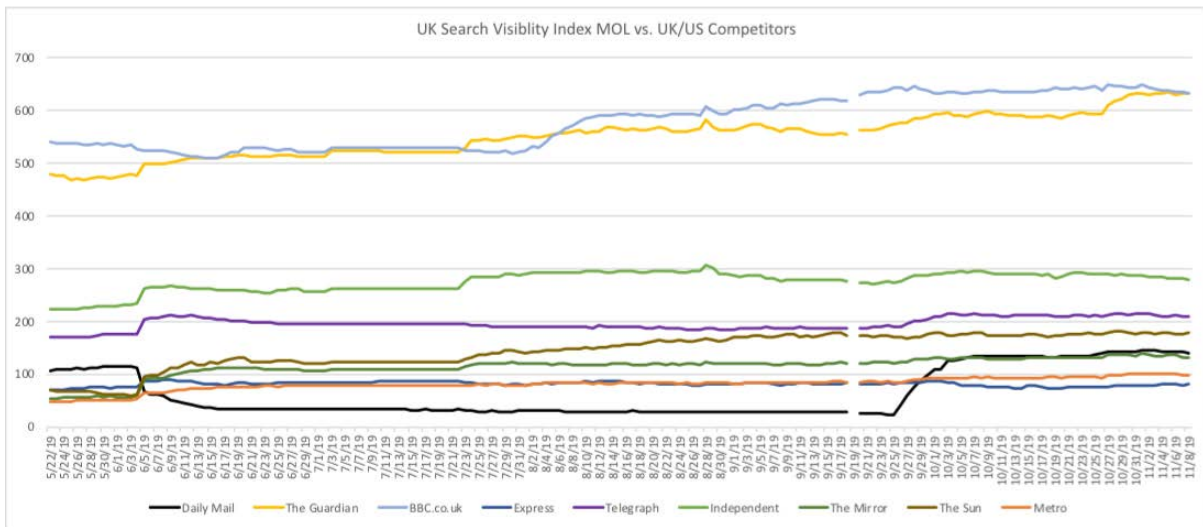
“The traffic drop has apparently happened because of a change in our overall core ranking systems, what we call a broad core update. We have communicated about such updates since the beginning of 2018. We have made clear that traffic drops that might happen under such updates are:

- *Not due to any site penalty*
- *Not due to a site doing anything ‘wrong’*
- *Do not have any specific ‘fix’ to pursue*

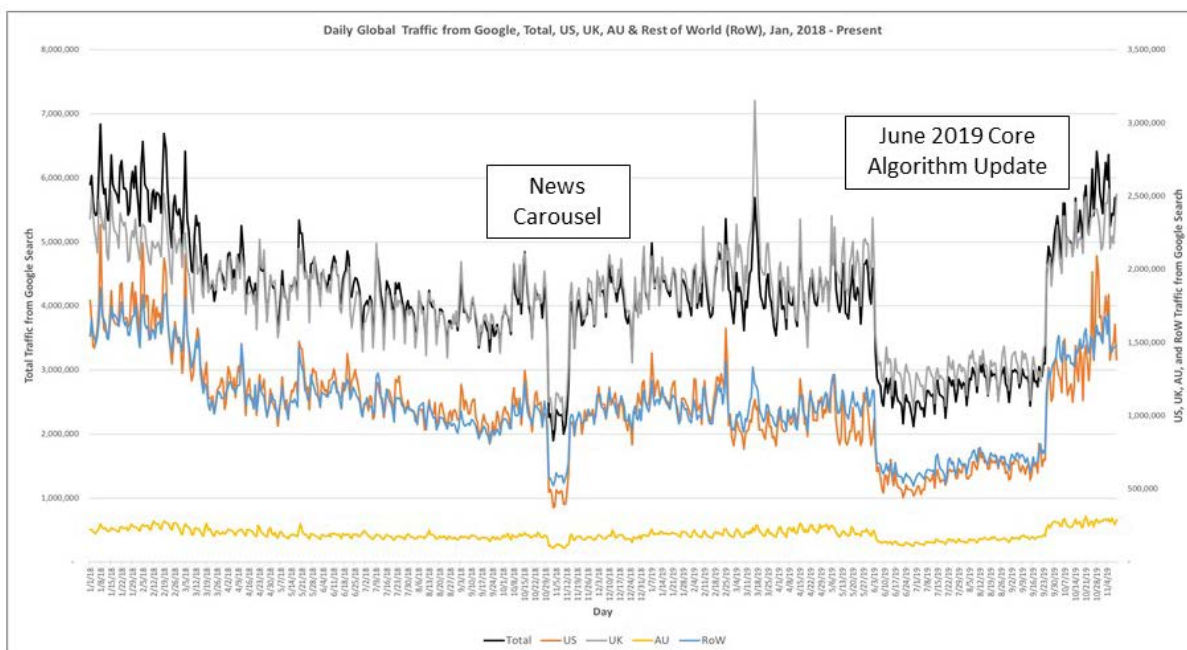
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Rather, as we have communicated, such updates often ensure that content that was previously under-recognized by our systems might perform better. As it moves up, other content might become less visible. That doesn't mean there's anything wrong with the content that no longer performs as well. It just means our systems believe there's better content we can return."

