

Response to the CMA Interim Report *Online Platforms and Digital Advertising Market Study*

February 2020

About ISBA

1. ISBA is the only body representing leading UK advertisers. Speaking with one voice on behalf of over 3,000 brands, we champion an advertising environment that is transparent, responsible and accountable; one that can be trusted by the public, by advertisers and by legislators. Our network of senior marketing professionals works together with ISBA to help members make better decisions for the future.
2. ISBA is one of the tripartite stakeholders that make up the Advertising Association (AA), which represents advertisers, agencies and media owners. We play a unique advocacy role, ensuring our members' interests are clearly understood and are reflected in the decision-making of media owners and platforms, media agencies, regulators and Government.
3. ISBA will:
 - **lead our members** in creating an advertising environment that delivers positive social and economic impact;
 - **champion media, agency and digital supply chain relationships that deliver value** for advertisers; and
 - **work with our community** of members and with partners to deliver thought leadership, learning, advice and guidance.
4. Our priorities fall into the following areas:

To **lead** the creation an advertising environment that delivers positive social and economic impact, ISBA will:

- develop and champion a **leadership position on the legal and ethical use of consumer data**, putting choice and control in the hands of the consumer;
- play a leading role in **advocating and shaping regulation** of Online Harms;
- **shape future self- and co-regulation** of advertising to be sustainable and fit for purpose; and
- with the AA, **better understand the drivers of public trust and champion improvement**, through the promotion of advertiser best practice, through advocacy for better industry standards and through encouraging the prioritisation of user experience by platforms and publishers

To **champion** a media, agency and digital supply chain relationships that deliver value for advertisers, ISBA will:

- lead global efforts to accelerate delivery of accountable **cross-media measurement** of video and digital formats, with stakeholder support;
- lead advertisers in the pursuit of transparency and efficiency in the **digital supply chain** to engender trust;
- publish **new media contract advice** and drive wider industry adoption of ISBA's contract frameworks;
- champion closer **agency/client alignment** based on sustainable commercial arrangements;

- advocate for a regulatory environment that fosters **competition and addresses market failures**;
- actively support the **WFA Media Charter**, particularly in relation to **advertising and influencer fraud**; and
- support the **Global Alliance for Responsible Media** in delivering improved measurement and tools to keep communities and brands safe.

To **work with our community** to deliver thought leadership, learning, advice and guidance, ISBA will:

- drive **wider active engagement** with ISBA through membership growth and greater participation in ISBA's working groups and governance bodies; and
- deliver an enhanced online **knowledge base**, working selectively with partners to create high quality, relevant content.

5. ISBA represents advertisers on the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) – the sister organisations of the Advertising Standards Authority which are responsible for writing the Advertising Codes. We are also members of the World Federation of Advertisers (WFA) and use our leadership role in such bodies to set and promote high industry standards as well as a robust, independent co-regulatory regime.

Context

6. As we said in our response to the CMA last July, ISBA welcomes this market study. We have consistently engaged with a number of recent reviews, including the Cairncross Review, Furman Review, and inquiries by the Digital, Culture Media and Sport Select Committee and House of Lords Communications Committee. All of those inquiries and reports called for the CMA to carry out this study.
7. We will not repeat in this submission the points made in our paper last July, but would refer the CMA back to our core points: that as the trade body for advertisers, we wish to see a trusted, transparent, and accountable environment; that advertisers should have greater choice in the context of a healthy digital market; and that consumers must be able to have trust in the way in which their data is used.
8. We recognised the CMA's description of the current market as set out in the original statement of scope, and continue to support the themes set out therein – to what extent online platforms have market power in user-facing markets, and what impact this has on consumers; whether consumers are able and willing to control how data about them is used and collected by online platforms; and whether competition in the digital advertising market may be distorted by any market power held by platforms.
9. We have continued to engage closely on behalf of our members with the CMA over the past six months, having provided in our previous response an overview of the digital advertising market. In this submission, we provide an update on the programmatic study currently underway into the structure of the market (see dedicated section on this below).
10. ISBA continues to support the establishment of an *ex ante* regulatory regime to regulate the activities of online platforms and encourage greater competition in both consumer-facing and digital advertising markets. As previously, and bearing in mind the result of the recent General Election and the opportunity for a renewed focus on policymaking outside of the challenges of Brexit, we would continue to ask that the CMA study takes account of the other significant pieces of work underway in accounting for the Furman recommendations, including the legislation which will arise out of the Online Harms White Paper; the

Centre for Data Ethics; the Department for Digital, Culture, Media and Sport's review of online advertising; and the Information Commissioner's Office's (ICO's) broader examination of the use of personal data in adtech.