However, at the end of September 2019 the lost visibility (and consequently traffic) abruptly began to return, again without explanation or warning (see chart below).



A further chart (below) shows the dramatic damage these changes in search visibility caused to MailOnline's global search traffic (an earlier brief blip, in November 2018, was caused by MailOnline's temporary removal from Google's news carousel):



[CONFIDENTIAL]

[CONFIDENTIAL]

Across the whole spectrum of search, none of the problems we have had with algorithm changes would have presented such a threat to our business if Google was but one of a number of competing search engines.

Google has been ruthless in pursuing dominance in search, particularly in mobile where the purchase of default positions has given it an 87.5% share of the search market³¹, allowing it in turn to leverage the News Carousel to force publishers adopt AMP pages, where Google has advantages to deliver its AdX demand when compared to a traditional web page (as AMP pages are incompatible with client-side header bidding). We would certainly support a restriction on the ability of Google to buy default positions if this allowed competitors in search to develop viable alternatives.

The other suggestions in Appendix J are all ideas worth exploring, however they address parts of the search business where we do not have direct activities, and we are therefore unable to offer detailed comment.

³¹ <https://www.statista.com/statistics/279797/market-share-held-by-google-in-the-united-kingdom-uk/>.

5. Comments on Appendix L

DMG Media responds to questions included in Appendix L of the Interim Report.

- 1) Would the data-sharing remedies we have discussed be effective (including practicable and technically feasible) in addressing our competition concerns? Above all, would consumers adopt them in significant numbers?**

In terms of consumer adoption, for most data sharing models there must be a third-party data facilitator, which means a consumer must sign up to this new service, learn how to use it, and learn which platforms warrants their sharing of data. The market for data-sharing as described does not yet fully exist, thus rate of adoption is still unknown. Whether, in the opinion of the consumer, the benefits of a data-sharing facilitator such as a PDS outweigh the cost is also still unknown. Potential concerns are that a PDS does not offer consumers new abilities or functionalities beyond the promise of improved data privacy, and in fact, involves extra work for the consumer (which for non-technical individuals could prove to be a barrier of understanding and adoption). We remain sceptical as to the extent that user privacy matters more to consumers than the simplicity and ease-of-use that is currently offered.

- 2) Would they address our concerns comprehensively? Would they perhaps only work in sectors (like financial services and travel) where there was sufficient advertising revenue to attract intermediaries and fund consumer incentives?**

From a publisher's perspective, it may be worth making the distinction between competition in open display and competition across the consumer-facing services that SMS platforms offer consumers.

Access to the data currently held by SMS platforms would probably help boost competition in open display. This data powers the various ad networks operated by these large platforms and enables them to control the lion's share of advertising dollars, thus generating the huge margins that they currently enjoy. If other intermediaries could utilize this data to innovate, competition within open display would improve and ad revenues for publishers would be expected to increase.

Competition in the consumer-facing side of the market could improve if consumers were able to share their data with a competing product or service. The mere ability to do so, however, is not enough to reinvigorate competition, considering the sheer network effects of social media, or the ability for Google to promote its search product via the browsers and operating systems that it controls. We should note that increased competition among SMS platforms in the consumer-facing side of the market does not necessarily assist publishers, unless, for example, this helps to democratise sources of publisher search and social traffic, or in the case of open display, that a newly competing product or service creates an ad network similar to those currently run by the SMS platforms that can offer additional unique demand.

We do feel data-sharing capabilities would assist greatly in boosting competition in open display, however explicit consumer consent for each ad tech company that wishes to use the data is unlikely to occur, even if sharing and management of the data is privacy compliant.

We should note that simply giving consent to publishers to utilize the data held by SMS platforms is probably not enough to address competition concerns within ad tech. Publishers with access to data currently used by Google and Facebook might be able to improve some areas of their monetisation, however, most advertising inventory is now purchased via programmatic channels where the ad targeting is handled by ad tech intermediaries on the buy-side, so these ad buying platforms would need access to the data (although the names of these ad buying platforms are not known to consumers, so users are unlikely to allow their data to be shared with them).

- 3) Would the data-sharing remedies we have discussed only, or be more likely to, address the competition concerns we have over Google than Facebook? If so, could variants of the remedy be effective for Facebook or would an entirely different approach work better (say one that facilitated multi-homing)?**

As far as competition in consumer-facing services is concerned, one should not forget that data mobility is but one of the factors at play, and does not account for other sources of market power. For example, Google owns the most comprehensive web-crawling and indexing data, and has privileged access to distribution channels such as operating systems and browsers. In the case of social media, the network effect of all of a consumer's friends and family on one platform seems to be the unique selling point.

In terms of competition in open display, data sharing from either Google or Facebook would assist the industry, however it is arguably the case that Google's combination of intent, interest and demographic data is superior to that of Facebook's (using the revenue transacted through their ad networks as a gauge of data quality).

- 4) Is there a viable business model for PIM providers? What evidence could we gather to inform our judgement on this? Are there viable data-sharing intermediaries operating profitably in other sectors or overseas jurisdictions? Given the large number of unknowns, would a PIM challenge prize help us determine whether there is a viable business model for PIM providers?**
- 5) If such a business model does exist, what other features would it be necessary to provide to create an ecosystem in which PIM providers could exist? We have discussed authentication and security protocols and an accreditation framework but are there other features that it would be necessary to create or adapt? For example,**

how desirable would it be to create unique and shared identifiers for individuals who wished to share data?

- 6) Are there additional constraints that it would be necessary to impose on SMS digital platforms to make the emergence of viable PIM providers more likely? If the platforms were required to always make a ‘Do Not Track’ option available and/or set this option as a default with no avoidable loss of service quality would that create an incentive for the platforms to, for example, access customers through the platforms of intermediaries? Is such a requirement practicable or reasonable?**

For ad-funded businesses, this seems to be an unreasonable requirement. Although SMS platforms currently generate huge revenues, these are generated primarily through targeted advertising. There is a risk that it might not be feasible to provide the same level of service while eliminating the ability to run targeted advertising. In our opinion this would not boost competition, but on the contrary could reduce consumer welfare, as some services may no longer be able to be provided.

In addition, publishers currently rely heavily on the ability for the SMS platforms to be able to track and target users off platform across their site. If advertisers are no longer able to use the ad networks belonging to these platform to target their ads, they will see diminished performance from their ad spend and are likely to spend less on digital, thus meaning publisher’s will receive less revenue for the content they produce.

- 7) Respondents to our consultation have acknowledged that obliging the major platforms to share with publishers and third-party providers the consumer data they hold could address some of our competition concerns but would increase the risk to consumer privacy. Do you agree that this risk is real and significant? Are there ways in which the risks to privacy could be mitigated?**

We agree this addresses some competition concerns, but we also acknowledge this may come with increased risks.

In the case of a PDS a primary concern is the ability for a participant in a nascent market, with potentially limited funding, to maintain the necessary privacy controls that protect user data to a standard that is equal to or greater than the SMS platforms. SMS platforms have massive resource to protect and keep private user data from malicious breaches. Additionally, a PDS that stores data from many different products and services is likely to hold a greater amount of data than any other single entity, and thus pose a single point of failure on data privacy.

Additionally, the financial model for a PDS may be difficult to create in such a way that there are no conflicts of interest. A primary reason that one of the current SMS platforms should not provide a PDS service is because they themselves generate their core profits from the sale of this data.

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Creating a feasible business model where only user consented market participants are able to access the data may be challenging.

- 8) Are there ways in which the major platforms could circumvent the remedies we have described? How could we reduce the prospect of this?**
- 9) Would any of the remedies we have discussed here give rise to fresh customer detriment such as higher prices, lower service quality or less innovation?**
- 10) Would the privacy-enhancing technologies we have discussed be practicable and technically feasible?**

PET based browsers already exist today, although their adoption as a mechanism to sustain digital advertising is unproven. As publishers have highlighted, the Safari and Mozilla browser updates restricting third party cookie tracking have been devastating to publisher CPMs across those browsers. Although PET technologies may allow for some interest-based targeting it is still unknown whether retargeting capabilities on the user level will be available to advertisers. We must stress the importance of retargeting and direct response advertising as it accounts for over 50% of all digital ad spend. Without this ability, advertisers' performance will be considerably lower and they may not be able to maintain their current digital ad spend levels across the open web.

We presume that logged in users will always be open to being targeted, and as the current SMS platforms own the majority of logged in ad supply, more ad dollars will flow to these pools of supply. This of course will cause revenue loss for publishers.