Report Response

11. ISBA welcomes the publication of the CMA's interim report, which we believe deserves careful reading by anyone seeking to understand the structure and workings of the search and online display advertising markets.
12. We agree with the report's assertion that 'big' is not necessarily 'bad'. There is undoubted value in the services which some platforms are providing free to the public, including search, social media, and access to news journalism. The central question is whether these markets are working well for consumers.
13. The interim report has clearly laid out the dominance of the major platforms in what are the non-substitutable markets of search and online display. This dominance is indisputable. We recognise the CMA's analysis of the market and agree with its arguments on substitutability; fundamentally, search and display advertising are not substitutable. The dominant shares of Google in the search market and Facebook in display advertising are clear.
14. Many of the themes examined in the report are familiar and, at base, are rooted in competition for the user. They give rise to certain network effects and there are clear economies of scale. We agree with the finding that substantial network effects inhibit competition.
15. We also accept that Facebook opts customers into personalised advertising by default. We know that, in many cases, users largely accept the value exchange of targeted advertising in return for the free service which platforms such as Facebook provide; the consumer simply wants advertising to be relevant to them. However, it is also worth noting the results of the March 2019 ICO/Ofcom consumer study, which showed that consumers' acceptance of this exchange diminishes once it is explained to them how adtech works, including what data is collected. Before it was explained, 63% of respondents said that it was either acceptable or completely acceptable for websites to display adverts in return for those sites being free to use. After an explanation, net acceptability fell to 36%.¹
16. Google and Facebook are indeed better able to track users and demonstrate the effectiveness of their advertising than their rivals. This is why we welcome the two companies' support of global and UK initiatives, led by advertisers, to provide independent, audited cross-media measurement. These initiatives are critical if advertisers are properly to evaluate the effectiveness of their media investments, including those in broadcast and other media.
17. The unintended impact of the EU's General Data Protection Regulation (GDPR) has been further to insulate 'walled gardens' from competition, through their understandable responses.
18. More specifically for advertisers, lack of transparency and asymmetric information are identified as having the potential to create or exacerbate market problems through the impact they have on all market participants. This is a key issue for ISBA's members, and one which manifests itself in multiple ways. Algorithms are indeed opaque, and the

¹ ICO/Ofcom, [Adtech Market Research Report](#) (2019).

problem is particularly acute in the programmatic open display market, where the potential for market distortion is substantial given the opacity and anonymity of parties in the supply chain.

19. Turning to vertical integration, Google's large share in the market for the intermediation of 'open display' advertising is highlighted in the interim report. More broadly, the report also recognizes that "there are legitimate concerns about perceived conflicts of interest for actors that operate at multiple levels of the intermediation value chain". While the report stressed that the CMA is still considering these concerns, we agree that this should remain a focus of further investigation. ISBA itself is focused on this issue, and we expect the results of our programmatic supply chain study to be a useful elucidation of the nature of the value chain. It is clear that the conflicts of interest the CMA identified combine with the lack of transparency to be a substantial source of concern. Advertisers remain concerned about the placement of their adverts, and about the share of their spend that makes its way to publishers.
20. The interim report is clear in its analysis of the harms which could flow from the factors it identifies, and argues that there is a strong case for a pro-competitive regulatory regime. The report leans towards an enforceable Code of Conduct for those players with market power, as well as rules to enforce transparency for market participants. In principle, ISBA would support these remedies, while awaiting further details.
21. At this stage, the CMA has not recommended a full market investigation, but is rather proposing a suite of recommendations which government can take forward in regulatory reform. In doing so, we believe that it has correctly recognised the global nature of this challenge, and the need to work with international regulators. It has also made clear that it is liaising closely with the ICO on questions of data, a co-ordination which ISBA strongly welcomes.

Programmatic Supply Chain study

22. As referenced in our previous submission to this review, ISBA is conducting a study into the programmatic supply chain – essentially, an end-to-end industry market audit which will provide the clearest understanding yet of the actual cost of the adtech supply chain, and provide credible evidence to drive much-needed reform.
23. Building on previous studies including the WFA programmatic media study, ANA Programmatic Fog study and Guardian media buying experiment, this first end-to-end supply chain study will provide all industry stakeholders, from clients to publishers, with real-world evidence to improve and optimise their supply chains and put more working media back into the hands of advertisers and media owners. The findings will also be used by ISBA to campaign for clear industry best practice standards.
24. The study will examine the 'open display market' (excluding owned and operated platforms of Google and Facebook) and disclosed buys only i.e. where both intermediaries in the supply chain and their respective fees are identifiable and declared to the advertiser. The principal reason for this limitation is the contractual arrangement between the agency and the client that prevents disclosure including right to audit for non-disclosed buys.
25. In our previous submission, we had anticipated completion of the study by the end of 2019, and that the results would be submitted by us as part of this review. However, we have experienced significant delays in the set-up of the study – predominantly due to intermediary adtech companies citing contractual clauses with each other and data privacy concerns. By so doing, they delayed access to data which advertisers and publishers had

appointed PriceWaterhouseCoopers, who have joined us in carrying out this study, to access.

26. Although the majority of these legal barriers and concerns appear to have been overcome as of the time of this submission, the apparent intransigence of parties to comply with the study and the lack of consistency in process to access data and corresponding legal frameworks has been a key learning.
27. Final data collection is now expected in January to February of 2020. The publication of aggregated industry report/findings is expected at the Advertising Week Europe conference, which will take place from 16-19 March 2020. We anticipate the results being submitted to the CMA in parallel with their publication – if not in advance, if at all possible. The results from the individual audits will be delivered in March and April to participating advertisers, detailing individual supply chain results and cost-saving opportunities, and will remain confidential.
28. Further, ISBA, as a founding body of the Joint Industry Committee for Web Standards (JICWEBS), is engaging in a pilot to test the efficacy of applying blockchain/distributed ledger technology (DLT) to the digital advertising supply chain, essentially creating an ‘always on’ approach to tracking transactions through the chain. The preliminary results from the pilot are expected by the Spring, and will be used in concert with the findings from the programmatic supply chain study to provide the industry with evidence to underpin reform.