- 11) Are there ways in which the major platforms could circumvent the remedies we have described? How could we reduce the prospect of this?**

Google is perhaps the most interesting use case as they operate a browser while at the same time being the dominant intermediary across the ad tech supply chain. They may have an active incentive to gather more information from the Privacy Sandbox APIs than will be available to non-Google entities in order to maintain the superior performance of their ad tech tools. Although Safari offers a client-side ad measurement service, Apple does not rely on advertising so their incentives may not be properly aligned to provide the necessary tools to support a healthy digital advertising ecosystem within their browser; Apple have proven with their ITP roll out that businesses relying on digital advertising are not a priority for them.

- 12) Would any of the remedies we have discussed here give rise to fresh customer detriment such as higher prices, lower service quality or less innovation?**

As discussed in our response to Question 10, we expect customer detriment to occur in the form of fewer (or lower quality) products and services provided under an ad funded model by reason of the

reduced ad targeting capabilities. In an extreme case, where targeting is not available on specific browsers, and the revenue generated from advertisements becomes inconsequential, publishers may decide to stop providing their content on a free basis to those users.

13) What is the current picture in terms of available proposals based on client-side PETs in the realm of digital advertising? Do any other approaches exist that have not been considered in this report?

From our understanding the primary client-side PET is Google's Privacy Sandbox. Due to the dominant position of Chrome,³² it is likely that the ad tech industry will more quickly align around this solution than any other. In an ideal world, and assuming the current targeting mechanisms are no longer available, browsers will share a common set of rules for ad tracking, measurement and targeting that is available to market participants via standardized APIs. However, this may be hard to achieve in practice without regulations in place, particularly as the varying browsers have different views on the importance of targeted advertising.

14) Current proposals for targeting rely on different approaches than proposals for attribution. Does any privacy-enhancing approach exist that combines targeting and attribution under the same framework?

15) What are the minimum requirements for a targeting or attribution technology to be considered privacy-enhancing? Can client-side technologies that disclose or broadcast limited information about the user (eg membership to specific clusters or interest groups) be considered privacy-enhancing?

16) Could client-side privacy-enhancing technologies be effective (including practicable and technically feasible) in addressing privacy concerns in digital advertising?

Client-side PETs could certainly be effective in enhancing user privacy, and considering that it still preserves some of the ability to provide targeted ads, it may suit the needs of some digital advertisers. Bringing the process of matching and conversion tracking down from the cloud to the device will limit the vulnerability of user's privacy, considering that the data leaving the device will be anonymized.

However, one should keep in mind that in the case of third party cookies users may still retain their agency by deciding for example to clear their cookies or configure their browser setting to block cookies. In the case of client-side PETs it is still unknown how a user would opt out of targeting.

³² Chrome has a 64% market share among web browsers. See <https://gs.statcounter.com/browser-market-share>.

17) Would these technologies exacerbate competition concerns, by entrenching the advantage of large vertically integrated platforms at the expense of smaller players in the ecosystem?

Because client-side PETs are largely Machine Learning-, AI-, and cryptography- driven, they require heavy computational power and advanced software development talent that only the largest tech companies may have resources to provide. This may further the dominance of large tech companies and stifle smaller players within the ecosystem to set themselves apart as a provider of a key differentiator to end advertisers.

Further, large tech companies usually own other components such as devices and browsers, allowing them to gather additional data which feeds, develops, and trains the Machine Learning models to improve over time.

18) What additional measures would be able to lessen competition concerns arising in an ecosystem where users browse using client-side PETs?

19) What are the main obstacles to widespread adoption of client-side PETs for online advertising? How can these obstacles be overcome, to avoid failures similar to previous initiatives like Do Not Track?

20) Is there any characteristic of digital advertising on mobile devices that makes client-side privacy-enhancing solutions less effective or practicable?

There would need to be solutions that work in mobile browsers and apps. In the case of mobile browser, standard client side PETs could be managed by the browser, but in the case of apps they may require individual app developers to properly implement them, causing integration discrepancies, as well as significant barriers to adoption.

It should also be noted that app targeting currently uses more persistent targeting methods than web. Advertising device IDs (e.g. AAID for Android, IDFA for iOS) are rarely replaced by the users. The manner in which Apple treats third party cookies within its browser is ironic considering the Apple IDFA persistent within their own operating systems and always present in app ad requests (it is likely due to fact that Apple wishes to maintain a vibrant app store, which requires ad funded apps, in order to entice and maintain users on its operating system).

21) Would consumers use devices and/or browsers that have the ability to serve privately targeted ads? Would adoption of these technology follow directly from their implementation in commonly used browsers or devices?

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If devices and/or browsers came pre-installed with the ability to serve privately targeted ads, consumers would be more likely to use them. The average consumer would not go through the hassle of finding alternate browsers or may not even be aware of the ability to serve privately targeted ads on their browsers. For instance, Safari's ITP is enabled by default and runs silently in the background with the user likely unaware of its existence.

22) What is the role of user incentives in the adoption of client-side PETs (eg the sharing of publisher revenue with consumers being exposed to ads on the publisher's website or app)? Are they necessary for widespread adoption? Do they have other implications that might be counterproductive or advantageous?

We are not sure that user incentives play a significant role in the adoption of client-side PETs. Such technology is implemented by the browser or app developer and does not necessarily require active decision by the end consumer. As regards sharing publisher revenue with consumers, we do not think consumers would be particularly interested in such an arrangement. [CONFIDENTIAL] Our view is that the value exchange taking place between news publishers and readers is one of offering professionally produced content in exchange for a user's exposure to advertisements. The value exchange is not content in addition to monetary payment in exchange for a user's exposure to advertisements.

23) What should the role of government regulation be in the adoption and maintenance of privacy-enhancing standards in digital advertising, especially considering the failure of past voluntary initiatives (like Do Not Track) to attain widespread adoption?

Government regulation could be beneficial in the design and implementation of standardized client-side PET roll out across browsers. This may assist the ad tech industry with developing products around these new targeting mechanisms.

24) In terms of efficiency, privacy, and competition, how does a digital advertising ecosystem based on client-side PETs compare to one where behavioral advertising is banned outright?

In terms of privacy, an ecosystem where behavioral targeting is banned outright would provide greater user privacy than in the client-side PET case of user-interest buckets. However, from the point of view of consumers, the privacy difference is minimal as in neither case is the user individually identified or targeted. In terms of efficiency, banning behavioral advertising would leave only contextual targeting as an option for advertisers, which could considerably impact the overall ad spend levels across the open web. Our feeling is that even improved contextual targeting technologies will never reach the efficiencies of user-based targeting. In terms of competition, client-side PETs would likely have an equal impact on market participants as all market participants

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would be subject to the same browser-based restrictions (with the exception of Google, who will own the PET in the case of Chrome).

25) Is there any non-client-side PET-based approach that can effectively mitigate privacy concerns in digital advertising while preserving some of the efficiencies associated with targeting and attribution?

26) Is there any scope for combining data sharing and PET approaches into a unified solution, where for example the functions of a PIMS provider could be performed on-device?

6. Comments on Appendix M

The CMA has discussed the following specific potential separation interventions in open display:

- separation of Google’s publisher ad server (or Google’s publisher ad server together with its SSP (AdX)) from other of its intermediary operations;
- separation by all intermediaries active in the open display market which operate both on the buy-side and sell-side to separate their operations between buy-side and sell-side;
- access by independent DSPs to Google’s YouTube advertising inventory;
- access by independent intermediaries to Google’s Analytics service; and
- access by independent intermediaries to Google’s data from its userfacing markets.

In respect of each of the potential interventions the CMA invited stakeholders to provide views on the following questions, on which we respond below:

1) **Would the intervention be effective in addressing the concerns identified in Chapter 5?**

As the CMA rightly acknowledges, while a code of conduct could in the short run go some way towards addressing potential harms arising from Google’s market power in ad serving, in the long run a more effective solution would be to implement separation / behavioural remedies over and above the code of conduct in order to tackle the problem at its source, i.e. the conflict of interests arising from Google’s presence across the ad tech stack.³³ As explained above, a Market Investigation running in parallel with government proposals for a code of conduct would be the ideal forum to further explore separation solutions and ultimately implement the most appropriate remedy to restore competition in open display.

However, we are sceptical as to whether any individual remedy in isolation could address the concerns identified in Chapter 5. Rather, there seems to be a strong case for combining *all* the separation interventions envisaged by the CMA. At the very least we think that separating Google’s publisher ad server – the beating heart of the ad selection process – from its ad intermediation activities is a *condicio sine qua non* for restoring competition in the ad tech ecosystem. An effective separation would put a stop on Google’s self-preferencing tactics, so that the ad server would be finally neutral and serve the interests of its customers, namely the publishers. That would also indirectly benefit advertisers and consumers, as the CMA notes.³⁴

2) **Would an intervention focused on the purchase/sale of digital advertising inventory aimed at UK users be effective?**

³³ Appendix M, paragraph 30.

³⁴ Appendix M, paragraph 33.

While it would be a start, we are concerned that the effectiveness of a solution confined to UK users would be limited. Such an intervention would not count for overseas traffic – which in the case of international news publishers like DMG Media can represent an important portion of the overall traffic – and might face implementation problems (it is not clear e.g. how the ad server would operate separately from the ad intermediation activities for certain users but not for others).

3) Should the intervention be considered further as a priority either by the CMA or by a regulatory body in the future?

Yes, we firmly believe that the identified interventions should be considered further as a priority by the CMA, ideally within the context of a comprehensive Market Investigation.

4) How could the intervention be designed to minimise costs and maximise benefits?

The answer to this question depends on the exact form of intervention. Benefits are expected to be maximized with stronger forms of separation, such as structural or ownership separation. As regards costs, we believe these will primarily consist in the necessary re-organisational costs that Google would incur, which again would depend on the exact form of intervention. Any resulting inefficiency relating to cookie matching could be overcome if Google supported common ID solutions, while any potential revenue loss due to Authorized Buyers (previously AdX) not being integrated with the ad server (e.g. through Dynamic Allocation) would be easily addressed by mandating AdX to participate in real-time auctions organized by alternative vendors (e.g. header bidding). That serves to confirm that restoring competition in ad tech would in all likelihood require a bundle of remedies, instead of isolated measures.

Finally, we should observe that any separation intervention is unlikely to deter investment and / or innovation as any related remedy would be aimed at essentially reversing the Google / DoubleClick acquisition rather than penalizing Google's organic growth.

5) Would the benefits of such an intervention would be likely to outweigh the costs?

Yes. As explained above, we believe the main costs to lie in re-organisational costs for Google, and any additional costs could be addressed through appropriate measures. Considering the importance of healthy competition in open display advertising for the thousands of publishers – and the spill-over benefits to consumers and society at large – we would expect the benefits of such intervention to greatly outweigh any costs.

In respect of mandating separation of Google's publisher ad server (or Google's publisher ad server together with its SSP (Adx)) from other of its intermediary operations the CMA also invited stakeholders to specifically consider:

6) Would separation in an appropriate form be effective in addressing the concerns above, and if so whether this would require ownership separation, or would operational separation be sufficient?

As explained above, separating Google’s publisher ad server from its intermediation activities is *essential* but not necessarily *sufficient* to address the concerns regarding Google’s conflicts of interests and the potential for leveraging practices. It is for this reason that a bundle of remedies aimed at curtailing Google’s market power should be adopted, including removing all exclusivities between Google’s ad tech products and/or Google’s products and inventory: Google Ads demand should be accessible on the same terms to competing exchanges, AdX demand should be accessible on the same terms to publishers using non-Google ad server and YouTube inventory should be accessible on non-Google intermediaries.

As regards the form of separation of Google’s ad server from its intermediation activities, we strongly believe Google should be mandated to separate and then sell the publisher ad server to an independent third party (**ownership** separation). Such a solution would have the benefit of simplicity, as it would avoid the need for having in place an ongoing monitoring mechanism (as the CMA rightly acknowledges),³⁵ and efficiency, as it would guarantee that ad serving activity would be run independently of ad intermediation. We note the CMA’s concern that such a strong remedy “*would be likely to have significant impacts on other markets outside the UK and may need to be coordinated with other authorities internationally*”.³⁶ While we understand the CMA’s reluctance, we should nevertheless observe that a Market Investigation would provide the forum for international cooperation with other competition authorities scrutinizing Google’s conduct in ad tech, such as the Department of Justice and State Attorney Generals in the US or the ACCC in Australia (all of which DMG Media has engaged with). On the other hand, we doubt that any remedy short of full-blown ownership separation (such as operational separation / “ring fencing”) could be effective – and at the very least it would require ongoing monitoring.

However, should the CMA consider that pursuing ownership separation would not be a pragmatic approach, we would urge to pursue the next best remedy in terms of efficiency, i.e. **structural** separation. In this case Google would have to transfer its ad serving activity to a separate subsidiary which would act independently and at arm’s length with Google’s other business activities (e.g. ad intermediation). Appropriate corporate governance measures would have to be put in place to ensure that the management of the subsidiary in charge of ad serving cannot receive any instructions from Google’s management and that the subsidiary maintains the incentive to behave independently of the wider group to which it belongs. In addition, Chinese walls should be put in place to ensure that commercially sensitive information cannot flow between the separate entities. We nevertheless consider the monitoring costs to be particularly high and would thus urge the CMA to first explore the possibility for ownership separation.

³⁵ Interim Report, paragraph 6.170.

³⁶ Interim Report, paragraph 6.170.

- 7) If separation of the publisher ad server were to be an effective intervention, would it be more effective to require Google to separate out solely its publisher ad server operations or its now fully integrated publisher ad server/SSP operations?**

As explained in our response to the RFI, Google has over the years leveraged DFP's key role in the ad selection process to give itself an advantage in ad intermediation. After the switch to a unified-first price auction, Google Ad Manager runs the auction deciding which ad will be served and at the same time participates in the auction. The auction takes place on Google's servers with Google having full visibility into the bidding data of its rivals and the price floors set by the publisher, while at the same time taking active steps to reduce transparency on the publisher-side (e.g. by preventing publishers from joining Data Transfer files) and eliminate publishers' ability to counteract (e.g. by preventing them from setting buyer-specific price floors). There is thus a strong case for breaking up Google Ad Manager into its constituent elements, namely an ad server (what was previously DFP) and an ad exchange (what was previously AdX) to avoid this conflict of interests. If the ad server remains integrated with the exchange there is a valid risk that the new entity will continue to engage in self-preference tactics.

In respect of mandating access by independent DSPs to Google's YouTube advertising inventory we also invite stakeholders to specifically consider:

- 8) Could any concerns about the sharing of personal information needed in order for Google to be able to sell YouTube advertising on a programmatic basis via all qualified DSPs be overcome?**

It is our understanding that third party pixel tracking across YouTube was disallowed in 2019. This means that ad and user tracking across YouTube must occur via Ads Data Hub which feeds data to DV360 and Google Ads: <https://developers.google.com/ads-data-hub/guides/intro>.

User tracking across YouTube is limited to the Google ecosystem via signed-in users and via first party Google cookies. In opening up YouTube supply to other DSPs one would assume that a cookie syncing process will need to take place in order for the DSP to target using the advertiser's data sets.

- 9) If it were too difficult for TrueView inventory to be offered to third-party DSPs, could access to only non-TrueView inventory still be effective?**

This question is perhaps best answered by an advertiser, however from our perspective we see that the majority of demand across our on-site video supply is monetised by non-TrueView campaigns, which indicates there is significant demand in market for standard instream video ads. If YouTube require a "skip" button to be run, this is a fairly simple feature to add into the

creative. So we feel there is likely significant value for non-Google DSPs to be able to access YouTube supply.

10) Would there need to be a mechanism to help ensure that Google would treat Google and non-Google demand on the same basis?

Considering Google's proven track record of favoring its own products / services over those of its competitors, we think it would be necessary to have in place a mechanism ensuring that Google does not prioritize demand coming from alternative DSPs.

In respect of mandating access by independent intermediaries to Google's Analytics service we also invite stakeholders to specifically consider:

11) Would mandating access to Google's attribution service rather than underlying data address privacy concerns?

Yes. Mandating access to Google's attribution service will limit the ability of third parties to utilise and analyse the dataset, so will assist with privacy concerns. It is our understanding that Google no longer releases to advertisers the full data sets with Google user IDs, and so advertisers must use Google's attribution service in order to track and measure their campaigns.

12) Would mandating access to Google's attribution service, rather than the underlying data, allow rivals to offer an equivalent service to Google?

Yes. One of the most powerful tools to which only Google has access is the Google user ID. With this Google can match user ID across Google products and sites allowing a full picture of the user journey. Mandating access to Google's attribution service rather than the underlying data should address privacy concerns but at the same time Google will lose some of their advantages when competing to their rivals. Of course this would require regulation to ensure a full attribution service is being offered to non-Google participants.

13) Transparency interventions:

The CMA has considered the following potential transparency interventions:

- **Reporting of fees by Google and Facebook or reporting of fees by all ad tech providers;**
- **Requirement to comply with a common transaction ID;**
- **A requirement on Google and Facebook to comply with industry standards on ad verification and measurement;**
- **A requirement on Google and Facebook to allow third-party verification of their own advertising inventory;**

- **A requirement on Google and Facebook to provide certain data, including bidding data, to publishers; and**
- **A requirement on Google and Facebook to provide transparency about the working of auctions to a regulatory body or approved independent auditor.**

In respect of each of these specific transparency interventions we invite stakeholders to consider:

14) Would the intervention, either individually or in combination, be effective in addressing the concerns identified in Chapter 5?

We strongly support all of these interventions, which we believe would address many of the concerns surrounding Google's present ability to charge hidden fees and manipulate auctions to secure a disproportionately large share of ad sales at prices which are artificially low for publishers. We remain of the view that no intervention in isolation is likely to be effective. However, there is a strong case for pursuing all of the above specific interventions in combination.

15) Should the intervention be considered further as a priority either by the CMA or by a regulatory body in the future?

Yes, we firmly believe that transparency interventions should be considered further as a priority by the CMA as part of a Market Investigation into open display. At the very least, they could be implemented as part of the code of conduct.

16) How could the intervention be designed to minimise costs and maximise benefits?

A proposal would be to limit reporting obligations to Google and Facebook.

17) Would the benefits of the intervention be likely to outweigh the costs?

We would expect the costs of transparency interventions to be minimal, and in any event largely outweighed by the significant benefits brought by increased transparency, including making informed business decisions and avoid unnecessary fees.

In respect of those interventions that would just apply to Google and Facebook we invite stakeholders to consider:

18) Would transparency interventions would be better addressed by a code of conduct as proposed in Chapter 6, for example by requiring Google and Facebook to comply with existing or future industry standards, or by a regulatory body given specific powers to address the lack of transparency?

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We doubt that a code of conduct alone could address the transparency concerns identified in Chapter 6. Given the scale of the discrepancy in market power between Google and Facebook on the one hand, and publishers on the other, no code of conduct is likely to achieve its purpose without enforcement by a regulatory body with statutory powers. The regulator should be vested with the power to order Google and Facebook to take necessary action to increase transparency under threat of significant financial penalties. If not, any regulatory intervention risks becoming toothless and is unlikely to improve transparency in any meaningful way.

19) If there were to be a regulatory body with powers to be able to put obligations on Google and Facebook in respect of the information that should be provided, what information should be provided?

Please see our response to Question 22.

In respect of a requirement to comply with a common transaction ID we also invite stakeholders to specifically consider:

20) Would any of the standard formats which currently exist, were they be adhered to either through industry agreement or a requirement by a future regulatory body, be effective in enabling the reporting of the ad tech tax?

We have been testing with a couple of ad tech tax measurement companies and found challenges with mapping transactions. Both companies need the KeyPart and TimeUse2 from Google's Data Transfer Files for the mapping (and potentially other fields are used too). As there is no common transaction ID that we are aware of, multiple fields need to be used in conjunction to attempt to recognize the transaction. The process would be made much easier with a common transaction ID.

Additionally, the Google transfer files only show net revenue amounts, so with Google "Average Revenue Share" enabled, there is no way to tell the actual revenue share from Google AdX on a per impression basis.

21) Would it be sufficient for the intervention to apply just to Google and Facebook or would the requirement also need to apply to all ad tech providers for it to work effectively?

No, ideally this would be measured across all ad tech intermediaries. The ad tech tax is an industry problem rather than just a Google and Facebook problem. However, Google is often used as an example of hidden ad tech taxes as they run multiple auctions across multiple pricing models, all under one roof.

In respect of a requirement on Google and Facebook to provide certain data, including bidding data, to publishers we also invite stakeholders to specifically consider:

22) What information should be provided?

- Google should be required to report to publishers and advertisers all fees charged by AdX, Google Ads, and DV360, on a per-impression basis, regardless of whether they are expressed as service fees, charges or revenue shares. Such information should include the “cost-per-click” (CPC) price that wins the auction in Google Ads; the converted “cost-per-mille” (CPM) submitted to AdX and/or the Unified Auction; any revenue shares; and the formulas used to calculate converted CPMs, revenue shares, and any other fees. Access to that information would expose any “hidden fee” charged by Google e.g. by reason of a thicker Google Ads auction and would thus allow publishers and advertisers to finally determine Google’s actual fees for ad intermediation.
- Platforms should be required to share non-aggregate impression-level and bidding data with publishers. Such data should include on a per-impression basis the bids from all participating exchanges (including from header bidding) and the ultimate price at which the impression is sold. Importantly, the different types of data should be shared in a format allowing publishers to combine them. Access to that information would allow publishers to better monitor whether the ad server conducts auctions fairly, as well as to optimize their monetization strategy e.g. by measuring the incremental revenue brought by header bidding demand partners. In addition, proper access to bidding data would be expected to increase fee transparency and help detect hidden fees.
- Google should be required to provide detailed information to a regulatory body of any planned changes to the operation of its ad tech products and services, including but not limited to its ad server, ad exchange, and DSPs. Changes to be notified would include alterations in auction mechanics; changes in fees or their calculations; and modifications to terms of access to bid, price, targeting, and other information. Notice should be given at least sixty (60) days before any modifications are implemented. This would give regulators a chance to review upcoming changes for possible anticompetitive effects and, if deemed appropriate, order Google to provide additional information, modify the planned changes or even refrain from rolling them out in the first place. The case for such a remedy is even stronger considering Google’s history of announcing important changes through vague blog posts and altering its products to favour its own activities.

23) Should this information be provided to publishers to analyse or, alternatively, provided to a regulatory body for audit or review against stated auction rules?

This information should in principal be supplied to publishers so that they can analyse it and make informed business decisions. For instance, being able to tie bidding data with impression-level data

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is crucial in optimizing monetization strategies as e.g. the publisher may measure the performance of header bidding demand partners vis-à-vis Google-controlled demand. In addition, full transparency across the ad tech stack will enable publishers to determine which supply path has the lowest ‘ad tech tax’ and choose their partners accordingly.

We note however that in certain cases such information could *also* be provided to a regulatory body, in order e.g. to resolve disputes between the parties around the interpretation of the provided data or in order for the regulator to perform periodic audits, as an additional safeguard.

DMG Media
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